

RECEIVED FPSC

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION AUG -3 PM 4:26

In re: Complaint of Intermedia)
Communications Inc. against)
GTE Florida Incorporated)
for breach of terms of Florida)
Partial Interconnection Agreement)
under Sections 251 and 252 of the)
Telecommunications Act of 1996,)
and request for relief.)

DOCKET NO.:
FILED: August 3, 1998

RECORDS AND REPORTING

980986-TP

30

COMPLAINT OF INTERMEDIA COMMUNICATIONS INC.

Intermedia Communications Inc. (Intermedia), through its undersigned counsel, pursuant to Sections 364.01, 364.03, and 364.05, Florida Statutes, and Rule 25-22.036(5), Florida Administrative Code, hereby files this complaint against GTE Florida Incorporated (GTEFL) for breach of the terms of Interconnection Agreement between GTEFL and Intermedia approved by the Commission by Order No. PSC-97-0719-FOF-TP, issued on June 19, 1997 and as subsequently amended by GTEFL and Intermedia and approved by the Commission by Order No. PSC-97-0788-FOF-TP, issued July 2, 1997 (collectively "Agreement").

The facts precipitating this complaint do not appear to be in dispute. GTEFL has breached the Agreement by failing to compensate Intermedia for the transport and termination of telephone exchange service local traffic that GTEFL sends to Intermedia for termination with telephone exchange service end-users that are Internet Service Providers (ISPs).

DOCUMENT NUMBER-DATE

08206 AUG-30 0001

FPSC-RECORDS/REPORTING

1. JURISDICTION

1. The exact name and address of the complainant is:

Intermedia Communications Inc.
3625 Queen Palm Drive
Tampa, Florida 33619-1309
(813) 829-0011 (telephone)
(813) 829-4923 (telecopier)

2. All notices, pleadings, orders and documents in this proceeding should be provided to the following on behalf of Intermedia:

Donna L. Canzano
Patrick Knight Wiggins
Wiggins & Villacorta
2145 Delta Boulevard
Tallahassee, Florida 32303
(850) 385-6007 (telephone)
(850) 385-6008 (telecopier)

Lans Chase
Intermedia Communications Inc.
3625 Queen Palm Drive
Tampa, Florida 33619-1309
(813) 829-0011 (telephone)
(813) 829-4923 (telecopier)

3. The complete name and principal place of business of the respondent to the Complaint is:

GTE Florida Incorporated
201 North Franklin Street
Tampa, Florida 33602

4. Both Intermedia and GTEFL are authorized to provide local exchange services in Florida.

5. Pursuant to Section 252 of the Telecommunications Act of 1996 (Act), Intermedia and GTEFL negotiated the Agreement and filed it with the Florida Public Service Commission (Commission), on February 20, 1997. In accordance with Section 252(e) of the Act, the Commission approved the Agreement by Order No. PSC-97-0719-FOF-

TP, issued on June 19, 1997 and approved the amendment by Order No. PSC-97-0788-FOF-TP, issued July 2, 1997. A copy of the relevant portions of the Agreement is attached as Exhibit A.

6. Although the interconnection agreement provides for dispute resolution through binding arbitration, Intermedia informed GTEFL of its intent to file this complaint with the Commission. In this case, however, GTEFL will not insist on arbitration, but reserves the right to demand arbitration in any future disputes with Intermedia.

7. The Commission has jurisdiction to enforce the terms of the Agreement that GTEFL has breached as alleged herein. The United States Court of Appeals for the Eighth Circuit recently confirmed that pursuant to Section 252 of the Act, state commissions, like this one, "are vested with the power to enforce the terms of the agreements they approve." *Iowa Utilities Board v. FCC*, 120 F.3rd 753 (8th Cir. 1997).

8. The Commission also has jurisdiction to consider this Complaint pursuant to Sections 364.01, 364.03, and 364.05, Florida Statutes, Rule 25-22.036(5), Florida Administrative Code.

9. Intermedia's interest in this proceeding is the enforcement of the Interconnection Agreement between Intermedia and GTEFL with respect to the provision of local exchange telecommunications services throughout the state of Florida.

II. GTEFL HAS BREACHED THE AGREEMENT BY FAILING TO COMPENSATE INTERMEDIA FOR TERMINATING LOCAL TRAFFIC

10. Pursuant to terms of the Agreement, Intermedia and GTEFL provide local exchange telecommunications services over their

respective networks. This enables end-users subscribing to Intermedia's local exchange service to place calls to end-users subscribing to GTEFL's local exchange service and vice versa.

11. GTEFL sent a letter, dated December 16, 1997, from Ms. Kimberly Tagg to Mr. Kirk Champion, of Intermedia, stating that "GTE believes that there is an error in your billing for the reciprocal termination of local traffic as provided for in our interconnection agreement. It appears that you are billing GTE for more than Local Traffic as defined in that agreement." A copy of this letter is attached as Exhibit B. Moreover, GTEFL stated that it disputed the bill and was withholding payment.

12. Intermedia responded to GTEFL by letter dated January 7, 1998, stating that Intermedia strongly disagrees with GTEFL's position that it is billing more than local traffic. In fact, Intermedia reiterated its request that GTEFL specifically identify what traffic GTEFL believes is not local in the billings from Intermedia and to identify the specific dollar amount that GTEFL considers to be non-local traffic. A copy of this letter is attached as Exhibit C.

13. GTEFL and Intermedia participated in a meeting to discuss these issues on January 26, 1998.

14. GTEFL sent a letter to Intermedia by letter, dated February 5, 1998, providing its position on the exchange of information service provider traffic and its proposal of the manner in which billing disputes should be handled pending final resolution by the FCC or appropriate state commission. A copy of

this letter is attached as Exhibit D.

