

ORIGINAL

STATE OF FLORIDA
PUBLIC SERVICE COMMISSION
DIVISION OF CONSUMER AFFAIRS

IN RE:

CAPITAL SERVICES OF SOUTH
FLORIDA, INC.

vs.

DOCKET NO. 98-0520-TP

INTERMEDIA COMMUNICATIONS, INC.

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

BACKGROUND

On April 15, 1998, Capital Services of South Florida, Inc. ("Capital Services") filed an Amended Complaint (the "Complaint") against Intermedia Communications, Inc. ("Intermedia") with the Public Service Commission, Division of Consumer Affairs, pursuant to Rule 25-22.032, Florida Administrative Code. On May 5, 1998, Intermedia filed a Motion to Abate or in the Alternative Stay, requesting an order from the Public Service Commission abating or staying "this action." As grounds for its motion, Intermedia maintains that the Public Service Commission lacks subject matter

ACK _____ jurisdiction over this dispute. For the following reasons,
AFA _____
APP _____ Capital Services requests that this informal complaint resolution
CAF _____ process be allowed to continue and that Intermedia's motion be
CMU 1 denied.
CTR _____

THE INFORMAL COMPLAINT RESOLUTION PROCESS
INITIATED BY CAPITAL SERVICES IS NOT SUBJECT
TO STAY, ABATEMENT, OR DISMISSAL AT THIS TIME.

EAG _____
LEG 1
LIN _____ Intermedia has characterized the complaint as a "request
OPC _____ that the Commission adjudicate the contractual dispute between
RCH _____ Capital Services and Intermedia." Clearly, Intermedia has

SEC _____
WAS _____
OTH _____

DOCUMENT NUMBER-DATE

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misinterpreted the Complaint. By filing the Complaint, Capital Services did not commence any "action", contractual or otherwise. Capital Services has simply initiated the informal complaint resolution process detailed in Rule 25-22.032, Florida Administrative Code. This process is not a formal or informal administrative proceeding governed by the Florida Administrative Procedures Act and is not subject to abatement, stay, or dismissal at this time.

Rule 25-22.032 provides an opportunity for customers to resolve disputes with utilities and potentially avoid judicial or quasi-judicial proceedings. Under the rule, the Director of the Division of Consumer Affairs designates a staff person to investigate the complaint. The staff member notifies the utility of the complaint and requests a response. Rule 25-22.032(1), F.A.C. The staff person then must investigate the complaint and propose a resolution to the customer and the utility. Rule 25-22.032(2), F.A.C. If either the customer or the utility objects to the proposed resolution, it may request an informal conference. At this juncture, the Director of the Division has two choices; he or she may either recommend that the Commission dismiss the complaint based on a finding that the complaint states no basis for relief, or he or she may appoint a staff member to conduct an informal conference. Rule 25-22.032(4), F.A.C. If the dispute is not settled at, or shortly after, the informal conference, the staff member submits a recommendation to the Commission. The Commission must dispose of

the dispute at the next available agenda conference by issuing a notice of proposed agency action or by setting the matter for hearing pursuant to section 120.57, Florida Statutes. Rule 25-22.032(7), F.A.C.

The Division Director may not consider whether to dismiss a complaint until a party objects to a proposed resolution. The rule does not provide for earlier dismissal, stay or abatement of a complaint. Thus, because a proposed resolution to Capital Services' Complaint has not been issued or objected to, the dispute is not yet subject to dismissal, stay, or abatement.¹

THE STAFF OF THE PUBLIC SERVICE COMMISSION IS UNIQUELY QUALIFIED TO ADDRESS THE ISSUES RAISED IN THE COMPLAINT.

Intermedia alleges that the Public Service Commission does not have subject matter jurisdiction over the issues raised in the Complaint. In fact, the staff of the Public Service Commission is uniquely qualified and authorized, under Public Service Commission statutes and rules, to address the disputed issues.

Rule 25-22.032(1) provides that "[a]ny customer of a utility regulated by this Commission may file a complaint with the Division of Consumer Affairs whenever he has an unresolved

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The process dictated by the rule is at its earliest stages. The Complaint has been filed, but Intermedia has not filed a response "explain[ing] . . . [its] . . . actions in the disputed matter and the extent to which those actions were consistent with the utility's tariffs and procedures, applicable state laws, and Commission rules, regulations, and orders." Rule 25-22.032(1), F.A.C. To our knowledge, the Director of the Division has yet to designate a staff member to investigate the Complaint and propose a resolution.

dispute with the utility regarding his electric, gas, telephone, water, or wastewater service." Intermedia has repeatedly failed to: properly credit Capital Services' account; bill Capital Services correctly; and provide reasonable connectivity and other services. In addition, Intermedia discontinued service in violation of Rule 25-4.113(f), (g), and Rule 25-24.490, Florida Administrative Code, and refuses to reconnect service in violation of Rule 25.22.032(10). This is a complex billing dispute involving technical service and connectivity issues and violations of Commission rules and statutes.² These issues are particularly well-suited for the informal complaint resolution process dictated by the rule, and Florida courts have repeatedly held that the Public Service Commission has jurisdiction over

