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 ORDER NO. PSC-03-0144-FOF-TP ISSUED: January 27, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ

ORDER DENYING MOTION FOR RECONSIDERATION OF COMMISSION VOTE FOR PROCEDURAL IMPROPRIETY

BY THE COMMISSION:

I. CASE BACKGROUND

On January 21, 2000, this docket was established to investigate the appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996 (the Act). By Order No. PSC-00-2452-PCO-TP, issued December 20, 2000, the issues in this docket were bifurcated into two phases: Phase I and Phase II. Subsequently, we decided to conduct another evidentiary hearing on Issues 13 and 17 of the proceeding, which has been referred to as Phase IIA.

On September 10, 2002, the Final Order on Reciprocal Compensation was issued, then later amended by Order No. PSC-02-1248A-FOF-TP, issued on September 12, 2002.

On September 25, 2002, Verizon Florida Inc. (Verizon) and ALLTEL Florida, Inc. (ALLTEL) filed a Motion for Partial Reconsideration and, in the alternative, Motion for Stay Pending Appeal. On that same day, the following filings were made: Motion

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for Reconsideration and Request for Oral Argument by AT&T Communications of the Southern States, LLC, TCG of South Florida and AT&T Broadband Phone of Florida, LCC (collectively "AT&T"); Sprint's Motion for Reconsideration, or, in the Alternative Motion for Stay Pending Appeal by Sprint; Notice of Adoption of AT&T's Motion for Reconsideration by FCCA; Notice of Adoption of AT&T's Motion for Reconsideration by Time Warner Telecom of Florida, L.P., and Florida Cable Telecommunications Association; Notice of Adoption of AT&T's Motion for Reconsideration by US LEC of Florida Inc. On October 2, 2002, Frontier Communications of the South, Inc., GTC, Inc. d/b/a GT Com, ITS Telecommunications Systems, Inc., Northeast Florida Telephone Company d/b/a NEFCOM, Smart City Telecommunications LLC d/b/a/ Smart City Telecom and TDS Telecom/Quincy Telephone filed a Response to Verizon and ALLTEL's Motion for Partial Reconsideration.

On October 7, 2002, the following filings were made: Response in Opposition to Sprint's Motion for Reconsideration, or, in the Alternative, Motion for Stay Pending Appeal by AT&T Communications of the Southern States, LLC, TCG South Florida, AT&T Broadband Phone of Florida, LCC, the Florida Cable Telecommunications Association, Florida Competitive Carriers Association, and Time Warner Telecom of Florida, LP; Response in Opposition to Verizon and ALLTEL's Partial Motion for Reconsideration, and in the Alternative Stay by AT&T et al.; Response in Opposition to Sprint's Motion for Reconsideration by US LEC of Florida Inc.; Response in Opposition to Verizon and ALLTEL's Partial Motion for Reconsideration by US LEC of Florida Inc.; Opposition to AT&T's Motion for Reconsideration by Verizon; Opposition to AT&T's Request for Oral Argument on its Motion for Reconsideration by Verizon; Opposition to AT&T's Motion for Reconsideration by BellSouth and BellSouth's Cross Motion for Reconsideration. On October 8, 2002, FDN filed a Notice of Adoption of AT&T's Responses to Verizon and Sprint's Motions for Reconsideration.

On October 24, 2002, Verizon filed a letter indicating, among other things, that Rhode Island's Public Utilities Commission found that designating competing and inconsistent local calling areas for purposes of intercarrier compensation seems contrary to federal law. On November 5, 2002, AT&T filed a Response to Verizon's October 24, 2002, letter, stating that we should disregard the Rhode Island Public Utilities Commission's decision because it is

not relevant and lacks authoritative stature. These filings were untimely and not considered.

On October 31, 2002, GNAPs filed a Notice of Adoption of AT&T/TCG/AT&T Broadband's Motion for Reconsideration. On November 12, 2002, Verizon filed a Motion to Strike GNAPs' Notice.

