

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

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Complaint of Intermedia Communications Inc., )  
against Cincinnati Bell Telephone Company, )  
for Breach of Terms of Ohio Interconnection )  
Agreement under Sections 251 and 252 of the )  
Telecommunications Act of 1996, and Request )  
for Relief )

PUCO

Case No. 00-271-TP-CSS

COMPLAINT OF INTERMEDIA COMMUNICATIONS INC.

Intermedia Communications Inc. ("Intermedia") through its undersigned counsel,  
pursuant to Ohio Revised Code ("R.C.") 4905.26 and Section XVIII C.2. of the Public Utilities  
Commission of Ohio's ("Commission" or "PUCO") Local Service Guidelines ("LSG"), hereby  
files this Complaint against Cincinnati Bell Telephone Company ("CBT") for breach of the  
October 17, 1997 Interconnection Agreement by and between CBT and Intermedia (the  
"Agreement"). As grounds for this Complaint, Intermedia states as follows:

DESCRIPTION OF THE PARTIES

1. Complainant's exact name and address is:

INTERMEDIA COMMUNICATIONS INC.  
3625 Queen Palm Drive  
Tampa, Florida 33619

2. All notices, pleadings, orders and other documents served upon Intermedia should be  
submitted through its counsel:

Sally W. Bloomfield, Esq.  
BRICKER & ECKLER LLP  
100 South Third Street  
Columbus, OH 43215-4291  
Tel: (614) 227-2368  
Fax: (614) 227-2390

This is to certify that the images appearing are an  
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Technician Anna M. Hix Date Processed Feb 8, 2000

Prince Jenkins, Esq.  
Senior Policy Counsel  
INTERMEDIA COMMUNICATIONS INC.  
3625 Queen Palm Drive  
Tampa, FL 33619  
Tel: (813) 829-4735  
Fax: (813) 349-1191

3. Respondent's complete name and principal place of business is:

Cincinnati Bell Telephone Company  
201 E. Fourth St.  
Cincinnati, OH 45201-2301

4. Intermedia is, and at all relevant times has been, a competitive local exchange carrier authorized to provide telecommunications services in Ohio, including telephone exchange, exchange access, and telephone toll services.
5. CBT is, and at all relevant times has been, an incumbent local exchange carrier in Ohio.

#### JURISDICTION

6. Pursuant to Section 251(a)(1) of the Communications Act of 1934, as amended by the Telecommunication Act of 1996 (the "Act"), telecommunications carriers are obligated to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." 47 U.S.C. § 251(a)(1).
7. The Act obligates Intermedia and CBT, as "local exchange carriers" ("LECs"), to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." 47 U.S.C. § 251(b)(5).
8. Section 252 of the Act governs the manner in which interconnection is negotiated between interconnecting telecommunications carriers. 47 U.S.C. § 252.

9. The Commission is authorized under Section 252(e) of the Act to adjudicate disputes relating to the interpretation and enforcement of interconnection agreements.

10. Under Ohio law, the Commission has jurisdiction to consider this dispute pursuant to R.C. Section 4905.26.

11. In addition, the FCC also addressed the jurisdiction of state commission to hear such disputes in its February 26, 1999 Declaratory Ruling, stating that “in the absence of a federal rule, state commissions have the authority under section 252 of the Act to determine inter-carrier compensation for ISP-bound traffic.”<sup>1</sup> In particular, the FCC specifically noted in its Notice of Proposed Rulemaking that:

Until adoption of a final rule, state commissions will continue to determine whether reciprocal compensation is due for this traffic. As discussed above, the Commission’s holding that parties’ agreements, as interpreted by state commissions, should be binding also applies to those state commissions that have not yet addressed the issue.<sup>2</sup>

12. Thus, the Commission has jurisdiction to interpret and enforce the terms of the Agreement under both federal and state statutes, as well as by the express terms of the Agreement, itself<sup>3</sup>.

13. This administrative action to properly brought before the Commission to enforce the terms of the Agreement which the Commission approved in Case No. 97-1380-TP-NAG.

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<sup>1</sup> FCC 99-38, ¶26 n.87, CC Docket No. 96-98, In the Matter of Implementation of Local Competition Provisions of the Telecommunications Act of 1996; CC Docket No. 99-68, In the Matter of Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68 (“Declaratory Ruling”).

<sup>2</sup> Id. at ¶28.

<sup>3</sup> Section 28.1.4.

### STANDING

14. Intermedia's substantial interest in this action is enforcement of the Agreement between itself and CBT with respect to the application of the appropriate reciprocal compensation rate for transport and termination of local traffic.

15. Accordingly, Intermedia has standing to bring this Complaint for hearing before the Commission pursuant to R.C. Section 4905.26 and Section 252(e)(1) of the Act.

