



ORIGINAL

Marcell Morrell\*  
Assistant Vice President &  
Associate General Counsel-East Area

Anthony P. Gillman\*  
Assistant General Counsel

Florida Region Counsel\*\*  
Kimberly Caswell  
M. Eric Edgington  
Ernesto Mayor, Jr.  
Elizabeth Biemer Sanchez

\* Certified in Florida as Authorized House Counsel  
\*\* Licensed in Florida

GTE SERVICE CORPORATION

One Tampa City Center  
201 North Franklin Street (33602)  
Post Office Box 110, FLTC0007  
Tampa, Florida 33601-0110  
813-483-2606  
813-204-8870 (Facsimile)

January 15, 1999

Ms. Blanca S. Bayo, Director  
Division of Records & Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Docket No. 981854-TP  
Complaint of Intermedia Communications Inc. and Petition for Emergency Relief  
Against GTE Florida Incorporated

Dear Ms. Bayo:

Please find enclosed an original and fifteen copies of GTE Florida Incorporated's  
Motion to Dismiss and Supporting Memorandum for filing in the above matter. Service  
has been made as indicated on the Certificate of Service. If there are any questions  
regarding this filing, please contact me at (813) 483-2617.

Very truly yours,

*Kimberly Caswell*  
Kimberly Caswell

KC:tas  
Enclosures

A part of GTE Corporation

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*[Signature]*  
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## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint of Intermedia Communications	)	Docket No. 981854-TP
Inc. and Petition for Emergency Relief	)	Filed: January 15, 1999
Against GTE Florida Incorporated	)	
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	)	

**GTE FLORIDA INCORPORATED'S MOTION TO DISMISS  
AND SUPPORTING MEMORANDUM**

Pursuant to Commission Rule 25-22.037, GTE Florida Incorporated (GTE) asks the Commission to dismiss the Complaint of Intermedia Communications Inc. (ICI) and Petition for Emergency Relief (Complaint) filed on December 11, 1998. As ICI has itself admitted, the Interconnection Agreement between ICI and GTE calls for binding arbitration as the sole method of dispute resolution for complaints arising from that agreement. Therefore, the Commission has no authority to decide ICI's Complaint.

As ICI recites in its Complaint, ICI and GTE have an Interconnection Agreement approved by this Commission in Order number PSC-97-0719-FOF-TP, issued on June 19, 1997, and subsequently amended and approved again by the Commission in Order number PSC-97-0788-FOF-TP, issued July 2, 1997. In its Complaint, ICI alleges that GTE has not complied with its physical collocation obligations under the Agreement.

Article 12 of the Agreement addresses dispute resolution. It states that except for approval of the Agreement by the Commission:

the Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following alternative dispute resolution procedure as their sole remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

DOCUMENT NUMBER-DATE

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Agreement, section 12.1. (A copy of Article 12, "Dispute Resolution," is attached.)

The Agreement then sets forth a detailed and specific process for negotiations, and if negotiations fail, arbitration, of disputes. Arbitrations are to be conducted "pursuant to the Commercial Arbitration Rules of the American Arbitration Association." (Agreement, section 12.3.)

ICI is well aware of the Agreement's dispute resolution provisions and has freely agreed that they require binding arbitration, rather than administrative or other litigation. In its Complaint, ICI "acknowledges that the interconnection agreement with GTEFL provides for dispute resolution through binding arbitration. If GTEFL insists on that approach, Intermedia will comply." (Complaint at 2-3.) ICI has acknowledged the decisive authority of the Agreement's dispute resolution provisions on a number of other occasions, as well.<sup>1</sup>

ICI did not seek GTE's agreement to pursue its collocation complaint before the Commission. Because ICI knows it cannot unilaterally supersede the Agreement's dispute resolution provisions, it thus agreed to comply with those provisions if GTE insisted on following them. (Complaint at 3.) After GTE received the Complaint, its counsel orally informed ICI's counsel that GTE would insist on compliance with the contract's dispute

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<sup>1</sup> See, e.g., Intermedia Communications Inc.'s Direct Testimony of Julia O. Strow in Docket No. 980986-TP, filed Dec. 10, 1998, at 5 ("the interconnection agreement provides for dispute resolution through binding arbitration"); Letter from P. Wiggins, ICI counsel, to K. Caswell, GTE counsel, re: mutual compensation dispute, dated July 16, 1998, at 1 ("The Interconnection Agreement provides for binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association"). Although GTE agreed to handle ICI's reciprocal compensation dispute through Commission process, ICI openly and formally recognized GTE's "right to demand arbitration in any future disputes with Intermedia." Strow Direct Testimony in Docket No. 980986-TP, at 6.