At our December 17, 2002, Agenda Conference, our staff presented its recommendation on the pending Motions for Reconsideration, as well as the Motion to Strike and the Requests for Stay. At the Agenda Conference, requests for oral argument on Issues 1 and 2 were denied. However, we entertained oral argument on Issue 3, which addressed Verizon, Sprint, and ALLTEL's Motions for Reconsideration of our decision that the originating carrier's retail local calling area would be the default for determining reciprocal compensation obligations. Neither Verizon nor ALLTEL attended the Agenda Conference; thus, neither participated in oral argument on Issue 3.

On December 30, 2002, Verizon filed a Motion for Reconsideration of Commission Vote for Procedural Impropriety, along with a Request for Oral Argument. Thereafter, on January 3, 2003, ALLTEL filed its Notice of Adoption and Joinder in Verizon's Motion. On January 6, 2003, AT&T and TCG ("AT&T") filed its Response to the Motion. On January 8, 2003, FDN filed its Notice of Adoption of the Response filed by AT&T.

On January 8, 2003, our Order on the motions addressed at the December 17, 2002, Agenda Conference was issued, Order No. PSC-03-0059-FOF-TP.

At our January 21, 2003, Agenda Conference, we granted Verizon's request for oral argument regarding its Motion. This Order addresses Verizon's Motion for Reconsideration of Commission Vote For Procedural Impropriety.

II. <u>MOTION FOR RECONSIDERATION OF COMMISSION VOTE</u>

By this Motion, Verizon is asking us to revisit our vote at the December 17, 2002, Agenda Conference denying Verizon, ALLTEL, and Sprint's Motions for Reconsideration of the decision that the originating carrier's retail local calling area will be the default

for determining reciprocal compensation obligations. Specifically, Verizon is alleging that the vote itself was improper, because we improperly entertained oral argument on this issue prior to voting. Verizon contends that such oral argument was not properly noticed; thus, Verizon was deprived of due process in the consideration of the matter.

ALLTEL has adopted Verizon's Motion in whole, and its arguments are largely restatements of Verizon's arguments in this motion, as well as those raised in the earlier Motions for Reconsideration. Therefore, while ALLTEL is not specifically referenced in the following analysis, it should be understood that Verizon's arguments on this issue are also those of ALLTEL. Likewise, FDN served notice of its adoption of AT&T's response. Thus, while FDN is not specifically referenced, it should also be understood that AT&T's arguments are those of FDN as well.

For ease of reference, the pertinent text of the rules at issue is set forth below.

A. RULES

Rule 25-22.060 (1)(a), (d), and (f), Florida Administrative Code - Motion for Reconsideration

(1) Scope and general provisions.
(a) Any party to a proceeding who is adversely affected by an order of the Commission may file a motion for reconsideration of that order. The Commission will not entertain any motion for reconsideration of any order which disposes of a motion for reconsideration. The Commission will not entertain a motion for reconsideration of a Notice of Proposed Agency Action issued pursuant to Rule 25-22.029, regardless of the form of the Notice and regardless of whether or not the proposed action has become effective under Rule 25-22.029(6).

. . .

(d) Failure to file a timely motion for reconsideration, cross motion for reconsideration, or response, shall constitute a waiver of the right to do so.

. . .

(f) Oral argument on any pleading filed under this rule shall be granted solely at the discretion of the Commission. A party who fails to file a written response to a point on reconsideration is precluded from responding to that point during the oral argument.

Rule 25-22.058(1), Florida Administrative Code - Oral Argument

(1) The Commission may grant oral argument upon request of any party to a section 120.57, F.S. formal hearing. A request for oral argument shall be contained on a separate document and must accompany the pleading upon which argument is requested. The request shall state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it. Failure to file a timely request for oral argument shall constitute waiver thereof.

Rule 25-22.0021(2), Florida Administrative Code - Agenda Conference Participation

(2) When a recommendation is presented and considered in a proceeding where a hearing has been held, no person other than staff who did not testify at the hearing and the Commissioners may participate at the agenda conference. Oral or written presentation by any other person, whether by way of objection, comment, or otherwise, is not permitted, unless the Commission is considering new matters related to but not addressed at the hearing.

B. ARGUMENTS

1. VERIZON

Verizon argues that we asked for oral argument from the parties on Issue 3 of our staff's recommendation, even though no party had requested such oral argument. Verizon argues that the decision to hear oral argument under these circumstances was procedurally improper and not in compliance with applicable Commission rules. Verizon contends that the applicable Commission rules do not allow us to hear oral argument at an Agenda conference

on a post-hearing motion unless there has been a request from a party for oral argument filed in accordance with Rule 25-22.058, Florida Administrative Code.

