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October 7, 2002

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 000075-TP (Phase IIA)
Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996

Dear Ms. Bayo:

Please find enclosed for filing in the above matter an original and 15 copies of Verizon Florida Inc.'s Opposition to AT&T Communications of the Southern States, LLC, TCG of South Florida and AT&T Broadband Phone of Florida, LLC's Motion for Reconsideration. Also enclosed are an original and 15 copies of Verizon Florida Inc.'s Opposition to AT&T's Request for Oral Argument on Its Motion for Reconsideration of Order No. PSC-02-1248-FOF-TP. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this matter, please contact me at 813-483-2617.

Sincerely,

Kimberly Caswell/dm

Kimberly Caswell

KC:tas
Enclosures

Opposition to AT+T's Request for Oral Argument
DOCUMENT NUMBER-DATE
10833 OCT-7 02
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Opposition to motion of Consideration
DOCUMENT NUMBER-DATE
10832 OCT-7 02
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Opposition to AT&T Communications of the Southern States, LLC, TCG of South Florida and AT&T Broadband Phone of Florida, LLC's Motion for Reconsideration and Opposition to AT&T's Request for Oral Argument on Its Motion for Reconsideration of Order No. PSC-02-1248-FOF-TP in Docket No. 000075-TP (Phase IIA) were sent via U.S. mail on October 7, 2002 to the parties on the attached list.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996	)))))	Docket No. 000075-TP (Phase IIA) Filed: October 7, 2002

VERIZON FLORIDA INC.'S OPPOSITION TO MOTION FOR RECONSIDERATION OF AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC, TCG OF SOUTH FLORIDA AND AT&T BROADBAND PHONE OF FLORIDA, LLC (FORMERLY KNOWN AS MEDIAONE FLORIDA TELECOMMUNICATIONS, INC.)

Verizon Florida Inc. ("Verizon") asks the Commission to deny the Motion for Reconsideration filed by AT&T Communications of the Southern States, LLC, TCG of South Florida and AT&T Broadband Phone of Florida, LLC (formerly known as Mediaone Florida Telecommunications, Inc.) on September 25, 2002 ("AT&T's Motion").[1] In that Motion, AT&T seeks reconsideration of two aspects of the September 10, 2002 Order ("Order") in this case: (1) the Commission's ruling that the ALEC must show that its switch is capable of serving a geographic area comparable to that served by the ILEC's tandem switch before the ALEC may receive interconnection compensation at the tandem rate; and (2) the Commission's affirmation that virtual NXX traffic is not subject to reciprocal compensation under federal law, because it is not local traffic.

AT&T has not met the standard for reconsideration of either ruling because it has not raised any point of fact or law that the Commission overlooked or failed to consider.

[1] The Florida Competitive Carriers Association filed a "Notice of Adoption" of AT&T's Motion for Reconsideration on September 25, 2002. Time Warner Telecom of Florida, L.P. and the Florida Cable Telecommunications Association filed a similar Notice of Adoption on September 25, 2002. US LEC of Florida Inc. followed with its own Notice of Adoption on September 27, 2002.

AT&T also filed a motion requesting oral argument addressing the effect of the *Virginia Arbitration Order*, discussed *infra*. Verizon has filed an opposition to that motion, as well.

AT&T is not really seeking reconsideration of these decisions; it is, rather, trying to reopen the record to introduce additional (and irrelevant) evidence. As its vehicle for reopening the record, AT&T falsely informs the Commission that the FCC has preempted the states with regard to the issue of tandem rate entitlement; and that there is FCC precedent supporting AT&T's position that reciprocal compensation should apply to virtual NXX traffic.

Moreover, AT&T's request for reconsideration of the tandem compensation issue is frivolous because the Commission decided that issue in AT&T's favor. AT&T is apparently seeking an even more favorable resolution than it advanced during the proceeding. If the Commission is inclined to reconsider its decision on tandem compensation to ensure its consistency with federal law, then it must require the ALEC to show that its switch actually serves the relevant geographic area before it may receive tandem compensation.

Verizon addresses below AT&T's arguments for "reconsideration" of each of the two rulings at issue.