### ALLEGATIONS OF FACT

16. Pursuant to Section 252 of the Act, Intermedia and CBT negotiated an interconnection agreement (hereinafter: "Agreement") and on October 24, 1997 filed it with the Commission for approval.

17. The Commission approved the Agreement on January 25, 1998. Relevant portions of the Agreement are attached and incorporated herein by reference as **Exhibit 1**.

18. Pursuant to the terms of the Agreement, the Parties are obligated to pay reciprocal compensation for originating and terminating local traffic upon each other's networks.

19. Since April of 1999, CBT has failed to remit payment to Intermedia for any local minutes of use ("MOUs") CBT deems to have been terminated to Internet Service Providers ("ISPs").

20. The amount of such payments owed to Intermedia, but improperly withheld by CBT, are established, in part, by CBT's own correspondence and are uncontroverted.

21. The Parties' obligation to pay reciprocal compensation is set forth in Section 4.7.1 of the Agreement. Section 4.7.1 expressly states:

Reciprocal Compensation applies for transport and termination of Local Traffic billable by CBT or Intermedia that a telephone Exchange service Customer originates on CBT's or Intermedia's network for termination on the other Party's network. The Parties

shall compensate each other for such transport and termination of Local Traffic at rates provided for in the Pricing Schedule.

22. Consistent with the above-mentioned provision, Intermedia has billed CBT for local traffic originated by CBT and terminated on Intermedia's network, including but not limited, to calls terminated to ISPs.

23. There is no language in Section 4.7.1 or elsewhere in the Agreement that exempts calls to terminated to ISPs.

24. By letter dated April 15, 1999, CBT advised Intermedia that it was withholding the sum of \$142,356.75 owed to Intermedia for MOUs allegedly terminated to ISPs. CBT's stated rationale was that "[t]hose MOUs were inappropriately billed since that traffic is interstate traffic, not local, and therefore not covered by the interconnection agreement." A copy of the letter is attached and incorporated herein by reference as **Exhibit 2**.

25. On May 19, 1999, Intermedia made demand on CBT for payment "of all past due sums for traffic terminating at an ISP and any late fees associated therewith." A copy of the letter is attached and incorporated herein by reference as **Exhibit 3**.

26. CBT was unresponsive to Intermedia's demand for payment.

27. In the months following its April 15<sup>th</sup> letter, CBT continued to withhold payments due Intermedia for reciprocal compensation for MOUs CBT asserted were terminated to ISPs. Copies of subsequent letters from CBT detailing the amounts it was withholding are attached as **Exhibits 4**.

28. By letters dated November 17, 1999 and December 7, 1999, respectively, Intermedia advised CBT that it was invoking the Dispute Escalation and Resolution clause of the Agreement

and requested that the Parties meet in an effort to resolve the matter. Copies of the letters are attached and incorporated herein by reference as **Exhibits 5**.

29. On January 10, 2000, representatives of the Parties held a conference call to discuss CBT's refusal to remit payment for calls it alleges are terminated to ISPs, but did not resolve the controversy. Copies of follow up letters, one from CBT dated January 10, 2000 and one from Intermedia dated January 14, 2000 are attached and incorporated herein by reference as **Exhibits 6**.

30. The amount owed to Intermedia as of December, 1999 was \$633,619 exclusive of late fees and other charges. Since October, 1999, CBT has continued its refusal to pay for calls terminated to ISPs and the amount owing has grown at the rate of approximately \$40,000 per month.

31. CBT continues to withhold payment from Intermedia and has advised that Intermedia would have to sue CBT to recover the payment.

32. CBT has breached the Agreement.

#### DECISIONS BY PUCO

33. This Commission in several prior rulings has determined that calls made over the public switched telephone network to ISPs should be treated as local calls for purposes of the reciprocal compensation provisions in the parties' interconnection agreements. *See: In the Matter of the Complaint of ICG Telecom Group, Inc. Against Ameritech Ohio Regarding the Payment of Reciprocal Compensation*, Case No. 97-1557-TP-CSS, Opinion and Order of October 14, 1998 *In the Matter of the Complaint of MCImetro Access Transmission Services, Inc. against Ameritech Ohio Relative to the Alleged and Unreasonable Violation of the Interconnection*


*Agreement*, Case No. 97-1723-TP-CSS, Opinion and Order of October 14, 1998; and *In the Matter of the Complaint of Time Warner Communications of Ohio, L.P. against Ameritech Ohio*, Case No. 98-308-TP-CSS, Opinion and Order of October 14, 1998. These Commission's decisions are incorporated herein by reference.

REQUEST FOR RELIEF

WHEREFORE, Intermedia requests that the Commission

- (a) find that CBT is in breach of the Agreement;
- (b) order CBT to remit full payment to Intermedia without delay, including payment of late fees and other charges as provided in the Agreement;
- (c) order CBT to comply with the terms of the Agreement as determined by the Commission and,
- (d) grant such other relief as the Commission deems appropriate.