Verizon seems to make two distinct, if somewhat conflicting, arguments as to why our decision to hear oral argument on Issue 3 was improper. First, Verizon asserts that Rule 25-22.0021, Florida Administrative Code, clearly restricts oral argument on post-hearing matters to Commissioners and staff. Verizon contends that the plain language of that rule provides no exceptions, and no exceptions can be implied.[1] Verizon argues that even though our staff's recommendation clearly stated that we could entertain oral argument on Issues 1 - 4 of the recommendation, this was insufficient notice and cannot be used to avoid application of Rule 25-22.0021, Florida Administrative Code. Thus, Verizon contends oral argument on Issue 3 was improper.

Verizon's secondary argument acknowledges, however, that Rule 25-22.058, Florida Administrative Code, provides a means by which parties may seek oral argument on post-hearing motions. Furthermore, Verizon concedes that Rule 25-22.060, Florida Administrative Code, gives the Commission sole discretion whether to hear oral argument or not, Verizon contends that the structure and placement of that Rule restricts that discretion and precludes us from hearing oral argument unless it has been requested in accordance with Rule 25-22.058, Florida Administrative Code. Specifically, Verizon argues that because Rule 25-22.060, Florida Administrative Code, states that oral argument may be "granted" at the Commission's discretion, a request must have been made by one of the parties in order for oral argument to be heard. In this case, Verizon contends that there was no request for oral argument and thus, nothing to grant. Verizon does not believe that Rule 25-22.060, Florida Administrative Code, contemplates that we would have discretion to hear oral argument on our own motion without some further additional notice to the parties.

Verizon adds, however, that we can at any time during a proceeding ask for argument from the parties on the issues addressed. Verizon contends that the oral argument must,

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[1] *Citing* Martin v. Johnston, 79 So. 2d 419 (Fla. 1955).

nevertheless, be conducted outside of an Agenda Conference, at a designated time and place, with a specific statement of what will be discussed. Verizon argues that the statement on our staff's recommendation that oral argument might be entertained on certain issues was insufficient. Verizon maintains that if our staff's interpretation of Rule 25-22.060, Florida Administrative Code, is correct and the notice on the staff's December 2, 2002, recommendation was sufficient, then parties would have to always attend every Agenda Conference at which a Motion for Reconsideration was being considered and be prepared to discuss all issues. Verizon believes that this interpretation promotes an "unreasonable result" that cannot stand. (Motion at 6-7)[2]

To remedy this situation, Verizon suggests that we hold a properly noticed oral argument regarding our decision to use the originating carrier's local calling scope as the default for determining reciprocal compensation obligations. Verizon maintains that no party will be prejudiced by this approach, and all parties will have an opportunity to fully prepare for the argument. Verizon adds that by conducting this oral argument, we will avoid having our decision challenged on procedural grounds. Verizon notes that even if we do not agree with Verizon's interpretation, we should still "err on the side of caution" and conduct an oral argument. (Motion at 8).

Finally, Verizon contends that the subject Motion is not a Motion for Reconsideration of an Order on Reconsideration, which is prohibited by Commission rules. Instead, Verizon argues that this is merely a request to "put the parties back, to the extent possible, in the positions they were in before the impermissible oral argument occurred." (Motion at 8). Verizon notes that as of the date of its Motion, the Order on Reconsideration arising from our December 17, 2002, vote had not yet been issued.

2. AT&T

AT&T argues that Verizon's Motion is really a Motion for Reconsideration that is prohibited as a successive reconsideration

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[2] *Citing* Woodley v. Dep't of Health and Rehabilitative Services, 505 So. 2d 676, 678 (Fla. 1st DCA 1987).

motion by Rule 25-22.060, Florida Administrative Code. AT&T contends that in its December 30, 2002, Motion, Verizon is arguing essentially the same thing that it argued in its September 25, 2002, Motion for Reconsideration - - that being that we should reconsider our decision to establish the originating carrier's retail local calling area as the default for determining reciprocal compensation obligations. Thus, AT&T maintains that Verizon's Motion should not be considered by us because it is a Motion for Reconsideration of an order disposing of a Motion for Reconsideration, which is prohibited by Rule 25-22.060(1)(a), Florida Administrative Code.