15. By letters dated February 17, 1998, and March 2, 1998, GTEFL again informed Intermedia that it believed there was an error in billing regarding local traffic and was withholding payment. Copies of these letters are attached as Exhibit E.

16. Also on March 2, 1998, representatives from GTEFL and Intermedia conducted a teleconference regarding the billing dispute. Moreover, Intermedia sent an e-mail to GTEFL regarding Intermedia's position that traffic transported and terminated to ISPs is local traffic and is subject to reciprocal compensation, its proposed solution, and comments to GTEFL's proposed long-term and interim solutions. A copy of this correspondence is attached as Exhibit F.

17. Intermedia informed GTEFL, by letter dated June 15, 1998, which is attached as Exhibit G, that since they have not been able to reach resolution with respect to the issue of Internet traffic, Intermedia has no alternative but to seek resolution of the issue via the regulatory process.

18. GTEFL's refusal to provide reciprocal compensation for local ISP traffic originated by its end-users that terminates on Intermedia's network constitutes a material and willful breach of the terms of the Agreement. GTEFL's action also violates Section 251(b)(5) of the Act which sets forth the obligation of all local exchange companies (LECs) to provide reciprocal compensation. Moreover, GTEFL's action is inconsistent with a number of FCC and state regulatory decisions which have addressed this issue.

19. Section 1.20 of the Agreement defines "Local Traffic" as:

originated by an end user of one Party and terminates to the end user of the other Party within GTE's then current local serving area, including mandatory local calling scope arrangements. A mandatory local calling scope arrangement is an arrangement that requires end users to subscribe to a local calling scope beyond their basic exchange serving area. Local Traffic does not include optional local calling scopes (i.e., optional rate packages that permit the end user to choose a local calling scope beyond their basic exchange serving area for an additional fee), referred to hereafter as "optional EAS."

20. The traffic at issue originates and terminates within GTEFL's current local serving area.

21. Section 3.1 of the Agreement regarding transport and termination of traffic states in part:

The Parties shall reciprocally terminate Local Traffic originating on each other's networks utilizing either direct or indirect network interconnections as provided in this Article.

22. Moreover, Section 3.3.1 of the original Agreement regarding mutual compensation states:

The Parties shall compensate each other for the exchange of Local Traffic in accordance with Appendix C attached to this Agreement and made a part hereof. Charges for the transport and termination of intraLATA toll, optional EAS arrangements and interexchange traffic shall be in accordance with the Parties' respective intrastate or interstate access tariffs, as appropriate.

23. Paragraph 33 of the amended interconnection agreement provides that the terms of the GTE/AT&T agreement (the AT&T terms) specified in Appendix I shall not take effect for purposes of the Agreement until ten days following GTE's receipt of written notice

of Intermedia's election to replace them. Intermedia has not provided GTE with written notice of election of AT&T terms.

24. Pursuant to the Agreement, parties owe each other reciprocal compensation for any "Local Traffic" terminated on the other's network.

25. The ISP traffic at issue is originated by a GTEFL end-user, delivered to Intermedia, and terminated on Intermedia's network. Pursuant to the Agreement, calls from GTEFL's end-users to Intermedia's end-users that are ISPs are subject to reciprocal compensation.

26. Nothing in the Agreement or applicable law or regulations creates a distinction pertaining to calls placed to telephone exchange end-users that happen to be ISPs. All calls that terminate within a local calling area, regardless of the identity of the end-user, are local calls under Section 3 of the Agreement, and reciprocal compensation is due for such calls. This includes telephone exchange service calls placed by GTEFL's customers to Intermedia's ISP customers.

27. GTEFL's refusal to recognize ISP traffic as local for purposes of reciprocal compensation is inconsistent with its approach in other contexts. For example, when a GTEFL customer calls an ISP and the traffic is handed off to Intermedia for termination with the ISP, GTEFL argues that the traffic is not local. But when a GTEFL customer calls an ISP that is also a GTEFL customer, then GTEFL regards the traffic as local. More specifically, on information and belief, GTEFL charges its own ISP

customers local business line rates for local telephone exchange service that enable customers of GTEFL's ISP customers to connect to their ISP by making a local phone call.

28. GTEFL treats the revenues associated with local exchange traffic to its ISP customers as local for purposes of interstate separations and ARMIS reports.

III. FLORIDA, THE FCC AND NUMEROUS OTHER STATE REGULATORY AUTHORITIES NATIONWIDE HAVE DETERMINED THIS TRAFFIC TO BE LOCAL TRAFFIC, AND GTEFL'S POSITION VIOLATES THE LAW

29. This Commission, the FCC and other state commissions have consistently determined that the traffic at issue is local in nature.

A. Florida

30. In Order No. 21815, issued September 5, 1989, in Docket No. 880423-TP, this Commission completed an investigation into access to the local network for providing information services by concluding, among other things, that end-user access to an ISP is local service. This decision was reached after hearing testimony and argument from a variety of parties, including GTEFL. In its order, the Commission cited testimony that "calls to a VAN (value added network) which use the local exchange lines for access are considered local even though communications take place with data bases or terminals in other states" and "such calls should continue to be viewed as local exchange traffic."¹ The Order also cited testimony that "connection to the local exchange network for the

¹ Order No. 21815, at 24 (emphasis added); 89 F.P.S.C. 9:30.

purpose of providing an information service should be treated like any other local exchange service.²

B. The Telecommunications Act of 1996 Requires Reciprocal Compensation for Local Calls to Internet Service Providers

31. The above treatment of local calls to an ISP is not only required under the terms of the Interconnection Agreement, but is also required under the 1996 Act. Specifically, Sections 251(b)(5), 251(c)(2) and 252(d)(2) of the 1996 Act establish the obligation of ILECs to interconnect with CLECs and to provide reciprocal compensation for the exchange of traffic. The 1996 Act defines the interconnection obligations of ILECs in very broad terms, and provides no basis for excluding local calls to ISPs from interconnection and reciprocal compensation arrangements. Section 3(47)(A) defines "telephone exchange service" simply as "service within a telephone exchange, or within a connected system of telephone exchanges" Section 3(47)(B) provides an even broader definition of telephone exchange service by eliminating the reference to an "exchange," and focuses on the ability of a subscriber to "originate and terminate a telecommunications service."

