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Continental Cablevision - Southeastern Region

DONALD L. CROSBY
Regulatory Counsel

June 4, 1996

Ms. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RE: DOCKET NO. 950985-TP

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket is the original and fifteen copies of Continental Cablevision, Inc.'s Motion of Reconsideration. Copies have been served on the parties of record pursuant to the attached certificate of service.

Please acknowledge receipt and filing of this document by date stamping the enclosed duplicate of this letter and returning it to me.

Thank you for your assistance with this filing.

Sincerely,

Donald L. Crosby
Donald L. Crosby

- ACK
- AFA
- APP
- CAF
- CMU *Chase*
- CTR
- EAG
- LEG *1*
- LIN *5*
- OPC
- RCH
- SEC *1*
- WAS
- OTH

Enclosure

cc: All Parties of Record

DOCUMENT NUMBER-DATE

06170 JUN-6 96

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Resolution of petition(s) to)
establish nondiscriminatory)
rates, terms and conditions) DOCKET NO. 950985-TP
for interconnection involving)
local exchange companies and) SERVED: June 4, 1996
alternative local exchange)
companies pursuant to Section)
364.162, Florida Statutes)
_____)

CONTINENTAL'S MOTION FOR RECONSIDERATION

Pursuant to Rule 25-22.060, Florida Administrative Code, Continental Cablevision, Inc., on behalf of its affiliates, Continental Fiber Technologies, Inc. d/b/a AlterNet and Continental Florida Telecommunications, Inc. (collectively "Continental"), respectfully submits the following Motion for Reconsideration of Order No. PSC-96-0668-FOF-TP, issued May 20, 1996 ("the Order") in the above-captioned docket.

The Order establishes rates, terms and conditions of interconnection for United Telephone Company of Florida and Central Telephone Company of Florida ("United/Centel") in response to petitions filed by Continental and other parties to this proceeding.

DOCUMENT NUMBER-DATE

06170 JUN-6 8

FPSC-RECORDS/REPORTING

2845

Continental seeks reconsideration only of that portion of the Order setting up a procedure for changing the mutual traffic exchange compensation arrangement adopted by the Commission. Continental believes that the balance of the Order is correct and accordingly urges the Commission to affirm all other aspects of it.

In resolving Issue No. 1 of the proceeding, the Commission adopts a process to be followed by any party wishing to change the mutual traffic exchange compensation arrangement.

Continental takes issue with the following portion of the Order:

... If any of these parties believes that traffic is imbalanced to the point that it is not receiving benefits equivalent to those it is providing through mutual traffic exchange, th[e]n that party may request the compensation mechanism be changed. If resolution by the Commission is required, the respective ALEC and the United/Centel shall provide the following information for our evaluation:

- 1) The respective ALEC and the United/Centel shall provide monthly MOU data for terminating local traffic which will reflect the trends in the flow of traffic;
- 2) The respective ALEC and the United/Centel shall provide the financial impact to their respective firms due to the traffic imbalance since the implementation of mutual traffic exchange; and
- 3) The respective ALEC and the United/Centel shall provide the estimated costs which would be incurred due to the additional processing and software required to measure usage.

Order at Page 21.

In Continental's view, the decision quoted above violates the Administrative Procedure Act, Chapter 120, Florida Statutes ("the APA"). As an adjudicatory proceeding governed by Section 120.57 of the APA, the decision rendered in this docket must be based upon competent substantial evidence. By establishing a procedure which is not based on record evidence, the Commission violates the APA's requirements for formal proceedings in which the substantial interests of parties are being determined.

Moreover, if the above-quoted decision is intended as the promulgation of a rule, then the Commission violates Section 120.54 of the APA by failing to comply with its rulemaking procedures. However, Continental does not believe that the Commission intends the Order as the promulgation of a rule. This proceeding was initiated and has been conducted for the purpose of resolving petitions brought by specific parties against other specific parties. Accordingly, there has been no indication that this docket was intended to adopt a regulation of general applicability.

With regard to the APA's adjudicatory requirements for a formal proceeding, Continental submits that the record compiled in this docket fails to contain evidence supporting the Commission's

adoption of this change procedure. Issue No. 1 in this proceeding concerns the appropriate compensation arrangements to be established for United/Centel. While the cost of measuring and billing traffic may be relevant to this particular issue, the parties had no notice that a specific set of criteria may be adopted by the Commission for changing this mechanism.

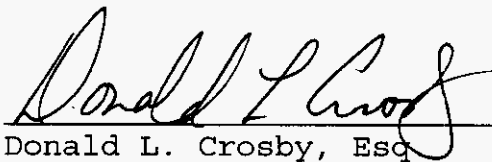
It is true that, in responding to Commissioners' questions, certain witnesses offered their opinions regarding whether traffic may be in balance at various times in the future and their speculations about the revenue impact. Yet, the only conclusion that can be drawn from their answers is necessarily subjective; an objective conclusion cannot be reached due to a paucity of actual, relevant data. Existing information is extremely thin because competition for local traffic is in its embryonic stage.

While the Commission properly concludes that mutual traffic exchange is the appropriate compensation arrangement for United/Centel, there appears to be continued concern regarding the possible ramifications on the parties of imbalanced traffic. In our view, any further adjudication of this issue should take place in a discrete hearing in which the parties are free to assert any right provided under federal or state law. The Commission should not attempt to compel the parties here to restrict those claims, or the factual showings to support them, to any particular set of criteria.

The record in this proceeding provides the Commission no basis for confining such a future party's showing to either certain traffic data, particular types of financial impact information or specific estimated costs. Continental encourages the Commission to delete this process from the Order in the interest of building a full and complete record in any future proceeding to change the compensation mechanism.

Continental urges the Commission to reconsider the Order and delete that portion establishing a procedure for requesting a change in the mutual traffic exchange compensation arrangement. The Commission correctly decided that United/Centel should institute mutual traffic exchange and should affirm all aspects of the Order after making this deletion.

RESPECTFULLY SUBMITTED this 4th day of June 1996.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the Motion of Reconsideration of Continental Cablevision, Inc., were furnished by U. S. mail this 4th day of June, 1996, to the following:

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