

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of BellSouth
Telecommunications, Inc. for
Section 252(b) arbitration of
interconnection agreement with
Intermedia Communications, Inc.

DOCKET NO. 991854-TP
ORDER NO. PSC-00-0613-PHO-TP
ISSUED: March 29, 2000

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on March 17, 2000, in Tallahassee, Florida, before Commissioner E. Leon Jacobs, Jr., as Prehearing Officer.

APPEARANCES:

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On behalf of BellSouth Telecommunications, Inc.

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On behalf of Intermedia Communications, Inc.

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On behalf of Intermedia Communications, Inc.

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On behalf of the Commission Staff.

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FPSC-RECORDS/REPORTING

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

On December 7, 1999, BellSouth Telecommunications, Inc. (BellSouth) filed a petition for arbitration of an interconnection agreement with Intermedia Communications, Inc. (Intermedia) under Section 252(b) of the Federal Telecommunications Act of 1996 (Act). This matter has been set for an administrative hearing.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the

Division of Records and Reporting's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Alphonso J. Varner	BellSouth	2(a), 3, 7, 12, 13(a), 13(b), 18(c), 22, 25, 26, 31, 32, 37, 38, 39(a)-(d), 45
W. Keith Milner	BellSouth	10, 29, 30(a), 30(b)
J. Carl Jackson, Jr.	Intermedia	All issues

<u>Rebuttal</u>		
Alphonso J. Varner	BellSouth	2(a), 3, 7, 12, 13(a), 13(b), 18(c), 26, 31, 32, 38, 39(a)-(d)
W. Keith Milner	BellSouth	6, 8, 9, 10, 17, 27, 28, 29, 30
J. Carl Jackson, Jr.	Intermedia	2(a), 3, 26, 32

VII. BASIC POSITIONS

BELLSOUTH: Each of the individually numbered issues in this docket (which has not been resolved) represents a specific dispute between BellSouth and Intermedia as to what should be included in the Interconnection Agreement between the parties. BellSouth's positions are the more consistent with the Act, the pertinent rulings of the FCC, this Commission's previous orders and the rules of this Commission. Therefore, each of BellSouth's positions should be sustained by this Commission.

INTERMEDIA: BellSouth and Intermedia have conducted negotiations in an attempt to reach agreement on a new interconnection agreement to replace their

existing (expired) agreement. On December 7, 1999, BellSouth petitioned for arbitration of unresolved issues with the Commission. BellSouth identified 10 issues for arbitration, but noted that several other issues had been raised by Intermedia in the parties' preceding discussions. On January 3, 2000, Intermedia answered BellSouth's petition, and presented 38 additional issues outstanding between the parties that had not been resolved prior to the filing of BellSouth's petition. The parties have continued their discussions in the wake of the filing of the petition and answer, and have managed to settle several outstanding issues by various means. Some of the issues have been deferred by agreement of the parties to ongoing generic proceedings, some issues have been withdrawn, and some issues have been settled by agreement of the parties on mutually acceptable language. In addition, the parties have agreed to revise and restructure certain of the issues to focus them with more precision and eliminated redundancy. Two issues, Issue No. 33 and Issue No. 48, have been dismissed from the proceeding in the February 11, 2000, Order Establishing Procedure.

At present, of the original forty-eight issues, only twenty-three issues remain to be arbitrated in this proceeding. Intermedia's basic position in this proceeding is that the Commission should find for Intermedia on all of the remaining issues. Intermedia expressly references and incorporates all of its prior argumentation and testimony with respect to the remaining issues.

STAFF:

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

ISSUE 2: Should the definition of "Local Traffic" for purposes of the parties' reciprocal compensation obligations under Section 251(b)(5) of the 1996 Act include the following:

a) ISP traffic?

POSITIONS:

BELLSOUTH: "Local traffic" should be defined to apply only to traffic that originates and terminates within a local area. The definition should expressly exclude traffic to Internet Service Providers, which is interstate traffic.

