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January 19, 1999

VIA HAND DELIVERY

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

RECEIVED
JAN 19 1999
FPC

Re: Docket No. 980986-TL - Complaint of Intermedia Communications Inc. against GTE Florida Incorporated for breach of Florida partial interconnection agreement under Section 251 and 252 of the Telecommunications Act of 1996, and request for relief.

Dear Ms. Bayo:

Enclosed for filing in the above-refereced docket are the original and fifteen (15) copies of Intermedia Communications Inc.'s **replacement** Rebuttal Testimony of Julia Strow. This testimony is being filed solely for the purpose of reformatting the original Rebuttal Testimony of Julia Strow filed on January 15, 1999. No other revisions have been made.

Thank you for your assistance in this matter.

RECEIVED & FILED

[Signature]
FPC-BUREAU OF RECORDS

Sincerely,

[Signature]
Donna L. Canzano

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cc: Parties of Record

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Intermedia) DOCKET NO. 980986-TL
Communications Inc. against GTE)
Florida Incorporated for breach of) FILED: 1-19-99
Florida partial interconnection)
agreement under Section 251 and)
252 of the Telecommunications Act)
of 1996, and request for relief.)
_____)

REBUTTAL TESTIMONY OF JULIA STROW ON BEHALF OF
INTERMEDIA COMMUNICATIONS INC.

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Counsel for Intermedia
Communications Inc.

000192

1 Q: Please state your name, employer, position, and business
2 address.

3 A: My name is Julia Strow. I am employed by Intermedia
4 Communications Inc. (Intermedia) as Assistant Vice
5 President, Regulatory and External Affairs. My business
6 address is 3625 Queen Palm Drive, Tampa, Florida 33619.

7 Q: What are your responsibilities in that position?

8 A: I am the primary interface between Intermedia and the
9 incumbent local exchange carriers (ILECs). In that
10 capacity, I am involved in interconnection negotiations
11 and arbitrations between Intermedia and the ILECs. I am
12 also primarily responsible for strategic planning and the
13 setting of Intermedia's regulatory policy.

14 Q: Did you previously file direct testimony in this
15 proceeding?

16 A: Yes. I filed direct testimony on December 10, 1998.

17 Q: What is the purpose of your rebuttal testimony?

18 A: The purpose of my rebuttal testimony is to respond to the
19 direct testimony of GTEFL's witnesses Steven J. Pitterle
20 and Howard Lee Jones.

21 Q: Do you agree with Mr. Pitterle that Internet Service
22 Provider (ISP) traffic is functionally and
23 jurisdictionally interstate and thus outside the scope of
24 the GTEFL/Intermedia interconnection agreement
25 (Agreement)?

26 A: No. This dispute is clearly a contractual dispute and

1 within the jurisdiction of the Florida Public Service
2 Commission. ISP traffic is local under the definition
3 contained in the Agreement and therefore under the
4 purview of the Florida Commission. Section 252(e) of the
5 Telecommunications Act of 1996 (Act), gives the states
6 the authority to resolve agreement disputes, and only if
7 the state fails to act, would the issue then go to the
8 Federal Communications Commission (FCC). To date, 26
9 states, including Florida, have found that the states do
10 have the authority to determine this issue. All 26
11 states that have considered this issue have ruled that
12 calls to ISPs are local and subject to reciprocal
13 compensation. In addition, as discussed in my direct
14 testimony, three federal courts have upheld state
15 Commission decisions in Texas, Illinois, and Washington.

16 **Q: Mr. Pitterle states that Intermedia is not entitled to**
17 **the reciprocal compensation payments it seeks for ISP**
18 **traffic (p. 3). Do you agree with his assessment on this**
19 **issue?**

20 **A: Mr. Pitterle is wrong for two straightforward and**
21 **unavoidable reasons. First, the GTEFL-Intermedia**
22 **interconnection agreement is clear as written and**
23 **requires such compensation. The essence of the Agreement**
24 **requires that parties owe each other reciprocal**
25 **compensation for any "Local Traffic" terminated on the**
26 **other's network and that a local telephone call from an**

1 end-user to an ISP qualifies as Local Traffic under the
2 terms of the agreement.

