BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition of Competitive Carriers for Commission action to support local competition in BellSouth Telecommunications, Inc.'s service territory.	DOCKET NO. 981834-TP
In re: Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for generic investigation to ensure that BellSouth Telecommunications, Inc., Sprint-Florida, Incorporated, and GTE Florida Incorporated comply with obligation to provide alternative local exchange carriers with flexible, timely, and cost-efficient physical collocation.	DOCKET NO. 990321-TP ORDER NO. PSC-04-0228-FOF-TP ISSUED: March 2, 2004

The following Commissioners participated in the disposition of this matter:

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

ORDER GRANTING, IN PART, AND DENYING, IN PART, MOTIONS FOR RECONSIDERATION AND/OR CLARIFICATION

BY THE COMMISSION:

I. CASE BACKGROUND

By Proposed Agency Action Order No. PSC-99-1744-PAA-TP, issued September 7, 1999, we adopted a set of procedures and guidelines for collocation, focused largely on those situations in which an incumbent local exchange company (ILEC) believes there is no space for physical collocation. Thereafter, we conducted a hearing to address further collocation guidelines. By Order No. PSC-00-2190-PCO-TP, issued November 17, 2000, various motions for reconsideration and/or clarification of the post-hearing decision regarding collocation guidelines were addressed by this Commission. By that Order, these Dockets were left open to address the remaining issues associated with collocation, including pricing.

By Order No. PSC-03-1358-FOF-TP, issued November 26, 2003, we resolved a number of outstanding technical and policy issues regarding collocation. On December 11, 2003, Verizon, BellSouth, Covad, FDN, and Sprint each filed Motions for Reconsideration and/or Clarification of the Order. Thereafter, on December 18, 2003, Verizon, AT&T and Covad (filing jointly), BellSouth, and Sprint filed their responses to the Motions. FDN filed its response on December 19, 2003.

On December 24, 2003, Verizon filed a Response to FDN's response, interpreting FDN's response to be a cross-motion for reconsideration. We do not, however, find anything in FDN's December 19, 2003 Response that leads us to believe that it can or should be considered a cross-motion for reconsideration. FDN only responds to Verizon's original Motion in its December 19, 2003 filing and requests no other affirmative relief. As such, we consider Verizon's December 24, 2003 Response a reply to a response, which is not contemplated by our rules. We, therefore, have not specifically addressed Verizon's December 24, 2003 filing in this Order.

The Motions seek modification or clarification of a variety of aspects of our decisions on Issues 1A, 3, 5, 6a and b, and 7. At the outset, we do not believe that any of the requests for reconsideration meet the applicable standard, but agree there are certain aspects of the Order that should be clarified.

We are vested with jurisdiction in this matter pursuant to Section 364.16, Florida Statutes, and Section 252(c)(6) of the Telecommunications Act of 1996 (1996 Act). Pub. L. No. 104-104, 104th Congress 1996, 110 Stat. 56, 47 U.S.C. §§ *et. seq.*

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 this 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 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). 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." Steward Bonded Warehouse, Inc. vs. Bevis.

Neither the Uniform Rules of Procedure nor Commission rules specifically make provision for a motion for clarification. However, we have 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 our order. 146 So. 2d 889. In cases where the motion sought only explanation or clarification of a Commission order, we have typically considered whether the order required further explanation or clarification to fully make clear its intent. See, e.g., Order No. PSC-95-0576-FOF-SU, issued May 9, 1995.

II. ANALYSIS AND DECISION

Because some of the arguments submitted overlap, the analysis of the Motions is set forth according to the issue upon which reconsideration is being sought, rather than by each individual motion.

B. Application Fee (1A)

1. ARGUMENTS

Regarding application fees, Verizon asks that we reconsider our decision forbidding ILECs to charge CLECs: (1) an application fee when they submit a collocation application; and (2) a deposit equal to 50 percent of the non-recurring construction costs Verizon incurs on the CLECs' behalf.

First, Verizon contends that we erred by including contradictory statements in our Order. On the one hand, Verizon contends that we correctly acknowledged that the application fee is designed to recover the costs associated with processing the CLEC's application, including assessing space requirements and developing a quote. Verizon argues, however, that our decision that a fee may not be charged if the application is not "Bona Fide" or if there is not space in the office fails to recognize that a cost is actually incurred in the process, even if the CLEC does not ask Verizon to proceed with the order. Thus, Verizon believes that we erred on this point.

