SCANNED

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October 22, 1993

Mr. Steve C. Tribble
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Florida Public Service Commission
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Re: Docket No. [redacted] - Intermedia's Petition

Dear Mr. Tribble:

Enclosed please find an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Brief, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely yours,

J. Phillip Carver (AD)

J. Phillip Carver

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Enclosures

cc: All Parties of Record
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CERTIFICATE OF SERVICE
Docket No. 921074-TL

I HEREBY CERTIFY that a copy of the foregoing has been furnished by United States Mail this 22nd day of October 1993, to:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Intermedia Communications of Florida, Inc. for Expanded Interconnection for AAVs within LEC Central Offices.	)	Docket No. 921074-TP
	)	Filed: October 22, 1993

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SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S BRIEF OF THE EVIDENCE

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STATEMENT OF THE CASE

This proceeding began with the filing of a Petition by Intermedia Communications of Florida, Inc. ("Intermedia" or "ICI") on October 16, 1992. In this petition, Intermedia requested that the Florida Public Service Commission ("Commission") enter an order "mandating that local exchange carriers ("LECs") file tariff revisions necessary to allow Alternative Access Vendors ("AAVs") to provide authorized intrastate services through collocation arrangements that will be established within LEC central offices". (Intermedia Communications of Florida, Inc. Petition for an Order Permitting AAV Provision of Authorized Services Through Collocation Arrangements In LEC Central Offices, p. 1). Over the next several months a total of 18 additional parties intervened in this proceeding.[1]

During the months of April and May of 1993, a number of workshops were conducted in which the various parties presented

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[1] BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell"); Central Telephone Company of Florida, ("Centel"), United Telephone Company of Florida ("United), GTE Florida Incorporated ("GTE" or "GTEFL"); Alltel Florida Inc. ("Alltel"); AT&T Communications of the Southern States ("AT&T"); Florida Cable Television Association Inc. ("FCTA"); Florida Interexchange Carriers Association ("FIXCA"); Indiantown Telephone System Inc. ("Indiantown"); Northeast Florida Telephone Company ("Northeast"); Quincy Telephone Company ("Quincy"); Southland Telephone Company ("Southland"); Interexchange Access Coalition ("IAC"); MCI Telecommunications Corporation ("MCI"); Sprint Communications Company Limited Partnership. ("Sprint"); Teleport Communications Group Inc. ("Teleport"); Time Warner AxS of Florida, L.P. ("Time Warner"); and the Office of Public Counsel ("Public Counsel").

to the Florida Public Service Commission Staff ("Staff") their views as to the issues that should be addressed in this docket and the way in which these issues should be resolved. On May 26, 1993, the Prehearing Officer issued an order entitled Order Establishing Procedure (Order No. PSC-93-0811-PCO-TP), which stated the manner in which the various issues relating to expanded interconnection would be addressed. Specifically, the Order stated the following:

> In order to address the Intermedia Petition, broader questions regarding private and special access expanded interconnection must be resolved. In turn, these broader issues raise still larger issues regarding expanded interconnection of switched access. However, because the switched access issues do not need to be resolved prior to answering Intermedia's Petition, we shall address initially only the private line and special access issues. Expanded interconnection of switched access shall be addressed in a hearing which has been tentatively scheduled for the Spring of 1994.

(Order Establishing Procedure, p. 1) This Order also stated that the "Phase I" hearing to address private line and special access issues would commence on September 10, 1993.

Prior to the Prehearing Conference, which was held on August 11, 1993, the parties agreed to a number of proposed stipulations that were subsequently set forth in the Prehearing Order issued September 1, 1993 (Order No. PSC-93-1274-PHO-TL). Among these was the following proposed generic stipulation:

> Unless specifically stated otherwise, when reference is made in this proceeding to 'expanded interconnection', it is understood to be limited to expanded interconnection for private line and special access services.

(Prehearing Order, p. 60) The other substantive proposed stipulations related specifically to Issues 2, 9, and 10. Also, the parties proposed stipulations to withdraw from further consideration in this proceeding Issues 3 and 19.

The hearing in this matter took place on September 10, and 11, 1993. Shortly after the commencement of the hearing the Commission accepted, without amendment or objection, each of the proposed stipulations of the parties. (Tr. pp. 10-11) During the hearing, direct and rebuttal testimony was presented by Southern Bell's witness, David B. Denton, Operations Manager, Regulatory Policy and Planning Department. Direct testimony was also offered by witnesses for AT&T, Teleport, Intermedia, GTE, Sprint and United. Intermedia, Teleport and United offered rebuttal testimony through the same witnesses. Rebuttal testimony was also presented by Northeast and Alltel. The hearing produced a transcript of 692 pages and 46 exhibits.

This Brief is submitted in accordance with the post-hearing procedures of Rule 25-22.056, Florida Administrative Code. In any instance in which Southern Bell's positions on multiple issues are similar or redundant, the discussion of these issues has been combined or cross-referenced rather than repeated. For the sake of continuity, Southern Bell has listed all issues in this docket in numerical sequence. In each instance in which there is an approved stipulation on a given issue, Southern Bell has listed the stipulated answer to the identified issue immediately after the statement of the issue. Southern Bell has

taken no position on Issue 18. As to every other issue for which evidence was presented at the hearing, the statement of the issue is immediately followed by a summary of Southern Bell's position on that issue and a discussion of the basis for that position. Each summary of Southern Bell's position is labeled accordingly and marked by an asterisk. Each statement of the stipulation on a given issue is also labeled accordingly and is marked by two asterisks.

ISSUE NO. 1: Is expanded interconnection for special access and/or private line in the Public Interest?

*SOUTHERN BELL'S POSITION: Expanded interconnection for special access and private line service will serve the public interest if it is ordered by this Commission in a way that avoids or minimizes harm to ratepayers through diminished contribution, which will result if LECs are not allowed to be price competitive as to these services.

All parties to this proceeding appear to agree, at least in concept, that expanded interconnection for special access and private line service by Tier 1 LECs would serve the public interest.[2] In support of this view, Southern Bell witness, David B. Denton stated in his direct testimony that, "allowing expanded interconnection will result in more competitive options for special access and private line service." (Tr. p. 390) Obviously the increased availability of competitive options will benefit the end-users of these services. Therefore, assuming that expanded interconnection is allowed to have this effect, the interests of this particular segment of the public would unquestionably be served. Southern Bell believes that it is important to ensure also that other segments of the ratepaying public are not harmed by the increased competition arising from expanded interconnection.

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[2] Each party took a position to this effect prior to the hearing, and no party presented evidence to the contrary. The only exceptions were Indiantown, Quincy, and Southland, who did not state a position on this issue as it relates to Tier 1 LECs. See Prehearing Order, pp. 12-14.

Mr. Denton testified further that "there is a contribution that intrastate special access and private line services provide to residential local exchange service." (Tr. p. 390) If the LECs are not granted pricing flexibility in order to respond to the increased competition for special access and private line services that results from expanded interconnection, then there is the obvious potential for the loss of this contribution to residential local exchange services. Thus, if pricing flexibility is denied the LECs, there is a substantial prospect of harm to users of residential local telephone service.

At the same time, if the LECs are unable to compete in these markets, then there will not be a true competitive environment, and the users of special access and private line services would receive little or no benefit.[3] If this situation were allowed to occur, the overall effect would be that expanded interconnection would not be in the public interest.[4]

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[3] Mr. Denton stated at the hearing that if LEC "prices are kept at a higher level and ... [the competitors] ... philosophy is [to] price below that, you have denied the consumers ... the chance to have even lower prices". (Tr. p. 424).

[4] A more thorough discussion of pricing flexibility appears below in response to Issue 18.

ISSUE NO. 2: How does the FCC's order on expanded interconnection impact the Commission's ability to impose forms and conditions of expanded interconnection that are different from those imposed by the FCC's order?