In the alternative, AT&T argues that there were no procedural improprieties in our December 17, 2002, consideration of the various Motions for Reconsideration in this case. AT&T believes that we did not err in hearing oral argument on Issue 3, because Rule 25-22.060, Florida Administrative Code, gives us "unbridled" discretion in hearing oral argument on a Motion for Reconsideration. (Response at p. 4).

AT&T believes that Verizon's arguments fail for several reasons. First, AT&T asserts that Verizon had sufficient constructive notice based on the language of Rule 25-22.060(1)(f), Florida Administrative, that oral argument might be entertained, as well as sufficient actual notice based upon the language included in the notice of our staff's recommendation, which stated, in part, "ISSUES 1 - 4: MOTIONS FOR RECONSIDERATION/CROSS-MOTION FOR RECONSIDERATION - ORAL ARGUMENT HAS BEEN REQUESTED ON ISSUES 1 & 2 ONLY, BUT MAY BE ENTERTAINED ON ISSUES 1 - 4 AT THE COMMISSION'S DISCRETION PURSUANT TO RULE 25-22.060(1)(F), F.A.C." In spite of this, Verizon failed to appear at the Agenda Conference.[3]

AT&T also argues that Verizon's contention that Rule 25-22.0021, Florida Administrative Code, precludes oral argument on a Motion for Reconsideration is erroneous, because Rule 25-22.060, Florida Administrative Code, clearly allows this Commission to entertain oral argument on such motions.

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[3]AT&T notes that, similarly, Verizon had failed to appear at the prior Commission Agenda Conference at which Verizon's Motion to Dismiss in unrelated Docket No. 021006-TP had been considered.

AT&T adds that even if our procedural rules precluded us from hearing oral argument, we are authorized to waive our own procedural rules.[4] AT&T notes that the U.S. Supreme Court has also stated that administrative agencies may waive their own procedural rules.[5] Thus, AT&T contends that it is well-settled law that this Commission can waive its own procedural rules.

III. DECISION

While we believe that Verizon's motion is highly unusual and apparently not contemplated by Commission rules, because it is asking us to reconsider a decision based upon an alleged error in the application of Commission rules and notice provisions, we find that the standard of review for this Motion is most appropriately that which is used for other motions for reconsideration.

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 we failed to consider in rendering our Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should 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).

While we do agree that Verizon's Motion is unusual and not clearly contemplated by Commission rules, we do not agree with AT&T that the Motion is clearly a Motion for Reconsideration of an order

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[4]*Citing* United Telephone Company of Florida v. Mayo, 345 So. 2d 648 (Fla. 1977).

[5]*Citing* American Farm Lines v. Black Ball Freight, 397 U.S. 532 (1970), citing NLRB v. Monsanto Chemical Company, 205 F.2d 763,764.

disposing of a Motion for Reconsideration that would be prohibited by Rule 25-22.060(1)(a), Florida Administrative Code. Nevertheless, applying the standard referenced above, we do not find that Verizon has identified a mistake of law in our deliberation of the matter, including our decision to hear oral argument on Issue 3. Verizon has reached an erroneous conclusion for the reasons set forth below.

A. Rule 25-22.0021, Florida Administrative Code, Is Inapplicable

Verizon has argued that Rule 25-22.0021, Florida Administrative Code, is a strict prohibition against oral argument on a staff recommendation being considered post-hearing. This is incorrect for reasons that Verizon itself has identified in its own motion. While Rule 25-22.0021, Florida Administrative Code, is the general rule applicable to consideration of matters post-hearing, Part IV.D of the Commission's rules clearly provides specific exceptions to that general prohibition.