Verizon also believes we erred by not allowing the ILEC to demand payment of the application fee at the time the CLEC submits its application. Verizon argues that this policy gives CLECs incentive to "flood" Verizon with collocation applications, whether or not they have any real intent to collocate.

Verizon further argues that it should be allowed to charge a deposit before incurring construction costs. Verizon maintains that we erred in our decision not to allow a deposit by failing to distinguish, or even acknowledge, an FCC decision allowing ILECs to charge up to 50 percent of the cost of construction before the construction commences.

Verizon also argues the smaller application fee will not provide sufficient incentive for CLECs to give careful consideration of proposed arrangements before the ILEC has already incurred costs, and because it does not believe that the stipulation reached regarding Issue 1(c)[1] will truly allow the ILECs to recover their costs. In addition, Verizon notes that we also based our decision on the understanding that a CLEC makes its commitment by a firm order, which is a rate element that Verizon does not have. Verizon notes that including such a rate element would necessitate that it revise its entire billing system.

Similarly, Sprint asks that we clarify what it considers to be a contradictory stance on the application fee. Sprint notes that in this Order we stated that the non-recurring application fee should be paid when the ILEC responds because "by billing in this manner ILECs would avoid having to refund the fee if the application were not a Bona Fide application or if there was no space available in the requested central office." Sprint believes this is contrary to our conclusion in Order No. PSC-99-1744-PAA-TP, wherein we allowed ILECs to charge CLECs for costs associated with an application, whether it was denied or not. Sprint does not ask us to reconsider our decision as to when the fee should be billed, but rather that we clarify that the Order is not intended to preclude ILECs from recovering costs they incur when processing an activity. If, however, this is contrary to the intent in our Order, Sprint asks that we reconsider our decision, because the record is clear that an ILEC does, in fact, incur costs in processing an application, whether or not it is approved.

Verizon supports Sprint's Motion on this point.

AT&T and Covad oppose Sprint's Motion on this point. They contend that while Sprint argues that reconsideration is proper due to the apparent conflict with Order No. PSC-99-1744-PAA-TP, we can overrule our own orders and change our position on a going-forward basis, as long as we explain our rationale and there is a sufficient record basis for the change. In this instance, AT&T and Covad contend that we did make a change based upon our continuing review and consideration of the issues relating to collocation. They argue that the decision was based upon record evidence and reflects no error. As such, Sprint has not met the standard for reconsideration.

They also oppose Verizon's request for reconsideration on 1A. They emphasize that Verizon has not pointed to any deficiency in the record, and that this Commission's Order clearly reflects that we considered Verizon's position and arguments, but specifically rejected them. They add that Verizon's request that we reconsider our decision on the 50% deposit argument is

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[1]Stipulation language: "When the CLEC cancels its request prior to the space ready date, there will not be a cancellation charge. All parties agree the CLEC will be responsible for reimbursing the ILEC for costs specifically incurred by the ILEC on behalf of the canceling CLEC up to the date that the written notice of cancellation is received."

beyond the scope of a proper motion for reconsideration, because Verizon does not contend that we erred in our decision, but instead simply indicates that it disagrees with this Commission's conclusion.

Sprint also asks for clarification of the Order at p. 14 regarding CLECs' use of certified vendors. Sprint argues that the Agenda discussion indicates that we intended that this section only mention that this issue was raised and that the issue is addressed by FCC regulations. The language, however, included in the Order appears to require that ILECs only allow CLECs to perform work in their own collocation space. Sprint says that it is currently considering adopting BellSouth's practice, which is to allow certified contractors to also perform some work in the common areas of the central office. As such, Sprint asks that this portion either be amended or clarified, as we find appropriate in order to make clear that ILECs are not required to allow CLECs to do work outside their own collocation space, but that they may do so.

2. DECISION

Regarding Verizon's request for reconsideration to allow it to charge an application fee when the application is submitted, we find Verizon has not identified an error in our decision, but, instead, has merely reframed its arguments that have already been considered and addressed. See Order at pp. 9 - 11. As such, Verizon's Motion on this aspect be denied.

As for Verizon's request for reconsideration to allow it to charge a 50% deposit, this has also been fully considered by the Commission. See Order at p. 10 and 14. A motion for reconsideration is not an opportunity for reargument, as reflected in the standard set forth above. As such, Verizon's Motion on this point also be denied.

