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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: GTE Florida Incorporated's Petition for Declaratory Ruling Concerning Order Number PSC-99-1477-FOF-TP

Docket No. 991414-TP

RECORDS AND REPORTING

Filed: October 12, 1999

INTERMEDIA COMMUNICATIONS INC.'S RESPONSE IN OPPOSITION TO GTE FLORIDA INCORPORATED'S PETITION FOR DECLARATORY RULING

COMES NOW Intermedia Communications Inc. ("Intermedia") and files its Response in Opposition to GTE Florida Incorporated's Petition for Declaratory Ruling. As grounds, Intermedia states as follows.

1. On September 17, 1999, GTE Florida Incorporated ("GTEFL") filed a Petition for Declaratory Ruling ("Petition"), seeking a declaratory ruling from the Commission that it may use the tandem switching rate in the parties' interconnection agreement ("agreement") to compensate Intermedia for Internet-bound calls under Order No. PSC-99-1477-FOF-TP ("Order"), which was issued in Docket No. 980986-TP.

2. In the Petition, GTEFL asks the Commission to interpret the language in the agreement at Section 3.3.1 that states that the parties are to "compensate each other for the exchange of Local Traffic in accordance with Appendix C."

3. Rule 28-105.001, Florida Administrative Code, provides that:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of ... orders over which the agency has authority. A petition for declaratory statement may be used only to resolve questions or doubts as to how the ... orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person or obtaining a policy statement of general applicability from an agency

4. GTEFL's Petition does not satisfy the requirements of the rule; therefore, it must be denied.

I.

4. In the Order, the Commission addressed only the single issue, "whether, under the parties' Interconnection Agreement, GTEFL and Intermedia are required to compensate each other

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for transport and termination of traffic to Internet Service Providers.” Order at 2. The Commission found that the parties’ interconnection agreement contemplated ISP traffic to be local and ordered GTEFL to compensate Intermedia according to the agreement. Order at 9.

5. The Order creates no uncertainty concerning its application to GTEFL’s particular circumstances. The Order simply rejects GTEFL’s contention that the agreement did not include ISP traffic within its definition of local traffic as well as GTEFL’s attempt to avoid its obligations under the agreement to pay Intermedia reciprocal compensation for ISP traffic.

6. In Docket No. 980986-TP, GTEFL did not raise the issue of what rate should apply to local traffic or, more particularly, how the language in Section 3.3.1 of the agreement must be interpreted, and there is no evidence in the record of that proceeding addressing these issues. GTEFL would attempt to cure its lack of foresight by seeking to improperly resolve these issues by means of a declaratory ruling. While, when necessary, a declaratory ruling may be sought to clarify obligations arising from the determination of issues actually litigated, it may not be sought, as in this case, to retrofit an order with determinations of issues not previously placed in dispute.

7. Intermedia rejects GTEFL’s view that the appropriate rate to be applied to local traffic is the tandem switching rate in Appendix C of the agreement; therefore, GTEFL does not have recourse to petition the Commission for redress by means of a declaratory ruling where the Commission is not in full possession of the facts necessary for a proper resolution.

8. Thus, in its Petition, GTEFL does not seek to resolve a controversy or questions or doubts about the applicability of the Order. Rather, GTEFL raises an entirely new and separate controversy, one that may not be properly resolved by a declaratory ruling.¹ See Order No. PSC-99-1194-FOF-TL.

¹ GTEFL, uncertain that a petition for declaratory ruling is proper procedurally, asks the Commission to consider the filing a petition for clarification of the Order in the event it is not. There is, however, no basis in the evidentiary record even to clarify the Order in respect to Section 3.3.1 and Appendix C.

II.

9. A declaratory ruling, moreover, is not an appropriate means for determining the conduct of another person. Rule 28-105.001, Florida Administrative Code; see also Order No. PSC-99-1592-DS-GU. The declaratory ruling GTEFL seeks here would most certainly determine the conduct of Intermedia.

10. Based on the Petition, the Commission is in no position to determine the validity of the facts as asserted by GTEFL. Given that the attendant facts are in dispute, any declaratory ruling based on GTEFL's unilateral assertions would deprive Intermedia of its due process rights and would be unsustainable as a matter of law.² The Petition, therefore, would have the Commission engage in an exercise in administrative futility.

III.

11. Finally, a declaratory statement is inappropriate for obtaining a policy statement of general applicability. Rule 28-105.001, Florida Administrative Code.

12. In the Petition, GTEFL does not stop at advocating the tandem switching rate in Appendix C. Rather, GTEFL argues at length that the Commission should embrace a policy of asymmetrical reciprocal compensation rates "structured consistently with the manner that carriers incur those costs." Petition at 4.

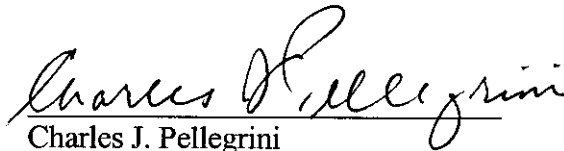
13. Thus, GTEFL would have this Commission improperly enunciate by declaratory ruling a policy statement establishing a price methodology vital not only to GTEFL, but to Intermedia and the rest of the local exchange carrier community as well. A statement of this kind is simply beyond the legitimate scope of a declaratory statement.

² Intermedia acknowledges that, *if* there were some grounds on which the Commission could entertain GTEFL's Petition, the Commission could hold a hearing pursuant to Rule 28-105.003, Florida Administrative Code.

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WHEREFORE, for all of the above reasons, Intermedia respectfully requests that the Commission deny GTEFL's Petition for Declaratory Ruling.

Dated this 12th day of October 1999.



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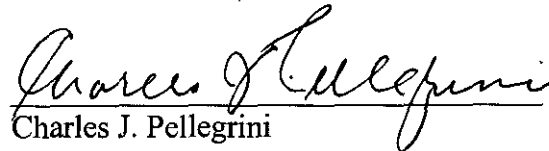
Counsel for Intermedia Communications Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Intermedia Communications Inc.'s Response in Opposition to GTE Florida Incorporated's Petition for Declaratory Ruling has been furnished by U.S. Mail this 12th day of October, 1999, to the following:

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