BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Global NAPS, Inc. for arbitration of interconnection rates, terms and conditions and related relief of proposed agreement with BellSouth Telecommunications, Inc.	DOCKET NO. 991220-TP ORDER NO. PSC-01-0762-FOF-TP ISSUED: March 26, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER

ORDER DENYING MOTIONS FOR RECONSIDERATION

BY THE COMMISSION:

I. BACKGROUND AND JURISDICTION

On August 26, 1999, Global NAPs, Inc. (GNAPs) filed a petition for arbitration of an interconnection agreement with BellSouth Telecommunications, Inc. (BellSouth) under Section 252(b) of the Telecommunications Act of 1996 (the "Act"). On September 20, 1999, BellSouth timely filed its Response to the petition. At the issue identification meeting, 14 issues to be arbitrated were identified by the parties.

An administrative hearing was held on June 7, 2000. Parties agreed to stipulate all testimony and exhibits, which were entered into the record without calling witnesses.

By Order No. PSC-00-1680-FOF-TP, issued September 19, 2000, we rendered our decision on the issues. Therein, we addressed the treatment of dial-up traffic to Internet service providers (ISPs), reciprocal compensation, the definition of local traffic, rates for unbundled network elements (UNEs), and collocation provisions.

On October 4, 2000, BellSouth filed a Motion for Reconsideration of our post-hearing decision. That same day, GNAPs also filed a Motion for Reconsideration and/or Clarification of our decision. On October 16, 2000, the parties filed their responses to the Motions.

Part II of the Federal Telecommunications Act of 1996 (Act) sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act regards interconnection with the incumbent local exchange carrier and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements reached through compulsory arbitration. Specifically, Section 252(b)(1) states:

> (1) Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(C) states that the State commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. This section requires this Commission to conclude the resolution of any unresolved issues not later than nine months after the date on which the local exchange carrier received the request under this section. In this case, however, the parties have explicitly waived the nine-month requirement set forth in the Act. Furthermore, pursuant to Section 252(e)(5) of the Act, if we refuse to act, then the FCC shall issue an order preempting our jurisdiction in the matter, and shall assume jurisdiction of the proceeding.

We retain jurisdiction of our post-hearing orders for purposes of addressing Motions for Reconsideration pursuant to Rule 25-22.060, Florida Administrative Code. Further judicial review of Commission decisions under the Act may be had at the Federal District Court, in accordance with 47 U.S.C. § 252(e)(6).

II. STANDARD OF REVIEW

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).

III. BELLSOUTH'S MOTION FOR RECONSIDERATION

A. The Motion

In its Motion, BellSouth contends that we erred by deciding that dial-up traffic to ISPs is local traffic. BellSouth also argues that we overlooked or failed to consider that bill-and-keep could be accepted as an intercarrier compensation mechanism. Furthermore, BellSouth maintains that we did not consider whether or not a party would incur costs associated with delivering traffic to ISPs for which that party would not be compensated by the ISP. For these reasons, BellSouth believes we erred in rendering our decision.

Specifically, BellSouth argues that we effectively determined that traffic to ISPs is local traffic in concluding that for purposes of the agreement between these two parties this traffic should be treated as local traffic. See Order No. PSC-00-1680-FOF-TP at p. 14. BellSouth emphasizes that this determination deviates from past Commission arbitration decisions addressing this issue wherein we determined that the parties should continue to treat traffic to ISPs as they had under their previous agreement until

the FCC renders a final decision on this issue. BellSouth adds that we have recently opened a generic docket to address this very issue and that a decision in this case could improperly encroach upon our deliberations in Docket No. 000075-TP.

In determining that this traffic should be treated as local traffic, BellSouth contends that we erroneously believed that we were required to reject BellSouth's proposal that the parties enter into a bill-and-keep arrangement for this traffic, because the provisions of FCC Rule 51.713(b) allow bill-and-keep only when "traffic appears to be roughly balanced." See Order at p. 22. BellSouth argues that the FCC's rule applies only to local traffic; thus, we could not rely upon this rule for our decision unless we determined that traffic to ISPs was, in fact, local traffic.

