

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Capital Services) DOCKET NO. 980520-TP
of South Florida, Inc. against)
Intermedia Communications Inc.) FILED: May 5, 1998
regarding failure to comply with)
contract for telecommunications)
services.)

INTERMEDIA COMMUNICATIONS INC.'S
MOTION TO ABATE OR IN THE ALTERNATIVE STAY

Respondent Intermedia Communications Inc. (Intermedia) moves
for an order of this Commission abating or, in the alternative,
staying this action. In support thereof, Intermedia states as
follows:

FACTUAL BACKGROUND

1. This matter arises from the Carrier Services agreement
(Agreement) between Intermedia and Capital Services of South
Florida, Inc. (Capital Services). The Agreement established the
terms and conditions under which Intermedia would provide certain
wholesale long distance voice, data and related services (LD
Services) to Capital Services and under which Capital Services
would pay Intermedia for those LD Services.

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2. The LD Services involved predominantly interstate and
international service.

3. The dispute is the subject of two lawsuits currently
filed in two separate circuit courts:

a. CAPITAL SERVICES OF SOUTH FLORIDA, INC., Plaintiff, vs.
INTERMEDIA COMMUNICATIONS, INC., Defendant, CASE NO. 98-
1932, IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA; and

b. INTERMEDIA COMMUNICATIONS, INC., Plaintiff, vs. CAPITAL
SERVICES OF SOUTH FLORIDA, INC., Defendant, CASE NO. 98-
2689 IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL
CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

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4. Capital Services now purchases from another carrier the wholesale long distance voice, data and related services that were the subject of the Agreement.

**THE FLORIDA PUBLIC SERVICE COMMISSION LACKS
SUBJECT MATTER JURISDICTION OVER THIS DISPUTE**

No Power To Act As A Court.

5. The gravamen of the complaint is a request that the Commission adjudicate the contractual dispute between Capital Services and Intermedia. The nature of the complaint can be seen clearly from the relief requested. Specifically, in its request for relief the complaint requests that the Commission do the following¹:

- a. determine a reasonable estimate of the amounts owed pending resolution of the dispute;
- b. determine the correct amount of the disputed billings;
- c. compel Intermedia to accept as payment in full the amount so ascertained by the Commission regarding the disputed billing;
- d. prevent Intermedia from continuing to interrupt service to Capital Services on account of disputed billings during the pendency of the complaint [i.e., compel Intermedia to provide service];
- e. take cognizance of this complaint;
- f. fine or otherwise discipline Intermedia for its violation of . . . rules and statutes; and
- g. grant such other relief as may be within the Commission's powers.

Complaint, page 4.

6. In items 5a. through 5d., Capital Services simply asks

¹ This list of requested action is quoted from the complaint, but in a different sequence.

the Commission to be a civil court by adjudicating the disputed amounts and granting Capital Services both legal and equitable relief. There is no basis under Chapter 364, Florida Statutes, for the Commission to grant this requested relief. These powers to grant such relief are judicial powers reserved to the state courts under Article V of the Constitution of the State of Florida. Stated conversely, if a legislative agency were to modify or abrogate contracts in the exercise of its delegated legislative power, the result would be an unconstitutional legislative impairment of contract. Thus adjudication of contract rights is reserved to the courts. See e.g., Telco Communications Co. v. Clark, 695 So.2d 304 (Fla. 1997) (Commission has no authority to adjudicate contracts); United Telephone Company of Florida v. Public Service Commission, 496 So.2d 116 (Fla. 1986) (substantially identical statutory precursor to Section 364.03, Florida Statutes, does not give Commission jurisdiction to alter contractual relationship between telephone companies); Winter Springs Development Corporation v. Florida Power Corporation, 402 So.2d 1225 (Fla. 5th DCA 1981) (administrative body not empowered to award money damages for breach of contract); cf Southern Bell Tel. & Tel. Co. v. Florida Pub. Serv. Comm'n, 453 So.2d 780 (Fla. 1984) (a previously existing statutory section, 364.07(2), Fla. Stat. (1981), specifically allowed Commission to "adjudicate" disputes over toll settlement agreements and order change in future course of dealings).

7. The apparent foundation for this invitation to ultra

vires action is Capital Services' allegation that Intermedia has violated certain state regulations with respect to the provision of service and Capital Service's corresponding demand for sanctions against Intermedia. It is apparent from the above listing of the relief requested, however, that Capital Services has not brought this complaint for the purposes of having the Commission sanction Intermedia; it could have achieved the same purpose with a letter to the Division of Consumer Affairs or to the Division of Communications. Rather, the purpose of this complaint is to invite the Commission to act like a court by resolving a contractual dispute. The Commission must decline.

No Jurisdiction Over Interstate and International Service

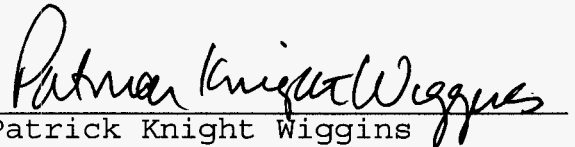
8. The Service involved in this dispute is overwhelmingly interstate and international in nature, and the relief requested cannot be granted without attempting to determine matters in dispute beyond the Commission's jurisdiction over intrastate service. Under Chapter 364, Florida Statutes, does not have the jurisdiction to address carrier to carrier disputes over non-payment for interstate and international services, and, to reiterate, this is exactly what Capital Services has requested.

9. Capital Services cannot create the jurisdiction for the Commission over the interstate and international services by alleging that this matter involves the alleged violation of regulations applicable only to intrastate service. The Commission is a creature of statute, and its jurisdiction must be well grounded in its enabling legislation. Moreover, any doubt about

the extent of that jurisdiction must be resolved against its exercise. Florida Bridge Company v. Hawkins, 363 So.2d 799 (Fla. 1978); Radio Telephone Communications, Inc. v. Southeastern Telephone Co., 170 So.2d 577 (Fla. 1965).

CONCLUSION

Based on the above, Intermedia respectfully requests that the Commission enter an order abating this action, or in the alternative, staying it until the actions in the circuit courts have been resolved.



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CERTIFICATE OF SERVICE

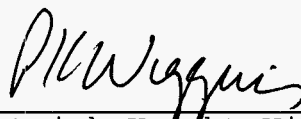
I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to the following this 5th day of May, 1998:

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