² Intermedia argues that this is a contractual dispute and cites several cases for the proposition that the Public Service Commission has no authority to adjudicate contractual disputes and may not award money damages. Capital Services does not dispute that the Public Service Commission may not award money damages; it did not request money damages in the Complaint. The cases cited by Intermedia on the contract issues are easily distinguished. None of the cases arise from or reference the complaint resolution process under Rule 25-22.032. In addition, the cases simply hold that the Public Service Commission does not have jurisdiction over certain types of contractual issues, those which do not involve rates, service, or other matters over which the Public Service Commission has jurisdiction, explicitly or implicitly, under Florida statutory law. For example, in Teleco Communications Company v. Clark, 695 So. 2d 304 (Fla. 1997), the Florida Supreme Court declined to resolve issues relating to a inside wire maintenance and lease agreement. The Court stated: "We find no statutory authority, express or implied, for the PSC's ruling on this type of contract issue." Id. at 309 (emphasis added); See United Telephone Co. of Florida v. Public Service Com'n, 496 So. 2d 116 (Fla. 1986) (Public Service Commission had no statutory authority to modify contract between telephone companies.).

such matters. Sandpiper Homeowners Ass'n v. Lake Yale Corp., 667 So. 2d 921, 926 (Fla. 5th DCA 1996) ("the PSC has exclusive jurisdiction to entertain actions involving utilities with regard to authority, services, and rates"); Hilltop Developers v. Holiday Pines Service Corporation, 478 So. 2d 368, 370 (Fla. 2d DCA 1985), review denied, 488 So. 2d 68 (Fla 1986) ("Judiciary . . . defers to the administrative agency in order . . . to bring specialized expertise to bear upon the disputed issues.") In addition, the Public Service Commission has jurisdiction under section 364.285, Florida Statutes, to enforce its statutes, rules, and orders governing regulated telecommunications companies.

The remedies requested by Capital Services either are stated in Rule 25-22.032 or authorized under the Commission's statutes. For example, Capital Services requests that the Public Service Commission determine a reasonable estimate of amounts owed pending resolution of the dispute; the rule provides that the designated staff person may make a reasonable estimate to establish an interim disputed amount until the complaint is resolved. Rule 25-22.032, F.A.C. Capital Services also requests that the Public Service fine or discipline Intermedia for violating Commission rules and statutes and prevent Intermedia from continuing to interrupt service in violation of Rule 25-

22.032(10). Both of these remedies are authorized by section 364.285.³

The dispute at hand is in many ways similar to the dispute in Charlotte County v. General Development Utilities, Inc., 653 So. 2d 1081 (Fla. 1st DCA 1995). In 1992 Charlotte County brought a breach of contract action against GDU alleging that the utility improperly calculated the amount of water consumed by the County and, as a result, overbilled. Id. at 1083. The utility moved to abate the action on the ground that the dispute was within the Public Service Commission's exclusive jurisdiction. Id. The District Court of Appeal for the First District upheld the Public Service Commission's determination that it had jurisdiction over the dispute. Id. at 1085. As in the Charlotte County case, the dispute at hand involves a complex billing structure between two sophisticated entities and billing for services not actually provided. The dispute at hand is best resolved by the Public Service Commission, which has the

³ Under section 364.285:

The commission shall have the power to impose upon any entity subject to its jurisdiction under this chapter which is found to have refused to comply with or to have willfully violated any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than \$25,000 The commission may, at its discretion, institute in any court of competent jurisdiction a proceeding for injunctive relief to compel compliance with this chapter or any commission rule

knowledge and expertise to delve through and understand the complex billing and service issues.

Additionally, Intermedia's argument that the Public Service Commission should not exercise jurisdiction over the dispute because it is overwhelmingly interstate and international in nature is without merit. As the designated staff person will observe after his or her investigation, this dispute involves many intrastate and local issues. The Public Service Commission may separate the intrastate and local issues from the interstate and international issues and exercise jurisdiction only over the intrastate and local issues. See Southern Bell Tel. and Tel. Co. v. Florida Public Service Com'n, 453 So. 2d 780 (Fla. 1984) (The Public Service Commission adjudicated the intrastate portion of a dispute that involved both intrastate and interstate long distance service.).

CONCLUSION

Based on the above, Capital Services respectfully requests an order from the Public Service Commission denying Intermedia's Motion to Abate or in the Alternative Stay and directing the Division of Consumer Affairs to commence its investigation of the Complaint in accordance with Rule 25-22.032, Florida Administrative Code.

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ATTORNEYS FOR CAPITAL SERVICES OF
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail to DAVID T. KNIGHT, Hill, Ward & Henderson, 101 East Kennedy Boulevard, Suite 3700, Tampa, Florida 33602; PATRICIA T. KURLIN, General Counsel of Intermedia Communications, Inc., 3625 Queen Palm Drive, Tampa, Florida 33619; and PATRICK K. WIGGINS, Wiggins & Villacorta, P.A., 2145 Delta Boulevard, Suite 200, Tallahassee, Florida 32303, this 15th day of May, 1998.



ALAN HARRISON BRENTS