BellSouth also contends that our decision was wrong as a matter of law. BellSouth argues that the FCC has determined that enhanced service providers, including ISPs, use access service, not local exchange service.[1] BellSouth further emphasizes that the FCC has consistently stated that traffic to ISPs is largely interstate in nature and does not terminate at the ISP.[2] BellSouth notes that although we alluded to these statements by the FCC, we determined that in view of the access charge exemption, we had to conclude that traffic to ISPs is local traffic. BellSouth maintains that this conclusion was in error.

BellSouth argues that we also erred by determining that we had to adopt a method of intercarrier compensation. BellSouth argues that this is incorrect, because Section 251(b)(5) of the Act does not require reciprocal compensation for non-local traffic. BellSouth adds that we cite no other authority in our Order

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[1]*Citing* MTS and WATS Market Structure, CC Docket No. 78-72, Memorandum Opinion and Order, 97 FCC 2d 682, 711 (1983).

[2]*Citing* Implementation of Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP Bound Traffic, CC Docket No. 99-38, Declaratory Ruling, FCC Order 99-38 (Feb. 26, 1999); Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-78, 98-91, Order on Remand, FCC Order 99-413 (Dec. 23, 1999).

supporting the premise that we were required to adopt an intercarrier compensation mechanism for non-local traffic. As such, BellSouth contends that we must have determined that this traffic is actually local traffic. BellSouth maintains that such a determination was erroneous.

In addition, BellSouth contends that we failed to consider that there was no evidence in the record as to whether or not GNAPs is compensated for its costs by the ISP nor was there evidence as to the type of costs GNAPs actually incurs. BellSouth argues that because traffic to ISPs is not local traffic, it is incorrect to assume that the costs of the ALEC are the same as those of the ILEC. In this instance, however, BellSouth argues that is what we did. Thus, BellSouth asserts that we erred in not requiring additional proof of GNAPs's costs and as such, our ultimate decision was flawed.

B. GNAPs' Response

GNAPs contends that we did not determine the ultimate legal status of traffic to ISPs, but, instead, determined that it would only be treated as such for purposes of the new GNAPs/BellSouth arbitrated agreement. GNAPs notes, however, that even if we had made such a determination, it would have been consistent with the D.C. Circuit's decision vacating the FCC's Reciprocal Compensation Order.[3] As such, GNAPs argues that BellSouth has failed to identify any error in our decision.

GNAPs points out that we expressly stated that we were not reaching the question of whether traffic to ISPs is local traffic. GNAPs notes that, instead, we stated that we were only determining the issue for purposes of the GNAPs/BellSouth arbitrated agreement.[4] GNAPs emphasizes that the specific issue addressed in this proceeding was:

> Should dial-up connections to an ISP (or "ISP-bound traffic") be treated as "local traffic"

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[3] Bell Atlantic Telephone V. FCC, 206 F.3d 1 (D.C. Circuit 2000).

[4] *Citing* Order No. PSC-00-1680-FOF-TP at p. 14.

> for purposes of reciprocal compensation under the new Global NAPs/BellSouth Interconnection Agreement or should it be otherwise compensated?

GNAPs argues that this issue clearly addresses traffic to the ISP for purposes of the arbitrated agreement, and is worded such that it addresses the "treatment" of the traffic, as opposed to its legal status. As such, GNAPs contends that BellSouth is trying to over-extend our decision and argue issues outside the scope of the proceeding.

Furthermore, GNAPs argues that the D.C. Circuit's decision vacating the FCC's Reciprocal Compensation Order allowed this Commission to make a determination as to the legal status of traffic to ISPs. Therefore, even if we did determine that traffic to ISPs is local, we did not err in doing so. GNAPs further emphasizes that the D.C. Circuit found that traffic to ISPs appears to terminate at the ISP and that the ISP is the "called party." Bell Atlantic Tel. Cos. V. FCC, 206 F.3d 1, 6 (D.C. Cir. 2000). In addition, GNAPs states that the Court found that when a dial-up connection is initiated, the ISP then initiates further communications and retrieves information from distant web sites in response to the initial connection. While these communications may be instantaneous, GNAPs adds that the Court did not find that this necessarily implies that the original communication does not terminate at the ISP. Id. at 7.

