

J. Phillip Carver
General Attorney

ORIGINAL
FILE COPY

Southern Bell Telephone
and Telegraph Company
c/o Marshall M. Criser III
Suite 400
150 So. Monroe Street
Tallahassee, Florida 32301
Phone (305) 530-5558

May 4, 1994

Mrs. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32301

Re: Docket No. ~~930955-TL~~ 930955-TL, 940014-TL
940020-TL, 931196-TL and 940190-TL
Expanded Interconnection Phase II and LTR

Dear Mrs. Bayo:

Enclosed please find an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Memorandum in Opposition to Intermedia Communications of Florida, Inc.'s Motion to Establish Additional Issue, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

- ACK ✓
- AFA ✓
- APP _____
- CAF _____
- CM ✓
- CTR _____
- EAG _____
- LEG _____
- LIN _____
- OPC _____
- RCR _____
- SEC _____
- W.S. _____
- Utn _____

Sincerely yours,

J. Phillip Carver
J. Phillip Carver (Pw)

Enclosures

- cc: All Parties of Record
- A. M. Lombardo
- 6 Harris R. Anthony
- B. Douglas Lackey

RECEIVED & FILED

DOCUMENT NUMBER-DATE

04240 MAY-4 94

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL
FILE COPY

In re: Expanded Interconnection)
Phase II and Local Transport)
Restructure)

Docket No. 921074-TP
Docket No. 930955-TL
Docket No. 940014-TL
Docket No. 940020-TL
Docket No. 931196-TL
Docket No. 940190-TL

Filed: May 4, 1994

**SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
MEMORANDUM IN OPPOSITION TO INTERMEDIA COMMUNICATIONS
OF FLORIDA, INC.'S MOTION TO ESTABLISH ADDITIONAL ISSUE**

COMES NOW, BellSouth Telecommunications, Inc. ("Southern Bell" or "Company"), pursuant to Rule 25-22.037(2)(b), Florida Administrative Code, and hereby respectfully files its Memorandum in Opposition to Intermedia Communications of Florida, Inc.'s Motion to Establish Additional Issue and states as grounds in support thereof the following:

On April 22, 1994, Intermedia Communications of Florida, Inc. ("Intermedia") filed a "Motion to Establish Additional Issue". The stated purpose of this motion was to raise two new issues that Intermedia contends are "closely related to and derived from [the current] Issue No. 6." (Motion at p. 2) In point of fact, these issues have little conceptual relationship and virtually no practical connection to Issue No. 6 as it stands currently.

Issue 6 is currently as follows:

Does Chapter 364, Florida Statutes, allow the Commission to require expanded interconnection for switched access?

DOCUMENT NUMBER-DATE

04240 MAY-4 8

FPSC-RECORDS/REPORTING

As Intermedia notes in its motion, this issue essentially poses the question of whether the Florida Statutes prohibit alternate access vendors from providing switched access services. (See, Intermedia Motion at p. 2) The additional issues proposed by Intermedia¹ would inject into this proceeding the question of whether granting expanded interconnection will render both switched access services and special access services (which are not even the subject of the Phase II portion of this proceeding) effectively competitive as that term is used in Section 364.338, Florida Statutes. Intermedia also proposes that there be a second new issue to inquire whether some alternate form of regulatory treatment should be prescribed if the Florida Public Service Commission ("Commission") were to determine that expanded interconnection will make these services effectively competitive. Examining these issues, however, would necessarily require a distinctly different analysis than does the current Issue No. 6, an analysis that is both complex and time consuming.

There is a fundamental problem with the approach proposed by Intermedia. There is nothing in the criteria for effective

¹ The full text of the two proposed issues are as follows:

6a: Does granting expanded interconnection for switched access render high capacity transport service for dedicated and switched services effectively competitive?

6b: If the Commission does determined that high capacity transport service for dedicated and switched services are effectively competitive, what regulatory treatment of this transport service should it prescribe?

competition set forth in Section 364.338 that would authorize the type of speculation as to future events that Intermedia advocates. As the provisions of § 364.338 make clear, a determination of whether a LEC service is subject to effective competition is based upon an analysis of current conditions. These conditions include such issues as the current effect "on the maintenance of basic local exchange service", (§364.338(a) and the present ability of consumers to "obtain functionally equivalent services". It is clear that these criteria are designed to examine a current market for a particular product and to determine whether that product is effectively competitive at the present. It is a misuse of this statute to attempt to utilize it to indulge in speculation as to whether a change that will occur in the future will render competitive in the future some product that is not currently competitive. This, however, is precisely what Intermedia is doing by asking the Commission to conjecture in this docket as to the future effect of expanded interconnection on all access services.

