

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Intermedia )  
Communications Inc. against GTE )  
Florida Incorporated for breach of )  
of Florida Partial interconnection )  
agreement under Section 251 and 252 )  
of the Telecommunications Act of )  
1996, and request for relief. )

DOCKET NO.: 980986-TL

FILED: 3-12-99

RECORDS AND  
REPORTING

59 MAR 12 PM 4:21

RECEIVED-FPSC

INTERMEDIA COMMUNICATIONS INC.'S

SUPPLEMENTAL DIRECT TESTIMONY OF JULIA O. STROW

RECEIVED & FILED

*JOS*  
FPSC-BUREAU OF RECORDS

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 2 \_\_\_\_\_
- LIN 3+6 \_\_\_\_\_
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC + \_\_\_\_\_
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

DOCUMENT NUMBER-DATE

03211 MAR 12 8 000254

FPSC-RECORDS/REPORTING

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

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

5 **Q: Did you previously cause to be filed in this docket written direct testimony addressing**  
6 **the issue before the Florida Public Service Commission ("Commission") for**  
7 **determination.**

8 A: Yes.

9 **Q: What is the purpose of this supplemental direct testimony?**

10 A: On February 26, 1999, the Federal Communications Commission ("FCC") released Order  
11 99-38, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in  
12 CC Docket No. 99-68 ("Ruling"), which addresses inter-carrier compensation for dial-up  
13 calls to ISPs. The purpose of this supplemental testimony is to assess the effect of the  
14 Ruling on the determination of the single issue before the Commission in this proceeding.  
15 To do this it is useful to briefly restate the issue before the Commission and the respective  
16 positions of Intermedia and GTEFL. As reflected in the Prehearing Order, they are as  
17 follows:

18 Issue 1. Under their Interconnection Agreement, are Intermedia  
19 Communications Inc. and GTE Florida Incorporated, required to  
20 compensate each other for transport and termination of traffic to Internet  
21 Service Providers? If so, what action, if any, should be taken?

22 Intermedia Position:

23 Yes. The term "local traffic" as used in the Agreement and as construed  
24 consistently by numerous regulatory bodies contemplates calls from end  
25 users to Internet Service Providers both originating and terminating within  
26 GTEFL's local serving area. The Commission should issue an Order  
27 finding GTEFL to be in willful and material breach of the parties'  
28 Agreement and requiring GTEFL to pay Intermedia for terminating such  
29

1 local traffic under the reciprocal compensation provisions of the  
2 Agreement.

3  
4 GTE Position:

5 No. The ISP traffic at issue is jurisdictionally interstate, so there is no  
6 basis for subjecting it to reciprocal compensation obligation under a local  
7 interconnection agreement. The Commission should take no action, other  
8 than to confirm that the ISP traffic is interstate.  
9

10 **Q: Given this background, what is your understanding of the effect of the Ruling on the**  
11 **issue before the Commission for determination?**

12 A: The effect of the Ruling is to close the last door through which GTE hopes to justify its  
13 breach of our interconnection agreement. Specifically, the Ruling rejects GTE's  
14 fundamental position that because some of the traffic at issue is jurisdictionally interstate  
15 there is no basis for subjecting it to reciprocal compensation under the local  
16 interconnection agreement. [Ruling ¶ 21-27] As we have said all along, there are  
17 numerous reasons that the interconnection agreement objectively requires reciprocal  
18 compensation for Internet Service Provider ("ISP")-bound traffic and this Commission is  
19 the proper authority to hear our complaint. The Ruling provides fundamental support for  
20 both the merits of Intermedia's claim for relief and its choice of forum.

21 **Q: What is your understanding of the Ruling?**

22 A: In the Ruling the FCC concludes that ISP-bound traffic is jurisdictionally mixed and  
23 appears to be largely interstate. [Ruling ¶ 18] The Ruling acknowledges that the FCC has  
24 been unclear whether access charges or reciprocal compensation applies when two  
25 interconnecting carriers deliver traffic to an ISP. Consequently, parties negotiating  
26 interconnection agreements and state commissions interpreting them were left to  
27 determine the appropriate compensation mechanism as a matter of first impression. Thus,

1 the Commission further concludes that, in the absence to date of a federal rule regarding  
2 the appropriate inter-carrier compensation for ISP-bound traffic, the parties should be  
3 bound by their existing interconnection agreements as interpreted by state commissions.

