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MEMORANDUM

SEPTEMBER 21, 1995

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (CANZANO)

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

1188-FOF

Attached is an ORDER REGARDING RECONSIDERATION AND CLARIFICATION to be issued in the above-referenced docket. (Number of pages in Order - 23)

DLC/mw
Attachment
cc: Division of Communications
I: 921074RI.DC

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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 ORDER NO. PSC-95-1188-FOF-TP ISSUED: September 21, 1995

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
JULIA L. JOHNSON

ORDER REGARDING RECONSIDERATION AND CLARIFICATION

BY THE COMMISSION:

I. BACKGROUND

This matter came to hearing as a result of a Petition by Intermedia Communications of Florida, Inc. (Intermedia) 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 for switched access. However, because the switched access issues did not need to be resolved prior to answering Intermedia's petition, we addressed only the matter of private line and special access during the hearing held September 13 and 14, 1993. Expanded interconnection of switched access was addressed during the Phase II hearing which was held on August 22-24, 1994.

By Order No. PSC-94-0285-FOF-TP, issued March 10, 1994 (Phase I Order), we decided various issues related to private line and special access interconnection. The parties have filed numerous motions for reconsideration and responses to those motions regarding the final order of Phase I. In addition to motions for reconsideration or clarification, parties have filed certain procedural motions, including a motion to strike a response, and two motions for stay of the Order. This Order addresses the relevant motions as set forth in the following sections.

On March 31, 1994, GTE Florida Incorporated (GTEFL) filed a Petition for Extension of the filing date for the zone-density pricing plans and tariff proposals. On June 6th, GTEFL withdrew its motion and stated that it would file the plan for special access within approximately one week. Accordingly, we will not address it, because the point is moot.

On April 18, 1994, Southern Bell filed a Motion to Strike Cross Motion for Reconsideration of Teleport Communications Group, Inc. On April 21, 1994, Southern Bell filed a Notice of Withdrawal of Motion to Strike Teleport's Cross Motion.

II. STANDARD OF REVIEW

The appropriate standard for review for a motion for reconsideration is that which is set forth in Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962). The purpose of a motion for reconsideration is to bring to the attention of the Commission some material and relevant point of fact or law which was overlooked, or which it failed to consider when it rendered the order in the first instance. See Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (Fla 1st DCA 1981). It is not an appropriate venue for rearguing matters which were already considered, or for raising immaterial matters which even if adopted would not materially change the outcome of the case.

III. MANDATORY PHYSICAL COLLOCATION

In the Phase I Order, we required the LECs to provide physical collocation to all interconnectors upon request as envisioned by the FCC and also allowed interconnectors to choose virtual collocation if desired. We also ordered other requirements to implement our decision to mandate physical collocation. Although we noted that we were not bound by any interstate policy, our Phase I decision was essentially consistent with the FCC's decision on most issues. We also found that unified plans would help prevent collocators from shopping between state and federal tariffs, and would remove incentives for misreporting the jurisdictional nature of the traffic.

Physical collocation is an offering that enables an interconnector to locate its own transmission equipment in a segregated portion of the LEC central office. The interconnector pays a charge to the LEC for the use of that central office space, and may enter the central office to install, maintain, and repair the collocated equipment.

Virtual collocation is an offering in which the LEC owns (or leases) and exercises exclusive hands-on control over the transmission equipment, located in the central office, that terminates the interconnectors circuits. The LEC dedicates this equipment to the exclusive use of the interconnector and provides installation, maintenance and repair services on a non-discriminatory basis. The interconnector has the right to designate its choice of central office equipment, and to monitor and control the equipment remotely.

At the federal level, GTE, BellSouth, United States Telephone Association and others filed a Joint Petition for Stay of the Federal Communications Commission (FCC) Order before the United States Court of Appeals for the District of Columbia Circuit regarding the initial FCC orders mandating physical collocation. In the Joint Petition for Stay, they argued that the FCC mandate for physical collocation on LECs constitutes a taking of property and that the FCC had failed to justify its reversal of previous policy decisions on physical collocation.

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 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 modified its policy so that it was 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 chose to offer physical collocation. If the LEC chose to offer physical collocation, it was then exempted from the mandate to provide virtual collocation. However, once the physical space has been exhausted, the LEC then must offer virtual collocation.

We stayed the Phase I Order so that the decisions in Phases I and II would be consistent. See Order No. PSC-94-1102-FOF-TP, issued September 7, 1994. In that Order, we also held in abeyance all outstanding motions for the Phase I Order until a decision was made in Phase II.