GNAPs argues that BellSouth has largely ignored the D.C. Circuit's ruling and attempted to downplay its underlying rationale. GNAPs asserts that this is a strategy BellSouth has unsuccessfully used in another proceeding. GNAPs explains that in BellSouth Telecomms., Inc. V. MCImetro Access Transmission Servs., Inc., 97 F. Supp. 2d 1363, 1367 (N.D. Ga. 2000), BellSouth argued that the FCC's original decision could be rehabilitated and even referenced the comments of an FCC official to that effect. GNAPs argues, however, that the Court rejected BellSouth's claims and affirmed the Georgia Public Service Commission's finding that reciprocal compensation was due under the agreements before it, stating:

> The District of Columbia Circuit's decision in Bell Atlantic, however, has removed the clarity provided by the [*Reciprocal Compensation Order*], and despite BellSouth's arguments that the FCC thinks it can maintain its conclusion in a manner that satisfies the Bell Atlantic court, the fact remains that the [*Reciprocal Compensation Order*] has been vacated on the very grounds that BellSouth uses for support.

GNAPs also references footnote 11 of the decision, where the Court noted that:

> n.11 Indeed, the court in Bell Atlantic made the same distinction between providers of telecommunication services and information services relied on by the PSC.

GNAPs contends that, essentially, BellSouth has set up a "straw man" in the form of a Commission decision that traffic to ISPs is local for all purposes. BellSouth then tries to "knock down" the straw man by arguing that we were legally precluded from making that decision. GNAPs maintains that BellSouth cannot, however, knock down the straw man, because we would not have erred had we rendered such a decision. Response at p. 5. Furthermore, GNAPs asserts that we were much more cautious and simply addressed the issue as it relates to these two parties and their arbitrated agreement. Our decision was not a blanket policy statement as alleged by BellSouth.

In addition, GNAPs argues that BellSouth has misconstrued our decision regarding the establishment of a compensation mechanism. GNAPs asserts that we did not indicate that we believed we were required to establish such a mechanism. Instead, the Order reflects that we believed that such a mechanism was warranted. Thus, GNAPs believes that this decision to establish a mechanism was not based on an erroneous assumption.

Finally, GNAPs contends that we did not assume facts not in evidence in rendering our decision. GNAPs believes that BellSouth's contention that we erroneously relied upon FCC rules

that apply only to local traffic is illogical and merely another attempt to argue that we could not find that the traffic to ISPs is local. GNAPs argues that if we are within our authority to determine the traffic is local, which GNAPs believes we are, then certainly we could apply the FCC's reciprocal compensation rules to that traffic. Furthermore, GNAPs contends that we should not assume that GNAPs would be compensated by its ISP customers for costs incurred in terminating the traffic, because the FCC's ESP exemption prevents GNAPs from charging its ISP customers a per-minute rate reflecting the actual costs.

C. Determination

Upon consideration, we find that BellSouth has failed to demonstrate that we made a mistake of fact or law in rendering our decision in this matter on any of the points raised by BellSouth.

First, BellSouth contends that we based our decision on an erroneous presumption that traffic to ISPs is, as a matter of law, local exchange traffic. We disagree. In fact, we specifically acknowledged that the issue we were being asked to address in this proceeding was whether or not ISP-bound traffic should be treated as local for purposes of reciprocal compensation for purposes of the parties' arbitrated agreement. Order No. PSC-00-1680-FOF-TP at p. 11. The evidence presented to this Commission addressing this issue included a number of compensation options, all of which we considered. Id. at 12-14. Based on the evidence presented in this proceeding, we concluded that traffic to ISPs should be treated as local for purposes of compensation. We further found that this traffic does differ somewhat from traditional local traffic because of the call duration and, therefore, we set a lower rate for this traffic. Id. at 14, 24-26. In addition, we noted that if our decision in this case is not consistent with the FCC's final rule or any final Court decision, our decision could be preempted. In view of this possibility, we emphasized that

> . . . in rendering this decision, we stop short of determining that ISP-bound traffic is, in fact, local traffic. Herein, we find only that this traffic shall be treated like local traffic for purposes of compensation.

