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 Section 251 and 252 of the Telecommunications Act of 1996, and request for relief.	/ / / / / / / / / / / /	DOCKET NO. 991534-TP Filed: October 13, 2000

NOTICE OF ADMINISTRATIVE APPEAL

NOTICE is given that Intermedia Communications Inc. ("Intermedia"), pursuant to Rule 9.030(a)(1)(B)(ii), Florida Rules of Appellate Procedure and Section 364.381, Florida Statutes, appeals to the Florida Supreme Court, the Florida Public Service Commission's Order No. PSC-00-1641-FOF-TP, issued on September 14, 2000, finding that the reciprocal compensation to be paid by BellSouth Telecommunications, Inc. ("BellSouth") and received by Intermedia for local traffic shall be governed by the rates set forth in the Amendment to the Master Interconnection Agreement between Intermedia and BellSouth, even where Intermedia

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has not ordered multiple tandem access under the Amendment. A copy of the order is attached hereto as Exhibit A.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of October, 2000, the original of the foregoing Notice of Administrative Appeal was filed with the Florida Public Service Commission, and that a true and correct copy of the foregoing, together with the appropriate filing fee, was filed with the Florida Supreme Court, and that a true and correct copy of the foregoing was served via U.S. Mail upon:

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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-00-1641-FOF-TP ISSUED: September 14, 2000

The following Commissioner participated in the disposition of this matter:

J. TERRY DEASON, Chairman

APPEARANCES:

CHARLIE PELLEGRINI, ESQUIRE, and PATRICK WIGGINS, ESQUIRE, Wiggins & Villacorta, P.A., Post Office Drawer 1657, 2145 Delta Boulevard, Tallahassee, FL 32302, and SCOTT SAPPERSTEIN appearing on behalf of Intermedia Communications, Inc.

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KIP EDENFIELD, ESQUIRE, and NANCY B. WHITE, ESQUIRE, BellSouth Telecommunications, Inc., c/o Nancy Sims, 150 South Monroe Street, Suite 400, Tallahassee, FL 32301, appearing on behalf of BellSouth Telecommunications, Inc.

MARLENE STERN, ESQUIRE, and C. LEE FORDHAM, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL, appearing on behalf of the Commission Staff.

Exhibit A

FINAL ORDER RESOLVING COMPLAINT

BY THE COMMISSION:

I. Background

On June 25, 1996, Intermedia Communications Inc. (Intermedia) and BellSouth Telecommunications, Inc. (BellSouth) negotiated a Master Interconnection Agreement (the Master Agreement) and filed it with this Commission pursuant to Section 252 of the Telecommunications Act of 1996 ("Act"). The Agreement was approved on October 7, 1996 in Order No. PSC-96-1236-FOF-TP. On June 3, 1998, Intermedia and BellSouth executed an Amendment to the Master Agreement (the "Amendment"). The Amendment was filed with this Commission on July 13, 1998, in accordance with Section 252 of the Act and approved in Order No. PSC-98-1347-FOF-TP, issued October 21, 1998.

On October 8, 1999, Intermedia filed a Complaint against BellSouth for breach of the terms of the Agreement and Amendment. On November 2, 1999, BellSouth filed its response to Intermedia's Complaint. An administrative hearing was held on June 13, 2000, regarding this matter.

The primary issue is the rate that should be used to bill for reciprocal compensation. Before the Amendment was signed, reciprocal compensation for all local traffic was billed at a composite rate of $0.01056 per minute of use (MOU). According to BellSouth, the Amendment requires that reciprocal compensation for all local traffic be billed at the new elemental rates established in the Amendment. According to Intermedia, the Amendment requires that reciprocal compensation for all local traffic be billed at the composite rate unless Intermedia orders multiple tandem access (MTA), in which case elemental rates apply.