Respectfully submitted,



Sally W. Bloomfield, Esq.  
BRICKER & ECKLER LLP  
100 South Third Street  
Columbus, OH 43215-4291  
Tel: (614) 227-2368  
Fax: (614) 227-2390

Prince Jenkins, Esq.  
Senior Policy Counsel  
INTERMEDIA COMMUNICATIONS INC.  
3625 Queen Palm Drive  
Tampa, FL 33619  
Tel: (813) 829-4735  
Fax: (813) 349-1191

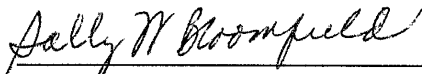
**Counsel for Intermedia Communications Inc.**

**CERTIFICATE OF SERVICE**

I certify that I have served a copy of this Complaint this 7th day of February, 2000 by regular mail, postage pre-paid upon the following:

Cincinnati Bell Telephone Company  
210 East Fourth Street, Room 102-910  
Cincinnati, Ohio 45201-2301  
Attn: Vice President-Regulatory Affairs

Cincinnati Bell Telephone Company  
210 East Fourth Street, Room 102-910  
Cincinnati, Ohio 45201-2301  
Attn: Senior Vice President and General Counsel

  
\_\_\_\_\_  
Sally W. Bloomfield



**ARTICLE XXI**  
**TERM AND TERMINATION**

**21.1 Term.** The initial term of this Agreement shall be two (2) years (the "Initial Term") which shall commence on the Effective Date. Upon expiration of the Initial Term, this Agreement shall automatically be renewed for additional one (1) year periods (each a "Renewal Term") unless a Party delivers to the other Party written notice of termination of this Agreement at least one hundred twenty (120) days prior to the expiration of the Initial Term or a Renewal Term; provided, however, that this Agreement shall continue in full force and effect until it is replaced by a superseding agreement or terminated at the end of the Transition Period as set forth in Section 21.4 below.

**21.2 Renegotiation of Certain Terms.** Notwithstanding the foregoing or Section 22.3, upon delivery of written notice at least one hundred twenty (120) days prior to the expiration of the Initial Term or any Renewal Term, either Party may require negotiations of the rates, prices and charges, terms, and conditions of the services to be provided under this Agreement effective upon such expiration. If the Parties are unable to satisfactorily negotiate such new rates, prices, charges and terms within sixty (60) days of such written notice, either Party may petition the Commission or take such other action as may be necessary to establish appropriate terms. If the Parties are unable to mutually agree on such new rates, prices, charges, terms and conditions or the Commission does not issue its order, the Parties agree that the rates, terms and conditions ultimately ordered by such Commission or negotiated by the Parties shall be effective retroactive to such expiration date.

**21.3 Default.** When a Party believes that the other Party is in violation of a material term or condition of this Agreement ("Defaulting Party"), it shall provide written notice to such Defaulting Party of such violation prior to commencing the dispute resolution procedures set forth in Section 28.3 and it shall be resolved in accordance with the procedures established in Section 28.3.

**21.4 Transitional Support.**

**21.4.1** In the event of the termination or expiration of this Agreement for any reason, each Party agrees to maintain the level and quality of services still being provided by it as of the date of termination or expiration of this Agreement ("Transition Date"), and to cooperate reasonably in an orderly and efficient transition to a successor provider.

**21.4.2** Each Party agrees (i) to furnish services during a period for up to two hundred (200) days (or such longer period as may be agreed by the Parties) after the Transition Date ("Transition Period") on terms and conditions and at charges that are the same as those in effect upon the Transition Date, and (ii) to enter into an agreement with the other Party for a transition plan that specifies the nature, extent, and schedule of the services to be provided during such Transition Period. During the Transition Period, CBT and Intermedia will cooperate in

27.7 **Single Point of Contact.** CBT shall provide to Intermedia a single point of contact, CBT's LEC-C, for handling any billing questions or problems that may arise during the implementation and performance of the terms and conditions of this Agreement.

**ARTICLE XXVIII  
DISPUTED AMOUNTS, AUDIT RIGHTS  
AND DISPUTE RESOLUTION**

**28.1 Disputed Amounts.**

28.1.1 If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") shall, prior to the Bill Due Date, give written notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such written notice the specific details and reasons for disputing each item; provided, however, a failure to provide such notice by that date shall not preclude a Party from subsequently challenging billed charges provided that such charges were paid. The Non-Paying Party shall pay when due all undisputed amounts to the Billing Party.

Notwithstanding the foregoing, except as provided in Section 28.2, a Party shall be entitled to dispute only those charges for which the Date was within the immediately preceding eighteen (18) months of the date on which the other Party received notice of such Disputed Amounts.

