

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Intermedia )  
Communications Inc. against GTE )  
Florida Incorporated for breach of )  
Florida partial interconnection )  
agreement under Section 251 and )  
252 of the Telecommunications Act )  
of 1996, and request for relief. )

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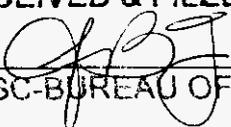
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REBUTTAL TESTIMONY OF JULIA STROW ON BEHALF OF  
INTERMEDIA COMMUNICATIONS INC.

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FPSC-BUREAU OF RECORDS

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1 Q: **Please state your name, employer, position, and business address.**

2 A: My name is Julia Strow. I am employed by Intermedia Communications Inc. (Intermedia) as  
3 Assistant Vice President, Regulatory and External Affairs. My business address is 3625 Queen Palm  
4 Drive, Tampa, Florida 33619.

5 Q: **What are your responsibilities in that position?**

6 A: I am the primary interface between Intermedia and the incumbent local exchange carriers (ILECs).  
7 In that capacity, I am involved in interconnection negotiations and arbitrations between Intermedia  
8 and the ILECs. I am also primarily responsible for strategic planning and the setting of Intermedia's  
9 regulatory policy.

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

11 A: Yes. I filed direct testimony on December 10, 1998.

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

13 A: The purpose of my rebuttal testimony is to respond to the direct testimony of GTEFL's witnesses  
14 Steven J. Pitterle and Howard Lee Jones.

15 Q. **Do you agree with Mr. Pitterle that Internet Service Provider (ISP) traffic is functionally and  
16 jurisdictionally interstate and thus outside the scope of the GTEFL/Intermedia interconnection  
17 agreement (Agreement)?**

18 A. No. This dispute is clearly a contractual dispute and within the jurisdiction of the Florida Public  
19 Service Commission. ISP traffic is local under the definition contained in the Agreement and  
20 therefore under the purview of the Florida Commission. Section 252(e) of the Telecommunications  
21 Act of 1996 (Act), gives the states the authority to resolve agreement disputes, and only if the state  
22 fails to act, would the issue then go to the Federal Communications Commission (FCC). To date,  
23 26 states, including Florida, have found that the states do have the authority to determine this issue.  
24 All 26 states that have considered this issue have ruled that calls to ISPs are local and subject to

1 reciprocal compensation. In addition, as discussed in my direct testimony, three federal courts have  
2 upheld state Commission decisions in Texas, Illinois, and Washington.

3 **Q. Mr. Pitterle states that Intermedia is not entitled to the reciprocal compensation payments it**  
4 **seeks for ISP traffic (p. 3). Do you agree with his assessment on this issue?**

5 **A.** Mr. Pitterle is wrong for two straightforward and unavoidable reasons. First, the GTEFL-Intermedia  
6 interconnection agreement is clear as written and requires such compensation. The essence of the  
7 Agreement requires that parties owe each other reciprocal compensation for any "Local Traffic"  
8 terminated on the other's network and that a local telephone call from an end-user to an ISP qualifies  
9 as Local Traffic under the terms of the agreement.

10 The second reason Mr. Pitterle is wrong is that he attempts to ignore the reality that within  
11 the context of the Agreement an Internet communication consists of two segments: (1) a local  
12 telephone call from an end-user to an ISP; and (2) an enhanced transmission from the ISP over the  
13 Internet.

14 For purposes of establishing reciprocal compensation, the call ends when it is delivered to  
15 the ISP. The information service provided by the ISP is not a "call", because it is not a  
16 telecommunications service, but is an enhanced information service.

17 It is only by ignoring the clear meaning of the Agreement and the clear distinction between  
18 telecommunications and information service that GTEFL can attempt to avoid its contractual  
19 obligation.

20 **Q. Under the scenario you just described; why isn't the ISP classified as a telecommunications**  
21 **carrier?**

22 **A.** First, the Act defines "telecommunications" as the "transmission, between or among points specified  
23 by the user, of information of the user's choosing, without change in the form or content of the

1 information as sent and received." (47 U.S.C. 153(43)) The local telephone call from an end-user  
2 to an ISP clearly meets the definition of telecommunications.

