BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

| | |
|---|---|
| In Re: Petition for expanded interconnection for alternate access vendors within local exchange company central offices by INTERMEDIA COMMUNICATIONS OF FLORIDA, INC. | ) DOCKET NO. 921074-TP<br>) ORDER NO. PSC-94-0285-FOF-TP<br>) ISSUED: 03/10/94 |

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

I. APPEARANCES

PATRICK K. WIGGINS, Wiggins & Villacorta, P.A., Post Office Drawer 1657, Tallahassee, Florida 32302, appearing on behalf of Intermedia Communications of Florida, Inc.

J. JEFFRY WAHLEN, and LEE L. WILLIS, Ausley, McMullen, McGehee, Carothers and Proctor, Post Office Box 391, Tallahassee, Florida 32301, appearing on behalf of ALLTEL Florida, Inc.

PETER M. DUNBAR, of the Pennington, Haben, Wilkinson, Culpepper, Dunlap, Dunbar, Richmond & French, P.A., Post Office 10095, Tallahassee, Florida 32302, appearing on behalf of Florida Cable Television Association, Inc., and Time Warner AxS of Florida, L.P.

JOSEPH A. McGLOTHLIN, McWhirter, Grandoff & Reeves, 315 S. Calhoun Street, Suite 716, Tallahassee, Florida 32301, appearing on behalf of Florida Interexchange Carriers Association.

KIMBERLY CASWELL, Post Office Box 110, MC 7, Tampa, Florida 33601, appearing on behalf of GTE Florida Incorporated.

DAVID B. ERWIN, Young, Van Assenderp, Varnadoe & Benton, P.A., Post Office Box 1833, Tallahassee, Florida 32303-1833, appearing on behalf of Indiantown Telephone System, Inc., Northeast Florida Telephone Company, Quincy Telephone Company, and Southland Telephone Company.

RICHARD D. MELSON, Hopping Boyd Green & Sams, Post Office Box 6526, Tallahassee, Florida 32314, appearing on behalf of MCI Telecommunications Corporation.

J. PHILLIP CARVER, c/o Marshall M. Criser III, 150 S. Monroe Street, Suite 400, Tallahassee, Florida 32302, appearing on behalf of BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company.

C. EVERETT BOYD, JR., Ervin, Varn, Jacobs, Odom & Ervin, Post Office Drawer 1170, Tallahassee, Florida 32302, and CHANTHINA R. BRYANT, appearing on behalf of Sprint Communications Company Limited Partnership.

MICHAEL W. TYE, AT&T Communications of the Southern States, Inc., 106 East College Avenue, Suite 1410, Tallahassee, Florida 32301, appearing on behalf 24 of AT&T Communications of the Southern States, Inc.

KENNETH A. HOFFMAN, Messer, Vickers, Caparello, Madsen, Lewis, Goldman & Metz, P.A., 215 South Monroe Street, P. O. Box 1876, Tallahassee, Florida 32302, and JOHN P. FONS and LEE L. WILLIS, Ausley, McMullen, McGehee, Carothers and Proctor, Post Office Box 391, Tallahassee, Florida 32301, appearing on behalf of United Telephone Company of Florida.

LAURA L. WILSON, Post office Box 10383, Tallahassee, Florida 32302, appearing on behalf of the Florida Cable Television Association.

CHARLES J. BECK, Office of Public Counsel, c/o The Florida Legislature, 111 W. Madison Street, Room 812, Tallahassee, Florida 32399-1400, appearing on behalf of the Citizens of the State of Florida.

PRENTICE P. PRUITT, FPSC Division of Appeals, 101 East Gaines Street, Tallahassee, Florida 32399-0850, Counsel to the Commission.

CHARLES MURPHY and TRACY HATCH, FPSC Division of Legal Services, 101 East Gaines Street, Tallahassee, Florida 32399-0850, appearing on behalf of the Commission Staff.

FINAL ORDER

BY THE COMMISSION:

II. CASE BACKGROUND

This matter came to hearing as the result of a Petition by Intermedia Communications of Florida, Inc. (Intermedia or ICI) to permit Alternative Access Vendor (AAV) provision of authorized services through collocation arrangements in Local Exchange Company (LEC) central offices. In order to address the Intermedia Petition, broader questions regarding private line and special access expanded interconnection must be resolved. In turn, these broader issues raise still larger questions regarding expanded interconnection of switched access. However, because the switched access issues do not need to be resolved prior to answering Intermedia's Petition, initially, we address only the matter of private line and special access. Expanded interconnection of switched access will be addressed in Phase II of this proceeding which is scheduled for hearing later this year.

The Federal Communications Commission (FCC) recently considered the matter of expanded interconnection. One concern in our examination of the issues before us is the relationship of our intrastate decision to what the FCC mandated at the interstate level.

III. PUBLIC INTEREST

As discussed above, the issue of whether expanded interconnection is in the public interest for interstate special access has been addressed by the FCC. The FCC concluded that expanded interconnection was in the public interest and that increased competition for interstate access would bring about significant benefits to the telecommunications marketplace.

In principle, all of the parties to this Docket agree that expanded interconnection for intrastate special access and private line service is in the public interest and will foster competition within the local exchange areas, thereby benefiting consumers of those services. In this regard, the LEC's conditioned their positions on whether they are granted sufficient flexibility to compete with AAVs. For example, GTEFL asserts that the benefits of competition will never come about if some market participants remain handicapped by unduly restrictive regulations while others are free of such competitive limitations. Southern Bell, GTEFL and United/Centel assert that expanded interconnection is not in the

public interest so long as LECs are denied the ability to effectively respond to competitive threats. While United does not oppose expanded interconnection, it raised concerns regarding the cross-elasticity of special access and switched access as well as the ability of LECs to compete effectively with AAVs. GTEFL ties the public policy issue to approval of negotiated virtual versus physical collocation as opposed a Commission mandated arrangement.

Upon review, we find that determining whether expanded interconnection for special access and private line services is in the public interest involves balancing the good to be gained (or the harm to be avoided) against the harm caused (or the good lost) through this course of action. This balancing must be done in the context of Chapter 364, Florida Statues and the FCC's decision regarding interconnection.

The difficulty is that competition will have effects that we may not necessarily be able to predict in advance. However, on the whole, we find that the evidence presented in this Docket supports expanding competitive opportunities in the private line and special access markets and that the adoption of a competitive regulatory model for private line and special access services will benefit Florida's long term telecommunications infrastructure and the users of telecommunications services. Expanding competitive opportunities for special access and private line will benefit end users through:

1. Increased customer choice;

2. Introduction of new services and technologies;

3. Price competition;

4. Diversification and network redundancy;

5. Private investment in the Florida infrastructure;

6. Increased service and quality;

7. Greater responsiveness to end user needs; and

8. Improved efficiency.

We find that Phase I intrastate expanded interconnection should have no substantial impact on residential rates. Although the LECs could potentially lose revenues from competition for special access and private line, and end users may migrate from switched to special access, the amount of LEC revenues at risk

appears to be relatively small. While it does appear that expanded interconnection for switched access might have significant effects on LEC revenues and place pressure on local rates, that matter is not before us and will be addressed in Phase II of this proceeding.

IV. FCC ORDER

We approve the following stipulation by the parties:

> 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.

V. Chapter 364, Florida Statutes

The parties agree that nothing in Chapter 364, Florida Statutes prohibits the Commission from mandating expanded interconnection for private line and special access services if it is found to be in the public interest. Southern Bell asserts that allowing "ratcheting," which includes switched access services, would violate Section 364.337(3)(a), Florida Statutes which enumerates the services which may be provided by an AAV. However, we observe that ratcheting has not been approved in this Order and is more appropriately the subject of Phase II of this proceeding.

