Legal Department

JAMES MEZA III
Attorney

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5561

July 25, 2001

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

Re: Docket No. 000731 -TP (AT&T Arbitration)

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Memorandum in Opposition to the Motion for Reconsideration and Cross-Motion for Clarification, which we ask that you file in the captioned docket.

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

Sincerely,

James Meza III

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

CERTIFICATE OF SERVICE
Docket No. 000731-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail this 25th day of July, 2001 to the following:

Lee Fordham
Staff Counsel
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Rhonda P. Merritt
AT&T Communications of the Southern States, Inc.
101 North Monroe Street
Suite 700
Tallahassee, FL 32301
Tel. No. (850) 425-6365
Fax. No. (850) 425-6361
rmerritt@att.com

Roxanne Douglas
AT&T Communications of the Southern States, Inc.
1200 Peachtree Street, N.W.
Suite 8100
Atlanta, GA 30309
Tel. No. (404) 810-8670
rxdouglas@att.com

James Meza III

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition by AT&T Communications of the Southern States, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. pursuant to 47 U.S.C. Section 252	Docket No. 000731-TP Filed: July 25, 2001

BELLSOUTH'S MEMORANDUM IN OPPOSITION TO MOTION FOR RECONSIDERATION AND CROSS-MOTION FOR CLARIFICATION

BellSouth Telecommunications, Inc. ("BellSouth") submits this Memorandum in Opposition to the Motion for Reconsideration of Order No. PSC-01-1402-FOF-TP ("Order") filed by AT&T Communications of the Southern States, Inc. ("AT&T"). Additionally, although BellSouth believes that clarification may not be necessary, in an abundance of caution, BellSouth files a Cross-Motion for Clarification as to the Commission's decision on unbundled local switching.

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 Florida Public Service Commission ("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. Jaytex 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." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

In its motion, AT&T requests that the Commission revisit its ruling on six issues: (1) the definition of "currently combines;" (2) the market based glue charge; (3) tandem switching element; (4) OSS issues; (5) MTU/MDU access terminals; and (6) unbundled local switching. Pursuant to the above-described legal standard, AT&T offers no legitimate basis for the Commission to review or modify its decision on these issues. In fact, AT&T does not even set forth the legal standard for reconsideration in its Motion or establish how said standard is satisfied for any of the above-stated issues.

I. Definition of Currently Combines

AT&T requests that the Commission reconsider its decision regarding the definition of "currently combines." Motion at 2. AT&T takes issue with the fact that the Commission correctly defined "currently combines" to mean combinations of UNEs that are, "in fact, already combined and physically connected in BellSouth's network at the time a requesting carrier places an order." Order at 23.

In support of reconsideration, AT&T makes the same arguments and cites to the same case law that it made and cited to at the hearing and in its Brief.

These arguments include (1) the allegation that the Commission has the authority to adopt a definition that requires BellSouth to provide UNEs that are not in fact combined; and (2) the allegation that BellSouth's position is not based on legal authority and is anti-competitive. Motion at 2-3; AT&T Brief at 2-4.[1]

After taking into account the applicable law, the Commission considered all of these arguments and squarely rejected them, finding that "Rule 51.315(b) only obligates BellSouth to make available at TELRIC rates those combinations that are in fact already combined and physically connected at the time a requesting carrier places an order." Order at 23. In addressing the same arguments that AT&T presents in its Motion for Reconsideration, the Commission held that the "adoption of a more expansive definition of 'currently combines,' as AT&T requests, would be inconsistent with the Eighth Circuit Court's July 18, 2000 decision" (Order at 21) and that "[w]e do not believe our obligations under the law can accommodate the urging of AT&T . . ." Order at 22.

