

ORIGINAL

INTERMEDIA COMMUNICATIONS INC.
REBUTTAL TESTIMONY OF HEATHER BURNETT GOLD
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 991534-TP

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Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, TITLE, AND THE NATURE OF YOUR POSITION WITH INTERMEDIA COMMUNICATIONS INC. ("INTERMEDIA").

A. My name is Heather Burnett Gold. I serve Intermedia as Vice President-Industry Policy. My business address is 3625 Queen Palm Drive, Tampa, Florida 33619. I am responsible for Intermedia's regulatory, legislative and philanthropic activities. I was formerly President of the Association for Local Telecommunications Services, and before that, Vice President, Industry Affairs for the Competitive Telecommunications Association. I have also held regulatory positions with National Telephone Services, Allnet, GTE Sprint and SBS. I am a director of the Universal Service Administrative Company. I hold BA and MA degrees in economics from Tuft University and an MBA degree in finance and marketing from Washington University.

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes, I filed direct testimony in this proceeding on March 17, 2000.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. I am appearing before the Commission as a policy and fact witness to present evidence describing Intermedia's contractual arrangements with BellSouth Telecommunications, Inc. ("BellSouth"), specifically those arrangements concerning intercarrier compensation for the transport and termination of local traffic. The purpose of my rebuttal testimony is to respond to the assertion's made by BellSouth witness, Jerry Hendrix, in his direct testimony.

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1 **Q. WHAT IS YOUR UNDERSTANDING OF MR. HENDRIX'S**
2 **TESTIMONY?**

3 **A.** Simply put, Mr. Hendrix's fundamental testimony is that Intermedia, for some
4 inexplicable and unrelated reasons, willingly and knowingly requested and
5 negotiated to replace the billing structure and rates for local traffic (including
6 traffic terminated to ISPs) throughout the nine states in the BellSouth region when
7 Intermedia executed BellSouth's June 3, 1998, Amendment (the "MTA
8 Amendment").

9 **Q. WHAT IS THE RATIONALE MR. HENDRIX USES?**

10 **A.** As I understand Mr. Hendrix's rationale, he makes two basic allegations. The
11 first allegation is that the MTA Amendment is the result of an Intermedia request
12 to amend the Interconnection Agreement "whereby BellSouth would make
13 available multiple access tandem arrangements." The second allegation is that the
14 supposed monumental reduction in the rate for reciprocal compensation included
15 in the MTA amendment is not linked to network architecture, but rather became
16 instantaneously applicable throughout BellSouth's nine-state territory irrespective
17 of how traffic is being transported between the companies, and that that is
18 something to which Intermedia agreed. Thus, as I understand his testimony, Mr.
19 Hendrix says that paragraphs 3 and 4 of the MTA Amendment are stand-alone
20 provisions not linked to either the multiple tandem access language in the
21 amendment or to whether Intermedia is in fact interconnected to BellSouth's
22 network by means of multiple tandem access arrangements pursuant to its request
23 or otherwise.

1 **Q. WHAT WERE THE CIRCUMSTANCES IN WHICH YOU BECAME**
2 **AWARE OF THE MTA AMENDMENT?**

3 **A.** I first became aware of the MTA Amendment in February 1999 when Intermedia
4 was negotiating a new interconnection agreement with BellSouth. With still a
5 large number of issues in dispute, the negotiations turned in the direction of
6 extending the Agreement, which was to expire in July 1999, to the end of the year.
7 It was then that I saw the MTA Amendment for the first time. In examining the
8 Amendment, I questioned Intermedia personnel who were themselves familiar
9 with the circumstances existing at the time the Amendment was signed and with
10 the purposes the Amendment was designed to serve.

11 **Q. DO YOU AGREE WITH MR. HENDRIX'S ASSERTION REGARDING**
12 **THE PURPOSE OF THE MTA AMENDMENT?**

13 **A.** Absolutely not.

14 **Q. WHAT THEN IS THE PURPOSE AND EFFECT OF THE MTA**
15 **AMENDMENT?**

16 **A.** As I explained in my direct testimony, the MTA Amendment was executed for the
17 sole purpose of making multiple tandem access available to Intermedia upon our
18 election for the alleviation of traffic congestion. There were no provisions in our
19 then existing interconnection agreement that addressed multiple tandem access.
20 Because of this, it was necessary to establish applicable rates when this different
21 type of access is elected by Intermedia. That is the purpose and effect of the rate
22 provisions of the MTA amendment.