In Phase II, we stated that "consistency and coordination with the federal expanded interconnection policy were important factors in determining the type of interconnection arrangement to order in Phase I of this docket." See Order No. PSC-95-0034-FOF-TP, issued January 9, 1995, (Phase II Order), page 30. Thus, to be consistent with the FCC, we ordered that

> the local exchange companies shall be required to provide virtual collocation for switched access interconnection to all interconnectors upon request. The local exchange companies shall be exempted from this requirement in offices where they opt to provide physical collocation; once space for physical collocation is exhausted, the local exchange company must provide virtual collocation. (Phase II Order, p. 64).

On our own motion we shall reconsider our Phase I decision regarding mandatory physical collocation so that it is consistent with the Phase II decision. Accordingly, the LECs shall be required to provide virtual collocation for private line and special access services to all interconnectors upon request. The LECs shall be exempted from this requirement in offices where they opt to provide physical collocation; once space for physical collocation is exhausted, the local exchange company must provide virtual collocation. Therefore, we shall lift the stay on the Phase I Order, Order No. PSC-94-0285-FOF-TP and revise it to require virtual collocation so that it is consistent with the decision made in Phase II.

IV. SOUTHERN BELL AND GTEFL'S MOTIONS FOR RECONSIDERATION OF MANDATORY PHYSICAL COLLOCATION

On March 25, 1994, GTEFL and BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell) filed Motions for Reconsideration of the Phase I Order. On April 6, 1994, Intermedia filed responses to GTEFL's and Southern Bell's motions. Also on April 6, 1994, Teleport Communications Group, Inc. (Teleport) filed a Cross Motion for Reconsideration and response to Southern Bell's and GTEFL's motions.

Specifically, Southern Bell and GTEFL sought reconsideration of our finding that mandatory physical collocation is constitutionally permissible. The companies argue at great length that mandatory physical collocation is an unconstitutional taking. Intermedia and Teleport respond that we already considered and rejected the companies' arguments.

Since we shall require the LECs to provide virtual collocation for private line and special access services upon request by interconnectors, the LECs' motions for reconsideration regarding physical collocation are rendered moot.

V. SOUTHERN BELL'S MOTION TO STRIKE

On March 25, 1994, Florida Cable Television Association, Inc. (FCTA) filed a Motion for Reconsideration and/or Clarification of the Phase I Order. The last day to file a motion for reconsideration was March 25th. On April 1, 1994, Time Warner AxS of Florida, L.P. (Time Warner) filed a response to FCTA's motion, to which Southern Bell filed a Motion to Strike on April 11, 1994.

Southern Bell argues that Time Warner's response should be governed by Rule 25-22.037(2)(b), Florida Administrative Code, and the Florida Rules of Civil Procedure. Southern Bell asserts that since Time Warner's response concurs with rather than opposes FCTA's Motion for Reconsideration, it should be excluded from consideration. Rule 25-22.037(2)(b) provides in part that "other parties to a proceeding may, within seven (7) days after service of a written motion, file written memoranda in opposition." Also, Southern Bell argues that neither Chapter 25, Florida Administrative Code, nor the Florida Rules of Civil Procedure authorize this type of concurring pleading.

Rule 25-22.037(2)(b), Florida Administrative Code, addresses general motion practice rather than motions for reconsideration, for which Rule 25-22.060, Florida Administrative Code, has been promulgated. Time Warner argues that a plain reading of Rule 25-22.060 specifically allows a party to file such a responsive memorandum:

> (b) A party may file a response to a motion for reconsideration . . .
>
> (f) . . . A party who fails to respond to file a written response to a point on reconsideration is precluded from responding to that point during the oral argument.

Time Warner also notes that the numerous omissions of the "in opposition" language in Rule 25-22.060 as compared witn Rule 25-22.037, evidences that these responses do not need to be limited to those in opposition. In such situations of affirmative omission of language, the case law dictates the rule of expressio unius est exclusio alterius, the mention of one thing implies the exclusion

of all other. See Russello v. U.S., 464 U.S. 16, 23 (1983); Devin v. City of Hollywood, 351 So.2d 815 (Fla 1976); and Graham v. Azar, 204 So. 2d 193 (Fla. 1967).

The last day to file a motion for reconsideration of the final order was March 25, 1994. If Time Warner wanted reconsideration of this issue, it should have filed a timely motion for reconsideration regarding the matter or joined in FCTA's Motion. We find that Time Warner's April 1st response is an inappropriate "second bite" at reconsideration under the guise of a response. It is nothing more than an attempt to rehabilitate and bolster FCTA's Motion. Accordingly, we will strike Time Warner's response.