32. The broad scope of this definition is further clarified by the definition of "telecommunications service" under the 1996 Act. Section 3(46) of the 1996 Act defines "telecommunications service" simply as "the offering of telecommunications for a fee directly to the public" Section 3(43) of the 1996 Act

² Order 21815, at 25; 89 F.P.S.C. 9:31.

defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing" GTEFL's attempts to exclude local calls to ISPs from interconnection and reciprocal compensation arrangements is wholly inconsistent with the extremely broad definitions contained in the 1996 Act. In contrast, the broad definitions of "service" in the 1996 Act reflect Congress' desire to accommodate new technologies and new service applications.

C. The FCC

33. This Commission's determination in Docket No. 880423-TP is consistent with decisions of the FCC. Under current FCC rules, traffic to an ISP is local traffic. The FCC has repeatedly affirmed the rights of ISPs to employ local exchange services, under *intrastate* tariffs, to connect to the public switched telecommunications network.³ The mere fact that an ISP may enable a caller to access the Internet does not alter the legal status of a local connection between the customer and the ISP. The local call to the telephone exchange service of an ISP is a separate and distinguishable transmission from any subsequent Internet connection enable by the ISP.

34. The FCC's recent Report and Order on Universal Service and First Report and Order on Access Charge Reform affirm this

³ *Amendments to Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Rcd 2631, para. 2 n. 8 (1988). In its First Report and Order regarding Access Charge Reform, the Commission reaffirmed this position explicitly and declined to impose access charges on ISPs. *In the Matter of Access Charge Reform, First Report and Order*, CC Docket No. 96-262 (rel. May 17, 1997) ("Access Charge Reform Order"), ¶¶344-348.

fact.⁴ In the *Universal Service Order*, the FCC determined that Internet access consists of severable components: the connection to the ISP via voice grade-access to the public switched network and the information service subsequently provided by the ISP.⁵ In other words, the first component is a simple local exchange telephone call. Such a call is eligible for reciprocal compensation under the Agreement.

35. In the *Access Charge Reform Order*, the FCC declined to allow LECs to assess interstate access charges on ISP.⁶ Indeed, the FCC characterized the connection from the end-user to the ISP as local traffic: "To maximize the number of subscribers that can reach them *through a local call*, most ISPs have deployed points of presence."⁷

36. In the FCC's *Non-Accounting Safeguards Order*, the Commission determined that the local call placed to an ISP was separate from the subsequent information service provided.⁸ The severability of these components was key to the FCC's conclusion

⁴ In the *Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45 (rel. May 8, 1997) ("*Universal Service Order*"); In the *Matter of Access Charge Reform*, First Report and Order, CC Docket No. 96-262 (rel. May 17, 1997) ("*Access Charge Reform Order*").

⁵ *Universal Service Order*, paras. 83, 788-789.

⁶ *Access Charge Reform Order*, paras. 344-348.

⁷ *Id.*, at n. 502 (emphasis added).

⁸ *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149 (rel. Dec. 24, 1996), para. 120.

that if each was provided, purchased, or priced separately, the combined transmissions did not constitute a single interLATA transmission.⁹ There can be no doubt that at this time the FCC does not consider the local exchange call to an ISP to be an interstate or international communication -- to the contrary, the FCC views such a call to be an intrastate call for jurisdictional purposes.

37. Although the FCC currently is examining the issue of the use of the public switched network by ISPs, it has not altered the existing rules.¹⁰ Moreover, any alteration at this time by the FCC would not affect the terms of Intermedia's Interconnection Agreement with GTEFL.

D. Federal Court

38. The U.S. District Court in Texas recently held that "as end-users, ISPs may receive local calls that terminate within the local exchange network." Southwestern Bell Telephone Company v. PUC of Texas, et. al, (Western District of Texas, filed June 16, 1998, (MO-98-CA-43) The Court found that "[i]n the instant case, the "call" from Southwestern Bell's customers to Time Warner's ISPs terminates where the telecommunications service ends at the ISPs facilities. As a technically different transmission, the ISPs'

⁹ Id.

¹⁰ *Notice of Inquiry, Usage of the Public Switched Network by Information Service and Internet Access Providers*, F.C.C., CC Docket 96-263 (released Dec. 24, 1996) ("NOI Proceeding"); see also *In the Matter of Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic*, F.C.C., CCB/CPD 97-30 (F.C.C.) ("ALTS Proceeding") (decision pending).

information service cannot be a continuation of the "call" of a local customer." [Id.] The Court determined that the PUC correctly interpreted the interconnection agreement as unambiguous, and correctly ordered Southwestern Bell to comply with the agreement's reciprocal compensation terms for termination of local traffic.

