BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by AT&T Communications of the Southern States, Inc. d/b/a AT&T 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 ORDER NO. PSC-01-1951-FOF-TP ISSUED: September 28, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER DENYING RECONSIDERATION, CORRECTING FINAL ORDER, AND GRANTING MOTION FOR EXTENSION OF TIME

BY THE COMMISSION:

Background

On June 16, 2000, AT&T Communications of the Southern States, Inc. and TCG South Florida (collectively "AT&T") filed a Petition for Arbitration pursuant to 47 U.S.C. Section 252(b) of the Telecommunications Act of 1996, seeking arbitration of certain unresolved issues in the interconnection negotiations between AT&T and BellSouth Telecommunications Incorporated (BellSouth). The petition enumerated 34 issues. On July 11, 2000, BellSouth filed its response. A number of the issues originally contained in the Petition were withdrawn, settled, or, by agreement of the parties, deferred to appropriate generic proceedings. On February 14-15, 2001, an administrative hearing was held on the remaining issues, and on June 28, 2001, we issued our findings in Order No. PSC-01-1402-FOF-TP.

On July 13, 2001, both AT&T and BellSouth timely filed separate motions for reconsideration. On July 25, 2001, BellSouth filed its Memorandum in Opposition to the Motion for Reconsideration and Cross-Motion for Clarification, and on July 30, 2001, BellSouth filed its Motion for Extension of Time for filing the final agreement.

We have authority to address this matter pursuant to Chapter 364, Florida Statutes, 47 C.F.R. §§ 52.3 and 52.19, and FCC Order No. FCC 99-249.

Analysis

Rule 25-22.060(1)(a), Florida Administrative Code, governs Motions for Reconsideration and states, in pertinent part: "Any party to a proceeding who is adversely affected by an order of the Commission may file a motion for reconsideration of that order." The standard of review for a Motion for Reconsideration would be 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. 3d 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., at 317.

Additionally, clarification has been requested within the pleadings. Neither the Uniform Rules of Procedure nor the Commission's Rules specifically make provision for a motion for clarification. However, the Commission has typically applied the Diamond Cab standard in evaluating a pleading titled a motion for clarification when the motion actually sought reconsideration of some part of the substance of a Commission order. In cases where the motion sought only explanation or clarification of a Commission order, we have typically considered whether the order requires

further explanation or clarification to fully make clear our intent.

AT&T Motion for Reconsideration

The AT&T Motion contains six points for which we are asked to reconsider our findings:

1. Our decision to adopt BellSouth's definition for "currently combines."

Though conceding that the Eighth Circuit Court did not specifically define "currently combines," AT&T argues that any definition should require that BellSouth provide combinations which may be typically combined, even if BellSouth does not currently combine them. AT&T cites a Georgia Public Service Commission finding in support of its claim.[1]

BellSouth responds that we correctly found that "currently combines" refers only to those 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." BellSouth further observes that AT&T re-asserts the same argument that it made at the hearing and in its brief; thus, reconsideration should be denied.

On this point, we find that AT&T clearly does not meet the criteria for reconsideration. AT&T has failed to identify a point of fact or law which was overlooked or which we failed to consider in rendering our Order. AT&T merely reargues that which is found within the record, (Order at 11-16) and points out that the state of Georgia adopted a definition different than that of this Commission. While the Georgia Commission may have reached a different conclusion, its decision does not identify a mistake of fact or law in our Order. Accordingly, reconsideration of this point is denied.

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[1] Order, *UNE Combinations, In re: Generic Proceeding to Establish Long-Term Pricing Policies for Unbundled Network Elements, Docket No. 10692-U,* Georgia Public Service Commission, February 1, 2000, p. 11.

2. Our decision that BellSouth's "glue charge" may be charged at market based rates.

AT&T argues that the "glue charge" is BellSouth's attempt to obtain an additional profit over and above the reasonable profit it recovers in the cost-based rates for network element combinations. Accordingly, there should be no additional charges added for the provision of such combinations.

BellSouth responds that AT&T makes no new argument and, in fact, is just repeating the argument from its brief, using identical language. Accordingly, BellSouth urges that reconsideration be denied.

