

LAW OFFICES  
**MESSER, CAPARELLO & SELF**  
A PROFESSIONAL ASSOCIATION

215 SOUTH MONROE STREET, SUITE 701  
POST OFFICE BOX 1876  
TALLAHASSEE, FLORIDA 32302-1876  
TELEPHONE: (850) 222-0720  
TELECOPIER: (850) 224-4359  
INTERNET: www.lawfla.com

November 16, 2000

**ORIGINAL**  
RECEIVED-FPSC  
00 NOV 16 PM 3:43  
RECORDS AND REPORTING

**BY HAND DELIVERY**

Ms. Blanca Bayó, Director  
Division of Records and Reporting  
Room 110, Easley Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Re: FPSC Docket No. 000690-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of Intermedia Communications, Inc., Phone One, Inc., NTC, Inc., and National Telephone are the following documents:

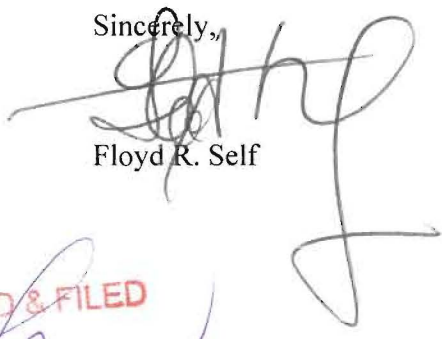
1. An original and fifteen copies of a Motion to Reconsider to Clarify the Commission Audit; **14835-00**
2. An original and fifteen copies of a Request for Oral Argument on Motion to Reconsider to Clarify the Commission Audit. **14836-00**

Also enclosed is a 3 1/2" diskette with the Motion to Reconsider to Clarify the Commission Audit on it in WordPerfect 9.0 format.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,



Floyd R. Self

DOCUMENT NO.  
14835-00  
11-16-00

APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMP 1 \_\_\_\_\_  
COM 3 \_\_\_\_\_  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
LEG 2 \_\_\_\_\_  
OPC \_\_\_\_\_  
PAL \_\_\_\_\_  
FPO \_\_\_\_\_  
SEC 1 \_\_\_\_\_  
SER \_\_\_\_\_  
OTH \_\_\_\_\_

FRS/amb  
Enclosure

cc: Scott Sapperstein, Esq.  
Parties of Record

RECEIVED & FILED  
FPSC BUREAU OF RECORDS

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by BellSouth Telecommunications, Inc. )  
 against Intermedia Communications, Inc., Phone One, Inc., )  
 NTC, Inc., and National Telephone of Florida regarding ) Docket No. 000690-TP  
 reporting of percent interstate usage for compensation ) Filed: November 16, 2000  
 for jurisdictional access services. )  
 \_\_\_\_\_ )

**INTERMEDIA COMMUNICATIONS, INC.'S  
MOTION TO RECONSIDER TO CLARIFY THE COMMISSION AUDIT**

Intermedia Communications Inc., Phone One, Inc., NTC, Inc., and National Telephone of Florida (hereinafter collectively "Intermedia"), pursuant to Rule 25-22.060, Florida Administrative Code, file this Motion to Reconsider to Clarify the Commission Audit ("Motion") directed by Order No. PSC-00-2081-PAA-TL ("Order") issued on November 1, 2000, by the Florida Public Service Commission ("Commission"). In support of the limited relief sought by this Motion, Intermedia states:

**I. INTRODUCTION**

1. On June 5, 2000, BellSouth Telecommunications, Inc. ("BellSouth") filed its Complaint to initiate this docket alleging, inter alia, that Intermedia had misreported its PIU in violation of BellSouth's tariff. Intermedia timely filed a motion to dismiss, or in the alternative, to stay BellSouth's Complaint pending the completion of the audit required by BellSouth's tariff.

2. In its Order, this Commission denied Intermedia's motion to dismiss or stay. However, in doing so, the Commission directed the Commission Staff "to conduct an audit regarding Intermedia's PIU in this proceeding for the reporting period raised in BellSouth's complaint." Order, at 6. At this time, Intermedia is not seeking reconsideration of the denial of its motion to

dismiss or stay. However, Intermedia seeks reconsideration for the limited purpose of clarifying the scope and parameters of the Commission's directive for a Commission audit.