Moreover, even if the question of effective competition for these services were ripe, a forum currently exists to properly raise this question, i.e., the currently open Docket No. 930046-TP, (In Re: Investigation into which local exchange company (LEC) services are effectively competitive in 1993). In an order issued in that docket on December 9, 1993 (Order No. PSC-93-1768-FOF-TP), the Commission set forth its preliminary conclusion as to which services are candidates to be declared effectively

competitive. This Order states that there are almost a thousand services offered by local exchange companies (Order at p. 4), and that "[t]he determination of which services should be evaluated for potential classification as effectively competitive was based on those services identified by one or more respondents as effectively competitive or possibly effectively competitive". (Order at p. 4)²

At the conclusion of this extensive evaluation, the Commission divided the services reviewed into two categories: (1) those that are not effectively competitive, and (2) those that are candidates to be deemed effectively competitive. Special access services appear on the list of the candidates for classification as effectively competitive (Order at p. 11), which means that in the course of that docket, these services will necessarily be scrutinized in light of the factors set forth in § 364.338.³

Thus, in a docket that is currently proceeding, and to which Intermedia is a party, this Commission is already attempting to evaluate every service that any party to that action has identified as being even potentially effectively competitive. If Intermedia believes at some future point that expanded

² Intermedia is a party to this docket and, accordingly, had the full opportunity to propose for classification as effectively competitive any service, including the ones that they wish to have examined for this purpose in the instant docket.

³ At the same time, switched access services do not appear in either of the two lists. This presumably means that no party to that docket (including Intermedia) contended that these services are, or even could be, effectively competitive.

interconnection has made access services effectively competitive, then it can raise that contention in that docket.⁴ There is absolutely no reason to allow Intermedia to inject into this docket the same issue in a way that will duplicate the investigation in the other docket, waste Commission resources, and raise the possibility of conflicting results. There is, likewise, no reason to allow Intermedia to address in either docket the effectively competitive issue prospectively by asking this Commission to speculate as to what may occur if expanded interconnection is ordered. Section 364.338 is clearly intended to address the current existence of effective competition, not to guess as to whether effective competition may exist in the future.

Further, Intermedia's motion should also be denied (even if it were otherwise proper) because of the practical effect it will have on the hearing in this matter. This hearing was initially set to deal only with issues relating specifically to expanded interconnection for switched access. Five hearing days were reserved for this purpose. This docket was subsequently consolidated with the protest filed by the Interexchange Access Coalition ("IAC") to the local transport tariffs filed by Southern Bell on September 22, 1993. (IAC Memorandum in

⁴ Forty services have been identified as potentially effectively competitive in that docket. Due to the complexity of the analysis required to make this determination, only five are being examined under § 364.338 initially. Thus, it is fair to assume that this docket will remain open for a considerable amount of time in order to make a determination as to all forty.

Opposition, October 29, 1993; Docket 930955-TL) After these two dockets were consolidated, the issues were broadened even more to encompass a generic consideration of the policy that should underlie local transport restructure. (e.g., Order Establishing Preliminary Issues and Addressing Other Procedural Matters, March 10, 1994, Issues 19 and 20) As it currently stands, there are, twenty-four distinct issues in this docket (twenty-seven, including subparts). Intermedia now suggests that the Commission expand the docket even more to include a speculative inquiry as to the possible competitive effect of expanded interconnection on access services.

Although Intermedia is presenting this inquiry as adding only two subparts to an existing issue, the fact remains that the question of the effective competitiveness of any service is a complicated one that cannot be quickly or easily resolved. An example of this fact appears in the previously-discussed Order in the effectively competitive docket (Order No. PSC-93-1768-FOF-TP). In that Order, this Commission noted specifically that it necessarily had to examine the many services that are candidates to be declared effectively competitive a few at a time. As this Commission stated, "this narrowed scope is necessary due to the total number of services at issue as well as the complexity and difficulty inherent in reaching a determination for any one service." (Order at p. 8) (emphasis added).

This inherently difficult determination, of course, requires for each particular service at issue a consideration of all the

factors set forth in Section 364.338. Despite this, Intermedia has blithely suggested that this Commission interject into an already full hearing, the consideration of all evidence necessary to determine (or more accurately, to speculate on) how all special access and all switched access services will be effected by expanded interconnection. Clearly, there is simply not adequate time under the current hearing schedule to consider these issues, even if this consideration were otherwise appropriate.

Finally, Southern Bell takes issue with the contention of Intermedia that no party will be prejudiced by adding these issues. Southern Bell believes that it will be severely prejudiced by having to attempt to formulate testimony on these complex issues by the time that direct testimony is due, i.e., in a little less than three weeks.

Thus, among the panoply of reasons that Intermedia's motion should be denied are the fact that Intermedia is requesting a speculative determination that is not proper under § 364.338, and that even if such a determination were proper, a different, currently ongoing docket is the appropriate forum for this determination. Also, the current hearing schedule simply does not accommodate the addition of testimony on the inherently complex issues concerning effective competition, and such addition would prejudice the parties to this proceeding. For all of these reasons, Southern Bell submits that Intermedia's motion should be denied.

WHEREFORE, Southern Bell respectfully requests for the reasons set forth above the entry of an Order denying Intermedia's Motion to Establish Additional Issue.

Respectfully submitted this 4th day of May, 1994.