28.1.2 If the Non-Paying Party disputes charges and the dispute is resolved in favor of such Non-Paying Party, the Billing Party shall credit the invoice of the Non-Paying Party for the amount of the Disputed Amounts along with any applicable late payment charges no later than the second Bill Due Date after the resolution of the Dispute. Accordingly, if a Non-Paying Party disputes charges and the dispute is resolved in favor of the Billing Party, the Non-Paying Party shall pay the Billing Party the amount of the Disputed Amounts and any associated late payment charges no later than the second Bill Due Date after the resolution of the Dispute. Late payment charges shall be assessed as set forth in Section 27.6.

28.1.3 If the Parties are unable to resolve the issues related to the Disputed Amounts in the normal course of business within sixty (60) days after delivery to the Billing Party of notice of the Disputed Amounts, each of the Parties shall appoint a designated representative who has authority to settle the Dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the Dispute and negotiate in good faith in an effort to resolve such Dispute. The specific format for such discussions will be left to the discretion of the designated representatives; however all reasonable requests for relevant information made by one Party to the other Party shall be honored.

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28.1.4 If the Parties are unable to resolve issues related to the Disputed Amounts within forty-five (45) days after the Parties' appointment of designated representatives pursuant to Section 28.3, then either Party may file a complaint with the Commission to resolve such issues or proceed with any other remedy pursuant to law or equity. The Commission or the FCC may direct payment of any or all Disputed Amounts (including any accrued interest) thereon or additional amounts awarded, plus applicable late fees, to be paid to either Party.

28.1.5 The Parties agree that all negotiations pursuant to this Section 28.1 shall remain confidential in accordance with Article XX and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.

## **28.2 Audit Rights.**

28.2.1 As used herein "Audit" shall mean a comprehensive review of services performed under this Agreement; "Examination" shall mean an inquiry into a specific element of or process related to services performed under this Agreement. Subject to the restrictions set forth in Article XX, a Party ("Auditing Party") may audit the other Party's ("Audited Party") books, records, data and other documents, as provided herein, one (1) time each Contract Year for the purpose of evaluating the accuracy of Audited Party's billing and invoicing. The scope of the Audit shall be limited to the (i) the period subsequent to the last day of the period covered by the Audit which was last performed (or if no Audit has been performed, the Effective Date) and (ii) the twenty-four (24) month period immediately preceding the date the Audited Party received notice of such requested audit. Unless otherwise agreed upon by the Parties in writing, such audit shall begin no fewer than thirty (30) days after Audited Party receives a written notice requesting an audit and shall be conducted by one (1) or more auditor(s) mutually agreed upon by the Parties. The Parties shall select such auditor(s) by the thirtieth day following Audited Party's receipt of a written audit notice. The Auditing Party shall cause the auditor(s) to execute a nondisclosure agreement in a form agreed upon by the Parties.

28.2.2 Upon thirty (30) days written notice by Intermedia to CBT, Intermedia shall have the right through its authorized representative to conduct an Examination, during Normal Business Hours, of CBT records, accounts and processes which contain information related to the services provided and performance standards agreed to under this Agreement. Within the above-described 30-day period, the parties shall reasonably agree upon the scope of the Examination, the documents and processes to be reviewed, and the time, place and manner in which the Examination shall be performed. CBT agrees to provide support, including appropriate access to and use of CBT's facilities (e.g., conference rooms, telephones, copying machines and washrooms).

28.2.3 Except as set forth in Section 28.2.1, each Party shall bear its own expenses in connection with the conduct of any Audit or Examination. The reasonable cost of special data extractions required by Intermedia to conduct the Audit or Examination will be paid for by Intermedia. For purposes of this Section 28.1, a "Special Data Extraction" shall mean the creation of an output record or informational report (from existing data files) that is not created in the normal course of business. Each Audit shall be conducted on the premises of Audited Party during Normal Business Hours. Audited Party shall cooperate fully in any such audit, providing the independent auditor reasonable access to any and all appropriate Audited Party employees and books, records and other documents reasonably necessary to assess the accuracy of Audited Party's billing and invoicing. No Party shall have access to the raw data of the other Party, but shall rely upon summaries or redacted documents provided by the independent auditor. Each Party shall maintain reports, records and data relevant to the billing of any services that are the subject matter of this Agreement for a period of not less than twenty-four (24) months after creation thereof, unless a longer period is required by Applicable Law.