Two additional issues arose during the course of the hearing and those issues are addressed in this Order. First, BellSouth made an oral motion to strike testimony of Intermedia witness Heather Gold. After Ms. Gold had summarized her prefiled rebuttal testimony, BellSouth claimed the summary exceeded the scope of that prefiled testimony. The presiding officer postponed ruling on the motion until the transcript was available so the testimony at issue could be clearly identified. The Commissioner stated that to the extent the summary exceeded the scope of the prefiled testimony, it would be stricken. BellSouth filed its written Motion to Strike on June 21, 2000, and Intermedia filed its Response on June 23, 2000.

Also during the hearing, Intermedia was granted leave to submit a late-filed exhibit, numbered 20, in which it was to

identify the tandems to which Intermedia was connected at the time the Amendment was signed. Exhibit 20 was to be filed before the post-hearing briefs were due. Although the exhibit was timely filed with the Commission, BellSouth claims it did not receive the exhibit within the specified time frame. Intermedia claims it timely delivered the exhibit to BellSouth. After BellSouth received the exhibit, it responded by letter dated July 7, 2000. The response contained additional arguments but also objections that the Forward to Exhibit 20 exceeded the scope granted at the hearing.

BellSouth's Motion to Strike and objections to Exhibit 20 will be addressed in Parts II and III of this Order, respectively. The principal issue of rates will be addressed in Part IV of this Order.

Two Commissioners were initially assigned to this panel. Both were present at the hearing, however Commissioner Clark left the Commission before the decision in this case was rendered. The parties were notified of her departure and agreed to allow the remaining Commissioner to complete the proceedings in this docket.

The Commission has jurisdiction to resolve this dispute pursuant to Sections 251 and 252 of the Telecommunications Act of 1996. See also Iowa Utilities Bd. V. FCC, 120 F. 3d 753, 804 (8th Cir. 1997) (state commissions' authority under the Act to approve agreements carries with it the authority to enforce the agreements).

II. BellSouth's Post-hearing Motion to Strike

At the hearing, Intermedia witness Heather Gold stated the following in summarizing her prefiled rebuttal testimony:

> 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.

BellSouth argues that this statement should be stricken because Ms. Gold's prefiled rebuttal testimony made no mention of this problem.

Intermedia contends that the statement appropriately represents the substance of the prefiled rebuttal testimony. The prefiled testimony includes the following statement:

> 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.

Intermedia contends that the purposes of this testimony were: 1) to rebut BellSouth's claim as to the purpose of the Amendment; and 2) to point out that if an MTA arrangement was needed to alleviate congestion, it would have to be incorporated into an agreement specifying the terms and conditions of that arrangement. Intermedia further contends that, in her summary at the hearing, Ms. Gold explains that Intermedia came to understand these two points when congestion occurred in early 1998 at the Norcross tandem. That is, the "traffic congestion" in the prefiled testimony refers to the blockage at Norcross. For this reason, Intermedia contends that Ms. Gold was furthering the explanation of the circumstances that gave rise to the MTA Amendment.

The prefiled rebuttal testimony of Ms. Gold addresses the issue of who initiated the request for MTA and makes reference to congestion problems. However, the prefiled testimony does not assign any special significance to the Norcross tandem and in fact does not mention that location. More importantly, the prefiled testimony does not suggest that the blockage at Norcross resulted from an intentional act of BellSouth. In light of these facts, I find that Ms. Gold's summary exceeded the scope of her prefiled rebuttal testimony. Lines 22-25 on page 282 of the hearing transcript, shall therefore be stricken.

III. Late-filed Exhibit 20

As described in the Section I, BellSouth claims it did not receive late-filed Exhibit 20 by the June 20, 2000, deadline. Intermedia filed the exhibit with the Commission on June 19, and claims to have delivered it to BellSouth on the same day. Intermedia was not aware of the problem until BellSouth stated, in its post-hearing brief, that it never received the exhibit. Intermedia immediately delivered the exhibit to BellSouth. BellSouth addressed the exhibit in a letter dated July 7, 2000, in which it asked that only the Foreword of the Exhibit be stricken.

