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November 28, 2000

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RECORDS AND REPORTING

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 000690-TP – BellSouth Complaint against Intermedia Communications, Inc., Phone One, Inc., NTC, Inc. and National Telephone of Florida regarding reporting of PIU for Access Service

Dear Ms. Bayo:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to Intermedia Communications, Inc, Phone One, Inc., NTC, Inc. and National Telephone of Florida's Motion to Reconsider to Clarify the Commission Audit, 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.

Sincerely,

Michael P. Goggin

Michael P. Goggin

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cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

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**CERTIFICATE OF SERVICE
Docket No. 000690-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

U.S. Mail this 28th day of November, 2000 to the following:

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Michael P. Goggin
(2A)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by BellSouth Telecommunications,) Docket No. 000690-TP
Inc. Against Intermedia Communications, Inc.,)
Phone One Inc., NTC, Inc. and National Telephone)
of Florida Regarding Practices in Reporting of)
Percent Interstate Usage for Compensation For)
Jurisdictional Access Services)
_____) Filed: November 28, 2000

BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE TO INTERMEDIA COMMUNICATIONS, INC., PHONE ONE, INC., NTC, INC. AND NATIONAL TELEPHONE OF FLORIDA'S MOTION TO RECONSIDER TO CLARIFY THE COMMISSION AUDIT

BellSouth Telecommunications, Inc. ("BellSouth") hereby responds to Intermedia Communications, Inc, Phone One, Inc., NTC, Inc. and National Telephone of Florida (collectively "Intermedia's") Motion to Reconsider to Clarify the Commission Audit (the "Motion") and states:

1. In its Motion, Intermedia asserts that the scope of the Commission's authority to investigate the facts alleged in BellSouth's Complaint in this matter is limited by the terms of BellSouth's tariff. Motion at 5-6. Intermedia is incorrect, however, with regard both to the scope of the Commission's authority and Intermedia's interpretation of the tariff.

2. The Commission properly denied Intermedia's motion to dismiss or to stay consideration of BellSouth's Complaint in this matter. Order No. PSC-00-2081-PCO-TP (Nov. 1, 2000) (the "Order"). Intermedia does not contest the denial of its motion. Instead, Intermedia takes issue with a different portion of the order, in which the Commission ordered its staff to conduct an audit "for the reporting period raised in BellSouth's complaint." Order at 6.

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3. Intermedia alleges that BellSouth's tariff would only permit BellSouth to audit one quarter's records, and that therefore, the Commission may not audit more than one quarter's records. Motion at 3. Intermedia also complains that the Commission's instructions to its staff must be clarified because, in Intermedia's view, the Complaint does not specify a period of time that is in question. Motion at 2. Finally, Intermedia argues that the scope of the audit must be limited because BellSouth's tariff allegedly would limit any "backbilling" to the quarter audited and the preceding quarter, and thus, a broader audit would be not only burdensome, but unjustified. Motion at 4-7.

4. Each of Intermedia's arguments is misleading and unfounded. First, Although the tariff includes rules that would govern an audit BellSouth might conduct, whether the audit occurs at all is optional, not mandatory, as Intermedia continually insists.¹ Second, and more importantly, any tariff provision that may limit the manner in which BellSouth may conduct an audit (in the event that it chooses to conduct an audit) in no way limits the Commission's authority to investigate the facts relating to a disputed matter properly before the Commission to be resolved. BellSouth has alleged certain facts in support of its claim that Intermedia intentionally underpaid BellSouth for intrastate access. The Commission denied Intermedia's attempt to have the matter dismissed. The Commission certainly has the authority to investigate, by discovery if not by a stipulated audit, any documents or records either party may have that would tend to prove or disprove the facts alleged in the Complaint.

