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M E M O R A N D U M

Via Hand Delivery

TO: Blanca Bayo, Director of Records and Reporting
Florida Public Service Commission

FROM: Donna L. Canzano

DATE: May 5, 1998

RE: Dockets Nos. ~~981478-TP~~, 980184-TP, 980495-TP, 980499-TP -
Intermedia Communications Inc.

On May 1, 1998 our office filed a Prehearing Statement and Rebuttal Testimony of Julia Strow on behalf of Intermedia Communications Inc. We have subsequently discovered that our file copy is missing page 2 of the testimony and page 4 of the Prehearing Statement, an indication that the Commission's copies are probably also missing these pages. The original we forwarded should be complete. Enclosed are 15 copies of these pages to supplement the Commission's copies of this filing.

On April 17, 1998, our office filed Direct Testimony of Michael A. Viren. One of the exhibits attached to the testimony was incomplete (MAV-EXH. D). Therefore, we are also including 15 complete replacement copies of MAV-EXH. D.

- ACK _____
- AFA _____ We apologize for any inconvenience.
- APP _____
- CAF _____
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FPSC-RECORDS/REPORTING

1 responsibility for the development and management of
2 BellSouth's toll fraud detection and deterrence
3 products. In 1988, I was promoted into the BellSouth
4 Federal Regulatory organization. During my tenure
5 there, I had responsibility for regulatory policy
6 development for various issues associated with Billing
7 and Collection Services, Access Services, and
8 Interconnection. In 1991, due to a restructuring of
9 the Federal Regulatory organization, my role was
10 expanded to include the development of state and
11 federal policy for the issues I mentioned above.
12 During my last two years in that organization, I
13 supported regulatory policy development for local
14 competition, interconnection, unbundling, and resale
15 issues for BellSouth. I joined Intermedia in April
16 1996 as Director of Strategic Planning and Regulatory
17 Policy. In April, 1998, I became Vice President,
18 Strategic Planning and Industry Policy.

19 **Q: Did you previously file direct testimony in this**
20 **proceeding?**

21 **A:** No, but I am adopting the direct testimony previously
22 filed by Michael A. Viren on April 17, 1998, and will
23 appear in his stead at hearing.

24 **Q: What is the purpose of your rebuttal testimony?**

25 **A:** The purpose of my rebuttal testimony is to respond to

BellSouth Telecommunications, Inc., required to compensate each other for transport and termination of traffic to Internet Service Providers? If so, what action, if any, should be taken?

INTERMEDIA'S POSITION:

**Intermedia is not a party to this portion of the proceeding. **

ISSUE 3: Under their Interconnection Agreement, are MCImetro Access Transmission Services, Inc., and BellSouth Telecommunications, Inc., required to compensate each other for transport and termination of traffic to Internet Service Providers? If so, what action, if any, should be taken?

INTERMEDIA'S POSITION:

**Intermedia is not a party to this portion of the proceeding. **

ISSUE 4: Under their Interconnection Agreement, are Intermedia Communications Inc., and BellSouth Telecommunications, Inc., required to compensate each other for transport and termination of traffic to Internet Service Providers? If so, what action, if any, should be taken?

INTERMEDIA'S POSITION:

Yes.

Under Section 1(D) of the Agreement, all calls that

Harris R. Anthony
General Attorney

BellSouth Telecommunications, Inc.
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Telephone: 404-335-0788
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September 11, 1997

Jonathan E. Canis
Kelley Drye & Warren
1200 19th Street, N.W.
Suite 1500
Washington, D.C. 20036

Re: Reciprocal Compensation For ISP Traffic

Dear Mr. Canis:

This is in response to your September 2, 1997 letter to Mr. Jere A. Drummond. In your letter, you express your disagreement with Mr. Bush's letter of August 12, 1997 wherein he brought to the attention of local carriers that the reciprocal compensation provisions of BellSouth's interconnection agreements apply only to local traffic. Accordingly, traffic being delivered to internet service providers (ISPs), which is jurisdictionally interstate, is not eligible for reciprocal compensation.

