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August 15, 2003

BY HAND DELIVERY
Ms. Blanca Bayó, Director
Division of Records and Reporting
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 990649B-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of AT&T Communications of the Southern States, LLC are an original and fifteen copies of AT&T's Motion for Reconsideration of Order Granting Motion to Stay in the above referenced docket.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,

Floyd R. Self

FRS/amb
Enclosures
cc: Tracy W. Hatch, Esq.
Parties of Record

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into Pricing of Unbundled Network Elements (Sprint/Verizon Track)	))))	Docket No. 990649B-TP Filed: August 15, 2003

AT&T'S MOTION FOR RECONSIDERATION OF ORDER GRANTING MOTION TO STAY

AT&T Communications of the Southern States, LLC ("AT&T") respectfully moves the Commission to reconsider its Order Granting Motion to Stay that stays the Commission's November 15, 2002 Order establishing rates for unbundled network elements ("UNEs") offered by Verizon. The Order Granting Motion to Stay must be reconsidered and rescinded because it deviates from established Commission precedent without providing a factual or policy basis for such deviation.

1. Verizon has requested a stay under the mandatory stay provision of Rule 25-22.061, Florida Administrative Code (the "stay rule"). That rule provides for issuance of a stay when the order being appealed involves a ". . . decrease in rates charged to customers."

2. The only order resulting from a contested matter in which the Commission has resolved the applicability of Rule 25-22.061(1) to an inter-carrier dispute is *In re: Complaint of WorldCom Technologies,* Order No. PSC-99-0758-FOF-TP, issued April 20, 1999 (the "BellSouth Stay Order"). In that case, the Commission unequivocally established a construction of the term "customers" in denying BellSouth's motion for a mandatory stay of an order which required BellSouth to refund overcharges to competitive telecommunications carriers for the transportation and termination of ISP-bound traffic. In its Order, the Commission stated that:

> This rule [25-22.06 (l)(a)] does not apply to this case, because, contrary to BellSouth's assertion, the complainants, **competitive telecommunications carriers, are not "customers" for purposes**

> **of this rule**. The rule is designed to apply to rate cases or other proceedings involving rates and charges to end use ratepayers or consumers, not to contract disputes between interconnecting telecommunications providers. (e.s.)

BellSouth Stay Order at 4-5.

3. In the Order Granting Motion to Stay, the Commission recognized the existence of the BellSouth Stay Order but, in a statement diametrically opposed to the precedent established in the BellSouth Stay Order, stated that "[b]ased upon a reading of its plain language, **our rule in no way indicates that an CLEC is not a customer** for purposes of applying the mandatory stay. In fact, in our proceedings, we regularly treat CLECs as customers of the ILEC." (Order Granting Stay at p.8)

4. If, as the Commission states, the plain language of the mandatory stay rule is dispositive of the issue, then it has not, and cannot, explain why the plain language of the rule would lead to divergent treatment of a CLEC based upon the nature of the proceeding, i.e. an arbitration proceeding as opposed to a rate proceeding. The effect of the Commission's Order Granting Stay is to cast off the *stare decisis* effect of its previous order, with no explanation other than "we believe that our previous decision was premised largely upon the facts of that case." (Order Granting Stay at p.8). The Commission provided no evolving policy basis for the change in its treatment of CLECs under the mandatory stay rule. **All** cases before the Commission involve different facts. The reason set forth by the Commission would lead to the result that no Commission Order could constitute discoverable precedent for its actions, since all Commission decisions may be said to be dependant "on the facts of that case."

5. It is well established that the principle of *stare decisis* applies to administrative proceedings. *Couch v. State*, 377 So.2d 32 (Fla. 1st DCA 1977). As stated by the Fourth District,

"It appears the legislature has made a policy decision that the judicial concept of stare decisis should apply to administrative proceedings by requiring the agency to provide reasonable access to prior agency orders." *Gessler v. Department of Business and Professional Regulation*, 627 So.2d 501, 503 (Fla. 4th DCA 1993). The Court in that case went on to hold that:

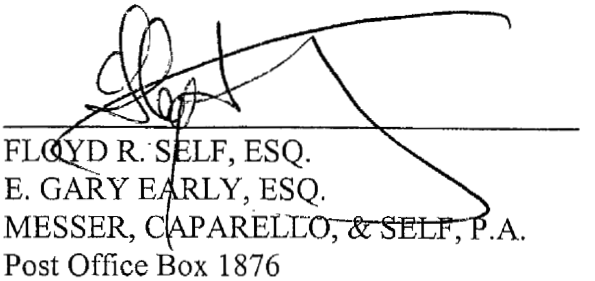
> Persons have the right to examine agency precedent and the right to know the factual basis and policy reasons for agency action. . . . the entry of inconsistent orders based upon similar facts, without a reasonable explanation, may violate section 120.68(12)(b), Florida Statutes (1991), as well as the equal protection guarantees of both the Florida and United States Constitutions. (Citations omitted)

Gessler at 503-504; see also *Plante v. Department of Business and Professional Regulation*, 716 So.2d 790 (Fla. 4th DCA 1998). Although the specific result in *Gessler* (i.e. the need to index all final orders from 1975 forward) has been superceded as a result of a subsequent amendment to Chapter 120, Fla. Stat., the applicability of *stare decisis* to administrative proceedings is unchanged.

6. In this case, the Commission has provided no explanation, factual basis, or policy based reason as to why an arbitration proceeding and a rate proceeding constitute different "facts" to justify the diametrically different treatment of CLECs under the mandatory stay rule. In the absence of such reasonable explanation, the Commission precedent established by the BellSouth Stay Order must, as a matter of *stare decisis*, be applied to this proceeding.

WHEREFORE the Commission should either confess error and disavow the precedent that CLECs are not "customers" for purposes of the mandatory stay rule as established in the BellSouth Stay Order, or should apply the BellSouth Stay Order precedent to this case and deny the Motion for Stay.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by U. S. Mail this 15th day of August, 2003.

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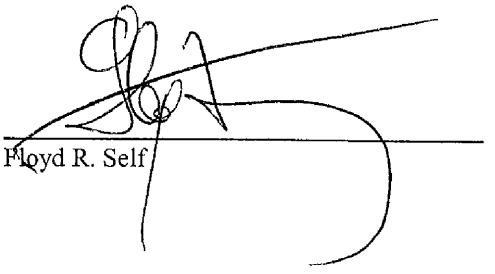

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