VI. GTEFL'S PETITION FOR STAY OF MANDATORY PHYSICAL COLLOCATION

On March 25, 1994, GTEFL filed a Petition for Stay of the physical collocation mandate of the Phase I Order. GTEFL requests a stay of the physical collocation mandate at least for a period to allow for the federal appeal in the United States Court of Appeals for the District of Columbia Circuit of the FCC's physical collocation mandate. GTEFL requests a stay of the physical collocation mandate because the constitutional status of the Florida decision is linked to the fate of the FCC's. GTEFL asserts that a stay is necessary to prevent irreparable harm to LECs and their ratepayers which, if the physical collocation mandate were overturned, there would be no guarantee that the LECs would recover their costs or would be compensated for inefficiencies and disruptions to their operations.

GTEFL seeks a stay until the conclusion of Phase II, because expanded interconnection for switched access raises the same constitutional issues with regard to collocation that switched access interconnection did. In the alternative, GTEFL requests a shorter period of stay, until a decision is rendered in the pending federal appeal.

On April 6, 1994, Intermedia responded to GTEFL's petition for stay. Intermedia argues that a stay is unnecessary and undesirable. In addition, Intermedia argues, we were aware of the federal appeal when we implemented mandatory physical collocation.

In determining whether to grant a stay, Rule 25-22.061, Florida Administrative Code, provides that we may consider, among other things, whether 1) the petitioner is likely to prevail on appeal; 2) the petitioner has demonstrated that he is likely to suffer irreparable harm if the stay is not granted; and 3) the delay will cause harm or be contrary to the public interest.

We believe that GTEFL's petition for stay is rendered moot. On our own motion, we stayed the Phase I Order mandating physical collocation for expanded interconnection. See Order No. PSC-94-1102-FOF-TP, issued September 7, 1994. Further, we decided to consider the Phase I tariffs in Phase II of this docket which effectively stays implementation of the service by Order No. PSC-94-0614-FOF-TP, issued May 23, 1994.

VII. EXTENSION OF EXPANDED INTERCONNECTION TO DS0 LEVEL

In its motion filed March 25, 1994, Southern Bell requests reconsideration of our decision to require LECs to extend expanded interconnection under tariff to the DS0 level. Southern Bell argues that the basis for extending tariffed interconnection to the DS0 level is not supported by the record in this case. Southern Bell notes that our rationale for extending interconnection to the DS0 level rather than permitting it on a case-by-case basis is that it might result in unnecessary delays for interconnectors. Southern Bell contends that there is no testimony to support this conclusion.

Southern Bell argues that because interconnection has been required for only fiber DS0 facilities, there will likely be only a limited demand for this type of DS0 interconnection. Nevertheless, it would require the LECs to create an entirely new tariff, including the preparation of cost studies and of all other supporting information that must necessarily be filed as part of a proposed tariff. Southern Bell contends that this is an unnecessary burden in light of the fact that the number of collocation requests for DS0 fiber-based interconnection will, in all likelihood, be relatively few. Southern Bell argues that there was no evidence presented at the hearing that requests for DS0 collocation cannot be handled to the satisfaction of collocators without the filing of a tariff.

Furthermore, Southern Bell states that the Phase I Order contains repeated references to the desirability of ordering collocation for intrastate purposes in a manner consistent with the FCC's ruling. Southern Bell notes that the FCC did not require DS0 interconnection, thus this Commission is making a specific exception to its general approach of pursuing consistency with the FCC.

On April 6, 1994, Teleport filed its response in opposition to Southern Bell's motion for reconsideration. Teleport states that Southern Bell's motion confuses the facilities used by the collocator with the facilities used by the LEC. Once the fiber is

in the collocation space, it is multiplexed down into lower transmission speeds and interconnected to the LEC network, within the central office, using copper facilities.

In response to Southern Bell's argument that there will be little if any demand for DS0 interconnection, Teleport argues that this assumption is incorrect. Teleport states that its national experience is that it has successfully completed thousands of interconnections, at DS1 and DS0 levels, and few if any use fiber facilities. Teleport also notes that Pacific Telephone offers DS0 interconnection in its federal tariff and New York Telephone offers DS0 interconnection in its state collocation offerings. We note that Teleport's argument regarding the demand for DS0 was not a part of the record nor did we use it in our decision to extend expanded interconnection under tariff to the DS0 level.

Furthermore, in response to Southern Bell's claim that we did not require interconnection of non-fiber optic technology, Teleport contends that we were referring to the transmission equipment placed in the collocation cage by the interconnector. Teleport states that the Order neither prohibits nor requires interconnection with a certain type of DS0.