¹ See Section E2.3.14B.1. of BellSouth's Access Tariff

5. Intermedia also is wrong to suggest that the Complaint does not specify a period of time. Motion at 2. The Complaint clearly alleges that Intermedia's Percent Interstate Usage "PIU" began to change radically in April 1999, with the percentage of minutes reported as intrastate drastically curtailed.² Complaint at ¶ 9. Subsequent investigation by BellSouth showed these PIUs to be grossly misstated. Complaint at ¶¶ 8-13.³ BellSouth also alleged that the intentional misreporting and underpayment is continuing, and asked for an order prohibiting such conduct on a going-forward basis. Complaint at ¶¶ 15-16. Accordingly, the period of time specified by the Complaint (and the period that should be investigated) is April 1999 to the present. In view of the plain allegations in the Complaint, Intermedia's assertion that the Complaint fails to specify a time period is simply unfounded.⁴

6. Intermedia's third argument for "clarification" seeks to have the Commission assume that the tariff protects Intermedia from having to answer for any intentional misconduct that occurred more than one quarter before the single

² Intermedia's June 30, 2000 Motion to Dismiss indicates that BellSouth first requested an audit on June 10, 1999. *See*, Intermedia Communications, Inc.'s Motion to Dismiss (filed June 30, 2000) at Attachment B. Thus, time BellSouth noticed the irregularities in Intermedia's PIUs (April 1999) and the date it requested an audit both fall in the 2nd quarter of 1999.

³ BellSouth contends that Intermedia's intentional underpayments of intrastate access date back to 1994, and BellSouth will produce evidence to prove it. Nevertheless, the time period likely to be most appropriate for purposes of the Commission's investigation is April 1999 to the present -- the same period initially examined by BellSouth.

⁴ Intermedia's also complains, in its Motion, about the burden of complying with an audit, and the likelihood that it might not have relevant records from the entire time period specified in the Complaint. Motion at 2-3. Any objections Intermedia may have about any burdens imposed by an audit would be no different if the information were required to be produced pursuant to a discovery request. Intermedia may seek a protective order if the staff's requests are overly burdensome. To the extent that the records sought no longer exist, Intermedia cannot be compelled to produce records that do not exist—confirming the non-existence of any such records to the staff does not appear to be burdensome. In any event, neither objection

quarter the Commission is authorized to audit. Accordingly, Intermedia argues, it would make no sense to permit an audit of more than one quarter. Motion at 4-7. This is wrong for a number of reasons. First, the tariff provisions Intermedia cites govern the consequences that would flow from an audit conducted by BellSouth, at its option, outside the context of a Commission proceeding. BellSouth did not, however, exercise its option to conduct an audit under the tariff provisions Intermedia cites. BellSouth chose, instead, to file a complaint, because it has reason to believe that Intermedia's systematic underpayment of intrastate access charges has been intentional. BellSouth is not seeking to "backbill" Intermedia for a simple error uncovered by an audit conducted according to an optional audit available under the tariff, it is asking the Commission to find that Intermedia intentionally underpaid intrastate access fees for years, in violation of Florida law and BellSouth's tariff.

7. Intermedia has not pointed to any authority that would suggest that the Commission's injunctive authority is in any way diminished by a provision in BellSouth's tariff that sets limits on the amount BellSouth may unilaterally decide to backbill if an optional, private audit reveals past billing errors. If Intermedia has intentionally underpaid access charges, as BellSouth asserts, the Commission may order restitution and/or fines, and may enjoin such misconduct in the future. BellSouth may not, through its tariff, curtail the Commission's authority in this regard, as Intermedia suggests.

supports Intermedia's demands in this motion, which, if granted, would, in effect, arbitrarily limit the timeframe within which Intermedia may be held accountable for its intentional misconduct.

8. Indeed, Intermedia's argument, that the scope of the Commission's investigation should be limited, is misleading in that it relies on the assumption that the Commission lacks the authority to punish Intermedia's intentional misconduct. By getting the Commission to focus on the scope of the audit, Intermedia apparently hopes the Commission will agree with its mistaken assumption that the Commission's enforcement authority is limited, without pausing to analyze the assumption. Intermedia will have an opportunity during the course of this proceeding to persuade the Commission of its interpretation of BellSouth's tariff. The Commission should not accept Intermedia's invitation to narrow the scope of its investigation, or to limit the range of injunctive remedies it is authorized to impose, based merely on Intermedia's assumption that its reading of the tariff is correct.

For the reasons given, Intermedia's Motion, and its request for oral argument, should be denied.

Respectfully submitted this 28th day of November, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.



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