3 The second reason Mr. Pitterle is wrong is that he
4 attempts to ignore the reality that within the context of
5 the Agreement an Internet communication consists of two
6 segments: (1) a local telephone call from an end-user to
7 an ISP; and (2) an enhanced transmission from the ISP
8 over the Internet.

9 For purposes of establishing reciprocal
10 compensation, the call ends when it is delivered to the
11 ISP. The information service provided by the ISP is not
12 a "call", because it is not a telecommunications service,
13 but is an enhanced information service.

14 It is only by ignoring the clear meaning of the
15 Agreement and the clear distinction between
16 telecommunications and information service that GTEFL can
17 attempt to avoid its contractual obligation.

18 **Q: Under the scenario you just described, why isn't the ISP**
19 **classified as a telecommunications carrier?**

20 **A:** First, the Act defines "telecommunications" as the
21 "transmission, between or among points specified by the
22 user, of information of the user's choosing, without
23 change in the form or content of the information as sent
24 and received." (47 U.S.C. 153(43)) The local telephone
25 call from an end-user to an ISP clearly meets the
26 definition of telecommunications.

1 The second segment, however, does not meet the
2 definition of telecommunications under the Act.
3 Moreover, the enhanced transmission from the ISP over the
4 Internet is not regulated under title II of the Act.
5 Specifically, "enhanced service" refers to

6 services, offered over common carrier
7 transmission facilities, which employ
8 computer processing applications that act
9 of the format, content, code, protocol or
10 similar aspects of the subscriber's
11 transmitted information; provide the
12 subscriber additional, different, or
13 restructured information; or involve
14 subscriber interaction with stored
15 information. Enhanced services are not
16 regulated under title II of the Act. (47
17 CFR 64.702(a), emphasis added)
18

19 Once a call is sent to an ISP, the ISP performs Internet
20 protocol conversion and also directly involves the
21 subscriber in direct access to stored information.
22 Therefore, the ISP segment of call meets the definition
23 of "enhanced" or "information" services.

24 **Q: Why isn't the word "terminate" specifically defined in**
25 **the Agreement?**

26 **A:** It is my understanding that the word "terminate" is not
27 defined for the same reason that the word "originate" is
28 not defined: both are commonly understood and are used
29 consistently by carriers and regulators alike. To
30 "terminate" means to deliver the call to the user
31 associated with the dialed number.

32 **Q: Have any other state commissions found that calls to an**
33 **ISP terminate when they reach the modem?**

1 **A:** Yes. The Georgia Commission found that to be the case.
2 Its December 28, 1998 order states,
3 The essential facts are that a call to an ISP
4 is placed using a local telephone number. The
5 LEC networks terminate this local call to the
6 ISP, whose local exchange service numbers bear
7 NPA-NXX designations associated with the same
8 local calling area. Whatever services the ISP
9 then provides are irrelevant to the fact that
10 the call has terminated locally (Page 7, 8196-
11 U).

12 The Georgia Commission further stated that a call is
13 considered to be terminated when it is delivered to the
14 telephone exchange service number that has been called,
15 regardless of the identity or status of the called party.

16 **Q:** If ISPs are classified as end-users and not
17 telecommunications carriers for purposes of determining
18 compensation arrangements, why in your opinion doesn't
19 GTEFL recognize that calls to ISPs qualify as local
20 calls?

21 **A:** Because GTEFL rejects the Act's fundamental distinction
22 between electronic transmissions that are
23 telecommunications services and those that are enhanced
24 services. It is only by treating the second segment,
25 enhanced service, as a continuation of a
26 telecommunications service for purposes of defining
27 reciprocal compensation obligations, that GTEFL can
28 confuse the otherwise clear application of the Agreement,
29 the tariff, the FCC orders, and the Commission orders
30 pursuant to the Act.

1 Q: On pages 9-10, of Mr. Pitterle's direct testimony, he
2 states that the Commission does not have to apply the
3 same rationale in this case as it did in the
4 BellSouth/Intermedia Reciprocal Compensation Complaint.
5 Do you agree?

