

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of INTERMEDIA
COMMUNICATIONS OF FLORIDA, INC. for
expanded interconnection for AAVS
within LEC central offices.

) DOCKET NO. 921074-TP
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) FILED: 10/22/93
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INTERMEDIA COMMUNICATIONS OF FLORIDA, INC.'S
POST HEARING BRIEF

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**INTERMEDIA COMMUNICATIONS OF FLORIDA, INC.'S
POST HEARING BRIEF**

Intermedia Communications of Florida, Inc. ("Intermedia"), hereby files this its Post Hearing Brief in the above docketed matter.

INTRODUCTION

Expanded interconnection for special access and private line service is in the public interest. It will promote more rapid deployment of new technology, system redundancy, increased protection against disastrous service outages, increased service innovation, greater customer choice, and price competition that will reduce the cost of telecommunications services to all customers. These benefits will not be fully delivered, however, unless the LEC is required to provide physical collocation where there is available central office space. Moreover, to avoid unnecessary inefficiencies in collocation arrangements, the Commission should, to the extent practical, mirror the FCC's approach to interstate collocation.

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DISCUSSION

ISSUE 1: Is expanded interconnection for special access and/or private line in the Public Interest?

Position: Yes. Expanded interconnection will promote deployment of new technology, system redundancy and increased protection against disastrous service outages, increased service innovation and greater customer choice, and price competition that will reduce the cost of telecommunications services to customers.

The caveats of the local exchange companies (LECs) notwithstanding, all parties in this docket appear to agree that expanded interconnection for intrastate special access and private line is in the public interest. To be sure, the LECs argue that they should have increased regulatory flexibility (see Issue 15) and that physical expanded interconnection should not be mandated if the LECs are not to be disadvantaged. However, the record does not support the proposition that the public interest benefits from expanded interconnection depend on granting the LECs' demands. Rather, the public benefits from expanded interconnection will be generated by competition in the special access and private line markets. No one has suggested that the LECs are not formidable competitors on their own turf, with or without increased LEC flexibility in pricing.

Determining the public interest question in this regulatory proceeding is essentially a balancing test: will the good to be gained (or the harm to be avoided) outweigh the harm caused (or the good lost) through this course of action? Applying the balancing test in light of current Chapter 364 of the Florida Statutes, the

FCC's decisions regarding interconnection, and the record of this case, it is clear that expanded interconnection is in the public interest.

A. Competition Benefits the Public Generally.

The benefits of competition as a process are well known and embraced by this Commission. These benefits include the following:

- (a) competitive markets are better than non-competitive markets at producing the types of goods and services that are most in demand by consumers;
- (b) competition offers the greatest opportunity for the introduction of new technology and new services;
- (c) competitive production of goods and services results in the most efficient use of inputs, so that society gets the most for its money;
- (d) competition offers users the ability to diversify the risks of outages; and
- (e) competition allows society to spend less on regulatory processes and procedures.

Chapter 364 also endorses the competitive provision of telecommunications services where practical. For example, in Section 364.01(3)(c), Florida Statutes, the Commission is directed to exercise its exclusive jurisdiction to:

Encourage cost-effective technological innovation and competition in the telecommunications industry if doing so will benefit the public by making modern and adequate services available at reasonable prices.

Similarly, Section 364.01(3)(e), Florida Statutes, directs the Commission to:

Recognize the continuing emergence of a competitive telecommunications environment through the flexible regulatory treatment of competitive telecommunications services, where appropriate, if doing so does not reduce

the availability of adequate basic local exchange service to all citizens of the state at reasonable and affordable prices, if competitive telecommunications services are not subsidized by monopoly telecommunications services, and if all monopoly services are available to all competitors on a nondiscriminatory basis.

B. Benefits of Expanded Interconnection

Granting AAVs expanded interconnection will fulfill the charge of these two provisions perfectly, and deliver the benefits they contemplate under the statute. Expanded interconnection is in the public interest because it will accelerate the deployment of technology and applications while satisfying current and future demands of customers, all without limiting the LECs' ability to compete. Moreover, many of the applications demanded by these customers will be commercially risky. AAVs will put their money at risk in betting on these markets, and the competition among these vendors will serve as a proving ground for new applications. The LECs will learn from the experiences of the interconnectors, and the general body of ratepayers will benefit.

The specific benefits of competition in these markets were summarized by Intermedia's witness, Mr. Jon Canis:

These benefits include more rapid deployment of new technology, system redundancy and increased protection against disastrous service outages, increased service innovation and greater customer choice, and price competition that will reduce the cost of telecommunications services to all customers. The importance of these benefits cannot be underestimated to communication dependent businesses. For example, information intensive businesses and health-care and educational institutions are and will continue in the future to be dependent upon a modern telecommunications infrastructure. (Tr. 22.)

