

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Generic investigation into	)	DOCKET NO. 890183-TL
the operations of Alternate Access	)	ORDER NO. 25546
Vendors.	)	ISSUED: 12/26/91
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The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
J. TERRY DEASON  
BETTY EASLEY

FINAL ORDER DENYING MOTION FOR  
RECONSIDERATION OF ORDER NO. 24877

BY THE COMMISSION:

I. RECONSIDERATION OF AFFILIATED ENTITIES  
LIMITATION DENIED

On September 9, 1991, Intermedia Communications of Florida, Inc., (ICI) filed a Motion for Reconsideration of Order No. 24877, issued August 2, 1991. Subsequently, on September 16, 1991, GTE Florida, Inc. (GTEFL), filed its Reply to ICI's Motion for Reconsideration, and on September 20, 1991, Southern Bell Telephone and Telegraph Company (Southern Bell) filed its Reply to ICI's Motion. ICI's Motion requests reconsideration of two of our decisions in Order No. 24877, the first of which is our decision that alternate access vendors (AAVs) may not provide intrastate private line service between two unaffiliated end users.

ICI argues that our interpretation of Sections 364.335 and 364.337, Florida Statutes, inappropriately expands the local exchange company's (LEC's) monopoly. ICI asserts that this is the result of prohibiting interexchange companies (IXCs) from providing interexchange private line services to unaffiliated entities with originating or terminating special access, which it asserts was previously permitted, with the proper showing, under the bypass restriction. According to ICI, this is an incorrect interpretation of the legislative intent since the point of the revised statutory language was to "open up" the LEC's monopoly.

ICI proposes that the Legislature could not possibly have intended to define the private line services that AAVS could provide in a way that would take away one of the opportunities that

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ORDER NO. 25546  
DOCKET NO. 890183-TL  
PAGE 2

IXCs might have had before. There is no basis on which ICI can argue that the Legislature would not have done just that. These statutory changes represent a significant alteration of the LECs' market and it may well be that the Legislature intended to limit some potential bypass opportunities for IXCs in return for such a fundamental loosening of the LECs' monopoly.

GTEFL's and Southern Bell's Replies both oppose ICI's Motion for Reconsideration on this issue. GTEFL states that ICI's policy arguments are groundless and constitute a rearguing of the case. Southern Bell's Reply supports the Commission's decisions and asserts that ICI's Motion for Reconsideration does not meet the legal criteria for such a Motion.

ICI's Motion for Reconsideration does not raise any matter of fact or law that this Commission did not fully consider in Order No. 24877. Order No. 24877 was the culmination of a full evidentiary proceeding in which all parties had every opportunity to present evidence and argument on all issues identified in the prehearing order. ICI has argued the same interpretation of Sections 364.335 and 364.337, Florida Statutes, throughout this proceeding that it argues in its Motion for Reconsideration. Based on the above, we find it appropriate to deny ICI's Motion for Reconsideration of Order No. 24877 on this issue.

## II. RECONSIDERATION ON PACKET SWITCHING ISSUE DENIED

The second decision in Order No. 24877 which ICI requested that we reconsider is that AAVs may not utilize packet switching in providing intrastate private line services.

ICI asserts that it was not on notice that this Commission might make the decision to prohibit AAVs from utilizing packet switching. From the point in this proceeding at which the issues were identified, ICI was on notice that we would address the issue of what services AAVs were authorized to provide by statute and whether AAVs were permitted to perform switching within their networks. We determined in Order No. 24877 that this Commission had been authorized to permit AAVs to provide certain dedicated services. Further, we decided that packet switching did not meet the dedicated requirement for AAV services. Whether packet switching constitutes "switching" was one of the recurrent themes of the proceeding. Lengthy cross-examination took place on this point. ICI cannot be heard now to say that it was not on notice that this Commission would have to make such a decision.

ORDER NO. 25546  
DOCKET NO. 890183-TL  
PAGE 3

Both GTEFL and Southern Bell's Replies support the Commission's decision on this issue and oppose ICI's Motion. They state that it is their view that all parties were on notice that packet switching was at issue as a service that AAVs would need authorization to provide, and that packet switching was the focus of a good deal of testimony during the proceeding.

On November 5, 1991, we decided, on our own motion, to reconsider our decision in Order No. 24877 prohibiting the use of packet switching by AAVs. We were concerned about Order No. 24877 being construed as the regulation of packet switching as a technology, and not the regulation of a service. We believe that Sections 364.335 and 364.337, Florida Statutes, allow AAVs to provide only dedicated private line service and dedicated special access service. Those statutes do not authorize any transmission method other than dedicated. We do not find packet switching to be a dedicated service.

Upon reexamination, the record indicated that customers could possibly control the entry/exit point of the transmission by changing the framing address of the packet, although ICI stated that this type of capability was not a service it intended to sell. ICI will not be the only AAV in Florida. This customer control capability could transform a virtual private line service into a switched service and, therefore, we find that it may not be authorized for an AAV's telecommunications network.

We find Sections 364.335 and 364.337, Florida Statutes, prohibit AAVs from providing switching within their telecommunications networks, and that the use of packet technology is switching. Therefore, we find packet switching is prohibited by these statutes. Therefore, we find it appropriate to affirm our decision in Order No. 24877 to prohibit AAVs from utilizing packet switching in their telecommunications networks.

Accordingly, we deny ICI's Motion for Reconsideration on this issue.

### III. MOTION TO REVISIT SCOPE OF AAV SERVICES DENIED

On October 2, 1991, ICI filed a Motion to Revisit Scope of AAV Services Allowed Under Statute. ICI states that its Motion is filed because we indicated that we would revisit the scope of the authority granted to AAVs once we heard oral argument on the definition of "local exchange services." ICI requests that this

ORDER NO. 25546  
DOCKET NO. 890183-TL  
PAGE 4

Commission look again at the scope of the services it authorized AAVs to provide by Order No. 24877 in light of the various positions taken on the definition of "local exchange services" by the participants in the Oral Argument on September 17, 1991. Apparently, ICI believes that the discussion of the definition of "local exchange services" on September 17, 1991, somehow broadened the scope of services that this Commission has authority to permit AAVs to provide.

However, the discussion regarding the definition of "local exchange services" did not alter our belief that Order No. 24877 appropriately sets out which services AAVs may legally provide. Therefore, we find it appropriate to deny ICI's Motion to Revisit the Scope of AAV Services.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Intermedia Communications of Florida, Inc.'s Motion to Reconsider Order No. 24877 is hereby denied in toto. It is further

ORDERED that Intermedia Communications of Florida, Inc.'s Motion to Revisit Order No. 24877 is hereby denied. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 26th  
day of DECEMBER, 1991.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

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ORDER NO. 25546  
DOCKET NO. 890183-TL  
PAGE 5

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 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 Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.