INTERMEDIA: Yes. When Intermedia carries calls originated by BellSouth customers on its network, Intermedia should be compensated for that service. BellSouth seeks to delete ISP traffic from the definition of "Local Traffic" in order to avoid payment to Intermedia for these services Intermedia renders to BellSouth's customers. The FCC did not intend for Intermedia to subsidize BellSouth by providing these services to BellSouth free of charge. In fact, the FCC expressly reserved for state commissions the full discretion to determine that reciprocal compensation could be paid on ISP traffic. The essential issue here is not whether ISP traffic is or is not "Local Traffic," but whether Intermedia should be compensated for services it renders to BellSouth's customers. Due to the way BellSouth structures its agreements, the only sensible way to do this is to treat ISP traffic the same way as local traffic for purposes of reciprocal compensation by including it in the definition of "Local Traffic." The Commission should find that the parties must compensate each other for ISP traffic at the rate designated for local traffic.

STAFF: Staff takes no position at this time.

ISSUE 2: b) False traffic deliberately generated for the sole purpose of obtaining increased reciprocal compensation (e.g., Router-Router traffic)?

Issue 2 b) has been resolved.

ISSUE 3: Should Intermedia be compensated for end office, tandem, and transport elements, for purposes of reciprocal compensation?

POSITIONS:

BELLSOUTH: Intermedia should be compensated for those functions it provides. The appropriate rates for reciprocal compensation are the elemental rates for end office switching, tandem switching and common transport that are used to transport and terminate local traffic. If a call is not handled by Intermedia's switch on a tandem basis, it is not appropriate to pay Intermedia reciprocal compensation for the tandem switching function.

INTERMEDIA: Yes. FCC Rule 51.711(a)(3) expressly requires that CLECs are entitled to be compensated at the tandem rate if their switches serve a geographical area comparable in scope to that served by the ILECs' tandems. There is no mention of "comparable functionality" in the Commission's rule; it should be read to mean exactly what it says, no more and no less. Intermedia has four switches in Florida that serve large territories in Jacksonville, Orlando, Miami and Tampa. These large and capable switches serve areas that are comparable to the areas served by BellSouth's tandems. Intermedia has submitted exhibits that show the areas covered by its switches, and these areas are demonstrably comparable in geographic scope to BellSouth's tandems. In addition, although this is not required by applicable law, Intermedia's switch does perform functions comparable to those of BellSouth's tandems. Intermedia's modern network architecture is structured differently, so the switch functions are not identical, but they are comparable to BellSouth's legacy systems. The

purpose of the FCC's rule is to compensate CLECs in this situation at the tandem rate in addition to all other applicable rate elements.

STAFF: Staff takes no position at this time.

ISSUE 4: Should BellSouth be required to pay for additional transport charges where Intermedia has configured its network in a way that its switch is in a different LATA than Intermedia's end user customer?

Issue 4 has been resolved.

ISSUE 7: What charges should Intermedia pay to BellSouth for space preparation for physical collocation?

POSITIONS:

BELLSOUTH: The issue of appropriate rates for physical collocation, including space preparation charges, has been addressed by this Commission in its Order No. PSC-98-0604-FOF-TP, dated April 29, 1998, wherein the Commission found that it was appropriate to determine space preparation charges on an Individual Case Basis ("ICB"). BellSouth proposes that it is appropriate for space preparation charges to continue to be determined on an ICB until such time as this Commission determines otherwise.

INTERMEDIA: Intermedia should pay charges that are duly derived from TELRIC cost studies. Intermedia should not be compelled to pay duplicative charges that have no demonstrable cost basis, such as vague "space preparation" charges for unidentified services that should be covered in the basic application charge. Moreover, Intermedia should not be forced to agree to open-ended "ICB" (Individual Cost Basis) - priced transactions in the preparation of collocation space, except where such transactions are truly extraordinary and impossible to anticipate. All other customary charges should be unit-priced in accordance with applicable law.