On April 6, 1994, Intermedia filed its response in opposition to Southern Bell's request for reconsideration of extending interconnection to the DS0 level. Intermedia argues that, "[a]s noted in Southern Bell's motion, the Commission considered and rejected the company's request to handle requests for interconnection at the DS0 level on a case-by-case basis. Reconsideration is neither necessary nor proper."

We disagree that the evidence in this proceeding does not support extending collocation to the DS0 level. As the Order indicates, we agreed with Teleport's witness that expanded interconnection to the DS0 level will extend the benefits of competition to a greater number of users. (Order, p. 26) Southern Bell's claim is incorrect that there was no evidence presented at the hearing that requests for DS0 collocation cannot be handled on a case-by-case basis. The rationale to require LECs to tariff collocation to the DS0 level is the same rationale to require LECs to tariff collocation for DS1 and DS3. The Order states that:

> [W]e find that such a negotiation has the potential to be one sided since the LECs own and control the central offices. (Order, p. 12)

The evidence in this proceeding, particularly that presented by Mr. Kouroupas, clearly supports our decision to require LECs to extend expanded interconnection under tariff to the DS0 level. We agree with Teleport that Southern Bell's motion confuses the facilities used by the collocator with the facilities used by the LEC. The fiber brought into the collocation space is then multiplexed down into lower transmission speeds and interconnected to the LEC network using copper facilities. Contrary to Southern Bell's position, we did not require a fiber interconnection from the interconnector's facilities to the LEC's facilities. Southern Bell is confusing entrance facilities with facilities used to interconnect the collocators' equipment to the LEC network.

In response to Southern Bell's argument regarding consistency with the FCC's policy, in the Phase I Order we adopted a stipulation which stated that the Commission is not restricted in its ability to impose forms and conditions of expanded interconnection that are different from those imposed by the FCC's order. We believe that extending interconnection to the DS0 level would increase competitive opportunities for end users. Therefore, we established a policy that was different from the policy imposed by the FCC.

Also, in arriving at our decision, we considered and rejected Southern Bell's request to handle DS0 interconnection on a case-by-case basis. Therefore, we deny Southern Bell's request for reconsideration of our decision to require LECs to extend expanded interconnection under tariff to the DS0 level.

In its proposed tariff, Southern Bell omitted filing a provision regarding interconnection at the DS0 level, pending the outcome of its motion for reconsideration. Based on the foregoing, we shall require Southern Bell to file the appropriate tariff provisions regarding interconnection at the DS0 level, as required by Order No. PSC-94-0285-FOF-TP, when it files revisions to its special access and private line expanded interconnection tariffs.

Since the Phase II Order did not specify when all LECs were to file revisions to their special access and private line tariffs, we find that all LECs shall file the appropriate revisions to their special access and private line expanded interconnection tariffs no later than 60 days after the issuance of this Order. This is the same time period the LECs have to file the switched access expanded interconnection tariffs in accordance with Order No. PSC-95-0034-FOF-TP.

VIII. FRESH LOOK

A. REQUEST TO EXTEND PERIOD

In Phase I, we adopted a "fresh look" policy for expanded interconnection for special access and private line. The Order states that:

> [T]he 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. (Order, p. 37)

In its Motion for Clarification, Intermedia states that our decision does not perfectly track the FCC's fresh look policy. Specifically, Intermedia refers to the FCC's Order on Reconsideration adopted August 3, 1993 (released September 2, 1993) which extended the FCC's original fresh look period from 90 days to 180 days.

Intermedia argues that we announced our intent to adopt the FCC's fresh look policy in Order No. PSC-94-0285-FOF-TP. Therefore, Intermedia requests that clarification of the Phase I Order to specify a fresh look of 180 days in order to ensure that our policy is, as intended, perfectly consistent with the FCC's fresh look policy.

We deny Intermedia's request to extend the fresh look period from 90 days to 180 days. Contrary to Intermedia's claim, we did not intend to adopt a fresh look policy that was perfectly consistent with the FCC's fresh look policy. Although most of the Phase I Order is consistent with the FCC's decisions, we approved a stipulation which states that:

> 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 opposed 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. (Order, p. 5)

Furthermore, our decision to institute a fresh look policy of 90 days after expanded interconnection arrangements are available in a given central office was based on the FCC's "Report and Order and Further Notice of Proposed Rulemaking" adopted September 17, 1992 and released October 16, 1992 of which we took official recognition at the hearing. The FCC order referenced by Intermedia was not a part of the record in this proceeding. Accordingly, we find that the 90-day period is sufficient, considering that expanded interconnection for special access and private line services will not be available until after Phase II. The motion is hereby denied, because there has been no error or omission of fact or law shown.