We find that AT&T offers no new authority or new argument on this point but, rather, only reargues that which was argued at the hearing and in its brief. As such, AT&T has not identified a mistake of fact or law on this point. Accordingly, reconsideration of this point is denied.

3. Tandem Switching element.

AT&T urges that the FCC has made clear that the geographic area test is the only criteria which must be met to entitle them to compensation at the tandem switching rate. AT&T also points to what it considers to be an inconsistency in the Order when one paragraph defers the "policy decision" to the generic docket but, in another paragraph, applies an "actually serves" geographic test in the proceeding. Accordingly, AT&T asks that we reconsider and find that AT&T meets the geographic test, or, in the alternative, defer a finding on this issue until we adopt the appropriate test in our generic proceeding in Docket No. 000075-TP.

BellSouth responds that the Commission ruling is totally consistent with the record from the hearing. Since AT&T raised no new issues and did not identify any point of fact or law not considered by the Commission in reaching its finding, BellSouth urges denying reconsideration.

We do not find there is any inconsistency on this issue in the Order. We did not find that AT&T does not meet the criteria, only that the evidence in the record is not sufficient to make a finding

that it does. We noted, however, that it appears the geographic area test alone may be sufficient. Therefore, the FCC's clarification added no additional facts not previously identified by us. Also, it is not necessary to defer a ruling on the issue as the parties may avail themselves of any decision from the generic proceeding in Docket No. 000075-TP.

Again, we find that the motion fails to identify a point of fact or law which was overlooked or not considered in rendering our Order. Moreover, the comments generally constitute reargument of matters previously considered and disposed of by us. Therefore, this portion of the motion is also denied.

4. OSS Issues

a. Electronic Ordering

b. Electronic Processing after Electronic Ordering.

In both of these issues, AT&T argues that BellSouth is not providing nondiscriminatory access to its OSS unless AT&T can electronically order everything that BellSouth itself orders electronically. AT&T believes that the direction in the Order that this issue should be addressed through the review of the Change Control Process (CCP) in the third party OSS testing will not be productive. Accordingly, it is requesting that we reconsider and require BellSouth to modify its systems so that AT&T's orders electronically flow through the systems, just as BellSouth's orders flow through.

BellSouth responds that AT&T made the same argument at the hearing and in its brief, which we considered and rejected. BellSouth agrees that the issues should be addressed through the CCP. Additionally, BellSouth notes that AT&T raised no point of law or fact that we failed to consider. Accordingly, BellSouth urges that reconsideration be denied.

We agree with BellSouth that AT&T offers no new authority or new argument on this point but, rather, only reargues that which was argued at the hearing. Accordingly, reconsideration of this point is denied.

5. MTU/MDU Access Terminals

AT&T's Motion for Reconsideration asks for "Clarification" that BellSouth is required to connect all pairs in a high-rise multi-tenant unit to the access panel at the time it is installed. To do otherwise, according to AT&T, would further delay AT&T's ability to serve customers in a timely manner.

BellSouth responds that clarification is not necessary because 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. Additionally, BellSouth claims that clarification is inappropriate because AT&T is raising a new argument based on facts not currently in the record.

Though the AT&T Motion asks for "Clarification" that BellSouth is required to connect all pairs in a high-rise multi-tenant unit to the access panel at the time it is installed, that was not our intent, as clearly stated in our decision starting on page 55 of the Order. There, we stated that, "If AT&T elects to approach provisioning under a 'pay-as-you-go' format, that is a business decision that it has made; BellSouth did not require provisioning in that manner." Additionally, the Motion does not identify a point of fact or law which was overlooked or which we failed to consider in rendering our Order. AT&T offers no new authority or new argument on this point but, rather, only reargues that which was argued at the hearing. We, again, note that AT&T has the option of ordering any number of pairs provisioned with a single visit by a BellSouth technician. Alternatively, AT&T may choose a "pay-as-you-go" plan. That is a business decision to be made by AT&T. Accordingly, clarification on this point is denied.

6. Unbundled Local Switching

Both AT&T and BellSouth ask for clarification, rather than reconsideration, on this issue.