Id. at 14. Clearly, we did not find, as a matter of law, that this traffic is local.

In addition, BellSouth's argument that we had, in the past, refrained from determining the nature of this type of traffic does not identify a mistake of fact or law. Our decisions in prior cases were based upon the evidence presented in those cases, while our decision in this case was based on the evidence presented by GNAPs and BellSouth. Prior determinations in other dockets that the record did not support any finding regarding traffic to ISPs do not constrain us from rendering a decision on the treatment of such traffic in this docket based on a full and complete record.

As for BellSouth's argument that we erred by assuming we were required by law to adopt some type of compensation mechanism, BellSouth has again misconstrued the Commission's decision without identifying any error. We did not state that we were compelled by law to adopt a compensation mechanism. Instead, we decided that the evidence presented compelled the establishment of a compensation mechanism. Id. at p. 22.

BellSouth also misinterprets our decision not to use witness Varner's proposed "bill and keep" compensation option. BellSouth contends that we relied upon FCC Rule 51.715(b) in rendering our decision. Since this rule refers to "local telecommunications traffic," BellSouth argues that we had to have concluded that traffic to ISPs is, as a matter of law, local traffic. We did not, however, rely on this rule in rendering our decision.

While we were persuaded by GNAPs's witness Selwyn that the FCC only used "bill and keep" when the traffic is roughly balanced, we did not find that we were constrained by the FCC rule referenced by BellSouth. Instead, we looked to the evidence in this case, which showed that the traffic to ISPs was, in fact, skewed. In addition, we indicated that the same arguments GNAPs used regarding the "track and true-up" proposal were applicable to the "bill and keep" proposal. Regarding "track and true-up," GNAPs had contended that delay will only save BellSouth money "unfairly," because it appears it may still be quite some time before the FCC reaches a final determination on this issue. Id. at 18. Furthermore, GNAPs pointed out that the FCC has indicated that state commissions may proceed with arbitrating this issue when presented with it, because

when the FCC's final rule regarding traffic to ISPs is promulgated, it will be prospective in nature. In our Order, we stated our concern that this traffic is not balanced; and in accepting GNAPs's "track and true-up" arguments as also applicable to the "bill and keep" proposal, indicated that further delay in establishing a mechanism would be unfairly detrimental to one or both parties. Id. at 22. In view of this inherent imbalance and the apparent delay in a final determination by the FCC as to the classification of this traffic, we agreed that "bill and keep" would not be appropriate for the same reason that "track and true-up" was not appropriate--that reason being that delay in compensation could be harmful to one or both of the parties. Id. at 22. While this finding may be in line with the FCC's view on "bill and keep" arrangements, we expressed no reliance upon the FCC rule referenced by BellSouth.

Furthermore, BellSouth's contention that our decision in this case "impinges" on the issues to be addressed in Docket No. 000075-TP is incorrect. We rendered our decision in this case based on the evidence presented by these two parties. The evidence presented addressed whether traffic to ISPs should be treated as local traffic for purposes of an interconnection agreement between these two parties. The generic docket has a much broader scope, does not address specific language for inclusion in a specific interconnection agreement, and directly addresses the issue of the treatment of this traffic as a matter of law. Thus, our decisions in this docket will have no impact on the generic proceeding. Nevertheless, even if they did have some minimal impact, this does not, in itself, identify an error made by us in rendering this decision.

BellSouth also argues that this traffic is not local traffic as a matter of law. Besides the fact that we did not render a finding as to the treatment of this traffic as a matter of law, these arguments have already been fully considered by us in our post-hearing decision, and as such, do not identify a basis for reconsideration. Id. at 5-12.