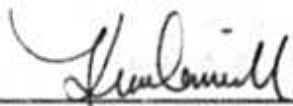
this instance; and that ICI said it would comply with them at GTE's demand. In short, by refusing to withdraw the Complaint, ICI has not kept the promise stated in its Complaint and is wilfully violating the Interconnection Agreement. Because ICI will not voluntarily withdraw its Complaint, the Commission must compel it to do so.

GTE notes that ICI's Complaint contains the usual jurisdictional allegations, which are necessary to justify the Commission's authority to entertain any complaint. However, as ICI itself has acknowledged, these jurisdictional allegations only apply in the event that GTE agrees to ICI's pursuing the Complaint before the Commission. Because GTE has not done so, the Commission has no authority to settle ICI's collocation Complaint. The Commission approved the dispute resolution provisions in the contract and cannot ignore them any more than ICI can. The Complaint must go to negotiation, and then, if necessary, independent arbitration, as the parties agreed in their contract. While the Commission cannot determine the underlying dispute itself, it can determine the jurisdictional issue. As recited above, the Agreement contains an exception to arbitration in instances where a party must compel compliance with the Agreement's dispute resolution process. Furthermore, it would make no practical sense for GTE to try to go to arbitration to obtain dismissal of a complaint filed at the Commission.

For all the reasons stated here, GTE asks the Commission to dismiss ICI's Complaint and order ICI to comply with the dispute resolution requirements in the parties' Interconnection Agreement.



Respectfully submitted on January 15, 1999.

By:  \_\_\_\_\_

Kimberly Caswell  
Post Office Box 110, FLTC0007  
Tampa, Florida 33601  
Telephone: 813-483-2617

Attorney for GTE Florida Incorporated

which may have subparts) of the following: interrogatories, demands to produce documents, or requests for admission. Each Party is also entitled to take the oral deposition of one individual of another Party. Additional discovery may be permitted upon mutual agreement of the Parties. The arbitration hearing shall be commenced within sixty (60) days of the demand for arbitration. The arbitration shall be held in Tallahassee. The arbitrator shall control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearings. The times specified in this section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

- 12.4 **Costs.** Each Party shall bear its own costs of these procedures. A Party seeking discovery shall reimburse the responding Party the costs of production of documents (including search time and reproduction costs). The Parties shall equally split the fees of the arbitration and the arbitrator.
13. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, negotiations, proposals, and representations, whether written or oral, and all contemporaneous oral agreements, negotiations, proposals, and representations concerning such subject matter. No representations, understandings, agreements, or warranties, expressed or implied, have been made or relied upon in the making of this Agreement other than those specifically set forth herein.
14. **Expenses.** Except as specifically set out in this Agreement, each Party shall be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.
15. **Force Majeure.** In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by Customer, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); *provided however*, that the Party so affected shall use diligent efforts to avoid or remove such causes of nonperformance and both Parties shall proceed whenever such causes are removed or cease.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of GTE Florida Incorporated's Motion to Dismiss and Supporting Memorandum in Docket No. 981854-TP were sent via U.S. mail on January 15, 1999 to the following:

Martha Carter Brown  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Donna L. Canzano  
Patrick Knight Wiggins  
Wiggins & Villacorta, P.A.  
2145 Delta Boulevard, Suite 200  
Tallahassee, FL 32302

Scott A. Sapperstein  
Intermedia Communications Inc.  
3625 Queen Palm Drive  
Tampa, FL 33619-1309

  
\_\_\_\_\_  
Kimberly Caswell

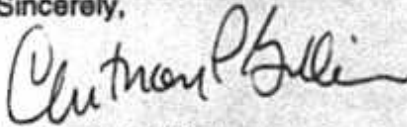
Donna Canzano  
December 18, 1998  
Page 2

prescriptions for dispute resolution, and Intermedia's expressed intention to comply with those prescriptions, there is no need for GTE to file any kind of response to Intermedia's Complaint with the Commission.

Nevertheless, GTE understands Intermedia's objective in filing its Complaint—that is, "to preserve its priority consistent with the Commission's decision in Docket No. 980800-TP." (Intermedia Complaint at 2.) Although the Complaint will not be pursued before the Commission, GTE does not dispute that Intermedia has now preserved its place in line for physical collocation in the offices at issue.

Please let me know if you disagree with the approach outlined in this letter.

Sincerely,

  
Bar Kimberly Caswell

KC:tas

**SENT VIA FACSIMILE - 850-385-6008**

c: Blanca Bayo, Division of Records and Reporting ✓  
Martha Carter Brown, Division of Legal Services  
Scott A. Sapperstein, Intermedia Communications, Inc.