28.2.4 If any Audit or Examination confirms any undercharge or overcharge, then Audited Party shall (i) for any overpayment promptly correct any billing error, including refunding any overpayment by Auditing Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results and (ii) for any undercharge caused by the actions of or failure to act by Audited Party, immediately compensate Auditing Party for such undercharge. In each case, the amount shall be with interest at the lesser of one and one-half percent (1 1/2%) per month and the highest rate of interest that may be charged under Applicable Law, compounded daily, for the number of days from the date on which such undercharge or overcharge originated until the date on which such credit is issued or payment is received, as the case may be. Notwithstanding the foregoing, Intermedia shall not be liable for any Underbilled Charges for which Customer Usage Data was not furnished by CBT to Intermedia within ten (10) months of the date such usage was incurred.

28.2.5 Any Disputes concerning audit results shall be referred to the Parties' designated personnel responsible for informal resolution. If these individuals cannot resolve the Dispute within thirty (30) days of the referral, either Party may request in writing that one additional audit shall be conducted by an independent auditor acceptable to both Parties, subject to the requirements set out in Section 28.2.1. Such additional audit shall be at the requesting Party's expense. If the second audit fails to resolve the Dispute, the matter shall be resolved in accordance with the procedures set forth in Section 28.3.

28.2.6 This Section 28.2 shall survive expiration or termination of this Agreement for a period of two (2) years after expiration or termination of this Agreement.

### **28.3 Dispute Escalation and Resolution.**

Except as otherwise provided herein, any dispute, controversy or claim (individually and collectively, a "Dispute") arising under this Agreement shall be resolved in accordance with the procedures set forth in this Section 28.3.

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28.3.1 In the event of a Dispute between the Parties relating to this Agreement and upon the written request of either Party, each of the Parties shall appoint a designated representative who has authority to settle the Dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the Dispute and negotiate in good faith in an effort to resolve such Dispute. The specific format for such discussions will be left to the discretion of the designated representatives; however, all reasonable requests for relevant information made by one Party to the other Party shall be honored. The Parties shall attempt in good faith to address any default or resolve any Dispute by applying the appropriate rules, guidelines or regulations of the Commission. If the Parties are unable to resolve issues related to a Dispute within thirty (30) days after the Parties' appointment of designated representatives as set forth above, or if a Party fails to appoint a designated representative within said thirty (30) days, a Party or the other Party, as appropriate, may pursue all available remedies in the event there is no satisfactory resolution pursuant to this Section 28.3.1.

28.3.2 The Parties agree that any Dispute arising out of or relating to this Agreement that the Parties themselves cannot resolve as set forth in Section 28.3.1, may be submitted to the Commission for resolution by complaint case. The Parties agree to seek expedited resolution by the Commission, and, unless otherwise agreed, shall seek such resolution no later than sixty (60) days from the date of submission of such dispute to the Parties' designated representatives. If the Commission appoints an expert(s) or other facilitator(s) to assist in its decision making, each party shall pay half of all fees and expenses so incurred. During the Commission proceeding each Party shall continue to perform its obligations under this Agreement: provided, however, that neither party shall be required to act in any unlawful fashion. A Party may pursue any available remedies in the event there is no satisfactory resolution pursuant to this Section 28.3.2.

28.3.3 In no event shall the Parties permit the pending of a Dispute or other proceeding to disrupt service to any Intermedia Customer or CBT Customer.

April 15, 1999



Ms. Lorraine Paci  
Intermedia Communications  
3625 Queen Palm Dr.  
Tampa, FL 33619

P.O. Box 2301  
Cincinnati, OH 45201-2301

Dear Ms. Paci,

This letter is in regards to billing for reciprocal compensation between Intermedia Communications (ICI) and Cincinnati Bell Telephone Co. (CBT). Specifically, it refers to the December, January, February, and March invoices. Thank you for the copies of the bills that were originally sent to Cincinnati Bell Long Distance. Following is information pertaining to which amounts CBT will be paying and why.

-The December bill contains usage that was over 90 days. Section 27.5.2 of the agreement between CBT and ICI states that "...the billing party shall not bill for Underbilled Charges which were incurred more than ninety (90) days prior to the date that the Billing Party transmits a bill for any Underbilled Charges." The December bill was issued on December 22, 1998 which makes CBT liable for usage back to September 23, 1998. Therefore, usage dated from December 1, 1997 through September 22, 1998 should be adjusted from the bill. That amount comes to a total of \$72,663.65.

-Of the remaining bills, there are minutes of use (mou) that terminate to an ISP provider. CBT feels those mou were inappropriately billed since that traffic is interstate traffic, not local, and therefore not covered by the interconnection agreement. The dollar amount of traffic terminating to known ISP telephone numbers comes to \$142,356.75. This amount will not be paid.

-The late payment charges on the January and February bills were waived and we certainly appreciate that. However, there is also a late payment charge of \$3,503.03 on the March 22, 1999 invoice that should also be deducted as the bill was rendered only 12 days after the facsimile copies of the December, January and February invoices were received by CBT.