As for Sprint's request for clarification on whether ILECs are precluded from recovering costs of processing an application, whether the application is denied or not, we agree that certain language in the Order could be misconstrued and, therefore, a clarification is warranted.[2] We did not intend that the Order would preclude an ILEC from recouping costs associated with engaging in a particular activity, such as the initial processing of an application. Instead, the language referenced by Sprint was intended to reflect that billing the full application fee in the manner ordered by this Commission would diminish the occasions in which a refund would be necessary. See Order at p. 13. In other words, by billing the application fee as ordered, the ILEC will know whether it is appropriate to assess the full application fee to the CLEC, or to assess only the costs incurred in the initial processing of an aborted or denied application. As such, Sprint's requested clarification on this point is granted.

[2] It appears that resolution of Sprint's request for clarification on this point nullifies Verizon's arguments on this same aspect of the Order.

As for Sprint's request that the Order be clarified to reflect that ILECs may allow certified vendors to perform work outside the CLEC's collocation space, the language referenced by Sprint at page 14 of the Order actually agrees with the position taken by Sprint in its brief. Nevertheless, we agree that parties should not be precluded from negotiating terms that would allow certified vendors to work outside the CLEC collocation areas, and the record reflects that this is BellSouth's current practice. Our decision was that use of certified vendors shall be in accordance with FCC rules, and this language is clearly reflected in the Order. We also note that the FCC rule on point, Rule 51.323(j), upon which our decision is based, does not specify the area in which a CLEC certified vendor may work. As such, the following sentence at p. 14 of the Order shall be deleted: "However, we also agree with Sprint that CLECs should be restricted to work in their collocation space, as the ILEC is responsible for all the common area work."

B. Transfers (3)

Issue 3 dealt with the rights and obligations of parties when collocation space is transferred from one CLEC to another.

1. ARGUMENTS

Regarding Issue 3, Verizon asks that we clarify: (1) that the Order is not intended to change any contractual rights or other legal rights and obligations arising in the course of a transfer, including Verizon's right to demand as part of the transfer that the transferring CLEC cure all outstanding debts arising under the parties' interconnection agreement; and (2) that Verizon is not prohibited from holding the acquiring CLEC jointly and severally liable for any outstanding balances. Verizon notes that our analysis on this point is very brief, creating opportunities for it to be misconstrued.

Specifically, while the Order states that the acquiring CLEC must satisfy all requirements of its interconnection agreement with the ILEC, it does not specifically state that the transferring CLEC must do the same. Verizon is concerned that a transferring CLEC could read the Order to require it to only comply with the specifics of the Order itself, and ignore any independent contractual obligations in the parties' interconnection agreement.

In addition, while our Order requires the transferring CLEC and the acquiring CLEC to enter into a transfer agreement with the ILEC, Verizon asks that this requirement be clarified such that the ILEC may require the transfer agreement to include a provision whereby the ILEC may hold the acquiring CLEC jointly and severally liable with the transferring CLEC for any undisputed amounts, as well as disputed balances later determined to be valid. Otherwise, without this clarification, Verizon is concerned that it will be left holding the proverbial bag should transferring CLECs file for bankruptcy relief.

FDN also seeks reconsideration on this issue. FDN, however, asks that we reconsider our decision that transfers be restricted to "in-place" collocation facilities. FDN contends that BellSouth witness Gray actually testified that transferring space without in-place equipment would not be a problem. FDN notes that the Order does not mention this testimony; therefore, FDN contends it was overlooked. FDN also offers the additional argument that requiring that there be "in-place" equipment makes little sense, further emphasizing that witness Gray testified that if a space has no in-place equipment, the only prohibition should be against a simultaneous request for transfer and reconditioning. FDN agrees with witness Gray's suggestion that in instances where a transfer involves a space with no in-place equipment, the transfer should conclude before reconditioning proceeds. As such, FDN seeks reconsideration or clarification of the Order to permit transfers of collocation without in-place equipment, provided the transfer is complete before the ILEC must process any reconditioning request.

FDN also seeks reconsideration on the issue of using a transfer to circumvent the waiting list in offices with limited space. Again, looking to witness Gray's testimony, FDN argues that BellSouth agreed that avoidance of the waiting list should not be a concern if the CLEC is selling all of its assets in a market. FDN notes that neither Verizon nor Sprint disagreed with this point. FDN contends that the Order, however, takes an apparently broader approach in that it addresses only the transfer of "all or substantially all" of a CLEC's assets, but does not limit it to a particular market. FDN argues that a CLEC would not sell its entire national holdings to avoid a waiting list. As such, FDN asks that we reconsider or clarify that the sale of assets is in a particular market, not necessarily a sale of assets in their entirety.