VI. Taking

The arguments regarding the taking issue were wide-ranging. Indeed, they were so diverse that we found it necessary to request additional briefing on this subject because it seemed that the parties were "talking past" one another. We do not recount every permutation of the issue. Rather, we observe that there are two core arguments to be culled from the filings. The LECs argue that a mandatory physical occupation is a per se taking. Intermedia and Time Warner/FCTA argue that property dedicated for the public purpose which is regulated in the furtherance of that purpose does not constitute a taking so long as the property owner is allowed a fair return on its investment.

As discussed below, we are persuaded by Intermedia and Time Warner/FCTA that property dedicated to a public purpose, such as

that of a common carrier, is subject to a different standard when, pursuant to statutory authorization, a regulatory body mandates certain uses of that property in the furtherance of its dedicated use. In the instant case, the statutory authorization is provided by Chapter 364, Florida Statutes.[1] We find that a determination that effective interconnection, and the adequate provision of telecommunications service, require that significant space in LEC central offices be dedicated for such purposes does not turn statutorily authorized regulation into a taking.

A. Loretto

There is disagreement regarding the applicable standards with which to determine whether a taking has occurred. Several parties agree that Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982) is applicable. It is relied upon as authority for taking analysis based upon an ad hoc factual inquiry of:

1. The economic impact of the regulation;
2. The extent to which it interferes with investment-backed expectations; and
3. The character of the governmental action.

Loretto is also relied upon for the proposition that a permanent physical occupation represents a per se taking and that an ad hoc inquiry is only reached in the absence of such a permanent physical occupation. In Loretto, the Court stated:

> We affirm the traditional rule that a permanent physical occupation of property is a taking. In such a case, the property owner entertains a historically rooted expectation of compensation, and the character of the invasion is qualitatively more intrusive than perhaps any other category of property regulation. Id. at 441

---

[1] For example, Section 364.16, Florida Statutes (which provides for the Commission to regulate interconnection); Section 364.01, Florida Statutes (which sets forth the general powers of the Commission); Section 364.15, Florida Statutes (which gives the Commission the authority to compel improvements to and changes in any telecommunications facility).

It is our view that an objective reading of Loretto is that if there is a permanent physical occupation there is a taking. This is the case regardless of the size of the occupation. In Loretto, the permanent occupation was the attachment of wires and a box to the exterior of a building.

In the instant case, the LECs object to the possible mandate of significant central office space to effectuate statutorily authorized interconnection. However, based on Loretto, it appears that even a mandate of virtual collocation, which would require cables and a connection, would be a taking if opposed by the LECs. Such an interpretation would make it impossible for this Commission to regulate telecommunications pursuant to its statutory mandate.

Assuming that there is a taking under Loretto, some argue that compensation will remedy a taking, while others contend that the issue of compensation is separate from a taking analysis and that appropriate compensation for a taking can only be determined by the judiciary. GTEFL argues that under the Florida Constitution an owner must be compensated at full market value for the property taken. GTEFL concludes that a cost-based mechanism for regulating physical collocation rates (such as that employed by the FCC) is unacceptable under the Florida Constitution. In this regard, we observe that the Commission lacks the power of eminent domain which is required to take property. We agree that the authority to determine the appropriate compensation for a taking rests with the judiciary.

However, it appears that Loretto is not the appropriate standard to employ regarding the Commission's statutorily authorized regulation of a LEC's "used and useful" property. This is consistent with the determination made by the FCC. In addressing this matter at the federal level, the FCC found 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."

B. Regulation of Used and Useful Property

Time Warner/FCTA observe that Loretto involved neither the taking of a common carrier's property nor government regulation of a common carrier. Time Warner/FCTA argue that this distinction is central to any taking analysis and quote State ex rel. Railroad Com'rs v. Florida East Coast Ry. Co., 49 So. 43-44, (Fla. 1909) as follows:

> A lawful governmental regulation of the service of common carriers, though it may be a burden, is not a violation of constitutional rights to acquire, possess, and protect property, to due process of law, and to equal protection of the laws, since those who devote their property to the uses of a common carrier do so subject to the right of governmental regulation in the interest of the common welfare. . . . Even where a particular regulation causes a pecuniary loss to the carrier, if it is reasonable with reference to the just demands of the public to be affected by it, and it does not arbitrarily impose an unreasonable burden upon the carrier, the regulation will not be a taking of property, in violation of the Constitution. (Emphasis added by Time Warner/FCTA)

Intermedia, in essence, questions the historically rooted expectation of the LECs regarding their "used and useful" property. Intermedia argues that it has long been established that property which has been dedicated to a public purpose can be regulated and even permanently physically occupied as long as the regulation involves the dedicated public purpose. Intermedia quotes Munn v. Illinois, 94 U.S. 113, 126 (1876) as follows:

> Property does become clothed with a public interest when used in a manner to make it a public consequence, and affects the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use, but, so long as he maintains the use, he must submit to the control.

Under Intermedia's analysis, the taking issue is not reached except to the extent that there is inadequate compensation for the use of the property or a mandate to use the property in a manner to which it has not been dedicated. Thus, while Intermedia would not find a taking in the ordering of mandatory physical collocation, it

avers that if the Commission ordered a LEC to make space available for a water and wastewater utility there might well be a constitutional taking because the LECs have dedicated their property to providing telecommunications service and not water service.

Under this view, if an owner, which has dedicated used and useful property for a public purpose, decides that regulatory impositions are too great, its options are to challenge the allowed rate of return, or withdraw from the business which is imbued with the public interest. Having withdrawn, the owner can use its property for other purposes.

GTEFL asserts that the power to regulate in the public interest does not include the right to take private property. We agree, but note that such analysis presumes that mandatory physical collocation represents a taking. Likewise, GTEFL argues the authority to order connections between carriers does not include the authority to take property. Again we agree, but note that this is not dispositive of whether a taking would occur with a physical collocation mandate.

GTEFL also asserts that the constitutional protection against unlawful takings extends to private property dedicated to the public use. We agree. However, we observe that the cases relied upon for this contention are not cases which involve a regulatory mandate regarding the public purpose for which the property at issue was dedicated. For example, the cases involve: the placement of telegraph lines on railroad rights of way, the authority of a municipality to establish a taxi stand on the driveway of a railroad station, and establishment of the rates which a utility can charge for a cable company to attach to the utility's poles. It is our view that these cases are akin to Intermedia's hypothetical that if the Commission required a LEC to provide space for a water company there could be a taking. Another case relied upon by GTEFL involves the setting of confiscatory rates for the use of the property at issue. Intermedia concedes that such a circumstance is prohibited.

GTEFL observes that it has been stipulated that interconnection will not be limited to telecommunications companies. GTEFL argues that Section 364.16, provides authority for mandating interconnection only between telecommunications companies. Thus, GTEFL contends that if the Commission mandates physical collocation on the basis of Section 364.16, an artificial distinction will necessarily be created between telecommunications companies and other functionally equivalent entities who might wish to interconnect. We agree that if physical collocation is ordered

under the authority of that Statute alone that an artificial distinction could result. However, it is our view that this Commission can require physical collocation of functionally equivalent entities pursuant to its more general statutory powers to regulate telecommunications in the public interest.

While the Commission cannot determine the appropriate compensation for a taking, it certainly has the authority to establish the appropriate rates for the provision of telecommunications service in Florida. Provided the rates are not confiscatory, we find that a physical collocation mandate represents a taking under neither the state nor the federal constitution.

## VII. Physical Versus Virtual Collocation

The various positions of the parties can be categorized in the following manner:

GTEFL, SBT, and United/Centel argue that the Commission should not mandate any particular form of interconnection but instead should allow the LEC and the interconnector to negotiate individual arrangements.