23 **Q. WHAT IS YOUR BASIC RESPONSE TO MR. HENDRIX'S TESTIMONY**
24 **ABOUT THE MTA AMENDMENT?**

25 **A.** The MTA Amendment does not provide for, and Intermedia did not agree to, a
26 reduction of the rate for reciprocal compensation throughout Florida, much less
27 the nine-state region. Mr. Hendrix's testimony ignores the structure and language
28 of the Amendment, as well as the economic and regulatory context of reciprocal

1 compensation. Moreover, in attempting to establish paragraphs 3 and 4 as stand-
2 alone provisions not linked to network architecture, Mr. Hendrix misstates the
3 facts. Specifically, he testifies that Intermedia asked for the Amendment in order
4 to request multiple tandem access arrangements and that Intermedia agreed to
5 include radical reductions in reciprocal compensation rates in the Amendment as
6 apparently a matter of convenience. These allegations are simply not true. Thus,
7 Mr. Hendrix's testimony fundamentally distorts both the purpose and effect of the
8 MTA Amendment. And in view of this Commission's ruling on BellSouth's
9 liability to pay Intermedia reciprocal compensation for BellSouth-originated
10 traffic terminated to ISPs on Intermedia's Florida network, Mr. Hendrix's
11 testimony must be another attempt by BellSouth to avoid its obligation to pay
12 Intermedia under the terms of the Interconnection Agreement.

13 **Q. AS YOU HAVE NOTED, MR. HENDRIX NOT ONLY ALLEGES THAT**
14 **INTERMEDIA REQUESTED AN AMENDMENT WITH RESPECT TO**
15 **MULTIPLE TANDEM ACCESS ARRANGEMENTS, BUT ALSO THAT**
16 **BELLSOUTH PROPOSED, AND INTERMEDIA AGREED, THAT THE**
17 **"NEW ELEMENTAL RATES AND STRUCTURE" BE INCORPORATED**
18 **INTO THE AMENDMENT FOR RECIPROCAL COMPENSATION FOR**
19 **ALL LOCAL TRAFFIC. EXPLAIN WHY THESE ALLEGATIONS ARE**
20 **UNTRUE.**

21 **A.** These allegations are not supported by facts and the surrounding circumstances.
22 First, BellSouth approached Intermedia with a multiple tandem access amendment
23 proposal in the form of a draft amendment, which we signed as drafted (the MTA
24 Amendment). It categorically was not the result of Intermedia's initiative. As I
25 have testified, there were no preceding negotiations and Intermedia made no
26 request for an amendment making multiple tandem access arrangements available.
27 Moreover, Intermedia has a strong operations preference for direct trunk groups.
28 Except for the BellSouth-imposed arrangements described by Mr. Thomas in his

1 direct testimony in this proceeding, Intermedia is directly trunked to BellSouth's
2 local tandems in Florida. Second, Intermedia has no recollection of a BellSouth
3 request to incorporate the "new elemental rates and rate structure for reciprocal
4 compensation for all local traffic" into our agreement by means of the MTA
5 Amendment, or any other means for that matter. And third, it is inconceivable to
6 think that if BellSouth had made such a request, Intermedia would have agreed
7 given the then-existing regulatory and economic context.

8 **Q. WHY WOULD INTERMEDIA'S AGREEMENT TO THE RATE CHANGE**
9 **BE INCONCEIVABLE "GIVEN THE THEN-EXISTING REGULATORY**
10 **AND ECONOMIC CONTEXT?"**

11 **A.** Let me begin with the regulatory context. Mr. Hendrix testifies that it was
12 the purpose of the MTA Amendment to "incorporate the new elemental rates and
13 rate structure for reciprocal compensation for all local traffic established by the
14 Florida Public Service Commission." In my direct testimony, I explain why this
15 is wrong. To reiterate briefly, the Commission's Order No. PSC-96-1579-FOF-
16 TP addressed and decided a large number of issues that were unresolved in the
17 interconnection agreement negotiations between AT&T and BellSouth and MCI
18 Metro and BellSouth. As is well known, the Florida Commission's decisions in
19 arbitration proceedings, without exception, are limited in applicability to the
20 parties to the negotiations. The Commission did not in that Order nor has it taken
21 action since to apply those or any arbitration decisions to the industry generally or
22 to BellSouth's interconnection relationship with other competitive carriers
23 specifically.

