BEFORE THE PUBLIC SERVICE COMMISSION

In re: Investigation into pricing of unbundled network elements (Sprint/Verizon track).	DOCKET NO. 990649B-TP ORDER NO. PSC-04-0202-FOF-TP ISSUED: February 24, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

BACKGROUND

On November 15, 2002, we issued Order No. PSC-02-1574-FOF-TP, our final substantive order in this docket on the pricing of Verizon Florida, Inc.'s (Verizon) Unbundled Network Elements (UNEs). The Order was appealed, and Verizon filed a motion for mandatory stay pending judicial review in which it invoked the terms of our Rule 25-22.061(1)(a), Florida Administrative Code. That rule provides as follows:

> When the order being appealed involves the refund of moneys to customers or a decrease in rates charged to customers, the Commission shall, upon motion filed by the utility or company affected, grant a stay pending judicial proceedings. The stay shall be conditioned upon the posting of good and sufficient bond, or the posting of a corporate undertaking, and such other conditions as the Commission finds appropriate.

AT&T Communications of the Southern States, LLC (AT&T), Florida Digital Network, Inc. (FDN), and WorldCom, Inc. filed a joint response in opposition to Verizon's motion for mandatory stay. We heard oral argument and discussed the motion and response at length at our April 9, 2003, Agenda Conference. Thereafter, we issued Order No. PSC-03-0896-PCO-TP (Stay Order), granting the mandatory stay pending judicial review. On August 15, 2003, AT&T filed a Motion for Reconsideration of Order Granting Motion to Stay, to which Verizon responded on August 27, 2003. Neither party requested oral argument.

DECISION

AT&T presents one ground for reconsideration of the Stay Order. It argues that the Stay Order deviates from the precedent established in a prior Commission order. AT&T contends that we have thereby violated stare decisis principles by failing to provide a sufficient factual or policy basis for our determination that Verizon was entitled to a mandatory stay in this case.

Commission Order No. PSC-99-0758-FOF-TP, issued April 20, 1999, in Docket No. 971478-TP, In re: Complaint of WorldCom Technologies, Inc. against BellSouth for Breach of Terms of Florida Partial Interconnection Agreement (BellSouth Stay Order), denied a mandatory stay in a contract complaint proceeding involving BellSouth's interconnection agreements with certain Competitive Local Exchange Carriers (CLECs). In the BellSouth Stay Order the Commission found that Rule 25-22.061(1)(a), Florida Administrative Code, did not apply to the case, because the order being appealed did not involve the refund of moneys to customers or a decrease in rates to customers, but rather the payment of money to CLECs pursuant to contractual obligations. The Commission found that the CLECs were not "customers" to whom a refund or rate decrease was due. Specifically, the Commission said:

> This rule does not apply to this case, because . . . 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 user ratepayers or consumers, not to contract disputes between interconnecting telecommunications providers. Furthermore, this case does not involve a "refund" or a "decrease" in rates. It involves payment of money pursuant to contractual obligations.

Order No. PSC-99-0758-FOF-TP, p. 6.

AT&T argues that this paragraph unequivocally established a construction of the term "customer" in the rule that does not include CLECs under any circumstances, and therefore we could not lawfully conclude that CLECs are Verizon's customers for purposes of a mandatory stay in this case.

Verizon responds that AT&T has raised the same argument it raises in its motion at least twice before in this proceeding, and we have expressly considered and denied the argument, in our deliberations at the April 9, 2003, Agenda Conference, and in the Stay Order. Verizon asserts that AT&T has not met the standard for reconsideration, because it has not identified any point of fact or law that we failed to consider. Verizon argues that we clearly explained the reasonable distinctions we made between the two cases in our Stay Order, and AT&T just does not agree with our explanation.

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law that we overlooked or 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 162 (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).

With this standard for reconsideration in mind, we deny AT&T's motion. We thoroughly and adequately considered the argument AT&T raises in our Stay Order. We overlooked no point of fact or law. AT&T is rearguing matters that we have already addressed. We specifically mentioned our earlier order several times in the Stay Order. At page 3, we described Verizon's analysis of the effect of the BellSouth Stay Order:

> Verizon acknowledges that on one previous occasion, this Commission took the opinion that the mandatory stay provisions in Rule 25-22.061(1)(a), Florida Administrative Code, apply only to orders reducing rates for retail end users. However, Verizon contends that the previous decision is not controlling in this instance, because the previous decision was rendered in an arbitration case involving a contract dispute between carriers, not in a generic ratesetting proceeding.

Order PSC-03-0896-PCO-TP, p. 3.

At page 5, we described AT&T's and the other CLECs' position on the effect of the BellSouth order:

> As to the merits of the request for stay, the CLECs argue that the mandatory stay provisions of Rule 25-22.061(1)(a), Florida Administrative Code, do not apply because the rate decrease at issue in our UNE Order does not involve rates to end use customers. Specifically, the CLECs maintain that Verizon has failed to adequately distinguish the decision in Docket No. 971478-TP, because Verizon did not address our fundamental reason for finding that the mandatory stay provisions were not applicable in that case – that being that competitive carriers are not considered 'customers' for purposes of the rule.

Order No. PSC-03-0896-PCO-TP, p. 5.

Finally, at pages 8-9, we specifically addressed the BellSouth Order in our decision that the mandatory stay rule does apply to this case. We explained that the plain language of the rule did not expressly exclude CLECs as customers, or differentiate between retail and wholesale customers for purposes of the application of the rule in appropriate circumstances. We stated

that we had treated CLECs as customers in other cases, and we distinguished the earlier decision on its facts, particularly the fact that the earlier case involved a contract dispute, not a generic rate proceeding. We distinguished the two cases this way:

> While in this case, we find the mandatory stay provisions applicable, we do not believe that this decision is in direct conflict with our decision in Order No. PSC-99-0758-FOF-TP. In particular, we believe that our previous decision was premised largely upon the facts of that case, which was not a proceeding to set rates and charges for end use ratepayers or customers.

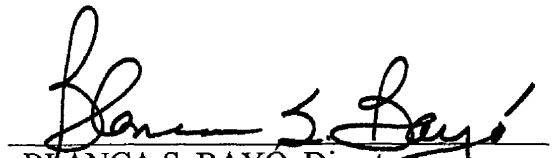
Order No. PSC-03-0896-PCO-TP, pp. 8-9.

AT&T's claim that this decision violates stare decisis is unfounded. As is clear from our discussion, the orders are based on different facts and different proceedings that justify different applications of the stay rule. It is therefore

ORDERED by the Florida Public Service Commission that AT&T Communications of the Southern States, LLC's Motion for Reconsideration is denied. It is further

ORDERED that this docket shall remain open pending further proceedings.

By ORDER of the Florida Public Service Commission this 24th day of February, 2004.



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

(SEAL)

MCB

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.