As I specified at the hearing, the purpose of Exhibit 20 was to clarify the tandems to which Intermedia was connected when the

amendment was signed. The first two paragraphs of the Foreward describe the events that lead up to the presiding officer's request for the late-filed exhibit. Paragraph three describes the types of diagrams and the spreadsheet included in the exhibit. Paragraph four provides a brief summary of the information conveyed in the diagrams and spreadsheet. The last two paragraphs address alleged problems with BellSouth's ability to adequately track Intermedia's trunking arrangements. Only paragraphs three and four fall within the scope of the exhibit and shall not be stricken. Paragraphs one, two, five and six exceed the designated scope of the exhibit and shall be stricken.

IV. Determination of Rates at Which to Bill Reciprocal Compensation

The central issue in this case was stated as follows:

> 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?

To resolve the dispute, it must be determined whether the Amendment requires that elemental rates be used for reciprocal compensation for the transport and termination of all local traffic or just local traffic in those Local Access and Transport Areas (LATAs) where Intermedia requests and BellSouth provides MTA.

Intermedia claims that performance under the Amendment requires reciprocal compensation for the transport and termination of local traffic to be billed at the composite tandem switching rate of $0.01056 per MOU, unless it orders MTA. If MTA is ordered and provided, then reciprocal compensation for the transport and termination of local traffic is to be billed at the elemental rates specified in the Amendment.

BellSouth claims that performance under the amendment requires reciprocal compensation for transport and termination of local traffic to be billed at the elemental rates, whether or not it provides MTA to Intermedia.

BellSouth witness Milner describes MTA as one form of interconnection available to Intermedia.

> The MTA option provides for LATA wide transport and termination of a facility based Alternative Local Exchange Carrier's (ALEC's) originated intraLATA toll traffic and local

> traffic. Such traffic is transported by BellSouth on behalf of the ALEC. The ALEC establishes a Point of Interconnection (POI) at a single BellSouth access tandem with BellSouth providing additional transport and routing through other BellSouth access tandems in that same LATA as required. The facility-based ALEC must establish Points of Interconnection at each BellSouth access tandem where the facility-based ALEC's NXX's are "homed". If the facility-based ALEC does not have NXX's homed at a given BellSouth access tandem within a LATA and elects not to establish Points of Interconnection at such a BellSouth access tandem, the facility-based ALEC can instead order MTA in each BellSouth access tandem within the LATA where the ALEC does have a Point of Interconnection and BellSouth shall terminate traffic to end-users served through those BellSouth access tandems where the facility-based ALEC does not have a Point of Interconnection.

He further explains that for a facility-based ALEC's originated local traffic and intraLATA toll traffic, transported by BellSouth but destined for termination by a third party network (transit traffic), MTA is available if the use of multiple BellSouth access tandems is necessary to deliver the call to the third party network.

Intermedia witness Thomas describes MTA as a means by which congested traffic may be "alternate routed." He continues that MTA is not, however, an efficient use of network facilities, since calls transported over MTA architectures are switched many more times than if they were to be transported over direct trunks to the called party's end office.

BellSouth witness Milner responds that with MTA, when an ALEC sends a call to a BellSouth Access Tandem that is destined for an end user served by an office subtending another BellSouth Access Tandem, only one additional switching function is required. He further argues that while MTA can be used to "alternate route" traffic, this is not the purpose for which MTA was designed. Instead, the witness contends that MTA allows an ALEC to minimize the points of interconnection between the ALEC's network and BellSouth's network.

As stated in the issue, the dispute in this complaint is whether the agreement calls for elemental rates or composite rates.

According to BellSouth witness Hendrix, elemental rates break down reciprocal compensation into several components that reflect various network functions. The customer is charged based on how much each function is used. Composite rates, explained Mr. Hendrix, are made up of averages.

In their briefs, Intermedia and BellSouth argue that the MTA Amendment is plain on its face. Intermedia witness Gold testified that the Amendment is a conditional contract. "If" Intermedia elects and BellSouth provides MTA, "then" the elemental rates in Attachment A will be used to bill and compensate each other for the transport and termination of all local traffic within the LATA in which MTA is provisioned. Intermedia maintains that all the paragraphs in the Amendment are interrelated and should be read collectively. In other words, the Amendment outlines the conditions under which Intermedia can obtain MTA from BellSouth. Therefore, according to Intermedia the elemental rates in the Amendment apply only if Intermedia orders, implements and uses multi-tandem access in a given LATA. Intermedia adds that it is Intermedia's preference to directly trunk to access tandems, rather than using MTA, so that Intermedia is not dependent upon anyone else.

