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October 15, 2002

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

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Re: **Docket No. 020119-TP**
**Petition of Florida Digital Network, Inc. for Expedited Review and
Cancellation of BellSouth Telecommunications, Inc.'s Key Customer
Promotional Tariffs and For an Investigation of BellSouth
Telecommunications, Inc.'s Promotional Pricing and Marketing Practices**

Docket No.: 020578-TP
**Petition for Expedited Review and Cancellation of BellSouth
Telecommunications, Inc.'s Key Customer Promotional Tariffs**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Opposition to FCCA's and Mpower's Motion for Reconsideration, which we ask that you file in the caption dockets.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return a copy to me. Copies have been served to the parties shown on the attached certificate of service.

Sincerely,

James Meza III
James Meza III (CM)

- AUS _____
- CAF _____
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- COM 5 _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
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- SEC 1 _____
- OTH Leach _____

Enclosures

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

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CERTIFICATE OF SERVICE
DOCKET NO. 020119-TP and 020578-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and First Class U.S. Mail this 15th day of October 2002 to the following:

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James Meza III (JMA)

(+) Signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited review and)
Cancellation of BellSouth Telecommunications,) Docket No. 020119-TP
Inc.'s Key Customer promotional tariffs and for)
Investigation of BellSouth's promotional pricing)
and marketing practices, by Florida Digital)
Network, Inc.)
_____)

In Re: Petition of the Florida Competitive)
Carriers Association for Expedited Review and) Docket No. 020578-TP
Cancellation of BellSouth Telecommunications)
Inc.'s Key Customer Promotional Tariffs)
_____) Dated: October 15, 2002

**BELLSOUTH'S OPPOSITION TO FCCA'S AND MPOWER'S
MOTION FOR RECONSIDERATION**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this Opposition to the Motion for Reconsideration filed by the Florida Competitive Carriers and Mpower Communications (collectively "ALECs") regarding Order No. PSC-02-1295-PCO-TP ("Order"). The ALECs' Motion is nothing more than an attempt to reraise arguments previously rejected by the Prehearing Officer and to improperly add new arguments regarding Proposed Issue 3(F) ("Issue") in the above-captioned docket. For these reasons and those discussed in detail below, the Prehearing Officer should deny the Motion because it fails to satisfy the standard for reconsideration.

BACKGROUND

On August 29, 2002, several parties and Staff conducted an issue identification meeting, wherein the parties identified a number of issues to be addressed in this proceeding. However, the parties could not agree on Florida

Digital Network, Inc. and the Florida Competitive Carriers Association's proposed Issue 3(F), which provided:

What additional filing requirements, if any, should be established for BellSouth promotional tariffs.

Because there was no agreement as to this proposed Issue, Staff notified the parties that the Prehearing Officer will rule on the propriety of including the Issue in the proceeding and asked the parties to submit briefs regarding the Issue. After submitting briefs, the Prehearing Officer issued an Order dated, September 23, 2002, that, among other things, determined that Issue 3(F) would not be included as an issue in the hearing. On October 3, 2002, FCCA filed the instant Motion.

LAW AND ARGUMENT

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering an order. See Diamond Cab Co. v. King, 146 So. 2d 889, 891 (Fla. 1962). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. See Sherwood v. State, 111 So. 2d 96, 97 (Fla. 3rd DCA 1959) (citing State ex. Rel. Jayatex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958)). Moreover, a motion for reconsideration is not intended to be "a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or the order." Diamond Cab Co., 394 So.2d at 891. Indeed, a motion for reconsideration should not be granted based upon an arbitrary feeling that a mistake may have been made, but should be based on specific factual matter set

forth in the record and susceptible to review.” Steward Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315, 317 (Fla. 1974).

Further, it is well settled that it is inappropriate to raise new arguments in a motion for reconsideration. In re: Establish Nondiscriminatory Rates, Terms, and Conditions, Docket No. 950984-TP, Order No. PSC 96-1024-FOF-TP, Aug. 7, 1996, 1996 WL 470534 at *3 (“It is not appropriate, on reconsideration, to raise new arguments not mentioned earlier.”); In re: Southern States Utilities, Inc., Docket No. 950495-WS, Order No. PSC-96-0347-FOF-WS, Mar. 11, 1996, 1996 WL 116438 at *3 (“Reconsideration is not an opportunity to raise new arguments.”).

I. The ALECs' Motion Does Not Satisfy the Standard for Reconsideration.

In its Motion, the ALECs argues that reconsideration is proper because the Prehearing Officer misconstrued Section 364.051(5)(a) and the presumption of validity that the Legislature has mandated for BellSouth's tariffs as a price-regulated LEC. See Motion at 3. In support, the ALECs raise the same arguments that they raised in their initial brief. See e.g., ALECs' Brief at 3-4. The Prehearing Officer considered these arguments and rejected them, finding that “[a]lthough, FCCA asserts that to not require an additional filing requirement would be an injustice to parties, Section 364.051(5), Florida Statutes, clearly provides that after 15 days notice, tariffs are presumptively valid. Accordingly, proposed Issue 3(F) shall not be included for purposes of the hearing.” Order at 9. Simply put, with this Motion, the ALECs are attempting to reargue matters solely because they are dissatisfied with the result, which is insufficient to satisfy

the standard for reconsideration. Accordingly, the ALECs' Motion for Reconsideration should be denied.

In addition, the ALECs' Motion should be denied because it is based on new arguments. Namely, the ALECs attempt to argue that the Prehearing Officer erred because (1) the cited case law is inapplicable; and (2) requiring the filing of additional information would not change the standard of "presumptively valid"; Motion at 3. All of these arguments should be denied because they are new arguments and thus cannot be the basis for reconsideration. See In re: Establish Nondiscriminatory Rates, Terms, and Conditions, supra; In re: Southern States Utilities, Inc., supra.

II. The ALECs' Arguments Do Not Warrant Reconsideration.

Even if considered, the ALECs' arguments do not warrant reconsideration for several reasons. First, the ALECs argue that proposed Issue 3(F) does not change the "presumptive validity" of BellSouth's tariffs. This argument must be rejected because, by its express terms, the proposed Issue will require the Commission to consider imposing "additional filing requirements" for BellSouth's tariffs. As correctly held by the Prehearing Officer, Section 364.051(5) provides that BellSouth's tariffs are presumptively valid upon 15 days notice without any additional filing requirements. Thus, it is nonsensical to suggest that, adding additional filing requirements, would not "alter or amend" Section 364.051(5).

Second, contrary to the ALECs' argument, the cited case law Diamond Cab Owner's Ass'n v. Florida R. R. & Pub. Comm'n, 66 So. 2d 593, 596 (Fla. 1953) is directly on point to the case at hand. As recognized by the Prehearing

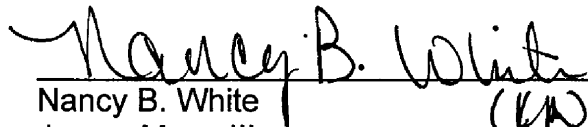
Officer, addressing proposed Issue 3(F) would require the Commission to implement "a change in the law", which is prohibited under Supreme Court precedent. Accordingly, the Order is based on sound legal reasoning and reconsideration is not warranted.

CONCLUSION

For the foregoing reasons, BellSouth respectfully requests that the Prehearing Officer deny the ALEC's Motion for Reconsideration.

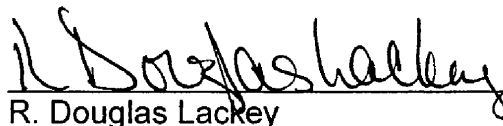
Respectfully submitted this 15th day of October, 2002.

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