BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into the rates for interconnection of mobile service providers with facilities of local exchange companies.	DOCKET NO. 940235-TL ORDER NO. PSC-96-1003-FOF-TL ISSUED: August 5, 1996

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

Background

In Docket No. 870675-TL, the Commission investigated the interconnection of mobile carriers with facilities of Local Exchange Companies (LECs). That investigation culminated with the issuance of Order No. 20475 on December 20, 1988, in which the Commission approved rates, terms and conditions for interconnection between mobile service providers (MSPs) and LECs. One of the notable decisions reached in that docket was the linkage of mobile interconnection usage rates with access charges through a specified formula.

On September 15, 1993, BellSouth Telecommunications, Inc. (BST) filed a petition to disassociate usage-based mobile interconnection charges from the formula. The petition was considered in Docket No. 930915-TL. In that docket the Commission found that BST had not fully supported its petition to disassociate the MSP network usage rates from the formula. Additionally, it was found that the formula, which was established with input from many parties, should not be discarded on the basis of a petition from one company. Accordingly, the Commission denied BST's Petition and undertook a generic investigation in Docket No. 940235-TL, to determine the appropriate rates, terms and conditions for mobile interconnection, including whether the formula for mobile service provider usage charges was still appropriate.

The Commission conducted a hearing on these and other issues on March 27 and 28, 1995 and rendered its decision in Order No. PSC-95-1247-FOF-TL, issued October 11, 1995. The Commission made a number of determinations. Some of those findings include:

- The formula linking mobile interconnection rates with access charges is eliminated.
- Usage rates for mobile interconnection are frozen at their current levels, except for Type 2B interconnection.
- The usage rate for Type 2B interconnection will be $0.01 per minute.
- If the parties are able to negotiate appropriate elements of interconnection, including usage rates, they are not precluded from doing so.
- Tariffs shall be filed no later than sixty days after the date of the order, with an effective date of December 31, 1995.

On November 13, 1995, McCaw Communications of Florida, Inc. (McCaw), filed an appeal to the Supreme Court of Florida of the Commission's final order. On December 7, 1995, McCaw filed a Motion for Stay with the Commission, for portions of the Order, pending appeal. Several parties filed responses in opposition to McCaw's Motion for Stay. The Commission denied McCaw's Motion for Stay by Order No. PSC-96-0334-FOF-TL.

Sprint/Centel/United (SCU), ALLTEL Florida, Inc. (ALLTEL), BST, and GTEFL filed tariffs pursuant to Order PSC-95-1247-FOF-TL. Those tariffs were approved at the December 19, 1995 agenda to be effective December 31, 1995. Order No. PSC-96-0132-FOF-TL was issued January 29, 1996, approving the tariffs. A Proposed Agency Action was issued in the same order requiring compliance tariff filings for Gulf Telephone Company (Gulf), Quincy Telephone Company (Quincy), and St. Joseph Telephone & Telegraph Company (St. Joe).

On February 13, 1996, McCaw filed a Motion for Reconsideration of Order No. PSC-96-0132-FOF-TL. GTE Florida Incorporated (GTEFL) filed its Response in Opposition to Reconsideration on February 20, 1996 while BST and SCU filed responses in opposition to McCaw's Motion for Reconsideration on February 26, 1996.

Standard for Reconsideration

The purpose of a Motion for Reconsideration is to bring to the attention of the Commission some material and relevant point of fact or law which was overlooked, or which it failed to consider when it rendered the order in the first instance. Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). Reconsideration is not an appropriate vehicle for rearguing matters which were already considered, or for introducing new material that was not before the forum in the first place.

Decision

First, McCaw argues that Order No. PSC-96-0132-FOF-TL does not give full recognition to its pending appeal and the fact that the effectiveness of the tariffs at issue in that order may be affected by the disposition of that appeal. McCaw requests that the order be reconsidered to require each LEC to collect, subject to refund on an ongoing basis, those revenues representing the difference between the price levels approved in the Tariff Order and the otherwise applicable usage levels that would be derived from the prior formula.

In its Memorandum in Opposition to McCaw's Motion for Reconsideration, BST argues that McCaw's motion is "nothing more than yet another in a continuing series of unsuccessful attempts to defer the implementation of a policy decision reached by the Commission with which McCaw disagrees." BST points out that, in the second paragraph of its motion, McCaw correctly acknowledges that the Commission explicitly recognized in the Tariff Order that McCaw has filed an appeal of Order No. PSC-95-1247-FOF-TL. BST argues that McCaw fails to cite anything that the Commission has overlooked or failed to consider in reaching its decision in the Tariff Order.