I. TANDEM INTERCONNECTION RATE

Under Issue 12, the Commission was asked to decide the conditions under which an ALEC may receive compensation at the ILEC's tandem interconnection rate. Because a carrier performing tandem switching will incur additional costs (relative to a carrier performing only end-office switching), the FCC permits state Commissions to set different tandem and end-office rates, to allow recovery of these additional costs.

The Commission ruled that the FCC requires payment of the tandem rate if the ALEC meets one of two criteria: when its switch either performs functions similar to those of the ILEC tandem switch or when the ALEC's switch "serves a comparable geographic area to that served by an ILEC tandem switch." (Order at 19.) AT&T does not challenge the Commission's similar functionality test, but claims the Commission "overlooked or misapplied the requirements of federal law" when it interpreted the FCC's geographic comparability test for tandem interconnection compensation. It complains that the Commission "erroneously placed evidentiary requirements on ALECs that are not consistent with federal law....The FCC has pre-empted the issue of tandem rate entitlement and this Commission therefore is not free to require ALECs to meet a greater burden than that set by the FCC." (AT&T Motion at 8.)

Because the FCC has not, in fact, preempted states' decisions on tandem rate entitlement under the geographic comparability test, there is no basis to grant AT&T's reconsideration request. AT&T is, in any event, seeking reconsideration of a ruling in its own favor. It is improperly seeking to introduce new evidence in an attempt to get an even more favorable ruling than it sought during the proceeding.

A. AT&T Has Mischaracterized the Virginia Arbitration Order.

AT&T's sole support for its Motion to reconsider the tandem interconnection decision is a July 17, 2002 opinion of the FCC's Wireline Competition Bureau resolving the issues in three Virginia ALECs' petitions for arbitration with Verizon Virginia Inc. *Petitions of WorldCom, Inc., Cox Virginia Telcom, Inc. and AT&T Communications of Vriginia Inc., Pursuant to Section 252(e)(5) of the Communications Act*, DA 02-1731

(*Virginia Arbitration Order*) (July 17, 2002). The FCC took jurisdiction over these petitions (one of which was filed by AT&T Communications of Virginia, Inc.) when the Virginia State Corporation Commission declined to act on them.

The parties to the Virginia arbitration disputed the conditions of entitlement to the tandem switching rate, as the parties here do. Among other holdings, the Bureau agreed with the ALECs that they need not actually serve a geographically dispersed customer base to receive tandem compensation; rather, the ALEC must prove only that its switch "is capable of serving" a geographic area comparable to that served by the ILEC's tandem switch.[2]

AT&T claims that that *Virginia Arbitration Order* is an FCC decision, in which "the FCC has given the state commissions full and accurate direction regarding Rule 51.711" and the meaning of the word "serves" in that Rule. (AT&T Motion at 4.) That is wrong. The Wireline Competition Bureau is a subdivision of the FCC; it is not the FCC itself. The Bureau's decisions are not FCC decisions; they do not represent FCC policy or FCC legal interpretations. Instead, in resolving state arbitration petitions, the Bureau, acting pursuant to delegated authority within the FCC, "stands in the stead" of the state Commission. *Virginia Arbitration Order* at ¶ 1. The Bureau made clear that its decision governed only "the commercial relationships between the interconnecting carriers before us in Virginia." *Id.* It made no attempt to and could not preempt or bind state Commissions in any way. The Bureau's Order is, moreover, under reconsideration now and its final decision is subject to review by the FCC itself.

[2] *Virginia Arbitration Order* at ¶ 309. The tandem interconnection compensation and virtual NXX compensation portions of the *Virginia Arbitration Order* are attached to AT&T's Motion, along with a portion of the Order concerning intercarrier compensation for ISP-bound traffic that has nothing to do with AT&T's Motion. As the Commission has repeatedly made clear, this phase of the docket addresses only non-ISP traffic. (*See, e.g.*, Order at 5-6.)

The *Virginia Arbitration Order* can no more bind this Commission than any order of another state commission—which is to say, not at all. Because AT&T's Motion relies solely on the assertion that this Commission must follow the *Virginia Arbitration Order*, and because that assertion is wrong, the Motion must be denied.

