

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration concerning complaint of MCImetro Access Transmission Services LLC for enforcement of interconnection agreement with BellSouth Telecommunications, Inc.

DOCKET NO. 981121-TP  
ORDER NO. PSC-99-2000-FOF-TP  
ISSUED: October 13, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JULIA L. JOHNSON  
E. LEON JACOBS, JR.

ORDER CLARIFYING ORDER NO. PSC-99-1089-FOF-TP AND  
DENYING RECONSIDERATION AND REQUEST FOR ORAL ARGUMENT

On September 14, 1998, MCIm Metro Access Transmission Services, LLC (MCIm) filed a complaint for enforcement of its Interconnection Agreement with BellSouth Telecommunications, Inc. (BellSouth). An evidentiary hearing on the complaint was conducted on February 3, 1999. On May 27, 1999, Order No. PSC-99-1089-FOF-TP was issued memorializing the Commission's decision that the combination of unbundled network elements (UNEs) consisting of a 4-wire DS-1 loop and DS-1 dedicated transport does not recreate BellSouth's Megalink service and requiring a refund.

Reconsideration

On June 11, 1999, BellSouth filed a Motion for Reconsideration of Order No. PSC-99-1089-FOF-TP, issued May 27, 1999. As grounds for its motion, BellSouth alleges that the Commission has overlooked a prior decision, Order No. PSC-96-1579-FOF-TP, issued December 31, 1996. Specifically, BellSouth argues that the Commission erred by applying end-user tariff restrictions in this docket which were determined to be unreasonable in Order No. PSC-96-1579-FOF-TP. According to BellSouth, in the early arbitration dockets (Dockets Numbers 960833, 960846 and 960916), the Commission

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held that no restrictions on the resale of services are allowed except for grandfathered services, residential services and lifeline/link-up services. Thus, BellSouth argues the Commission should not rely on the private-line restriction on its Megalink service to reject a finding that MCIm's combination of a DS1 loop and transport recreates a BellSouth service. Further, BellSouth argues that there was no record evidence of the tariff restriction.

MCIm responded to the Motion for Reconsideration on June 23, 1999. In its response, MCIm argues that BellSouth misconstrued Order No. PSC-96-1579-FOF-TP and Order No. PSC-98-0810-FOF-TP issued June 12, 1998. MCIm points out that in the Order for which BellSouth now seeks reconsideration, the Commission found that it must look to both the nature of the tariffed retail service as well as the intended use of the UNE Combination to determine whether the one recreates the other. MCIm also notes that BellSouth's motion failed to address the Commission's reliance on MCIm's intended use of the facilities.

The proper 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 Commission failed to consider in rendering its 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).

We have reviewed the hearing and Agenda Conference transcripts and Order No. PSC-99-1089-FOF-TP. Our ultimate conclusion in the Order, that the intended use by MCIm of the DS1 loop and transport is inconsistent with BellSouth's Megalink service tariff and therefore, does not recreate an existing service, is not

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inconsistent with previous decisions. Further, we believe that this conclusion is supported by the record.

BellSouth also argues that there was no record support for the statement found on page 6 of the Order which states that MCIIm pointed out the tariff restrictions at the hearing. We disagree. The record indicates that this evidence was elicited during Mr. Milner's cross-examination and may be found on pages 138 through 154 of the transcript.

Therefore, we conclude that BellSouth has failed to identify any point of law, fact or policy which this Commission has overlooked or misapprehended.

#### Clarification

In reaching our conclusion on the intended use, our Order states:

Therefore, the language of BellSouth's Private Line Service tariff would prohibit MCIIm from providing the service it intends to provide.

Order No. PSC-99-1089-FOF-TP at page 7.

BellSouth argues in its Motion to Dismiss that this sentence appears to be inconsistent with the Commission's earlier ruling in Order No. PSC-96-1579-FOF-TP which determined tariff restrictions to be presumptively unreasonable. It is not our intent in Order No. PSC-99-1089-FOF-TP to recede from or be inconsistent with our previous decision. BellSouth also notes that some of the discussion at the Agenda Conference, particularly the discussion found on pages 14 through 17 of the May 4, 1999 Agenda Conference transcript, is contradictory to the presumption that certain tariff restrictions may be unreasonable.

Upon review of the Agenda Conference discussion and from the sentence on page 7 of the Order, it is not clear whether we were relying on the conclusion that the tariff prohibited use of BellSouth's Megalink Service for MCIIm's intended purpose. We find it appropriate to clarify that the ultimate conclusion reached by this Commission is that the intended use of DS1 loop and transport combination by MCIIm is inconsistent with BellSouth's Megalink

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Service tariff. Therefore, we reaffirm this conclusion and clarify Order No. PSC-99-1089-FOF-TP by striking the sentence on page 7 quoted above.

Oral Argument

BellSouth also filed a Request for Oral Argument in conjunction with its Motion for Reconsideration. This Motion is denied as we did not find oral argument necessary in order to fully address and resolve the issues raised on reconsideration.

It is therefore,

ORDERED by the Florida Public Service Commission that the Motion for Reconsideration filed by BellSouth Telecommunications, Inc. is hereby denied. It is further


ORDERED that the Request for Oral Argument is denied. It is further

ORDERED that Order No. PSC-99-1089-FOF-TP is hereby clarified by striking the following sentence found on page 7: Therefore, the language of BellSouth's Private Line Service tariff would prohibit MCIIm from providing the service it intends to provide. It is further

ORDERED that this docket may be closed.

By ORDER of the Florida Public Service Commission this 13th day of October, 1999.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

  
\_\_\_\_\_  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

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NOTICE OF 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 or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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.

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TO: DIVISION OF RECORDS AND REPORTING  
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RE: DOCKET NO. 981121-TP - REQUEST FOR ARBITRATION CONCERNING  
COMPLAINT OF MCIMETRO ACCESS TRANSMISSION SERVICES LLC  
FOR ENFORCEMENT OF INTERCONNECTION AGREEMENT WITH  
BELLSOUTH TELECOMMUNICATIONS, INC.

*2000-FOF*

Attached is an Order Clarifying Order No. PSC-99-1089-FOF-TP and Denying Reconsideration and Request for Oral Argument to be issued in the above-referenced docket. (Number of pages in order - 5)

CB/sa  
Attachment  
cc: Division of Communications  
I:981121or.cb

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*forced  
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