ICI, ATT-C, FCTA, MCI, Sprint, Teleport, Time Warner and OPC assert that the Commission should be consistent with the FCC's ruling and require the LECs to offer physical collocation.

Alltel, Indiantown, Northeast, Quincy, and Southland argue that they should not be required to provide physical or virtual collocation at this time.[2]

FIXCA and IAC took no position on this issue.

The FCC defines physical collocation as a situation where "the interconnecting party pays for LEC central office space in which to locate the equipment necessary to terminate its transmission links, and has physical access to the LEC central office to install, maintain, and repair this equipment." Under virtual collocation, interconnectors are allowed to "designate the central office transmission equipment dedicated to their use, as well as monitor and control their circuits terminating in the LEC central office." Therefore, under both physical and virtual collocation the

---

[2] This argument will be addressed at Section VIII, of this Order.

equipment used to terminate interconnected circuits is located in the LEC central office. The distinction that is made by the FCC is a matter of who owns and maintains the interconnection equipment. With physical it is the interconnector, while with virtual it is the LEC.

The FCC mandated that all Tier 1 LECs make physical collocation available, under tariff, to all interconnectors which request it. Concerning virtual collocation, the FCC stated that the parties are free to negotiate virtual collocation arrangements if preferred. The LECs may request a waiver of the physical collocation requirement in instances where a lack of central office space prohibits the LEC from providing physical collocation. If the waiver is granted then the LEC is obligated to provide virtual collocation.

Tier 1 LECs are defined as those companies having annual revenues from regulated operations of $100 million or more. The Tier 1 LECs in Florida include GTEFL, SBT and United/Centel. As mentioned above, each of these companies argues that this Commission should allow collocation, but not mandate any particular type. United is the only LEC in Florida that is on record as having customers (other than ATT-C) collocated in its facilities. These existing arrangements were reached through individual negotiations.

With the exception of FIXCA and IAC, who took no position, the non-LECs all argue that the Commission should adopt the FCC's mandatory physical collocation standard. Witnesses for ATT-C, ICI, Sprint and Teleport testified that this would allow uniformity between state and federal requirements. ICI argues against negotiation because of the disparity of bargaining positions between the LECs and the interconnectors. There is also concern that it would be inefficient for the Commission to establish a collocation policy that is inconsistent with the FCC's. Teleport argues that physical collocation ensures that interconnectors are provided interconnection on the same terms and conditions as the LECs interconnect with their own high capacity networks.

ICI asserts that virtual collocation is operationally, economically and technically inferior to physical collocation and that under virtual collocation, AAV's are constrained in their ability to upgrade, modify, or expand their networks.

GTEFL argues that security must be considered when deciding whether or not to mandate physical collocation. GTEFL contends that the LECs will have to set aside separate space within the central office and then provide secure access to that space. GTEFL

asserts that without the LEC having complete discretion to control entry to its central offices, the potential for interference with LEC operations increases dramatically. In this regard, United provides a separate entrance and a separate cage facility for its interconnectors. Where this is not possible, United requires an escort.

ICI contends that as a normal business practice, LECs regularly provide central office access to outside contractors, who are issued photo IDs and are permitted free and regular access to the most sensitive of central office equipment. ICI adds that if a LEC is concerned about control over AAV personnel, it is free to designate separate secured interconnection areas which do not permit access to LEC common areas.

Upon review, we observe that the issue of whether or not to mandate physical and/or virtual collocation is divided upon clear lines. The non-LECs assert that we should be consistent with the FCC and require the LECs to offer physical collocation. The LECs argue that we should allow expanded interconnection but not mandate any particular type. This would allow the LECs to negotiate interconnection arrangements with collocators. We find that such a negotiation has the potential to be one sided since the LECs own and control the central offices. Additionally, we find that it is important to be consistent with the FCC. As acknowledged by the LECs, a unified plan will limit administrative costs, help prevent tariff shopping, and remove some incentives for misreporting the jurisdictional nature of the traffic. We agree that security is an important concern for the LECs, but find that it is one that can be overcome.

While we mandate physical collocation, we do not wish to preclude any potential interconnectors from seeking virtual collocation. The FCC ordered that for virtual collocation, interconnectors would be allowed to designate the central office transmission equipment dedicated to their use, as well as monitor and control their circuits terminating in the LEC central office. We find this to be appropriate. Thus, while we shall require the LECs to provide physical collocation to all interconnectors upon request, as ordered by the FCC, interconnectors shall be free to choose virtual collocation if they so desire.

## VIII. LECS to Provide Expanded Interconnection

ALLTEL, ATT-C, FCTA, MCI, Southern Bell, and Sprint assert that we should mirror the FCC regarding which LECs should provide expanded interconnection. The FCC limited expanded interconnection

to the Tier 1 LECs because it found that high demand in the smaller LECs' service areas was unlikely. In addition, the FCC found that requiring smaller LECs to provide expanded interconnection might tax their resources as well as harm universal service and infrastructure development in the rural areas.

Teleport asserts that all LECs should be required to offer expanded interconnection in Florida, but non-Tier 1 LECs should only be required to provide expanded interconnection upon a bona fide request. It also contends that the Commission should set the terms and conditions of interconnection for non-Tier 1 LECs as a part of this proceeding, and after requests are received, the non-Tier 1 LEC should file a tariff.

Teleport contends that terms and conditions applicable to all LECs should be set in this proceeding so that consumers throughout the state can benefit from the expanded interconnection policy and not just the consumers in the more urban areas. In addition, Teleport argues that if the terms and conditions are set in this proceeding, then future proceedings addressing the same issue will not be needed.

Intermedia, ALLTEL, ATT-C, Centel, FCTA, GTEFL, Indiantown, Northeast, Quincy, Southland, MCI, Southern Bell, Sprint, Time Warner, United, and OPC argue that only Tier 1 LECs should be required to provide expanded interconnection. FIXCA and ICA took no position on this issue.

GTEFL asserts that, in theory, all LECs should be required to offer expanded interconnection; however, since the FCC has restricted mandatory collocation to Tier 1 LECs, GTEFL asserts that it is probably best for Florida to do the same because the costs of preparing for collocation will not be recoverable due to insufficient demand for such a service in non-urban areas.

Indiantown, Northeast, Quincy, and Southland are opposed to any mandatory form of collocation for non-Tier 1 LECs. These companies assert that with a legitimate request from a potential interconnector, who is approved by the Commission, the non-Tier 1 LECs would allow collocation under individually negotiated terms and conditions.

Intermedia argues that Tier 1 LECs should be mandated to provide physical collocation as a tariffed generally available service, but requests for collocation to non-Tier 1 LECs should be reviewed on a case-by-case basis, to determine whether collocation is feasible and should be provided.

Upon review, only the Tier 1 LECs shall be required to offer expanded interconnection as a tariffed generally available service. We also find it appropriate to allow non-Tier 1 LECs to negotiate provision of the service in response to bona fide requests. If the terms and conditions of such a request cannot be reached, the Commission will review the matter on a case-by-case basis.

IX. Where Expanded Interconnection Should Be Offered

To decide this issue, first, we must determine the types of LEC facilities (e.g., wire centers, remote switching nodes) where expanded interconnection should be provided. Next, we must determine from which specific facilities expanded interconnection should be offered.

With regard to the types of facilities, we note that expanded interconnection is designed to give collocators access to a larger customer base. In order to achieve this, interconnection must occur in the LEC network where traffic is aggregated. These points, or nodes, include facilities such as end offices, serving wire centers and remote distribution nodes. Each one of these network nodes houses either switching facilities, electronics that combine traffic, or a mixture of both.

ALLTEL, FCTA, FIXCA, Indiantown, Northeast, Quincy, Southland, IAC, OPC, Southern Bell and Time Warner did not take a position on this aspect of the issue.