Simply put, AT&T has not set forth any point of fact or law that the Commission overlooked or failed to consider. To the contrary, the Order clearly establishes that the Commission considered and rejected all of AT&T's arguments. With this motion, AT&T is attempting to reargue matters solely because it is dissatisfied with the result, which is insufficient to satisfy the

[1] Indeed, the argument set forth in AT&T's Motion for Reconsideration is almost identical to the argument asserted in AT&T's Brief. Compare, AT&T Brief at 3 ("BellSouth's position, which is not based any [sic] valid legal authority, is anti-competitive and is designed solely to prevent ALECs from using UNE-P to compete for customers."), with, Motion at 2 ("BellSouth's position . . . is anti-

standard for reconsideration. Accordingly, AT&T's Motion for Reconsideration should be denied as to this issue.

II. **Glue Charges**

AT&T requests that the Commission reconsider its finding that AT&T pay a "glue charge" based on market rates when it requests that BellSouth combine UNEs that are not "currently combined." Motion at 3. As with its "currently combined" argument above, AT&T's sole argument in support for reconsideration is the same argument that it presented in its Brief and at the hearing. Indeed, a cursory review of AT&T's Brief and Motion reveals that the two are strikingly similar as numerous sentences in the Brief are reproduced in the Motion. In both pleadings, AT&T essentially argues that a "glue charge" is nothing more than an attempt by BellSouth "to obtain an additional profit over and above the reasonable profit it recovers in the cost based rates for network element combinations." AT&T Brief at 5; Motion at 2.

In deciding this issue, the Commission specifically recognized AT&T's argument as it stated that "AT&T witness Gillan maintains that BellSouth should only be permitted to charge a cost-based rate for combining network elements." Id. The Commission ultimately rejected AT&T's argument, finding that "BellSouth is only obligated to provide combinations, at cost-based rates, that are in fact physically connected and existing within BellSouth's network at the time an ALEC requests it." Order at 25.

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competitive and designed solely to prevent ALECs from using UNE-P to compete for customers. BellSouth's position is not based on any valid legal authority.").

AT&T points to no fact or law that the Commission failed to consider in reaching its decision. Again, AT&T is simply dissatisfied with the result and is attempting to resurrect arguments that AT&T previously raised and which the Commission rejected. Accordingly, AT&T's Motion for Reconsideration as to the "glue charge" issue should be denied.

III. Tandem Switching Elements

With this issue, AT&T seeks reconsideration of the Commission's decision that AT&T is not entitled to the tandem switching rate. AT&T's primary basis for reconsideration is that there is a purported inconsistency in the Commission's Order. Motion at 7. Namely, AT&T suggests that the Commission, in one paragraph of the Order, states that it will defer the "policy decision regarding the nature of the test ALECs must meet to the Commission's generic docket," but in the next paragraph, applies an "actually serves" geographic test in the proceeding. Id. Because of this inconsistency, AT&T requests that the Commission reconsider its decision and find that (1) AT&T is entitled to the tandem rate; or (2) alternatively, defer its ruling until the Commission issues its Order in Docket No. 000075.

The Commission should deny AT&T's request because AT&T points to no evidence that the Commission overlooked or failed to consider in finding that AT&T was not entitled to receive the tandem rate.* Additionally, reconsideration

[2] For support, AT&T only cites to orders from other state commissions, one of which it cited to in its Brief. See Motion at 8; Brief at 26. Additionally, AT&T also cites to recent Federal authority allegedly establishing that geographic comparability is the only test that an ALEC has to satisfy to

is not necessary because AT&T's argument is based on a misreading of the Order. AT&T's confusion lies in the fact that, in the Order, the Commission (1) deferred to the generic proceeding the issue of whether any policy issues required the Commission to examine both functionality and geographic comparability in determining whether an ALEC is entitled to the tandem rate; but (2) addressed the issue of whether AT&T actually met both criteria based on the record in this proceeding.

The "policy issue" the Commission was referring to was not the actual components or elements of any specific test. Instead, the Commission was addressing its finding that the evidence in the record indicated that, from a policy perspective, the Commission possibly should consider both functionality and geographic comparability in examining one or both criteria. Order at 79. The Commission decided to defer only this specific "policy" issue to the generic docket. Indeed, the Commission explicitly stated that it was evaluating the "practical question" of whether AT&T met one or both criteria.