Intermedia is especially puzzled by BellSouth's insistence on ICB pricing in particular for those items where the ICB price applies to a "per arrangement, per square foot" transaction. When it is known in advance what measurement units are applicable to a transaction, it should be possible to assign cost-based prices to those units - and ICB prices should not be necessary.

STAFF: Staff takes no position at this time.

ISSUE 10: Are BellSouth's policies regarding conversion of virtual to physical collocation reasonable?

POSITIONS:

BELLSOUTH: Yes. BellSouth will convert virtual collocation arrangements to physical collocation arrangements upon Intermedia's request. However, if BellSouth determines in a nondiscriminatory manner that the arrangement must be relocated, Intermedia should pay the cost of such relocation.

INTERMEDIA: No, they are not. Especially in the wake of the FCC's orders in the Advanced Services proceedings, it is clear that there is little or no practical difference between Intermedia's virtually collocated positions and the set-up that Intermedia would have if its virtual arrangement were converted to cageless physical collocation. Since ILECs are required by law to make "any unused space" in their offices available for CLEC cageless collocation, subject to only minimal (and probably inapplicable) limitations, the only reason for repositioning Intermedia's equipment upon conversion would be if BellSouth wants to do so for its own purposes, e.g., because it believes that it needs to do so for security purposes. If BellSouth insists on repositioning Intermedia's equipment for its own purposes in this way, BellSouth should bear the cost of doing so, and should provide additional assurance that there will be no disruption to Intermedia's customers in the process. It should be recalled that the only reason that CLECs collocated virtually in the first place - at

additional expense, technical difficulty and inconvenience - is that ILECs insisted there was "no room" for physical collocation. In fact, there is room, as clarified by the FCC. Conversion of virtual to cageless collocation is in one sense just a transaction that is setting the record straight, and this should not be at the CLECs' expense. The CLEC already realized unnecessarily increased costs - and BellSouth already obtained inflated payments it was not correctly entitled to, when CLECs were compelled to take virtual collocation instead of physical collocation due to ILEC stonewalling.

STAFF: Staff takes no position at this time.

ISSUE 12: What is the appropriate definition of "currently combines" pursuant to FCC Rule 51.315(b)?

POSITIONS:

BELLSOUTH: BellSouth's obligation should be limited to combinations that currently exist to serve a particular customer at a particular location.

INTERMEDIA: BellSouth should be required by the state commission to make available to Intermedia all UNEs that BellSouth customarily combines as a matter of course in providing service to its own customers. If a retail customer can order a service from BellSouth that is essentially equivalent to a combination of UNEs, BellSouth should also make that combination available to Intermedia as a UNE combination at TELRIC based prices. Intermedia should not be limited to purchasing combinations from BellSouth that are already in use for a particular customer at a particular location. If BellSouth currently combines certain network elements for itself and its customers, the Commission should require it to do so for Intermedia as well.

STAFF: Staff takes no position at this time.

ISSUE 13: Should BellSouth be required to:

- a) provide access to enhanced extended links ("EELs") at UNE rates; and

POSITIONS:

BELLSOUTH: BellSouth's obligation should be limited to combinations that currently exist to serve a particular customer at a particular location.

INTERMEDIA: Yes. EELs are essential to Intermedia's ability to compete with BellSouth because they allow Intermedia to provide services to a customer served by a given BellSouth end office without having to collocate equipment at that BellSouth end office. This provides maximum flexibility for Intermedia to be of service to the public without expending unnecessary resources. The Commission has ample authority to require BellSouth to offer this combination.

STAFF: Staff takes no position at this time.

ISSUE 13: b) allow Intermedia to convert existing special services to EELs at UNE rates?

POSITIONS:

BELLSOUTH: Intermedia's ability to convert special access facilities to EELs at UNE rates is constrained at least until the FCC completes its Fourth Notice of Proposed Rulemaking. Until that rulemaking is complete, carriers may not convert special access services to combinations of UNEs unless the carrier uses the UNE combination to provide a significant amount of local exchange service, in addition to exchange access service to a particular customer.