ATT-C, Centel/United, GTEFL, ICI, MCI, Sprint and Teleport assert that we should follow the guidelines established by the FCC. The FCC ordered the LECs to provide expanded interconnection at serving wire centers, end offices, remote distribution nodes and any other points that the LECs treat as a rating point. The FCC found that these locations are designed as points that provide aggregated access to end user premises and IXC POPs. Tandem offices were specifically excluded from special access interconnection but will be addressed under switched transport interconnection.

The FCC found that expanded interconnection obligations extend to central office buildings which house end offices or serving wire centers as well as tandem switches, but not to buildings which contain only tandem switches and are not used as a rating point for special access services. ICI asserts that tandem switches were excluded because they are considered mainly to provide switched service connections and are not normally considered to provide

special access services. However, ICI argues that this restriction is unnecessary because the LECs can route special access services through the offices that house only tandems without using the switching functions.

Upon review, we adopt the approach mandated by the FCC. We do not include tandem switches in Phase I of the Docket because they are considered mainly to provide a trunk-to-trunk switched connection and are not normally considered to provide special access or private line services. However, tandem switches will be considered in Phase II of this proceeding.

Regarding specific facilities, FCTA, Time Warner and Centel/United assert that expanded interconnection should be offered out of those offices where it is likely to occur. They argue that intrastate serving wire centers should match those approved for interstate expanded interconnection and that additional locations could be added upon request.

Similarly, ICI, MCI and Teleport urge that we adopt the FCC's approach in which the LEC would initially tariff the top 10% of the central offices within its serving area. ICI adds that collocators should be allowed a specified period of time to request tariffing additional central offices. Teleport concurs but thinks that interconnection should be made available in all central offices of both Tier 1 and non-Tier 1 LECs.

ATT-C is not as specific in its position as Teleport but asserts that expanded interconnection should be offered at all rating points, including all LEC central offices. Southern Bell argues that expanded interconnection should be offered in all Florida central offices where space permits. GTEFL, Indiantown, Northeast, Quincy and Southland state that expanded interconnection should be offered where demand exists and the revenues retained will exceed the cost to provision the service. Sprint's position is that the decision of where expanded interconnection is offered should be left up to the interconnector, not the LECs. ALLTEL, FIXCA, IAC and OPC did not take a position on this issue.

Upon review, we do not find that it is necessary for the LECs to tariff all possible interconnection locations within their service territories, only those where interconnection is likely to occur. Requiring the LECs to offer expanded interconnection out of the same offices that have been tariffed at the interstate level makes sense and will be the least burdensome approach for the LECs. However, additional locations may be desired by interconnectors and we find it appropriate that these offices be added within 90 days of a written request to a LEC by an interconnector.

X. Who Shall be allowed to Interconnect

We approve the following stipulation by the parties:

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.

XI. ATT-C

We approve the following stipulation by the parties:

ATT-C should be allowed to 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.

XII. Standards For Collocation

Indiantown, Northeast, Quincy, Southland and GTEFL are the only parties who argue that standards should not be required for physical or virtual collocation. GTEFL asserts that the parties should be allowed to negotiate an agreement rather than have standards imposed. If standards are to be required, GTEFL contends that they should be only minimal technical standards which are equivalent to what the LEC currently provides for its own services.

ATT-C, Centel/United, FCTA, ICI, MCI, Southern Bell, Sprint, Teleport, and Time Warner argue that there should be standards for expanded interconnection. The FCC required standards in order to clarify the rights and obligations of the LECs and interconnectors and also to reduce the number of disputes during the implementation process. Upon review, we agree with the FCC's approach and with the parties who argue that interconnection standards should be required. Such standards can help facilitate implementation by defining up front, certain minimum rights and obligations of all the parties involved.

While parties have urged various standards, it appears that the development of interconnection standards will be an evolving process. We find that the standards adopted by FCC will serve as an initial step towards interconnection standards that are technically, operationally and economically comparable to the way

the LEC connects with its own facilities. Therefore, in addition to the standards set forth in other Sections of this Order, we adopt the following:

1. LECs are to specify an interconnection point or points as close as reasonably possible to the central office. These interconnection points must be physically accessible to both the LEC and interconnectors on non-discriminatory terms. Under virtual collocation, the interconnection point would constitute the demarcation between the interconnector and LEC facilities. For physical collocation, this would constitute the entry point for interconnector cable in which the LEC would be compensated for the conduit and other facilities utilized by the interconnector.

2. LECs are required to provide at least two separate points of entry to a central office whenever there are at least two entry points for LEC cable.

3. Expanded interconnection requirements should apply only to central office equipment needed to terminate basic transmission facilities, including optical terminating equipment and multiplexers.

## XIII. RECIPROCITY

We have been asked to determine whether or not collocators should be required to offer interconnection to the LECs or other parties.

Alltel, FIXCA and IAC took no position on this issue.

Indiantown, Northeast, Quincy and Southland assert that if non-Tier 1 LECs are required to provide expanded interconnection then the same requirement should be mandated for the interconnectors.

ICI, Centel/United, GTEFL, Southern Bell, Sprint and OPC all assert that collocators should be required to offer interconnection to LECs and other parties.

Upon review, it appears that symmetrical treatment might be appropriate in a more mature environment. However, at this juncture, we find mandated symmetrical treatment to be inappropriate in an asymmetrical market where the LECs are the dominant provider of local access services and the owner of the

bottleneck facilities. Therefore, we shall not mandate that collocators permit LECs and other parties to interconnect with their networks. Instead, we simply encourage collocators to allow LECs and other parties to interconnect with their networks.

## XIV. Floor Space

In this Section we address standards for allocation, availability, size, warehousing, and expansion of central office space.

### A. Allocation

All parties who took a position advocated mirroring the FCC's first-come, first-served standard for allocation of space. We find that it makes sense to have the same standards as the FCC in this regard. Therefore, central office space for physical collocation shall be allocated to interconnectors on a first-come, first-served basis, and when central office space is exhausted, the LEC shall be required to offer virtual collocation.

### B. Availability

The only serious dispute among the parties regarding space availability appears to be whether independent verification is necessary. Intermedia argues for some type of independent verification. GTEFL asserts that such verification is not necessary. On balance, when space availability becomes an issue, we find that the LECs should file the same type of information that is required by the FCC. This includes charts specifically listing the central offices for which the LECs seek exemption, the area in square feet in each of these offices, and the amount of area currently occupied by LEC equipment or reserved for future use as well as affidavits of employees who have examined the central offices. If there is a dispute regarding the accuracy of the information or if the Commission needs further information to determine the availability of space, independent verification may be necessary.

Thus, if a LEC files for an exemption from physical collocation for central offices in Florida, it shall provide the same type of information to the Commission as required by the FCC. The Commission shall evaluate the information provided and if additional information or an independent verification is found to be necessary, it can be required. If an exemption for physical

collocation is granted, the LEC shall be required to offer virtual collocation under the parameters set forth at Section XVII of this Order.

C. Size

There is testimony that 100 square foot increments for distribution of floor space is an arbitrary standard adopted by the FCC. However, because this is the standard adopted at the interstate level, it seems reasonable from an administrative perspective to use the same standard at the intrastate level. Thus, we shall adopt that standard except where different size increments are mutually agreeable between the parties.

D. Warehousing

Most parties agree that some type of restriction on warehousing of space should be implemented. This will keep collocators from purchasing all of the space in certain central offices so that others cannot collocate. The FCC permitted LECs to include in their tariffs reasonable restrictions on warehousing of unused space by interconnectors.

Upon review, we find that although it may not make sense for an interconnector to warehouse space, as a safety measure, LECs shall be allowed to place restrictions on warehousing in their tariffs such as the amount of time an interconnector is allowed before it must use the space. However, such a time period shall be at least 60 days. The interconnector shall forfeit its space and its collocation application fee if it does not use the space within the allotted time period specified in the tariff. The Commission will resolve disputes regarding when a collocator began to use its space.