Finally, BellSouth contends that we failed to consider the lack of any evidence as to GNAPs's costs associated with handling this traffic, and whether or not GNAPs is already compensated for such costs by the ISPs. Because this is not local traffic,

BellSouth contends that we cannot assume that GNAPs and BellSouth incur the same costs in handling this traffic. BellSouth argues that GNAPs failed to provide sufficient proof on this issue; therefore, BellSouth contends we erred in setting up a reciprocal compensation mechanism.

BellSouth fails to grasp, however, that we determined, based on the evidence in this case, that it was appropriate to treat this traffic as local traffic for purposes of the arbitrated agreement. With that determination made, we could then decide that reciprocal compensation was appropriate. We did not, however, simply assume that reciprocal compensation was appropriate for this traffic. Instead, we considered the various compensation proposals offered, as well as the rates proposed. Based on the evidence regarding the imbalance in the exchange of this traffic, the rate proposals offered by BellSouth and GNAPs, and the evidence of the impact of the holding times associated with ISP-bound calls, we determined that BellSouth witness Varner's recalculation of the end office switching rate for ISP-bound traffic found the most support in the record. There is no additional burden of proof that GNAPs was required to meet, and BellSouth has not included any citations supporting such a burden of proof. This Commission's decision was based on the evidence in the record. That is all that is required. Therefore, BellSouth has not identified a mistake of fact or law on our part in rendering this decision.

For all of the above reasons, we find that BellSouth has failed to identify a mistake of fact or law made by this Commission in rendering our decision. Therefore, BellSouth's Motion is hereby denied.

IV. GNAPS'S MOTION FOR RECONSIDERATION AND/OR CLARIFICATION

A. The Motion

GNAPs contends that we should modify the rate structure applicable to local calls in a manner consistent with the record. GNAPs explains that we relied upon evidence presented by BellSouth that the $.002 end office switching rate for local traffic is based on an average local call length of 2.708 minutes, that a typical call to an ISP is 20 minutes long, and that the 20-minute average

for a call to an ISP reduces the per-minute rates by 36%. From this, GNAPs states, this Commission derived that the rate for calls to ISPs should be $0.00128 per minute. See Order at p. 23. GNAPs emphasizes, however, that the information upon which we relied to approve the $0.00128 rate also may be used to support the $0.002 rate recommended by GNAPs. GNAPs adds that although it did not specifically present this analysis in its case, it did allude to such an analysis in the testimony of its witnesses in which it suggested a two-part rate structure would not be unreasonable. GNAPs attached the mathematical analysis supporting its argument to its motion. The analysis results in a rate of $0.00342 for the first minute, and $0.00117 for each subsequent minute. Under this analysis, a 3-minute call to an ISP would result in a charge of $0.00576, and a 20-minute call would lead to a $0.0256 charge.

GNAPs asserts that we should recognize that the difference in the length of calls does affect the costs of the carriers terminating the calls. Because we did not do this, GNAPs contends, we created an incentive for BellSouth to claim that as much traffic as possible to GNAPs is traffic to ISPs, and we established a rate that will likely become increasingly unstable over time, unless the duration of the ISP-bound calls remains completely stable. Therefore, GNAPs asks that we replace our decision to establish a lower rate for calls to ISPs, with a two-part rate structure that accommodates changes in the length of the call.

GNAPs also asks that we reconsider or clarify our decision on Issue 13, which asked:

> What is the appropriate language relating to local traffic exchange to be included in the Interconnection Agreement?

GNAPs contends that we did not fully or clearly address this issue in our Order. GNAPs explains that while we did clarify how "local traffic" should be defined, we did not determine whether the portions of the parties' current agreement regarding the specific mechanics of interconnection should remain the same or should be superseded by new language. GNAPs maintains that this is critical, because if the BellSouth "standard" language remains applicable, GNAPs believes that BellSouth is interpreting that language in a manner inconsistent with the Telecommunications Act of 1996. GNAPs

adds that the lack of discussion in our Order suggests that we intended to leave the parties' existing technical arrangements in place; thus, GNAPs asks that we clarify that the modified definition of "local traffic" is the only change to the parties' existing agreement on this topic and that we did not intend for the parties to adopt BellSouth's "standard" agreement language.