INTERMEDIA: Yes. Applicable law allows conversion of existing special access arrangements to EELs at UNE rates, and BellSouth should be required to commit to this in the Parties' interconnection agreement.

STAFF: Staff takes no position at this time.

ISSUE 15: Should BellSouth be required to condition loops in accordance with the FCC's most recent ruling?

Issue 15 has been resolved.

ISSUE 17: Should BellSouth be required to offer subloop unbundling and access to BellSouth-owned inside wiring in accordance with the UNE Remand Order and FCC Rule 319(a)?

Issue 17 has been resolved.

ISSUE 18(c): Should BellSouth be required to provide access on an unbundled basis in accordance with, and as defined in, the FCC's UNE Remand Order to packet switching capabilities?

POSITIONS:

BELLSOUTH: There is no requirement under Section 251 of the Telecommunications Act of 1996 for unbundling of packet switching capabilities. Further, in its UNE Remand Order, the FCC expressly declined "to unbundle specific packet switching technologies incumbents LECs may have deployed in their networks." (Para. 311)

INTERMEDIA: Yes. The FCC's UNE Remand Order specifies the circumstances in which BellSouth must offer access to packet switching capabilities. It is not sufficient for BellSouth to assert that those circumstances will never arise: the Parties' agreement should reflect the state of applicable law on this issue. On one hand, if BellSouth is correct that the circumstances in which it is required to offer such access will never arise, the language in the Parties' agreement will never be active, so BellSouth is not adversely affected by it. On the other hand, if the circumstances do arise, and BellSouth has been successful in convincing the Commission that it need not include this language in its agreement, Intermedia may be

prevented from gaining access to a UNE to which it is otherwise entitled by law.

STAFF: Staff takes no position at this time.

ISSUE 22: Should BellSouth be required to provide non-discriminatory access to interoffice transmission facilities in accordance with, and as defined in, the FCC's UNE Remand Order?

POSITIONS:

BELLSOUTH: BellSouth agrees that it is required to provide nondiscriminatory access to interoffice transmission facilities and has proposed language which it believes is consistent with § 51.319(d) of the FCC's UNE Remand Order and with Intermedia's proposed language.

INTERMEDIA: Yes. BellSouth must offer nondiscriminatory access to this UNE, and should define it as the FCC does. In addition, BellSouth must price this UNE based on TELRIC costs, and to the extent that TELRIC studies have not been performed and approved by the Commission for certain types of elements, the Parties' agreement should allow for interim rates and a true-up if the interim rates differ from the Commission's final approved rates. It is not sufficient for BellSouth to claim that the rates it proposes ARE the proper TELRIC rates - only the Commission can make that decision, and until it does, the rates are only interim, and should be subject to true-up.

STAFF: Staff takes no position at this time.

ISSUE 25: Should BellSouth be required to furnish access to the following as UNEs: (i) User to Network Interface ("UNI"); (ii) Network-to-Network Interface ("NNI") and (iii) Data Link Control Identifiers ("DLCI"), at Intermedia-specified committed information rates ("CIR")?

POSITIONS:

BELLSOUTH: No. BellSouth is not legally required to offer the indicated components of Frame Relay as UNEs under Section 251.

INTERMEDIA: Yes. Although these UNEs have not yet found their way onto the list of nationally mandated UNEs at the FCC, the use of frame relay and other packet-switched technologies is becoming more and more essential as the telecommunications field and its customers become more sophisticated and demand more innovative and better service. BellSouth's frame relay network, which carries high-speed data, should be just as accessible to competitive carriers as its voice network. Presently BellSouth charges from its tariff for services, greatly and unnecessarily inflating the cost of using BellSouth's frame relay network. The network elements on BellSouth's frame relay networks should be unbundled and TELRIC cost studies should be performed to arrive at prices that fairly reflect BellSouth's costs. Otherwise, Intermedia and others are unfairly subsidizing BellSouth's operations by paying far more than is appropriate. The Commission has clear authority under the terms of the UNE Remand Order to find that these network elements should be unbundled and offered at TELRIC based prices to CLECs, and Intermedia requests that it do so.

