

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Generic Investigation into the	)	DOCKET NO. 890183-TL
Operations of Alternate Access Vendors.	)	ORDER NO. 23000
<hr/>		ISSUED: 5-29-90

ORDER GRANTING IN PART INTERMEDIA COMMUNICATIONS, INC.'S MOTION FOR PROTECTIVE ORDER; GRANTING IN PART SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND RESPONSES TO INTERROGATORIES; AMENDING ISSUES TO BE CONSIDERED IN THIS DOCKET; AND PROVIDING FOR SUPPLEMENTAL DIRECT TESTIMONY ON CERTAIN ISSUES

On Monday, May 14, 1990, the Prehearing Officer heard oral argument on Intermedia Communications, Inc.'s (Intermedia's) Motions to Amend the List of Issues and for a Protective Order and Southern Bell Telephone and Telegraph Company's (Southern Bell's) Motion to Compel Production of Documents and Responses to Interrogatories, as well as Southern Bell's and GTEFL's responses to Intermedia's Motion to Amend the List of Issues.

I. Intermedia's Motion to Amend the List of Issues and Southern Bell's and GTEFL's Responses

Intermedia's Motion to Amend the Issues List requested that two issues be added to those being considered in this proceeding. Those issues are what is the potential of the local exchange companies to cross-subsidize the provision of special access or private line service and what should the Commission do about this, if anything, and should the Commission order actual or virtual co-location and interconnection among all companies that provide high speed special access or private line services and the local exchange companies.

Intermedia also stated in its Motion to Amend the List of Issues that the issue of what costing methodology is used by alternate access vendors (AAVs) in developing individual cost basis (ICB) rates for DS-1 and DS-3 services is not relevant to this proceeding. At oral argument, however, Intermedia withdrew its objection to this issue. Therefore, this issue, as worded below, shall remain:

What costing methodology do AAVs use in developing ICB (individual cost basis) rates for DS-1 and DS-3 services?

DOCUMENT NUMBER-DATE

04704 MAY 29 1990

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Southern Bell and GTE Florida Incorporated (GTEFL) argued that the two new issues proposed by Intermedia are irrelevant to this proceeding. Southern Bell argued that its costs must be covered by its rates and that it is required by Rule 25-4, Florida Administrative Code, to use the cost manual set out therein, and therefore, any issue regarding cross-subsidization is not appropriate in this proceeding. GTEFL argued also that collocation is not appropriate in this proceeding because it is a subject that is a broad and complicated enough topic in itself to warrant a separate full proceeding.

We find that the issue of cross-subsidization is appropriate in this proceeding because it will allow consideration of the possibility that, if competition between LECs and AAVs in the provision of these services is found to be appropriate, there may need to be methods for monitoring cross-subsidization by any entity providing them. We find the following wording of this issue to be more appropriate:

What method, if any, should the Florida Public Service Commission use to monitor and control cross subsidization?

Regarding the issue of co-location, however, we find it is not appropriate in this proceeding because it is not necessary to complete our investigation of the operations of alternate access vendors, nor would it be necessary to consider whether such operations are in the public interest. At some point in the future, it may become useful and necessary to consider the appropriateness of co-location and the associated issue of unbundling of services. However, this issue would add a great deal of unnecessary complication to this proceeding.

Because it is only by this Order that parties will be aware of which of these three issues that have been in controversy are surviving, we find it appropriate to permit supplemental direct testimony on the cross-subsidization and costing methodology issues. This supplemental direct testimony will be due Wednesday, June 13, 1990. Staff testimony on all issues, if any, shall be due Friday, June 29, 1990.

II. Intermedia's Motion for Protective Order and Southern Bell's Motion to Compel

In its Motion for a Protective Order filed March 27, 1990, Intermedia has specifically requested that it not be required to produce responses to Southern Bell's Requests for Production

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Nos. 2, 3, 4, and 6 and Interrogatories Nos. 1, 11, 26, 32, 39, 45, 49, and 50. The basis for Intermedia's request is that the information is confidential and proprietary business information that would be useful to its competitors, including Southern Bell. The disclosure of this information, Intermedia asserts, could cause it material damage to its competitive and financial position and would expose it to an unreasonable risk of harm. Intermedia also asserts that a confidentiality agreement will not protect it from the damage done by disclosing such information to Southern Bell because of the competitor status of Southern Bell.