The March 22, 1999 invoice was issued in the amount of \$271,980.21. Following is a breakdown of what CBT will pay/not pay. CBT will issue a check to ICI for the amount of \$53,456.78 to cover reciprocal compensation for local terminating traffic. ICI should adjust \$72,663.65 for traffic that was over 90 days old when billed. ICI should also adjust ~~\$142,356.75~~ for traffic that terminated to a known ISP provider. ICI has already

adjusted \$4,942.01 in late payment charges and should adjust the \$3,503.03 from the March invoice.

If you have any questions concerning this letter, or if you would like to discuss my calculations, I can be reached at 513 397-1845.

Sincerely,



Stanley J. Raaker  
Application Administrator - CABS

Copy: Intermedia Communication Inc  
3625 Queen Palm Drive  
Attn: Senior Vice President - Strategic Planning  
Tampa, FL 33619

Lance Reid - CBT



May 19, 1999

Mr. Stanley J. Raaker  
Application Administrator - CABS  
Cincinnati Bell Telephone  
P.O. Box 2301  
Cincinnati, OH 45201-2301

Re: Response to April 15 letter

Dear Mr. Raaker:

This letter is in response to your correspondence of April 15, 1999 to Ms. Lorraine Paci regarding billing for reciprocal compensation between Intermedia Communications Inc. (Intermedia) and Cincinnati Bell Telephone Co. (CBT).

We have reviewed our records and the underlying interconnection agreement and respond as follows:

- We agree with your statement in paragraph two of your letter concerning unbilled charges that were incurred more than 90 days prior to the billing transmittal date. Therefore, your account will be adjusted for usage between December 1, 1997 and September 22, 1998. Subject to verification, the amount will be \$72,663.65.
- We also agree with your statement in paragraph four of your letter concerning a late payment charge of \$3,503.03 listed on the March 22, 1999 invoice. This amount has been credited to your account.
- Intermedia strongly disagrees with the conclusion made in paragraph three of your letter concerning the jurisdictional nature of traffic that terminates at an ISP. Our interpretation of the interconnection agreement between CBT and Intermedia requires reciprocal compensation payment for traffic terminating at an ISP. Additionally, Intermedia asserts that this traffic is local in nature. The agreement provides no exception to this understanding. Furthermore, nothing in the FCC's Declaratory Ruling of February 25, 1999, in CC Docket No. 96-98 changes our interpretation or the proper conclusion reached by the majority of state commissions that ISP bound traffic is jurisdictionally local.

Therefore, Intermedia seeks immediate payment of all past due sums for traffic terminating at an ISP and any late fees associated therewith. Intermedia



Mr. Stanley J. Raaker  
May 19, 1999  
Page 2

reserves the right to pursue other legal options in the event Cincinnati Bell Telephone fails to timely comply with this demand for payment.

Please address and legal question regarding this letter to the undersigned counsel. If you have any question, please feel free to contact me at (813) 829-4093.

Sincerely,

A handwritten signature in black ink, reading "Scott A. Sapperstein". The signature is fluid and cursive, with a large loop at the end of the last name.

Scott A. Sapperstein  
Senior Policy Counsel

CC: Julia Strow  
Don Davis  
Ron Walters  
Lorraine Paci



January 10, 2000

P.O. Box 8301  
Cincinnati, OH 45201-2301

Ms. Lorraine Paci  
Intermedia Communications  
3625 Queen Palm Dr.  
Tampa, FL 33619

Dear Ms. Paci,

This letter is in regards to billing for reciprocal compensation between Intermedia Communications (ICI) and Cincinnati Bell Telephone Co. (CBT). Specifically, it refers to the December invoice. Following is information pertaining to which amounts CBT will be paying and why.

-On the December 1999 invoice, ICI billed CBT for 32,139,521 minutes of use (mous) for the period of November 1 through November 30. CBT recorded 29,847,317 mous for the same period. 2,292,204 mous are being disputed as overbilled. This can further be broken down as 2,265,385 mous of local and 26,819 mous of local intraLATA. This disputed amount is \$9,313.79.

-Also on the December invoice, there are 25,373,436 minutes of use (mous) that terminated to an ISP provider. CBT feels those mous were inappropriately billed since that traffic is interstate traffic, not local, and therefore not covered by the interconnection agreement. The dollar amount of traffic terminating to known ISP telephone numbers comes to \$104,319.01. This amount will not be paid.

-CBT has issued a check in the amount of \$16,957.95 to cover the reciprocal compensation for local traffic.

If you have any questions concerning this letter, or if you would like to discuss my calculations, I can be reached at 513 397-1845.