****STIPULATION:** The FCC's order on expanded interconnection does not restrict the FPSC's ability to impose forms and conditions of expanded interconnection that are different from those imposed by the FCC's order. Expanded interconnection for intrastate special access/private line falls under the FPSC's jurisdiction and the Commission is not bound by any interstate policy.

ISSUE NO. 3: Under what circumstances should the Commission impose different forms and conditions of expanded interconnection?

****STIPULATION:** By agreement of the parties, Issue 3 is deleted from further consideration in this proceeding.

ISSUE NO. 4: Does Chapter 364 Florida Statutes allow the Commission to require expanded interconnection?

***SOUTHERN BELL'S POSITION:** There is nothing in Chapter 364, Florida Statutes that would prohibit this Commission from ordering expanded interconnection. Expanded interconnection, however, cannot be used as a means to do something that would otherwise be prohibited by Chapter 364.

As stated above, there is no provision in Chapter 364 that would prohibit this Commission from allowing expanded interconnection. Chapter 364 does, however, prohibit certain entities from providing specified types of telecommunications service. Obviously, this Commission could not order that expanded interconnection be allowed as a means for a carrier to provide some service or take some other action that would violate Chapter 364. This point is especially salient because several of the parties to this action have, in effect, taken the position

that this Commission should allow expanded interconnection to be used to engage in an action that is barred by Chapter 364, i.e., "ratcheting" by AAVs.

Intermedia's witness, Jonathan E. Canis defined ratcheting in his rebuttal testimony as "the combination of special access services and switched transport over the same facilities". (Tr. p. 604) Likewise, Mr. Denton defined ratcheting in his rebuttal testimony as the use of "special access high capacity service to provide both special access and private line dedicated services as well as the local transport portion of switched access (i.e., shared use)". (Tr. p. 637) Intermedia, Teleport, and Sprint have all argued that this Commission should include in the Order on Phase I of this docket the provision that interconnectors be allowed to ratchet. As Mr. Denton noted, however, the same argument was made to and rejected by the FCC:

> The FCC is on record, of course, that it does not believe that interconnectors should be allowed to 'ratchet' before a new local transport rate structure is implemented. The FCC correctly recognized that the LECs would face the potential of losing significant amounts of revenue if 'ratcheting' were allowed before local transport restructuring occurs. The FCC found, therefore, that 'ratcheting' is not in the public interest at the present time.

More to the point of this issue, ratcheting by an AAV would constitute a violation of Chapter 364.336(3)(a). As stated

above, ratcheting involves the shared used of a circuit to provide both switched and non-switched services. Section 364.337(3)(a) specifically enumerates the services that may be provided by an alternate access vendor:

> For the purposes of this section, 'alternate access vendor services' means the provision of private line service between an entity and its facilities at another location or dedicated access service between an end-user and an interexchange carrier by other than a local exchange telecommunications company, ...

In other words, AAVs are currently prohibited under Florida law from providing any sort of switched access, including ratcheting. Therefore, in addition to the reasons stated by Mr. Denton that ratcheting should not be allowed now, the most compelling reason to prohibit AAVs from ratcheting at this time is that to do otherwise would be to sanction a specific violation of Chapter 364, Florida Statutes.

ISSUE NO. 5: Does a physical collocation mandate raise federal or state constitutional questions about the taking or confiscation of LEC property?

*SOUTHERN BELL'S POSITION: Southern Bell has appealed the FCC's order because it believes that a mandate of physical collocation constitutes an unlawful taking of LEC property.

Southern Bell believes, and has argued before the Federal Communications Commission, that any order of mandatory physical collocation would constitute a constitutionally impermissible

governmental taking of private property. The FCC rejected this argument in its Order in CC Docket No. 91-141 ("FCC Order"), and Southern Bell has appealed this ruling to the United States District Court of Appeals for the District of Columbia Circuit. Southern Bell asserts that the FCC's decision that the order of mandatory physical collocation was not an improper taking is unsupported by the relevant legal authority.

Likewise, there is no legal basis for this Commission to conclude that an order of mandatory physical collocation for intrastate purposes is constitutionally permissible. Instead, an order of mandatory physical collocation by this Commission would constitute a governmental "taking" of LEC property that is impermissible under the Fifth Amendment to the United States Constitution.[5] It is an unwavering principle of takings jurisprudence that "a permanent physical occupation authorized by government is a taking without regard to the public interests that it may serve." Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 426 (1982). In Loretto, for example, the Court held that a law forcing landlords to permit the

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[5] "The pertinent words of the Fifth Amendment of the Constitution of the United States are the familiar ones: 'nor shall private property be taken for public use, without just compensation.' That prohibition, of course, applies against the states through the Fourteenth Amendment." Webb's Fabulous Pharmacies, Inc. v. Beckwith, 101 S.Ct. 446, 450 (1980), on remand, 394 So.2d 1009 (Fla. 1981).

installation of cable facilities on their apartment buildings was a taking even though the facilities occupied only 1 1/2 cubic feet of space. 458 U.S. at 435-40 & n.16.

There can be no doubt that the intrusion upon LEC property involved in mandatory physical collocation is the type of permanent physical occupation that amounts to a taking. As the United States Supreme Court has said, "whether a permanent physical occupation has occurred presents relatively few problems of proof. The placement of a fixed structure on land or real property is an obvious fact that will rarely be subject to dispute." Loretto, 458 U.S. at 437. If this Commission orders mandatory physical collocation for intrastate purposes, then uninvited collocators will physically install their transmission equipment within LEC central office buildings, maintain dominion and control over the portion of the building unwillingly dedicated to their exclusive use, and secure access through other portions of the respective LEC central office to maintain and repair their equipment.

There is nothing "temporary" about this forced occupation. As one Federal court has explained, "[i]f the term 'temporary' has any real world reference in takings jurisprudence, it logically refers to those governmental activities which involve an occupancy that is transient and relatively inconsequential,"

such as a government "truckdriver parking on someone's vacant land to eat lunch." Hendler v. United States, 952 F.2d 1364, 1377 (Fed. Cir. 1991). Likewise, "'permanent' does not mean forever, or anything like it" (id. at 1376). An uninvited physical occupation of indefinite duration amply qualifies as a permanent taking.

Thus, a mandatory physical collocation requirement presents a case of permanent physical occupation amounting to a per se taking. It is not, as the FCC mistakenly believed, a case of "nonpossessory governmental activity" (Loretto, 458 U.S. at 440) that is subject to analysis under the three-part "facts and circumstances test" applicable to regulatory takings. (FCC Order, par. 231) Instead, the permanent physical intrusions outlined above unmistakably constitute an impermissible taking of LEC property under settled law.

The FCC attempted to avoid the prohibition of per se taking set forth in Loretto by way of two separate conclusions. First, The FCC asserted that "[a]ny per se rule, including the Loretto per se rule, is not reasonably applicable to a regulation covering public utility property owned by an interstate common carrier subject to the specific jurisdiction of this agency." (FCC Order, par. 233) Second, the FCC stated that mandatory

physical collocation "is significantly less intrusive" then the action deemed to be a taking in Loretto. (FCC Order, par. 234)

As to the FCC's first contention, Southern Bell asserts that there is no exception in the law from the per se rule of Loretto for property owned by a regulated public utility. Moreover, it has long been settled that the constitutional protection against unlawful takings "applies as well to private property devoted to a public use." Western Union Tel. Co. v. Pennsylvania R.R., 195 U.S. 540, 569 (1904) (cited with approval in Loretto, 458 U.S. at 430-31). The Supreme Court has made it clear that "broad as is the power of regulation, the State does not enjoy the freedom of an owner" and cannot invoke the "public interest" to deprive the owner of its constitutionally protected property rights. Northern Pacific Ry. v. North Dakota, 236 U.S. 583, 593 (1915).