STAFF: Staff takes no position at this time.

ISSUE 26: Should parties be allowed to establish their own local calling areas and assign numbers for local use anywhere within such areas, consistent with applicable law?

POSITIONS:

BELLSOUTH: When an ALEC assigns numbers having the same NPA/NXX to customers both inside and outside the BellSouth local calling area where the NPA/NXX is homed, it is impossible for BellSouth to determine whether BellSouth's end users are making a local or a long distance call when BellSouth's end user calls the ALEC's end user. Consequently, BellSouth can't tell whether access or reciprocal compensation should apply to the resulting traffic.

INTERMEDIA: Yes. It is not in the public interest to allow BellSouth to compel Intermedia to mirror its calling areas, and to restrict the assignment of numbers. Intermedia can compete with the monopoly carrier only if it can offer innovative services that are materially different, perhaps lower in cost, and more useful than existing ILEC services. One way in which this can be done is to establish different calling areas, and assign numbers differently in them. Some customers will have a price incentive to change their service to Intermedia if this is done, although others will not. The flexibility to design unique services and to present a different "look" than BellSouth is essential. Where applicable law permits this flexibility, BellSouth should not be allowed to restrain competition in its interconnection agreements.

STAFF: Staff takes no position at this time.

ISSUE 27: Should Intermedia be permitted to establish Points of Presence ("POP") and Points of Interface ("POI") for delivery of its originated interLATA toll traffic?

Issue 27 has been resolved.

ISSUE 29: In the event Intermedia chooses multiple tandem access ("MTA"), must Intermedia establish points of interconnection at all BellSouth access tandems where Intermedia's NXXs are "homed"?

POSITIONS:

BELLSOUTH: Yes. If Intermedia elects BellSouth's multiple tandem access ("MTA") offer, Intermedia must designate for each of Intermedia's switches the BellSouth tandem at which BellSouth will receive traffic originated by Intermedia's end user customers.

INTERMEDIA: No. The point of multiple tandem access is to interconnect to fewer tandems, and to have calls routed by BellSouth to end offices not served by those tandems. This is a question of efficiency and cost savings to the CLEC. If a CLEC must under its interconnection agreement establish POIs at every access tandem where its NXXs are "homed," this will defeat the entire purpose of multiple tandem access.

STAFF: Staff takes no position at this time.

ISSUE 30: Should Intermedia be require to:

- a) designate a "home" local tandem for each assigned NPA/NXX; and

POSITIONS:

BELLSOUTH: Yes. If more than one BellSouth local tandem serves a particular local calling area, Intermedia must establish one of the BellSouth local tandems as a home local tandem for each of its NPA/NXXs.

INTERMEDIA: No. If CLECs are required to home to a single local tandem for each assigned NPA/NXX, it will deprive them of the flexibility they require to serve customers with innovative services. CLEC networks should not be compelled to mirror BellSouth's networks, and CLEC calling areas and the distribution of their NPA/NXXs should not be required to mirror BellSouth's. CLECs should be able to design their own local calling areas, and assign numbers anywhere within them.

STAFF: Staff takes no position at this time.

ISSUE 30: b) establish points of interconnection to BellSouth access tandems within the LATA on which Intermedia has NPA/NXXs homed?

POSITIONS:

BELLSOUTH: Yes. Intermedia must interconnect at each access tandem where its NPA/NXXs are homed for Intermedia's exchange access traffic.

INTERMEDIA: No. The Parties' agreement should not unduly restrict Intermedia's flexibility in designing its network and its calling plans.

STAFF: Staff takes no position at this time.

ISSUE 31: For purposes of compensation, how should intraLATA Toll Traffic be defined?

POSITIONS:

BELLSOUTH: IntraLATA Toll Traffic should be defined as any telephone call that is not local or switched access per the parties' agreement.