Mr. Paul Kouroupas, the witness for Teleport Communications Group, Inc. (TCG), also supported this view in his testimony:

Central office interconnection will provide significant benefits to consumers in Florida. In order to prepare for competition they will face from collocated competitors, LECs will upgrade and improve their transmission infrastructure. All telephone company subscribers will then benefit from improved service, better quality and lower cost for the basic services transmitted over these upgraded networks. By acting upon competitive incentives to improve service to their customers, the LECs themselves will also benefit from competition. (Tr. 243.)

Mr. Kouroupas further observed that competition will also induce the LECs to reduce their costs and improve efficiency, while reducing the likelihood that the LECs will experience stranded investment. (Tr. 244.)

The rationale of witnesses Canis and Kouroupas was also embraced generally by Mr. Mike Guedel for AT&T, who observed as follows:

The adoption of expanded interconnection would facilitate the beginning of competition within the local exchange and would benefit customers in much the same way as competition in other aspects of the telecommunications industry (i.e., interexchange services or telephone sets) has benefited customers over the years. Competition facilitates customer choice and the development and production of new and innovative services designed or tailored to meet particular customer needs. Competition fosters better price performances as competing vendors vie for customers in the open market place. Competition will also assist the regulators in regulating the local exchange companies encouraging these companies to become more efficient and more responsive to customer needs. (Tr. 194.)

As noted above, even the LECs appear to embrace the position that expanded interconnection is in the public interest. Of

course, in acknowledging the public interest benefits of competition in the local markets, each Tier-I LEC witness was also sure to emphasize the LECs' long-term needs for regulatory flexibility. For example, Mr. David Denton, for Southern Bell, responded to the public interest question as follows:

Assuming as this Commission did in the alternate access vendor docket, that AAV competition is in the public interest, then allowing expanded interconnection will result in more competitive options for special access and private line service. However, there is a contribution that intrastate special access and private line services provide to residential local exchange service. If that contribution is lost and no competitive flexibilities are gained by the local exchange companies (LECs), then there is the potential that the public interest may not be well served. (Tr. 390.)

Similarly, Mr. Edward Beauvais observed in his summary for GTEFL as follows:

As an economist, I sincerely believe in the benefits derivable from the competitive provision of virtually any good or service, telecommunications or otherwise. However, the extent of the benefit passed to the public depends to a large extent on the pricing practices of the companies competing with each other.

In order to allow the customers the maximum benefit possible, all parties should be allowed to compete on an equal basis. That would immediately imply that the LECs should be allowed the same pricing flexibility as AAVs already have.¹ (Tr. 334.)

United Telephone's witness Ben Poag also addressed the essential LEC position that competition in special access and private line can be in the public interest, but that the Commission

¹The issue of pricing flexibility is addressed under Issue 15. Mr. Beauvais' observation is included here so that his comments are not taken out of context.

must also accord the LECs flexibility. (See, e.g., Tr. 437, where Mr. Poag stressed the interrelationship between special and switched access, and called for greater pricing flexibility to meet bypass competitors.)

C. Expanded Interconnection and Long-Term Telecommunications Needs

Expanded interconnection for special access and private line is also in the public interest because it will facilitate meeting the long-term telecommunications needs of the state. These needs include:

- o increasing demand for information services among all types of customers;
- o increasing demand among a variety of customers for broadband telecommunications services;
- o increasing demand for diverse and redundant routing and electronics in telecommunication services;
- o increasing demand for faster provisioning of services. (Exhibit 3)

These trends suggest that in the future Florida will need a telecommunications infrastructure that is faster, more reliable, more advanced, and more ubiquitous than today's. Florida's long term intrastate telecommunications needs should be met by a variety of providers, both competitive and monopoly. The Commission's overriding policy objective should be to establish a competitive environment within which private investment and diversity of supply are allowed to meet Florida's evolving telecommunications needs. Simply put, the Commission should adopt policies that remove

barriers to competition in local services. Establishing expanded interconnection is a significant step in the right direction.

ISSUE 2: How does the FCC's order on expanded interconnection impact the Commission's ability to impose forms and conditions of expanded interconnection that are different from those imposed by the FCC's Order?

Approved Stipulation: 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.

ISSUE 3: Under what circumstances should the Commission impose different forms and conditions of expanded interconnection?

Approved Stipulation: By agreement of the parties, Issue 3 is deleted from further consideration in this proceeding.

ISSUE 4: Does Chapter 364, Florida Statutes, allow the Commission to require expanded interconnection?

Position: Yes.

No one appears to dispute the Commission's authority under Chapter 364 to require expanded interconnection for special access and private line service. Given the expansive charge to the Commission under Chapter 364 to regulate telecommunications in the public interest, it is safe to say that the law gives the Commission ample authority to promote competition in special access and private line service upon the terms it believes best serve the

public interest. This expansive charge is directly implied in Section 364.01, Florida Statutes, which states the general powers of the Commission and the legislative intent of Chapter 364. As stated above, Section 364.01(3) provides in part as follows:

The commission shall exercise its exclusive jurisdiction in order to:

(c) Encourage cost-effective technological innovation and competition in the telecommunications industry if doing so will benefit the public by making modern and adequate telecommunications services available at reasonable prices.