Similarly, a federal district court has affirmed the Illinois Commerce Commission's ruling that calls to ISPs are local calls and are subject to reciprocal compensation. (The original stay of the ICC's decision remains in effect to allow the parties to appeal). *Ameritech Illinois v. WorldCom Technologies, et al.*, Case No. 98-C-1925 (District Court).

D. Other State Commissions

39. At least 20 state commissions that have addressed this issue have reached the conclusion that calls from an end-user to an ISP are local traffic subject to reciprocal compensation. These states include Arizona, Colorado, Connecticut, Delaware, Maryland, Illinois, Michigan, Minnesota, Missouri, New York, North Carolina, Oregon, Pennsylvania, Texas, Virginia, Washington, West Virginia, and Wisconsin. The initial decisions of hearing officers in Tennessee and Georgia regarding complaints against BellSouth are consistent as well. Decisions in several other states are pending.

40. The Virginia State Corporation Commission, in response to a petition filed by Cox Virginia Telecom, Inc., determined that calls to ISPs are local and that the presence of an Alternative Local Exchange Carrier (ALEC) does not change the local nature of

the call.¹¹ When New York Telephone (NYT) unilaterally withheld payment of reciprocal compensation for local exchange traffic delivered to ISPs, the New York Public Service Commission ordered NYT to continue to pay reciprocal compensation for such traffic.¹² Following the filing of a similar complaint, the Maryland Public Service Commission ruled that local exchange traffic to an ISP is local in nature and eligible for reciprocal compensation and ordered Bell Atlantic-Maryland, Inc. to pay reciprocal compensation previously withheld.¹³ Likewise, in response to a petition by Southern New England Telephone Company, the Connecticut Department of Public Utility Control issued a decision holding that local exchange traffic to ISPs is local in nature and eligible for reciprocal compensation.¹⁴ When US West asserted a similar

¹¹ *Petition of Cox Virginia Telecom, Inc. for Enforcement of Interconnection Agreement with Bell Atlantic-Virginia, Inc. and Arbitration Award for Reciprocal Compensation for Termination of Local Calls to Internet Service Providers*, Case No. PUC970069 (Va. State Corp. Comm'n Oct. 27, 1997). Bell Atlantic has appealed this decision to the Virginia Supreme Court.

¹² *Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic*, Case 97-C-1275, Order Denying Petition and Instituting Proceeding (N.Y.P.S.C. July 17, 1997). The Order also instituted a proceeding to consider issues related to Internet access traffic. Comments and Reply Comments have been filed.

¹³ Letter dated September 11, 1997 from Daniel P. Gahagan, Executive Secretary, Maryland Public Service Commission, to David K. Hall, Esq., Bell Atlantic-Maryland, Inc. On October 1, 1997, the Commission confirmed that decision rejecting a BA-MD Petition for Reconsideration. Bell Atlantic has appealed this decision to the Circuit Court of Montgomery County, Maryland.

¹⁴ *Petition of the Southern New England Telephone Company for a Declaratory Ruling Concerning Internet Services Provider Traffic*, Docket No. 97-05-22, Decision (Conn. D.P.U.C. Sept. 17, 1997).

argument (that traffic originated by or terminated to enhanced service providers should be exempted from reciprocal compensation arrangements under Interconnection Agreements) the states of Arizona,¹⁵ Colorado,¹⁶ Minnesota,¹⁷ Oregon¹⁸, and Washington¹⁹ all declined to treat traffic to ISPs any differently than other local traffic. Moreover, the North Carolina Commission ruled in

¹⁵ *Petition of MFS Communications Company, Inc., for Arbitration of Interconnection Rates, Terms, and Conditions with US WEST Communications, Inc., Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996, Opinion and Order, Decision No. 59872, Docket No. U-2752-96-362 et al.* (Arizona Corp. Comm. Oct 29, 1996) at 7.

¹⁶ *Petition of MFS Communications Company, Inc. for Arbitration Pursuant to 47-U.S.C. § 252(b) of Interconnection Rates, Terms, and Conditions with US WEST Communications, Inc., Decision Regarding Petition for Arbitration, Docket No. 96A-287T, at 30 (Col. PUC Nov. 5, 1996).* The Colorado Public Utilities Commission has since affirmed its rejection of US West's efforts to exclude ISP traffic from reciprocal compensation by rejecting such a provision in a proposed US West tariff. *The Investigation and Suspension of Tariff Sheets Filed by US West Communications, Inc. With Advice Letter No. 2617, Regarding Tariffs for Interconnection, Local Termination, Unbundling and Resale of Services, Docket No. 96A-331T, Commission Order, at 8 (Colo. P.U.C. July 16, 1997).*

¹⁷ *Consolidated Petitions of AT&T Communications of the Midwest, Inc., MCImetro Access Transmission Services, Inc., and MFS Communications Company for Arbitration with US WEST Communications, Inc., Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996, Order Resolving Arbitration Issues, Docket Nos. P-442, 421/M-96-855, P-5321, 421/M-96-909, P-3167, 421/M-96-729 (Minn. PUC Dec. 2, 1996) at 75-76.*

¹⁸ *Petition of MFS Communications Company, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. Sec. 252(b) of the Telecommunications Act of 1996, Commission Decision, Order No. 96-324 (Ore. PUC Dec. 9, 1996) at 13.*

¹⁹ *In the Matter of Petition for Arbitration of an Interconnection Agreement Between MFS Communications Company, Inc. and US WEST Communications, Inc., Pursuant to 47 USC § 252, Arbitrator's Report and Decision, Docket No. UT-960323 (Wash. Utils. and Transp. Comm. Nov. 8, 1996) at 26.*

favor of U.S. LEC's petition against BellSouth for failure to pay reciprocal compensation for ISP traffic. The Commission found that the Interconnection Agreement speaks of reciprocal compensation for local traffic and that there is no exception for local traffic to an end user who happens to be an ISP. For the purposes of reciprocal compensation, the Commission concluded that the call terminates when it is delivered to the called local exchange telephone number of the end-user ISP. The initial decisions by hearing officers in Tennessee and Georgia of complaints against BellSouth comport with these decisions as well.²⁰

41. Intermedia submits that the persuasive authority of the above-referenced state commissions is consistent with this Commission's historic treatment of services provided to ISPs. The consistency in these holdings supports the conclusion that the term Local Traffic, as used in the Agreement and as understood by those practicing within the industry and by those regulatory bodies overseeing the industry at the time the Agreement was entered into, includes calls from end-users to ISPs.