Though AT&T's Motion does not ask for clarification in the title, this section of the Motion simply requests clarification of what AT&T perceives as an inconsistency in Order No. PSC-01-1402-FOF-TP. The quoted portion of the Order referenced in the first

paragraph of Section VI of the AT&T Motion is as follows: "While FCC Rule 51.319(c)(2) is silent on answering this specific concern in a direct fashion, we believe that the FCC's intent was to have the rule apply on the 'per-location-within the MSA' basis that AT&T supported." AT&T's Motion contends that the concluding paragraph in our Order contradicted the above-noted finding. We agree, and observe that text was inadvertently omitted from the concluding paragraph of the Order, either through scrivener's or electronic error, which may have contributed to this confusion. The incorrect text of the paragraph read "Therefore, we find that BellSouth will be allowed to aggregate lines provided to multiple locations of a single customer, within the same MSA, to restrict AT&T's ability to purchase local circuit switching at UNE rates to serve any of the lines of that customer." It should actually have read: "Therefore, we find that BellSouth will not be allowed to aggregate lines provided to multiple locations of a single customer, within the same MSA, to restrict AT&T's ability to purchase local circuit switching at UNE rates to serve any of the lines of that customer." Accordingly, Order No. PSC-01-1402-FOF-TP is corrected to reflect the above quote. With that correction, this issue should be otherwise clear.

BellSouth Motion for Reconsideration

BellSouth seeks reconsideration of the portion of the Final Order which requires it to provision access terminals to AT&T within five calendar days. The reason, according to BellSouth, is that there is no record evidence to support the time frame referenced in the Order. AT&T did not respond to BellSouth's Motion.

We concur that there is no record evidence supporting a fixed time frame for such provisioning. However, we also point out that the referenced five days is not a rigid mandate, but, rather, a reasonable guideline for a "typical" installation. The operative sentence on page 56 of the Order reads ". . . typically, BellSouth should be required to provision the 'access' terminal to AT&T within five calendar days, or in a mutually agreed upon alternative time frame." We, particularly, note the word "typically" and the concluding phrase of the referenced sentence, ". . . or in a mutually agreed upon alternative time frame." Additionally, as stated in the Order, "In the event undue provisioning delays are experienced, AT&T may petition us for a review of the problem."

Additionally, the Motion does not identify a point of fact or law which was overlooked or which we failed to consider in rendering our Order. BellSouth offers no new authority or new argument on this point but, rather, only reargues, as it did at the hearing, that the time frame is situational. That argument is not inconsistent with our finding. Accordingly, reconsideration of this point is denied.

BellSouth Memorandum in Opposition to AT&T's Motion for Reconsideration and Cross-Motion for Clarification

BellSouth's Cross-Motion for Clarification is rendered moot by the correction which was made earlier pursuant to the AT&T Motion for Reconsideration regarding the issue of Unbundled Local Switching. Accordingly, this pleading requires no additional consideration.

Motion for Extension of Time

On July 30, 2001, BellSouth filed its Motion for Extension of Time. The BellSouth Motion stated that it understood counsel for AT&T agreed with the Motion, but BellSouth was unable to get with them in time to make it a joint motion. As reason for the request, BellSouth cited the Motions for Reconsideration which are the earlier subject of this Order. Until the question of reconsideration is determined, the final agreement can not be drafted.

Accordingly, the Motion for Extension of Time is granted. The agreement should be filed within 30 days of the date of the issuance of this Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motions for Reconsideration filed by AT&T Communications of the Southern States, Inc. and TCG South Florida, and BellSouth Telecommunications, Incorporated, are hereby denied. It is further

ORDERED that Order No. PSC-01-1402-FOF-TP is corrected as reflected in the body of this Order. It is further

ORDERED that the Motion for Extension of Time filed by BellSouth Telecommunications, Incorporated is granted. The agreement shall be filed within 30 days of the date of the issuance of this Order. It is further

ORDERED that Docket No. 000731-TP shall remain open pending receipt and approval of the Agreement in this matter.

By ORDER of the Florida Public Service Commission this 28th Day of September, 2001.

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

(S E A L)

CLF

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) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-

22.060, Florida Administrative Code; 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 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.