The post-Loretto case that is most instructive is FCC v. Florida Power Corp., 480 U.S. 245 (1987). The Court there held that the Pole Attachments Act did not effect a per se taking of public utility company property because, in contrast to a mandatory physical collocation requirement, it did not give cable operators "any right to occupy space on utility poles" and did not prohibit "utility companies from refusing to enter into attachment agreements with cable operators." Id. at 251. The Court made clear that the question would be different "if the FCC

in a future case required utilities, over objection, to enter into, renew, or refrain from terminating pole attachment agreements." Id. at 252 n.6 (emphasis added). Mandatory physical collocation, unlike the situation at issue in Florida Power, does involve the "element of required acquiescence" that defines "the unambiguous distinction between a commercial lessee and an interloper with a government license." Id. at 252-53.

Again, the FCC also asserted that mandatory physical collocation is "less intrusive" than the physical occupation at issue in Loretto. (FCC Order, par. 234) But the intrusion in Loretto, which involved the installation of a thin cable and two small boxes on the exterior and roof of a building, was trivial compared to that which is necessarily entailed in pnysical collocation. In any event, the relative degree of intrusiveness is beside the point. As the Supreme Court recently confirmed, "regulations that compel the property owner to suffer a physical 'invasion' of his property" constitute a per se taking "no matter how minute the intrusion." Lucas, 112 S. Ct. at 2893.

Finally, the FCC concluded that "even if physical collocation were deemed a taking, it does not violate the Fifth Amendment because the constitutional requirements will be satisfied and the LECs will receive just compensation". (FCC Order, par. 238) The FCC's conclusion that the constitutional

requirements will be satisfied was premised on the fact that the United States Congress "has broad authority to take property for a public purpose" and the FCC's belief that this authority had been delegated to it. (FCC Order, par. 238) To the contrary, recognizing that governmental takings subvert "the usual attributes of ownership of private property" and are in derogation of "common right," the Supreme Court has long held that statutes shall not be read to delegate the Congressional power to take property unless they do so "in express terms or by necessary implication." Western Union Tel. Co. v. Pennsylvania R.R., 195 U.S. at 569.

On the basis of this analysis, Southern Bell has argued that the FCC lacks the delegated authority to engage in the taking of the property of an entity it regulates. Likewise, there is no legal basis upon which this Commission could find that it has been delegated the federal congressional authority to effect a taking that, in the absence of this delegated authority, would constitute a violation of Southern Bell's Fifth Amendment rights.

Finally, mandatory physical collocation is no less a taking of property merely because there exists a mechanism under which LECs may receive some payment from collocators for their use of the LECs' property. Although the United States Constitution prohibits the taking of private property without just

compensation, the payment of compensation (just or unjust) does not transform a taking into something else. "The fundamental ... question of constitutional right to take cannot be evaded by offering 'just compensation.'" Ramirez de Arellano v. Weinberger, 745 F.2d 1500, 1524, n.95. In other words, because this Commission lacks the power to, in effect, condemn LEC property for a public purpose, no taking is permissible. The fact that some compensation may be paid by a third party collocator does not render constitutionally valid an otherwise impermissible taking.

Therefore, on the basis of the foregoing, it is clear that this Commission lacks the authority, delegated or otherwise, to engage in a taking of LEC property. It is equally clear that an order of mandatory physical collocation constitutes just such a taking. For this reason, Southern Bell asserts that mandatory physical collocation cannot be ordered in this docket without violating the United States Constitution.

ISSUE NO. 6: Should the Commission require physical and/or virtual collocation?

*SOUTHERN BELL'S POSITION: This Commission should not require either form of collocation. Instead, each LEC should have the option of providing either physical or virtual interconnection arrangements.

Southern Bell believes that when adequate central office space exists, some form of collocation should be made available

upon a request by anyone who is authorized to interconnect. However, the LEC should retain the option to provide either physical or virtual collocation.

In reaching this conclusion, Southern Bell concurs with the statement of GTE's witness, Dr. Edward Beauvais that "it is difficult to construct any rational or logical argument that physical collocation provides additional benefits to competition that are not already available under virtual collocation." (Tr. pp. 304-05) At the same time, physical collocation unquestionably requires more space than does virtual collocation.[6] Given this, as Dr. Beauvais also stated, "[s]pace allocation and exhaustion problems are perhaps an inevitable consequence of a physical collocation mandate". (Tr. p. 306) At the same time, mandatory physical collocation would require that interconnectors be given access to the LEC central office even

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[6] When Mr. Canis was asked to admit as much, he responded that he could "only answer that question somewhat equivocally". (Tr. p. 61) When Mr. Canis was later asked a similar question by Commissioner Johnson, he answered more directly:

> Commissioner Johnson: Does virtual collocation require less space, use less space than physical, and if so, why?
>
> Witness Canis: As a general matter, the answer is yes, but it's a matter of degree.

(Tr. p. 124)

when this access might result in safety hazards or security risks to a LEC central office. Again, in Dr. Beauvais words, "one of the LEC's chief means of guarding against harm to the network is its complete discretion to control entry to its central offices. Without this authority, the potential for both inadvertent and intentional interference with LEC operations increases dramatically." (Tr. p. 309)

For these reasons, it is imperative that the LEC have the ability to avoid situations in which allowing physical collocation would exhaust space or result in safety or security problems. Giving the LEC the option of granting virtual rather than physical collocation in appropriate circumstances is the most effective way to ensure that this result occurs.

Several of the parties to this docket have taken the position that mandatory physical collocation should be ordered for intrastate interconnection because to do otherwise would necessarily cause an irremediable conflict with the FCC Order.[7] The FCC, however, stated specifically that physical collocation was not necessary "if the LEC and the interconnecting party voluntarily negotiate a virtual collocation arrangement." (Canis, Tr. p. 607) Thus, in a situation in which, for example,

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[7] See the positions of Intermedia, Teleport and AT&T as set forth in the Prehearing Order, pp. 23-25.

a LEC is unable due to legitimate safety concerns to offer physical collocation, then the interconnector can assure that it will have the same form of collocation for facilities to be used for both interstate and intrastate services by opting for virtual collocation for interstate purposes as well. The risk of inconsistency that was cautioned against by some parties would only be a problem in reality if the collocating party insisted upon one form of collocation for interstate purposes and was unable to obtain the same arrangement for intrastate purposes. Clearly, the interconnector could avoid this result by conforming its interconnection for interstate purposes to the intrastate interconnection.

Also, some of the intervenors who are potential interconnectors have argued for mandatory physical collocation based on the apparent belief that this is the superior form of collocation and that their interests will be best served by obtaining it. For example, Mr. Canis stated in summary of his testimony that "it is absolutely abundantly clear that physical collocation is superior in all respects to virtual collocation". (Tr. p. 59) When Mr. Canis was asked whether collocators who obtain a physical collocation arrangement would have an advantage over others who, due to exigent circumstances, are forced to accept a virtual collocation arrangement, he responded by stating

that he "would say that the parties taking virtual collocation may be disadvantaged in a number of respects". (Tr. p. 67) Mr. Canis' view, however, was not shared by other intervenors who are potential interconnectors. For example, Mr. Fred Rock stated on behalf of Sprint the following:

> Technologically, Sprint believes that the same interconnection opportunities can be made available on a virtual basis as on a physical basis. Sprint believes there is minimal cost difference between provisioning for physical and virtual arrangements. As long as LECs offer 'virtual' interconnectors the same level of service as if they were located in the central office, and provide a virtual arrangement at the same price for common rate elements, Sprint does not believe the requirement for physical interconnection is necessary.

(Tr. p. 446)

In either event, whether physical collocation is superior or not, the offering of physical collocation should not be mandatory. If, as Mr. Rock asserts, virtual and physical collocation provide equal benefits, then there is no basis to allow an interconnector to insist upon one as opposed to the other, particularly in an instance in which a LEC's decision to offer only one or the other is based upon compelling reasons such as safety or security. If, however, as Mr. Canis asserts, physical collocation is superior, there may still be instances in

which in the interest of fairness, virtual collocation should be offered to all interconnectors.