Indeed, AT&T's Motion is not a request for reconsideration, but an improper attempt to reopen the record. As a participant to the Virginia arbitration, AT&T should know full well that the Bureau's Order does not preempt this Commission. But AT&T is constrained to argue its binding effect (even though that argument is plainly wrong) because AT&T cannot claim the Commission overlooked or failed to consider a decision issued a year after the record closed in this proceeding. (The hearing ended on July 6, 2002; the *Virginia Arbitration Order* issued on July 17, 2002.) AT&T's attempted submission of excerpts of the *Virginia Arbitration Order* is no different than a party submitting decisions another state commission made after the record in this proceeding closed.

B. AT&T Is Improperly Seeking "Reconsideration" of a Ruling in Its Own Favor.

As noted, FCC Rule 51.711 permits assessment of the tandem rate when the ALEC's switch "serves a geographic area comparable to the area served by the incumbent LEC's tandem switch." Thus, the Commission was obliged to interpret the word "serves" in the Rule. (Order at 13.) The Order explains that: "The debate revolves around whether this word means that an ALEC is actually providing service to a particular number of geographically dispersed customers in that area, or simply capable of providing service to customers throughout the area." (Order at 13.) Verizon

and BellSouth favored the "actually serving" standard, while A&T and the other ALECs supported the "capable of serving" test.

The Commission accepted the position of AT&T and the ALECs that an ALEC need only show that its switch is capable of serving an area comparable to that served by the ILEC's tandem. To show such capability, the Commission will require proof that the ALEC has deployed a switch and obtained NPA/NXX codes to serve the relevant area, and that it is serving the area either through its own facilities or a combination of its own facilities and leased facilities connected to its collocation arrangements in ILEC central offices. (Order at 19.)

The nature of AT&T's disagreement with the Commission's ruling is not clear, because AT&T won this issue. AT&T argues that, under the Bureau's Order, the ALEC "*need only present evidence relating to the capability of its switch to serve the area.*" (AT&T Motion at 5 (emphasis in original).) That is exactly what this Commission ordered, and exactly what AT&T asked for.

What AT&T seems to dispute is not the ruling itself, but the examples of the types of showing the Commission will require to meet the "capable of serving" standard. AT&T relies on the *Virginia Arbitration Order* to claim that these examples show "the Commission now demands a much more detailed demonstration of an ALEC's network ability than do the FCC rules and orders it was interpreting for an ALEC to be entitled to the tandem interconnection rate." (AT&T Motion at 4.) There are a number of problems with this claim.

First, Rule 51.711, which sets forth the geographic comparability test, says nothing about the nature or quantum of evidence a state commission can accept as a showing that the ALEC's switch serves a comparable geographic area.

Second, the Bureau did not interpret Rule 51.711 in the way AT&T claims. It did not hold that the Rule either required or did not require the ALEC to offer any particular type of evidence to prove capability of serving. All the Bureau said was that, in the context of the specific arbitration before it, AT&T and WorldCom had shown that their switches were capable of serving a geographic area comparable to that of the ILEC's tandem switch (*Virginia Arbitration Order* at ¶ 309)--which is the same showing this Commission said it will require.

Third, as explained above, regardless of what the *Virginia Arbitration Order* says, it is in no way binding on this Commission.

Fourth, during the proceeding, AT&T supported the very factors the Commission identifies as evidence of capability to serve a comparable geographic area—and that AT&T now apparently disputes. For example, the ALECs themselves, including AT&T, proposed that the Commission should consider an ALEC's opening of NPA/NXX codes as evidence of its capability to serve an area.[3] They acknowledged the importance of a showing of an ALEC's "investments in both switch capacity and network capacity to offer service to the rate center with which the NXX is associated." (Joint ALECs' Brief, at 12.) And AT&T witness Selwyn presumed an ALEC would have a switch (*see* Order at 18), rather than, for example, just relying on the ILEC's facilities through UNE-P. It is