3. Intermedia recognizes that a motion for reconsideration requires a demonstration that the Commission failed to consider or overlooked a point of law or fact, and that under the circumstances it would be appropriate for the Commission to grant reconsideration or clarification. Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974). In the instant situation, Intermedia is seeking clarification only of the Commission audit, which was not a part of Intermedia's motion to dismiss or stay nor BellSouth's Complaint. While Intermedia welcomes the Commission's directive for an audit by the Commission Staff, there are certain specific technical questions that must be resolved before the Commission audit can proceed. These issues are presented not to reargue matters that have been considered, but to bring pertinent issues to the attention of the Commission in connection with the audit. To that end, Intermedia requests that the Commission grant reconsideration and clarify certain aspects of the Commission audit.

## **II. ISSUES FOR RECONSIDERATION AND CLARIFICATION**

4. The directive in the Order is for an audit based upon the reporting period raised in BellSouth's Complaint. The immediate difficulty with this directive is that the Complaint does not specify a period of time. On this basis alone, then, the Order requires clarification.

5. Intermedia's analysis of BellSouth's Complaint suggests that BellSouth may be attempting to backbill a recalculated PIU for multiple years and for companies prior to their acquisition by Intermedia. If the intent of the Commission audit is to evaluate multiple years worth of data, this would present an extremely burdensome and difficult task. If the intent is to attempt

to retroactively apply a mere sample of current data for multiple years, and for companies prior to their acquisition by Intermedia, as BellSouth may have done, such an approach likely would not have much relevance. Quite simply, due to the nature of the changes in Intermedia's network and the fact that it has acquired different companies that have had different traffic mixes and served different customers, the further back in time one travels the greater the variables and the greater the margin of error. Indeed, if BellSouth had proceeded on the basis of its original audit request, it would have only been able to reach back one quarter, as any attempt to backbill any earlier would be a clear violation of BellSouth's tariff. Thus, the Order requires further clarification to establish that not every quarter will be audited and that the audit will not reach back prior to the period subject to the original audit request.

6. The Commission Staff has already proceeded to seek information both from BellSouth and Intermedia. The information requested from Intermedia includes the period October 1999 to March 2000, or two quarters worth of data. Assuming the withdrawn original audit had proceeded, it would have only investigated one quarter's worth of data. Intermedia believes it has data from the six month period requested, and has instructed the relevant employees that any audit-related data not be destroyed until further notice. However, while it is burdensome to Intermedia, as well as to the auditors, to investigate one quarter's worth of data, to require six months worth of data would be highly burdensome and require more than a doubling of work, since the older the data the more difficult it is to locate, extract, and compile. Thus, Intermedia seeks clarification to limit the Commission audit to only one quarter's worth of data.

7. Assuming the Commission audit establishes a new PIU, it is necessary to establish how far back Intermedia may be backbilled, assuming a new PIU, as this can assist in determining

the quarter to be audited. BellSouth's tariff is very explicit regarding backbilling. In the PIU section, the tariff states that BellSouth shall backbill any changed PIU only on the basis of an audit and only for the quarter audited and for the immediate quarter prior to the audit. BellSouth Access Tariff, Section E2.3.14(D)(1), page 16. Thus, it is necessary to clarify how far back BellSouth may apply a new PIU, assuming the audit results in a new PIU, in order to rightfully determine the period to be audited.

### III. ANALYSIS AND ARGUMENT

8. The primary facts in connection with the original BellSouth audit are as follows: On October 13, 1999, Intermedia received a fax from Deloitte and Touche, BellSouth's auditors, that transmitted a draft letter setting forth the proposed audit procedures that would formally govern the original audit. After a series of discussions between the two companies regarding the proposed audit procedures, by a letter dated March 22, 1999 (the year is misdated on the letter, it was really 2000), BellSouth notified Intermedia that it was suspending the audit, although BellSouth asserted its right to "reinstate the audit at a later date." On June 5, 2000, BellSouth filed its Complaint with this Commission.

9. The primary tariff provision affecting this docket is the language regarding the backbilling of a new PIU produced by the audit. This section of the access tariff provides in relevant part: "The PIU resulting from the audit shall be applied to the usage for the quarter the audit was completed, the usage for the quarter prior to completion of the audit, and to the usage for the two (2) quarters following completion of the audit." BellSouth Access Tariff, Section E2.3.14(D)(1), page 16.

10. In view of these facts and the limitation in the tariff, the appropriate quarter to audit is the quarter the Complaint was filed, i.e., the second quarter of 2000. This means that the extent of any backbilling by BellSouth would be limited to the first quarter of 2000. Quite simply, BellSouth withdrew its earlier request for the audit. Thus, the relevant time for the Commission audit would be the second quarter 2000, with any backbilling reaching back only to January 1, 2000.