Verizon opposes FDN's Motion on this point. Verizon contends that FDN simply misunderstands our decision on transfers and emphasizes that this Commission should affirm our decision that collocation space in central offices at or near exhaust should not be transferable directly from one CLEC to another. Furthermore, Verizon argues that unused collocation space should be returned to the ILEC, not put up for bid.

Sprint also opposes FDN's Motion on this issue. Sprint argues that we specifically limited our decision on this issue to situations in which the central office was not at exhaust, because there was testimony that if the office were near exhaust, the transfer would violate the FCC's first-come, first-served rules. Sprint contends that FDN has not identified a mistake of fact or law in this Commission's decision on this point.

FDN, in turn, opposes Verizon's Motion. FDN contends that Verizon's Motion simply seeks to impose additional obstacles to transfers of collocation space between CLECs and also maintains that Verizon's requested clarification regarding an acquiring CLEC's liability for the transferring CLEC's debt has no record support. FDN argues that Verizon's requests are "over-reaching and unfair," and as such, should be rejected.

AT&T and Covad also oppose Verizon's request for reconsideration of our decision on this point. They argue that clarification is not proper, nor is it contemplated by the Commission's rules. They further argue that all but one argument Verizon has raised in its Motion regarding transfers was specifically considered by us in our Order. As for the additional argument regarding Verizon's request that acquiring CLECs be held jointly and severally liable, AT&T and Covad maintain that this is a wholly new argument raised for the first time in Verizon's Motion for Reconsideration. As such, they argue that it is not an appropriate basis for reconsideration.

2. ANALYSIS AND DECISION

On the issue of transfers, we do not find Verizon's requested clarification regarding the applicability of parties' contractual obligations is warranted. The Order is clear that we did not intend to abrogate any parties' contractual rights, as reflected in footnote 4 on page 19. As such, clarification on this point is not warranted.

We also do not agree that we should include any additional clarification or reconsideration regarding Verizon's right, if any, to demand the acquiring CLEC cure all outstanding debts by holding the acquiring CLEC jointly and severally liable for the debts of the transferring CLEC. The Order at page 19 clearly sets forth the responsibilities of all parties to the collocation transfer. The Order is also clear that there must be no unpaid, undisputed collocation balances between the ILEC and the transferring CLEC. While the Order does not preclude the ILEC and the acquiring CLEC from working something out in order to facilitate the transfer through payment of any of the transferring CLEC's outstanding balances, the Order does not require the acquiring CLEC to assume responsibility for such balances. It does, however, allow the ILEC to put the transfer on hold until such balances are paid. We considered Verizon's arguments on this issue, but reached a clear, albeit different, conclusion. Furthermore, the specific arguments raised by Verizon in its Motion on this point appear to be wholly new arguments inappropriate for consideration through a Motion for Reconsideration. As such, Verizon's request for reconsideration or clarification on this point is rejected.

As for FDN's request for reconsideration of the language in the Order that limits transfers to "in-place" collocation facilities, this does not rise to the level of reconsideration or clarification. Instead, FDN's motion identifies, if anything, a misunderstanding of our Order. The Order does not require that there actually be equipment in place in order for a transfer to occur; instead, it requires that if there is equipment already installed in the space, the transfer can only occur if the collocation equipment is also transferred to the same CLEC. See Order at p. 19. This requirement was to eliminate the concern that if only the space was transferred, the ILEC would be left with the added cost and responsibility of removing the equipment to prepare

the space for the acquiring CLEC. Since the Order does not say what FDN contends it says and there does not appear to be any lack of clarity, FDN's Motion on this point is denied.

FDN's request for reconsideration or clarification that the transfer should be allowed to occur if the CLEC is transferring its collocation facilities in a particular market also appears to be slightly off the mark. FDN contends first that we should not be concerned about a CLEC attempting to circumvent the waiting list, as long the CLEC is transferring all of its collocation assets in a market. Thus, FDN asks that we delete the reference at page 19 of the Order to a CLEC transferring "all, or substantially all, of the in-place collocation equipment" and replace it with a reference to a CLEC's ability to transfer its collocation assets in a particular market. As with the request identified above, this request does not identify a mistake of fact or law, or even a need for clarification, but rather a misapprehension of the Order.