> Although the evidence in the record may indicate that from a policy perspective we should examine both functionality and geographic coverage to determine if an ALEC satisfies one or both of the criteria, the practical question of whether AT&T does in fact meet one or both criteria is left to be evaluated.

Order at 79.

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receive the tandem rate. These decisions, however, have no impact on the Commission's factual finding that AT&T failed to satisfy the geographic comparability test.

Based on the evidence in the record, the Commission determined that AT&T, as a matter of fact, failed to satisfy either criteria.

> Based upon the record in this proceeding we find that AT&T is not entitled to the tandem rate for the purposes of reciprocal compensation. Although the evidence in the record may indicate that geographic coverage alone may determine eligibility for the tandem rate, AT&T has failed to show that it meets this criterion. Therefore, any policy decision regarding the functionality/geography test is better left to the Commission's generic docket on this issue.

Id. at 80.

As made clear by the above-passage, the Commission decided to leave for another day the issue of whether policy considerations required the Commission to look at functionality in addition to geographic comparability because AT&T failed satisfy either criteria. Such a decision is not inconsistent with its application of both criteria and its determination that AT&T was not entitled to the tandem rate.[3] Accordingly, because there is no inconsistency in the Order and because AT&T points to no evidence that the Commission failed to consider, the Commission should deny AT&T's request for reconsideration as to this issue.

IV. OSS Issues

AT&T seeks reconsideration of the Commission's decision that AT&T submit the Electronic Ordering and Electronic Processing issues to the Change of Control Process ("CCP"). Order at 126, 139. AT&T's basis for

reconsideration is that the CCP will not bring resolution of these issues because AT&T alleges that "BellSouth, whenever it chooses, unilaterally exercises it power to decide which issues will be addressed in the CCP or whether they are addressed at all." Motion at 10.

AT&T made this same argument at the hearing and in its Brief, which the Commission considered and rejected. AT&T Brief at 38. For instance, regarding Electronic Processing, the Commission specifically found that AT&T had previously requested that BellSouth modify the ordering process through the CCP. Order at 139. Despite this fact, the Commission found that the issue should be addressed through the CCP.

> We agree with AT&T that change requests (numbers 0137 and 0160) were issued requesting that BellSouth modify its systems so that additional order types will flow through its systems without manual intervention. We disagree with BellSouth that "AT&T is attempting to avoid the CCP" on this issue.
>
> We find that the proper mechanism to address this issue is the CCP. It would be beneficial for AT&T and other ALECs to have the ability to electronically enter all LSRs and have them flow through to SOCS without designed manual fall-out. However, the system in place does not create a disparity for AT&T regarding order submission as stated earlier.
>
> Therefore, this issue is currently best suited to be pursued through the CCP process.

Id.

[3] Ironically, in light of the recent authority cited by AT&T allegedly evidencing that only a geographic comparability test applies, the Commission's decision to defer any policy considerations to the generic docket may now be moot.

AT&T raises no point of law or fact that the Commission failed to consider. To the contrary, AT&T simply makes the same argument and cites to the same Commission Order (PSC-97-1459-FOF-TL) in support of reconsideration that it asserted in its Brief, which is insufficient to satisfy the standard for reconsideration. Accordingly, AT&T's Motion should be denied as to these issues.

V. Access Terminals

The Commission ordered AT&T to cross-connect its own facilities with BellSouth's facilities through access terminals when provisioning service to customers in multi- tenant units ("MTUs") or multi-dwelling units ("MDUs"). Order at 56. In reaching this conclusion, the Commission rejected AT&T's argument that the access terminal would be too costly because it found that AT&T had the option of ordering all "available" pairs to each unit in a building. Id. at 52, 56.