Sincerely,

Stanley J. Raaker  
Application Administrator - CABS

Copy: Intermedia Communication Inc  
3625 Queen Palm Drive  
Attn: Senior Vice President - Strategic Planning  
Tampa, FL 33619

Sue Ash - CBT



January 11, 2000

P.O. Box 2301  
Cincinnati, OH 45201-2301

Ms. Lorraine Paci  
Intermedia Communications  
3625 Queen Palm Dr.  
Tampa, FL 33619

Dear Ms. Paci,

This letter is in regards to billing for reciprocal compensation between Intermedia Communications (ICI) and Cincinnati Bell Telephone Co. (CBT). Specifically, it refers to the November invoice. Following is information pertaining to which amounts CBT will be paying and why.

-On the November 1999 invoice, ICI is trying to recover IntraLATA revenue for usage that has been previously billed. ICI was apparently not able to bill for this rate element until recently. ICI is trying to recover underbilled revenue all the way back to October 1, 1998. According to Section 27.5.2 of the Interconnection Agreement between ICI and CBT, you may not bill for "...Underbilled Charges which were incurred more than 90 days prior to the date that the Billing Party transmits a bill for any Underbilled Charges." ICI transmitted the bill on December 14, 1999 (see Attached photocopy of ICI envelope and associated postmark), therefore, CBT will only pay for Underbilled Charges back to September 14, 1999. The over 90 day dispute for those charges amounts to \$59,808.96 for the period of October 1, 1998 through September 13, 1999.

-Also on the November invoice, there are 23,664,908 minutes of use (mou) that terminated to an ISP provider. CBT feels those mou were inappropriately billed since that traffic is interstate traffic, not local, and therefore not covered by the interconnection agreement. The dollar amount of traffic terminating to known ISP telephone numbers comes to \$96,076.93. This amount will not be paid.

-CBT has issued a check in the amount of \$25,501.87 to cover the reciprocal compensation for local traffic.

If you have any questions concerning this letter, or if you would like to discuss my calculations, I can be reached at 513 397-1845.

Sincerely,

Stanley J. Raaker  
Application Administrator - CABS

Copy: Intermedia Communication Inc  
3625 Queen Palm Drive  
Attn: Senior Vice President - Strategic Planning  
Tampa, FL 33619

Sue Ash - CBT



November 17, 1999

**VIA FED-EX:**

Barbara Stonebraker, Sr. Vice President - Regulatory  
Cincinnati Bell Telephone Company  
201 E. Fourth St. Room 102-910  
Cincinnati, OH 45201-2301

Re: Notice of Interconnection Agreement Dispute

Dear Ms. Stonebraker:

Please be advised that Intermedia Communications Incorporated ("Intermedia") hereby invokes **Section 28.3 - Dispute Escalation and Resolution** of the Interconnection Agreement (the "Agreement") between Cincinnati Bell Telephone Company ("Cincinnati Bell") and Intermedia. Cincinnati Bell has announced its intention to no longer continue providing full access to unbundled network elements and interconnection for Intermedia's customers during the pendency of current interconnection re-negotiation talks with Intermedia. This pronouncement by Cincinnati Bell constitutes an anticipatory breach of Section 21.1 of the Agreement, which if carried out, would severely disrupt the ability of Intermedia to service customers in the state of Ohio. Moreover, the timing of Cincinnati Bell's pronouncement, which only recently came to light in the midst of the current re-negotiation discussions, has greatly diminished the prospects of a negotiated agreement between the parties. Such negotiating tactics by Cincinnati Bell is inconsistent with its duty to negotiate in good faith under Section 251(c)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.

Without waiving its rights to pursue injunctive relief or any other legal remedies, Intermedia is formally requesting that a Dispute Resolution meeting with Cincinnati Bell be convened within the next fifteen (15) days and has designated Mr. Carl Jackson as Intermedia's authorized representative. Please feel free to contact either Mr. Jackson at (404) 720-5745, or myself at the telephone number below to coordinate the logistics of such meeting.

Sincerely,

A handwritten signature in dark ink, appearing to read "Prince Jenkins".

Prince Jenkins, Esq.  
Senior Policy Counsel  
(813) 829-4735

Cc: Carl Jackson, Sr. Director, Industry Policy  
Sally Bloomfield, Esq.  
Thomas Taylor, Sr. VP and General Counsel, Cincinnati Bell

December 7, 1999

**VIA FED-EX:**

Stanley J. Raaker - Applications Administrator - CABS  
Cincinnati Bell Telephone Company  
201 East Fourth, Room 102-330  
Cincinnati, OH 45201-2301

Re: Notice of Billing Dispute

Dear Mr. Raaker:

I am in receipt of your November 22, 1999 letter to Ms. Lorraine Paci of Intermedia Communications Incorporated ("Intermedia"). In your November 22<sup>nd</sup> letter, and indeed in your previous correspondence to Ms. Paci dating back to April 15 1999, Cincinnati Bell Telephone Company ("Cincinnati Bell") readily acknowledges withholding reciprocal compensation payment to Intermedia for certain minutes of use ("MOUs") it alleges were terminated to ISP providers.