At page 19 of the Order, we clearly set forth the circumstances in which a transfer of collocation space could and could not occur. The Order is clear that a transfer cannot occur if the space in the office is near exhaust. If the office is not near exhaust, the transfer can proceed if three other criteria are met: 1) the ILEC approves it (noting that the ILEC should not unreasonably withhold permission); 2) there are no unpaid, undisputed collocation balances; and 3) the transfer includes any equipment that may have already been installed, as clarified in the preceding paragraph. We did not say that the CLEC must be in the process of transferring all of its collocation facilities company-wide, nor does the Order even require that the CLEC be transferring all of its collocation assets in a particular market. Instead, the Order focuses on transfers in each individual central office. Thus, FDN's request for reconsideration or clarification on this point shall be denied. Not only has FDN not identified a mistake of fact or law in the Order, FDN has not identified a point that needs to be clarified.

C. Standardized Power Increments (5)

1. ARGUMENTS

BellSouth asks that we reconsider or clarify our decision that DC power of 70 amps or greater may be provisioned directly from the ILEC main power board. BellSouth contends that this may lead to CLECs trying to custom order feeds that are not standard, requiring BellSouth to incur additional costs to meet these customized requests. Furthermore, if it is required to meet customized requests, BellSouth argues that it will not be able to meet the provisioning intervals. Thus, it asks that we confirm that the interval for providing power from the main power board in non-standard increments is a matter for negotiation between the ILEC and CLEC.

Verizon supports BellSouth's request.

2. ANALYSIS AND DECISION

BellSouth has not identified a mistake of fact or law in this Commission's Order, nor has it identified a necessary or proper clarification. We can find nothing in the record to indicate that BellSouth opposed using non-standard fusing increments because it would cause BellSouth to incur additional costs. To the extent BellSouth raises this argument for the first time on reconsideration, it is improper and shall be denied. Beyond that, the Order simply does not address how the ILEC may charge for provisioning power in non-standard increments. Instead, the Order requires only that the ILEC must, subject to technical feasibility, commercial availability, and safety limitations, provide DC power in 5-amp increments up to 100 amps, and that 70 amps or greater, given industry standard sizing, may be provisioned from the ILEC main power board. See Order at p. 28. As such, BellSouth has not identified a mistake of fact or law in this Commission's decision, nor has it identified any need for clarification. If anything, BellSouth has identified an issue that perhaps should have been identified and addressed in the proceeding, but was not.

D. Power Rate Based on Amps Used and Charges Based on CLEC Requested Draw (6A and B)

Issues 6A and 6B addressed whether the per amp rate should be based on the amps used or fused, and how the recurring and non-recurring charges for DC power should be calculated.

1. ARGUMENTS

FDN asks that we clarify that our decision on Issues 6A and B does not permit ILECs to bill recurring charges for dual feed redundancy. FDN argues that this clarification is necessary to avoid future disputes. FDN does not identify any specific reasons that the Order is not clear, other than that it does not reference FDN's position and arguments with sufficient specificity to avoid future arguments on this issue.

Covad also seeks reconsideration or clarification on this part of the Order. Covad, however, asks that we reconsider our decision to go only with the Sprint option, whereby a CLEC may order a power feed designed to meet a future, higher demand level but initially fusing this power feed so that a lesser amount of power can be drawn, and instead, provide two options - the Sprint option and the one proposed by Covad, which would allow a nonrecurring charge or a monthly recurring charge for infrastructure costs. Since there would be two options available to CLECs, our concern regarding barriers to entry would be mitigated. Thus, Covad asks that we reconsider or clarify our Order to provide for two options for recovery of infrastructure costs.

Covad further seeks reconsideration or clarification of the Order to require BellSouth to credit CLECs for any overpayments made to date under the monthly recurring charge element.

Covad argues that the record shows that overpayment will occur at some point under a monthly recurring charge for infrastructure that is applied in perpetuity. Covad notes the FCC limits the application of a monthly recurring charge for such costs to a reasonable time period. Covad contends that, therefore, a non-recurring charge option should be made available in order to avoid such potential overpayment, and BellSouth should be required to refund any overpayments made under the current monthly recurring charge.

