



ORIGINAL

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January 15, 1999

Ms. Blanca S. Bayo, Director  
Division of Records & Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

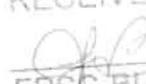
Re: Docket No. 980986-TP  
Complaint of Intermedia Communications Inc. against GTE Florida Incorporated  
for breach of terms of Florida Partial Interconnection Agreement under Sections  
251 and 252 of the Telecommunications Act of 1996, and request for relief

Dear Ms. Bayo:

Please find enclosed an original and fifteen copies of the Rebuttal Testimony of Steven  
J. Pitterle on behalf of GTE Florida Incorporated for filing in the above matter. Service  
has been made as indicated on the Certificate of Service. If there are any questions  
regarding this filing, please contact me at (813) 483-2617.

Sincerely,

  
Kimberly Caswell

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KC:tas  
Enclosures

A part of GTE Corporation

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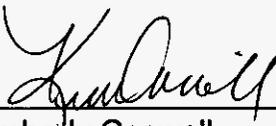
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of the Rebuttal Testimony of Steven J. Pitterle on behalf of GTE Florida Incorporated in Docket No. 980986-TP were sent via U. S. mail on January 15, 1999 to the following:

Martha Brown, Staff Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

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Scott A. Sapperstein  
Intermedia Communications Inc.  
3625 Queen Palm Drive  
Tampa, FL 33619

  
\_\_\_\_\_  
Kimberly Caswell

**ORIGINAL**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of Intermedia Communications, )  
Inc. against GTE Florida, Inc. 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. 980986-TP**

**REBUTTAL TESTIMONY OF  
STEVEN J. PITTERLE  
ON BEHALF OF  
GTE FLORIDA INCORPORATED**

**JANUARY 15, 1999**

DOCUMENT NUMBER-DATE

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**GTE FLORIDA INCORPORATED**

**REBUTTAL TESTIMONY OF STEVEN J. PITTERLE**

**DOCKET NO. 980986-TP**

**Q. PLEASE STATE YOUR NAME AND ADDRESS.**

A. My name is Steven J. Pitterle and my business address is 600 Hidden Ridge Drive, Irving, Texas 75038.

**Q. ARE YOU THE SAME STEVEN J. PITTERLE WHO FILED DIRECT TESTIMONY IN THIS CASE?**

A. Yes.

**Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

A. I will respond to the Direct Testimony of Julia Strow, the witness for Intermedia Communications Inc. (ICI), in this case.

**Q. MS. STROW ALLEGES THAT GTE HAS MATERIALLY AND WILLFULLY BREACHED ITS INTERCONNECTION CONTRACT WITH ICI BECAUSE IT HAS NOT PAID ICI RECIPROCAL COMPENSATION FOR INTERNET SERVICE PROVIDER (ISP) TRAFFIC. IS THIS TRUE?**

A. No. ICI's claim rests on its misapprehension that ISP traffic is local in nature and thus subject to the interconnection contract's reciprocal compensation obligations. As I and the other GTE witness, Howard

1 Lee Jones, explained in our respective Direct Testimony in this  
2 proceeding, ISP traffic is functionally interstate and must be classified  
3 this way for jurisdictional purposes. A long line of FCC precedent  
4 including, most recently, the FCC's decision in GTE's ADSL tariff  
5 proceeding, confirms that ICI's jurisdictional analysis is wrong, and  
6 therefore that ISP traffic must be treated as jurisdictionally interstate.

7  
8 ICI's case rests on a "two-call" theory that the FCC has repeatedly  
9 rejected. In short, ICI's position is founded on the assumption—recited  
10 over and over in Ms. Strow's testimony—that ISP calls "terminate" at  
11 the ISP's point of presence. But that assumption is wrong. As the  
12 FCC most recently clarified, ISP communications "do not terminate at  
13 the ISP's local server, as some competitive LECs and ISPs contend,  
14 but continue to the ultimate destination or destinations, very often at  
15 a distant Internet website accessed by the end user." (GTE Tel.  
16 Operating Cos. GTOC Tariff No. 1, GTOC Transmittal No. 1148, FCC  
17 98-292, Memorandum Op. and Order, Oct. 30, 1998 (FCC Order)  
18 (attached to my Direct Testimony as Ex. SJP-1), at para. 19.)

19  
20 In short, ISP traffic is not severable into interstate and intrastate  
21 components; under FCC precedent, the entire communication must  
22 be treated as jurisdictionally interstate. Therefore, there is no basis for  
23 subjecting this traffic to reciprocal compensation obligations reflected  
24 in state interconnection contracts.

25

1       **Q.    MS. STROW ALSO CLAIMS THAT GTE HAS VIOLATED SECTION**  
2       **251(B)(5) OF THE TELECOMMUNICATIONS ACT OF 1996. IS**  
3       **THAT RIGHT?**

4       A.    No.    That provision directs telecommunications companies to  
5       establish reciprocal compensation arrangements “for the transport  
6       and termination of telecommunications.” Once again, ICI’s claim rests  
7       on the mistaken assumption that ISP traffic terminates at the ISP’s  
8       server. As I explained above, the FCC has unequivocally discredited  
9       this premise of ICI’s argument. Thus, the Act does not support ICI’s  
10      claim for reciprocal compensation.