GNAPs further contends that there is a problem if we intended BellSouth's language to apply. GNAPs argues that BellSouth is interpreting this language in a manner which would allow BellSouth to select the location at which it will hand off traffic to GNAPs. GNAPs asserts that this is contrary to Section 251(c)(2) of the Act, which provides that a CLEC has the right to interconnect at any technically feasible point. Thus, GNAPs believes it, not BellSouth, has the right to choose where it will interconnect with BellSouth's network. GNAPs argues that if we did, in fact, intend for BellSouth's language to apply, this determination is beyond our authority under the Act and FCC Rule 51.223, which allows state commissions to impose obligations of Section 251(c) only on ILECs.

GNAPs adds that this language would allow BellSouth to require GNAPs to pick up traffic at various end office locations, whether or not GNAPs already had a collocation arrangement there or not. Thus, BellSouth could require GNAPs to collocate at every BellSouth end office BellSouth chooses, which GNAPs contends would impose on it a burdensome and overly broad duty to interconnect at any point designated by BellSouth contrary to Section 251(c).

GNAPs emphasizes that it does not believe we intended this result in view of the fact that we did not address it in the Order. Therefore, GNAPs states that it simply seeks clarification from us that the language in the ITC^DeltaCom agreement previously adopted by GNAPs should remain in place and should not be superseded by BellSouth's standard language.

B. BellSouth's Response

BellSouth argues that GNAPs does not point out a mistake of fact or law in our decision, but, instead, asks us to resolve issues that GNAPs neglected to raise in its original petition for arbitration. BellSouth asserts that GNAPs only raised two issues:

1) reciprocal compensation for internet-bound traffic; and 2) whether the 1997 ITC^DeltaCom agreement adopted by GNAPs expired in 1999 or continued for a full two years from the date of GNAPs's adoption of it. BellSouth emphasizes that it responded by presenting its standard agreement and identifying the additional issues that it knew to be in dispute between the parties. BellSouth adds that prior to hearing, we ruled separately that the ITC^DeltaCom agreement had expired. We then identified the issues for hearing.

As it pertains to GNAPs's arguments regarding the rate approved for traffic to ISPs, BellSouth notes that GNAPs acknowledges that we based our decision on record evidence. BellSouth contends that GNAPs's proposal that this Commission adopt a two-part rate for this traffic is an entirely new argument that should have been raised at hearing. BellSouth maintains that had GNAPs's rate proposal been made at hearing, it would have had an opportunity to cross-examine GNAPs's witness regarding the proposal. If, however, we decide to accept GNAPs's proposal, BellSouth argues that it will be deprived of due process. BellSouth further emphasizes that GNAPs does not contend that we made a mistake of fact or law, or overlooked any evidence in rendering our decision on this point; therefore, BellSouth argues that GNAPs's Motion as it addresses this issue should be rejected.

As for the issue of the language addressed in hearing Issue 13, BellSouth argues that GNAPs has again attempted to raise a new issue not addressed at hearing. BellSouth asserts that throughout the case, GNAPs only opposed BellSouth's definition of local traffic. As such, our Order was limited to this issue. BellSouth notes that GNAPs apparently does not disagree with our decision regarding Issue 13, but instead wants us to reach a decision on an additional issue that was not addressed at hearing or even raised by GNAPs until now.