B. APPLICATION TO SPECIAL ACCESS AND PRIVATE LINE SERVICES

Southern Bell's Motion for Reconsideration, for Clarification, and for Stay, requests clarification as to one provision of the Phase I Order regarding the "fresh look" policy. In its motion, Southern Bell notes that the Phase I Order states:

> 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.

Southern Bell notes, however, that in the body of the Order, there is a discussion regarding fresh look that refers to both special access service and private line service. Southern Bell claims in its motion that it assumes that we only intended to apply the fresh look provision to special access service and requests a clarification to this effect.

Southern Bell argues that the principal testimony that addressed the fresh look provision was that of the witness for Teleport. As the Order notes, Teleport argued that we should adopt a 'fresh look' provision designed to allow consumers in the special access market to choose a carrier without incurring substantial penalties. Southern Bell argues that in fact, Teleport's witness' testimony on this point dealt exclusively with the reasons that he believed a fresh look should be allowed for special access with no

mention of extending the fresh look provisions to private line services. Southern Bell states that it has been unable to find record evidence to support extending the fresh look policy to private line service.

Furthermore, Southern Bell argues that the Order recites in numerous places our intention to order expanded interconnection in a manner consistent with the FCC. Southern Bell claims that the action that is consistent with the testimony in this case and the prior action by the FCC which provides that the "fresh look" policy apply only to special access services.

In response to Southern Bell's motion, Intermedia agrees that the Order is internally inconsistent and that clarification is proper. However, Intermedia contends that Southern Bell incorrectly argues that we intended to apply the fresh look provision only to special access.

Intermedia cites to page 28 of the Order which states that "customers of LEC private line and special access services with terms equal to or greater than three years ... shall be permitted to switched to competitive alternatives ...." Thus, Intermedia argues that we intended to make the fresh look policy available to both LEC special access and private line customers.

In response to Southern Bell's claim that there is no evidence to support the application of the fresh look policy to LEC private line customers, Intermedia states that we made a policy decision to apply the fresh look opportunity to private line customers and special access customers based on our determination to increase the possibilities for a competitive marketplace. Therefore, Intermedia argues that Southern Bell has presented no factual reason to differentiate between these two sets of customers.

We agree with Southern Bell and Intermedia that the Order should be clarified. However, we disagree with Southern Bell's assertion that we intended to institute a fresh look policy only for special access services. The purpose for instituting a fresh look provision was to provide end users with the ability to take advantage of competitive opportunities which may not have been available in the past. We found that:

> 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 end user's ability to exercise choice to best meet its telecommunication needs. (Order, p. 28)
>
> The body of the Order further states:
>
> Thus, customers of LEC private line and special access services with terms equal to, or greater than three years... (Order, p. 28)

Although Teleport's testimony is that we should adopt a fresh look provision designed to allow customers in the special access market to choose a carrier without incurring substantial penalties, we intended to institute the fresh look provision for both special access and private line. As mentioned previously, the purpose for granting the fresh look provision was to provide end users of particular services with an opportunity to choose alternative carriers that were not available in the past. This applies to both special access and private line services. To limit the fresh look provision to special access services would deny end users of private line services the benefits of expanded interconnection.

Southern Bell's argument that the Order recites in numerous places our intention to order expanded interconnection in a manner consistent with the FCC, and that the FCC did not apply the fresh look provision to private line service, is without merit. The purpose of this proceeding was to determine whether to allow expanded interconnection for both intrastate special access and private line. The FCC's expanded interconnection proceeding was limited to special access because LECs do not provide interstate private line services.

Upon review, we deny Southern Bell's request to clarify the Order to state that the fresh look provision applies only to special access services. However, we shall clarify the ordering paragraph to state:

> 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 and **private line** 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. (emphasis added)

In its tariff, Southern Bell omitted provisions regarding our fresh look policy, pending the outcome of its motion for reconsideration. Based on the foregoing, we shall require Southern Bell to file the appropriate tariff provisions regarding the fresh look policy within 60 days after the issuance of this Order as required by the Phase I Order.

IX. ZONE-PRICING FLEXIBILITY AND CSAs

Upon consideration, we find that FCTA's Motion for Reconsideration should be denied. Essentially, GTEFL and Southern Bell in their respective responses agree that FCTA's motion should be denied. FCTA asserts that the provisions of Chapter 364 make clear that price flexibility can only be granted to services deemed to be subject to effective competition. FCTA also argues that contract service arrangement (CSA) authority constitutes pricing flexibility under Section 364.338, Florida Statutes, and that LECs should not be permitted to use CSAs for private line and special access services until they are deemed "effectively competitive" under Chapter 364.