In contrast, BellSouth witness Hendrix testified that the Amendment is a quid pro quo between the parties. In exchange for BellSouth agreeing to provide Intermedia multiple tandem access when requested, Intermedia would give BellSouth elemental rates for all local traffic in all of the BellSouth states. BellSouth witness Hendrix contends that the elemental rates are not tied to MTA. Instead, he states, the elemental rates in the Amendment entirely replace the composite rates in the Master Agreement. BellSouth clarifies that paragraphs three and four of the Amendment are to be interpreted independently because they are separately numbered paragraphs that were intended to accomplish a specific purpose -- namely, the establishment of cost-based reciprocal compensation rates.

Although both parties contend that the Amendment is clear on its face, I find the Amendment to be somewhat ambiguous. One part of the Amendment indicates that elemental rates apply only to MTA, while another part indicates elemental rates apply to local traffic in general. The statement at the top of Attachment A to the Amendment reads: "MTA shall be available according to the following rates for local usage:". In contrast, paragraph three of the Amendment specifies that "(t)he Parties agree to bill Local traffic at the elemental rates specified in Attachment A," with no mention of MTA. Paragraph three of the amendment thus, could be read to require elemental rates for all local traffic. Each statement refers to the same set of rates.

When the language of a contract is ambiguous or unclear, evidence extrinsic to the contract may be used to determine the intent of the parties at the time the contract was executed. See Gulf Cities Gas Corp. v. Tangelo Park Service Company, 253 So. 2d 744, 748 (Fla. 4th DCA 1971). The intent of the parties to a contract should govern interpretation of the contract. See Florida Power Corp. v. City of Tallahassee, 154 So. 2d 638, 643-4 (Fla. 1944); American Home Assurance Co. v. Larkin General Hospital, Ltd., 593 So. 2d 195, 197.

In determining the intent of the parties when they executed their contract, we may consider circumstances that existed at the time the contract was entered into, and the subsequent actions of the parties. In James v. Gulf Life Insur. Co., 66 So.2d 62, 63 (Fla. 1953) the Florida Supreme Court cited with favor Contracts, 12 Am.Jur. § 250, pages 791-93, as a general proposition concerning contract construction in pertinent part as follows:

> Agreements must receive a reasonable interpretation, according to the intention of the parties at the time of executing them, if that intention can be ascertained from their language. . . . Where the language of an agreement is contradictory, obscure, or ambiguous, or where its meaning is doubtful, so that it is susceptible of two constructions, one of which makes it fair, customary, and such as prudent men would naturally execute, while the other makes it inequitable, unusual, or such as reasonable men would not be likely to enter into, the interpretation which makes a rational and probable agreement must be preferred. . . . An interpretation which is just to both parties will be preferred to one which is unjust.

When interpreting a contract, the circumstances in existence at the time the contract was made should be considered in ascertaining the parties' intentions. Triple E Development Co. v. Floridagold Citrus Corp., 51 So.2d 435, 438, rhg. den. (Fla. 1951). What a party did or omitted to do after the contract was made may be properly considered. Vans Agnew v. Fort Myers Drainage Dist., 69 F.2d 244, 246 (Fla. 5CA 1934), rhg. den. 292 US 643, 78 L. Ed. 1494, 54 S. Ct. 776. Courts may look to the subsequent action of the parties to determine the interpretation that they themselves place on the contractual language. Brown v. Financial Service Corp., Intl., 489 F.2d 144, 151 (5th Cir.) citing LaLow v. Codomo, 101 So.2d 390 (Fla. 1958). Although recitals and titles are not operative components of a contract, they may be used to ascertain

intent when the operative components are ambiguous. See Johnson v. Johnson, 725 So. 2d 1209, 1213 (Fla. 3d DCA 1999). Ambiguous terms in a contract should be construed against the drafter. Vans Agnew v. Fort Myers Drainage Dist., 69 F.2d 244, 246 (Fla. 5CA 1934); Sol Walker & Co. v. Seaboard Coast Line Railroad Co., 362 So. 2d 45, 49; MacIntyre v. Green's Pool Service, 347 So. 2d 1081, 1084; City of Homestead v. Johnson, 760 So.2d 80 (Fla. 2000).