* * *

(e) Recognize the continuing emergence of a competitive telecommunications environment through the flexible regulatory treatment of competitive telecommunications services, where appropriate, if doing so does not reduce the availability of adequate basic local exchange service to all citizens of the state at reasonable and affordable prices, if competitive telecommunications services are not subsidized by monopoly telecommunications services, and if all monopoly services are available to all competitors on a nondiscriminatory basis.

Thus, under the Commission's general authority, a finding that expanded interconnection is in the public interest would support a requirement that the service be provided by the LEC.

Additionally, several statutory provisions give the Commission specific authority to require expanded interconnection. For example, Section 364.03(3), Florida Statutes, provides that:

(3) Every telecommunications company shall, upon reasonable notice, furnish to all persons who may apply therefor and be reasonably entitled thereto suitable and proper telecommunications facilities and connections for telecommunications services and furnish telecommunications service as demanded upon terms to be approved by the commission.

Next, Section 364.15 states:

Whenever the commission finds, on its own motion or upon complaint, that repairs or improvements to, or changes in, any telecommunications facility ought reasonably to be made, or that any additions or extensions should reasonably be made to any telecommunications facility, in order to promote the security or convenience of the public or employees or in order to secure adequate service or facilities for telecommunications services, the commission shall make and serve an order directing that such repairs, improvements, changes, additions, or extensions be made in the manner to be specified in the order.

And additionally, Section 364.16 provides as follows:

Whenever the commission finds that connections between any two or more telecommunications companies, whose lines form a continuous line of communication or could be made to do so by the construction and maintenance of suitable connections at common points, can reasonably be made and efficient service obtained, and that such connections are necessary, the commission may require such connections to be made, may require that telecommunications services be transferred, and may prescribe through lines and joint rates and charges to be made, used, observed, and in force in the future and fix the rates and charges by order to be served upon the company or companies affected.

In sum, there can be no reasonable doubt that under Chapter 364 the Commission is authorized to require expanded interconnection upon such terms and conditions it finds to be in the public interest.

ISSUE 5: Does a physical collocation mandate raise federal and/or state constitutional questions about the taking or confiscation of LEC property?

Position: No. With respect to the federal taking issue, the LEC is compensated for collocation space, even if "occupation" is ruled to be a "taking" in this context. At the state level, mandated physical collocation is

"occupation" by consent because of the LEC's status as the certificated monopoly provider under Chapter 364.

A. Federal Question.

Before the FCC, several LECs argued that mandated physical collocation would constitute an unlawful taking of property in violation of the Fifth Amendment of the United States Constitution.

As explained by the FCC, the LECs

"... generally contend that: (1) mandatory physical collocation would constitute a taking of property; (2) just compensation would therefore be required; (3) only courts, not regulatory agencies, can determine just compensation for constitutional purposes; (4) the Commission lacks authority to effect such taking under the Communications Act; and (5) such a taking would be unlawful if carried out for a private purpose, such as to benefit the CAPS rather than for a public purpose."

Expanded Interconnection with Local Telephone Company Facilities, 7 FCC Rcd 7369 (1992); appeal pending sub nom. Bell Atlantic Corp. v. FCC, No. 92-1619 (D.C. Cir., filed November 25, 1992); modified on reconsideration, 8 FCC Rcd 127 (1992); further modified on reconsideration, Second Memorandum and Opinion and Order on Reconsideration, CC Docket No. 91-141, FCC 93-378 (released Sept. 2, 1993).

The Fifth Amendment provides that private property shall not be taken for public use without just compensation. U. S. Const. amend. V. Thus, if government takes private property for public use, it must fairly compensate the property owner.

The FCC addressed the taking argument at length in its Order, and that discussion need not be repeated here. In essence, the FCC concluded that requiring mandatory physical collocation does not violate the Fifth Amendment because it is not a taking. Further, the FCC reasoned, even if forced physical collocation is a taking,

the requirement does not violate the Fifth Amendment because the taking would be for public purpose and a mechanism was provided for tier one LECs to receive just compensation for the use of their property. See generally FCC Order, Para. 230-40.

B. State Questions

The Constitution of the State of Florida protects citizens of the state against unjust taking of their property. Article X, Section 6 is entitled "Eminent Domain," and provides, in part, that "(n)o private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner."

Intermedia does not have the benefit of the arguments that the LECs would advance to suggest that the requirement of physical interconnection for intrastate special access and private line would constitute the taking of private property within the meaning of the Florida Constitution. However, for the LECs to argue that mandatory interconnection violates this section, the LECs must establish that forced physical collocation interconnection amounts to a taking.

At the outset, if the FCC's plan for mandatory physical collocation passes constitutional muster, then there appears to be no state constitutional question triggered by an intrastate physical collocation requirement. Assuming that the intrastate space allocation did not exceed that of the FCC, no additional

space would be occupied for intrastate purposes, and thus no space allegedly "taken" to trigger any provision of the Florida Constitution. Further, mandatory interstate collocation would not be subject to the Florida Constitution under the supremacy clause of the U. S. Constitution. Thus, with respect to state constitutional law, this issue appears moot.