On the other hand, Southern Bell argues, in its Motion to Compel production of these documents and responses to its interrogatories, that this information is relevant and essential for the investigation of the operations of alternate access vendors which is the focus of this proceeding. We find that some of the information requested by Southern Bell is, indeed, relevant and appropriate for this proceeding. However, we do not find it necessary to expose Intermedia and other alternate access vendors to an unreasonable risk of harm. Therefore, we find that information relating to the specific costs and identification of the customers of Intermedia will, to the extent possible, not be required in this proceeding. Therefore, we find it appropriate to require Intermedia to produce the following portions of the five document requests, for which Southern Bell presented its oral argument, as indicated below:

Request No. 2 - Intermedia shall provide the contracts that it has entered into with other IXCs for the purpose of providing service to Intermedia's end user customers without providing the names or specific locations of the IXCs. The services offered and the terms and conditions under which they are offered shall be provided, including price levels.

Request No. 3 - Intermedia shall provide these requested five typical contracts without the names or locations included.

Request No. 4 - Intermedia shall provide these diagrams of its network facilities in Florida.

Request No. 6 - This production request is irrelevant to this proceeding and Intermedia is not required to provide these current and forecasted budgets.

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Request No. 8 - Intermedia shall provide these requested documents because we find that any current or potential agreements or arrangements between alternate access vendors and cable television companies is relevant to this investigation.

Intermedia shall respond or not respond, as indicated below, to the following 22 interrogatories, that were specifically designated by Southern Bell at oral argument as those for which it desires responses:

Interrogatories Nos. 17, 18, 22, 23, 41, and 54 - These interrogatories have already been answered satisfactorily by Intermedia and will require no further response.

Interrogatories Nos. 9, 32, 39, 44, and 53 - Intermedia shall not be required to respond to these interrogatories as we find them to request information that is not relevant to this proceeding.

Interrogatories Nos. 6, 25, 40, 46, 47, 52, and 61 - Intermedia shall respond to these interrogatories because we find them to request information relevant to this proceeding.

Interrogatory No. 1 - Intermedia shall provide a description of its customers showing general categories with the services offered and the terms and conditions under which offered. However, Intermedia shall not be required to provide names of customers or specific locations of customers.

Interrogatory No. 26 - Intermedia shall provide this information relating to its cost methodology. However, it shall not be required to produce its specific costs in providing DS-1 and DS-3 services in Florida.

Interrogatory No. 45 - Intermedia shall provide a more responsive answer to Part d of this interrogatory. The balance of the interrogatory has been answered satisfactorily.

Interrogatory No. 49 - Intermedia shall respond to the second question in this interrogatory. However, Intermedia shall not be required to respond to the first question because it requires specific costs which we have already found to be inappropriate at this point in this proceeding.

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Interrogatory No. 55 - Intermedia shall not be required to respond to this interrogatory on the condition that its response to Interrogatory No. 61 is adequate.

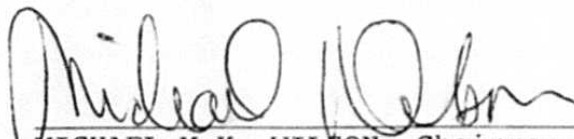
Based on the foregoing, it is, therefore,

ORDERED by Commissioner Michael McK. Wilson that Intermedia Communications, Inc.'s Motion to Amend the List of Issues and Motion for a Protective Order is hereby granted to the extent set forth in the body of this Order. It is further

ORDERED that Southern Bell Telephone and Telegraph Company's Motion to Compel Production of Documents and Responses to Interrogatories is hereby granted to the extent set forth in the body of this Order. It is further

ORDERED that all parties are given until June 13, 1990, to file supplemental direct testimony on the issues relating to the potential for cross subsidization and costing methodology that are hereby approved as appropriate for this proceeding.

By ORDER of COMMISSIONER MICHAEL McK. WILSON, Prehearing Officer, this 29th day of MAY, 1990.

  
MICHAEL McK. WILSON, Chairman  
and Prehearing Officer

( S E A L )

SFS

NOTICE OF FURTHER PROCEEDINGS OR 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

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requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.