

E. EARL EDENFIELD, JR.  
General Attorney

BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(404) 335-0763

ORIGINAL

RECORDS AND REPORTING

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June 1, 2000

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

Re: Docket No. 991534-TP (Intermedia Arbitration)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of the Response of BellSouth Telecommunications, Inc. to Intermedia Communications, Inc.'s Motion For Protective Order, 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.

APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMP \_\_\_\_\_  
COM 2  
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RGO \_\_\_\_\_  
SEC 1  
SER \_\_\_\_\_  
OTH \_\_\_\_\_

Sincerely,  
*E. Earl Edenfield, Jr.*  
E. Earl Edenfield, Jr.

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

RECEIVED & FILED

101  
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE  
06712 JUN-18  
FPSC-RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re:	)	
	)	
Request for Arbitration Concerning Complaint of	)	Docket No. 991534-TP
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.	)	Filed: June 1, 2000
	)	

**RESPONSE OF BELL SOUTH TELECOMMUNICATIONS, INC. TO INTERMEDIA COMMUNICATIONS INC.'S MOTION FOR PROTECTIVE ORDER**

In direct contradiction to representations made to Commissioner Clark at the Pre-Hearing Conference, Intermedia Communications, Inc. ("Intermedia") now objects to BellSouth Telecommunications, Inc. ("BellSouth") taking the deposition of the Intermedia corporate representative requested by BellSouth. For the reasons set forth below, the Florida Public Service Commission ("Commission") should deny Intermedia's Motion for Protective Order.

**BACKGROUND**

In a letter dated May 4, 2000,<sup>1</sup> BellSouth notified Intermedia that BellSouth desired to take the depositions of Intermedia corporate representatives with the most knowledge concerning: (1) Intermedia's interconnection arrangements in Georgia, including but not limited to any request by Intermedia for multiple tandem access (MTA) in Georgia and (2) reciprocal compensation billing by Intermedia to BellSouth in BellSouth's service territory, including Georgia. Intermedia voiced an objection to BellSouth taking those depositions.

<sup>1</sup> A copy of the May 4, 2000 letter is attached hereto as Exhibit "A."

DOCUMENT NUMBER-DATE  
06712 JUN-18 218  
FPSC-RECORDS/REPORTING

At the May 18, 2000 Pre-Hearing Conference, BellSouth raised the issue of the depositions and Intermedia's objection thereto.<sup>2</sup> (TR, at 5.) After some discussion, Commissioner Clark determined that "the deposition should go forward." (*Id.*, at 6.) What makes Intermedia's Motion for Protective Order so egregious is the fact that counsel for Intermedia, on two separate occasions during the discussion, *agreed* that the depositions would go forward and that objections would be reserved until the hearing:

MR. PELLEGRINI: Relevant, admissible. We would agree to proceed with the deposition. And if there is testimony as a result of the deposition that we think is not admissible, we will raise that objection at the hearing.

...

COMMISSIONER CLARK: Well, it strikes me that the deposition should go forward.

MR. PELLEGRINI: Yes. And I'm not objecting to that. I just - - we expressed our objection, as I've described it, but we will go forward reserving our right to object at hearing if - -

*Id.* Eight (8) days after Commissioner Clark directed, and Intermedia agreed, that the depositions should go forward, Intermedia filed this Motion for Protective Order.<sup>3</sup>

In an attempt to resolve this discovery dispute without involving the Commission, BellSouth wrote to Intermedia advising them that Commissioner Clark had already directed that the depositions proceed. In response, Intermedia now disingenuously suggests that it did not realize the discussion at the Pre-Hearing Conference concerned both depositions, but only the

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<sup>2</sup> A copy of the transcript from the Pre-Hearing Conference is attached hereto as Exhibit "B."

<sup>3</sup> The Motion for Protective Order was filed on the Friday before a three-day weekend, when counsel for Intermedia knew that counsel for BellSouth was out of town and would not have a chance to review the Motion for Protective Order until the following Tuesday, only one week before the discovery cut-off date.

deposition of Mr. Thomas. Intermedia's new position is flawed on two grounds. First, at the Pre-Hearing Conference BellSouth made it perfectly clear that it "wanted to take *two* corporate representative depositions to be used at the hearing." (*Id.*, at 5.)(Emphasis added) Second, nowhere in the discussion does Intermedia indicate that it is objecting to only one corporate representative deposition, or otherwise indicate that the arguments presented only apply to the corporate representative deposition of Edward Thomas. In fact, at the time of the Pre-Hearing Conference, BellSouth was not even aware that Edward Thomas was going to be produced by Intermedia as a corporate representative. Clearly, Mr. Thomas was not mentioned by name at any point during the Pre-Hearing Conference.