E. Expansion

Intermedia asserts that there should be a standard that will allow efficient and effective expansion of an interconnector's facilities. While Intermedia acknowledges that there are many ways to accomplish this, it states that one such approach would be to have a "checker board" type arrangement in the central offices, with every other square occupied by an interconnector's collocation cage. This would allow an interconnector to expand to an area directly adjacent to its existing space, instead of across the room, or to another floor. Intermedia states that this policy is

being used today in Massachusetts by New England Telephone. It is Intermedia's view that such an approach minimizes the cost of additional cabling and repeaters that would be necessary if the two spaces were far apart or even on different floors. Intermedia concedes that this approach should only be followed when there is enough space to accomplish it. Intermedia avers that if collocation demand is great enough or if there is not adequate space to implement the "checker board" arrangement in the central office, then the LECs should build collocation cages in the in-between spaces as new collocators make requests.

Intermedia contends that the same approach should be adopted for virtual collocation where spaces should be left in the equipment rack between the equipment of each collocator so that it may expand to a rack directly adjacent to its existing equipment.

Intermedia was the only party that discussed the expansion of existing space. Even so, we agree that there needs to be a provision to ensure that expansion needs can be reasonably met. Thus, we find that the LECs shall provide a checker board type of arrangement for physical and virtual collocation, if sufficient space is available. If there is not sufficient space in specific central offices to employ this approach, the LECs shall request exemption from the checker board requirement at the same time and in the same manner as they would request an exemption from offering physical collocation in a central office. As space becomes exhausted in the central office, the LEC shall begin to place new interconnectors between the occupied spaces.

XV. Non Fiber Technology

We have been asked to determine whether expanded interconnection for non-fiber optic technology should be allowed. Non-fiber optic technology includes, but is not limited to, copper cable, coaxial cable and microwave technologies.

All of the LECs which took a position on this issue assert that only fiber optic technology should be utilized by the collocators for the purposes of expanded interconnection.

FCTA and Time Warner assert that expanded interconnection should be made available for both fiber and non-fiber optic technology. Sprint avers that expanded interconnection for non-fiber optic technology should be limited to microwave equipment. OPC argues that technology should not be a determining factor when deciding whether to require collocation. ALLTEL, ICI, ATT-C, FIXCA, IAC, MCI and Teleport took no position.

Upon review, we shall neither require or prohibit expanded interconnection of non-fiber optic technology. We shall allow expanded interconnection of non-fiber optic technology on a central office basis where facilities permit. Such arrangements may be negotiated on a case-by-case basis. Disputes shall be addressed through either complaints or petitions to the Commission. Similarly, the location of microwave equipment used for interconnection may be negotiated between the parties.

XVI. Pricing Flexibility

As noted in ATT-C's position, the FCC has granted the LECs "zone-pricing" flexibility on the interstate level. Centel, GTEFL, Indiantown, Northeast, Quincy, Southland, SBT, Sprint, and United acknowledge the FCC's decision and take positions in support of zone pricing or a modification of zone pricing. Parties opposed to additional pricing flexibility are Intermedia, FCTA, FIXCA, IAC, MCI, Teleport, Teleport, Time Warner, and OPC. Alltel takes no position.

The parties have taken various positions which can be summarized as (1) the LECs have sufficient pricing flexibility under the existing arrangements and no additional flexibility should be approved; (2) the LECs do not have adequate pricing flexibility to compete with expanded interconnection parties and the Commission should adopt some form of the FCC's zone-density pricing methodology, and (3) access price reductions and flexibility are necessary because of the cross-elasticity between special and switched services resulting from interstate access rates being substantially higher than intrastate rates.

Having reviewed the arguments, we shall approve a "zone-pricing" concept for the LECs under the same general guidelines established by the FCC in Order No. 92-440, CC Docket No. 91-141. We believe it is important to emphasize approval on a conceptual basis as opposed to any specific plan. SBT emphasizes that no LEC has filed a tariff or otherwise proposed a specific plan to implement additional pricing flexibility, thus our consideration can only be on a conceptual basis. Therefore, specific approval or denial of LEC zone-pricing plans and tariffs shall be reviewed on an individual basis as was the case in the FCC's review of interstate filings.

We emphasize that the FCC's decision to grant pricing flexibility to the LECs was not without consideration of the view that LECs already have substantial pricing flexibility under price caps, and that until additional competition for both switched and

special access has developed, no further flexibility warranted. However, the FCC noted that certain LEC services are subject to much greater competitive pressure than others, and that excessive constraints on LEC pricing and rate structure flexibility will deprive customers of the benefits of competition and give the new entrants false signals. We believe the FCC's rationale is appropriate in this case because the same arguments have been presented here.

Some parties have presented testimony regarding when zone pricing flexibility should begin. Sprint supports zone pricing flexibility, but argues that the FCC has been overly restrictive in allowing LECs to initiate a zone pricing system in study areas only after expanded interconnection offerings are operational in that study area. We agree and shall permit density zone pricing whether or not competitive entry has occurred, once the zone pricing flexibility plans and tariffs have been approved.

Although the FCC ties the implementation of LEC pricing flexibility to those LECs with operational expanded interconnection offerings (defined as when an interconnector has taken the expanded interconnection cross-connect element), it rejected the arguments of some parties that pricing flexibility should be delayed until competition has developed further. The FCC reasoned that competition is already developing rapidly in urban markets and will only accelerate with the implementation of expanded interconnection. SBT urges that we not delay the implementation of pricing flexibility, and notes that the FCC's authorization of pricing flexibility is in terms of the zoned deaveraging of state averages from the very beginning of expanded interconnections. We agree.

OPC asserts that no price increases should be allowed as a result of this Docket. GTEFL asserts that the FCC's policy on zone density pricing is actually too restrictive which could force prices up in rural areas. However, these concerns shall be addressed on a LEC-specific basis at the time the LECs file their intrastate zone density pricing plans and tariffs. In this regard, the LECs shall use their FCC-approved or pending interstate zone density plans and tariffs as a guide, with variations and justifications where appropriate, when submitting their intrastate filings.

We share United's concern regarding the impact of cross-elasticity between switched and special access services and how it will affect LEC revenues and the general body of ratepayers. We note that switched access will be addressed in Phase II of this Docket.

Southern Bell, GTEFL and United/Centel all argue for retention of the CSAs, even when admitting there are problems with the CSA process. This is not the first time the LECs have complained about CSAs. [3] Indeed, we urged a streamlining of the process in the AAV Order. We observe that no testimony was presented regarding the results of any attempts to improve the CSA process. Accordingly, at the time they file their zone density pricing plans and tariffs, the LECs shall include comments regarding what has accomplished or will be accomplished to improve the CSA process.

In summation, we approve, in concept, zone pricing flexibility for the LECs. It is approved on a conceptual basis, with LEC-specific approval held in abeyance until a review of the LEC's zone density pricing flexibility plan and associated tariff. We adopt the FCC's zone pricing flexibility concept as a guide which allows for the establishment of three density pricing zones, requiring that rates be averaged within each zone but allowing that rates may differ between pricing zones. If a LEC desires to deviate from the FCC parameters, it shall be required to identify the variation and provide justification for the change. LECs should submit their zone-density pricing plans and tariff proposals, with cost data to support rates that cover costs, by March 31, 1994.

## XVII. Rates, Terms and Conditions

In this Section we consider some specific provisions to be included in LEC offerings of expanded interconnection.

### A. Generally

Most parties agree that since the same equipment will carry both intrastate and interstate traffic, this Commission should mirror what is established by the FCC on the interstate level. However, there are a few elements, such as floor space and utility costs, which some parties do not believe should be tariffed.

