

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Contract Service )  
Arrangements Tariff of BellSouth )  
Telecommunications, Inc. )

---

Docket No. 960687-TP  
Filed: May 31, 1996

PETITION

Pursuant to Rule 25-22.036, Florida Administrative Code, Intermedia Communications of Florida, Inc. ("Intermedia") hereby petitions the Commission to issue an order declaring invalid the tariff of BellSouth Telecommunications Inc. (BellSouth) as it relates to Contract Service Arrangements ("CSAs") and directing BellSouth to file an amended tariff that is in compliance with Chapter 364, Florida Statutes generally and Section 364.051, Florida Statutes, specifically.

PROCEDURAL INFORMATION

1. The exact name of Petitioner and the address of its principal business office is:

Intermedia Communications  
of Florida, Inc.  
3625 Queen Palm Drive  
Tampa, Florida 33619-1309

2. All notices, pleadings and orders should be directed to:

Patrick K. Wiggins  
Wiggins & Villacorta, P.A.  
501 East Tennessee Street  
Suite B  
Post Office Drawer 1657  
Tallahassee, Florida 32302  
(904) 222-1534

Patricia Kurlin  
Intermedia Communications  
of Florida, Inc.  
3625 Queen Palm Drive  
Tampa, Florida 33619-1309  
(813) 621-0011

DOCUMENT NUMBER-DATE

06027 MAY 31 96

FPSC-RECORDS/REPORTING

3. Intermedia is a certificated Alternative Access Vendor, Alternative Local Exchange Company (ALEC), Shared Tenant Service Provider and Interexchange Carrier. Intermedia has standing to bring this petition because its regulated intrastate operations are directly and negatively affected by BellSouth's ultra vires use of CSAs.

#### INTRODUCTION

4. On April 15, 1996, BellSouth filed tariff revision T-96-300, which bore an effective date of April 30, 1996. This filing changed certain provisions in BellSouth's General Subscriber Service Tariff Section 5.7.1 relating to CSAs by (a) eliminating language that restricted the types of services available under CSAs and (b) adding the following language:

Contract service arrangements may be offered on any non-basic service in this tariff that satisfies the requirements specified in this section of the tariff. Contract service arrangements may be offered for a basic service only if the basic service is offered as part of a package with non-basic services.

In sum, the tariff revision attempts to expand CSA authority by removing restrictions on the kinds of services that might be provided under CSAs while adding language that allows BellSouth to combine basic services with non-basic services under a CSA.

5. The tariff revision was filed fifteen days before its effective date, and thus apparently was filed pursuant to Section 364.051(6)(a), Florida Statutes. This section provides in part as follows:

Each company subject to this section shall maintain tariffs with the Commission containing the terms, conditions and rates for each of its non-basic services and may set or change on 15 days notice the rate for each of its non-basic services . . .

**BELLSOUTH'S CSA TARIFF IS INVALID**

6. The Commission must declare BellSouth's current CSA tariff invalid for at least three reasons. First, it is ultra vires because it does not conform to the statutory standard for authorizing CSAs. Second, it contemplates the premature use of CSAs, which will result in proscribed unjust discrimination. Finally, to the extent that it reflects the changes intended by BellSouth's tariff revision T-96-300, it is void ab initio because that filing did not qualify for the 15 day notice provision of Section 364.051(6)(a), Florida Statutes.

New Statutory Standard for CSAs

7. The current tariff does not adopt the new CSA standard for CSA authority contained in Section 364.051(6), but rather continues the historical standard. Under Commission policy in place before the adoption of Chapter 95-403, Laws of Florida, CSAs were allowed as exceptions to the LEC's tariff offerings where there was a "reasonable potential for uneconomic bypass." Moreover, the "reasonable potential for uneconomic bypass" meant that there must be a "direct potential" for bypass before the LEC could use its CSA authority.<sup>1</sup>

---

<sup>1</sup> See generally, Order No. PSC-95-0926-FOF-TL, Docket No. 950011-TL, In re: Investigation into use of Contract Service Arrangements of BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company in Monroe County.

8. The historical "potential bypass standard" remained applicable to BellSouth until January 1, 1996, the day it became subject to price regulation. On that day BellSouth's CSAs became subject to a new standard under Section 364.051(6)(a), Florida Statutes, the key language of which provides as follows:

Nothing contained in this section shall prevent the local exchange telecommunications company from meeting offerings by any competitive provider of the same, but functionally equivalent, non-basic services in a specific geographic market or to a specific customer by deaveraging the price of any non-basic service, packaging non-basic services together or with basic services, using volume discounts and term discounts and offering individual contracts. However, the local exchange telecommunications company shall not engage in any anti-competitive act or practice, nor unreasonably discriminate among similarly situated customers. (emphasis added)

This new standard is narrower and more specific than the historical standard. It requires not just a "reasonable potential" for "direct bypass," but an actual offering from a competitor which needs to be met by the LEC.