In short, Intermedia has embarked upon a course of action that can only be described as discovery abuse. As demonstrated below, Intermedia's attempts to justify its actions are nothing more than transparent excuses that serve only to highlight the extent of the abuse.

#### ARGUMENT

The only rational conclusion to be drawn from Intermedia's conduct is that Intermedia intentionally misled the Commission and BellSouth in an attempt to preclude BellSouth from discovering evidence that Intermedia knows is detrimental to Intermedia's case. There is simply no other explanation as to why Intermedia would represent to the Commission, on the record, that the depositions would go forward and then file, eight days later, a Motion for Protective Order. This conduct is exacerbated by the fact that Intermedia, at the Pre-Hearing Conference, made the same relevancy arguments it now presents in the Motion for Protective Order. Intermedia's relevancy arguments were rejected at the Pre-Hearing Conference and should be rejected here as well. Notwithstanding, BellSouth will explain the relevancy of the billing information it seeks.

The issue to be decided in this proceeding is ultimately very simple -- is the Rate Amendment to the Interconnection Agreement applicable only to multiple tandem access ("MTA") arrangements or applicable to all local traffic. Intermedia takes the position that the Rate Amendment applies only in situations where Intermedia utilizes an MTA arrangement in a state to route traffic. Thus, under Intermedia's interpretation, Intermedia should bill BellSouth at what Intermedia calls "MTA rates" in those states where an MTA arrangement is used by Intermedia to route traffic.

What Intermedia seeks to hide through its Motion for Protective Order is the fact that in those states where Intermedia has MTA arrangements, Intermedia does not bill BellSouth at the "MTA rates." Instead, Intermedia bills BellSouth at the rates for local traffic set forth in the original Interconnection Agreement, which are significantly higher than the local traffic rates found in the Rate Amendment. Clearly, Intermedia's "MTA rates only" interpretation of the Rate Amendment is simply a contrived justification for Intermedia having over-billed BellSouth for tens-of-millions of dollars of reciprocal compensation. It is this inconsistency between Intermedia's stated position and its conduct that BellSouth seeks to explore through the corporate representative depositions.

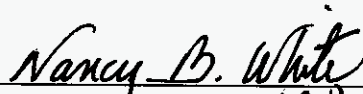
#### CONCLUSION


Unfortunately, Intermedia's conduct puts this proceeding in a posture where less than two weeks before the hearing -- and less than one week before the discovery cut-off date -- a major discovery dispute has arisen. Thus, BellSouth respectfully requests that the Commission resolve Intermedia's Motion for Protective Order on an expedited basis, such that BellSouth can take the deposition, have it transcribed and available to introduce into evidence at the hearing. At this point, the only remedy for Intermedia's actions may be to continue the proceeding to allow

BellSouth to complete the deposition. At a minimum, BellSouth respectfully submits that the Commission should require Intermedia to produce the corporate representative for deposition at BellSouth's offices in Atlanta next week and order Intermedia to bear all costs associated with that deposition.

Respectfully submitted this 1<sup>st</sup> day of June 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

  
\_\_\_\_\_  
NANCY B. WHITE (BN)  
c/o Nancy Sims  
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Tallahassee, Florida 32301  
(305) 347-5558

  
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E. EARL EDENFIELD JR.  
BENNETT L. ROSS  
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214667

E. Earl Edenfield, Jr.  
General Attorney

BellSouth Telecommunications, Inc.  
Legal Department - Suite 4300  
875 West Peachtree Street  
Atlanta, Georgia 30375-0001  
Telephone: 404-335-0763  
Facsimile: 404-658-9022

May 4, 2000

VIA FACSIMILE AND US MAIL

Charles J. Pellegrini  
WIGGINS & VILLACORTA, P.A.  
2145 Delta Boulevard, Suite 200  
Tallahassee, Florida 32303

RECEIVED  
MAY 10 2000

DIRECTOR - REG. RELATIONS  
TALLAHASSEE, FL

Re: FPSC Docket No. 991534-TP (Intermedia v. BellSouth)

Dear Charlie,

As you are aware, there is a Pre-Hearing Conference set in this matter for May 18, 2000. In preparation for that conference, I have reviewed Intermedia's responses to BellSouth's discovery and some questions have arisen that I hope we can resolve short of a formal discovery motion. Specifically, Intermedia responds to a number of interrogatories and request for production "subject to, and without waiving the foregoing objection..." (Interrogatories Nos. 1, 7, 8, 9, 11, 12, 13, 14 and 15; Request for Production No. 9). I need for Intermedia to confirm that the responses to the referenced Interrogatories and Request for Production are indeed complete notwithstanding the objection (i.e., no information was withheld because of the objection).

