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Florida Cable Telecommunications Association

Steve Wilkerson, President

June 3, 1996

VIA HAND DELIVERY

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

RE: Docket No. 950985-TP

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are an original and fifteen (15) copies of Florida Cable Telecommunications Association, Inc.'s ("FCTA") Motion for Reconsideration and Clarification. Copies have been served on the parties of record pursuant to the attached certificate of service.

Also enclosed is a copy on a 3-1/2" diskette in WordPerfect format, version 5.1.

Please acknowledge receipt and filing of the above by date stamping the duplicate copy of this letter and returning the same to me.

Thank you for your assistance in processing this filing.

Yours very truly,

Laura L. Wilson
Laura L. Wilson
Vice President, Regulatory Affairs &
Regulatory Counsel

1 Enclosures

cc: All Parties of Record
Mr. Steven E. Wilkerson

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310 North Monroe Street
Tallahassee, Florida 32301

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Resolution of Petition(s) to establish)
non-discriminatory rates, terms and)
conditions for interconnection involving)
local exchange companies and alternative)
local exchange companies pursuant to)
Section 364.162, Florida Statutes)
_____)

DOCKET NO. 950985-TP
GTEFL/Sprint Subdocket

FILED: June 3, 1996

FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION, INC.'S
MOTION FOR RECONSIDERATION AND CLARIFICATION

The Florida Cable Telecommunications Association, Inc. (FCTA), pursuant to Rule 25-22.060, Florida Administrative Code, respectfully submits this Motion for Reconsideration and Clarification of Order No. PSC-96-0668-FOF-TP, issued May 20, 1996 in the above-captioned docket relating to interconnection with GTEFL and Sprint-United/Centel. As grounds therefore, FCTA states:

1. In the Final Order Establishing Nondiscriminatory Rates, Terms, and Conditions for Local Interconnection No. PSC-96-0668-FOF-TP issued May 20, 1996 (the "Final Order"), the Commission establishes Mutual Traffic Exchange (MTE) and sets three standards that it will consider if a party petitions the Commission to change the interconnection rate in the future. The three standards are set out as follows:

If any of these parties believes that traffic is imbalanced to the point that it is not receiving benefits equivalent to those it is providing through mutual traffic exchange than that party may request the compensation mechanism be changed. If resolution by the Commission is required, (the respective ALEC and the LEC) shall provide the following information for our evaluation:

1) (The respective ALEC and the LEC) shall provide monthly MOU data for terminating local traffic which will reflect the trends in the flow of traffic;

2) (The respective ALEC and the LEC) shall provide the financial impact to their respective firms due to the traffic

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imbalance since the implementation of mutual traffic exchange;
and

3) (The respective ALEC and the LEC) shall provide the estimated costs which would be incurred due to the additional processing and software required to measure the usage.

Order at 19-21. This Motion focuses upon the above three standards for a future determination of whether MTE should be abandoned for a usage charge.

2. The Commission has appropriately ordered MTE based on the record evidence presented. The Commission need not establish at this time the criteria by which it will judge any future petitions to change the interconnection terms it has established. If not entirely eliminated, at minimum, the three standards in the Order should be reconsidered and revised. The standards ignore or overlook findings of fact contained in the Order and certain essential requirements of law. In addition, the standards fail to consider that other standards may be relevant or more appropriate at the time a petition is filed.

3. First, the three standards in the Order are inconsistent with the Commission's findings and the record evidence. At page 19, the Commission accepts the ALECs' arguments for establishing MTE:

We find the ALECs' arguments to be compelling. Mutual traffic exchange appears to be the most efficient, least-cost method of interconnection, and should provide the lowest barrier to entry of any method presented.

The finding was based on evidence presented by Time Warner and MCIMetro concerning the significant costs of developing the measurement and billing system that would be necessary if a usage charge were implemented rather than MTE. As the Order notes on page 16, the record demonstrates that developing such a measurement and billing system could more than double the TSLRIC of the switching function for terminating traffic from the cost without the measurement and billing. It is also significant that the Order finds "consistency among the

parties that there is a significant expense to measuring local terminating traffic." Order at 16.