Although there is no stipulation on this point, all parties have essentially agreed that interconnection should be made available in each central office on a "first come, first served" basis. (See Issue 13). As stated above, Mr. Canis conceded that, all things being equal, a party that obtains physical collocation is going to be in a better position than one who requests collocation after the space for physical collocation is exhausted and, as a result, must accept a virtual collocation arrangement.[8] Therefore, if Mr. Canis were correct in the contention that physical collocation is superior, a collocator might in some circumstances be able to obtain an unfair advantage over its non-LEC competitors by requesting physical collocation to an extent that will exhaust existing space and thereby force its competitors to accept virtual collocation. In such a circumstance, the LEC should have the discretion to offer collocation in a way that does not necessarily entail disparate treatment of the parties requesting it.

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[8] It is also noteworthy that Mr. Canis readily admitted on cross examination that Intermedia intends to try to obtain physical collocation in the LEC central offices throughout the state where it can do so. (Tr. pp. 67-68)

Moreover, Mr. Canis provided other answers on cross-examination that make it clear that Intermedia's desire to obtain mandatory physical collocation is not based purely on the notion that it is the superior form of collocation. Specifically, he stated in his prefiled direct testimony that "[a] policy mandating physical collocation as a default is essential to ensure that LECs have incentive to negotiate a collocation arrangement that is truly equivalent to physical collocation." (Tr. p. 608) Thus, Mr. Canis is, in effect, arguing that physical collocation should be required of all LECs in order to give a potential interconnector the leverage to ensure that if it accepts a virtual collocation arrangement, then it will do so on terms that are favorable to the interconnector.

Under Mr. Canis' scenario, the first collocator who requests collocation in any given central office (or all collocators who request collocation prior to the exhaustion of the space) will have the unfettered right to receive physical collocation, even when there are concerns such as safety or security that would make this form of collocation unworkable or even unsafe. A LEC which receives such a request would have as its only option the alternative of buying from the interconnector its entitlement to physical collocation by offering virtual collocation on terms that are financially disadvantageous to the LEC. Southern Bell

submits that this Commission should reject this result and, instead, grant each LEC the option to offer one form of collocation or the other, particularly when this option will be used to avoid safety or security problems or to avoid disparate treatment of similarly situated interconnectors.

ISSUE NO. 7: What LECs should provide expanded interconnection?

*SOUTHERN BELL'S POSITION: Southern Bell is not opposed to this Commission's adopting the same approach as did the FCC, and requiring expanded interconnection only by Tier 1 LECs.

In its Order in CC Docket No. 91-141, the FCC exempted from the requirement of offering expanded collocation all non-Tier 1 LECs. In reaching this conclusion, the FCC noted that "requiring smaller LECs to offer expanded interconnection might ... tax their resources and harm universal service and infracture development in rural areas". (Order, par. 56) Southern Bell does not take issue with the logic of this conclusion by the FCC, nor is it opposed to this Commission taking the same action and exempting from the requirement of collocation all non-Tier 1 LECs.

Southern Bell does submit to this Commission, however, that to the extent that it is inclined to require non-Tier 1 LECs to offer expanded interconnection, such a requirement would certainly be more workable if the Commission adopted Southern

Bell's position that LECs should have the option of providing either physical or virtual collocation. As Mr. Denton stated in his direct testimony, the FCC reached its decision regarding non-Tier 1 LECs, at least in part, because of the conclusion "that many smaller LECs may have inadequate central office space to accommodate collocation". (Tr. p. 394) As previously stated, virtual collocation requires less space than does physical collocation. Therefore, Mr. Denton opined that "if this Commission were to give all LECs the option of offering either physical or virtual collocation, then many smaller LECs could offer collocation even though they might not be able to comply with a mandatory physical collocation requirement". (Tr. p. 394)

Thus, while Southern Bell does not necessarily advocate that non-Tier 1 LECs be required to offer collocation, it does note that if this Commission Orders such a requirement, then allowing LECs the choice between the form of collocation to be offered will certainly be a boon to smaller LECs in their subsequent efforts to comply with this requirement.

ISSUE NO. 8: Where should expanded interconnection be offered?

*SOUTHERN BELL'S POSITION: Expanded interconnection could be offered in all Southern Bell central offices in Florida where sufficient space is available.

Southern Bell believes that collocation in some form can ultimately be offered in all Southern Bell central offices in

Florida where there is sufficient space. (Tr. p. 394) Most parties to this proceeding, rather than addressing this issue as has Southern Bell (i.e., in terms of where interconnection could be offered ultimately) have instead construed this issue to inquire where expanded interconnection should be offered immediately upon the entry of a collocation Order by this Commission. For example, in his testimony, Mr. Canis set forth the history of a similar issue regarding the initial offering of expanded interconnection as follows:

> In the federal collocation proceedings, the FCC forged a compromise that limited the number of COs in which interconnection had to be tariffed, thereby minimizing the need for LECs to establish CO-specific rates. Under the initial FCC plan, LECs were required to tariff each CO for physical collocation, even if there was little likelihood that collocation would be requested in a particular office. The LECs opposed this approach, stating that they would be required to survey and establish rates for COs for which no demand for collocation was likely. In response, the FCC announced a compromise position, under which a LEC initially would tariff only the top 10% of the COs in its service area. These tariffed COs would be the ones at which collocators likely will seek to collocate.

(Tr. pp. 51-52)

If, in fact, this issue is intended to address collocation in the short term -- that is, the question of where it should be offered initially -- then Southern Bell has no objection to this

Commission's adoption of the FCC approach as described in the above-quoted portions of Mr. Canis' testimony.[9]

ISSUE NO. 9: Who should be allowed to interconnect?

**STIPULATION: Any entity should be allowed to interconnect on an intrastate basis its own basic transmission facilities associated with terminating equipment and multiplexers except entities restricted pursuant to Commission rules and regulations.

ISSUE NO. 10: Should the same terms and conditions of expanded interconnection apply to AT&T as apply to other interconnectors?

**STIPULATION: AT&T should be allowed interconnect intrastate Special Access Arrangements to the same extent as other parties, subject to the requirements adopted by the FCC in CC Docket 91-141 regarding preexisting collocated facilities.

ISSUE NO. 11: Should the Commission require standards for physical and/or virtual collocation? If so, what should they be?

*SOUTHERN BELL POSITION: Yes. Southern Bell proposes that central office space should be provided on a "first come, first served" basis and that all other FCC standards for interstate interconnection should be followed, with the exception that interconnection should not be allowed for non-fiber optic technology.

Southern Bell submits that this Commission should allow LECs the option of providing either physical or virtual collocation,

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[9] As set forth below in response to Issue 16, Southern Bell opposes the tariffing of central office floor space and utility costs. Thus, its acceptance of the above-referenced proposal to tariff the top 10% of the central offices in its service area applies only to those elements that Southern Bell believes should be tariffed, not to central office space or utility costs.

and that the standards for collocation should be those set forth in the direct testimony of Mr. Denton as follow:

> First, central office space should be provided on a 'first come, first served', basis. The determination of the availability of space should be the responsibility of the LEC.
>
> Second, the point of interconnection should constitute the demarcation point for LEC and interconnector responsibilities. For physical collocation, the interconnection point is the location in the central office designated by the LEC where the LECs DS1 and DS3 services are terminated for interconnection to the collocator's termination equipment. For virtual collocation, the point of interconnection should be as close as reasonably possible to the central office, such as the central office manhole.
>
> The requirements for expanded interconnection should apply only to central office equipment needed to terminate basic transmission facilities associated with optical terminating equipment and multiplexers. Interconnection should not be allowed for other types of equipment, such as enhanced services, switches and customer premises equipment.
>
> Finally, because of the potential for adverse effects regarding the availability of conduit and riser space, the interconnection of non-fiber optic cable should not be allowed.