3 The second segment, however, does not meet the definition of telecommunications under  
4 the Act. Moreover, the enhanced transmission from the ISP over the Internet is not regulated under  
5 title II of the Act. Specifically, "enhanced service" refers to

6 services, offered over common carrier transmission facilities, which  
7 employ computer processing applications that act of the format, content,  
8 code, protocol or similar aspects of the subscriber's transmitted  
9 information; provide the subscriber additional, different, or restructured  
10 information; or involve subscriber interaction with stored information.  
11 Enhanced services are not regulated under title II of the Act. (47 CFR  
12 64.702(a), emphasis added)  
13

14 Once a call is sent to an ISP, the ISP performs Internet protocol conversion and also directly involves  
15 the subscriber in direct access to stored information. Therefore, the ISP segment of call meets the  
16 definition of "enhanced" or "information" services.

17 **Q. Why isn't the word "terminate" specifically defined in the Agreement?**

18 **A.** It is my understanding that the word "terminate" is not defined for the same reason that the word  
19 "originate" is not defined: both are commonly understood and are used consistently by carriers and  
20 regulators alike. To "terminate" means to deliver the call to the user associated with the dialed  
21 number.

22 **Q. Have any other state commissions found that calls to an  
23 ISP terminate when they reach the modem?**

24 **A.** Yes. The Georgia Commission found that to be the case.  
25 Its December 28, 1998 order states,

26 The essential facts are that a call to an ISP  
27 is placed using a local telephone number.

28 The LEC networks terminate this local call to

1 the ISP, whose local exchange service numbers  
2 bear NPA-NXX designations associated with the  
3 same local calling area. Whatever services  
4 the ISP then provides are irrelevant to the  
5 fact that the call has terminated locally  
6 (Page 7, 8196-U).

7  
8 The Georgia Commission further stated that a call  
9 is considered to be terminated when it is delivered to  
10 the telephone exchange service number that has been  
11 called, regardless of the identity or status of the  
12 called party.

13  
14 **Q. If ISPs are classified as end-users and not telecommunications carriers for purposes of**  
15 **determining compensation arrangements, why in your opinion doesn't GTEFL recognize that**  
16 **calls to ISPs qualify as local calls?**

17 **A. Because GTEFL rejects the Act's fundamental distinction between electronic transmissions that are**  
18 **telecommunications services and those that are enhanced services. It is only by treating the second**  
19 **segment, enhanced service, as a continuation of a telecommunications service for purposes of**  
20 **defining reciprocal compensation obligations, that GTEFL can confuse the otherwise clear**  
21 **application of the Agreement, the tariff, the FCC orders, and the Commission orders pursuant to the**  
22 **Act.**

23 **Q. On pages 9-10, of Mr. Pitterle's direct testimony, he**  
24 **states that the Commission does not have to apply the**

1 same rationale in this case as it did in the  
2 BellSouth/Intermedia Reciprocal Compensation Complaint.

3 Do you agree?

4 A. No. As discussed in my direct testimony, Commission  
5 Order PSC-98-1216-FOF-TP, September 15, 1998, in the  
6 BellSouth/Intermedia case does have bearing on this  
7 case. The facts of the two cases are virtually  
8 identical, the type of traffic at issue is the same,  
9 and the relevant reciprocal compensation language found  
10 in the GTEFL/Intermedia agreement and the  
11 BellSouth/Intermedia agreement is essentially the same.  
12 Because of these factual and legal similarities, the  
13 Commission's order in the BellSouth/Intermedia  
14 reciprocal compensation case is controlling.

15 Q. Mr. Pitterle argues that since the order in the  
16 BellSouth/Intermedia proceeding came out prior to the  
17 FCC's Order on GTE's ADSL tariff, the Commission cannot  
18 use its earlier rationale. Do you agree with Mr.  
19 Pitterle that the FCC has already ruled on this issue?