In its prayer for relief FCTA asks the Commission to:

> (1) discontinue CSA authority for private line and special access service until such services are deemed effectively competitive pursuant to Section 364.338(2)(a)-(g); or alternatively (2) clarify the Final Order to require the LECs to demonstrate that private line and special access services are effectively competitive and, only then, to justify why deviation from FCC parameters through CSA authority should be granted.

FCTA raises these issues for the first time in its Motion for Reconsideration. The notion that CSAs have been legally improper since the 1990 statutory revisions to Chapter 364 was not an issue in this proceeding and was not argued in FCTA's brief. The legal basis for CSAs specifically, or other types of flexible pricing generally, was not raised until now. To address this for the first time on reconsideration would be a denial of process to the other parties who have not had an opportunity to address this new issue. The only issue identified for Phase I regarding pricing flexibility was Issue 15:

If the Commission permits expanded interconnection, what pricing flexibility should the LECs be granted for special access and private line services?

In its Posthearing Brief, FCTA opposed additional pricing flexibility generally but did not raise its current position that any flexible pricing for any service is prohibited by Chapter 364 unless such service is determined to be effectively competitive pursuant to Section 364.338. Moreover, FCTA's blanket indictment of our current policies regarding flexible pricing extends well beyond the limits of the instant proceeding and is therefore inappropriate in this context. Accordingly, we deny FCTA's motion.

In the alternative portion of its Motion, FCTA asks that the Order be construed to require the LECs to justify the retention of CSA authority by first demonstrating that private line, special access and switched access services are subject to effective competition pursuant to Section 364.338(2)(a)-(g). FCTA's alternative request is also denied. This request suffers from the same flaws discussed above. Moreover, it is inappropriate to use reconsideration as a vehicle to insert an issue from a separate albeit related proceeding. If FCTA wishes to contest whether private line, special access and switched access services are effectively competitive, there are appropriate procedural vehicles to bring this before the Commission. A post-hearing motion for clarification is not the appropriate vehicle.

X. CHECKER BOARD ARRANGEMENT

In the Phase I Order, we required the LECs to provide a checker board type of arrangement for physical and virtual collocation, if sufficient space is available. In the case of physical collocation, the checker board arrangement would have every other ten by ten square occupied by an interconnectors' 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. In the case of virtual collocation, the checker board arrangement would apply to the equipment rack. This would allow an interconnector to expand to a space in the equipment rack directly adjacent to its existing space. The rationale for using this type of arrangement is that it would prevent collocators from having to pay extra cabling charges if the equipment was spread out in the central office.

In Phase II, we implemented a mandatory virtual collocation policy which is generally consistent with the FCC's decision, because both interstate and intrastate traffic will be carried over the same facilities. See Order No. PSC-95-0034-FOF-TP. We also

decided that this rationale should also be used to ensure the private line and special access expanded interconnection and the switched access expanded interconnection tariffs are consistent. Since the tariffs filed for private line and special access contain terms and conditions for mandatory physical collocation, we ordered that they should be revised to remove the mandatory physical collocation requirements.

In Southern Bell's motion for reconsideration, it requested reconsideration of Section XIV. E. of the Order which requires interconnectors to be given space in the LEC central offices in a checker board arrangement in order to accommodate future expansion of their facilities. Southern Bell requested that we withdraw the portion of the Order that mandates the checker board arrangement and allow the parties to submit testimony on this issue in the Phase II hearing. On April 6, 1994, Intermedia filed a response to Southern Bell's motion. Intermedia believes that Southern Bell's motion does not raise sufficient grounds for reconsideration.

Southern Bell states that the procedural order did not identify any issue that called specifically for testimony regarding the expansion of collocated facilities. Consistent with this, Southern Bell notes that no party prefiled either direct or rebuttal testimony on this point. Although this is true, we believe the expansion of a collocator's space clearly falls under Issue 13 stated in the prehearing order: "What standards should be established for the LECs to allocate space for collocators?" In proceedings such as this, there are usually sub-parts that are discussed in the context of an issue after the issuance of a prehearing order.

Southern Bell claims that the only evidence introduced at the hearing regarding expansion was approximately two pages of the hearing transcript. However, Intermedia's witness also discusses the expansion of space in his deposition which was made an exhibit and part of the record. (EXH 4, pages 28-31) In addition, Intermedia's witness also discussed the checker board arrangement in response to interrogatories. (EX 3, pp. 4-5) Therefore, we find that there was adequate time for Southern Bell to respond to Intermedia's position on this issue, and there is sufficient evidence in the record to support our decision requiring the checker board arrangement.