[3] *See* Order at 16-17; Joint Posthearing Brief of Global NAPs, Inc., US LEC of Florida, Inc., MCI WorldCom, e.spire Communications, Inc., Time Warner Telecom of Florida, LP, Florida Cable Telecommunications Association, Inc., the Florida Competitive Carriers Ass'n and KMC Telecom, Inc. ("Joint ALECs' Brief"), filed Aug. 10, 2001, at 12-13. AT&T adopted large portions of the Joint ALECs' Brief, including the position on Issue 12 (Posthearing Brief of AT&T. filed Aug. 10, 2001, at 2).

not clear just what kind of evidence AT&T now believes would suffice to meet the geographic comparability test, but AT&T has no right to reopen the record to explain its newly revised views.

AT&T's Motion for Reconsideration is improper because it is not a reconsideration request at all. AT&T is not asking the Commission to reconsider its interpretation of the geographic comparability test. AT&T is simply trying to reopen the record, apparently to advance a more extreme position than it did during the hearing. Because AT&T has not asked for any relief that may be addressed through a reconsideration proceeding, its Motion must be denied.

C. The Commission Misapplied Federal Precedent, But Not in the Way AT&T Suggests.

As noted, the Commission rejected Verizon's and BellSouth's arguments that an ALEC must actually serve a comparable geographic area in order to be entitled to tandem compensation. If the Commission is inclined to accept AT&T's invitation to reconsider whether its ruling on the tandem compensation issue is consistent with FCC precedent, then it needs to have a correct understanding of that precedent—which is much different than AT&T would lead the Commission to believe.

In the FCC's *Local Competition Order* implementing the Act, the FCC concluded that, "it is reasonable to adopt the incumbent LEC's transport and termination prices as a presumptive proxy for other telecommunications carriers' additional costs of transport and termination." *Implementation of the Local Competition Provisions in the Telecomm. Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (*Local Competition Order*), at ¶ 1085 (1996). The FCC further found that, since "additional costs" would likely be

greater when tandem switching is involved, it would be appropriate to create separate rates for tandem and end office switching. *Id.* at ¶ 1090. Finally, acknowledging that new technologies might perform functions similar to those performed by an ILEC tandem, the Commission ruled that: "Where the interconnecting carrier's switch *serves* a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's *additional costs* is the LEC tandem interconnection rate." *Id.* (emphasis added).

The FCC later confirmed that the actual reach of the ALEC switch must be demonstrated, not just assumed: "We confirm that a carrier *demonstrating that its switch serves* 'a geographic area comparable to that served by the incumbent LEC's tandem switch' is entitled to the tandem interconnection rate to terminate local telecommunications traffic on its network." *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, at ¶ 105 (Apr. 27, 2001) (emphasis added).

The Commission could have said that a carrier demonstrating that its switches *are capable of serving* a comparable geographic area is entitled to reciprocal compensation at the tandem rate. It did not say that, nor would it have made any sense. Any switch is *capable* of serving a very large area. This Commission's interpretation of the geographic comparability test thus cannot be consistent with federal precedent because it would render meaningless the FCC's distinction between end office and tandem rates for ALECs. As a number of state commissions have found, the proper way to interpret FCC Rule 51.711 is to require an ALEC to demonstrate that its switches *actually serve* a geographic area comparable to the ILEC tandem.

Correctly applying federal requirements requires this Commission to revise its ruling to require an ALEC to prove that its switch actually serves a geographic area comparable to that of the ILEC tandem before the ALEC may receive compensation at the tandem rate. The ALEC's demonstration should include, at a minimum, evidence showing that an ALEC has customers, as well as facilities, in exchanges that are comparable in size to the area served by Verizon's tandem switch.

II. VIRTUAL NXX COMPENSATION

In resolving Issue 15, the Commission ruled that carriers should be permitted to assign telephone numbers to end users physically located outside the rate center in which the telephone numbers are homed. When a carrier has neither facilities nor customers located in that rate center, this practice is known as assigning "virtual NXX" numbers.