AT&T seeks clarification of the Order and asks that the Commission order BellSouth to "connect all-pairs in a high-rise multi-tenant unit to the access panel at the time it is installed pursuant to an ALEC's initial request for the terminal." Motion at 10. AT&T premises its argument on the fact that having to "issue more orders or service inquiries to pull additional pairs to the access terminals when an ALEC is ready to serve a customer" would cause an unnecessary delay. Id.

Clarification, however, is not necessary to address AT&T's concerns because, as recognized by the Commission, AT&T currently has the ability to remedy any potential delay in provisioning additional pairs to the access terminal by simply requesting that BellSouth provision all "available" pairs. As stated by

BellSouth witness Milner, BellSouth will prewire as many pairs as AT&T asks for. (Tr. 1182).

Notwithstanding the above-argument, clarification or reconsideration would be inappropriate because AT&T is raising a new argument based on facts not currently in the record. Besides general allegations that the access terminal would delay AT&T's ability to service customers, AT&T did not present any specific evidence at the hearing to support the argument and requested relief that it now makes. Specifically, AT&T never previously asserted that "BellSouth should not be allowed to further delay ALEC's ability to serve customers in a timely way be refusing to pull all pairs in a multi-tenant building to the access terminal when it is first installed." Motion at 10. (emphasis in original). AT&T also failed to make this specific argument in its brief.

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."). Accordingly, AT&T's request for clarification as to this issue should be denied.

VI. Unbundled Local Switching

AT&T requests that the Commission clarify its finding that BellSouth be allowed to aggregate lines provided to multiple locations of a single customer within the same Metropolitan Statistical Area ("MSA") in determining whether AT&T is able to purchase local circuit switching at UNE rates to serve any of the lines of that customer. Order at 64. AT&T premises its request on the fact that, in discussing this issue, the Commission stated that the FCC's intent was to have the rule apply on the "per-location-within the MSA" rule that AT&T supported. Motion at 11; Order at 63.

BellSouth believes that this statement is a simple typographical error and that clarification of the Order may not be necessary because, upon reading the Order in its entirety regarding this issue, it is clear that the Commission intended to adopt BellSouth's interpretation of the FCC Rule. For instance, the Order states that the Commission found merit and agreed with BellSouth witness Ruscilli's statements that (1) the availability of EELs in the top 50 MSA is significant in considering this issue; and (2) the "availability of EELs renders the actual geographic location of the customer's lines irrelevant, as long as the lines are in the same MSA." Order at 63. Moreover, the Order goes on to address several concerns raised by AT&T if the Commission adopted BellSouth's interpretation of Rule 51.319(c)(2), including the availability of market-based rates for unbundling switching and AT&T's ability to provide a competitive offering. Order at 63, 64.

Accordingly, because the entirety of the Order regarding this issue establishes that the Commission's intent was to adopt BellSouth's per-customer in the MSA interpretation of FCC Rule 51.319(c)(2), clarification may not be necessary. Nevertheless, in an abundance of caution, BellSouth requests that, to the extent the Commission determines that clarification may be required, the Commission simply correct the statement in question to allow it to conform to the Commission's analysis and conclusion. In no event, however, should the Commission adopt AT&T's request regarding this issue, which is clearly contradicted by all other portions of the Commission's Order.

CONCLUSION

For the foregoing reasons, BellSouth respectfully requests that the Commission deny AT&T's Motion for Reconsideration. In addition, if the Commission decides that it must clarify its position regarding the unbundled local switching issue, BellSouth respectfully requests that the Commission confirm its position that BellSouth is allowed to aggregate lines provided to multiple locations of a single customer within the same MSA.

Respectfully submitted this 25th day of July, 2001.

BELLSOUTH TELECOMMUNICATIONS, INC.

NANCY B. WHITE
JAMES MEZA III
c/o Nancy Sims
150 South Monroe Street, Suite 400
Tallahassee, FL 32301
(305) 347-5558

R. DOUGLAS LACKEY
Suite 4300
675 W. Peachtree St., NE
Atlanta, GA 30375
(404) 335-0747

401405

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