

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

99 JAN 27 PM 2:55

Complaint of Intermedia Communications )  
Inc. and Petition for Emergency )  
Relief Against GTE Florida Incorporated )

DOCKET NO.: 981854-TP  
FILED: 1-27-99 RECORDS AND REPORTING

RESPONSE OF INTERMEDIA COMMUNICATIONS INC.  
TO GTEFL'S MOTION TO DISMISS

Intermedia Communications Inc. (Intermedia), through its undersigned counsel, pursuant to Rule 25-22.037(B), Florida Administrative Code, hereby files this its memorandum in response to the motion to dismiss filed by GTE Florida Incorporated (GTEFL) on January 15, 1999.

1. GTEFL argues that its interconnection agreement with Intermedia requires that disputes under the agreement be resolved through binding arbitration, rather than administrative or other litigation. In addition, GTEFL stresses that Intermedia has acknowledged as much in both its initial pleading to the Commission and its communications with GTEFL, and in fact had represented that it would withdraw its complaint if GTEFL insisted on arbitration. Further, GTEFL reports that it was "... surprised to learn ...

that ICI did not intend to withdraw its Complaint and did not intend to comply with the Agreement's dispute resolution provisions."

2. GTEFL's argument is correct as far as it goes; however, it does overlook the procedural ambiguity central to Intermedia's decision to file the complaint in the first place. Unfortunately, simply granting GTEFL's motion on the basis it pleads would not resolve a major procedural concern of Intermedia.

ACK \_\_\_\_\_  
AFA \_\_\_\_\_  
APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMU \_\_\_\_\_  
CTR \_\_\_\_\_  
EAG \_\_\_\_\_  
LEG 1 \_\_\_\_\_  
LIN \_\_\_\_\_  
OPC \_\_\_\_\_  
RCH \_\_\_\_\_  
SEC 1 \_\_\_\_\_  
WAS \_\_\_\_\_  
OTH \_\_\_\_\_

DOCUMENT NUMBER-DATE  
01104 JAN 27 99  
FPSC-RECORDS/REPORTING

stated:

. . . we consider Supra to have priority . . . only because Supra filed its complaint after BellSouth denied Supra physical collocation in these offices, well before BellSouth had filed its waiver requests for these offices with us, and before any other ALEC had complained. (Order at 10)

The Commission also stated:

[o]nly the timing and circumstances at work in this case constitute a basis for avoiding strict application of the first-come, first-served rule, because without Supra's complaint, we might not even be addressing the issue of whether there is space for physical collocation in these offices. (Order at 10)

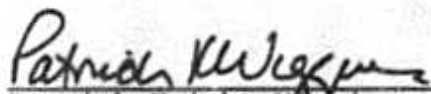
5. As Intermedia noted in its complaint, the facts in its dispute with GTEFL are substantially similar to those in the Supra docket. Thus Intermedia felt compelled to file the complaint and for the same reasons is reluctant to voluntarily dismiss it without an order from the Commission addressing the matter of Intermedia's priority.

6. Although GTEFL is apparently frustrated with Intermedia over its procedural posture in this case, it is worth noting to the Commission that both sides appear to be addressing the merits of the dispute cooperatively and in good faith. For example, GTEFL responded quickly to BFRs submitted by Intermedia with respect to certain central offices, and has indicated that it will negotiate in good faith with respect any central office where the availability of space remains in dispute. Based on its working relationship with GTEFL and the immediate history of this particular dispute, Intermedia remains hopeful that all issues can be resolved bilaterally.

7. In conclusion, Intermedia does not oppose the Commission issuing an order dismissing its complaint, if that order either (a) acknowledges Intermedia's priority or (b) affirms that Intermedia's complaint was not necessary due to the applicability of the FCC's rules establishing priority on a first-come, first-served basis.

Dated this 27th day of January, 1999.

Respectfully submitted,



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

and

Scott A. Sapperstein  
Intermedia Communications Inc.  
3625 Queen Palm Drive  
Tampa, Florida 33619-1309  
(813) 829-0011 Telephone  
(813) 829-4923 Facsimile

Counsel for Intermedia  
Communications Inc.

**CERTIFICATE OF SERVICE**

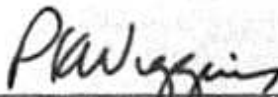
I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery(\*) or U.S. Mail this 27th day of January 1999, to the following:

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

Beverly Y. Menard  
c/o Margo B. Hammar  
GTE Florida Incorporated  
106 E College Ave, Ste. 810  
Tallahassee, FL 32301-7704

Kimberly Caswell  
GTE Florida Incorporated  
P.O. Box 110, FLTC0007  
Tampa, FL 33601-011

Scott A. Sapperstein  
Intermedia Communications Inc.  
3625 Queen Palm Drive  
Tampa, FL 33619-1309

  
\_\_\_\_\_  
Patrick Knight Wiggins