BellSouth further explains that it proposed its standard agreement to GNAPs over a year ago, and GNAPs never objected to the interconnection provisions until now. BellSouth argues that this is an entirely new issue and GNAPs should not be allowed to raise it. BellSouth further asserts that although GNAPs asks that we "clarify" that we intended the parties to continue under the language in their "existing" agreement, the ITC^DeltaCom agreement,

we have already determined that that agreement has expired. Thus, there is no existing agreement between the parties. BellSouth emphasizes that this proceeding was conducted specifically to decide new terms to replace the ITC^DeltaCom agreement. If this was an issue for GNAPs, BellSouth argues that it should have been brought to BellSouth's and this Commission's attention long before now. BellSouth adds that GNAPs has not suggested that we overlooked or failed to consider any point of fact or law in rendering our decision. As such, BellSouth believes that GNAPs's motion should be denied.

C. Determination

Upon consideration, we find that GNAPs has failed to identify a mistake of fact or law made by us in rendering our decision in this matter.

Regarding GNAPs's contention that we should modify the approved rate structure for ISP-bound calls to include a two-part rate structure that compensates for any changes in the duration of the calls to ISPs that may occur over time, we emphasize that we fully considered the evidence presented regarding rate structure for these calls at pages 21-25 of the Order. We specifically noted that

> While we agree, in principle, with GNAPs witness Goldstein that a two-part rate structure for compensating for the transport and termination of calls may have merit and believe that this proposal warrants further study, the record in this proceeding is insufficient to develop a two-part rate.

Order No. PSC-00-1680-FOF-TP at p. 25.

In its Motion, GNAPs seeks to have us consider additional analysis and support for a two-part rate that should have been presented at hearing. This is merely an improper attempt to supplement the record post hearing. GNAPs has not identified a mistake of fact or law, or any lack of clarity in our decision.

As for GNAPs's argument that we should clarify our decision with regard to Hearing Issue No. 13, we agree with BellSouth that this is an effort to raise an issue that should have been identified prior to hearing. No evidence was offered at hearing as to changes to the proposed agreement language that GNAPs believed might be necessary to address the mechanics of interconnection, and GNAPs even concedes in its motion that this only recently came to its attention as a possible problem due to BellSouth's interpretation of the interconnection provisions. Thus, GNAPs has not identified any mistake of fact or law made by us in rendering our decision, because we only addressed the issue we were asked to address based on the evidence presented to us in the proceeding.

Furthermore, GNAPs asks that we "clarify" that the applicable terms regarding the interconnection of the parties' networks is the language in the ITC^DeltaCom/BellSouth agreement adopted by GNAPs, instead of the language in the standard interconnection agreement proposed by BellSouth. There is, however, no need for us to make this clarification, because we have already clearly determined by separate order issued in this Docket, Order No. PSC-00-0568-FOF-TP, that the ITC^DeltaCom/BellSouth agreement has terminated. Thus, those terms are no longer applicable.

We note that, if necessary, the concerns raised by GNAPs regarding the language applicable to interconnection could be addressed through another proceeding. We find, however, that it is neither necessary nor appropriate to make the requested clarification in this Docket, because this issue was not identified for resolution in this proceeding. We emphasize that we specifically noted in our Order that only language regarding Local Traffic Exchange to which GNAPs indicated it was opposed was that relating to ISP traffic. Id. at 28. It is also noteworthy that GNAPs has indicated in its own Motion that this may not really be a problem, because the language it is concerned would not preclude BellSouth from approaching interconnection with GNAPs in a manner consistent with the Act. If, however, a problem should arise and the parties are unable to resolve it through negotiation, this issue can be addressed through either a separate complaint proceeding or through arbitration of this issue.

For these reasons, we find that GNAPs has failed to identify a mistake of fact or law made by us in rendering our decision. Therefore, GNAPs's Motion is hereby denied.

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 Motion for Reconsideration and/or Clarification filed by Global NAPs, Inc. is hereby denied. It is further

ORDERED that the parties shall file their final interconnection agreement conforming with our arbitration decision within 30 days of the issuance of this Order. It is further

ORDERED that this Docket shall remain open pending approval of the parties' agreement.

By ORDER of the Florida Public Service Commission this 26th Day of March, 2001.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(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: 1) judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6); or 2) 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 Records and reporting 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.