Your letter contains several observations which you believe create an obligation on the part of BellSouth to pay mutual compensation for ISP traffic. As discussed below, Intermedia is mistaken as to the jurisdictional nature of the ISP traffic. Likewise, your statements that BellSouth may be violating certain provisions of the Communications Act are unfounded.

Contrary to your apparent belief, there is no basis in fact or law that would support your position that ISP traffic is intrastate, let alone "local" for reciprocal compensation purposes. It is well established that whether a communication is interstate and, thus, within the exclusive jurisdiction of the FCC depends on the end-to-end nature of the communication itself. ISP traffic does not terminate on Intermedia's local facilities. Rather, the traffic traverses these facilities as well as those of the ISP and the internet transport provider(s) to establish a communications path to distant internet destination(s). The communication terminates at the distant internet site. Internet end-to-end communication paths are typically interstate in nature because they not only cross state boundaries but often national boundaries as well. Even in the instances where the distant internet site is within the same state as the originating end of the communication, the dynamic aspects of internet communications make such communications inseverable from the interstate traffic. Under existing case law, such traffic must also be considered interstate.

Mr. Jonathan E. Ceris
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Further, the FCC has already exercised its jurisdiction over internet traffic. The Commission's grant of an exemption from the payment of interstate access charges to enhanced service providers must necessarily be based upon fact that by definition such traffic was interstate in the first instance. Otherwise, the Commission would not have had the jurisdiction to grant an exemption. A fact often lost is that the access charge exemption affects the rate an incumbent LEC may charge an ISP, not the jurisdictional nature of the ISP traffic. The access charge exemption is a transitional mechanism that was prescribed by the Commission to avoid significant economic dislocation in the then nascent enhanced services market. Nothing in the creation of the access charge exemption altered the jurisdictional nature of the end-to-end communications. The traffic remains jurisdictionally interstate. Be advised, however, that the FCC's access charge exemption for ISPs is directed only to incumbent LECs. Intermedia, as a competitive local exchange carrier, is free to charge appropriate access rates in order to compensate it fully for any services it provides to ISPs.

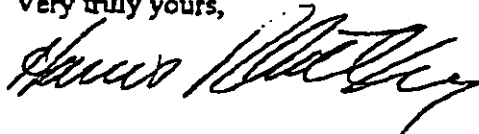
In its Local Interconnection Order, the FCC made it abundantly clear that reciprocal compensation rules only apply to traffic that originates and terminates within a local area. The rules do not apply to non-local traffic, such as ISP or other interstate interexchange traffic, none of which terminates in the local area.

Your letter incorrectly contends that if ISP traffic is interstate, such a jurisdictional determination would compel a finding that BellSouth, through its BellSouth.net subsidiary, is engaged in the provision of interLATA services in violation of Section 271 of the Communications Act. BellSouth merely provides a gateway to the internet. It does not provide any of the interLATA internet transport. Such transport is provided by non-affiliated interLATA carriers. Thus, BellSouth's internet gateway is not unlike the interstate access services BellSouth provides for interLATA voice communications, except that the internet gateway is an enhanced service. While the end-to-end communication may be interLATA, the access components of that communication are not.

Similarly without merit is the assertion that BellSouth, in not paying reciprocal compensation for interstate ISP traffic, may run afoul of the Customer Proprietary Network Provisions in Section 222 of the Communications Act. Even assuming *arguendo* that customer network proprietary information were involved, nothing in Section 222 would prevent BellSouth from rendering proper bills for its services including the determination of amounts to exclude from the payment of reciprocal compensation.

BellSouth is fully meeting its obligations under the Communications Act and the interconnection agreements it has negotiated. To the extent, however, that Intermedia has a dispute with regard to the interconnection agreement, Intermedia is free to seek resolution of the dispute before the appropriate state regulatory body.

Very truly yours,



cc: Ernest Bush

CERTIFICATE OF SERVICE

Strow
REBUTTAL

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

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Donna L. Canzano

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