(Denton Testimony, Tr. p. 395-96)

The general theory behind this list was set forth by Mr. Denton upon cross examination when he was asked by counsel for Staff whether it was Southern Bell's "position that the

Commission should follow what the FCC has done with respect to expanded interconnection ...?" (Tr. p. 410) Mr. Denton responded that "with respect to the rules, regulation[s], terms, the technical items, I think the only practical thing to do is to do that." (Tr. p. 410)

Southern Bell advocates one exception to this. As set forth above in the list of proposed standards, Southern Bell recommends that interconnection for non-fiber optic cable should not be allowed. In contrast, the FCC ordered that the "interconnection of non-fiber optic cable should be permitted only upon Commission approval of a showing that such interconnection would serve the public interest in a particular case." (FCC Order, par. 99) As set forth at greater length in response to Issue 14, Southern Bell believes that the interconnection of non-fiber optic cable should not be allowed, not even under the limited circumstances described above by the FCC. Beyond this, Southern Bell submits that the most practical approach to setting standards for collocation is to follow those that have already been set by the FCC for interstate collocation.[10]

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[10] As set forth in response to Issue 6, Southern Bell does not believe that physical collocation should be mandatory, but rather that the LEC should have the option to offer physical or virtual collocation. Therefore, Southern Bell's acceptance of the FCC's standards relates to the issue of which standards should be used when physical or virtual collocation takes place, not whether either should be mandatory in any given situation.

ISSUE NO. 12: Should collocators be required to allow LECs and other parties to interconnect with their networks?

*SOUTHERN BELL'S POSITION: Yes, reciprocity should be part of any interconnection/collocation ordered by this Commission.

Of the various parties that presented testimony at the hearing in this matter, only one, Paul Kouroupas on behalf of Teleport, testified in opposition to a reciprocal arrangement in which collocators would offer expanded interconnection to LECs. Several parties did, however, set forth in their respective prehearing statement some opposition to such a reciprocal arrangement. The position of AT&T is fairly typical of the opposition to reciprocity. Specifically, AT&T stated that "the purpose of expanded interconnection is to facilitate the entry of potential competitors into the historical monopoly preserves of the local exchange companies - to remove a specific barrier to entry imposed by the existing monopoly". (Prehearing Order, at p. 37) Thus, AT&T, at least in this statement, appears to conceive of expanded interconnection as something that is designed primarily to place interconnectors on an equal competitive footing with the LECs. Southern Bell submits that, to the contrary, this definition of expanded interconnection is both self-serving and inappropriately narrow. Instead, expanded interconnection should be viewed in terms of the benefits that it

will bring to the end-users of telecommunications in the State of Florida.

As Mike Guedel testified generally on behalf of AT&T, "[t]he adoption of expanded interconnection would facilitate the beginning of competition within the local exchange and would benefit customers in much the same way as competition in other aspects of the telecommunications industry ... has benefitted customers over the years". (Tr. p. 194) Mr. Guedel continued by stating that "[c]ompetition facilitates customer choice and the development and production of new and innovative services designed or tailored to meet particular customer needs". (Tr. p. 194) Southern Bell believes that expanded interconnection should be offered in such a way that it will bring about the benefits to consumers identified by Mr. Guedel in this more general context.

Accordingly, Southern Bell asserts that reciprocal interconnection should be required of interconnectors to facilitate what should be the ultimate goal of not only expanded interconnection, but of any effort to foster competition, to provide some benefit to the end-users of telecommunications services. A review of the testimony in this case makes it clear that ordering reciprocal interconnection would benefit customers of the services for which interconnection is offered.

For example, Mr. Canis testified on behalf of Intermedia as to both the technical innovation and what he deemed as "superior service quality" that can be offered by AAVs. (Tr. p. 23) When cross examined about this testimony, he identified specifically the AAV innovation of "the availability of ... what is called disaster-proof networks. That is fully redundant and fully diverse networks that allow for the recovery of a circuit in case one of the transmission pads is damaged". (Tr. p. 84)

Mr. Canis further testified on behalf of Intermedia (an AAV that supports reciprocity) that "[i]n order for Florida to maintain an innovative, state-of-the art communications infrastructure, it is crucial that all networks be interconnectable to each other on a mutually equitable and efficient basis." (Tr. p. 23) Southern Bell agrees with this analysis.

Specifically, Mr. Denton testified in his deposition as to the benefits of allowing LECs the option of interconnecting with the networks of collocators. He alluded to the fact that, in some instances, an AAV may "have a more cost effective facility [in a given location] ... than we have", or that "maybe they have a facility where we don't have a facility". (Exh. 21, p. 50). Mr. Denton also stated in his testimony that this reciprocal arrangement would facilitate the "network of networks concept",

which was specifically advocated by Mr. Canis in the above-quoted portions of his testimony. (Exh. 21, p. 50).

Thus, there are identifiable benefits to users of telecommunications services as a result of requiring reciprocal interconnection. Southern Bell believes that providing as many of these benefits as possible to end-users should be the proper goal of expanded interconnection, not simply providing a competitive boost to those who wish to interconnect.

In response to this, the only witness to oppose the reciprocity requirement, Mr. Kouroupas, stated no basis whatsoever to oppose reciprocity, per se. Instead he simply opined that a collocator "would be foolish to reject a collocation request and the associated revenues". (Tr. p. 262) He, therefore, felt that "a requirement that collocators should provide interconnection to the LECs and other parties is unnecessary". (Tr. p. 262) While Mr. Kouroupas correctly notes that, generally speaking, it would be in the best business interests of a collocator to allow a LEC to interconnect, Southern Bell believes that it is simply not appropriate to allow an AAV who might wish to ignore its best business interests and refuse to allow a LEC to interconnect to do so. Instead, this Commission should require collocation for both LECs and for those who interconnect with LEC facilities. As set forth above, this

is the only approach that will best serve what should be the ultimate goal of interconnection, providing a benefit to the end-users in Florida of telecommunications services.

ISSUE NO. 13: What standards should be established for the LECs to allocate space for collocators?

*SOUTHERN BELL'S POSITION: Central office space for collocation should be allocated on a "first-come, first-served" basis. The space for both physical and virtual collocation should be allocated in a manner that is consistent with the standard set for interstate expanded interconnection service.

It is Southern Bell's position that central office space for collocation should be allocated on a "first come, first served" basis, and that the standards for this allocation should be consistent with those set by the FCC for interstate expanded interconnection. The "first come, first served" method of allocation that was prescribed by the FCC for interstate expanded interconnection is the most workable method to allocate space. The FCC reached this conclusion after noting that most of the parties to that proceeding were in agreement that this was the best method to use. (FCC Order, par. 74)

Likewise, review of the positions of the various parties to this docket reveals that no one party has advocated an allocation method other than first come, first served. At the same time, in addition to Southern Bell, Intermedia, GTE, Sprint, Teleport, and

United have all specifically advocated that the first come, first served method be adopted.

As to other technical standards, Southern Bell's position (as set forth previously in response to Issue 11) is that, in the absence of some compelling reason to do otherwise, the most practical way to establish standards for interstate expanded interconnection is simply to follow those which have been ordered by the FCC for interstate purposes.[11] Southern Bell advocates the same approach in response to this issue.

ISSUE NO. 14: Should the Commission allow expanded interconnection for non-fiber optic technology?

*SOUTHERN BELL'S POSITION: No. The interconnection of non-fiber optic cable would require too much space and it would be incompatible with technological development.

Southern Bell believes that expanded interconnection should not be offered for any non-fiber optic technology. The reasons for this position were succinctly stated by Mr. Denton in his direct testimony as follows:

> ... [B]ecause of the potential limited availability of conduit and riser space the interconnection of non-fiber optic cable should not be allowed. In addition, the telecommunications network is moving towards a fiber optics-based network. Southern Bell

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[11] For example, Southern Bell addresses in Issues 5 and 6 the compelling reasons that this Commission should not follow the FCC's lead and order mandatory physical collocation.

