

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration concerning complaint of Intermedia Communications, Inc. against BellSouth Telecommunications, Inc. for breach of terms of interconnection agreement under Sections 251 and 252 of the Telecommunications Act of 1996, and request for relief.

DOCKET NO. 991534-TP
ORDER NO. PSC-00-1069-PHO-TP
ISSUED: June 5, 2000

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on May 18, 2000, in Tallahassee, Florida, before Commissioner Susan F. Clark, as Prehearing Officer.

APPEARANCES:

CHARLES J. PELLEGRINI, ESQUIRE, Wiggins & Villacorta, P.A., 2145 Delta Boulevard, Suite 200, Tallahassee, Florida 32303.

On behalf of Intermedia Communications Inc.

E. EARL EDENFIELD, ESQUIRE, c/o Ms. Nancy H. Sims, 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301.

On behalf of BellSouth Telecommunications Inc.

FELICIA BANKS, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

On behalf of the Commission Staff.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

DOCUMENT NUMBER-DATE

06787 JUN-58

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FPSC-RECORDS/REPORTING

II. CASE BACKGROUND

On October 8, 1999, Intermedia Communications, Inc. (Intermedia) filed a complaint against BellSouth Telecommunications, Inc. (BellSouth). The complaint alleged that BellSouth breached its interconnection agreement with Intermedia. The agreement was approved by the Commission on October 7, 1996, in Order No. PSC-96-1236-FOF-TP. The Commission approved an amendment to the agreement on October 21, 1998 in Order No. PSC-98-1347-FOF-TP. This matter has been set for an administrative hearing on June 13, 2000.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183(3), Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1. above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Heather Burnett Gold	Intermedia	1
Edward L. Thomas	Intermedia	1
Jerry Hendrix	BellSouth	1
David Scollard	BellSouth	1
<u>Rebuttal</u>		
Heather Burnett Gold	Intermedia	1
Edward L. Thomas	Intermedia	1
Jerry Hendrix	BellSouth	1
Keith Milner	BellSouth	1

VII. BASIC POSITIONS

INTERMEDIA:

Under the parties' Interconnection Agreement, approved by this Commission on October 7, 1996, and the Commission's Order No. PSC-98-1216-FOF-TP, BellSouth is, and has been at all times, obligated to pay Intermedia reciprocal compensation for the exchange of local traffic in Florida on the basis of the composite tandem switching rate of \$0.01056 per MOU established in Attachment B-1 of the Interconnection Agreement. Intermedia has consistently remitted invoices to BellSouth for reciprocal compensation on this basis. BellSouth has fashioned an incorrect interpretation of the June 3, 1998, Amendment to the Interconnection Agreement to wrongfully withhold substantial amounts of reciprocal compensation from Intermedia. This Commission should find that BellSouth is in breach of the Interconnection Agreement and require BellSouth to remit at once full reciprocal compensation payments, including interest, to Intermedia on the basis of Intermedia's invoices.

BELLSOUTH:

The issue in this docket concerns a dispute between BellSouth and Intermedia Communications, Inc. under the terms of their Interconnection Agreement, including an amendment dated June 3, 1998. BellSouth's interpretation of the June 3, 1998, Amendment to the Interconnection Agreement reflects the intentions and agreements of the parties and is the more consistent with Florida law. Therefore, the Florida Public Service Commission should sustain BellSouth's position.

STAFF:

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

ISSUE 1: What is the applicable rate(s) that Intermedia and BellSouth are obligated to use to compensate each other for transport and termination of local traffic in Florida pursuant to the terms of their Interconnection agreement approved by the Commission?

POSITIONS

INTERMEDIA:

The applicable rate to be used for reciprocal compensation for the transport and termination of local traffic is and always has been the composite tandem switching rate of \$0.01056 per MOU established in Attachment B-1 of the parties' Interconnection Agreement. Performance under the parties' Interconnection Agreement, as approved by this Commission on October 7, 1996, together with all amendments, requires reciprocal compensation payments on the basis of the composite tandem switching rate established in Attachment B-1 of the Interconnection Agreement.

BELLSOUTH:

On June 3, 1998, the parties executed a joint amendment to the Interconnection Agreement. Under the clear and unequivocal language of the June 3, 1998, Amendment, the parties agreed to modify, among other things, the rates at which the parties would bill each other reciprocal compensation for the exchange of local traffic. Specifically, Intermedia and BellSouth modified the Interconnection Agreement to provide that, "[t]he Parties agree to bill Local traffic at the elemental rates specified in Attachment A" and, at the same time, reconized that the June 3, 1998, Amendment would "result in reciprocal compensation being paid between the Parties based on the elemental rates specified in Attachment A." Therefore, BellSouth respectfully requests that the Commission deny Intermedia's request for reciprocal compensation based on rates other than those set forth in the June 3, 1998, Amendment.

STAFF:

Staff takes no position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Heather Burnett Gold	Intermedia	_____	This exhibit consists of pertinent sections of the Intermedia and BellSouth Interconnection Agreement
		(HBG-1)	

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Heather Burnett Gold	Intermedia	_____	This exhibit is the June 3, 1998, Amendment to the Intermedia and BellSouth Interconnection Agreement.
		(HBG-2)	
		_____	This exhibit is a letter written by Nancy B. White to Scott Sapperstein, dated August 27, 1999, responding to Heather Burnett Gold's letter dated July 26, 1999, and explaining the basis for BellSouth's reciprocal compensation payment.
		(HBG-3)	
		_____	This exhibit is the rebuttal testimony of Jerry Hendrix in Docket No. 990874-TP.
		(HBG-4)	

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Heather Burnett Gold	Intermedia	_____ (HBG-5)	This exhibit is BellSouth's First Set of Interrogatories in this proceeding.
Edward L. Thomas	Intermedia	_____ (ELT-1)	This exhibit is a diagram showing typical call flow between BellSouth and interconnected ALECs.
		_____ (ELT-2)	This exhibit is a diagram showing single tandem architecture.
		_____ (ELT-3)	This exhibit is a diagram showing multiple tandem architecture.
		_____ (ELT-4)	This exhibit is a diagram showing Intermedia's interconnection arrangement with BellSouth in Jacksonville. CONFIDENTIAL.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Edward L. Thomas	Intermedia	_____	This exhibit is a diagram showing Intermedia's interconnection arrangement with BellSouth in Orlando. CONFIDENTIAL.
		(ELT-5)	

		(ELT-6)	This exhibit is a diagram showing Intermedia's interconnection arrangement with BellSouth in Miami. CONFIDENTIAL.

		(ELT-7)	This exhibit is a diagram showing Intermedia's Florida voice network. CONFIDENTIAL.
Jerry Hendrix	BellSouth	_____	Letter from Intermedia to BellSouth
		(JDH-7)	

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

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X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

Intermedia filed a Motion for Leave to File Surrebuttal Testimony on May 18, 2000, the date of the prehearing conference. BellSouth did not have an opportunity to respond prior to the prehearing conference.

XII. PENDING CONFIDENTIALITY MATTERS

Exhibits ELT-4, 5, 6, and 7 to the prefiled direct testimony of witness Edward L. Thomas were filed with a claim of confidentiality pursuant to Rule 5-22.006(5), Florida Administrative Code.

It is therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 5th day of June, 2000.



SUSAN F. CLARK
Commissioner and Prehearing Officer

(S E A L)

CLF/MKS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.