Part IV.D of the Commission's procedural rules addresses filings and motions that are received after the Commission's hearing has concluded. Rule 25-22.058, Florida Administrative Code, the first rule in that Part, provides the means by which a party may request oral argument on a motion or pleading received post-hearing. Furthermore, Rule 25-22.060(1)(f), Florida Administrative Code, provides that oral argument on a post-hearing Motion for Reconsideration may be granted at our discretion. It is a well-settled principle of statutory construction, which can be useful in the interpretation of rules as well, that the more specific provision controls over the more general provision. Furthermore, when statutes or rules address the same subject matter, one must endeavor to read each statute or rule in a way that avoids conflict and gives each a field of operation. See 48A Fla. Jur. Statutes § 185 (Fla. Jur 2nd, WEST 2002). See also Harley v. Board of Public Instruction of Duval County, 103 So. 2d 111, 112 (Fla. 1958)("a special grant of power . . . takes precedence over a general grant. . . ."); and Tallahassee Democrat, Inc. v. Florida Board of Regents, 314 So. 2d 164 (Fla. 1st DCA 1975)(". . . when general and specific acts are incongruous, the specific statute controls). Thus, Rules 25-22.058, Florida Administrative Code, and Rule 25-22.060, Florida Administrative Code, being more specific

than Rule 25-22.0021, Florida Administrative Code, are controlling. Both of the Rules located in Part IV.D clearly contemplate that oral argument may be heard by this Commission on motions and pleadings received post-hearing, and neither restricts us from hearing such oral argument at an Agenda Conference. As for the scope of applicability of Rule 25-22.0021, Florida Administrative Code, we interpret this Rule to be particularly applicable to our staff's recommendations that address the issues presented and the record received at hearing. We interpret the purpose of this prohibition against parties' participation in the debate of these types of recommendations is to prevent improper supplementation of the record through oral argument.

Based on the foregoing, we do not believe Rule 25-22.0021, Florida Administrative Code, is applicable; thus, Verizon has not identified a mistake of law on this point.

B. Rule 25-22.060, Florida Administrative Code, Does Not Limit the Commission's Discretion in Hearing Oral Argument to Only Those Instances Where Requested by a Party

Verizon contends that Rule 25-22.060, Florida Administrative Code, only contemplates oral argument on a post-hearing motion for reconsideration when requested by a party in accordance with Rule 25-22.058, Florida Administrative Code. For this interpretation, Verizon relies particularly on the use of the word "grant" in the rule. We disagree with this restrictive application for two reasons: 1. Rule 25-22.060(1)(f), Florida Administrative Code, gives the Commission "sole discretion" in whether to hear oral argument or not; and 2. The rule does not specify that the request for oral argument must come from a party, nor does it specifically restrict our discretion to grant oral argument to those instances where the request has been made by a party.

We interpret Rule 25-22.060(1)(f), Florida Administrative Code, to give us great discretion in whether oral argument will be entertained on a Motion for Reconsideration. This subsection is largely intended to put parties on notice that even if they do file a Request for Oral Argument on a Motion for Reconsideration in accordance with Rule 25-22.058, Florida Administrative Code, that request may or may not be granted. This rule does not, however,

preclude us from entertaining oral argument on our own motion, nor does it specify that when oral argument is "granted," the request must have come from a party. In this instance, we expressed interest in hearing oral presentations on Issue 3, and those parties in attendance demonstrated that they were willing and prepared to make such presentations.[6]

For the foregoing reasons, we find that Verizon has identified a mistake of law in our decision on this point.

C. Verizon's Interpretation Leads to an Absurd Result

We also reject Verizon's Motion because it leads to an absurd result in the application of our rules.

We emphasize that when the Motions for Reconsideration of our decision in Order No. PSC-02-1248-FOF-TP were filed, AT&T requested oral argument on its Motion. While Verizon responded in opposition to the requested oral argument, Verizon did not at that time contest this Commission's authority to entertain oral argument, should it have been granted, at our scheduled Agenda Conference. Instead, Verizon contested only the necessity for hearing oral argument on the issues raised in AT&T's Motion. Nevertheless, even though Verizon contested AT&T's request, Verizon did not appear at the scheduled Agenda Conference, in spite of the fact that our staff's recommendation regarding AT&T's request could have been rejected by this Commission.