Further, I request that Intermedia provide better responses to the following Interrogatories and Requests for Production:

Interrogatories 4 and 5: Intermedia contends that the list is complete, yet not exclusive. As Intermedia was asked to identify "any and all documents," Intermedia is obligated to provide an exhaustive list. In response to Interrogatory 14, Intermedia references a March 99 correspondence that I did not see in the list of documents provided in response to Interrogatories 4 and 5. Additionally, in response to Interrogatory 9, Intermedia references various documents concerning an ASR and subsequent revocation that are also not mentioned in the list of documents responsive to Interrogatories 4 and 5. Therefore, I have serious concerns about the completeness of Intermedia's response.

Interrogatory 6: Intermedia responds that there are no documents "in its possession." Please confirm that by possession Intermedia means "custody, control or available."

Interrogatory 11: Intermedia's response appears to be relative to Florida, although the interrogatory is not limited as such. Please confirm that the answer is the same regardless of

EXHIBIT A

geographic location or, if the answer is not the same, provide a more complete answer. Also, please provide the details, in accordance with the information requested in the interrogatory, concerning the "executive conference" referenced in Intermedia's response. Finally, I need Intermedia to provide the date of "Intermedia's response" so as to confirm that BellSouth has a copy of that document.

Interrogatory 12: Although Intermedia is correct in identifying where the rates in the "FL" column originated, Intermedia never responds to the ultimate question of whether Intermedia intended to include those rates in the "FL" column of the Attachment to the Amendment. Please provide that response.

Interrogatory 13: While BellSouth appreciates that the Order "speaks for itself," Intermedia never answers the question of whether Intermedia agrees that the rate was approved in the referenced dockets. While a response of "it speaks for itself" may be sufficient in an Answer to a Complaint, it is clearly not sufficient as a discovery response. As to relevance, the rates in the Attachment to the Amendment, as well as the origins of those rates and how they made their way into the Interconnection Agreement are clearly relevant to this proceeding.

Requests for Production 2, 3, 6, 8 and 9: These requests seek the documents in Interrogatories 4, 5, 9, 11 and 14, as well as any document referenced by Intermedia in responding to BellSouth's Interrogatories. BellSouth reiterates its concerns as set forth in the discussion of the individual Interrogatories above. Further, Intermedia's response that the requested documents "are or should be in the possession of BellSouth" is inappropriate. So as to avoid a potential argument later over whether a document was or should have been produced, BellSouth requests that Intermedia provide copies of all of the documents requested, even those presumably already in BellSouth's possession.

The final issue we need to discuss is the setting of depositions. I want to take an Intermedia corporate representative deposition of the person/people with the most knowledge concerning (1) Intermedia's interconnection arrangements in Georgia, including but not limited to any request by Intermedia for multiple tandem access (MTA) in Georgia and (2) reciprocal compensation billing by Intermedia to BellSouth in BellSouth's service territory, including Georgia. Please let me know whether I need to send a Notice of Deposition, or whether Intermedia will just agree to produce this person/people.

Given the limited time before the Pre-Hearing Conference, we need to resolve these issues prior to May 10, 2000. This way, if it becomes necessary to file a Motion to Compel, you will have time to respond prior to the Pre-Hearing Conference. Charlie, please give me a call tomorrow or Monday to discuss this matter further.

Very truly yours,



E. Earl Edenfield Jr.



BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 991534-TP  
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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 :  
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\*  
\* ELECTRONIC VERSIONS OF THIS TRANSCRIPT \*  
\* ARE A CONVENIENCE COPY ONLY AND ARE NOT \*  
\* THE OFFICIAL TRANSCRIPT OF THE HEARING \*  
\* AND DO NOT INCLUDE PREFILED TESTIMONY. \*  
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PROCEEDINGS: PREHEARING CONFERENCE  
  
BEFORE: COMMISSIONER SUSAN F. CLARK  
Prehearing Officer  
  
DATE: Thursday, May 18, 2000  
  
TIME: Commenced at 1:30 p.m.  
Concluded at 1:35 p.m.  
  