11. If the Commission believes that it should proceed on the basis of the original audit request, the earliest date that could be backbilled would be usage back to July 1, 1999. BellSouth formally began the audit process when Deloitte and Touche faxed the proposed audit procedures on October 13, 1999. The draft audit procedures sought to audit data for the first quarter of 1999. However, assuming Intermedia had agreed to the Deloitte and Touche terms, and the audit had proceeded on that basis, the earliest the audit could have been completed would have been the fourth quarter of 1999. Thus, under the most favorable of circumstances for BellSouth, the absolute earliest period that could be backbilled by BellSouth pursuant to its tariff and the original audit would have been only to July 1, 1999. The key is the tariff phrase "completion of the audit" quoted in paragraph 9 above. Even assuming the original audit had produced a new PIU, the audit results would have been applied to the quarter the audit was completed (the fourth quarter 1999), the period prior to the completion of the audit (the third quarter 1999), and the two quarters following the completion of the audit (the first and second quarters of 2000). This should be the maximum reach of any Commission audit, as this would be the result under BellSouth's own audit had it occurred without any interruption.

12. Intermedia would be willing to stipulate to a different quarter for purposes of conducting the audit, and Intermedia believes that the first quarter 2000 data requested by the Staff

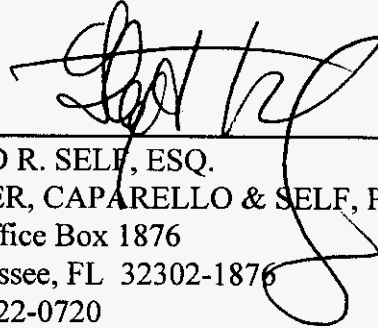
would be appropriate. However, any stipulated audit period must be contingent upon agreement of the parties or a decision of this Commission that BellSouth may not backbill any earlier than the quarter indicated herein.

13. BellSouth is required by law to comply with the terms of its own tariff. By filing its Complaint, BellSouth should not be able to obtain any better result than if it had followed its tariff and conducted the audit as it was intended at that time. Thus, the Commission audit should proceed on the same basis as, and as a substitute for, the audit originally sought by BellSouth. If the audit is conducted in this manner, it may be possible to resolve all outstanding issues between the parties on the basis of this audit without any further proceedings before the Commission.

14. The issues raised by this Motion for the purpose of seeking reconsideration to clarify the scope of the audit and the potential period for any backbilling require Commission action so that the audit can proceed in an orderly, proper manner. Intermedia takes the Commission's decision very seriously, and welcomes the opportunity to have an impartial audit, such as is contemplated by the audit provisions of the BellSouth tariff. Intermedia has been attempting to identify and compile the relevant data. Unfortunately, at this point the scope of the audit is so broad, and the consequences so unlimited, that Intermedia is unable to meaningfully proceed. Intermedia genuinely believes that the requested clarification resolves the uncertainty and will enable the Commission to proceed with the audit in an expeditious and efficient manner.

WHEREFORE, Intermedia Communications, Inc. respectfully requests that the Order No. PSC-00-2081-PAA-TL, issued on November 1, 2000, be reconsidered and clarified as described herein to set a quarter to be audited and the extent of any backbilling that may arise out of a new PIU arising out of the Commission audit.

Respectfully submitted this 16th day of November, 2000.



FLOYD R. SELF, ESQ.  
MESSER, CAPARELLO & SELF, P. A.  
Post Office Box 1876  
Tallahassee, FL 32302-1876  
(850) 222-0720

and

Jonathan E. Canis  
Kelley Drye & Warren, L.L.P.  
1200 19<sup>th</sup> Street, N.W., Suite 500  
Washington, DC 20036  
(202) 955-9664

Attorneys for Intermedia Communications, Inc.



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of Intermedia Communications, Inc., Phone One, Inc., NTC, Inc., and National Telephone's Motion to Reconsider to Clarify the Commission Audit in Docket No. 000690-TP have been served upon the following parties by Hand Delivery (\*) and/or U. S. Mail this 16th day of November, 2000.

Timothy Vaccaro, Esq.\*  
Division of Legal Services, Room 370  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Lisa S. Foshee, Esq.  
c/o Nancy H. Sims  
BellSouth Telecommunications, Inc.  
150 South Monroe Street, Suite 400  
Tallahassee, FL 32301

  
\_\_\_\_\_  
Floyd R. Self