Please be advised that Cincinnati Bell's refusal to remit payment for calls purportedly terminated to ISP providers is unlawful in light of several recent rulings by the Public Utility Commission of Ohio<sup>1</sup> and moreover, in breach of its interconnection agreement with Intermedia. Accordingly, please be advised that Intermedia hereby invokes **Section 28.3 - Dispute Escalation and Resolution** of the Interconnection Agreement (the "Agreement") between Cincinnati Bell and Intermedia. Without waiving its rights to pursue injunctive relief or any other legal remedies, Intermedia is hereby requesting that a Dispute Resolution meeting with Cincinnati Bell be convened within the next fifteen (15) days. Please feel free to contact to coordinate the timing and/or logistics for such meeting.

Sincerely,

Prince Jenkins, Esq.  
Senior Policy Counsel  
(813) 629-4735

Cc: Julia Strow, Intermedia Communications  
Carl Jackson, Intermedia Communications  
Lorraine Paci, Intermedia Communications  
Sally Bloomfield, Esq.  
Barbara Stonebraker, Sr. Vice President - Regulatory, Cincinnati Bell

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<sup>1</sup> See In the matter of the Complaint of ICG Telecom Group, Inc. v. Ameritech Ohio, case No. 97-1557-TP-CSS; In the matter of the Complaint of Time Warner Communications of Ohio, L.P. v. Ameritech Ohio, case No. 98-308-TP-CSS; and, In the matter of the Complaint of MCI Metro Access Transmission Services, Inc. v. Ameritech Ohio, case No. 97-1723-TP-CSS.



**Cincinnati Bell  
Telephone**

201 E. Fourth St., 102-910  
P. O. Box 2301  
Cincinnati, Ohio 45201-2301  
Phone: (513) 397-6699  
Fax: (513) 397-2408  
gbaldrate@cinbell.com

**Eugene J. Baldrate**  
Vice President - Regulatory Affairs

January 10, 2000

Mr. Carl Jackson  
Senior Director Industry Policy  
Intermedia Communications  
360 Interstate No. Parkway, Suite 500  
Atlanta, GA 30339

**RE: Confirmation of Telephone January 10, 2000 Conference**

Dear Mr. Jackson:

This letter confirms our conversation today regarding Intermedia Communication's concerns about our legal position that Cincinnati Bell has no obligation to accept new service orders beyond October 26, 1999. While we continue to maintain that we do have that right under the terms of our agreement, I can assure you that it is not our intent to exercise that right given the on going business relationship that exists between our companies. Should the business relationship change in some adverse way, however, we do reserve the right to invoke that that language to preserve our legal rights.

I understand that you plan to review and modify the proposed language that Mr. Kritzer sent to you regarding the process that we will jointly follow to negotiate a replacement contract. In our discussion, we specifically "agreed to disagree" on whether CBT has an obligation to pay reciprocal compensation for ISP bound traffic. Our contention is that we do not have such an obligation as part of the initial contract, nor do we have such an obligation during the 200-day transition period. I understand that Intermedia does not agree with that position. Finally, we noted that the reciprocal compensation issue for new interconnection agreement will be the subject of negotiations in that replacement agreement and that that new agreement is unrelated to the current agreement.

Thank you for your assistance in this matter. Should you have any questions, please feel free to call me.

Very truly yours,

cc: Steve Kritzer





January 14, 2000

Eugene J. Baldrate  
VP Regulatory Affairs  
Cincinnati Bell Telephone Company  
201E 4th Street, 102-910  
Cincinnati, OH 45201

Re: Intermedia Communications, Inc./ Cincinnati Bell Telephone Company  
Escalation Meeting

Dear Mr. Baldrate:

This letter is to follow up our January 10, 2000 conference call to resolve the outstanding disputes between Intermedia Communications Inc. and Cincinnati Bell Telephone Company. In particular, this letter is to memorialize Intermedia's understanding of where the parties stand regarding the following issues:

Payment of Reciprocal Compensation

The parties have reached an impasse on this issue. CBT's continues to assert that it is not obligated to pay reciprocal compensation to Intermedia for local traffic purportedly terminated to Internet Service Providers. Intermedia's disagrees with CBT's position and consequently, the parties will have to litigate this matter.

Interconnection Agreement Arbitration Window

The Parties recognize November 12, 1999 as the negotiation start date for CBT-Ohio/Intermedia interconnection agreement. Accordingly, the window for arbitration commences on May 5, 2000 and the closing date would occur on May 30, 2000.

Please feel free to contact me should you have any questions.

Very truly yours,

/s/

Carl Jackson  
Senior Director, Industry Policy  
Intermedia Communications, Inc.