6 A: No. As discussed in my direct testimony, Commission
7 Order PSC-98-1216-FOF-TP, September 15, 1998, in the
8 BellSouth/Intermedia case does have bearing on this case.
9 The facts of the two cases are virtually identical, the
10 type of traffic at issue is the same, and the relevant
11 reciprocal compensation language found in the
12 GTEFL/Intermedia agreement and the BellSouth/Intermedia
13 agreement is essentially the same. Because of these
14 factual and legal similarities, the Commission's order in
15 the BellSouth/Intermedia reciprocal compensation case is
16 controlling.

17 Q: Mr. Pitterle argues that since the order in the
18 BellSouth/Intermedia proceeding came out prior to the
19 FCC's Order on GTE's ADSL tariff, the Commission cannot
20 use its earlier rationale. Do you agree with Mr.
21 Pitterle that the FCC has already ruled on this issue?

22 A: No. The FCC has not ruled on the issue of dial-up
23 traffic to ISPs. Mr. Pitterle references, on page 6 of
24 his direct testimony, the October 30, 1998 FCC Order on
25 GTE/FL's ADSL Tariff (CC Docket No. 98-79). The FCC
26 ruled that GTEFL's tariff offering, which is a dedicated

1 service that provides customers with high speed access to
2 the Internet, is an interstate service. However, the
3 order also clearly states that this does not apply to
4 dial-up traffic:

5 This Order does not consider or address issues
6 regarding whether local exchange carriers are
7 entitled to receive reciprocal compensation
8 when they deliver to information service
9 providers, including internet service
10 providers, circuit-switched dial-up traffic
11 originated by interconnecting LECs.
12

13 Therefore, this dispute must be decided by the Florida
14 Public Service Commission.

15 Q: Has the FCC's October 30, 1998 decision on GTEFL's ADSL
16 Tariff affected other state commission decisions?

17 A: No. In fact, as late as December 31, 1998 the Georgia,
18 Utah, and Arkansas Commissions have ruled that ISP
19 traffic is local and subject to state jurisdiction. All
20 of these decisions were issued after the FCC issued its
21 Order on the GTEFL ADSL Tariff.

22 Q: Will the FCC decide if dial-up traffic to ISP are local
23 calls and subject to reciprocal compensation?

24 A: It appears that the FCC may issue a separate order on
25 this issue in the future, however, to date no action has
26 been taken. As a result, the Commission must move
27 forward because it clearly has jurisdiction to resolve
28 this complaint. It should be noted that in the
29 BellSouth/Intermedia case before this Commission (Docket
30 980495-TP), BellSouth continually suggested that the FCC

1 was going to issue an order at any time and that the
2 Commission should defer to the FCC. However, an order
3 has still not been released to date. If the FCC should
4 release such an order, the parties and the Commission
5 would, at that time, evaluate its relevance to this
6 proceeding.

7 **Q: Mr. Pitterle also remarks that it was never GTEFL's**
8 **intent for the Agreement to cover ISP traffic. How do**
9 **you respond?**

10 **A: Intermedia was relying on the clear language of the**
11 **Agreement and the clear distinction between**
12 **telecommunications and enhanced services when it entered**
13 **into the Agreement. Moreover, the Agreement and GTEFL's**
14 **local end-user tariffed rate structure dovetail nicely**
15 **until GTEFL begins ignoring the distinction between**
16 **telecommunications and enhanced services. For example,**
17 **Section 1.20 of the Agreement defines "Local Traffic" as**
18 **"originated by an end user of one Party and terminates to**
19 **the end user of the other Party within GTEFL's then**
20 **current local serving area," which are also defined and**
21 **specified in Section A3 of the GSST. Thus calls to ISPs**
22 **bearing the same central office designation as the end-**
23 **user meet the definition of local calls under the**
24 **Agreement. This simple and straightforward application**
25 **of the Agreement requires no clarification.**

26 **Q: On page 13, lines 9-17, Mr. Pitterle states that**

1 reciprocal compensation agreements are grounded in the
2 understanding that traffic between two networks will be
3 roughly equal. How do you respond?

4 A: Mr. Pitterle has it exactly backwards. If traffic
5 between two carriers is roughly equal, there is no need
6 for mutual compensation, and mutual traffic exchange
7 (also known as Bill & Keep) can be an appropriate method
8 for exchanging traffic. Mutual compensation is required
9 in cases where there is a significant imbalance in
10 traffic. In fact, in cases where GTEFL has Bill & Keep
11 provisions in its interconnection agreements, those
12 provisions expressly provide for the payment of
13 reciprocal compensation rates in cases where traffic is
14 out of balance by 10% or more.