The Commission further ruled that virtual NXX calls are not subject to reciprocal compensation. In doing so, it explicitly continued the historical practice of determining the jurisdiction of a call based on its end points, regardless of whether a call is rated as local or toll. (Order at 28.) The Commission agreed that "traffic that originates in one local calling area and terminates in another local calling area would be considered *intrastate exchange access* under the FCC's revised Rule 51.701(b)(1)" (which defines telecommunications traffic subject to reciprocal compensation). (Order at 29 (emphasis in original).)

Although the Commission observed that "it seems reasonable to apply access charges to virtual NXX/FX traffic," it did not prescribe any particular compensation

mechanism for such traffic. Rather, it left the compensation issue to be negotiated in the context of individual interconnection agreements, where parties could better consider issues such as how or whether to separately identify virtual NXX traffic. (Order at 30-31.)

AT&T challenges the Commission's decision that virtual NXX calls are not local calls, and that they are thus not subject to reciprocal compensation. AT&T argues that reconsideration is necessary because the Commission: (1) "overlooked applicable FCC precedent on the payment of reciprocal compensation for traffic based on NPA/NXX comparison"; (2) "overlooked the difficulty and expense associated with implementing the decisions"; and (3) "overlooked the impractical and unreasonable burdens placed on ALECs who attempt to receive *any* compensation for virtual NXX or FX traffic on their networks." (AT&T Motion at 9 (emphasis in original).) AT&T is wrong on all three counts.

A. The Commission Did Not Overlook Any Applicable FCC Precedent.

The asserted legal foundation for AT&T's request for reconsideration of the virtual NXX compensation issue is the same as it was for the tandem compensation issue—the *Virginia Arbitration Order*. As discussed above, that arbitration opinion is not "FCC precedent," as AT&T incorrectly advises the Commission, so it is not a legitimate basis for reconsideration. In any event, the Commission could not have "overlooked" the *Virginia Arbitration Order*, as AT&T claims the Commission did, because that

decision did not exist at the time the Commission voted on the virtual NXX issue in this case.[4]

Furthermore, the Bureau did *not* interpret federal law to find that reciprocal compensation applies to virtual NXX traffic. The Bureau's decision requiring Verizon to pay reciprocal compensation on virtual NXX traffic was not based on the law, but rather on practical concerns about the ability to rate calls according to their actual geographic end points.

As Verizon has pointed out in its Petition for Clarification and Reconsideration of the *Virginia Arbitration Order*, the Bureau's conclusion in this regard was factually incorrect and its ruling impermissibly ignored the FCC's own precedent. But the relevant point for this proceeding is that the Bureau did not even comment on, let alone resolve for the states, the *legal* issue of whether virtual NXX traffic is subject to reciprocal compensation. Its decision was based only on purported practical concerns.

The South Carolina Commission correctly understood that the Virginia Arbitration Order had no effect on its holdings interpreting federal law to deny reciprocal compensation for virtual NXX traffic. In South Carolina, US LEC tried to use the Virginia Arbitration Order to support its position, as it does here in joining AT&T. The South Carolina Commission responded:

> The decision of the FCC's Wireline Competition Bureau in the *Virginia Arbitration Order*—in adopting language allowing the NPA-NXX of the called party to govern payment of reciprocal compensation—does not call our conclusion into question. The Bureau never addressed the basic question whether Virtual FX traffic is subject to reciprocal compensation under federal law. Instead, the Bureau simply suggested that, in the absence of a concrete proposal for distinguishing Virtual FX traffic from

[4] The *Virginia Arbitration Order* was issued several months after this Commission's vote on the tandem compensation and virtual NXX issues, but about two months before the Commission rendered its Order. Nevertheless, AT&T made no attempt to seek permission to supplement the record.

> local traffic for billing purposes, the parties would not be compelled to give effect to that distinction, irrespective of the requirements of federal law. The Bureau's failure to respect the limitations on Verizon's reciprocal compensation obligations was both inconsistent with federal law and unsupported on the record, but in any event it has no application here, because, as discussed below, Verizon *has* presented evidence that carriers *can* accurately estimate the volume of FX and Virtual FX traffic exchanged between them. Thus, the *Virginia Arbitration* provides no basis for failing to implement the clear requirements of federal law in South Carolina.

