

ORIGINAL

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
Filed: June 23, 2000**

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**INTERMEDIA COMMUNICATIONS INC.'S
RESPONSE TO BELLSOUTH TELECOMMUNICATIONS, INC.'S POST-HEARING
MOTION TO STRIKE**

COMES NOW, Intermedia Communications Inc. ("Intermedia") and files this Response to BellSouth Telecommunications, Inc.'s ("BellSouth's") Post-Hearing Motion to Strike, stating as follows in support thereof.

- 1) On June 21, 2000, BellSouth filed a post-hearing motion seeking to have stricken a portion of Intermedia witness Gold's oral summary of her rebuttal testimony, which is reported on page 282 at lines 22-25 in the hearing transcript ("TR").
- 2) BellSouth appears to allege that this portion of Ms. Gold's summary, which BellSouth describes as speaking of "some 'conspiracy theory,'" should not be permitted to remain in the evidentiary record because it does not stem from Ms. Gold's prefiled rebuttal testimony.
- 3) Ms. Gold does not speak of a "conspiracy theory" at the transcript citation (or elsewhere).

There, Ms. Gold states that:

BellSouth, in fact, told Intermedia personnel that we had to sign the amendment, if we wanted BellSouth to stop blocking our traffic in the Norcross tandem in Georgia.

- 4) The Prehearing Order permits a witness to summarize her testimony at the time she takes the stand. That statement indeed stems from and summarizes Ms. Gold's prefiled rebuttal

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testimony on the circumstances that gave rise to the MTA Amendment. A summary presents the substance or general idea in brief form.¹ The statement to which BellSouth here is objecting is just that: it appropriately presents the substance or general idea of her rebuttal testimony. At page 3, Ms. Gold's testimony is as follows:

As I explained in my direct testimony, the MTA Amendment was executed for the sole purpose of making multiple tandem access available to Intermedia upon our election for the alleviation of traffic congestion. There were no provisions in our then existing interconnection agreement that addressed multiple tandem access. Because of this, it was necessary to establish applicable rates when this different type of access is elected by Intermedia. (TR 288)

With that testimony, Ms. Gold rebuts BellSouth witness Hendrix's assertion of the purpose of the MTA Amendment. The point of Ms. Gold's testimony is that Intermedia recognized that should a circumstance arise in which an MTA networking arrangement might be used to alleviate traffic congestion, it would have to have in place a commercial agreement specifying terms and conditions.²

5) In her summary of her rebuttal testimony, Ms. Gold explains that Intermedia came to this recognition when traffic blockage occurred in early 1998 at the Norcross tandem.³ This is the "traffic congestion" that she addresses in that part of her rebuttal testimony cited above. When

¹ See Webster's New World Dictionary, Third College Edition.

² Both Intermedia witnesses, Ms. Gold and Mr. Thomas, state at numerous times that Intermedia prefers direct trunking arrangements to BellSouth's access tandems and has never elected to use multiple tandem access arrangements. See, e.g., Thomas TR 100; Gold TR 289.

³ It is Intermedia's belief that the Norcross problem occurred when BellSouth cut service to that tandem. See, e.g., Intermedia's cross examination of Mr. Hendrix at pages 190 and 228 of the transcript, where counsel for Intermedia explores Mr. Hendrix's recollection of the circumstances surrounding the Norcross problem and Intermedia's signing the MTA amendment, and the likelihood that the two events may have been connected in some way. To be sure, Intermedia was at the time concerned about the Norcross service cutoff circumstances, and it remains concerned.

that congestion (or blockage) occurred, BellSouth proposed to Intermedia that the problem could be resolved if Intermedia signed an MTA amendment.

6) Thus, in her summary statement, which BellSouth wrongly and pointlessly challenges, Ms. Gold in summary fashion is simply furthering her explanation in her rebuttal testimony of the circumstances that gave rise to the MTA Amendment. Her summary statement in fact does stem from and summarize her prefiled testimony and is for that reason entirely appropriate.

7) In making his motion to strike at the hearing, BellSouth counsel describes Ms. Gold's summary to be "referenc[ing] some conspiracy on the part of BellSouth or intentional act to create blocking at the Norcross tandem ... not part of her rebuttal." (TR 296) In neither her rebuttal testimony nor her summary of it does Ms. Gold make such references.

8) BellSouth counsel stated at hearing that "the only person who has mentioned conspiracy today are the lawyers (sic) for Intermedia." (TR 297) Even that statement is incorrect. BellSouth counsel himself is the first to use the word conspiracy in the redirect examination of Mr. Hendrix. (Tr 250) In fact, that word is never used by Intermedia counsel nor by Intermedia's witnesses.⁴

9) On cross examination of Ms. Gold, BellSouth counsel asks Ms. Gold to show where in her rebuttal testimony she mentions "this conspiracy you claim at the Norcross tandem." (TR 296) Ms. Gold simply responds by saying that she did not refer directly to the Norcross tandem in her testimony. (Id.) She could not have made the showing she was requested to make because she had not claimed a Norcross conspiracy. She does not, as BellSouth alleges in its post-hearing motion "admit[] that her Rebuttal testimony did not mention this 'conspiracy theory.'"


⁴ BellSouth witness Milner, however, testifies at some length about the implausibility of a conspiracy, even though

Although no foundation had been laid, BellSouth counsel, immediately upon Ms. Gold's response, moved to have stricken "that portion of the summary where Ms. Gold references some conspiracy." (Id.)

10) In summary, BellSouth has misrepresented Ms. Gold's summary of her rebuttal testimony as to its substance and as to its relationship to her prefiled testimony. It has misrepresented as well her response on cross examination. For those reasons, BellSouth's motion to strike is badly misguided.

WHEREFORE, Intermedia urges that, for the reasons stated, the Commission deny BellSouth Telecommunications, Inc.'s Post-Hearing Motion to Strike, permitting Ms. Gold's oral summary of her rebuttal testimony to stand in the record as it does without change.

Respectfully submitted this 23rd day of June 2000.


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Intermedia's witnesses do not allege a conspiracy. (TR 350, 352-53)

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 Overnight Delivery this 23rd day of June 2000 upon the following:

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