11

12      **Q.    IS IT SIGNIFICANT, AS MS. STROW CONTENDS, THAT THE**  
13      **PARTIES’ AGREEMENT DOES NOT CREATE A “DISTINCTION**  
14      **PERTAINING TO CALLS PLACED TO TELEPHONE EXCHANGE**  
15      **END-USERS THAT HAPPEN TO BE ISPS”?**

16      A.    No.  Again, ICI’s contention rests on a mistaken assumption that was  
17      never plausible. GTE has never considered ISPs to be “end users”  
18      in a generic sense and there was no indication during negotiations  
19      that ICI did either. When GTE executed the contract with ICI, it  
20      correctly understood that ISPs are not end users for all purposes, but  
21      that they are treated as end users only under the FCC’s access  
22      exemption for policy reasons. As the FCC confirmed: “The fact that  
23      ESPs are exempt from certain access charges and purchase their  
24      PSTN links through local tariffs does not transform the nature of traffic  
25      routed to ESPs. That the Commission exempted ESPs from access

1 charges indicates its understanding that they in fact use interstate  
2 access service; otherwise, the exemption would not be necessary."  
3 (FCC Order at para. 21 [emphasis in original].) Both at the FCC and  
4 in the states, GTE has long advanced the same understanding as the  
5 FCC about the scope of the access charge exemption. Because the  
6 interstate nature of ISP traffic was clear to GTE, there would have  
7 been no need to address ISP traffic in the context of a local  
8 interconnection agreement. Furthermore, as I pointed out in my  
9 Direct Testimony, GTE, as a rational business entity, would never  
10 have acquiesced to applying reciprocal compensation to ISP traffic,  
11 since doing so would assure GTE would pay out substantial sums  
12 without any means of recovery.

13  
14 **Q. MS. STROW STATES THAT THERE IS "NOTHING ABSOLUTELY**  
15 **UNIQUE IN THE NATURE OF A CALL TO AN ISP THAT COULD**  
16 **SEPARATE ISP TRAFFIC FROM OTHER LOCAL TRAFFIC WITH**  
17 **LONG HOLDING TIMES." (STROW DT AT 8.) DO YOU AGREE?**

18 **A.** No. Ms. Strow offers as examples calls to a help desk, reservation  
19 centers, travel agencies, and customer service centers. (Strow DT at  
20 8.) These kinds of calls are typically measured in minutes, and do not  
21 affect the average voice grade holding time (which is 4 minutes).  
22 Internet connections, however, routinely last much longer (perhaps  
23 even hours), with a significant impact on average holding times. This  
24 difference in holding times, coupled with the ongoing, explosive growth  
25 of the Internet, counsels against a policy of treating ISP traffic as local.



1 decision to allow reciprocal compensation for ISP calls was "properly  
2 based on FCC regulations which exempt ESP providers from paying  
3 access charges." (U. West Communications, Inc. v. MFS Intelenet,  
4 Inc., No. C97-222WD (U.S. District Court, W.D. Washington, Jan. 7,  
5 1998, Ex. JOS-8 at 28.). As noted above, the FCC has unambiguously  
6 rejected this expansive reliance on its access charge exemption.

7

8 As to Commission decisions from other states, Ms. Strow claims that  
9 24 states have "heard complaints" on the reciprocal compensation  
10 issue. This is an overstatement. For example, some of the decisions  
11 ICI cites were made in the context of interconnection arbitrations,  
12 rather than complaints. In these complex cases, the Commissions  
13 barely touched upon the ISP traffic issue (and so it is not surprising  
14 that the conclusions reached were patently erroneous under FCC  
15 precedent). Also, some of the precedent ICI cites is narrower than Ms.  
16 Strow suggests. In particular, the Maryland Commission did not deem  
17 ISP traffic to be local. Rather, in the context of an MFS complaint  
18 against Bell Atlantic, the Commission recognized, but did not settle,  
19 the "question as to whether these communications are 'jurisdictionally  
20 interstate communications'" under FCC precedent. (Letter from D.P.  
21 Gahagan, Exec. Sec'y, Maryland Pub. Serv. Comm'n, to D. Hall et al.,  
22 Sept. 11, 1997, cited in Strow Ex. JOS-9 at 1.)

23

24 Again, GTE's lawyers can address the other state decisions in more  
25 detail in the Company's posthearing brief. I can say here, however,

1           that even though there are a number of state Commission decisions  
2           applying reciprocal compensation to ISP traffic, those decisions were  
3           all made before the FCC's ADSL Order, and they are largely based on  
4           misinterpretations of FCC precedent. Now that the FCC has clarified  
5           the meaning of its past rulings, this Commission, fortunately, can avoid  
6           making the same mistakes other Commissions have. A correct  
7           interpretation of FCC precedent--as well as sound policy--compels the  
8           conclusion that ISP traffic is jurisdictionally interstate.

9

10       **Q.    DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

11       **A.    Yes.**

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