The FCC looked at two issues in regard to the tariffing of expanded interconnection. The first was whether the LECs should offer the services through a tariff at generally available, averaged rates, or whether they should be allowed to offer the services under individually negotiated provisions. The second issue was whether floor space should be tariffed. Since LECs have substantial market power over interconnectors, the FCC decided that

---

[3] Order No. 24877 issued on August 2, 1991.

tariffing requirements must be established to prevent anticompetitive pricing and discrimination. It also determined that central office space is an integral part of expanded interconnection and is necessary to complete calls. Although it was contested in our proceeding, we agree with the FCC that central office floor space is an integral part of expanded interconnection and must be tariffed.

The tariffing issue is difficult because most parties did not present evidence regarding specific rates, terms, and conditions to be tariffed. However, we find that certain tariffing requirements must be established to prevent anticompetitive pricing and discrimination and initially, shall require all Tier 1 LECs to file expanded interconnection tariffs that, at a minimum, mirror what was filed on the interstate level with the FCC. When the LECs file these tariffs they will be subject to the Commission's normal tariff review process.

Accordingly, Tier-1 LECs shall initially file tariffs that mirror the following FCC standards:

1. The cross-connect element;

2. Charges for central office space which must be tariffed at a uniform charge per square foot;

3. Labor and materials charges for initial preparation of central office space under physical collocation;

4. Labor and materials charges for installation, repair and maintenance of central office equipment dedicated to virtual collocation interconnectors;

5. Other charges that can be reasonably standardized, such as power, environmental conditioning, and the use of riser and conduit space; and

6. Language to reflect that LECs and interconnectors are allowed to negotiate connection charge sub-elements where different types of central office electronic equipment are dedicated to interconnectors under virtual conditions. These rates, terms and conditions must be available to all similarly situated interconnectors.

The tariffs shall also include provisions to comply with our decisions which are set forth at Sections IX, XII, XIV, and XV of this Order. The tariffs, with supporting data for all elements,

shall be filed within 30 days from the date of this Order. If the rates, terms, and conditions are different from the LEC's interstate tariff on file with the FCC on January 1, 1994 the LEC shall provide detailed explanations and cost support.[4] The LECs also shall identify the central offices which they wish to be exempt from offering physical collocation. Such exemption requests shall be reviewed using the standards for space availability and expansion which are set forth in Section XIV of this Order.

Teleport has raised several additional items which it argues should be required of the tariffs:

1. rearrangement charges must be non-discriminatory;

2. interconnectors must be given channel assignment control;

3. interconnectors must be allowed to use letters of agency;

4. escort and eviction terms must be limited to prevent the LECs from using these mechanisms as a way to invalidate the usefulness of an interconnection;

5. LECs should only force an interconnector to relocate within a central office under extreme circumstances and must give reasonable notice to the interconnector;

6. reasonable installation time frames should be tariffed;

7. interconnectors should be allowed to self-insure;

8. there should be no restrictions placed on interconnectors by LECs regarding the types of equipment that can be installed as long as it can be used to terminate basic transmission facilities; and

9. the Commission should ensure that the LECs' liability language for interconnection is reasonable.

Upon review, it appears that some of Teleport's suggestions might be appropriate for the intrastate expanded interconnection tariffs. We urge the LECs to consider these terms and conditions when filing their intrastate tariffs. We will review all proposed terms and conditions during the tariff review process.

---

[4] Except where such differences are anticipated by requirements set forth in this Order.

B. Related Tariffing Issues

There has been testimony regarding additional provisions that might improve the access marketplace. These include: extending interconnection to the DS0 level, adopting a "fresh look" approach, and allowing interconnectors to provide the local transport portion of switched carrier access. We address each as follows:

1. Extending Expanding Interconnection to the DS0 Level

In the FCC's decision which authorized expanded interconnection for special access, it limited interconnection to the DS1 and DS3 level. Teleport argues that we should require interconnection at a DS1, DS3 and DS0 level in order to extend the benefits of collocation to all special access customers. Teleport argues that restricting interconnection to DS1 and DS3 denies the benefits of collocation to a large number of customers who currently use special access facilities with speeds below a DS1 capacity. Teleport's witness testified that:

> The only way for a competitor to serve such a collocation arrangement would be to purchase LEC multiplexing services and individual DS0 end links. This makes the competitor captive to the LEC's multiplexing prices and service quality, while at the same time eliminating any competitive check on the reasonableness of these multiplexing prices.

SBT argues that we should not adopt Teleport's position regarding DS0. It is that company's view that a requirement to file interconnection tariffs at the DS0 level would place a larger requirement for space and cabling on the LECs. SBT would prefer to handle requests for DS0 collocation on a central office by central office basis.

Upon review, we agree with Teleport that expanded interconnection at the DS0 level will extend the benefits of competition to a greater number of end users. Allowing interconnection at the DS0 level will help satisfy the needs of medium to small users who do not produce the volume of traffic that would warrant a DS1 or DS3 interconnection. With the exception of SBT's rebuttal testimony, the parties in this proceeding did not address Teleport's position that expanded interconnection should be extended at the DS0 level. SBT did not oppose allowing the AAVs to provide expanded interconnection to the DS0 level, but recommended

that the Commission allow the LECs to handle such requests on a case-by-case basis because of the potential space and cabling limitations. However, we find that SBT's approach might create unnecessary delays and frustration to the AAVs. While interconnection at the DS0 level may create more demands on the LEC CO for space and cabling, there is no evidence that it will exhaust the LEC's CO space. Thus, in order to further competition in the marketplace, we shall require expanded interconnection at the DS0 level. If collocation at the DS0 level does exhaust CO space then the AAVs will need to seek alternative arrangements pursuant to our decision set forth at Section XIV of this Order.

2. Fresh Look

Teleport argues that the Commission should adopt a "fresh look" provision designed to allow consumers in the special access market to choose a carrier without incurring substantial penalties. This suggests that consumers should be free to terminate existing contracts with LECs in order to switch to competitive alternatives without occurring substantial financial liabilities for terminating these contracts. The FCC has implemented a fresh look provision at the interstate level.

In rebuttal testimony, SBT argues that the Commission should reject Teleport's fresh look provision. SBT argues that competition for these services exists at the present time and that the Commission has already determined that contracts for these services are in the public interest. SBT asserts that many special access and private line contracts are designed to recover their installation charges over the life of the contract and that if we adopt a fresh look approach there is the potential that the LECs will not be able to fully recover these installation costs. As a result, SBT concludes that the LECs could be forced to provide service below the actual cost to these customers without being able to recover the costs as anticipated during the terms of the contract.

GTEFL notes that GTE has petitioned the FCC for reconsideration of the fresh look policy. GTEFL states that GTE opposed the fresh look policy because the end users involved are sophisticated customers and that there is no reason to void a valid contract simply because a new option becomes available. GTEFL contends that the customers knew that these options were available or were coming shortly, and that they could have elected to take a shorter tariff period.

Upon review, we find that introducing competition, or extending the scope of competition, provides end users of particular services with opportunities that were not available in the past. However, these opportunities are temporarily foreclosed to end users if they are not able to choose competitive alternatives because of substantial financial penalties for termination of existing contract arrangements. A fresh look proposal will enhance an end user's ability to exercise choice to best meet its telecommunications needs.

We disagree that the LECs may not be able to fully recover their installation costs. Under the FCC's fresh look provision the LEC limits the termination liability to the amount that the customer would have paid for the services actually used. For example, if an end user has a five-year contract but terminates the contract after three years, the termination liability equals the difference between what the end user would have paid if the contract were three years and the amount that it actually paid; the end user pays all of the installation costs.