IV. GTEFL'S POSITION IS ANTICOMPETITIVE

42. GTEFL's position demonstrates anticompetitive behavior. Any carrier terminating calls to an ISP incurs costs in terminating such calls (which are the same costs incurred in terminating calls

²⁰ Subsequently, by unanimous vote, the full Tennessee Regulatory Authority adopted the Hearing Officer's initial decision. An order is forthcoming.

On July 21, 1998, the Georgia Commission voted to reconsider the initial decision of the hearing officer and may set this matter for an evidentiary hearing.

to any other end-user). Since GTEFL controls most of the originating traffic within its territory, its newly announced position would force Intermedia and other new entrants to terminate these calls without compensation. The inevitable result would be that no ALEC would seek to furnish service to an ISP, since providing that service would result in uncompensated termination costs. This would leave GTEFL with a *de facto* monopoly over ISP end-users, a state of affairs that was not intended by the Act.

43. Upon information and belief, GTEFL, through BBN Corporation, is now offering its own Internet access service to consumers further aggravating this anticompetitive effect. By gaining monopoly power over local exchange service to ISPs and increasing their costs for network access, GTEFL will be in a position to drive competing ISPs out of the local market, thereby leaving GTEFL with a *de facto* monopoly over access to the Internet.

V. REQUEST FOR RELIEF

WHEREFORE, Intermedia Communications Inc. requests that the Commission: (1) determine that GTEFL has breached the Agreement by failing to pay Intermedia reciprocal compensation for the transport and termination of telephone exchange service local traffic originated by GTEFL's end-user customers and sent to Intermedia for termination with ISPs that were Intermedia's end-user customers; (2) enforce the Interconnection Agreement by ordering GTEFL to pay Intermedia for terminating such local traffic under the reciprocal

compensation provisions of the Agreement; and (3) grant such other relief as the Commission deems appropriate.

Respectfully submitted this 3rd day of August, 1998.



Donna L. Canzano
Patrick Knight Wiggins
Wiggins & Villacorta, P.A.
2145 Delta Boulevard
Suite 200
Post Office Drawer 1657
Tallahassee, Florida 32302
(850) 385-6007 Telephone
(850) 385-6008 Facsimile

Counsel for Intermedia
Communications Inc.

EXHIBIT A

000019

- 1.10 **"Exchange Service"** refers to all basic access line services, or any other services offered to end users which provide end users with a telephonic connection to, and a unique telephone number address on, the public switched telecommunications network ("**PSTN**"), and which enable such end users to place or receive calls to all other stations on the PSTN.
- 1.11 **"EIS"** or **"Expanded Interconnection Service"** means a service that provides interconnecting carriers with the capability to terminate basic fiber optic transmission facilities, including optical terminating equipment and multiplexers, at GTE's wire centers and access tandems and interconnect those facilities with the facilities of GTE. Microwave is available on a case-by-case basis where feasible.
- 1.12 **"FCC"** means the Federal Communications Commission.
- 1.13 **"Guide"** means the GTE Customer Guide for CLEC Establishment of Services - Resale and Unbundling, which contains GTE's operating procedures for ordering, provisioning, trouble reporting and repair for resold services and unbundled elements. A copy of the Guide has been provided to ICI.
- 1.14 **"Interconnection"** means the physical connection of separate pieces of equipment, transmission facilities, etc., within, between and among networks, for the transmission and routing of Exchange Service and Exchange Access. The architecture of interconnection may include collocation and/or mid-span meet arrangements.
- 1.15 **"IXC"** or **"Interexchange Carrier"** means a telecommunications service provider authorized by the FCC to provide interstate long distance communications services between LATAs and authorized by the State to provide long distance communications services.
- 1.16 **"ISDN"** or **"Integrated Services Digital Network"** means a switched network service providing end-to-end digital connectivity for the simultaneous transmission of voice and data.
- 1.17 **"ISUP"** means a part of the SS7 protocol that defines call setup messages and call takedown messages.
- 1.18 **"Local Exchange Carrier"** or **"LEC"** means any company certified by the Commission to provide local exchange telecommunications service. This includes the Parties to this Agreement.
- 1.19 **"Local Exchange Routing Guide"** or **"LERG"** means the Bellcore reference customarily used to identify NPA-NXX routing and homing information.
- 1.20 **"Local Traffic"** means traffic that is originated by an end user of one Party and terminates to the end user of the other Party within GTE's then current local serving area, including mandatory local calling scope arrangements. A mandatory local calling scope arrangement

is an arrangement that requires end users to subscribe to a local calling scope beyond their basic exchange serving area. Local Traffic does not include optional local calling scopes (i.e., optional rate packages that permit the end user to choose a local calling scope beyond their basic exchange serving area for an additional fee), referred to hereafter as "optional EAS."