It appears to us that Verizon does not contest our authority to hear oral argument on a Motion for Reconsideration at an Agenda Conference when oral argument has been requested by a party in accordance with Rule 25-22.058, Florida Administrative Code. However, Verizon contests our authority to do so when oral argument is requested by the Commissioners themselves. Apparently, Verizon believes that we must be held to higher notice standard when we seek oral argument on our own motion, than when oral argument is requested by a party. As stated in its Motion, Verizon believes

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[6] We note that the parties that participated in the oral argument on Issue 3 did not contest this Commission's ability to entertain oral argument on its own motion.

that this Commission can remedy the procedural error in our deliberations on December 17, 2002, by conducting another oral argument on the pertinent issue outside of an Agenda Conference, and subject to a proper notice that designates the time, place, and subject matter for the oral argument. It is not clear whether Verizon believes that we could then make a ruling on the Motions for Reconsideration, or whether the Commission staff recommendation would then have to be scheduled for another Agenda Conference for consideration, but it appears that Verizon contemplates that the oral argument and deliberation of our staff's recommendation would be conducted entirely separately. This result is not only absurd and administratively burdensome, but it does not promote an effective use of oral argument in the consideration of the matters at issue. It simply makes no sense to apply a notice standard with regard to oral argument on a motion for reconsideration that is dependent upon who seeks the oral argument.

D. Sufficient Notice Was Provided that Oral Argument Might Be Entertained

As noted above, Verizon believes that we can remedy the perceived procedural error by conducting an oral argument outside of an Agenda Conference, subject to a proper notice. While not conducted outside of an Agenda Conference, we do believe that the Commission staff's recommendation contained all of the elements necessary for proper notice, and the Notice was properly served on the parties and interested persons in the Docket. Specifically, the parties in this Docket were sent notice that our staff's recommendation would be considered on the December 17, 2002, Agenda. Included in the information sent to parties was the following notice provided on our staff's recommendation:

> ISSUE A: REQUEST FOR ORAL ARGUMENT ON ISSUES 1 & 2 - PARTICIPATION LIMITED TO COMMISSIONERS AND STAFF
> ISSUES 1 - 4: MOTIONS FOR RECONSIDERATION/CROSS-MOTION FOR RECONSIDERATION - ORAL ARGUMENT HAS BEEN REQUESTED ON ISSUES 1 & 2 ONLY, BUT MAY BE ENTERTAINED ON ISSUES 1 - 4 AT THE COMMISSION'S DISCRETION PURSUANT TO RULE 25-22.060(1)(F), F.A.C.
> ISSUES 5-6: MOTION TO STRIKE AND REQUESTS FOR STAY - PARTICIPATION LIMITED TO COMMISSIONERS AND STAFF

This information clearly provided parties with sufficient notice that oral argument might be entertained, as well as the subjects to be addressed. The rest of the Agenda Notice sent to parties includes the specific time and place of our Agenda Conference. There could be no doubt based on the information sent to parties that oral argument might be entertained, and where and when the parties should appear in order to participate. Thus, we find that the actual notice sent to the parties of our staff's recommendation and the possibility of oral argument regarding the motions addressed in that recommendation was more than adequate. Thus, no procedural impropriety occurred. As such, Verizon has not identified a mistake of law in our deliberation or decision.

Finally, Verizon and ALLTEL had clear notice of the interpretation of our discretion to entertain oral argument on a motion for reconsideration, as noticed on our staff's recommendation, well before the scheduled Agenda Conference. It would seem that, at a minimum, they should have appeared at the Agenda Conference in an abundance of caution and have made their arguments regarding our discretion, or lack thereof, to hear oral argument at the time we opened the matter for discussion.

IV. **CONCLUSION**

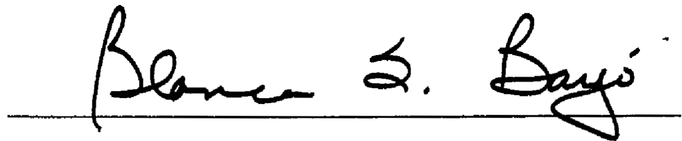
Upon consideration of the foregoing, we hereby deny Verizon's Motion for Reconsideration of Commission Vote For Procedural Impropriety. Verizon has not identified a mistake of fact or law in our deliberation of the matter at issue.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Verizon Florida Inc.'s Motion for Reconsideration of Commission Vote For Procedural Impropriety is hereby denied. It is further

ORDERED that this Docket be closed.

By ORDER of the Florida Public Service Commission this 27th Day of January, 2003.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request 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 the Commission Clerk and Administrative Services 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.