Assuming for the sake of analysis, however, that the Florida Public Service Commission orders physical collocation for intrastate purposes and there is no comparable FCC order, there still would be no intrastate taking issue. Essentially, what is challenged here is the Commission's ability to control the use of LEC facilities in the provision of telecommunications services. The entire purpose of Chapter 364, however, is to set up a system under which (a) the LEC is granted a monopoly over certain markets; (b) the Commission may control the use of LEC facilities in the provision of monopoly services; and (c) the LEC is guaranteed the opportunity to earn a fair rate of return on its investments in its facilities. Under this "regulatory bargain," the LEC voluntarily relinquished certain property rights in exchange for certain guarantees and privileges. The right to unfettered² use of its property is one of the rights compromised by the LEC when it applied for its certificate. In short, the LEC long ago agreed to

²Of course, no property right is actually unfettered. Under both common law and statutory law, restrictions on one's use and enjoyment of property abound. However, for the most part, reasonable use of private property by a person remains honored in this country.

its property being "taken" in exchange for just and reasonable compensation through customer payments approved by the Commission. In short, the "taking by occupation" alleged to be inherent in mandated physical collocation is occupation by consent.

The LEC might argue that the Commission's authority over its realty is less than the Commission's authority over its other facilities. There is, however, no basis in the statute for this distinction. Under Chapter 364, it is clear that all facilities used by a telephone company in the provision of telephone service are in fact affected with the public interest. For example, in the definitional section, "telecommunications company" is essentially defined to include (with certain specific exceptions) any entity that offers telecommunications services to the public for hire within the state by use of a "telecommunications facility." Section 364.02(7), Fla. Stat. (1992). Under subsection 8, "telecommunications facility" is defined to include ". . . real estate, easements, apparatus, property, and routes used and operated to provide two way telecommunications service to the public for hire within this state." Section 364.02(8), Fla. Stat. (1992). Thus, the Legislature has made it clear that regulated telecommunications facilities include real property as well as hardware.

Moreover, conceptually, the Commission's regulation appears to be the compensated "taking" of the LEC's facilities in the expansive sense of the term. For example, as already established

in this brief, Chapter 364, Florida Statutes, specifically authorizes the Commission to order interconnection between companies. Forced interconnection forces one telephone company to allow its transmission capacity (i.e., spectrum space within its circuits) to be used or occupied by the transmissions of another company. Thus, personal property of the telephone companies is in fact being "taken" in a sense as a fundamental part of the regulatory bargain of Chapter 364. Mandated physical collocation is simply another example of required provision of telecommunication service, involving the forced use (or "occupation") of LEC property.

ISSUE 6: Should the Commission require physical and/or virtual collocation?

Position: Yes, the Commission should require physical collocation. Physical collocation ensures that the LEC and collocators interconnect with the LEC's network on the same basis. Virtual collocation, however, is both technically and economically inferior to physical collocation. Moreover, a "LEC choice" policy would be inefficient because it would conflict with the FCC's mandatory physical collocation policy.

A. Substantial Disagreement

There is substantial disagreement on the proper resolution of this issue. Intermedia and the other proponents of collocation believe that without the requirement of physical collocation, interconnectors will never enjoy the required comparably efficient interconnection. With a mandatory physical collocation

requirement, Intermedia and other interconnectors are willing to negotiate virtual collocation arrangements with LECs.

The LECs, on the other hand, want the opposite approach. Specifically, they believe that physical collocation unnecessarily compromises their operations. They argue that only virtual collocation should be required under terms and conditions presumably established by tariff. The LEC and would-be interconnector should be free to negotiate a physical collocation arrangement. However, the LECs believe that a LEC should not be forced to take such an arrangement if in its business interest it does not believe physical collocation is appropriate.

B. Purpose of Expanded Interconnection Favors Mandated Physical Collocation

Although the record is replete with testimony comparing the relative advantages and disadvantages of the two approaches, resolving the dispute involves a simple determination. Specifically, the Commission need only determine which party in the negotiation needs most the ability to tell the other party to "take it or leave it." From this prospective, this answer is obvious: the would-be interconnector needs that negotiating leverage with the LEC. It is the LEC upon whom the interconnector depends for the interconnection, and it is the LEC who has the ability to withhold this monopoly, bottleneck service from the interconnector.

Moreover, the entire purpose of collocation is to give the interconnector interconnections with LEC facilities that are comparable to those which the LEC enjoys. The cleanest and most

certain way to assure comparable interconnection is to require physical collocation using the same interconnection standards that the LEC uses for its facilities. Anything other than physical collocation is merely a surrogate to emulate physical collocation. It makes no sense to require only a surrogate of the real thing, when in fact the real thing is available to the interconnector.