Petition of US LEC of South Carolina Inc. for Arbitration of an Interconnection Agreement with Verizon South, Inc., Order on Arbitration, Order No. 2002-619, at 15 (S.C. P.S.C. Aug. 30, 2002) (citations omitted).

The Ohio Commission recently reached the same conclusion. In affirming that the intercarrier compensation for virtual NXX calls is properly "based on the geographic end points of the call," the Commission recognized that the *Virginia Arbitration Order* is neither a "final decision nor a legally binding precedent." *Petition of Global NAPs Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon North Inc.*, Arbitration Award, Case No. 01-876-TP-ARB, at 10 (Ohio P.U.C. Sept. 5, 2002).

The requirements of federal law that the South Carolina and Ohio Commissions followed, and that this Commission (and most others addressing the issue) also correctly applied, prohibit applying reciprocal compensation for virtual NXX traffic, because it is, "by definition, interexchange traffic." *Id.* at 14. The *Virginia Arbitration Order* (which is no different than a misguided ruling from another state commission) provides no basis for reconsideration of this Commission's legal conclusion about the nature of virtual NXX traffic.

B. The Commission Did Not Overlook any Evidence About the Asserted "Difficulty and Expense" or "Impractical and Unreasonable Burdens" AT&T Claims the Decision Presents.

As noted, the remaining justifications AT&T offers for reconsideration are the "difficulty and expense" and "impractical and unreasonable burdens" the Commission's ruling purportedly presents for the ALECs. Those arguments are legally and factually groundless.

i. The Commission Already Rejected AT&T's Arguments About the Jurisdictional Nature of Virtual NXX Traffic and Its Complaints About Access Charges.

Instead of citing evidence of difficulty, expense, or other burdens that the Commission overlooked, AT&T reiterates the same arguments that it and the other ALECs made during the proceeding. It claims virtual NXX traffic is "traditional local traffic" that the Commission's decision allows the ILECs to "reclassify" as toll traffic and complains about having to pay non-cost-based access charges for toll traffic. (AT&T Motion at 10.)

The Commission considered and explicitly rejected the ALECs' claim that basing reciprocal compensation on the end points of a call (rather than on its NPA/NXXs) changes existing local traffic into toll traffic. It observed:

> Although presently in the industry switches do look at the NPA/NXXs to determine if a call is local or toll, we believe this practice was established based upon the understanding that NPA/NXXs were assigned to customers within the exchanges to which the NPA/NXXs are homed. Level 3 witness Gates conceded during cross examination that historically the NPA/NXX codes were geographic indicators used as surrogates for determining the end points of a call.
>
> We believe that a comparison of NPA/NXXs is used as a proxy for determining the actual physical location of the particular customer being

> called. In other words, the NPA/NXX provides a reasonable presumption of the physical location of a customer as being within the calling area to which the NPA/NXX is homed. Therefore, carriers have been able to determine whether a call is local or toll by comparing the NPA/NXXs of the calling and called parties. However, this presumption may no longer be valid in an environment where NPA/NXXs are disassociated from the rate centers to which they are homed.

(Order at 28.)

Based on this correct understanding of longstanding practice, the Commission concluded that "classification of traffic as either local or toll has historically been, and should continue to be, determined based upon the end points of a particular call....regardless of whether a call is rated as local for the originating end user." (Order at 28.)

As Verizon pointed out in its testimony and its brief, it is the ALECs, not the ILECs, that seek to deviate from the *status quo* (as well as federal law), which defines the jurisdiction of a call by reference to its end points. Basing reciprocal compensation on NPA/NXXs will transform traffic that is undeniably access traffic today into local traffic for reciprocal compensation purposes. The ALECs' proposal is thus a stunning departure from the Commission's decades-old toll/local distinction and underlying social policies—and an undisguised attempt to engage in access arbitrage.

Put simply, the burden, expense, and impracticality of the Commission's ruling, in the ALECs' view, inheres in the fact that the ALECs cannot reap a windfall by collecting reciprocal compensation for virtual NXX traffic, and that access charges may be applied to access traffic. Of course, these same principles held true before the Commission issued its decision on virtual NXX compensation. That ruling just confirmed that federal law prohibits application of reciprocal compensation to non-local, virtual NXX traffic.