Like BST, SCU points out that Order No. PSC-96-0132-FOF-TL specifically acknowledges that McCaw has filed an appeal, so McCaw cannot argue that its appeal has been overlooked. SCU also argues that McCaw's request to hold revenues for certain services subject to refund is without merit. According to SCU, this request is an attempt to stay the Final Order by another means, and should be rejected.

GTEFL argues that McCaw's reasons for requesting reconsideration are without merit. GTEFL argues that McCaw is merely making a back-door attempt to reargue its motion for stay, a motion which the Commission has denied. GTEFL points out that

McCaw was not able to meet the statutory requirements of the stay; it should not be entitled to obtain the same relief through a motion on reconsideration or any other procedural mechanism.

We find that it is unnecessary to reconsider our Order to determine whether revenues should be held subject to refund. If the Supreme Court overturns the Commission's Order eliminating the link between mobile interconnection rates and access charges, we believe McCaw will be able to obtain relief if access charges have continued a downward trend in the interim.

Second, McCaw asserts that the order does not mention its December 7, 1995, Motion for Stay nor does it contingently recognize the fact that the effectiveness of the tariffs at issue may be affected by the disposition of the motion for stay. We note, this matter is moot since we denied the Motion for Stay by Order No. PSC-96-0334-FOF.

Third, McCaw asserts that Order No. PSC-96-0132-FOF-TL does not mention its protest in Docket No. 920260-TL. On November 9, 1995, in Docket No. 920260-TL, McCaw filed a protest to Order No. PSC-95-1295-FOF-TL, in Docket No. 920260-TL, regarding the Commission's decision not to flow through the October 1, 1995 access charge reductions that McCaw believes are required by Order No. 20475 and the then effective provisions of BST's mobile interconnection tariff. McCaw requests that the final effectiveness of the BST tariff should be withheld until this protest can be addressed.

BST responded to this assertion in Docket No. 920260-TL, in its answer to McCaw filed November 29, 1995. BST points out that "McCaw's assertion that the express terms of Order No. PSC-95-1247-FOF-TL did not break the link with access charges until new tariffs are filed is clearly contradictory to the express language used by the Commission in its Order." BST asserts that the Commission has already fully considered the issues raised by McCaw in that docket.

In its final argument, McCaw states that GTEFL's tariff rates "may not have been properly negotiated." McCaw points out that it requested the opportunity to investigate the matter, review the situation with GTEFL, and report back to the Commission. McCaw believes that Order No. PSC-96-0132-FOF-TL should be "corrected to reflect this fact."

GTEFL argues, in its response to McCaw, that one of the letters it presented containing the negotiated rates was signed by Ted Lipsky, Director of Advanced Network Systems for AT&T Wireless Services. GTEFL states that Mr. Lipsky had acted as AT&T Wireless'

representative throughout the negotiations with GTEFL. GTEFL had previously dealt with Mr. Lipsky or his predecessor regarding interconnection matters in Florida and was not advised that these negotiations would be handled any differently.

GTEFL contends that it has met the burden of proof in showing that its proposed rates complied with the Order in all respects. GTEFL further argues that McCaw's allegations are insupportable. GTEFL points out that McCaw raised these allegations for the first time at the Commission's agenda on December 19, 1995. GTEFL notes that McCaw's counsel stated that he would investigate the matter and report back to the Commission. GTEFL argues that, since it has received no new information from McCaw, the Commission need not wait any longer by making its Order contingent upon McCaw being able to prove what GTEFL characterizes as "previously unsupported allegations."

We note that several months have passed since the December 19, 1995 Agenda Conference at which McCaw brought this matter to the Commission's attention. Further, the companies were all given 60 days to negotiate rates, if they were able to do so, yet in the months that have passed, McCaw has been unable to determine whether those rates were properly negotiated by one of its affiliates. Accordingly, we agree that no further action need be taken regarding this point.

Upon consideration, we find that McCaw has presented no evidence that we overlooked or failed to consider. Therefore, the standard for reconsideration has not been met and McCaw's Motion for Reconsideration shall be denied.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that McCaw Communications of Florida, Inc.'s Motion for Reconsideration of Order No. PSC-96-0132-FOF-TL is denied. It is further

ORDERED that this docket shall remain open pending the outcome of the appeal filed by McCaw Communications of Florida, Inc. with the Florida Supreme Court.

By ORDER of the Florida Public Service Commission, this 5th day of August, 1996.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: _____
Chief, Bureau of Records

(S E A L)

MMB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.