C. Specific Reasons to Require Physical Collocation

There are numerous other reasons to require physical collocation. First, as a practical matter, a virtual collocation or "LEC choice" policy would conflict with the FCC's physical collocation policy, and therefore would require collocators to build unnecessary and duplicative collocation arrangements, and to artificially segregate their interstate and intrastate traffic. This would be grossly inefficient.

Next, if past experience with virtual collocation is instructive, then a LEC choice policy promises frustration and administrative litigation. For example, the New York Public Service Commission (NYPSC) issued an order adopting a collocation policy on May 16, 1989. Pursuant to that order, New York Telephone (NYT) filed its virtual collocation tariff, which was hotly contested for failure to provide true comparability with physical collocation. Two years of NYPSC sponsored negotiations finally resulted in NYT's "OTIS II" physical collocation tariff. In short, the parties finally agreed that physical collocation was the best

approach to satisfying the interconnectors' needs and the NYPSC's comparability and reasonableness standards.

NYT confirmed the superiority of physical collocation in its Comments to the FCC in the Expanded Interconnection Proceeding, stating found that "[w]hile virtual collocation arrangements may be appropriate for some LECs, the NTCs [NYNEX Telephone Companies] have found that physical collocation provides a more suitable solution to the needs of the NTCs and their customers." (Tr. 26-29.)

D. Virtual Collocation Inferior to Physical Collocation

Intermedia urges the Commission to require physical collocation because virtual collocation cannot provide the operational, economic and technical equivalent of physical collocation. Under a physical collocation arrangement, the AAV has unfettered discretion in the deployment of equipment, and in setting service and personnel performance standards. Physical collocation allows the collocator to define the type and quality of the service it provides. In contrast, under virtual collocation, the LEC's own performance standards will become the de facto standards for the collocator. Customers located on the LEC network will have to accept LEC provisioning and repair intervals, even though the AAV, such as Intermedia, attracts customers by providing superior operating standards and quicker installation times. For example, most LECs require two weeks or more to install a new DS1 or DS3 service to a customer, while an AAV will require only

several days to install a new service to a customer on its network. Another reason that virtual collocation is inferior to physical is that it will impose inefficiencies upon the collocator. These inefficiencies include training costs, equipment carrying costs, overtime charges, and potential litigation costs that simply are not incurred with physical collocation. These inefficiencies will needlessly inflate AAV service rates, reducing the benefits of competition to the end user.

Additionally, under the FCC's physical collocation rules, all of the collocator's equipment typically is located in one 10' x 10' foot space. Under virtual collocation, however, there is no guarantee that all collocator equipment will be installed in the same place. The collocator may be denied the opportunity to expand or modify equipment efficiently, or may be required to bear the expense of cabling and repeaters that would be unnecessary if they were able to expand their operations within a centralized operating area.

Another disadvantage of virtual collocation involves the servicing of equipment. Because only a limited number of LEC personnel will be familiar with the equipment, there will be unavoidable delays. Moreover, Intermedia remains troubled that the quality of equipment service will be compromised under virtual collocation. No matter how skilled the LEC employees, it is doubtful that they will be as capable at servicing unfamiliar equipment as would be the collocator's own employees, who deal with

that equipment on a daily basis. This is especially true in instances in which multiple AAVs are collocated; LEC personnel cannot reasonably be expected to remain current on the technical intricacies of all of the equipment a number of different AAVs will choose to use based upon their different networks.

Virtual collocation invariably imposes any LEC's inefficiencies on the collocated AAVs. This is precisely the reason that the FCC mandated physical collocation but gave the parties the option of negotiating virtual collocation. Only when the collocator has the right to physical collocation does the LEC have the necessary incentive to negotiate a virtual collocation agreement economically and functionally equivalent to physical collocation, which will not present the need for extensive regulatory involvement.

E. LEC Concerns

In opposing physical collocation, some LECs have argued that under physical collocation network integrity will suffer because they would have insufficient control over interconnector personnel. This, however, is not a substantial problem. Access to LEC central offices and wire centers is not currently restricted to LEC employees. As a normal business practice, LECs regularly provide central office access to outside contractors, who typically are issued photo IDs and are permitted free and regular access to the most sensitive of central office equipment. There is no

demonstrable reason why AAV personnel should not be afforded similar access based upon similar security conditions.

Moreover, additional security can be achieved by designating separate secured interconnection areas that do not permit AAV personnel access to common areas. As the FCC has stated, the cost of preparing the secured area could be charged to the interconnectors.

LECs have also argued that under physical collocation they will be unable to exclude from central offices persons who have violated central office safety codes in the past or who somehow pose a threat to plant security. LECs have worried that they will be unable to enforce fire codes and other operational standards on AAV personnel. LECs have also worried that under physical collocation LEC personnel will be required to restrict their communications in common areas to protect the confidentiality of proprietary information from their collocator competitors. Intermedia believes that these issues involve the LECs' supervision of their own personnel and enforcement of conduct and safety codes. There is no reasonable basis to believe that collocator employees will not adhere to the conduct and safety codes to which subcontractors adhere. Intermedia believes that LECs will maintain the same control over their central offices that they maintained before physical collocation.