4. Standards 1) and 3) in the Order conflict with the above findings and evidence. Having concluded that the additional processing and software costs required to measure usage are significant and not worthwhile at this time (Order at 16), standards 1) and 3) in the Order nevertheless require ALECs to immediately incur these costs. The Order overlooks or fails to consider that ALECs would have to immediately develop the very tracking and billing systems that the record evidence fails to justify. This would be necessary to provide the monthly data and costs of implementing the tracking and billing systems. The Order would require ALECs to incur these costs despite the fact that the standards conflict with the Commission's policy rationale for implementing MTE - to provide the most "efficient," "least cost," "lowest barrier" to competition given the lack of evidence that traffic will be out of balance and the duty to foster competition.

5. Accordingly, the Order should not set any standards for determining if and when it is appropriate to move away from MTE. The Commission has fully discharged its statutory obligation by ordering MTE. Nothing additional is required at this time. If standards are nevertheless set, they should be consistent with the findings in the Order and record evidence. They should not require the very costs to be incurred that MTE is designed to eliminate. For these reasons reconsideration and elimination of the standards are proper.

6. In addition, standard 2) in the Order is ambiguous and could create competitive disincentives. Standard 2) requires the parties to quantify the "financial impact" to their respective firms due to any traffic imbalance. There is no discussion in the Order as to what is meant by "financial impact" or how this quantification would be relevant to a determination that the parties' costs of furnishing interconnection are covered. This standard concerns FCTA because the acknowledged legislative goal of Chapter 364 is creating a competitive

market out of one that is overwhelmingly dominated by the LEC. Since the LECs have 100% of the local exchange customers, they must necessarily lose residential as well as business customers. In the new price regulated environment, the LECs' financial viability is no longer guaranteed and increased competition is encouraged for all types of customers. Standard 2) appears to conflict with these Legislative goals; therefore, reconsideration is appropriate.

6. The Order also overlooks or fails to consider that there already exists a full statutory scheme for the setting and changing of interconnection terms by the Commission. The Order appears to set up standards independent from Section 364.162(7). Section 364.162(7) is the provision that is intended to govern future petitions. That section specifically requires a petitioner to make a "compelling showing of changed circumstances, including that the provider's customer population includes as many residential as business customers" before MTE can be abandoned for a usage charge or some other mechanism in the future. Section 364.162(7) is not mentioned in Order, nor is there any discussion in the Order of the interplay between this statutory provision, the burden of proof contained therein and the standards in the Order.

7. In light of Section 364.162(7), the standards in the Order are also too restrictive. They do not allow for consideration of the nature of a provider's customer population (as permitted by law) or any number of other "changed circumstances" that could be relevant in the future. For these reasons, the FCTA urges a more cautious approach that recognizes the statutory burden of proof upon the petitioning party but does not undertake, at this point, to determine what changed circumstances (if any) would warrant movement away from MTE.

8. Finally, FCTA requests clarification that the Commission does not intend in this Order to make any determination with respect to whether the Intermedia 105% cap on traffic imbalance, or any other cap, is appropriate if and when a usage sensitive local interconnection

rate is ordered. The language giving rise to FCTA's concern is found at the bottom of page 19:

In addition, we find the LECs' argument incredulous since in their agreements with Intermedia there is a 105% cap in the exchange of traffic with a default to mutual traffic exchange. Assuming arguendo that the LECs are correct that mutual exchange of traffic violates Section 364.162(4), Florida Statutes, then it is also true that the provisions of their agreements with Intermedia providing a limit on compensation of 105% also violates the same provisions. Nothing in the agreements with Intermedia even pretend to ensure the recovery of costs of termination.

Because the present record does not demonstrate that traffic is likely to be out of balance and due to the lack of sufficient cost information, it can not be determined to any degree of certainty whether the Intermedia 105% cap or any other cap on traffic imbalance is appropriate at this time.

WHEREFORE, for the foregoing reasons, the FCTA requests the Commission grant its Motion for Reconsideration and Clarification and that the Commission eliminate the standards for determining whether the interconnection terms in the Order should be changed.

RESPECTFULLY SUBMITTED this 3rd day of June, 1996.



Laura L. Wilson, Esquire
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CERTIFICATE OF SERVICE
DOCKET NO 950985-TP

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by Hand Delivery(*) and/or U. S. Mail on this 3rd day of June, 1996 to the following parties of record:

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