20 A. No. The FCC has not ruled on the issue of dial-up traffic to ISPs. Mr. Pitterle references, on page  
21 6 of his direct testimony, the October 30, 1998 FCC Order on GTE/FL's ADSL Tariff (CC Docket  
22 No. 98-79). The FCC ruled that GTEFL's tariff offering, which is a dedicated service that provides

1 customers with high speed access to the Internet, is an interstate service. However, the order also  
2 clearly states that this does not apply to dial-up traffic:

3 This Order does not consider or address  
4 issues regarding whether local exchange  
5 carriers are entitled to receive reciprocal  
6 compensation when they deliver to information  
7 service providers, including internet service  
8 providers, circuit-switched dial-up traffic  
9 originated by interconnecting LECs.

10  
11 Therefore, this dispute must be decided by the Florida  
12 Public Service Commission.

13 **Q. Has the FCC's October 30, 1998 decision on GTEFL's ADSL  
14 Tariff affected other state commission decisions?**

15 A. No. In fact, as late as December 31, 1998 the Georgia,  
16 Utah, and Arkansas Commissions have ruled that ISP  
17 traffic is local and subject to state jurisdiction.  
18 All of these decisions were issued after the FCC issued  
19 its Order on the GTEFL ADSL Tariff.

20 **Q. Will the FCC decide if dial-up traffic to ISP are local  
21 calls and subject to reciprocal compensation?**

22 A. It appears that the FCC may issue a separate order on  
23 this issue in the future, however, to date no action  
24 has been taken. As a result, the Commission must move  
25 forward because it clearly has jurisdiction to resolve  
26 this complaint. It should be noted that in the  
27 BellSouth/Intermedia case before this Commission

1 (Docket 980495-TP), BellSouth continually suggested  
2 that the FCC was going to issue an order at any time  
3 and that the Commission should defer to the FCC.  
4 However, an order has still not been released to date.  
5 If the FCC should release such an order, the parties  
6 and the Commission would, at that time, evaluate its  
7 relevance to this proceeding.

8 **Q. Mr. Pitterle also remarks that it was never GTEFL's intent for the Agreement to cover ISP**  
9 **traffic. How do you respond?**

10 **A.** Intermedia was relying on the clear language of the Agreement and the clear distinction between  
11 telecommunications and enhanced services when it entered into the Agreement. Moreover, the  
12 Agreement and GTEFL's local end-user tariffed rate structure dovetail nicely until GTEFL begins  
13 ignoring the distinction between telecommunications and enhanced services. For example, Section  
14 1.20 of the Agreement defines "Local Traffic" as "originated by an end user of one Party and  
15 terminates to the end user of the other Party within GTEFL's then current local serving area," which  
16 are also defined and specified in Section A3 of the GSST. Thus calls to ISPs bearing the same central  
17 office designation as the end-user meet the definition of local calls under the Agreement. This simple  
18 and straightforward application of the Agreement requires no clarification.

19 **Q. On page 13, lines 9-17, Mr. Pitterle states that reciprocal compensation agreements are**  
20 **grounded in the understanding that traffic between two networks will be roughly equal. How**  
21 **do you respond?**

22 **A.** Mr. Pitterle has it exactly backwards. If traffic between two carriers is roughly equal, there is no need  
23 for mutual compensation, and mutual traffic exchange (also known as Bill & Keep) can be an  
24 appropriate method for exchanging traffic. Mutual compensation is required in cases where there

1 is a significant imbalance in traffic. In fact, in cases where GTEFL has Bill & Keep provisions in  
2 its interconnection agreements, those provisions expressly provide for the payment of reciprocal  
3 compensation rates in cases where traffic is out of balance by 10% or more.

4 Moreover, had GTEFL's intent been to exclude ISP traffic in order to bring traffic in balance  
5 between our two companies, a system to identify and measure ISP traffic would have had to been  
6 discussed by the parties. Traffic delivered on Intermedia's network to ISPs is recorded as local.