> is in the process of modernizing its network and deploying fiber optic technology. Any expanded interconnection offering should be compatible with these technological developments.

(Tr. p. 398)

The fundamental reason that expanded interconnection should not be allowed for non-fiber technology is that expanded interconnection was intended to be used to enhance the development of new technology, not as a means to perpetuate passing or obsolete technology. This point was made very clearly by Mr. Denton in the context of a question from Commissioner Clark concerning Southern Bell's objection to the use of expanded interconnection for microwave equipment:

> Commissioner Clark: Why are you objecting to it?
>
> Witness Denton: Because microwave is a passing technology ... [and] this whole operation was intended to try and enhance development of fiber optic technology, digital technology, modern technology. It just didn't fit that model ...
>
> Commissioner Clark: You mean expanded interconnection is designed to promote deployment of new technology?
>
> Witness Denton: Yes, exactly.
>
> Commissioner Clark: And microwave is not a new technology?
>
> Witness Denton: Exactly.

(Tr. pp. 422-23) The second, more immediate reason Mr. Denton stated was that the interconnection of, for example, copper cable, would require substantially more of the limited space available in any given central office than would the interconnection of fiber optic cable. In fact, the FCC specifically noted with approval in its Order the position of a number of LECs that interconnection for copper cable would deplete the space available for the more efficient fiber technology. Accordingly, the FCC refused to allow interconnection for non-fiber cable because of "the potential adverse effects of such interconnection on the availability of conduit and riser space". (FCC Order, par. 99) Southern Bell believes that this Commission should reach the same result on the basis of the same logic.

As to interconnection for microwave facilities, Southern Bell acknowledges that this type of collocation "has been ordered by the FCC, and they've ordered that it be done on an individual case basis because each one is unique". (Denton Testimony, Tr. p. 422) Southern Bell, again, opposes expanded interconnection for microwave technology, but believes that if it is ordered by this Commission, then this Commission should also order that it be dealt with on an individual case basis. As Southern Bell

stated in its response to Item No. 35, Staff's First Set of Interrogatories (Exh. 18),

> [i]f the Commission should order expanded interconnection for microwave technology, it should be on an individual case basis because the technical complexities of providing microwave service. The technical feasibility is dependent on the facts of the specific request.
>
> . . .
>
> These type of factors cannot be generalized. They are case specific and must be negotiated with each request for microwave collocation.[12]

For these same reasons, the FCC ruled that microwave transmission should be dealt with individually to the extent that "differences in the interconnection technology" warrant this approach. (FCC Order, par. 98) Southern Bell submits that if interconnection is ordered by this commission for microwave facilities, then the order should provide also that it must be

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[12] The interrogatory answer went on to state that as to each request for microwave interconnection the following steps must be taken: (1) Obtain the frequency to be used by the interconnectors; (2) Coordinate frequency among all microwave users in the area to ensure that there will be no interference of frequencies; (3) Determine the height of the supporting structure for the microwave antenna on both ends of the link to ensure a line of sight transmission path; (4) Determine if there are any local restrictions (e.g. zoning) that may be applicable; (5) Evaluate the impact of the microwave antenna design (e.g. weight and wind load) on the design of a supporting structure; (6) Evaluate impact, if any, that the wave guide runs might have on the location of the interconnection floor space.

addressed on a case-by-case basis due to the technical issues described above.

ISSUE NO. 15: If the Commission permits expanded interconnection, what pricing flexibility should the LECs be granted for special access and private line services?

*SOUTHERN BELL'S POSITION: The LEC should retain the pricing flexibility they currently have for private line services. For intrastate special access services, Southern Bell should be permitted, at a minimum, to implement zone pricing on a basis of wire center groupings.

At the outset, it must be noted that no LEC has made a specific request in this docket for immediate pricing flexibility, filed a tariff or otherwise proposed a specific plan to implement additional pricing flexibility. Instead, pricing flexibility was addressed at the hearing, and should properly be considered by this Commission, as a concept. Specifically, at the conclusion of Docket No. 890183-TL (In re: Generic Investigation into the Operations of Alternate Access Vendors) this Commission entered Order No. 24877. In that Order, this Commission declined to grant additional pricing flexibility at that time, but stated that "if any LEC finds that some other option to CSAs is necessary, then it should come before this Commission with a specific request for new pricing authority". (Order No. 24877, p. 23)

Southern Bell takes the position that pricing flexibility in the form of the zone density pricing plan that was ordered by the FCC would be appropriate for LECs for intrastate purposes as well. The point remains, however, that there is no specific proposal before this Commission at the moment for zone density pricing, or for any other type of additional pricing flexibility. Instead, Southern Bell simply requests herein that this Commission remain open in concept, just as it did in the AAV docket, to proposals in the future by LECs as to appropriate pricing flexibility, and that this "open door" policy be restated specifically in any order authorizing expanded interconnection.

Mr. Denton stated specifically the position of Southern Bell on this point:

> Witness Denton: My view is that if expanded interconnection is allowed, then we should have the option of filing a zone pricing tariff, for example, and have that accepted by the Commission as a competitive pricing response just as the FCC has done.
>
> . . .
>
> What I would suggest this Commission do is that if you're going to order expanded interconnection, do that; and then we will, in turn, subsequent to that, file tariffs that we think are responsive, ... And at that time you can review that tariff.

(Tr. p. 423)

(Tr. p. 424) In response to this statement, Commissioner Clark asked a question that goes to the heart of the reason that LECs should be allowed pricing flexibility:

> Commissioner Clark: What if we don't allow you to do that? That puts you at a competitive disadvantage?
>
> Denton Witness: Well, that's correct. And what does that do to the consumer? If you don't allow us to do that, there are a number of things that could be a result of that event.

(Tr. p. 424) Mr. Denton then went on to explain some of the almost certain ill-effects that would follow a failure to grant LECs pricing flexibility in the face of the increasingly competitive market for services that would be offered through expanded interconnection:

> One is that by not letting us be as competitive with prices as we can be, you are, in effect, allowing into the market ..., competitors who don't have to face a real tough competitive price test. You may introduce some ... [inefficient] ... competitors because they have a lot of margin they can play with. I don't think that's a good thing for the consumers in the state.
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> Secondly, the pricing philosophy of CAPs is [to] price below the LECs, 5% or 15%. So if our prices are kept at a higher level and their philosophy is ... [to] price below that, you have denied the consumers ... the chance to have even lower prices. If we can lower our prices, they're going to follow us down. So you deny the consumers that benefit.

(Tr. pp. 424-25)

Finally, Mr. Denton stated a third compelling reason to grant LECs pricing flexibility: the fact that this and every other Commission to consider similar issues have consistently granted pricing flexibility to the LECs at the same time as new competition is introduced. (Tr. p. 425) For example, the FCC decided to "allow LECs with operational expanded interconnection offerings to implement a system of traffic density-related rate zones to bring special access rates more in line with costs." (FCC Order, p. 179) In reaching this decision, the FCC noted that "Illinois, New York, and Massachusetts, states in which intrastate expanded interconnection arrangements already exist, have also granted the LECs certain pricing flexibility". (FCC Order, par. 176)

As might be expected, the most vocal of the parties who were opposed to pricing flexibility by the LECs were those who compete with the LECs in the special access and private line market. For example, Mr. Canis stated that he was opposed to additional pricing flexibility for the LECs because the flexibility that they currently have is sufficient. (Tr. p. 53) On cross examination, however, Mr. Canis conceded that he does not "know what rules and regulations this Commission has established with regard to the use of contract service arrangements." (Tr. p. 112) Thus, even while claiming that no additional pricing

flexibility is needed, Mr. Canis admitted ignorance as to the details of the current primary form of pricing flexibility.