Thus, customers of LEC private line and special access services with terms equal to or greater than three years, entered into on or before February 1, 1994, shall be permitted to switch to competitive alternatives during the 90 day period after expanded interconnection arrangements are available in a given CO. If an end user chooses to switch to a competitor, termination charges to the LEC contract will be limited to the additional charges that the customer would have paid for a contract covering the term actually used, plus the prime rate of interest.

3. Local Transport Carriage

Teleport urges the Commission to permit interconnectors to provide the local transport portion of switched carrier access. Sprint agrees that the Commission should allow dual use of the collocation facilities for the origination and termination of special access and switched traffic. Sprint argues that not allowing this provision would appear to prohibit an IXC that takes advantage of expanded interconnection, either directly or by means of arrangements with an AAV, to use collocated facilities in the LEC CO as a point from which to order switched access. Moreover, such a prohibition would preclude IXCs from making efficient use of the network.

Upon review, while we understand that interconnectors wish to configure their networks in the most efficient and economical manner, we reject Sprint's and Teleport's proposal. We observe

that Sprint argues that under dual use of collocated facilities there would be no impact on the LECs. However, it is unclear from the evidence in this proceeding that such is necessarily the case. In any event, we find that permitting interconnectors to handle the local transport piece of switched access might inappropriately predetermine our decision in Phase II of this proceeding in which we are to address switched access.

XVIII. Exemption from Tariff Filings

The parties are about equally divided regarding whether all special access and private line providers should be required to file tariffs. Sprint, GTEFL, FIXCA, IAC, OPC, SBT, Indiantown, Northeast, Quincy and Southland are in favor of tariffs. While FCTA, United, Centel, Intermedia, Teleport, and Time Warner assert that tariffs are unnecessary. ATT-C, ALLTEL, and MCI took no position.

The parties opposing tariffs generally support their positions based Order No. 24877, issued on August 2, 1991, in a separate docket, wherein we determined that AAVs should not file tariffs. In that Order, the Commission reasoned that tariffs would provide limited benefits because the high volume customers using AAV services tend to be more sophisticated than the average IXC customer.

GTEFL and SBT contend that the original rationale for not requiring AAVs to file tariffs is not as relevant at the present time. GTEFL emphasizes that expanded interconnection will greatly alter the circumstances that existed when the Commission issued the AAV order, noting that Intermedia's witness testified that an AAV will now be able to reach any customer on the LEC's ubiquitous network, and that ICI has explicitly expressed its intentions to expand its marketing efforts to medium and small users -- and perhaps even the residential market -- as regulators allow increasingly greater competition.

SBT reiterated GTEFL's position that the Commission's AAV decision was based upon factors that are becoming less pertinent. SBT also asserts that there is a need for parity in regulatory treatment of LECs and competitors. SBT contends that the tariff requirement that applies to LECs at present provides a good example of why movement toward comparable treatment is needed. SBT argues that LEC tariffs place them at a competitive disadvantage as they cannot respond as quickly as their competitors.

GTEFL would have us forego tariffing requirements for all special access and private line providers, including the LECs because unilateral tariff requirements tend to weaken price competition, thus lessening the benefits to the ultimate consumer.

The parties advocating tariffs for the non-LEC providers generally contend that less, rather than more, regulation is desirable. However, some contend that if tariffing requirements are maintained, they should apply to all.

Upon review, we shall not require the AAV and AAV-like interconnector entities to file tariffs. While AAVs may expand their services to medium and small customers, we are persuaded by the parties who advocate less, not more, regulation. If subsequent events reveal discrimination among customers, we may revisit whether AAVs and AAV-like interconnector entities should file tariffs. All of those who are currently under tariff mandates shall continue to file tariffs for the present time. However, consistent with previous decisions, if an IXC offers AAV services, then it is required to be certificated as an AAV. Once so certificated, it will be exempt from tariffing those services.

## XIX. Separations

GTEFL and Centel/United argue that there may be a significant effect on LEC separations due to decreased use of the interoffice transport facilities and the resulting reallocation of fixed costs to other services as well as an anticipated migration from switched to special access services.

The central office investment used in the provision of local switching is allocated in the jurisdictional separations process using a usage sensitive factor (Dial Equipment Minutes). As the toll/access minutes migrate from the switched network to dedicated special access, the local allocation of these investments and related expenses will increase. The LECs acknowledge that collocation will have an effect on LEC separations, but are unable at the present time to quantify that effect because of lack of collocation demand forecasts.

Intermedia contends that expanded interconnection will not have any impact on separations because the small relative size of intrastate special access revenue. Intermedia concludes that any migration from switched access to special access will produce no significant effect on LEC separations. Sprint also argues that the separations effect of collocation on the LECs will be minimal due to offsetting efficiencies in reaction to expanded competition.

Other than the reallocation caused by migration, the effects of which no party has been able to quantify, no party has addressed any serious separation problems caused by expanded interconnection. Based on the record, we do not foresee any serious separation imbalance where costs will not follow revenues between the jurisdictions.

Intermedia's argument that the special access and private line services are a small amount of the total LEC services and, as such, will not have a significant effect on separations assumes that the effect upon the LEC is loss of customers. The LECs put their emphasis on migration of customers. We agree with Intermedia that loss of customers will not have a significant effect on separations due to the relatively small amount of revenue involved. Based on the record, it appears that lost customers will be replaced, to a certain extent, with growth. Thus, the loss of customers will be felt as simply a slowing in the growth rate.

However, migration from switched access to special access may affect the switched access services which are a much larger portion of the LEC's operations. In this regard, it appears that the stranded investment is the only significant impact of expanded interconnection which may cause a separations imbalance. However, this shifting of costs should be offset by normal growth and offsetting operating efficiencies in reaction to expanded competition.

Thus, we find that expanded interconnection will not have any material impact on separations. Migration may have an impact on separations, however, such impact is not measurable at this time.

## XX. Ratepayer Impact

FCTA argues that the ratepayers will not be financially harmed by expanded interconnection due to the offsetting efficiencies in LEC operations and reduced costs when faced with increased competition.

ATT-C, GTEFL, SBT and Centel/United argue that the ratepayer effects of expanded interconnection will depend on the way in which it is implemented and the pricing flexibility that the LECs are allowed. GTEFL asserts that expanded interconnection will ultimately mean higher rates for the average residential ratepayer because of lost contribution. ALLTEL, GTEFL, Indiantown, Northeast, Quincy, and Southland note that rural subscribers may be adversely affected by expanded interconnection.

Upon review, it appears that ratepayers who receive the benefit of competition in special access and private line services will enjoy improved services at reduced prices. The competition and increased pricing flexibility as enjoyed in interstate operations will put slight upward pressure on other services. However, based on the facts in this record, there is no indication that there will be a substantial negative impact on residential or small business ratepayers. We expect for there to be more competition in special access and private line service which should result in improved prices, and improved services at reasonable prices. We acknowledge that the increased price flexibility in interstate operations may put slight pricing pressure on other services, but it is unclear that this will result in higher prices.

## XXI. ICI's Petition

By a Petition filed On October 16, 1992, ICI asks us to require LECs to file tariff revisions necessary to allow AAVs to provide authorized intrastate services through physical collocation arrangements that will be established within LEC central offices.

ICI asks that LECs be mandated to establish tariffed rates, terms and conditions necessary to permit certificated AAVs to use physically collocated facilities to provide intrastate special access and private line services authorized in the AAV certificates. It is ICI's position that such a mandate is consistent with established Commission policies and would yield substantial and immediate benefits to the public.

In principle, the parties to this proceeding all agree that expanded interconnection will increase competition in the special access and private line markets, thus benefitting end users. The four large LECs do not oppose expanded interconnection or the granting of ICI's Petition provided the Commission allows the LECs additional flexibility to compete effectively with AAVs. The small LECs argue that the Commission should not impose expanded interconnection on them. In Section XIII of this Order, we decided not to mandate expanded interconnection for non-Tier 1 LECs. However, we decided that if a small LEC receives a bona fide request for expanded interconnection and the terms and conditions cannot be negotiated by the parties, we will review the request on a case-by-case basis.