F. Past Experience with Physical Collocation Suggests No Threat to Network Integrity

The concerns of the LECs notwithstanding, actual experience in New York and Massachusetts has established that physical collocation presents no threat to LEC network integrity. (Tr. 54.) This should come as no surprise.

In truth, it is in the collocator's interest to preserve the integrity of the LEC's office and the LEC's network. Any disruption of the LEC's office as a result of collocator activities would likely destroy the reputation -- and thus economic viability -- of the collocator. Thus, in order to protect the integrity of both collocator and LEC networks, collocators routinely follow the same established technical equipment standards followed by the LEC.

G. Mandated Physical Collocation in the Public Interest

For all of the reasons noted above, the Commission should require physical collocation. Not only would failure to do so create a counterproductive incompatibility with the FCC standard, but it would also subject collocators to avoidable inefficiencies and costs that would limit the benefits of competition in special access and private line services. The purpose of expanded interconnection is to assure the competitive interconnectors access to the LEC network comparable to that which the LEC enjoys. Only physical collocation achieves that purpose.

ISSUE 7: What LECs, if any, should be required to provide expanded interconnection?

Position: Only Tier I LECs should be required to offer collocation as a tariffed, generally available service. Nevertheless, the Commission should review requests for collocation in non-Tier 1 LEC central offices on a case-by-case basis where the LEC has the technical ability to accommodate collocation.

Intermedia recommends that the Commission require only Tier I LECs to offer collocation as a tariffed, generally available service. However, other LECs may control central offices that are critically important to competitors and their customers. The Commission should therefore review requests for collocation in non-Tier 1 LEC central offices on a case-by-case basis. If AAVs or other potential collocators have a bona fide interest in collocating in such central offices, and if the LEC has the technical capability to accommodate collocation, the Commission should approve it. Such ad hoc adjudication of collocation in non-Tier 1 LEC central offices would extend the benefits of increased competition to smaller LECs.

ISSUE 8: Where should expanded interconnection be offered?

Position: The Commission should adopt the FCC compromise in which a LEC initially would tariff only the top 10% of the COs in its service area. However, collocators would be allowed a period within which to request the tariffing of additional COs, with a 45 day response requirement placed on the LECs.

In the federal collocation proceedings, the FCC forged a compromise that limited the number of COs in which interconnection

had to be tarified, thereby minimizing the need for LECs to establish CO-specific rates. Under the initial FCC plan, LECs were required to tariff each CO for physical collocation, even if there was little likelihood that collocation would be requested in a particular office. The LECs opposed this approach, stating that they would be required to survey and establish rates for COs for which no demand for collocation was likely. In response, the FCC announced a compromise position, under which a LEC initially would tariff only the top 10% of the COs in its service area. Prior to the filing of the LECs' initial collocation tariffs, the FCC required the LECs to publish lists of their top 10% of central offices. The FCC then established a notice period of several weeks during which interested parties could request that additional central offices be included in the LECs' initial collocation tariffs.

Finally, the FCC imposed upon LECs an ongoing obligation to respond to future requests for collocation in additional central offices. Upon receipt of a bona fide request for collocation in a new central office, the LEC must file tarified rates for the requested central office within 45 days. Under this compromise position, LECs are relieved from establishing rates for central offices for which no collocation demand exists, and the collocater's right to interconnect in the central office of its choice is not unreasonably limited. This accommodation of

competing interests is quite rational, and should be adopted by this Commission.

ISSUE 9: Who should be allowed to interconnect?
Approved Stipulation: 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.

ISSUE 10: Should the same terms and conditions of expanded interconnection apply to AT&T as apply to other interconnection?

Approved stipulation: AT&T 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.

ISSUE 11: Should the Commission require standards for physical and/or virtual collocation? If so, what should they be?

Position: Yes. For physical collocation, the Commission should simply establish that the standards for interconnection are the same technical standards followed by the LEC for its own interconnection to its network. For virtual collocation the Commission should prescribe certain minimal standards to protect against LEC abuse.

As already noted, the purpose of expanded interconnection is to assure competitors and other parties interconnection with LEC facilities comparable to that which the LEC enjoys. Thus, for physical collocation, the Commission should simply establish that the standards for interconnection are the same technical standards followed by the LEC for its own interconnection to its network.

To the extent that virtual collocation may be necessary in those rare instances where physical collocation is not possible, the Commission should establish standards to ensure that the virtual arrangements are reasonably equivalent to physical collocation. These safeguards should require the LEC to do the following:

- o Report provisioning and maintenance intervals for both LEC and collocator equipment to ensure against discrimination
- o Justify overtime charges to prevent collocators from bearing unwarranted costs
- o Allow provision of all collocated equipment by collocators at their cost and disallow any LEC markups
- o Allow retention of title to the collocated equipment by collocators, and permit them to have equipment removed from the collocation arrangement upon request and payment of removal costs
- o Require tariffing and support of all LEC rate elements; to prevent discrimination, do not allow individual case basis charges
- o Establish strict guidelines to prevent imposition of unreasonable training costs (e.g., prohibit LECs from requiring collocators to pay for LEC personnel training in SONET or ATM technology, which ultimately will benefit LECs)
- o Provide expedited consideration of any collocator complaints arising out of virtual collocation arrangements

Of course, collocators and LECs should remain free to negotiate different arrangements, provided that all relevant rates and other information are publicly disclosed in LEC tariffs, and offered on a nondiscriminatory basis to other collocators.