Later in his testimony, Mr. Canis categorized the pricing flexibility that has been granted in other states as creating situations in which "the LECs have been given extraordinary pricing flexibility that would allow them to meet any competitive response" (Tr. p. 156) When Mr. Canis continued by stating that there is no need for additional pricing flexibility in Florida, this exchange with Commissioner Clark took place:

> Witness Canis: I believe that is the case that currently exists in Florida. That LECs have considerable pricing flexibility that would enable them to meet any -- respond to competitors.
>
> Commissioner Clark: Mr. Canis, I think you have astounded everyone in this room.
>
> I guess what comes to mind is average rates for long distance service. I mean, it certainly costs more to serve some remote areas than it does to serve between large metropolitan areas, and to that extent the requirement that a carrier average its rates for long distance service has the effect of allowing competitors to come in and underprice or price closer to cost in the markets where it costs less.
>
> Witness Canis: Commissioner, I was answering that question under the assumption that we're only talking special access and private line.
>
> Commissioner Clark: Okay.
>
> Witness Canis: And, of course, that's the area where competition has been coming in.

> I certainly agree that in any jurisdiction that is considering collocation as a means of promoting competition for, say, switched services, they have looked at the need to restructure pricing. It happened in New York, it's happened at the FCC, and I have no doubt that that kind of a scrutiny is appropriate here as well.

(Tr. pp. 156-57) Thus, Mr. Canis appeared to concede that pricing flexibility is appropriate in an increasingly competitive environment, even while declining to say specifically that this is the case with the special access services that are at issue in Phase I of this proceeding. The fact remains, however, that the analysis that Commissioner Clark stated in regard to long distance services applies equally to any service (including special access services) that is subject to competition and that has costs which vary from one portion of the LEC's service area to another.

Mr. Kouroupas, likewise, stated on behalf of Teleport his opposition to any additional pricing flexibility for LECs, although, in Mr. Kouroupas' case, it was more difficult to discern his precise position on pricing flexibility. Mr. Kouroupas' direct testimony contained a number of statements that appeared to indicate that he was against pricing flexibility of

any sort by a LEC.[13] He qualified this by stating on cross examination that he was not opposed to all LEC pricing flexibility, only additional pricing flexibility. (Tr. p. 279) Of course, at the same time he expressed "no opinion" as to whether a LEC should be allowed to price a service on a deaveraged basis when its costs vary from one area of the state to another. (Tr. p. 281) Thus, Mr. Kouroupas stated his opposition to additional LEC pricing flexibility, yet he had no opinion as to whether the LECs should have the ability to use the form of additional pricing flexibility that was most prominently discussed in this docket. The extent of his confusion was evident also when he was asked about his particular form of pricing flexibility by name:

> Q: ... So then what's been discussed in this docket, what you're really against is zone density pricing?
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> A: [by Mr. Kouroupas]: If that's the form of pricing flexibility the LECs desire, yes.

(Tr. 280) Finally, Mr. Kouroupas stated in his deposition testimony that he was not opposed to pricing flexibility after

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[13] For example, Mr. Kouroupas testified that "local exchange carriers do not require <u>any</u> pricing flexibility to compete with interconnectors .... [under the current conditions]." (Tr. p. 264) (emphasis added).

all, but only to the immediate availability of pricing flexibility.[14]

The ambiguities of Mr. Kouroupas' testimony aside, it is clear that his proposal to delay pricing flexibility would do absolutely nothing to benefit consumers, and that, in fact, to the extent it would keep in the market parties that are not able to effectively compete, it would be anticompetitive. As the above-quoted portions of Mr. Denton's testimony set forth, if LECs are not allowed pricing flexibility, then this would allow inefficient competitors (i.e., those whose costs are higher than LEC costs) to price below the LECs and to obtain an increased market share. (p. 42, SUPRA, quoting Tr. p. 424) This situation would provide little or no benefit to consumers. Thus, denying the LECs pricing flexibility temporarily will only have the result of temporarily bringing about the ill effects of price constraints that were previously identified by Mr. Denton.

Further, Mr. Kouroupas proposal for relief to non-LEC competitors would be short-lived in any event because one must logically assume that when artificial market restraints are

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[14] Q: ...[y]ou're not really opposed to pricing flexibility, you're just opposed to it now?

A: To the timing of it, yes.

(Exh. 9, Deposition of Kouroupas, p. 33)

removed, the market will correct itself at that time. For example, when, under Mr. Kouroupas' proposal, the LECs are granted pricing flexibility at some point in the future, an inefficient competitor would be unable to price compete any longer and would lose the market share that it had temporarily gained while the LECs were constrained from competing. At the same time, if a particular competitor for the services at issue does, in fact, have lower costs than a given LEC, then it should be able to compete successfully from the outset. In this circumstance, there is simply no need to create a pricing umbrella because the efficient competitor will be able to immediately compete successfully and, therefore, will need no artificial temporary advantages.

For all of these reasons, this Commission should continue to extend to LECs the invitation that was originally set forth in Order No. 24877 to come forward with a proposal for pricing flexibility as to those services that are subject to increased competition, which, in this case, would be prompted by expanded interconnection.

ISSUE NO. 16: If the Commission permits collocation, what rates, terms, and conditions should be tariffed by the LEC?

*SOUTHERN BELL'S POSITION: All rate elements for both virtual and physical collocation should be tariffed, except for floor space and utility costs. Tariffed rates should be consistent

with those that Southern Bell has filed with the FCC for interstate collocation.

With the exception of floor space and utility costs, Southern Bell has no objection to the tariffing of all elements that would be entailed in the offering of collocation (either virtual or physical). Central office floor space, however, is not a telecommunications service per se. Instead, the provision of floor space is analogous to the leasing of real estate. For this reason, Southern Bell does not believe that it is appropriate to set tariffed rates for floor space in central offices. Instead, the LECs and the interconnectors should be free to negotiate the price for central office floor space according to the market for such space in each central office.

At the same time, to the extent that floor space is necessary to the provision of expanded interconnection, this Commission would certainly have review power over any agreements negotiated between the LEC and the collocator. Therefore, if a collocator believed that a LEC was charging more than a fair market price for floor space, it would have the ability to file a complaint with this Commission. Further, if a LEC were to charge a lease price for floor space that this Commission deemed to be improper, the LEC would presumably modify the prices offered under similar circumstances to other interconnectors in the future. (See Deposition Testimony of Mr. Denton, Exh. 21, pp.

45-46) Thus, the complaint process would offer an efficient mechanism for resolving any difficulties that might arise in this process. Southern Bell submits that this mechanism would certainly be preferable to the alternative of setting a tariffed rate for something that is, in essence, not a telecommunications service and, therefore, not properly the subject of a tariff.

ISSUE NO. 17: Should all special access and private line providers be required to file tariffs?

*SOUTHERN BELL'S POSITION: If tariffs are required for any providers of special access or private line services, then tariffs should be required of all providers of these services. Southern Bell, however, believes that the better alternative would be to remove these competitive services from the detailed regulatory requirements that apply today.

Southern Bell believes that as competition increases for any given service, it is absolutely imperative for the regulatory requirements that apply to LECs and those that apply to their competitors to become more alike. The tariffing requirement that applies to LECs at present provides a good example of why movement toward comparable treatment is needed. The fact that LECs file tariffs while their competitors do not place LECs at an obvious competitive disadvantage because the tariffing process substantially hampers a LEC's ability to respond to new markets and to provide products for those markets. As Mr. Canis conceded on cross examination (at least in response to jurisdictions with which he is familiar), "competitive access providers typically

are able to introduce services on a very expeditious basis". (Tr. p. 68) Obviously, the tariffing process prevents LECs from responding in such an "expeditious" fashion.[15] Southern Bell believes that this competitive imbalance should not continue indefinitely.