PLACE: Betty Easley Conference Center  
Room 152  
4075 Esplanade Way  
Tallahassee, Florida  
  
REPORTED BY: TRICIA DeMARTE  
Official FPSC Reporter  
(850) 413-6736

## 1 APPEARANCES:

2 CHARLIE PELLEGRINI, Wiggins & Villacorta, P. A.,  
3 2145 Delta Boulevard, Suite 200, Tallahassee, Florida  
4 32303, appearing on behalf of Intermedia Communications,  
5 Inc.

6 E. EARL EDENFIELD, BellSouth Telecommunications,  
7 Inc., c/o Nancy Sims, 150 South Monroe Street, Suite 400,  
8 Tallahassee, Florida 32301, appearing on behalf of  
9 BellSouth Telecommunications, Inc.

10 FELICIA BANKS, Florida Public Service  
11 Commission, Division of Legal Services, 2540 Shumard Oak  
12 Boulevard, Tallahassee, Florida 32399-0850, appearing on  
13 behalf of the Commission Staff.

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FLORIDA PUBLIC SERVICE COMMISSION

## P R O C E E D I N G S

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COMMISSIONER CLARK: We'll call the prehearing to order. Would you, please, read the notice.

MS. BANKS: By notice issued May 2nd, 2000, this time and place has been set for a prehearing conference in the Docket 991534-TP regarding the request for arbitration concerning the complaint of Intermedia Communications against BellSouth Telecommunications for breach of terms of the interconnection agreement under Sections 251 and 252 of the Telecommunications Act of 1996, and request for relief. The purpose is set forth in the notice.

COMMISSIONER CLARK: We'll take appearances. BellSouth?

MR. EDENFIELD: Kip Edenfield on behalf of BellSouth.

MR. PELLEGRINI: Charles Pellegrini on behalf of Intermedia Communications.

MS. BANKS: Felicia Banks, appearing on behalf of the Commission Staff.

COMMISSIONER CLARK: Okay. Thank you very much. I understand -- I have looked over the prehearing order. What I'm just going to do is ask if there are any changes to the prehearing order.

MR. PELLEGRINI: Commissioner Clark, I might mention that I filed this morning a motion for leave to

1 file surrebuttal testimony.

2 COMMISSIONER CLARK: Okay. Let's deal with the  
3 prehearing order first and see if there is any changes to  
4 it. Does BellSouth have any?

5 MR. EDENFIELD: BellSouth has none.

6 COMMISSIONER CLARK: Mr. Pellegrini, does  
7 Intermedia have any?

8 MR. PELLEGRINI: If you'll give me just a short  
9 moment.

10 COMMISSIONER CLARK: Okay. Ms. Banks, is there  
11 other issues? Are there any pending motions beyond the  
12 request for surrebuttal?

13 MS. BANKS: BellSouth has not had an opportunity  
14 to file --

15 COMMISSIONER CLARK: Respond to the motion?

16 MS. BANKS: Yes.

17 COMMISSIONER CLARK: Okay.

18 MS. BANKS: At this time, Staff is unaware of  
19 any outstanding motions or any other preliminary matters.

20 COMMISSIONER CLARK: Okay.

21 MR. EDENFIELD: There may be when we get to that  
22 point, Commissioner Clark, there may be one other, and it  
23 will concern depositions that Mr. Pellegrini and I have  
24 discussed. And he has voiced an objection to me wanting  
25 to take those, but there has been no formal motion filed

1 yet.

2 MR. PELLEGRINI: I have no problem with the  
3 prehearing order, Commissioner Clark, as it stands.

4 COMMISSIONER CLARK: Mr. Edenfield?

5 MR. EDENFIELD: I have no problems with the  
6 prehearing order.

7 COMMISSIONER CLARK: All right. Now, there is  
8 an issue regarding discovery?

9 MR. EDENFIELD: I don't want to put words in  
10 Mr. Pellegrini's mouth. I sent a letter to him. We had  
11 worked out a number of discovery disputes satisfactorily  
12 to both parties.

13 COMMISSIONER CLARK: Uh-huh.

14 MR. EDENFIELD: I had indicated that I wanted to  
15 take two corporate representative depositions to be used  
16 at the hearing. Mr. Pellegrini indicated that they would  
17 not agree to those, but I have not yet filed a formal  
18 motion. But instead of having to do this again later, I  
19 will just bring it up now.