Southern Bell also states that allowing the checker board arrangement would appear to be in conflict with other portions of the Phase I Order because it effectively allows an interconnector to warehouse space for expansion without even paying to reserve the space. We find that this is simply not true, because in the event

that the central office becomes filled to capacity, the "in-between spaces" would be available to any potential collocator. Therefore, the in-between spaces are not reserved for the current collocators. Even without the checker board requirement, it can be argued that any of the empty space in the central office is reserved for a current collocator until all of the space is exhausted.

We hereby deny Southern Bell's motion to reconsider the checker board expansion requirement. There is sufficient evidence in the record to support the checker board requirement. There has been no error or omission of fact or law shown. In addition, the Phase II Order, which changes the collocation requirement from mandatory physical to mandatory virtual, should have no effect on the checker board requirement, because in the original order the checker boarding requirement was for both physical and virtual collocation. The checker board requirement should not change because the mandate changed from physical to virtual. We believe that the checker board arrangement should not become a burden for the LEC because the requirement only applies where space is available. Therefore, we do not believe that the checker board requirement conflicts with the warehousing restrictions that were ordered in Section XIV. D of the Order.

In its proposed tariff, Southern Bell omitted provisions regarding check board type arrangements pending the outcome of its Motion for Reconsideration. Therefore, we shall require Southern Bell to file the appropriate tariff provisions as required by the Phase I Order when it files revisions to its special access and private line tariffs.

XI. WAREHOUSING OF SPACE

In the Phase I Order, we allowed the LECs to place restrictions on warehousing in their tariffs, such as the amount of time an interconnector is allowed before it must use the space. The time period must be at least 60 days. In addition, we ordered the interconnectors to forfeit their space and collocation application fee if they do not use the space within the allotted time period specified in the tariff.

On April 6, 1994, Teleport filed a cross motion for reconsideration and response to the motions for reconsideration and stay filed by Southern Bell. Specifically, Teleport requests reconsideration of the warehousing provision in the Phase I Order.

Teleport asserts that the warehousing restriction in the LEC tariffs mandating that an interconnector must use its designated collocation space within 60 days or forfeit the space and the application fee is unnecessary and unreasonable. Teleport states that:

> the degree of the use of an interconnector's collocation space is of no concern to the LECs as long as the interconnector is paying for the space. A public interest issue arises only if all of the collocation space in a central office is exhausted and the LEC is efficiently using the rest of the space, thereby rendering other potential interconnectors incapable of securing space. Any restriction should become effective only at this point. (Motion, p.2)

Teleport also argues that the 60 day period is impractical and unfair because problems can be experienced in using a collocation space. Teleport also argues that "it may take more than 60 days for an interconnector to make a sale of services, coordinate the shift of services from the LEC to the collocator, and implement the new services." (Motion, p.3)

Teleport believes that

> the real LEC motivation behind these 'use it or lose it' requirements is the LEC's desire to force collocators to order cross connections so that pricing flexibility will be triggered. Collocators will have no alternative but to order useless LEC services from the LEC facility back into its own private office facilities so that the collocation space will be considered 'used' by the LEC. (Motion, p.3)

Teleport also argues that the requirement will result in an unjust enrichment of the LEC. Conversely, Teleport asserts that if the LEC tears down the collocation space after it evicts the collocator, it will likely find itself rebuilding the collocation arrangement in the future which would be an inefficient use of its resources.

Teleport requests reconsideration of the Order implementing the warehousing restrictions. Teleport states that

> if the Commission finds it necessary to implement a warehouse restriction, it should be limited to a situation in which a collocation space is not being used and there is an unmet demand for collocation space in

> that office that cannot be satisfied due to lack of space. In that situation, the LEC could require the initial collocator to turn its collocation space over to the waiting customer, who must be required to reimburse the collocator for the construction costs billed by the LEC. (Motion, p.4)

Upon further consideration, we agree with Teleport that the 60 days may be too short a time for the collocator and the LEC to establish the arrangement and for the collocator to use the space. United/Centel testified to a 6-month time period. (Exhibit 30, p. 9). In addition, United/Centel filed this time period restriction in its interstate tariffs with the FCC. Some time is necessary for the collocator to begin to use the space, and we can settle disputes regarding when a collocator began to use its space if they arise. The Phase II Order should have no effect on this warehousing provision.

