

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: Request for Arbitration Concerning Complaint of Intermedia Communications Inc. against BellSouth Telecommunications, Inc. for Breach of Terms of Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 and Request for Relief

Docket No. 991534-TP

Filed: May 26, 2000

RECORDS AND REPORTING

00 MAY 26 PM 3:55

RECEIVED-PPSC

INTERMEDIA COMMUNICATIONS INC.'S MOTION FOR PROTECTIVE ORDER

COMES NOW, Intermedia Communications Inc. ("Intermedia") and files this Motion for Protective Order, stating as follows in support thereof.

- 1) On May 24, 2000, BellSouth Telecommunications, Inc., ("BellSouth") filed a Notice of Deposition by which it seeks to take the deposition of "[t]he Intermedia corporate representative with the most knowledge concerning reciprocal compensation billing by Intermedia to BellSouth in BellSouth's service territory, including Georgia" ("Second Deposition").
2) Through conversation with BellSouth counsel, Intermedia understands that BellSouth wishes to inquire into the nature of the information presented in Intermedia's bills to BellSouth for reciprocal compensation.
3) Pursuant to Rule 1.280(b)(1), Florida Rules of Civil Procedure, defining the permissible scope of discovery, Intermedia objects to such deposition on grounds that any inquiry into reciprocal compensation billing will not produce admissible information nor will it produce

information reasonably calculated to lead to the discovery of admissible evidence.

APP.
CAF
GMB
COM
CTR
EGR
LEG
OPC
PAI
RGO
SEC
SER
OTH

RECEIVED & FILED
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
06545 MAY 26 8
FPSC-RECORDS/REPORTING

214

4) The basis for Intermedia's bills to BellSouth for reciprocal compensation is no secret. This has been made clear in Intermedia's Complaint in this proceeding.¹ Intermedia bills BellSouth for the transport and termination of local traffic originating on BellSouth's network, including traffic to internet service providers ("ISPs"), at the composite tandem switching rate of \$0.01056 per MOU established in the parties' interconnection agreement dated June 21, 1996.

5) Moreover, BellSouth has never indicated to Intermedia that it failed to understand the basis for Intermedia's bills.² With the exception of its claim that ISP traffic is not eligible for reciprocal compensation,³ neither has BellSouth ever indicated a concern about the number of minutes of use stated in Intermedia's bills for which reciprocal compensation is due or for which access is due.

6) The sole issue for decision in this proceeding is whether Intermedia is right or BellSouth is right concerning the rate applicable to reciprocal compensation under the parties' interconnection agreement. BellSouth has not in its Response to Intermedia's Complaint raised Intermedia's billing practices as an issue in this proceeding and it cannot be permitted to do so now by means of the Second Deposition or any other means.

7) Thus, notwithstanding the already clear basis for Intermedia's bills to BellSouth, an inquiry seeking to go behind the bills themselves will not produce information useful to the Commission's determination of the applicable reciprocal compensation rate, particularly, information useful to the Commission's essential task of interpreting the provisions of the interconnection agreement pertinent to reciprocal compensation payments. Indeed, BellSouth

¹ See ¶25 and Exhibit J.

² See, e.g., prefiled direct testimony of Jerry Hendrix at pages 2 and 7.

³ This claim was rejected by the Commission in Order No. PSC-98-1216-FOF-TP, September 15, 1998.

should not be heard to say that the inquiry it seeks to make in the Second Deposition has anything at all to do with the issue for decision in this proceeding.

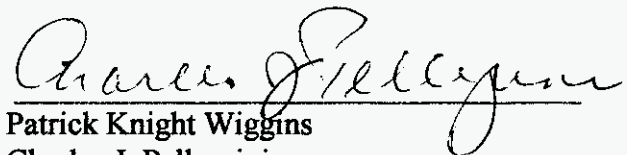
8) Furthermore, Intermedia notes that under their interconnection agreement, the parties are entitled to conduct annual audits to ensure the proper billing of traffic.⁴

9) Pursuant to Rule 1.280(c), Florida Rules of Civil Procedure, the Commission may make an order to protect a party from whom discovery is sought from annoyance or undue burden or expense that justice requires, including an order that discovery not be had.

10) Intermedia asserts that the discovery to which it here objects is of the kind to cause it annoyance and undue burden and expense in that it seeks information that is far afield of the issue in this proceeding.

WHEREFORE, Intermedia requests that, for the reasons stated, the Commission issue a protective order barring BellSouth from taking the Second Deposition as identified in the foregoing.

Respectfully submitted this 26th day of May 2000.



Patrick Knight Wiggins

Charles J. Pellegrini

Wiggins & Villacorta

2145 Delta Boulevard

Suite 200

Tallahassee, FL 32303

Tel. No. (850) 385-6007

Fax No. (850) 385-6008

⁴ See Section XIX.


CERTIFICATE OF SERVICE
Docket No. 991534-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by hand delivery* or by Federal Express Overnight Delivery this 26th day of May 2000 upon the following:

Marlene Stern*
Staff Counsel
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Nancy B. White
Michael P. Goggin
c/o Nancy H. Sims*
150 So. Monroe Street, Suite 400
Tallahassee, FL 32301

R. Douglas Lackey
E. Earl Edenfield Jr.
Bennett L. Ross
675 Peachtree Street, No. 4300
Atlanta, Georgia 30375



Charles J. Pellegrini