Southern Bell has urged that the appropriate way to approach ICI's Petition is to consider its review subsumed within the issues considered in this Docket. We agree, and grant ICI's Petition subject to the decisions set forth in this Order.

Therefore, it is

ORDERED by the Florida Public Service Commission that expanded interconnection for special access and private line services is in the public interest. It is further

ORDERED that the following stipulation is approved:

> 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.

It is further

ORDERED that the Commission has the authority, pursuant to Chapter 364, Florida Statutes, to mandate expanded interconnection for private line and special access services. It is further

ORDERED that a physical collocation mandate violates neither the federal nor state constitution. It is further

ORDERED that we hereby require the LECs to provide physical collocation to all interconnectors upon request as envisioned by the FCC. However, interconnectors shall be allowed to choose virtual collocation if so desired. It is further

ORDERED that only Tier 1 LECs (Southern Bell, GTEFL, United, and Centel) shall be required to offer expanded interconnection as a tariffed generally available service. It is further

ORDERED that if a non-Tier 1 LEC receives a bona fide request for expanded interconnection and the terms and conditions cannot be negotiated by the parties, we shall review such a request on a case-by-case basis. If the parties agree on expanded interconnection, the terms and conditions shall be set by individual negotiation. It is further

ORDERED that expanded interconnection shall be offered out of LEC offices that are used as rating points for special access or private line services. Initially, expanded interconnection shall be offered out of those central offices that are tariffed in the interstate jurisdiction. Additional offices shall be added within 90 days of a written request to the LEC for interconnection. It is further

ORDERED that the following stipulation is hereby approved:

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.

It is further

ORDERED that the following stipulation is hereby approved:

ATT-C should be allowed to 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.

It is further

ORDERED that, in addition to the standards discussed elsewhere in this Order, we adopt the following standards for interconnection:

1. LECs shall specify an interconnection point or points as close as reasonably possible to the central office. These interconnection points must be physically accessible to both the LEC and interconnectors on non-discriminatory terms. Under virtual collocation, the interconnection point shall constitute the demarcation between the interconnector and LEC facilities. For physical collocation, this shall constitute the entry point for interconnector cable in which the LEC shall be compensated for the conduit and other facilities utilized by the interconnector.

2. LECs shall provide at least two separate points of entry to a central office whenever there are at least two entry points for LEC cable.

3. Expanded interconnection requirements shall apply only to central office equipment needed to terminate basic transmission facilities, including optical terminating equipment and multiplexers.

It is further

ORDERED that collocators shall not be required to allow LECs or other parties to interconnect with their networks. It is further

ORDERED that central office space shall be allocated to interconnectors on a first-come, first-served basis. When central office space is exhausted, the LEC shall be required to offer virtual collocation. It is further

ORDERED that if a LEC files for an exemption from physical collocation for a central office in Florida, it shall provide the Commission with the same type of information as required for an exemption by the FCC. In such circumstances, the Commission may rely on the information provided by the LEC or may order independent verification. If the Commission grants an exemption for physical collocation, the LEC shall be required to offer virtual collocation. It is further

ORDERED that LECs shall provide floor space to collocators in increments of 100 square feet. However smaller or larger increments may be provided if it is agreeable to both the LEC and the individual collocator. It is further

ORDERED that LECs shall be allowed to place restrictions on warehousing in their tariffs such as a reasonable time period during which an interconnector must begin to use its space. Such time period shall be at least 60 days but may be longer. It is further

ORDERED that the interconnector shall forfeit its collocation application fee if it does not use the space within the time period specified in the tariff. It is further

ORDERED that the LECs shall provide a "checker board" type of arrangement for physical and virtual collocation, if sufficient space is available. A checker board type arrangement for physical collocation is one in which every other square is available to be occupied by an interconnector's collocation cage. For virtual collocation, a space in the equipment rack shall be left vacant between each collocator. If there is not sufficient space to implement such a policy in a specific central office, a LEC may request exemption for that central office at the same time and in the same manner as it would request an exemption from offering physical collocation at that central office. As space becomes exhausted in a central office, the LEC may begin to place new interconnectors between occupied spaces. It is further

ORDERED that expanded interconnection of non-fiber optic technology shall be permitted on a central office basis where facilities permit. It is further

ORDERED that the location of microwave technology shall not be mandated but may be negotiated between the LEC and the interconnector. It is further

ORDERED that the LECs are granted "zone-pricing" flexibility on a conceptual basis under the guidelines established by the FCC in Order No. 92-440, CC Docket No. 91-141. The LECs shall submit their Zone Density Pricing Plans and accompanying zone-pricing tariff proposals, with cost data to support rates by March 31, 1994. The LECs shall use their FCC-approved (or pending) interstate zone density plans and tariffs as a guide, with variations and justifications where appropriate. The LECs also shall file results of their efforts or plans to streamline the Contract Service Arrangements process. Once approved by the Commission, the LECs shall implement zone-pricing tariffs consistent with the effective dates specified in the tariffs. It is further

ORDERED that with the exception of the standards, terms and conditions adopted in this Order that are different than those adopted by the FCC, all Tier 1 LECs shall file expanded interconnection tariffs which shall, at a minimum, mirror the interstate tariffs on file with the FCC on January 1, 1994. Where the FCC filing is inconsistent with the standards terms and conditions approved in this Order, the LECs shall file tariffs that are consistent with this Order.

The LEC tariffs shall contain the following interconnection elements:

1. the cross-connect element;

2. charges for C.O. space;

3. labor and materials for initial preparation of space for physical collocation;

4. labor and materials for installation, repair, and maintenance of equipment dedicated to virtual collocators;

5. charges for power, environmental conditioning, riser and conduit space; and

6. language to reflect that LECs and interconnectors are allowed to negotiate connection charge sub-elements where different types of electronic equipment are dedicated to interconnectors under virtual conditions.

It is further

ORDERED that the standards established in Sections IX, XII, XIV, and XV of this Order also shall be included in the LEC tariffs. It is further

ORDERED that the tariffs, with supporting information and cost data for all elements, shall be filed within 30 days from the issue date of this Order. If the rates, terms, and conditions are different than the LEC's interstate tariff, the LEC shall provide additional detailed explanations and cost support. It is further

ORDERED that the LECs shall file with these tariffs, a list of central offices for which they request an exemption from offering physical collocation. It is further

ORDERED that the LECs shall tariff expanded interconnection at the DS0 level. It is further

ORDERED that the tariffs shall contain a fresh look provision consistent with the fresh look policy adopted by the FCC. Specifically, customers with LEC special access services with terms equal to, or greater than, three years, entered into on, or before, February 1, 1994, shall be permitted to switch to competitive alternatives during the 90 day period after expanded interconnection arrangements are available in a given CO. If an end user chooses to switch to a competitor, termination charges to the LEC contract shall be limited to the additional charges that the customer would have paid for a contract covering the term actually used, plus the prime rate of interest. It is further

ORDERED that proposals by Teleport and Sprint to handle the local transport for switched access through expanded interconnection are denied. It is further

ORDERED that AAVs and AAV-like interconnector entities are not required to file tariffs. It is further

ORDERED that ICI's Petition is granted under the terms and conditions set forth in this Order.

By ORDER of the Florida Public Service Commission, this 10th day of March, 1994.

STEVE TRIBBLE, Acting Director
Division of Records and Reporting

by: _____
Chief, Bureau of Records

( S E A L )

CWM

Commissioner Lauredo dissented from the Commission's decision regarding the taking issue.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.