INTERMEDIA: IntraLATA Toll Traffic should be defined as proposed by Intermedia, to include data messages as well as voice traffic. BellSouth should not be permitted to "define away" data messaging in this fashion. There should not be a different regulatory treatment for calls carrying voice and data content.

STAFF: Staff takes no position at this time.

ISSUE 32: How should "Switched Access Traffic" be defined?

POSITIONS:

BELLSOUTH: Switched Access Traffic should be defined in accordance with BellSouth's access tariff and should include IP Telephony.

INTERMEDIA: Switched Access Traffic should be defined as proposed by Intermedia, and it should not be defined to include IP telephony. ISPs and ESPs are exempt from access charges on a national basis by law. The treatment IP telephone is a relatively new issue that will ultimately be resolved by the FCC. This Commission should not "jump the gun" as requested by BellSouth and fashion a treatment for IP telephony in Florida that may end up being entirely inconsistent with the FCC's analysis. This issue is a controversial issue that is simply not adequately investigated at present, and it is better left out of the Parties' agreement.

STAFF: Staff takes no position at this time.

ISSUE 35: How should Wireless Type I and/or Type 2A traffic be treated for purposes of the parties' interconnection agreement?

Issue 35 has been resolved.

ISSUE 36: What should the appropriate compensation mechanism for transit traffic be for purposes of the parties' interconnection agreement?

Issue 36 has been resolved.

ISSUE 37: Should all framed packet data transported within a Virtual Circuit that originate and terminate within a LATA be classified as local traffic?

POSITIONS:

BELLSOUTH: BellSouth agrees that all framed packet data transported within a VC that originate and terminate within a LATA will be classified as local traffic. However, BellSouth contends that frame relay traffic originated and terminated in the LATA is not subject to reciprocal compensation.

INTERMEDIA: Yes. There is no reason why data messages should be treated any differently from voice calls for the purpose of determining what is or isn't local traffic, or for paying reciprocal compensation. Applicable law makes it clear that there is no legal distinction between these types of content. Local traffic, whether it is data or voice, gives rise to reciprocal compensation obligations, and BellSouth should not be allowed to avoid its financial responsibility by seeking to "define away the problem."

STAFF: Staff takes no position at this time.

ISSUE 38: If there are no Virtual Circuits on a frame relay interconnection facility when it is billed, should the parties deem the Percent Local Circuit Use to be zero?

POSITIONS:

BELLSOUTH: Yes. BellSouth proposes a PLCU of zero in such circumstances.

INTERMEDIA: No. If the PLCU is deemed to be zero, Intermedia will have to pay for the entire cost of establishing the interconnection arrangement. But that is patently unfair, and inconsistent with normal practices in comparable situations such as a mid-span fiber meet. Even BellSouth's own proposed language in the Parties' interconnection agreement envisions that the parties will each cover their

own costs of bringing their facilities to a common point where they may be joined. The same thing is going on here in the frame relay arena. BellSouth and Intermedia join their facilities with interconnection trunks for the purpose of connecting their customers: an Intermedia customer "talking" to a BellSouth customer. Since both sides benefit, and there is a clear reason for both sides to establish the arrangement in the first place, it would make sense to treat this situation similarly to a mid-span fiber meet. For each Party to cover its own costs, the PLCU will have to be set at 100%. This does not mean that BellSouth will have to pay for all of the interconnection cost: if the traffic is deemed to be all local, the parties simply split the cost, and that is the appropriate result.

STAFF: Staff takes no position at this time.

ISSUE 39: What are the appropriate charges for the following:

- a) interconnection trunks between the parties' frame relay switches,

POSITIONS:

BELLSOUTH: BellSouth proposes use of the nonrecurring and recurring charges set forth in its interstate access tariff.

INTERMEDIA: The interconnection trunks between the Parties' frame relay switches should be priced and paid for on the basis of TELRIC costs for dedicated transport. BellSouth wants Intermedia to pay tariffed prices that have no demonstrable relationship to TELRIC costs. Intermedia proposes that TELRIC studies be performed to support proper pricing, and that in the meantime, interim rates should be established at 50% of BellSouth's tariffed costs, with a true-up once final rates have been approved by the Commission.

