

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

MEMORANDUM

AUGUST 4, 1994

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF COMMUNICATIONS [REITH] *MR*
DIVISION OF LEGAL SERVICES [CANZANO] *FL*

RE : DOCKET NO. 921074-TP, PETITION FOR EXPANDED
INTERCONNECTION FOR ALTERNATIVE ACCESS VENDORS WITHIN
LOCAL EXCHANGE COMPANY CENTRAL OFFICES BY INTERMEDIA
COMMUNICATIONS OF FLORIDA, INC.

AGENDA: AUGUST 16, 1994 - REGULAR - POST HEARING PROCEDURAL
MATTER - PARTIES MAY PARTICIPATE

PANEL: COMMISSIONERS CLARK AND JOHNSON

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\921074II.BCM

CASE BACKGROUND

This matter came to hearing as a 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 Intermedia's petition, broader questions regarding private line and special access expanded interconnection needed to be resolved. In turn, these broader issues raised larger questions regarding expanded interconnection of switched access. However, because the switched access issues did not need to be resolved prior to answering Intermedia's petition, the Commission addressed only the matter of private line and special access during the hearing held September 13 and 14, 1993. Expanded interconnection of switched access will be addressed in Phase II of this proceeding which is scheduled for hearing beginning August 22, 1994.

By Order No. PSC-94-0285-FOF-TP, issued March 10, 1994, the Commission decided various issues related to private line and special access interconnection. The parties have filed numerous motions regarding the final order in this docket.

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On June 29, 1994, BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell) filed a Notice of Supplemental Authority and Motion for Additional Briefing. Pursuant to a noticed conference call by the parties, and Commission staff, the parties sought to file legal briefs to address the Bell Atlantic Telephone Companies v. FCC, No. 92-1619, 1994 WL 247134 (D.C. Cir., June 10, 1994) decision and to add an additional issue to Phase II to address the policy impact of the decision. Because the Bell Atlantic decision may have an impact on the testimony filed by the parties in Phase II, on June 23, 1994, by Order No. PSC-94-0777-PCO-TP, Chairman Deason, as Prehearing Officer for Phase II, modified procedural dates to allow supplemental direct testimony and to extend time for rebuttal. On July 7, 1994, by Order No. PSC-94-0830-PCO-TP, Chairman Deason added an issue to Phase II, which was agreed to by the parties, as to whether the Commission should modify the Phase I order in light of the Bell Atlantic decision. On July 8, 1994, by Order No. PSC-94-0832-PCO-TP, Commissioner Johnson, as Prehearing Officer for Phase I, issued an order allowing the parties until July 15, 1994 to file legal briefs to address the supplemental legal authority.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission stay the Phase I Order (Order No. PSC-94-0285-FOF-TP, issued March 10, 1994)?

RECOMMENDATION: Yes. Staff recommends that the Commission stay the Phase I order until a decision has been made in Phase II. All outstanding motions for the Phase I order should be held in abeyance until a decision has been made in Phase II.

STAFF ANALYSIS: In the Phase I Order, the Commission required the local exchange companies (LECs) to provide physical collocation to all interconnectors upon request as envisioned by the Federal Communications Commission (FCC) and also allowed the interconnectors to choose virtual collocation if desired. See Order No. PSC-94-0285-FOF-TP, issued March 10, 1994. The Commission also ordered other requirements to implement its decision to mandate physical collocation. Although the Commission was not bound by any interstate policy, as noted in the stipulation which the Commission approved, its decision in Phase I was essentially consistent with the FCC's decision on most issues. (Order, page 5) The Commission found that unified plans would help prevent collocators from shopping between state and federal tariffs, and remove incentives for misreporting the jurisdictional nature of the traffic. (Order, page 12)

Subsequently, the parties filed numerous motions in response to the Commission's Order. Motions for reconsideration or clarification regarding portions or all of Order No. PSC-94-0285-FOF-TP were filed by GTE Florida, Inc. (GTEFL), BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell), Intermedia Communications of Florida Inc., Florida Cable Television Association, and Teleport Communications Group. Parties also filed numerous responses to such motions. In addition, several procedural motions were filed, including motions to strike responses. GTEFL and Southern Bell filed motions for stay of the Order.

On June 10, 1994, the United States Court of Appeals for the District of Columbia Circuit issued an order stating that it would vacate in part the first two of the FCC's expanded interconnection orders on the grounds that the FCC did not have express statutory authority under the Communications Act of 1934, as amended, to require the LECs to provide expanded interconnection through physical collocation. Bell Atlantic Telephone Companies v. FCC, No. 92-1619, 1994 WL 247134 (D.C. Cir., June 10, 1994). The court

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vacated the orders insofar as they required physical collocation; in all other respects, the orders were remanded to the FCC for further proceedings.

On July 14, 1994, the FCC adopted an order modifying its policy so that it is consistent with the Bell Atlantic decision. (Order No. FCC 94-190) The FCC required the LECs to provide expanded interconnection through virtual collocation unless the LEC chooses to offer physical. If the LEC chooses to offer physical, it is then exempted from the mandate to provide virtual collocation. However, once the physical space has been exhausted, the LEC then must offer virtual collocation.

Staff believes that the decisions in Phases I and II should be consistent. In addition, the parties and staff need time to analyze the Bell Atlantic decision as well as the policy implications of the FCC's July 14th order. Since we are addressing the effects of these changes in the upcoming Phase II hearing, staff recommends that the Commission stay the Phase I order until a decision has been made in Phase II. All outstanding motions for the Phase I order should be held in abeyance until a decision has been made in Phase II.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No.

STAFF ANALYSIS: This docket should remain open because Phase II is pending.