9. BellSouth's current CSA tariff fails to conform to this new, more narrow, i.e., it does not restrict CSAs to situations where BellSouth is "meeting offerings by any competitive provider of the same, or functionally equivalent non-basic services in a specific geographic market or to a specific customer . . . ." On the contrary, BellSouth's current CSA tariff announces the general availability of CSAs irrespective of the offerings of a competitive provider. Under the tariff BellSouth may enter into a CSA in

---



anticipation of competition, not in response to a functionally equivalent competitive offering in a specific geographic market or to a specific customer.

The new, more narrow standard was designed to allow BellSouth to respond flexibly to specific competitive offerings, not to allow it to preempt competition generally. BellSouth's current tariff does not comply with the statutory standard and must be corrected.

#### Unjust Discrimination

10. Because the tariff does not comply with the more narrow statutory standard, it contemplates the premature use of CSAs. The premature use of CSAs will unreasonably discriminate among customers. Even though the statute allows BellSouth the flexibility of CSAs in particular circumstances, it also provides that BellSouth may not ". . . unreasonably discriminate among similarly situated customers." Intermedia respectfully suggests that this standard can only be met when BellSouth is responding to a specific offering of a competitor.

#### BellSouth Tariff Revision T-96-300 Void Ab Initio

11. BellSouth apparently filed its tariff revision T-96-300 under the assumption that it was "presumptively valid" and subject to the 15 day notice provisions of Section 364.051(6)(a), Florida Statutes. This tariff filing does not qualify for the 15 day notice provision, however.

Under Section 364.051(6)(a), BellSouth may "set or change on 15 days notice the rate for each of its non-basic services . . . ." (emphasis added) Tariff revision T-96-300 does not set or change

a rate on 15 days notice; on the contrary, it purports to allow expanded use of CSAs so that tariffed rates can be ignored without notice. Additionally, there is no provision in Chapter 364 that allows BellSouth to file a tariff affecting the terms and conditions of basic service upon 15 days notice. Because T-69-300 did not qualify for the 15 day notice provision of Section 364.051(6)(a), the filing was void ab initio.

#### RELIEF REQUESTED

12. Given the flaws of BellSouth's current CSA tariff Intermedia requests that the Commission enter an order:

- a. declaring the current CSA tariff invalid;
- b. forbidding BellSouth to enter into any CSA unless the CSA is necessary to meet a functionally equivalent offering by a competitor; and
- c. directing BellSouth to file a revised CSA tariff that fully complies with Section 364.051 (6)(a), Florida Statutes, by tracking the standards of that section.

#### ISSUES OF MATERIAL FACT, POLICY AND LAW IN DISPUTE

13. Intermedia does not know what issues of material fact, policy and law are or will be in dispute in this proceeding. Nevertheless, Intermedia believes that the central issue in dispute will be as follows:

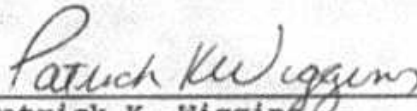
Does BellSouth's current CSA tariff (General Subscriber Tariff A.5.7) comply with Section 364.051(6)(a), Florida Statutes?

**CONCLUSION**

For the reasons provided above, Intermedia respectfully requests that the Commission enter its order granting the relief requested herein, or, in the alternative, setting this matter for formal hearing pursuant to Section 120.57(1), Florida Statutes.

DATED this 31st day of May, 1996.

Respectfully submitted,



---

Patrick K. Wiggins  
Wiggins & Villacorta, P.A.  
501 East Tennessee Street  
Suite B  
Post Office Drawer 1657  
Tallahassee, Florida 32302  
(904) 222-1534

Attorneys for Intermedia  
Communications of Florida, Inc.

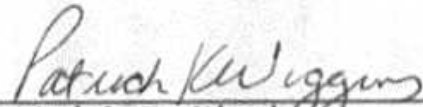
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition filed by Intermedia Communications of Florida, Inc. has been served by U.S. Mail this 31st day of May, 1996, on the following:

Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street  
Room 812  
Tallahassee, Florida 32399-1400

Nancy H. Sims  
BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Suite 400  
Tallahassee, Florida 32302

  
\_\_\_\_\_  
Patrick K. Wiggins