24 From a regulatory perspective, I am advised that there was not and is not a
25 Commission expectation that BellSouth would take decisions established in an
26 individual arbitration to revise existing agreements to conform. It is my
27 understanding that where uniformity under the Act is needed throughout the
28 industry, some sort of generic proceeding is required. For example, the

1 Commission opened such a proceeding for the first time on May 20, 1999,
2 (Docket No. 990649-TP), and on February 22, 2000, approved an industry
3 stipulation on interim deaveraged rates, to which Intermedia and BellSouth were
4 signatories. Intermedia's interconnection agreement with BellSouth as
5 presently amended has been fully negotiated. Contrary to Mr. Hendrix's
6 allegation, Intermedia has at no time participated in negotiations with BellSouth
7 that might have produced an outcome consistent with the supposed second
8 purpose of the Amendment.

9 Moreover, given the regulatory attention and sensitivity to the issue of
10 reciprocal compensation -- particularly for ISP traffic, an agreement to import
11 new rates into an existing interconnection agreement from a later arbitration
12 decision would have been spelled out in the recitals. There are no such recitals in
13 the MTA Amendment. Indeed, if the two issues had been considered
14 independently of one another and if there is no linking relationship between them,
15 as Mr. Hendrix testifies, the far better practice would have been to treat them in
16 separate amendments.

17 **Q. WHY THEN WOULD INTERMEDIA'S AGREEMENT TO THE RATE**
18 **CHANGE BE INCONCEIVABLE "GIVEN THE . . . ECONOMIC**
19 **CONTEXT?"**

20 **A.** In the history of ILEC-ALEC relations, there has been no greater point of conflict
21 than the argument over reciprocal compensation for a subset of local traffic. I am
22 speaking, of course, of the disputes nearly everywhere over reciprocal
23 compensation for local ISP traffic. It is difficult to overstate the tension between
24 ILECs and ALECs over this issue. Thus, in general, any proposed revision of
25 reciprocal compensation rates, particularly wholesale revisions as Mr. Hendrix
26 alleges is the case here, would be carefully considered and highlighted for
27 substantial, high-level negotiations.

1 **Q. WHAT IS THAT TENSION?**

2 **A.** We remain distressed at BellSouth's continuing refusal to recognize the anti-
3 competitive effects of its attempts to repudiate its reciprocal compensation
4 obligations under the Interconnection Agreement. We agreed to pay each other
5 for terminating local traffic, which, as defined in the Interconnection Agreement,
6 includes local ISP traffic, and then they attempted to substantially reduce our
7 compensation by claiming that traffic bound to ISPs is not qualifying local traffic.
8 Intermedia was forced to arbitrate this issue with BellSouth before this
9 Commission, and this Commission's decision does not need to be revisited here.
10 I emphasize, however, that having spent considerable resources enforcing its
11 contract rights for ISP reciprocal compensation against BellSouth, Intermedia
12 would not be apt to surrender its revenues through a drastic rate reduction. And in
13 the MTA Amendment, Intermedia has done no such thing. As a general
14 proposition, it simply makes no sense.

15 **Q. WHY DOES IT NOT MAKE SENSE THAT INTERMEDIA AGREED TO**
16 **A RATE REDUCTION?**

17 **A.** Let me first be clear about one thing. In the context of this dispute, it
18 would not have made sense for Intermedia to have agreed to a rate reduction at the
19 time the MTA Amendment was proposed. There was no material question that
20 we were entitled to reciprocal compensation for traffic terminated to ISPs.
21 Although the Florida Commission had not yet ruled on our liability complaint
22 against BellSouth, at that time the same issue under similar interconnection
23 agreements had been successfully litigated by various other competitive carriers in
24 at least eighteen other state jurisdictions, including a litigation against BellSouth
25 in North Carolina, without even a single setback.

26 With that said, as a business person, it does not make sense to me for
27 someone to suggest that we negotiated and agreed to reduce our compensation by
28 as much as two-thirds in exchange for nothing. That is not what the MTA

1 Amendment means. Simply, under the MTA Amendment, we would agree to the
2 reduced “elemental” rates if we elected to use a multiple tandem access
3 arrangement in a particular serving area. Under those circumstances, we would
4 evaluate whether the benefit from using that form of access was worth the
5 reduction in compensation we might experience.

6 After all, the rates in the MTA Amendment are several times less than the
7 rates negotiated in the July 1, 1996, agreement, which had remained (and remain)
8 in effect. There is nothing in the language of the MTA Amendment that describes
9 any consideration for an Intermedia agreement to reduced reciprocal
10 compensation rates for all local traffic. It seems self-evident that such a radical
11 departure from practice would have been preceded by negotiations.