Upon review, we shall reconsider the time period that the LEC must give the interconnector to begin to use the space when the LEC chooses to offer physical collocation. An interconnector shall begin to use the space within six months of the date the application is approved or another time period agreed upon by the collocator and the LEC. In addition, the warehousing provisions shall be contained in the LEC's special access and private line and switched access expanded interconnection tariffs where the LEC chooses to offer physical collocation. The remainder of Teleport's cross motion for reconsideration is denied, because it is outside the record.

XII. TARIFFS

Since the Phase II Order did not specify when all LECs were to file revisions to their special access and private line tariffs, we find that all LECs shall file the appropriate revisions to their special access and private line expanded interconnection tariffs no later than 60 days after the issuance of this Order. This is the same period the LECs have to file the switched access expanded interconnection tariffs as required by the Phase II Order.

XIII. SOUTHERN BELL'S MOTION FOR STAY

In its March 25, 1994 Motion, Southern Bell requested a stay of the entire Phase I Order. Southern Bell set forth various reasons to stay the Order.

By Order No. PSC-94-1102-FOF-TP, issued September 7, 1994, on our own motion we stayed the Phase I Order until a decision had been made regarding expanded interconnection for switched access services in our Phase II proceeding. We stated that the decisions regarding expanded interconnection in Phases I and II should be consistent. Therefore, Southern Bell's motion for stay is rendered moot.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that local exchange companies shall be required to provide virtual collocation for private line and special access services to all interconnectors upon request. The local exchange companies shall be exempted from this requirement in offices where they opt to provide physical collocation; once space for physical collocation is exhausted, the local exchange company must provide virtual collocation. It is further

ORDERED that the stay on the Phase I Order, Order No. PSC-94-0285-FOF-TP, is hereby lifted, and the Phase I Order is revised to require virtual collocation so that it is consistent with the decision made in Phase II. It is further

ORDERED BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company's and GTE Florida Incorporated's motions for reconsideration regarding the decision that the local exchange companies must provide mandatory physical collocation for private line and special access services are rendered moot. It is further

ORDERED Southern Bell's motion to strike Time Warner AxS of Florida, L.P.'s response to Florida Cable Television Association's motion for reconsideration is hereby granted. It is further

ORDERED that GTEFL's petition for a stay of mandatory collocation is rendered moot. It is further

ORDERED that Southern Bell's motion for reconsideration of the decision requiring local exchange companies to extend expanded interconnection under tariff to the DS0 level is hereby denied. Southern Bell shall file appropriate tariff provisions regarding interconnection at the DS0 level as required by the Phase I Order when it files revisions to its special access and private line expanded interconnection tariffs. It is further

ORDERED that Intermedia Communications of Florida, Inc.'s motion for clarification to specify a fresh look policy of 180 days rather than the 90 days is hereby denied. It is further

ORDERED Southern Bell's request for clarification that the fresh look policy applies only to special access and not private lines services is hereby denied. It is further

ORDERED that the following ordering paragraph of the Phase I Order is clarified to state:

> 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 and **private line** 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. (emphasis added)

It is further

ORDERED that Southern Bell shall file appropriate tariff provisions regarding the fresh look policy as required by the Phase I Order within 60 days after the issuance of this Order. It is further

ORDERED that FCTA's motion for reconsideration/clarification regarding the decision to approve zone pricing flexibility on a conceptual basis and the decision to require local exchange companies to file reports regarding streamlining the contract service arrangement process is hereby denied. It is further

ORDERED that Southern Bell's motion for reconsideration of the decision requiring that mandatory collocation be implemented in a checker board pattern to provide for expansion of collocated facilities is hereby denied. The checker board provision still applies to virtual collocation arrangements as originally ordered

in Phase I. If the local exchange company chooses to provide physical collocation, then the checker board provision also applies as originally ordered. It is further

ORDERED that Teleport Communications Group, Inc.'s cross motion for reconsideration of the decision regarding warehousing of space is hereby granted in part. An interconnector shall begin to use the space within six months of the date the application is approved or another time period agreed upon by the collocator and the local exchange company. It is further

ORDERED that the warehousing provisions shall be contained in the local exchange company's special access, private line and switched access expanded interconnection tariffs where the LEC chooses to offer physical collocation. The remainder of Teleport's cross motion for reconsideration is denied. It is further

ORDERED that all local exchange companies shall file the revisions, consistent with this Order, to their special access and private line expanded interconnection tariffs no later than 60 days after the issuance of this Order. It is further

ORDERED that Southern Bell's motion for stay of the Phase I Order is rendered moot. It is further

ORDERED this docket shall remain open pending resolution of any outstanding motions.

By ORDER of the Florida Public Service Commission, this 21st day of September, 1995.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: _____
Chief, Bureau of Records

(S E A L)

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NOTICE OF 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 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 wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.