ATTORNEYS FOR SOUTHERN BELL
TELEPHONE AND TELEGRAPH COMPANY

Harris R. Anthony (pm)
HARRIS R. ANTHONY
J. PHILLIP CARVER
c/o Marshall M. Criser III
150 So. Monroe Street, Ste. 400
Tallahassee, FL 32301
(305) 347-5555

Mary Jo Beed (pm)
MARY JO BEED
c/o Marshall M. Criser III
150 So. Monroe Street, Ste. 400
Tallahassee, FL 32301
(404) 529-7208

CERTIFICATE OF SERVICE
Dockets No. 921074-TL, 930955-TL,
940014-TL, 940020-TL, 931196-TL, 940190-TL

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by United States Mail this *4th* day of *May* 1994,
to:

Tracy Hatch
Division of Communications
Fla. Public Service Commission
101 East Gaines Street
Tallahassee, FL 32399-0866

Charles Murphy
Division of Legal Services
Fla. Public Service Commission
101 East Gaines Street
Tallahassee, FL 32301

Patrick K. Wiggins
Wiggins & Villacorta, P.A.
Post Office Drawer 1657
Tallahassee, Florida 32302

Intermedia Communications
9280 Bay Plaza Blvd., #270
Tampa, FL 33619-4453

Charles J. Beck
Deputy Public Counsel
Office of the Public Counsel
111 W. Madison Street
Room 812
Tallahassee, FL 32399-1400

Thomas Parker
GTE Florida Incorporated
P.O. Box 110, MC 7
Tampa, FL 33601-0110

C. Dean Kurtz
Central Tel. Co. of Florida
Post Office Box 2214
Tallahassee, FL 32316-2214

Florida Cable Television
Association, Inc.
310 N. Monroe Street
Tallahassee, FL 32301

Interexchange Access Carrier
Coalition (IACC)
Brad E. Mutschelknaus
Rachel J. Rothstein
Ann M. Szemplenski
Wiley, Rein, & Fielding
1776 K Street, NW
Washington, D.C. 20006

Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Grandoff and Reeves
Suite 716
315 South Calhoun Street
Tallahassee, FL 32301

Joseph P. Gillan
J. P. Gillan and Associates
Post Office Box 541038
Orlando, FL 32854-1038

C. Everett Boyd, Jr.
Ervin, Varn, Jacobs, Odom &
Ervin
305 South Gasden Street
Tallahassee, FL 32301

Chanthina R. Bryant
Sprint
3065 Cumberland Circle
Atlanta, GA 30339

Sprint Communications Co.
Ltd. Partnership
c/o Tony Key, Director
3065 Cumberland Circle
Atlanta, GA 30339

Laura L. Wilson, Esq.
c/o Florida Cable Tele-
vision Association, Inc.
Post Office Box 10383
310 North Monroe Street
Tallahassee, FL 32302

Paul Jones, Esq.
Time Warner Cable
Corporate Headquarters
300 First Stamford Place
Stamford, CT 06902-6732

Peter M. Dunbar
Pennington, Haben, Wilkinson,
Culpepper, Dunlap, Dunbar,
Richmond & French, P.A.
Post Office Box 10095
Tallahassee, FL 32302

Michael W. Tye
Suite 1410
106 East College Avenue
Tallahassee, FL

Harriet Eudy
ALLTEL Florida, Inc.
Post Office Box 550
Live Oak, FL 32060

Lee L. Willis
J. Jeffry Wahlen
John P. Fons
Macfarlane, Ausley, Ferguson
& McMullen
Post Office Box 391
Tallahassee, FL 32302

Charles Dennis
Indiantown Telephone System
Post Office Box 277
Indiantown, Florida 34956

John A. Carroll, Jr.
Northeast Telephone Company
Post Office Box 485
Macclenny, Florida 32063-0485

Daniel V. Gregory
Quincy Telephone Company
Post Office Box 189
Quincy, Florida 32351

Jeff McGehee
Southland Telephone Company
210 Brookwood Road
Post Office Box 37
Atmore, Alabama 36504

Jodie L. Donovan
Regulatory Counsel
Teleport Communications Group
Inc., Ste. 301
1 Teleport Drive
Staten Island, NY 10311

Kenneth A. Hoffman, Esq.
Rutledge, Ecenia, Underwood,
Purnel & Hoffman, P.A.
P.O. Box 551
Tallahassee, FL 32302-0551

F. Ben Poag
United Telephone Company of FL
P.O. Box 165000
Altamonte Springs, FL 32716

Michael J. Henry
MCI Telecommunications Corp.
Suite 700
780 Johnson Ferry Road
Atlanta, GA 30342

Richard D. Melson
Hopping Boyd Green & Sams
Post Office Box 6526
Tallahassee, FL 32314

Benjamin H. Dickens, Jr.
Blooston, Mordkofsky, Jackson
& Dickens
2120 L Street, N.W., Suite 300
Washington, DC 20037-1527

Douglas S. Metcalf (Ad Hoc)
Communications Consultants,
Inc., Suite 250
631 S. Orlando Avenue
P.O. Box 1148
Winter Park, FL 32790-11

J. Phillip Carver (Paul)