BellSouth claims that the language at the top of Attachment A is a title or recital and should not be considered when interpreting the Amendment. See Johnson v. Johnson, 725 So. 2d 1209, 1212 (Fla. 3d DCA 1999). Based on the record, however, I find that the language at the top of Attachment A provides instruction on how to apply the elemental rates and is therefore an operative part of the Agreement.

Intermedia and BellSouth disagree about the circumstances that led to the execution of the Amendment. According to Intermedia witness Gold, in early 1998, BellSouth stopped terminating local traffic from Intermedia end users to BellSouth end users that subtended BellSouth's Norcross, Georgia tandem. BellSouth informed Intermedia's engineering manager, that since Intermedia was not directly trunked to the Norcross tandem, the only way to alleviate the problem was to request MTA between the Buckhead and Norcross tandems. Such an arrangement would require an amendment to the Master Agreement.

Ms. Gold explained that in response to BellSouth's proposed resolution, Intermedia requested the MTA Amendment. Ms. Gold also explained that it ordered an outgoing trunk to Norcross so that it could trunk directly to the Norcross tandem. According to Intermedia witness Thomas, the plan was to go with whatever happened first. The trunk was completed before the Amendment.

Between the time BellSouth stopped connecting calls to end users subtending the Norcross tandem and the time Intermedia completed the direct trunk to Norcross, Intermedia witness Thomas explained that outgoing calls from its customers were completed by redirecting that traffic to the long distance side of the BellSouth switch at an access or long distance rate.

According to BellSouth witness Hendrix, Intermedia initially came to BellSouth wanting MTA. He stated that the reason Intermedia wanted MTA was to reduce trunking costs. Witness Hendrix alleges that Intermedia foresaw MTA as a vehicle that would give them lower tandem and trunking costs since Sprint won on this very same issue in Georgia.

Mr. Hendrix testified that of all the witnesses who testified at the hearing, only he was present during the negotiations for the Amendment. Mr. Hendrix noted that Intermedia witness Gold did not join the company until three months after the execution of the Amendment. Therefore, BellSouth contends that witness Gold's testimony is not credible because she cannot speak to the intent of the parties first hand.

Intermedia witness Gold stated that Ms. Julia Strow, who is no longer with the company, was the only person from Intermedia who participated in negotiating the Amendment. Ms. Gold explained that Ms. Strow's understanding of the Amendment's intent is reflected in her March 25, 1999, letter, a response to correspondence from BellSouth. BellSouth's letter to Ms. Strow indicated that it would be backbilling Intermedia at elemental rates, from June 1998, the month the Amendment became effective, to March 1999. Ms. Strow responded that she did not understand the need to backbill because BellSouth was not providing MTA to Intermedia and the elemental rates only applied to MTA. Thus, Intermedia witness Gold argues that Ms. Strow understood the Amendment to impose elemental rates only when MTA was ordered.

Ms. Gold also explained that she directly supervised Ms. Strow for 15 months. Therefore, Ms. Gold maintained that she was well aware of the circumstances and negotiations of the Amendment.

As evidence of BellSouth's intent, BellSouth witness Scollard testified that BellSouth's Carrier Access Billing System (CABS) was not capable of billing a given ALEC in a given state, at both composite and elemental rates. He explained that, in Florida, CABS could either bill an ALEC reciprocal compensation using a composite rate structure or using an elemental rate structure, but not both. Therefore, witness Scollard claims that BellSouth's intent was for only one rate structure to be in effect. Intermedia contends that the system can, at any time, be revised to provide that capability.

