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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive Review of the Revenue Requirements and Rate Stabilization Plan of Southern Bell Telephone and Telegraph Company) Docket No. 920260-TL
)
) Filed: 9/20/96
)

REPLY OF INTERMEDIA COMMUNICATIONS INC. TO
BELLSOUTH'S RESPONSE AND OPPOSITION TO
INTERMEDIA'S MOTION FOR LEAVE TO FILE AMENDED DIRECT TESTIMONY

Intermedia Communications Inc. (ICI), hereby files this its reply to BellSouth's Response and Opposition to ICI's Motion for Leave to File the Amended Direct Testimony of Thomas E. Allen. For ease of reference, BellSouth's pleading is hereafter referred to as "Response and Opposition."

BACKGROUND

1. On August 14, 1996, ICI timely filed the Direct Testimony of Thomas E. Allen. On September 12, 1996, ICI filed a Motion for Leave to File the Amended Direct Testimony of Thomas E. Allen ("Motion"), along with said amended testimony. As grounds for the Motion, ICI said that the hearing process would be better served if

ICI explicitly stated its principles for evaluating proposals, clarified its position on certain specific proposals, and reorganized the text of the testimony to correspond to the prehearing issues. ICI also stated that ". . .the amended testimony does not make any substantive changes to the positions taken in its precursor." ICI concluded its justification for the filing by stating that

. . . the Amended Direct Testimony of Mr. Allen will be easier for other parties to respond to and will better

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serve the Commission in developing a complete record upon which to determine the issues before it.

2. On September 13, 1996, BellSouth filed its Response and Opposition suggesting that ICI's filings violated the applicable procedural order and amounted to an egregious abuse of process. BellSouth appeared to be particularly troubled by its conclusion that (a) Mr. Allen had "reversed" his positions on the "separate components" of BellSouth's proposal taken in the precursor testimony and (b) ICI had filed the revisions so late that BellSouth was prejudiced in responding. Thus BellSouth apparently concluded that ICI's motion misrepresented the nature of the amended testimony and its effect on the parties and process, and attempted to "profit" by these misrepresentations.

REPLY

The Amended Testimony and Explanation:

3. Before responding to BellSouth's legal points, ICI wishes to assure the Commission, BellSouth, and the other parties that it filed the amended direct testimony in the good faith belief that this was a constructive step. There was and is no intent on ICI's part to disadvantage procedurally any party through the filing of the amended direct testimony. Moreover, ICI remains convinced that the filing was appropriate.

4. Mr. Allen began the substantive part of his originally-filed testimony as follows:

Q. What is the purpose of your testimony?

A. ICI opposes several of the reductions offered by BellSouth. ICI does not oppose the reductions of switched access charges, waiver of secondary

service charges, elimination of usage charges for RCF, reduction of the SNAC for business, reductions of MegaLink/DS1 interoffice rates and the credit for ECS routes. We believe these reductions provide the correct signals for the changing environment. These reductions account for \$26 Million.

This introductory language was intended to be a generalized conceptual statement of non-opposition to certain types of reductions; it was not intended to be a specific statement of non-opposition to the discrete, specific proposals of BellSouth. It is obvious that this language needed clarification; had this language been clear, BellSouth would not be accusing ICI of reversing its position. Moreover, BellSouth's apparent reading of that language is not unreasonable; indeed, a sure test for ambiguity is whether language intended to mean one thing can be read reasonably to mean another. In short, BellSouth's vexation is ICI's proof that this language needed to be clarified.

5. ICI did not recognize the ambiguity of the testimony and the potential for confusion until it began preparing its prehearing statement to be filed in this proceeding. At this point, ICI understood that generalized "non-opposition" on certain elements would be of little use to the Commission. For example, there are in this proceeding two discrete proposals for access charge reductions. Stating "non-opposition" to the concept of access charges for reductions does nothing to assist the Commission in evaluating these competing methods of reducing access charges. Moreover, ICI anticipated that at hearing Mr. Allen would be cross-examined to clarify his testimony and ICI's position on specific proposals. ICI concluded that the process would be best served by

achieving that clarification in writing in September rather than orally at the hearing.

6. In reviewing both sets of testimony, of the twenty proposals of the parties, ICI is aware of only two proposals regarding which BellSouth might argue that ICI reversed its position: (a) the switched access charge reduction via zone density pricing [Issue 1 A) 1)] and (b) elimination of usage charges [Issue 1 A) 6)]. On the former, Mr. Allen clarified that ICI favors some reduction in switched access charges as a concept, but does not favor achieving that reduction through zone density pricing. On the latter, Mr. Allen clarified that ICI favors elimination of usage charges for RCF in support of number portability, but not strategically by BellSouth to favor its competitive position. If ICI understands BellSouth's "Response and Opposition," it is Mr. Allen's amended testimony on these two points that leads BellSouth to urge the Commission to disallow the filing of all of his testimony.

Argument

7. Having explained ICI's good faith reasoning in filing the amended direct testimony, it is incumbent upon ICI to respond to BellSouth's demand for relief. First, ICI is unaware of Commission rule or precedent with respect to filing amended testimony. Specifically ICI is not aware of any rule or order that specifies the conditions and timing applicable to amending filed testimony. Given that there are no rules governing such filing, BellSouth cannot base its claim for relief on allegations that ICI has

violated an applicable rule or order.

8. Even though no rule or order addresses amended testimony, ICI believes the Commission has inherent authority to prevent abuse of process through procedural remedies. In exercising such authority, however, the Commission would need to balance several competing interests. For example, in this case the Commission would need to consider BellSouth's interest in having adequate opportunity to respond to testimony, ICI's right to proffer testimony in support of its position, and the Commission's interest in developing a competent and thorough record to support its determination. In the context of this case, BellSouth has certainly made no case for disallowing the amended Direct Testimony. Nevertheless, ICI has no objection to a "curative remedy;" i.e., allowing BellSouth additional time to respond to Mr. Allen's Amended Direct Testimony.

CONCLUSION

For the reasons stated above, ICI respectfully requests that the Commission reject BellSouth's request, and grant ICI's Motion for Leave to File Amended Direct Testimony. Nevertheless, ICI does not oppose granting BellSouth additional time to respond to the amended testimony.



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CERTIFICATE OF SERVICE

Docket No. 920260-TL

I HEREBY CERTIFY that a copy of the Reply of Intermedia Communications Inc. to BellSouth's Response and Opposition to Intermedia's Motion for Leave to File Amended Direct Testimony has been furnished this 20th day of September, 1996, to the following:

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