BellSouth asks that we clarify that the ILEC does not need to build infrastructure in a central office to meet a CLEC's forecasted demand. Instead, BellSouth asks that we confirm that an ILEC need only build infrastructure to meet the current demand. Thereafter, if the CLEC requests the maximum feed, the ILEC can make any necessary augments at that time to provide the requested feed. BellSouth notes that such augments could take quite some time, though, even as much as a year. BellSouth believes that this clarification is, nonetheless, necessary, because otherwise the ILEC will be building infrastructure that is not covered in the CLECs' per-amp-used-rate.

BellSouth also asks that we modify our Order to allow ILECs to audit at any time the amount of power that is actually being used by a CLEC. BellSouth contends that the use of a fuse to "police" a CLEC's usage is imprecise, because a fuse does not precisely limit the amount of power being drawn. Furthermore, because the fuses themselves are placed by the CLECs' contractors, BellSouth maintains that it has no way of being sure that the fuse placed is what the CLEC says it is.

Verizon supports BellSouth's Motion as it pertains to power issues, except to the extent that it does not oppose Covad's request for an optional power NRC. Verizon emphasizes, however, that the power billing option advocated by Covad would be difficult and costly to implement.

Verizon also notes that it does not oppose FDN's request for clarification regarding charges for dual feed redundancy, but argues that the clarification requested is inappropriate because no ILEC actually bills for redundant power feeds. Verizon emphasizes that how power is billed is based on how it is ordered by the CLEC, such that if a CLEC is powering a piece of equipment that load shares, it should order half of the amps required on its A feed and the other half on the B feed. Verizon believes that this clarification will negate FDN's request for reconsideration.

BellSouth opposes, in principle, FDN's Motion to the extent that it seeks clarification that the Order does not allow duplicate charges for redundant power feeds. BellSouth notes that while it does not oppose the request, since it does not apply duplicate charges for redundant feeds, it also does not believe there is any ambiguity in the Order.

BellSouth opposes Covad's motion to the extent that it proposes that a monthly recurring charge results in over-recovery of infrastructure costs and asks the Commission to require BellSouth to refund any over-recovered amounts. BellSouth contends that Covad's motion on this point "mischaracterizes" the evidence at hearing, as well as the charges included in the infrastructure cost, and is contrary to FCC accounting rules. BellSouth argues that its own witness Milner conceded that while some over-recovery may occur for the actual energy used, there was no over-recovery on infrastructure costs. BellSouth further maintains that Covad's Motion relies upon testimony that does not really support Covad's arguments and that the proposal is, at its heart, fundamentally flawed.

Sprint also opposes Covad's Motion to the extent it asks for a NRC option for power infrastructure. Sprint contends that Covad's arguments were fully addressed and considered by this Commission. We, however, rejected Covad's proposal. Sprint argues that Covad has not identified an error in that decision.

AT&T and Covad oppose BellSouth's request as it pertains to these issues. They contend that we fully considered the evidence presented on this issue (devoting 4 pages of the Order to Issue 6A and 13 pages to Issue 6B), and that BellSouth has not identified a mistake of fact or law on these issues. They further argue that, with regard to 6B, BellSouth mischaracterizes the use of fuses. They contend that fuses are used to protect equipment, not to "police" usage. They maintain that BellSouth's argument on this issue is without merit and does not meet the standard for reconsideration. Nevertheless, they note that they are not opposed to BellSouth monitoring usage, as long as it does so at its own expense.

2. ANALYSIS AND DECISION

Regarding FDN's request that a clarification be made to the Order stating that ILECs cannot bill recurring charges for dual feed redundancy, clarification is not necessary or appropriate. FDN does not identify what in the Order it believes is unclear or where clarification should be made. FDN simply seeks an additional affirmative statement in the Order. The Order is, however, clear that the CLEC should be billed, ". . . based upon the amount of power it requests to draw at any given time." Order at p. 40. Therefore, FDN's request for clarification is denied.

As for Covad's request that we reconsider or clarify our decision to allow a non-recurring charge for power infrastructure, there is some merit to Covad's request. While we do not believe that Covad has identified an error in this Commission's Order, we do find that clarification is warranted. In the Order, we did acknowledge that a separate, non-recurring charge for power infrastructure was a sound theory, but expressed concern about the CLECs' ability to pay such costs up front. Thus, we found Sprint's proposal to be more reasonable. See Order at pp. 39 - 40. We did not intend to prohibit the CLEC and ILEC from negotiating a non-recurring charge for

power infrastructure if the CLEC believed this method to be preferable. Thus, clarification on this point is granted to give CLECs the option of negotiating a separate, non-recurring charge for power infrastructure.