12 **Q. SO, IS IT MR. HENDRIX’S POSITION THAT THE RECIPROCAL**
13 **COMPENSATION RATES IN THE MTA AMENDMENT ARE NOT**
14 **LIMITED TO ONLY WHEN MULTIPLE TANDEM ACCESS**
15 **ARRANGEMENTS ARE REQUESTED?**

16 **A.** Yes, that appears to be his position, and, again, Mr. Hendrix is wrong. This and
17 other positions that Mr. Hendrix takes in this dispute are simply one more
18 illustration of the difficulty that Intermedia experiences in negotiating agreements
19 with BellSouth and then in trying to operate under those agreements. In my direct
20 testimony, at pages 3 through 5, I explain in detail how the MTA Amendment is
21 properly interpreted, provision by provision. The result is that there is indeed a
22 linkage between Intermedia’s election of multiple tandem access (and BellSouth’s
23 provisioning of it in response) and the activation of the rates in Attachment A of
24 the MTA Amendment. This is the only rational way in which the MTA
25 Amendment can be understood.

1 Q. IS THERE ANYTHING ELSE YOU WISH TO SAY CONCERNING MR.
2 HENDRIX'S ALLEGATIONS?

3 A. Yes, there is. In Intermedia's present negotiations of a successor
4 agreement with BellSouth (which is the subject matter of a pending arbitration
5 proceeding before this Commission), BellSouth has offered in its proposed
6 interconnection agreement multiple tandem access language which is remarkably
7 in support of Intermedia's view that the "linkage" I describe above is the correct
8 construction of the MTA Amendment. First, BellSouth's proposed language
9 makes clear that multiple tandem access is an optional network arrangement for
10 Intermedia (and CLECs generally) and the conditions under which it must be
11 deployed.

12 Within each LATA, [Intermedia] must
13 interconnect at all BellSouth access tandems
14 where [Intermedia's] NXX's are "homed."
15 However, if [Intermedia] does not have
16 NXX's homed at each BellSouth access
17 tandem within a LATA and elects not to
18 interconnect at such BellSouth access
19 tandems where no NXX's are homed,
20 [Intermedia] must order MTA in each
21 BellSouth access tandem within the LATA
22 where it interconnects to the extent it desires
23 to terminate traffic to customers served
24 through BellSouth access tandems in the
25 LATA to which [Intermedia] has not
26 interconnected

27
28 In fact, Intermedia has NXX's homed at all of BellSouth's access tandems within
29 the Florida LATAs in which it provides local services and is directly
30 interconnected with them, apart from the BellSouth-imposed exceptions I
31 mentioned earlier. Therefore, the conditions that would require Intermedia to
32 order multiple tandem access are not satisfied.

33 Second, BellSouth's proposed interconnection agreement sets out what
34 Intermedia would be required to do prior to ordering multiple tandem access.

35 Prior to ordering MTA, [Intermedia] must
36 execute an MTA amendment to its contract
37 if its contract does not address MTA, and
38 agree that mutual and reciprocal

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compensation will be billed on an elemental basis at the Local Interconnection (Call Transport and Termination) rates specified in the BellSouth CLEC Standard Agreement on a minimum statewide basis.

This means, quite clearly, that under the MTA Amendment, if Intermedia orders multiple tandem access, as it would be required to under the conditions above, then the elemental rates in Attachment A would obtain. So, BellSouth is caught up in its own web. It cannot contend that the Attachment A rates are a wholesale replacement of reciprocal compensation rates for all local traffic that is effectuated with the Amendment and at the same time acknowledge that multiple tandem access is an optional network arrangement that when elected invokes the rates in Attachment A for reciprocal compensation.

As a final point, the position Mr. Hendrix takes in his direct testimony appears to Intermedia to be an after-the-fact rationalization. Even more than that, we suspect that BellSouth's real intent with the MTA Amendment may have been to impose upon Intermedia a general reduction in reciprocal compensation by bootstrapping elemental rate provisions into the Amendment with the help of imprecise language. While these rate provisions as expressed certainly appear to be linked to the election of multiple tandem access, once the ink was dry, BellSouth claimed that they have nothing to do with network deployment and apply rather to all traffic however carried. This implicates section 251(c)(1) of the Act as well as section 51.301(b)(5) of the FCC's rules, which impose a duty on the parties to negotiate in good faith.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

CERTIFICATE OF SERVICE
Docket No. 991534-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by hand delivery* or by Federal Express for overnight delivery** this 21st day of April, 2000 upon the following:

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