As additional evidence of its intent, BellSouth witness Hendrix explained that state commissions had begun ordering BellSouth to replace composite rates with elemental rates in its Standard Interconnection Agreement. In its brief, BellSouth noted that this Commission required BellSouth to implement elemental rates into its interconnection agreements with AT&T and MCIWorld. See Order No. PSC-96-1579-FOF-TP ("AT&T" Order). BellSouth explained that composite rates were the norm when Intermedia and BellSouth signed their Master Agreement. BellSouth further explained that when Intermedia requested MTA, BellSouth took that opportunity to incorporate elemental rates into the agreement.

In response, Intermedia witness Gold pointed out that BellSouth imported only the switching and transport rates into the Amendment, although the AT&T Order established rates for a number of other elements. Intermedia noted that BellSouth never explained the reason for importing only the two rates into the Amendment and not the others. Ms. Gold also noted that the rulings in the AT&T Order were specific to the litigants in that docket and were not intended to apply generically to all ALECs.

In a separate argument, Intermedia witness Gold described previous litigation between itself and BellSouth over the Master Agreement, and explained how that litigation illuminates Intermedia's intent with respect to the Amendment. The litigation was ongoing when the amendment negotiations were in progress and when the Amendment was signed. See Order No. PSC 98-1216-FOF-TP, issued in Docket No. 971478-TP, on September 15, 1998. The litigation resulted from BellSouth's refusal to pay Intermedia reciprocal compensation for traffic originating from a BellSouth customer and terminating to ISPs on Intermedia's network in the same local calling area. Over $7.5 million dollars was at issue. Intermedia witness Gold testified that it "is implausible" to believe, that Intermedia would modify the Master Agreement to receive a 60% reduction in reciprocal compensation, without settlement of the outstanding $7.5 million balance. In addition, witness Gold noted that at the time the Amendment was signed, Intermedia had already resolved the Norcross problem by directly trunking to that tandem.

As evidence that BellSouth's intent was the same as Intermedia's when they signed the Amendment, Intermedia's brief and witness Gold noted three facts. First, BellSouth continued to bill Intermedia at composite rates for several months after the Amendment was signed. Second, BellSouth was required to provide summaries of the Amendment upon filing in Georgia and North Carolina. The summaries said nothing about elemental rates replacing composite rates globally. The summaries only mentioned that MTA would be made available. The summary for North Carolina stated:

> On October 10, 1996, the Commission approved and interconnection agreement between BellSouth and ICI. I enclose an amendment to that agreement that provides for Multiple Tandem Access.

The summary for Georgia stated:

> This Amendment reflects that BellSouth will, upon request, provide and Intermedia will accept and pay for, Multiple Tandem Access, otherwise referred to as Single

> Point of Interconnection. . .All other provisions of the Interconnection Agreement, dated July 1, 1996, shall remain in full force and effect.

Intermedia contends that a global rate change is far more significant than provisioning MTA upon request, and if BellSouth's intent was, in fact, a global rate change, the filings would have reflected that.

Third, Intermedia's brief explained that in Georgia, under a federal court order to make deposits into the court's registry of the amounts invoiced by Intermedia for ISP traffic, BellSouth made deposits after the execution of the Amendment based on the composite rates. This conflicts with BellSouth's claim that the reduced elemental rates were in effect starting June 1998 for all local traffic in all other states.

BellSouth also makes arguments regarding billing inconsistencies. BellSouth ellicited testimony from Intermedia witness Gold that Intermedia never came to BellSouth after the Amendment questioning why BellSouth was billing Intermedia the elemental rates. BellSouth claims that as of June 1998, they billed Intermedia using the elemental rates, making the invoices to Intermedia 20 to 30% less than they had been prior to the Amendment.

The record demonstrates that after the execution of the Amendment there was some correspondence between the parties regarding rates and billing. The correspondence is contained in Exhibit 4 of the record and was proffered by BellSouth. On June 4, 1998, one day after the Amendment was signed, BellSouth sent Intermedia a letter responding to an inquiry about a possible error in an end office switching rate. BellSouth claims that the letter made it apparent that rates had, at least, been discussed during the negotiations of the Amendment. Intermedia witness Gold agreed, but made clear that the letter did not say or contemplate that MTA was ever implemented. Intermedia never responded to the letter.