15 Moreover, had GTEFL's intent been to exclude ISP
16 traffic in order to bring traffic in balance between our
17 two companies, a system to identify and measure ISP
18 traffic would have had to been discussed by the parties.
19 Traffic delivered on Intermedia's network to ISPs is
20 recorded as local. To date, no such discussions have
21 taken place. Thus, the entire record of this proceeding
22 and the history of discussions demonstrate that there has
23 never been any intention by either party to exclude ISP
24 traffic. In addition, Intermedia has never objected to
25 paying reciprocal compensation for ISP traffic delivered
26 from our end users to ISPs served by GTEFL.

1 Q: To your knowledge, does GTEFL's system distinguish
2 between a local call placed to an ISP from any other
3 local call?

4 A: No. Currently, neither company can distinguish these
5 types of calls. If GTEFL intended to exclude traffic
6 terminated to ISPs from other local traffic, GTEFL would
7 have needed to develop a way to measure traffic that
8 distinguishes such calls from all other types of local
9 calls with long-holding traffic, such as calls to airline
10 and hotel reservations, computer help desks, customer
11 support lines, etc.

12 GTEFL is a sophisticated company. GTEFL knew or
13 should have known that its customers could dial a 7-digit
14 number (as well as other locally dialed calls) to call an
15 ISP. Given GTEFL's current position that it never
16 intended to include traffic to ISPs for purposes of
17 reciprocal compensation, it is inconceivable that GTEFL
18 would not have made arrangements to distinguish that type
19 of traffic from other local calls at the time of the
20 Agreement, knowing that the parties must pay for the
21 termination of local traffic on the other party's
22 network.

23 Q: Mr. Pitterle states that given the long holding times
24 associated with Internet calls, GTEFL would have to pay
25 substantial compensation to ICI without the ability to
26 recover its costs from GTEFL customers who originate

1 those calls. How do you respond?

2 A: This argument is irrelevant to the proceeding. The
3 purpose of this proceeding is to determine, based on the
4 language of the Agreement that was negotiated by the
5 parties, if calls to ISPs are local and if reciprocal
6 compensation applies to such calls. The matter of how
7 GTEFL recovers the costs of providing local service to
8 its end-user has nothing to do with the issue at hand.

9 Moreover, even if the merits of GTEFL's argument are
10 considered - and they should not be in this proceeding -
11 it is clear that GTEFL is fully compensated for all
12 services it provides. The FCC expressly found that ILECs
13 are fully compensated for local calls to ISPs by the
14 local service charges that the ILECs charge to the
15 originating caller. If GTEFL feels that its local
16 calling rates are not adequate to compensate for such
17 calls, it is free to petition this Commission for a
18 change in those rates.

19 Finally, I need to correct any misimpression caused
20 by GTEFL's argument. GTEFL fails to mention that there
21 are many other types of local calls that have long hold
22 times other than calls to ISPs. These include calls to
23 customer service call centers; computer help desks; talk
24 radio shows; airplane, car, and hotel reservation
25 centers; conference calls among business users, ect.
26 These calls all can have hang times as long or longer

1 than ISP-bound calls, and yet GTEFL has not argued that
2 it fails to recover the costs of these calls.

3 **Q:** Mr. Pitterle goes on to say that such a policy would have
4 broader implications for local competition. What is your
5 response?

6 **A:** This is again irrelevant. This complaint is a dispute of
7 a negotiated contract under Section 251 and 252 of the
8 Act. The issue that must be decided is whether or not
9 traffic to ISPs is subject to reciprocal compensation
10 under the Agreement. This case is not about how GTELF
11 can avoid paying reciprocal compensation for certain
12 types of calls or classes of customers. Any policy
13 decisions that would carve out classes of customers from
14 local calls would set a dangerous precedent. Again, this
15 is dangerous because it ignores, but sets a potential
16 precedent for, other local calls with long holding times
17 such as local calls to customers service call centers,
18 talk radio shows, reservation centers, conference calls,
19 ect.