7 To date, no such discussions have taken place. Thus, the entire record of this proceeding and the history of  
8 discussions demonstrate that there has never been any intention by either party to exclude ISP traffic.  
9 In addition, Intermedia has never objected to paying reciprocal compensation for ISP traffic delivered  
10 from our end users to ISPs served by GTEFL.

11 **Q. To your knowledge, does GTEFL's system distinguish between a local call placed to an ISP  
12 from any other local call?**

13 **A.** No. Currently, neither company can distinguish these types of calls. If GTEFL intended to exclude  
14 traffic terminated to ISPs from other local traffic, GTEFL would have needed to develop a way to  
15 measure traffic that distinguishes such calls from all other types of local calls with long-holding  
16 traffic, such as calls to airline and hotel reservations, computer help desks, customer support lines,  
17 etc.

18 GTEFL is a sophisticated company. GTEFL knew or should have known that its customers  
19 could dial a 7-digit number (as well as other locally dialed calls) to call an ISP. Given GTEFL's  
20 current position that it never intended to include traffic to ISPs for purposes of reciprocal  
21 compensation, it is inconceivable that GTEFL would not have made arrangements to distinguish that  
22 type of traffic from other local calls at the time of the Agreement, knowing that the parties must pay  
23 for the termination of local traffic on the other party's network.

24 **Q. Mr. Pitterle states that given the long holding times**

1           associated with Internet calls, GTEFL would have to pay  
2           substantial compensation to ICI without the ability to  
3           recover its costs from GTEFL customers who originate  
4           those calls. How do you respond?

5 A.       This argument is irrelevant to the proceeding. The  
6       purpose of this proceeding is to determine, based on  
7       the language of the Agreement that was negotiated by  
8       the parties, if calls to ISPs are local and if  
9       reciprocal compensation applies to such calls. The  
10      matter of how GTEFL recovers the costs of providing  
11      local service to its end-user has nothing to do with  
12      the issue at hand.

13           Moreover, even if the merits of GTEFL's argument  
14      are considered - and they should not be in this  
15      proceeding - it is clear that GTEFL is fully compensated  
16      for all services it provides. The FCC expressly found  
17      that ILECs are fully compensated for local calls to  
18      ISPs by the local service charges that the ILECs charge  
19      to the originating caller. If GTEFL feels that its  
20      local calling rates are not adequate to compensate for  
21      such calls, it is free to petition this Commission for  
22      a change in those rates.

23           Finally, I need to correct any misimpression

1           caused by GTEFL's argument. GTEFL fails to mention  
2           that there are many other types of local calls that  
3           have long hold times other than calls to ISPs. These  
4           include calls to customer service call centers;  
5           computer help desks; talk radio shows; airplane, car,  
6           and hotel reservation centers; conference calls among  
7           business users, ect. These calls all can have hang  
8           times as long or longer than ISP-bound calls, and yet  
9           GTEFL has not argued that it fails to recover the costs  
10          of these calls.

11 **Q. Mr. Pitterle goes on to say that such a policy would**  
12 **have broader implications for local competition. What**  
13 **is your response?**

14 **A.** This is again irrelevant. This complaint is a dispute  
15 of a negotiated contract under Section 251 and 252 of  
16 the Act. The issue that must be decided is whether or  
17 not traffic to ISPs is subject to reciprocal  
18 compensation under the Agreement. This case is not  
19 about how GTEFL can avoid paying reciprocal  
20 compensation for certain types of calls or classes of  
21 customers. Any policy decisions that would carve out  
22 classes of customers from local calls would set a  
23 dangerous precedent. Again, this is dangerous because

1 it ignores, but sets a potential precedent for, other  
2 local calls with long holding times such as local calls  
3 to customers service call centers, talk radio shows,  
4 reservation centers, conference calls, ect.

5 Q. Do you agree with Mr. Pitterle that requiring ILECs to  
6 pay ALECs for calls terminated to ISPs would not incent  
7 facilities-based competition?

8 A. No. Intermedia is a facilities-based service provider  
9 which has deployed and continues to deploy large  
10 networks in over 15 states.