ISSUE 12: Should collocators be required to allow LECs and other parties to interconnect with their networks?

Position: Yes. Intermedia is willing to provide reciprocal interconnection arrangements for LECs or other parties, upon similar terms and conditions as those established by the LECs.

There are valid reasons for not requiring collocators to allow LECs and other parties to interconnect with their networks. For example, as pointed out by AT&T in its Prehearing Statement, a major purpose of collocation is the potential to access customers on terms comparable to those of the LEC. The LEC's control over bottleneck facilities is overcome by the collocation requirement. A non-dominant, competitive carrier, however, has no such control; therefore, there is no purpose in requiring it to allow collocation at its facilities.

These legitimate objectives notwithstanding, Intermedia views this issue in a practical sense. It simply wishes to create synergy, both with its network and the LECs' networks. If this synergy can be created by collocation at Intermedia's facilities upon terms and conditions similar to those established by the LEC, then Intermedia is willing to submit to a requirement of providing collocation.

ISSUE 13: What standards should be established for the LECs to allocate space for collocators?

Position: The provisioning standard should be first come, first served. The standard for denying space on the basis of unavailability

should be one of reasonableness, with the burden on the LEC to justify the denial of physical collocation.

As a practical matter, the standard for the allocation of space by the LEC should be consistent with the FCC's approach, which is first come, first served. All parties in the proceeding appear to agree with this position.

There appears to be a greater opportunity for dispute with respect to the issue of when space is unavailable. The standard for denying space due to unavailability should be one of reasonableness, and should take into account the total central office space, the amount of space not currently used for provision of service and the amount of space reserved for LEC services that may be provided over the next three years. Moreover, the burden should be on the LEC to demonstrate that denial of physical collocation is reasonable under the standard. In addition, any claimed lack of central office space should be verified by the collocater's personnel or an independent party. Where adequate space is not available to allow physical collocation, the LECs should be required to provide virtual collocation.

ISSUE 14: Should the Commission allow expanded interconnection for non-fiber optic technology?

Position: No position at this time.

ISSUE 15: If the Commission permits expanded interconnection, what pricing flexibility should the LECs be granted for special access and private line services?

Position: None. The Commission already has granted LECs substantial pricing flexibility--

allowing them to offer contract serving arrangements and individual case basis pricing, under which the LECs may price their services at nearly any level they desire, so long as they meet the LECs' long run incremental costs.

The LECs argue that allowing the AAVs to compete with them without unshackling the LECs would result in distorted competition that would benefit only a few. This, of course, is the LECs' familiar "level playing field" argument, or, the LECs' concern about asymmetrical regulation.

The essence of the LEC's call for a "level playing field" is the request for pricing flexibility. For example, the LECs have called for the ability to "de-average rates" - i.e., to be freed of the obligation to average geographically their rates. However, the LECs currently have the ability to depart from tariffed rates through contract service arrangements (CSAs).

Southern Bell and GTEFL maintain that CSAs are too cumbersome to allow competitive responses. According to the LECs, it takes between seven to thirty days to respond with a firm offer under the CSA process, and this is too long in a competitive market.

Any clumsiness or delay in the CSA process, however, is the result of LEC bureaucracy, not of regulatory burdens or lag. For example, all that is required of a LEC is that it file quarterly reports identifying CSAs made during the preceding three months. The report requires no justification or documentation of the arrangement. It is Intermedia's understanding that if asked, the

LEC must be prepared to justify the arrangement as covering costs under the Commission's private line manual. However, to the best of Intermedia's knowledge, no order determines the process by which the LECs must satisfy the private line manual requirements before the CSAs are made. The LEC is free to devise methods to quickly approve CSAs. Moreover, the types of costs that the LEC must consider in pricing its circuits are not substantially different than those considered by an AAV. Therefore, it is difficult to understand why the CSA process places the LEC at a competitive disadvantage.

In sum, CSAs offer the LEC the flexibility to respond individually to competition. Any rigidity in the process is the result of LEC bureaucracy, not regulatory restraint.

ISSUE 16: If the Commission permits collocation, what rates, terms, and conditions should be tariffed by the LEC?

Position: All rates and charges associated with physical and virtual collocation should be tariffed. These elements would include: central office space rental, cross-connects, power and other utilities, cage constructions, cable and conduit, splicing, testing, training, order processing, engineering and design, and central office space preparation.

As with other aspects of intrastate interconnection, the Commission should assure that the approach to tariffing rates, terms and conditions is consistent with the FCC's approach. As the Commission is aware, the FCC has required that rates, terms and conditions of interconnection service be tariffed.