20 **Q:** Do you agree with Mr. Pitterle that requiring ILECs to
21 pay ALECs for calls terminated to ISPs would not incent
22 facilities-based competition?

23 **A:** No. Intermedia is a facilities-based service provider
24 which has deployed and continues to deploy large networks
25 in over 15 states.

26 **Q:** Mr. Pitterle also states on page 16, lines 5-8, that

1 ALECs will be reluctant to provide facilities-based local
2 service because it would not want to pay the reciprocal
3 compensation to ILECs. Do you agree?

4 A: No. Intermedia strongly disagrees. Intermedia has never
5 been opposed to paying reciprocal compensation for calls
6 to ISPs. Intermedia negotiated the Agreements with ILECs
7 with full intention of abiding by the terms of the
8 Agreement.

9 Q: Mr. Pitterle suggests on page 16, lines 10-20, that ALECs
10 would be motivated to actually pay ISPs to be their
11 customers. How do you respond?

12 A: This suggestion is both irrelevant and untrue.
13 Intermedia does not cut deals with ISPs in order to win
14 them as customers. Intermedia has and will continue to
15 differentiate itself as a provider of quality service,
16 operational efficiencies and leading technologies. It is
17 evident that GTEFL did not take advantage of the market
18 opportunities to win ISP customers like Intermedia. It
19 is therefore, GTEFL who is using the regulatory system to
20 try to catch up with the ALECs.

21 Q: Mr. Pitterle proposes several interim alternatives to
22 reciprocal compensation if the Commission rules that ISP
23 traffic is local. Do you agree with any of these
24 alternatives?

25 A: No. Reciprocal compensation rates were developed so that
26 carriers could recover the costs of terminating local

1 calls on their networks. If GTEFL believes that it needs
2 additional revenue to recover costs of originating calls
3 on its network that have long holding times, then they
4 should ask the Commission to consider rate revisions on
5 a going forward basis.

6 Q: Mr. Jones speaks at length about calls to the Internet
7 being functionally interexchange and jurisdictionally
8 interstate in nature. Do you agree with Mr. Jones'
9 characterization?

10 A: No. To reiterate, an Internet communication consists of
11 two segments: (1) a local telephone call from an end-
12 user to an ISP; and (2) an enhanced transmission from the
13 ISP over the Internet. The telephone segment of the call
14 ends at the point it is delivered to the ISP. The
15 information service provided by the ISP over the internet
16 is distinct for ratemaking purposes because it is not a
17 telecommunications service, but an enhanced information
18 service.

19 This is consistent with the compensation structures
20 required by numerous FCC orders, the Florida Public
21 Service Commission's decisions in Docket No. 880423-TP,
22 Orders Nos. 21815, issued September 5, 1989, and 23183,
23 issued July 13, 1990, and all of the state decisions
24 decided to date.

25 Q: Mr. Jones states that the ISP modem has no information
26 service function, but is inserted in the transmission

1 path to reduce the capacity required to be carried to the
2 servers or ultimate destination or the user. Do you
3 agree?

4 A: No. The ISP modem does perform an information service.
5 The modem answers the call and then performs protocol
6 conversions required to route the call over the internet.

7 Q: Mr. Jones states on page 7, lines 6-7, that calls do not
8 connect through at ISP modems within the local calling
9 scope and that traffic is often hauled, unaltered, to
10 distant sites for connection to ISP "mega modem"
11 equipment. How do you respond?

12 A: This argument is not relevant to this complaint. The
13 services and means that an ISP uses to combine and route
14 traffic does not take away that the call ultimately
15 terminates locally with the NPA-NXX assigned to the ISP
16 modem. Even if you agree with his argument, all he is
17 describing is foreign exchange service which is a valid
18 way for ISPs to serve areas today.

19 Q: Please summarize your testimony.

20 A: The language of the Agreement is clear and the
21 distinction between telecommunications and enhanced
22 services is clear, thus so is BellSouth's obligation.
23 The Commission should enforce the Agreement as written to
24 require BellSouth to compensate for local traffic
25 terminated to ISPs served by Intermedia.

26 Q: Does this complete your testimony?


1 A: Yes.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery(*) or U.S. Mail this 19th day of January, 1999, to the following:

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