Instead, Southern Bell submits that, as Mr. Denton stated in his deposition testimony, "in the context of the regulatory requirements on us relative to our competitors, ... over time we ought to evolve to where we have the same set of requirements for providing competitive services". (See Exh. 21, p. 29) If this Commission determines that the only way to accomplish this in the short term would be to require non-LEC providers of special access and private line services to file tariffs, then Southern Bell would not object to this requirement. Southern Bell believes, however, that the better approach would be to loosen over time the regulatory restraints from LECs, including tariffs, so that in this increasingly competitive environment the

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[15] For example, if approval of a LEC tariff is protested by an interested party, than that party is entitled to an evidentiary hearing pursuant to the provisions of Florida Statutes, Section 120.57. In the instant docket, almost a year elapsed between the filing of Intermedia's petition and the Phase I hearing. Presumably, a comparable amount of time would be required to schedule and hold any necessary evidentiary hearing.

regulatory requirements for all competitors would eventually be the same.

As might be expected, some parties to this action responded to this issue with the position that LEC competitors should continue to be exempt from the requirement of filing tariffs while LECs should continue to operate under this restriction. Mr. Canis, for example, noted that this "Commission declined in its AAV Order to require tariffing by AAVs".[16] (Tr. p. 53) He then asserted that "[t]he considerations that informed that decision still hold true today." (Tr. p. 53)

To the contrary, this Commission's ruling in that docket was based upon factors that are becoming less pertinent as competition in the telecommunications industry continues to evolve. Specifically, the Commission stated in Order No. 24877 that because AAVs were "relatively recent market entrant[s]", "customers utilizing AAVs should be going in with open eyes". "Therefore, the filing of tariffs would provide limited benefit". (Order No. 24877, p. 17) Further, the Commission noted the fact (as partially alluded to by Mr. Canis in his testimony, Tr. p. 53) that "AAV customers ... will tend to be high volume, sophisticated customers at first". (Order, p. 17) (emphasis

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[16] The quoted testimony refers to Order No. 24877, entered in Docket No. 890183-TL, In re: Generic Investigation into the Operations of Alternate Access Vendors.

added). Id. Finally, this Commission noted the limited extent to which AAVs would be able to compete at that time. (Order, p. 17)

Obviously, conditions have changed somewhat since the entry of Order No. 24877, in Docket 891083-TL on August 2, 1991 and they continue to change. Much of the purpose of this proceeding, at least from the perspective of interconnectors, is to increase the extent to which they can competitively offer certain services and the parties to whom they can offer them. Mr. Canis, for example, admitted on cross examination that it is Intermedia's intent to market more in the future to small and medium-sized users of access services. (Tr. p. 73) Likewise, the longer that AAVs remain in the market, and the more competitive they become, the less reason there is to treat them differently than LECs in terms of tariffing requirements.

Again, Southern Bell does not request specifically a provision in the order entered in this docket that would require AAVs to file tariffs for collocation. Nor is Southern Bell specifically requesting that LECs be relived from tariffing at this time. Instead, Southern Bell's position on this issue is similar in one regard to its previously stated position on pricing flexibility. (See Issue 15) That is, assuming that expanded interconnection is ordered in this docket, the Order

does not need to make a change in LEC or AAV tariffing requirements at this time. This Commission should, however, remain open to considering future proposals for parity in tariff requirements. In other words, there should be the same sort of "open door" for future changes in tariffing as the Order in the AAV docket provided for future proposals regarding pricing flexibility.

ISSUE NO. 18: What separations impact will expanded interconnection have on the LECs?

*SOUTHERN BELL'S POSITION: Southern Bell has not developed a forecast of demand for collocation and related separations effects and, therefore, does not know the potential jurisdictional separations impact of expanded interconnection. Accordingly, Southern Bell is unable to state a position on this issue at this time.

ISSUE NO. 19: Should expanded interconnection be subject to a "net revenue test" requirement in order to avoid possible cross-subsidy concerns?

**STIPULATION: By agreement of the parties, Issue 19 is deleted from further consideration in this proceeding.

ISSUE NO. 20: How would ratepayers be financially affected by expanded interconnection?

*SOUTHERN BELL'S POSITION: If the LECs are not able to compete for the provision of telecommunications services that currently provide a contribution to residential service, then this would have an adverse affect on residential ratepayers.

unquestionably have an adverse financial impact on subscribers to local residential service. (See, generally Denton deposition, Exh. 21, pp. 13-14) Moreover, if LECs are not given the ability to price compete, then expanded interconnection will likely provide little benefit to the users of special access and private line services while presenting the very definite prospect of adverse financial consequences to other ratepayers.

ISSUE NO. 21: Should the Commission grant ICI's petition?

*SOUTHERN BELL'S POSITION: Any action this Commission takes on ICI petition should be consistent with its general rulings in this docket.

This proceeding was, of course, initiated when ICI filed a Petition requesting that this Commission order LECs to "file tariff revisions necessary to allow ... AAVs ... to provide authorized interstate services through collocation arrangements that will be established within the LEC central offices". (Intermedia Petition, at p. 1) If this Commission enters an order mandating collocation (either physical or virtual) in Florida, such an order will, at least in a general sense, constitute a grant of the petition of ICI. At the same time, as was set forth in the Order Establishing Procedure, the Intermedia Petition has given rise to "broader questions regarding private and special access expanded interconnection ... [that] ... must be resolved". (Order No. PSC-93-0811-PCO-TP, p. 1) There is no

One fact that all parties to this proceeding can likely agree to is that if expanded interconnection is offered for any given service, the price of that service will likely drop. The end-users of that service will, accordingly, obtain a benefit in the form of these lower prices. The crucial questions, however, involve the cost of that benefit and by whom it will be paid. Southern Bell believes that expanded interconnection should be offered in such a way that it does not have an unnecessary adverse financial impact on residential ratepayers.

As stated previously, special access and private line services provide a considerable contribution to residential local exchange service.[17] As Mr. Denton stated in his deposition testimony, expanded interconnection will increase competition for the subject services, and the LECs will lose some of their market share of these services. (Exh. 21, pp. 16-17). The issue becomes one of how much corresponding contribution will be lost. If LECs are allowed to compete for customers who use special access and private line services, than to the extent they are successful in this competition, the flow of contribution to residential customers will remain continuous, even if diminished. If, however, LECs are granted no pricing flexibility, then the loss of contribution could be dramatic, and this loss would

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[17] See Issue 1 for a related discussion.

reason, nor has any party attempted to assert a reason, that these broader issues should be resolved as to Intermedia in a way that is any different from the resolution that this Commission reaches as to all other parties.

Therefore, Southern Bell submits that the appropriate approach would be to consider the Petition to be subsumed totally within the issues considered in this docket, and for this Commission to enter rulings on these issues that apply equally to all interested parties, or to anyone else affected by expanded interconnection, including Intermedia.

CONCLUSION

Assuming, as this Commission has done in the past, that increased competition is in the public interest, then, on balance, expanded interconnection for intrastate purposes would be in the public interest because it will increase the competitive options for private line and special access service. The public interest would be best served, however, by granting to the LECs pricing flexibility in order to allow them to pass the benefits of competition on to end-users of special access and private line services while, at the same, limiting any resulting adverse financial impact upon local residential ratepayers.

Southern Bell also believes that the form of expanded interconnection should generally follow that which has been

ordered by the FCC for intrastate purposes. There are, however, two exceptions to this general position. One, Southern Bell believes that mandatory physical collocation cannot be ordered because such an order would be constitutionally impermissible. An order of mandatory physical collocation would also hamper the LECs in their ability to deal with possible resulting problems. Instead, the LEC should be free to negotiate with potential interconnectors either physical or virtual collocation. Two, central office floor space should not be tariffed for collocation purposes because this floor space is not a telecommunications service and such tariffing would, accordingly, be inappropriate.

Respectfully submitted this 22nd day of October, 1993.

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