- 1.21 "MDF" or "Main Distribution Frame" means the distribution frame used to interconnect cable pairs and line trunk equipment terminating on a switching system.
- 1.22 "Meet-Point Billing" or "MPB" refers to an arrangement whereby two LECs jointly provide the transport element of a switched access service to one of the LEC's end office switches, with each LEC receiving an appropriate share of the transport element revenues as defined by their effective access tariffs.
- 1.23 "MECAB" refers to the *Multiple Exchange Carrier Access Billing* ("MECAB") document prepared by the Billing Committee of the Ordering and Billing Forum ("OBF"), which functions under the auspices of the Carrier Liaison Committee ("CLC") of the Alliance for Telecommunications Industry Solutions ("ATIS"). The MECAB document, published by Bellcore as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of an access service provided by two or more LECs, or by one LEC in two or more states within a single LATA.
- 1.24 "MECOD" refers to the *Multiple Exchange Carriers Ordering and Design* ("MECOD") *Guidelines for Access Services - Industry Support Interface*, a document developed by the Ordering/Provisioning Committee under the auspices of the Ordering and Billing Forum ("OBF"), which functions under the auspices of the Carrier Liaison Committee ("CLC") of the Alliance for Telecommunications Industry Solutions ("ATIS"). The MECOD document, published by Bellcore as Special Report SR-STS-002643, establish methods for processing orders for access service which is to be provided by two or more LECs.
- 1.25 "Mid-Span Fiber Meet" means an Interconnection architecture whereby two carriers' fiber transmission facilities meet at a mutually agreed-upon POI.
- 1.26 "NANP" means the "North American Numbering Plan", the system of telephone numbering employed in the United States, Canada, and the Caribbean countries that employ NPA 809.
- 1.27 "NID" or "Network Interface Device" means the point of demarcation between the end user's inside wiring and GTE's facilities.
- 1.28 "Numbering Plan Area" or "NPA" is also sometimes referred to as an area code. This is the three digit indicator which is defined by the "A", "B", and "C" digits of each 10-digit telephone number within the NANP. Each NPA contains 800 possible NXX Codes. There are two general categories of NPA, "Geographic NPAs" and "Non-Geographic NPAs". A Geographic NPA is associated with a defined geographic area, and all

3. Transport and Termination of Traffic.

3.1 Types of Traffic. The Parties shall reciprocally terminate Local Traffic originating on each other's networks utilizing either direct or indirect network interconnections as provided in this Article. Neither Party is to send cellular traffic or traffic of any third party unless an agreement has been made between the originating Party and both the tandem company and the terminating company.

3.2 Audits. Either Party may conduct an audit of the other Party's books and records, no more frequently than once per twelve (12) month period, to verify the other Party's compliance with provisions of this Article IV. Any audit shall be performed as follows: (i) following at least ten (10) days' prior written notice to the audited Party; (ii) subject to the reasonable scheduling requirements and limitations of the audited Party; (iii) at the auditing Party's sole cost and expense; (iv) of a reasonable scope and duration; (v) in a manner so as not to interfere with the audited Party's business operations; and (vi) in compliance with the audited Party's security rules.

3.3 Compensation For Exchange Of Traffic.

3.3.1 Mutual Compensation. The Parties shall compensate each other for the exchange of Local Traffic in accordance with Appendix C attached to this Agreement and made a part hereof. Charges for the transport and termination of intraLATA toll, optional EAS arrangements and interexchange traffic shall be in accordance with the Parties' respective intrastate or interstate access tariffs, as appropriate.

3.4 Tandem Switching Services. The Parties will provide tandem switching for traffic between the Parties end offices subtending each other's access tandem, as well as for traffic between the Parties and any third party which is interconnected to the Parties' access tandems.

3.4.1 The originating Party will compensate the tandem Party for each minute of originated tandem switched traffic which terminates to third Party (e.g. other CLEC, ILEC, or wireless service provider). The applicable rate for this charge is identified in Appendix C.

3.4.2 The originating Party also assumes responsibility for compensation to the company which terminates the call.

3.4.3 Services Provided. Tandem switching services provided pursuant to this section 3.4 shall include the following:

- (a) signaling;
- (b) screening and routing;

EXHIBIT B

000023

December 16, 1997

Mr. Kirk Champion
Intermedia Communications, Inc.
3625 Queen Palm Drive
Tampa, FL 33619

Dear Mr. Champion:

GTE believes that there is an error in your billing for the reciprocal termination of local traffic as provided for in our interconnection agreement. It appears that you are billing GTE for more than Local Traffic as defined in that agreement. In addition, ICI's rates are based on "opt-in" language from the AT&T agreement. Given this, the rates charged on the invoices do not correspond to the AT&T opt-in rates.

Based on this appearance, GTE disputes your bill dated December 3, 1997 totaling \$843,239.78 and is withholding payment. GTE requests that we establish a discussion and work toward resolution of this issue as soon as possible.

Please contact me at 813/273-2904 to establish a review of this dispute.

Sincerely,

Kimberly Tagg
Support Manager - Emerging Markets

Cc: Michael A. Marczyk
Ann Lowery
Julia Strow

000024

EXHIBIT C

000025

January 7, 1998

Ms. Kimberly Tagg
GTE Network Services
One Tampa Center
201 N. Franklin Street
Tampa, Florida 33602

Dear Ms. Tagg:

This is to acknowledge our receipt of your letter dated December 16, 1997 disputing the reciprocal compensation billing in the amount of \$843,239.78 for local traffic termination. You identify two issues associated with the dispute. The letter states that Intermedia appears to billing for more than local traffic as defined in our agreement to which Intermedia strongly disagrees. The billing rendered contains only local traffic as defined in our agreement. On December 17 when I called to inquire about this statement, you referred me to Steve Pitterle. In my discussion with Mr. Pitterle, I requested a written explanation from GTE as to what was meant by the statement "more than local traffic" in your letter, although I understand from my discussion with him that GTE is referring to Internet traffic. I have not received anything from Mr. Pitterle and would request again some specific explanation, in writing, from GTE which specifically identifies what traffic GTE feels is not local in the billings from Intermedia. Additionally, I would like to request that GTE identify the specific dollar amount of the \$843,239.78 that GTE considers to be non-local traffic and that payment of the balance or non-disputed amount be paid.

