



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

**DATE:** September 23, 1999

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (DAYO)

**FROM:** DIVISION OF LEGAL SERVICES (FORDHAM) *W.F. JB*  
DIVISION OF COMMUNICATIONS (CORDIANO) *W*

**RE:** DOCKET NO. 980520-TP - COMPLAINT BY CAPITAL SERVICES OF SOUTH FLORIDA, INC. AGAINST INTERMEDIA COMMUNICATIONS, INC. REGARDING FAILURE TO COMPLY WITH CONTRACT FOR TELECOMMUNICATIONS SERVICES.

**AGENDA:** OCTOBER 5, 1999 - REGULAR AGENDA - MOTION TO DISMISS - PARTIES MAY PARTICIPATE.

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\980520.RCM

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### CASE BACKGROUND

Intermedia Communications, Inc. (Intermedia) is a regulated Interchange Carrier. On November 12, 1997, Intermedia contracted with Capital Services of South Florida, Inc. (Capital) to provide Capital with long distance telecommunications services. On April 13, 1998, Capital filed a Complaint with this Commission, alleging that Intermedia had breached that contract. On April 15, 1998, Capital filed an Amended Complaint, wherein one paragraph was added to the original complaint. On May 5, 1998, Intermedia filed a Motion to Abate or in the Alternative Stay the Complaint of Capital. On May 15, 1998, Capital filed their Response to Intermedia Communications Inc.'s Motion to Abate or in the Alternative Stay. On June 3, 1998, Intermedia filed a reply to Capital's Response.

During the several months following the filing of the Complaint, Commission staff requested from Capital additional

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details of the alleged breach of the agreement. After significant delays in responding to these requests, on December 8, 1998, Capital provided a billing summary of the disputed terms of their Agreement with Intermedia. The summary did not show that any of the calls involved in the dispute were intrastate traffic; they were, in fact, all international. On June 23, 1999, staff was advised by Counsel for Capital that it was withdrawing from the case because of "irreconcilable differences" with Capital. Thereafter, staff contacted the replacement counsel, and advised him that, based on the materials staff had received, it appeared to staff that the Commission had no jurisdiction in this dispute. As of this date, we have heard nothing further from Capital.

There are also two Circuit Court cases pending on the same issues which are the subject of the complaint. On June 15, 1999, the Circuit Court of the Thirteenth Judicial Circuit of Florida granted partial summary judgment in favor of Intermedia and against Capital on the same issues contained in their complaint to the Commission.

#### **DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission, on its own motion, dismiss the complaint of Capital Services of South Florida, Inc., for lack of jurisdiction.

**RECOMMENDATION:** Yes. The Commission, on its own motion, should dismiss the complaint of Capital Services of South Florida, Inc., alleging violations of their resale agreement with Intermedia Communications, Inc. **(FORDHAM)**

#### **STAFF ANALYSIS:**

This complaint should be dismissed because the Commission has no jurisdiction over interstate and international service. There has been no showing that the subject matter of the complaint involves any intrastate traffic of any type. An analysis of the data provided by Capital disclosed only international calls. Capital was advised by staff on more than one occasion that, if there were intrastate matters involved in the complaint, that data should be provided immediately. To date, no such data has been forthcoming. Therefore, staff recommends that the Commission, on its own motion, dismiss the Complaint of Capital Services of South Florida, Inc., wherein they allege violations of their resale agreement with Intermedia Communications, Inc.

**ISSUE 2:** Should Intermedia Communications Inc.'s Motion to Abate or in the Alternative Stay be granted?

**RECOMMENDATION:** No. If the recommendation in Issue 1 is approved, the motion would be moot and the case closed. In the event the Commission does not on its own motion dismiss the Complaint, the recommendation to this issue would be to grant the Motion to Abate. **(FORDHAM)**

**STAFF ANALYSIS:** If the recommendation in Issue 1 is approved, there would be no need to address the motion. In the event the Commission does not on its own motion dismiss the Complaint, the recommendation to this issue would be to abate the proceedings, because the issues are presently being litigated in the Circuit Courts of the State. The disposition in the Circuit Court cases should resolve any issues contained in the Complaint to this Commission.

**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** Yes, if the Commission approves staff's recommendation on Issue 1, this docket should be closed. If, however, the Commission does not approve staff's recommendation in Issue 2, this docket should remain open pending final disposition of the court cases. **(FORDHAM)**

**STAFF ANALYSIS:** If the Commission approves staff's recommendation on Issue 1, this docket should be closed. If, however, the Commission does not approve staff's recommendation in Issue 2, the docket should remain open pending final disposition of the court cases.