11 Q. Mr. Pitterle also states on page 16, lines 5-8, that  
12 ALECs will be reluctant to provide facilities-based  
13 local service because it would not want to pay the  
14 reciprocal compensation to ILECs. Do you agree?

15 A. No. Intermedia strongly disagrees. Intermedia has  
16 never been opposed to paying reciprocal compensation  
17 for calls to ISPs. Intermedia negotiated the  
18 Agreements with ILECs with full intention of abiding by  
19 the terms of the Agreement.

20 Q. Mr. Pitterle suggests on page 16, lines 10-20, that  
21 ALECs would be motivated to actually pay ISPs to be  
22 their customers. How do you respond?

1 A. This suggestion is both irrelevant and untrue.  
2 Intermedia does not cut deals with ISPs in order to win  
3 them as customers. Intermedia has and will continue to  
4 differentiate itself as a provider of quality service,  
5 operational efficiencies and leading technologies. It  
6 is evident that GTEFL did not take advantage of the  
7 market opportunities to win ISP customers like  
8 Intermedia. It is therefore, GTEFL who is using the  
9 regulatory system to try to catch up with the ALECs.

10 **Q. Mr. Pitterle proposes several interim alternatives to**  
11 **reciprocal compensation if the Commission rules that**  
12 **ISP traffic is local. Do you agree with any of these**  
13 **alternatives?**

14 A. No. Reciprocal compensation rates were developed so  
15 that carriers could recover the costs of terminating  
16 local calls on their networks. If GTEFL believes that  
17 it needs additional revenue to recover costs of  
18 originating calls on its network that have long holding  
19 times, then they should ask the Commission to consider  
20 rate revisions on a going forward basis.

21 **Q. Mr. Jones speaks at length about calls to the Internet being functionally interexchange and**  
22 **jurisdictionally interstate in nature. Do you agree with Mr. Jones' characterization?**

1 A. No. To reiterate, an Internet communication consists of two segments: (1) a local telephone call  
2 from an end-user to an ISP; and (2) an enhanced transmission from the ISP over the Internet. The  
3 telephone segment of the call ends at the point it is delivered to the ISP. The information service  
4 provided by the ISP over the internet is distinct for ratemaking purposes because it is not a  
5 telecommunications service, but an enhanced information service.

6 This is consistent with the compensation structures required by numerous FCC orders, the  
7 Florida Public Service Commission's decisions in Docket No. 880423-TP, Orders Nos. 21815, issued  
8 September 5, 1989, and 23183, issued July 13, 1990, and all of the state decisions decided to date.

9 Q. Mr. Jones states that the ISP modem has no information  
10 service function, but is inserted in the transmission  
11 path to reduce the capacity required to be carried to  
12 the servers or ultimate destination or the user. Do  
13 you agree?

14 A. No. The ISP modem does perform an information service.  
15 The modem answers the call and then performs protocol  
16 conversions required to route the call over the  
17 internet.

18 Q. Mr. Jones states on page 7, lines 6-7, that calls do  
19 not connect through at ISP modems within the local  
20 calling scope and that traffic is often hauled,  
21 unaltered, to distant sites for connection to ISP "mega  
22 modem" equipment. How do you respond?

1 A. This argument is not relevant to this complaint. The services and means that an ISP uses to combine  
2 and route traffic does not take away that the call ultimately terminates locally with the NPA-NXX  
3 assigned to the ISP modem. Even if you agree with his argument, all he is describing is foreign  
4 exchange service which is a valid way for ISPs to serve areas today.

5 Q. Please summarize your testimony.

6 A. The language of the Agreement is clear and the distinction between telecommunications and  
7 enhanced services is clear, thus so is BellSouth's obligation. The Commission should enforce the  
8 Agreement as written to require BellSouth to compensate for local traffic terminated to ISPs served  
9 by Intermedia.

10 Q. Does this complete your testimony?

11 A. Yes.

12

13

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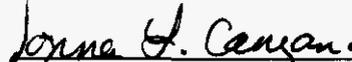
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery(\*) or U.S. Mail this 15th day of January, 1999, to the following:

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