The second issue raised in the letter addresses what the actual rate for the local reciprocal compensation should be. As we discussed on December 17, 1997, Intermedia is required to notify GTE in writing of its desire to "opt in" to the approved AT&T agreement. To date, no such notification has been given by Intermedia therefore we are operating under the approved contracts executed between Intermedia and GTE. It is my understanding based on our conversation that GTE is in agreement with Intermedia on this point.

I also request by this letter that the dispute resolution procedures in our interconnection agreement be initiated to resolve the issue as to what if any of our billing is for "non-local" traffic. I will be the Intermedia representative responsible for this negotiation. Please have the designated GTE representative contact me to establish the action plan for our negotiations.

Please call me on 813-829-2072 if you have any questions.

Sincerely,



Julia Strow
Director - Industry Policy
Intermedia Communications Inc.

cc: Michael Viren
Michael Marczyk
Ann Lowery
Steve Pitterle

000026

EXHIBIT D

000027



**GTE Telephone
Operations**

4100 N. Roxboro Road
P.O. Box 1412
Durham, NC 27702
919 317-5453

February 5, 1998

VIA AIRBORNE AND FACSIMILE

Ms. Julia Strow
Intermedia Communications, Inc.
3625 Queen Palms Drive
Tampa, FL 33619

Dear Julia:

Subject: INTERMEDIA COMMUNICATIONS INC.

Attached is GTE's position on the exchange of information service provider traffic for your review. In addition, GTE's proposal of the manner in which billing disputes should be handled pending final resolution by the FCC or appropriate state commission has also been addressed.

Please contact me at your convenience when you have reviewed the attached and are prepared to discuss it. I can be reached at 919/317-5453.

Yours truly,

Ann Lowery
Manager-Carrier Compensation - East

OAL:kbm
Enclosure

c: M. Marczyk
S. Pinterle
K. Tagg
A. Wood

ISP Bill Adjustment

Background:

Per the FCC's Local Interconnection Order, GTE and CLECs pay reciprocal compensation for local traffic. A disagreement has arisen between GTE (and most ILECs) and the CLECs as to the definition of local traffic. Specifically, the disagreement has focused on whether ISP traffic is local, and thus eligible for reciprocal compensation. GTE strongly contends that ISP traffic is interstate in nature and is not subject to reciprocal compensation. Historically, the jurisdictional nature of traffic has been determined by its end-to-end configuration, not by the presence of intermediate local switching and/or transport. Since ISP traffic is passed through the LECs to ISP sites that could be anywhere in the nation or the world, ISP traffic must be interstate/international, not intrastate, and especially not local. In the FCC's Access Charge Order, the FCC ruled that calls to an information service provider (ISP) would be exempt from interstate access charges, but the FCC has not ruled that ISP traffic is intrastate or local.

Issue:

CLECs pass ISP traffic through their switch, before sending it on to ISP sites. If the CLEC switch houses NXX codes that are local or EAS to the originating GTE end user customer, such calls appear to be local traffic. Since these calls are not local, but are interstate, if the CLEC bills GTE reciprocal compensation for such calls, they must be adjusted out. However, GTE has no precise way of knowing which calls are to ISPs and not subject to reciprocal compensation, and which calls are local and properly subject to reciprocal compensation.

Interim Solution:

ISP traffic has a longer average holding time than local traffic. The average GTE holding time for local traffic is approximately 3.5 minutes. Absent the CLEC identifying and removing their ISP traffic from their local reciprocal compensation bill to GTE, GTE will attempt to estimate the ISP traffic and withhold payment for such traffic. GTE will estimate the CLEC's ISP traffic by analyzing the bill detail, assume that traffic with a holding time of greater than 10 minutes is ISP traffic and adjust the bill from the CLEC accordingly.

Also, since ISP providers may have service that terminates to GTE, GTE will also adjust out any billing to CLECs that has a holding time of more than 10 minutes.

Thus GTE will pay CLECs reciprocal compensation as provided for in the Interconnection Agreement, but only for local traffic, not ISP traffic.

Long Term Solution:

GTE will remove actual ISP traffic from local when the ability to identify such traffic is available. Until then, the interim solution described above will continue.

EXHIBIT E

000030



GTE Network Services

One Tampa City Center
201 N. Franklin Street
Tampa, FL 33602

February 17, 1998

Ms. Julia Strow
Director – Strategic Planning
Intermedia Communications, Inc.
3625 Queen Palm Drive
Tampa, FL 33619

Dear Ms. Strow:

GTE believes that there is an error in your billing for the reciprocal termination of local traffic as provided for in our interconnection agreement. It appears that you are billing GTE for more than Local Traffic as defined in that agreement. In addition, ICI's rates are based on "opt-in" language from the AT&T agreement. Given this, the rates charged on the invoices do not correspond to the AT&T opt-in rates.