20 MR. PELLEGRINI: Well, our objection,  
21 Commissioner Clark, was, I think, somewhat more limited  
22 than Mr. Edenfield has represented it. I objected to the  
23 taking of a -- the deposition of an Intermedia corporate  
24 representative to the extent that the questioning would  
25 pursue the Intermedia/BellSouth interconnection

1 arrangements in Georgia, but not so far as they might  
2 pursue those arrangements in Florida, of course.

3 COMMISSIONER CLARK: Well, Mr. Pellegrini, if  
4 you have to object on the basis it's not designed to lead  
5 to whatever the standard is then --

6 MR. PELLEGRINI: Admissible evidence, yes.  
7 Well, and we --

8 COMMISSIONER CLARK: No, relevant evidence.

9 MR. PELLEGRINI: Relevant, admissible. We would  
10 agree to proceed with the deposition. And if there is  
11 testimony as a result of the deposition that we think is  
12 not admissible, we will raise that objection at hearing.

13 COMMISSIONER CLARK: Well, how can there be  
14 any -- is there an opportunity to file any more testimony  
15 in this docket?

16 MR. PELLEGRINI: No, not so far as the  
17 procedural order is concerned. No.

18 COMMISSIONER CLARK: Well, it strikes me that  
19 the deposition should go forward.

20 MR. PELLEGRINI: Yes. And I'm not objecting to  
21 that. I just -- we expressed our objection, as I've  
22 described it, but we will go forward reserving our right  
23 to object at hearing if --

24 COMMISSIONER CLARK: If the deposition is -- if  
25 they attempt to enter it in the record.

1 MR. PELLEGRINI: -- they go beyond the limits of  
2 relevancy, yes.

3 COMMISSIONER CLARK: All right. I guess that's  
4 solved, Mr. Edenfield.

5 MR. EDENFIELD: That's good. As far as the  
6 motion to file surrebuttal, I have not seen that. So I  
7 couldn't even begin to formulate a response to it because  
8 I don't know the basis for it.

9 COMMISSIONER CLARK: When is the hearing in  
10 this?

11 MS. BANKS: Commissioner, the hearing is set for  
12 June 13th.

13 COMMISSIONER CLARK: Okay. That gives us time  
14 to rule on it. So when we have the response, if you would  
15 bring it to me with a recommendation, we'll make a ruling.

16 MR. PELLEGRINI: Very well.

17 COMMISSIONER CLARK: Is there anything else we  
18 need to take up at this time?

19 MS. BANKS: Commissioner, there are no other  
20 preliminary matters that Staff is aware of at this time.

21 COMMISSIONER CLARK: Okay. Thank you all very  
22 much. This prehearing is adjourned.

23 (The hearing concluded at 1:35 p.m.)

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2 STATE OF FLORIDA)

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: CERTIFICATE OF REPORTER

4 COUNTY OF LEON )

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6 I, TRICIA DeMARTE, Official FPSC Commission Reporter, do  
7 hereby certify that the Prehearing Conference in Docket  
8 No. 991534-TP was heard by the Prehearing Officer at the  
9 time and place herein stated.

10 It is further certified that I stenographically  
11 reported the said proceedings; that the same has been  
12 transcribed under my direct supervision; and that this  
13 transcript, consisting of 7 pages, constitutes a true  
14 transcription of my notes of said proceedings.

15 I FURTHER CERTIFY that I am not a relative, employee,  
16 attorney or counsel of any of the parties, nor am I a  
17 relative or employee of any of the parties' attorneys or  
18 counsel connected with the action, nor am I financially  
19 interested in the action.

20 DATED THIS 22ND DAY OF MAY, 2000.

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TRICIA DeMARTE  
FPSC Official Commission Reporter  
(850) 413-6736

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**CERTIFICATE OF SERVICE  
Docket No. 991534-TP**

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

(\*) Facsimile and U.S. Mail this 1st day of June, 2000 to the following:

Marlene Stern (\*)  
C. Lee Fordham  
Staff Counsel  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**(+) Signed Protective Agreement**

Scott Sapperstein (+)  
Senior Policy Counsel  
Intermedia Communications, Inc.  
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Tampa, FL 33619  
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Fax. No. (813) 829-4923

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E. Earl Edenfield, Jr. (A)