STAFF: Staff takes no position at this time.

ISSUE 39: d) requests to change a PVC segment or PVC service order record.

POSITIONS:

BELLSOUTH: BellSouth proposes use of the nonrecurring and recurring charges set forth in its interstate access tariff.

INTERMEDIA: These charges should be based on TELRIC costs. BellSouth wants Intermedia to pay tariffed prices that have no demonstrable relationship to TELRIC costs. Intermedia proposes that TELRIC studies be performed to support proper pricing, and that in the meantime, interim rates should be established at 50% of BellSouth's tariffed costs, with a true-up once final rates have been approved by the Commission.

STAFF: Staff takes no position at this time.

ISSUE 45: Should the interconnection agreement specifically state that the agreement does not address or alter either party's provision of Exchange Access Frame Relay Service or interLATA Frame Relay Service?

POSITIONS:

BELLSOUTH: Yes. The purpose of this language is to make clear that the parties' obligations with respect to access service are not affected by this local interconnection agreement.

INTERMEDIA: No. This general "catch-all" statement is of unknown effect. BellSouth should state in clear terms what it intends to accomplish by this language, and Intermedia can attempt to determine whether it is problematic. But Intermedia should not be required to sign onto sweeping statements that can alter many separate arrangements in the Parties' agreement without knowing what the underlying intent is, or how it affects this agreement.

STAFF: Staff takes no position at this time.

ISSUE 46: Should Intermedia's obligation to identify and report quarterly to BellSouth the PLCU of the Frame Relay facilities it uses cease when BellSouth obtains authority to provide in-region interLATA service?

Issue 46 has been resolved.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
			<u>Direct</u>
Alphonso J. Varner	BellSouth	_____ (AJV-1)	Proposed Rates
		_____ (AJV-2)	BellSouth's Comments
		_____ (AJV-3)	BellSouth's Reply Comments
W. Keith Milner	BellSouth	_____ (WKM-1)	NTW Diagrams
J. Carl Jackson, Jr.	Intermedia	_____ (JCJ-1)	Consists of a map that shows the location of Inter- m e d i a ' s switches on a nationwide basis.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		_____ (JCJ-2)	Contains maps that show the local, extended and toll calling areas in various Fla. jurisdictions that are covered by Intermedia's switches.
<u>Rebuttal</u>			
Alphonso J. Varner	BellSouth	_____ (R-AJV-1)	Florida Usage Data
		_____ (R-AJV-2)	Florida Usage Date Specific To Intermedia
		_____ (R-AJV-3)	Maps of BellSouth Local and Access Tandem Service Area
J. Carl Jackson, Jr.	Intermedia	_____ (JCJ-3)	Contains network topology, calling areas, and switch descriptions

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

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X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

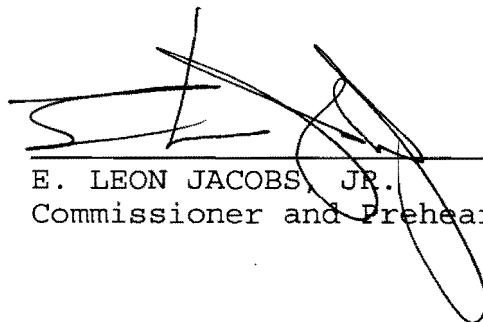
BellSouth has filed a Notice of Intent to Request Specified Confidential Classification of Varner Rebuttal Exhibit No. AJV-2 pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code.

Intermedia has filed Jackson Exhibit No. JCJ-3 with a claim of confidentiality as to a portion, pursuant to Rule 25-22.006(5), Florida Administrative Code.

It is therefore,

ORDERED by Commissioner E. Leon Jacobs, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 29th day of March, 2000.



E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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 requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, 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 wastewater 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.