Based on this appearance, GTE disputes charges billed for November and December 1997, totaling \$488,891.14, and is withholding payment. This is in addition to the \$843,239.78 disputed in our letter to you dated December 16, 1998. We can further discuss this matter on our conference call scheduled for March 2, 1997 at 10:00 am EST. The conference bridge for this meeting is 919/317-7033.

Please contact me at 813/273-2904 if you have any questions regarding the above.

Sincerely,

Kimberly Tagg
Support Manager – Emerging Markets

Cc: Michael A. Marczyk
Ann Lowery
Kirk Champion

000031



GTE Network Services

One Tampa City Center
201 N. Franklin Street
Tampa, FL 33602

March 2, 1998

Ms. Julia Strow
Director - Strategic Planning
Intermedia Communications, Inc.
3625 Queen Palm Drive
Tampa, FL 33619

Dear Ms. Strow:

GTE believes that there is an error in your billing for the reciprocal termination of local traffic as provided for in our interconnection agreement. It appears that you are billing GTE for more than Local Traffic as defined in that agreement.

Based on this appearance, GTE disputes charges billed for November and December 1997, totaling \$488,891.14, and is withholding payment. This is in addition to the \$843,239.78 disputed in our letter to you dated December 16, 1998. We can further discuss this matter on our conference call scheduled for March 2, 1997 at 10:00 am EST. The conference bridge for this meeting is 919/317-7033.

Please contact me at 813/273-2904 if you have any questions regarding the above.

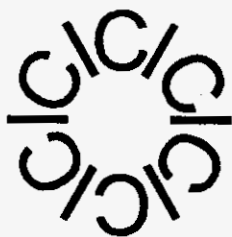
Sincerely,

Kimberly Tagg
Support Manager - Emerging Markets

Cc: Michael A. Marczyk
Ann Lowery
Kirk Champion

EXHIBIT F

000033



**Intermedia
Communications- Inc.**

FAXED
3/2/98

Facsimile Cover Sheet

To:	Kimberley Tagg
Company:	
Phone:	
Fax:	813-204-8839
From:	Julia Strow
Company:	ICI-Industry Policy
Phone:	813-829-2072 813-829-0011 ext. 2072
Fax:	813-829-4923
Date:	03/02/98
Pages including this cover page:	2

Comments:

000034

GTE/Intermedia
Reciprocal Compensation for ISP Traffic

Intermedia Position: Traffic transported and terminated to ISPs is local traffic and therefore subject to reciprocal compensation provisions of the interconnection agreement between GTE and Intermedia.

Basis for Intermedia's Position and Current Status: The FCC has long held that calls to ISPs must be treated as local calls by ILECs regardless of whether the ISP reformats or retransmits information received over such calls to or from out-of-state destinations. Calls placed to ISPs over local numbers provided out of the ILEC tariff are clearly local. Recent state commission rulings on this issue are supportive of Intermedia's positions. In every case where a final ruling has been issued, the state commission has found that ISP traffic is local and therefore subject to reciprocal compensation. These states include Arizona, Connecticut, Colorado, Illinois, Maryland, Michigan, Minnesota, Oregon, Texas, Virginia, Washington, West Virginia, Oklahoma and North Carolina. Furthermore, in Florida a recent staff recommendation also supports Intermedia's position as well as the interim decision in New York.

Proposed Solution: Since the states where decisions have been made have unanimously ruled in favor of Intermedia's position and it would appear that Florida will also rule that ISP traffic is local and subject to mutual compensation, GTE should pay Intermedia the balance due on outstanding reciprocal compensation invoices in full. At such time that a decision is made that determines that the ISP traffic is not local and therefore not subject to mutual compensation, then Intermedia will cease to assess those charges at that point on a going forward basis unless required by the order to retroactively adjust the charges.

Comments to GTE's Proposed Long Term and Interim Solutions: Intermedia rejects GTE's proposals for two reasons. First, GTE nor any other party has the ability to identify ISP traffic. Second, use of a surrogate methodology using holding times of greater than 10 minutes as the basis for excluding ISP traffic in the interim, is unacceptable since GTE would be arbitrarily withholding compensation on other local calls with holding times in excess of 10 minutes.

Outstanding Issues: .

In proceedings that are underway or decisions that have been reached by state commissions on this issue to which GTE was not a party, will GTE abide by those decisions for purposes of this dispute?

Prepared by:
Julia Strow
Director - Industry Policy
Intermedia Communications Inc.
03/02/98

000035

EXHIBIT G

000036

June 15, 1998

Ms. Kimberly Tagg
GTE Network Services
One Tampa Center
201 N. Franklin Street
Tampa, Florida 33602

Dear Ms. Tagg:

As you aware GTE and Intermedia have been seeking to reach resolution of the reciprocal compensation billing dispute via the dispute resolution procedures contained in our interconnection agreement. Unfortunately, with regard to the issue of Internet traffic we have not been able to reach resolution. In light of this, Intermedia has no alternative but to seek resolution of the issue via the regulatory process.

Intermedia has, however, determined that with regard to the issue of the billing initiation date for reciprocal compensation provisions that such billing should be initiated under the time frame specified by our interconnection agreement. Therefore, billing adjustments will be made by Intermedia to resolve this matter.

Additionally, it has been brought to my attention that some billing adjustments have also been made to bill for access minutes of use instead of for conversation minutes of use. If you should have any questions about this issue, please contact me as well.

Sincerely,



Julia Strow
Director - Industry Policy
Intermedia Communications Inc.

000037

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery(*) or U.S. Mail this 3rd day of August, 1998 to the following:

Martha Carter Brown*
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Kimberly Caswell
Anthony Gillman
GTE Florida Incorporated
201 North Franklin Street
Tampa, Florida 33602



Donna L. Canzano

000038