Reargument of matters that have already been considered is not a proper basis for a motion for reconsideration. *See, e.g., Sherwood v. State*, 111 So. 2d 96 (Fla. 3d DCA 1959). The motion must instead "be based upon specific factual matters set forth in the record and susceptible to review." *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315, 317 (Fla. 1974). AT&T's reiteration of the ALECs' vague and unsupported arguments that denying reciprocal compensation for virtual NXX traffic will make it "nearly economically burdensome" for them to use virtual NXX codes (AT&T Motion at 10) raises nothing the Commission hasn't already considered and rejected.

ii. The Commission Explicitly Considered the ALECs' Arguments About Billing System Modifications.

Aside from recycling its arguments about access charges, AT&T claims the Commission overlooked the evidence about the assertedly costly billing system modifications that all LECs will need to make to charge reciprocal compensation based on the end points of a call.

AT&T is incorrect. The Commission explicitly considered the testimony about potential billing system modifications. In fact, the testimony of Level 3 witness Gates and Sprint witness Maples about potential billing system changes was the basis for the Commission's decision not to require any particular compensation mechanism for virtual NXX traffic. Because the Commission could not determine, on the basis of the record, whether the billing systems modifications to apply access charges to voice virtual NXX traffic would be worth the trouble and expense to the ILECs and the ALECs, it declined to mandate the development of a database to separate out virtual NXX traffic from local

traffic. Instead, it left the parties themselves to determine what, if any, compensation to apply to such traffic. (Order at 30-31.)

Moreover, although AT&T would have the Commission believe billing systems modifications are an insurmountable obstacle to devising a compensation scheme for virtual NXX traffic, AT&T cites no testimony on this point from the ALECs' own witnesses. Instead, it refers to an exchange between Level 3's counsel and Verizon witness Haynes at the hearing. (AT&T Motion at 10.) During that exchange, Mr. Haynes *disagreed* with the suggestion that an ALEC would have to undertake a cumbersome process of reviewing monthly invoices to determine which calls were delivered to customers with virtual NXX numbers. (Tr. 439-50.) Mr. Haynes instead referred to the "honest and up-front" arrangement under which the company using the virtual NXX arrangement would notify the other company of where virtual NXX calls would be terminated. (Tr. 439.) He acknowledged that a system solution for Verizon to differentiate virtual NXX from local traffic would require "programming changes" (Tr. 443), but explained that he was not a party to internal discussions about any potential system changes (Tr. 449). In the absence of any ALEC testimony on the potential costs of modifying their billing systems, Level 3's counsel instead asked Verizon witness Haynes about the costs the ALEC might have to incur to do so. (Tr. 443). Of course, Mr. Haynes did not know. *Id.*

This testimony certainly does not support AT&T's contention that compensation based on the geographic end points of a call would be extraordinarily costly and difficult to implement. On the contrary, it shows that workable solutions are available today. Indeed, the Commission observed that BellSouth demonstrated the technical feasibility

of separating virtual NXX traffic from local traffic by developing a database to do so. (Order at 30.)

If the process of system modifications to determine local from NXX traffic were as costly and burdensome as AT&T suggests, the ALECs would surely have focussed on this point and produced at least some cost evidence. The Commission duly considered what little testimony the ALECs did provide and thus decided against ordering all LECs to develop the database solution BellSouth has, and against establishing any particular type of compensation for virtual NXX traffic. (Order at 30-31). While AT&T may wish the Commission drew a different conclusion from the evidence, "an arbitrary feeling that a mistake may have been made" is not a sufficient reason for reconsideration. *Stewart Bonded Warehouse*, *supra*, at 317. AT&T has cited no "specific factual matters set forth in the record" that the Commission overlooked in rendering its decision. The Commission's holding that virtual NXX traffic is not local and thus not subject to reciprocal compensation is the only one that is consistent with federal law and sound policy, and the Commission should refuse to reconsider it.

For all the reasons set forth in this Opposition, Verizon asks the Commission to deny AT&T's Motion for Reconsideration.

Respectfully submitted on October 7, 2002.

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