4 [Ruling ¶¶ 24-25]

5 **Q: Did the FCC address the merits of whether carriers have provided for mutual**  
6 **compensation for ISP-bound traffic in existing interconnection agreements?**

7 A: Yes, but in the context of deferring to state public utility commissions that either have  
8 addressed and may be addressing this issue. Noting that the FCC itself has treated ISP-  
9 bound traffic as though it were local and that LECs have characterized associated expenses  
10 and revenues as intrastate for separations purposes, [Ruling ¶ 23] the FCC finds it  
11 reasonable that the parties entering into interconnection agreements may have agreed that  
12 ISP-bound traffic should be treated in the same manner as local traffic for purposes of  
13 reciprocal compensation. [Ruling ¶ 24] The FCC suggests that in construing the  
14 interconnection agreements on this issue, state commissions might consider the following  
15 factors, if applicable, as supporting the contractual obligation of reciprocal compensation  
16 for ISP-bound calls:

- 17 1) that negotiations were undertaken in the context of the Commission's
- 18 longstanding policy of treating ESP/ISP traffic as local;
- 19 2) that LECs serve ISPs out of local tariffs;
- 20 3) that revenues associated with ISP services are booked to intrastate accounts;
- 21 4) that LECs and CLECs made no effort to meter or otherwise segregate ISP
- 22 traffic for purposes of billing one another for reciprocal compensation;

1           5) that if LECs bill end users by message units, they have included ISP calls in  
2           local charges; and

3           6) that LECs and CLECs would not be compensated for ISP traffic if it were not  
4           treated as local traffic and subject to reciprocal compensation.

5           [Ruling ¶ 24]

6   **Q: Are the factors outlined in the FCC's Ruling considered by the Commission in**  
7   **determining the earlier substantially identical dispute between BellSouth and**  
8   **Intermedia on this issue (as articulated in Order No. PSC-98-1216-FOF-TP, issued**  
9   **September 15, 1998, in Complaints of WorldCom Technologies, Inc., Teleport**  
10   **Communications Group, Inc./TCG South Florida, Intermedia Communications Inc.,**  
11   **and MCI Metro Access Transmission Services, Inc. against BellSouth**  
12   **Telecommunications, Inc. for breach of terms of interconnection agreement under**  
13   **Section 251 and 252 of the Telecommunications Act of 1996, and request for relief,**  
14   **Dockets Nos. 971478-TL, 980184-TP, 980495-TP, and 980499-TP("BST ISP Order"))?**

15   **A:** Yes. The Ruling of the FCC and this Commission's BST ISP Order are consistent. The  
16   BST ISP Order explicitly considers several of the factors suggested by the FCC.

17   **Q: Did the Ruling provide that state utility commissions could provide for mutual**  
18   **compensation for ISP-bound traffic only as a matter of contract?**

19   **A:** No. In fact, the FCC further concludes that even where parties to interconnection  
20   agreements do not voluntarily agree on an inter-carrier compensation mechanism for ISP-  
21   bound traffic, state commissions may determine in arbitration proceedings that reciprocal  
22   compensation should be paid for this traffic. Noting that the Local Competition Order  
23   provides for state commission authority over interconnection agreements pursuant to 47

1 U.S.C. §252 and extends such authority to both interstate and intrastate matters, the  
2 Commission observes that the mere fact that ISP-bound traffic is largely interstate does not  
3 remove it from negotiation and arbitration pursuant to 47 U.S.C. § 251 and 252, so long as  
4 the arbitration is consistent with governing federal law. The FCC acknowledges that its  
5 policy of treating ISP-bound traffic as local for purposes of interstate access charges  
6 suggests that reciprocal compensation is due for that traffic. The FCC further  
7 acknowledges that a state commission decision that reciprocal compensation obligations  
8 encompass ISP-bound traffic does not conflict with any FCC rule regarding ISP-bound  
9 traffic. [Ruling ¶ 25]

10 **Q: Given that this is not a dispute over the failure to agree to contractual terms, does the**  
11 **arbitration portion of the Ruling relate directly to the dispute before this**  
12 **Commission?**

13 **A:** No, but it does reaffirm that the FCC's determination that there were many reasons for  
14 persons looking at this issue to conclude that ISP-bound traffic is indeed local for the  
15 purposes of intercarrier compensation. This supports Intermedia's view that this was the  
16 conventional understanding.

17 **Q: Please summarize your supplemental testimony.**

18 **A:** The Ruling strengthens Intermedia's claim for relief for several reasons. First, it rejects  
19 the essential position of GTE that because ISP-bound traffic may be jurisdictionally  
20 interstate, such traffic cannot be subject to reciprocal compensation as local traffic under  
21 an interconnection agreement. Second, it confirms this Commission's authority to address  
22 Intermedia's claim for relief under the agreement. Third, the Ruling acknowledges that  
23 compensation may be a matter of contract between the parties. Fourth, the Ruling

1 suggests a number of factors that might lead a state public utility commission to conclude  
2 that an interconnection agreement provides for compensation for ISP-bound traffic. And  
3 fifth, these factors are among the very ones that this Commission employed in ruling in  
4 the BST ISP Order.

5 **Q: Does this conclude your supplemental testimony?**

6 **A:** Yes.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail this 12th day of March, 1999, to the following:

Cathy Bedell\*  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Kimberly Caswell  
Anthony Gillman  
One Tampa City Center  
GTE Florida Incorporated  
201 North Franklin Street  
Tampa, FL 33602

  
Patrick Knight Wiggins

000261