On March 3, 1999, BellSouth sent Intermedia another letter noticing its mistake in the end office switching rate and indicating to Intermedia that the correct rate should be $0.002. BellSouth also indicated in the letter that it would be back billing this corrected rate to June 3, 1998, since that rate should have been in effect at the same time as the MTA Amendment.

In a letter dated March 25, 1999, Intermedia responded to BellSouth's March 3rd letter, stating that while Intermedia was open to the rate correction, Intermedia was confused by BellSouth's

statement about back billing Intermedia's invoices using the elemental rates since Intermedia had not implemented MTA.

On April 2, 1999, BellSouth explained to Intermedia, in a letter, that pursuant to the Amendment, the elemental rates in the Attachment apply to all local traffic, regardless of whether or not MTA had been provided. Intermedia filed this complaint with the Commission on October 9, 1999.

Upon consideration, I find that elemental rates should be applicable for transport and termination of all local traffic, in all LATAs, regardless of whether MTA was ordered and provided.

First, while witness Thomas testified that Intermedia was direct trunked to all applicable tandems in Florida prior to the signing of the amendment, the record shows that this was not the case in Georgia. Indeed, witness Thomas testified that Intermedia requested an MTA amendment to the Agreement which was regional, while also investigating other options to allow its customers to call exchanges subtending the Norcross, Georgia tandem. In addition, Intermedia witness Thomas and BellSouth witness Milner agree that MTA may be used to alternate route traffic. Thus, even with direct trunking to all applicable tandems, Intermedia might still have had an interest in MTA. Consequently, I find that Intermedia could have knowingly entered into an amendment which required elemental rates for all local traffic, even though this constituted a significant reduction in reciprocal compensation revenue.

Second, BellSouth witness Hendrix participated in negotiations and signed the agreement, while the Intermedia witnesses were not involved in the process. As a result, I believe that the testimony of witness Hendrix must be given more weight, particularly since his interpretation appears to be supported by the above mentioned circumstances in Georgia at the time and the possible use of MTA for alternate routing.

Third, I find that the language of the agreement, while somewhat ambiguous, is more consistent with BellSouth's interpretation. If the statement in the Amendment which reads "(t)he Parties agree to bill Local traffic at the elemental rates specified in Attachment A," was intended to apply only in the MTA context, this dependency should have been clearly stated; it was not. The same is true for the statement in the Amendment which reads "(t)his amendment will result in reciprocal compensation being paid between the Parties based on the elemental rates specified in Attachment A." I find that a more reasonable interpretation is that the statement was designed to show that the rates had generic applicability to all local traffic, not merely

for local traffic in those LATAs where MTA was requested and provided.

Finally, this conclusion is consistent with BellSouth witness Scollard's testimony regarding CABS. The witness alleges that CABS does not have the capability to bill based on the manner in which calls are routed. It would be awkward to bill local traffic in one LATA differently from local traffic in another LATA, since this would necessitate comparing originating and terminating telephone numbers (area code and prefix) to determine the LATA. In addition, local traffic can be interLATA, which raises the question of which rate(s) would apply if MTA has been provided in one LATA and not the other.

V. Conclusion

These proceedings have been conducted pursuant to the directives and criteria of Sections 251 and 252 of the Act. This decision is consistent with the terms of Section 251, the provisions of the FCC's implementing Rules that have not been vacated, and the applicable provisions of Chapter 364, Florida Statutes.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that elemental rates shall apply to transport and termination of all local traffic, in all LATAs, regardless of whether BellSouth Telecommunications, Inc. provisions multiple tandem access to Intermedia Communications, Inc. It is further

ORDERED that BellSouth's Post-Hearing Motion to Strike is granted. It is further

ORDERED that paragraphs one, two, five and six of the Foreward to Intermedia's late-filled Exhibit 20 are stricken from the record of this proceeding. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 14th day of September, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: s/ Kay Flynn

Kay Flynn, Chief
Bureau of Records

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).