Tariffing recognizes that LEC control over the bottleneck facilities gives it the opportunity to engage in discriminatory and anticompetitive pricing. Tariffing also establishes a unilateral offer by the LEC that the collocator may accept without negotiation. Given that the rate levels and other elements of the tariff are reviewed to ensure they are in the public interest, tariffs therefore ensure that collocation can be timely achieved on an appropriate basis.

All material rates, terms, and conditions should be included in the tariff. These would include: central office space rental, cross-connects, power and other utilities, cage constructions, cable and conduit, splicing, testing, training, order processing, engineering and design, and central office space preparation.

ISSUE 17: Should all special access and private line providers be required to file tariffs?

Position: No. The Commission should continue its policy of exempting AAVs from tariffing requirements. Unlike the LECs, AAVs have no dominant position over their customers that can be abused in contract negotiation. Moreover, their customers are generally sophisticated users who do not need expansive Commission protection.

A tariffing requirement for competitive access providers is superfluous. A tariff is in effect a unilateral offer by the monopoly provider which it is obligated to honor if a customer accepts the terms of the offer. Because tariffs are reviewed by the Commission to ensure that they are in the public interest, the resulting contract between the customer and the monopoly provider

is fair, just, and reasonable. Thus, tariffs can prevent the monopoly provider from abusing its dominant position with respect to its customer, while ensuring that the monopoly is fairly treated. Tariffs also can prevent the monopoly provider from engaging in anticompetitive pricing. If competition between the LEC and an AAV is to determine which can bleed the longest, one does not need a crystal ball to see which will prevail.

The above concerns that justify tariffing the material elements of the monopoly's offering do not apply to an AAV. The AAV does not enjoy a dominant position with respect to its potential customers. On the contrary, its potential customers are savvy business users who drive hard bargains in negotiations. Likewise, the AAV has no ability and no incentive to price its services below costs, because it has no ability to make up these losses through inter-product subsidies.

In the AAV docket (Docket No. 890183-TL) that resulted in Order No. 24877, the LECs argued that AAVs should file tariffs. However, based in part on the considerations reflected above, the Commission determined that AAVs should be exempted from a tariffing requirement. This approach has proved successful, and Intermedia knows of no reason to change that policy now.

ISSUE 18: What separations impact will expanded interconnection have on the LECs?

Position: For special access, none.

As a practical matter, expanded interconnection for intrastate special access services will have no separations effect on LECs. The volume of "lost" intrastate switched traffic due to migration to intrastate special access will be insignificant when compared to the volume of remaining switched services. For example, as noted by Mr. Poag, in 1992, United Telephone had total access revenues of \$315 million. Of this amount, only \$5 million came from intrastate special access services. (Tr. 490.)

ISSUE 19: Should expanded interconnection be subject to a "net revenue test" requirement in order to avoid possible cross-subsidy concerns?

Deleted by approved stipulation.

ISSUE 20: How would ratepayers be financially affected by expanded interconnection?

Position: Ratepayers who receive the benefit of competition in special access and private line services will enjoy improved services at reduced prices. This financial benefit will promote the general public interest by lowering input costs for the production of goods and services.

The purpose of expanded interconnection is to expand the availability of competitive special access and private line services. Thus, ratepayers who receive the benefit of competition in special access and private line services will enjoy improved services at reduced prices. This financial benefit will promote

the general public interest by lowering input costs for the production of goods and services.

This issue, however, appears to look beyond the specific customers of these competitive services to the general body of ratepayers, or perhaps typical residential customers. As the record reflects in this phase, expanded interconnection will have no material financial effect on these customers. (See, e.g., Tr. 356.) Local rates will not go up because of expanded interconnection for intrastate special access and private line services, nor will long distance rates go down because of reduced switched access charges. In short, intrastate special access and private line services are not going to drive the pricing change worried about by the LECs.

It is likely, however, that competitive pressures in the local markets for both local service and switched access will ultimately require revised pricing which is typically envisioned as increased local rates. However, it must be understood that no increase in anyone's rates will be allowed by the Commission unless that increase is justified as fair, just, and reasonable. In short, a dollar decrease in switched access revenues does not mean that the LEC is entitled to a dollar increase in revenues from local rates.

ISSUE 21: Should the Commission grant ICI's petition?

Position: Yes.

For the reasons discussed above in Issues 1 - 20, ICI's petition should be granted.

CONCLUSION

Expanded interconnection is in the public interest, and can be achieved most efficiently through mandated physical collocation. ICI therefore respectfully requests that this Commission grant its petition, requiring those LECs who provide collocation to AAVs for interstate services to revise their intrastate tariffs in a manner which will allow AAVs to use those collocation arrangements to provide authorized intrastate special access and private lines services.

Respectfully submitted this 22nd day of October 1993.



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CERTIFICATE OF SERVICE

Docket No. 921074-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail this 22nd day of October, 1993, to the following.

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