We shall not, however, grant Covad's request for reconsideration or clarification to require BellSouth to credit CLECs for alleged overpayments made using a monthly recurring charge element for power infrastructure. While we did recognize that such a method does appear to likely result in overcharges, Covad's request goes beyond the issues addressed at hearing and is improper in the context of a Motion for Reconsideration. See Order at p. 38. This Docket was not designed or noticed to address specific over- or under-billing issues between individual companies. As such, Covad's request on this point is denied.

We shall grant BellSouth's request for clarification that the ILEC does not need to build central office power infrastructure to meet a CLEC's forecasted demand. While this Commission encouraged rational forecasting by the CLECs, we did not require that the ILECs actually build to meet CLEC forecasted demand, but rather required the ILECs to allow CLECs to "order a power feed that is capable of delivering a higher DC power level. . . ." See Order at p. 40. This was intended to reduce costs for CLECs when and if they decided to increase fuse sizes, but does not appear intended to make the ILEC bear the risk of building power infrastructure that might never be used. Id. As such, BellSouth's requested clarification shall be made, clarifying that the ILEC need not build infrastructure now to meet CLEC future demand. We register some concern, however, over BellSouth's statements that such augments could take as much as a year, particularly in view of the fact that our approval of Sprint's plan was based on our finding that the plan not only allocated costs better, but allowed a CLEC to grow more efficiently. See Order at p. 40. As such, all ILECs are cautioned not to unduly delay augments to power infrastructure necessary to allow a CLEC to increase fuse size within the range allowed by the feed ordered.

As for BellSouth's request that we reconsider or clarify that ILECs are allowed to audit power being used by a CLEC, we do not believe BellSouth has identified a mistake of fact or law in our decision or anything that requires clarification. Nevertheless, we note that AT&T and Covad do not appear opposed to BellSouth's proposal, and the Order does not preclude negotiating such an audit provision in future interconnection agreements.

E. AC Power Feed Option (7)

1. ARGUMENTS

Sprint asks that we reconsider our decision requiring ILECs to allow CLECs to have the option of obtaining an AC power feed for their collocation arrangements, as long as they comply with applicable safety regulations. Sprint notes that the decision appears to rely on statements

made by Sprint's witness Fox and Verizon's witness Bailey modifying their testimony such that they agreed that AC power could be used in limited circumstances. Sprint contends that our decision on this point, however, fails to include all the conditions set forth in the witnesses' concession on this point. Sprint emphasizes in particular that the Order does not include the requirement that AC power could only be used if it would not pose potential harm to the ILEC's equipment or operations. Sprint argues that the record is replete with examples of the harm that can be caused by a CLEC's use of AC power, and notes that we recognized these concerns, but did not adequately reflect those concerns in our decision.

Verizon supports Sprint on this point.

AT&T and Covad, however, oppose Sprint on this point. They contend that Sprint has not met the standard for reconsideration on this aspect of our decision, noting that our Order reflects full consideration of all parties' arguments and a reasoned analysis. Thus, they believe Sprint's request for reconsideration should be denied.

2. ANALYSIS AND DECISION

Sprint has not identified a mistake of fact or law in our decision on this point. We also do not find that clarification is warranted, because our decision, which states that the provision of such a feed would be subject to the constraints of the National Electric Code, as well as all other applicable electric and building codes, adequately addresses Sprint's safety concerns regarding its own equipment. Order at pages 47-48. As such, Sprint's request is denied.

IV. **CONCLUSION**

Upon consideration, the Motions for Reconsideration and/or Clarification are granted, in part, and denied, in part, as set forth herein. These Dockets shall remain open to address the remaining pricing issues.

It is therefore

ORDERED by the Florida Public Service Commission that the Motions for Reconsideration, Clarification and/or Modification of Order No. PSC-03-1258-FOF-TP, which were all filed on December 11, 2003, are hereby granted, in part, and denied, in part, as set forth in the body of this Order. It is further

ORDERED that these Dockets shall remain open pending our final decision on the remaining pricing issues addressed at our January 2004 hearing.

By ORDER of the Florida Public Service Commission this 2nd day of March, 2004.

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

(SEAL)

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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) 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.