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March 4, 1997

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Betty Easley Conference Center, Rm. 110
Tallahassee, FL 32399-0850

Re: FPSC Docket No. 920260-TL

Dear Mrs. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to Palm Beach Newspapers, Inc.'s Motion for Reconsideration, and Response to Petition for Relief from Unjust Rates, which we ask that you file in the above captioned matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies of BellSouth's Request have been served to the parties shown on the attached Certificate of Service.

Thank you for your attention to this matter.

Sincerely yours,

Edward L. Rankin III

Edward L. Rankin, III (En)

- ACK
- AFA 3
- APP
- CAF
- CMU Noter
- CTR
- EAG Enclosures
- LEG 1
- LIN 5 cc: All Parties of Record
- OPC A. M. Lombardo
- RCH R. G. Beatty
- SEC 1 William J. Ellenberg, II
- WAS
- OTH

DOCUMENT NUMBER-DATE

02035 MAR -4 5

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive Review of)
the Revenue Requirements and) Docket No. 920260-TL
Rate Stabilization Plan of)
Southern Bell Telephone and) Filed: March 4, 1997
Telegraph Company)
_____)

BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE TO PALM BEACH
NEWSPAPERS, INC.'S MOTION FOR RECONSIDERATION, AND RESPONSE
TO PETITION FOR RELIEF FROM UNJUST RATES

BellSouth Telecommunications, Inc. (BellSouth) hereby
files its Response to Palm Beach Newspapers, Inc.'s Motion
for Reconsideration, Or In The Alternative, Petition for
Relief from Unjust Rates and Inadequate Service. In support
of its Response, BellSouth states as follows:

INTRODUCTION

This docket was initiated pursuant to Order No. 25552
(issued December 31, 1991) to analyze and evaluate the rate
stabilization Plan under which BellSouth had operated since
1988. On January 5, 1994, BellSouth and the Office of
Public Counsel ("OPC" or "Public Counsel") jointly filed a
document entitled, Stipulation and Agreement Between The
Office of Public Counsel and Southern Bell Telephone and
Telegraph Company. On January 12, 1994, BellSouth filed a
document entitled, Implementation Agreement for Portions of

DOCUMENT NUMBER-DATE

02335 MAR-45

FPSC-RECORDS/REPORTING

the Unspecified Rate Reductions in Stipulation and Agreement Between The Office of Public Counsel and Southern Bell Telephone and Telegraph Company. On February 11, 1994, the Florida Public Service Commission ("Commission") entered Order No. PSC-94-0172-FOF-TL, Order Approving Stipulation and Implementation Agreement. The Settlement provided for various specified and unspecified revenue reduction amounts in 1995 and 1996.

The Implementation Agreement stated that the Commission would "conduct hearings to determine the rate design by which the amounts not specifically allocated by the Stipulation and [the] Implementation Agreement shall be disposed of in ... 1996" (Implementation Agreement, Par. 10, pp. 7-8). The Agreement further stated that "the PARTIES [to the Agreement] or any other interested persons shall submit, not less than 120 days prior to the scheduled effective date of each reduction, their proposals as to how such reductions should be implemented." (Implementation Agreement, Par. 4, pp. 11-12).

On May 31, 1996, BellSouth filed revisions to its General Subscribers Service Tariff, its Private Line Service Tariff, and its Access Service Tariff, to use the

unspecified revenue reduction to fund the reduction in 1996 rates of various features and services. Proposals of alternative ways to allocate the 1996 revenue reduction were filed by the Office of Public Counsel, the Florida Interexchange Carriers Association ("FIXCA")¹, Florida Cable Telecommunications Association ("FCTA"), and Palm Beach Newspapers, Inc. ("PBN"). A total of twelve parties participated in this docket.

On July 26, 1996, the Prehearing Officer issued the Order Establishing Procedure (Order No. PSC-96-0965-PCO-TL), which set the hearing of this matter for October 30, 1996. At the hearing, testimony and exhibits were stipulated into the record and cross examination was waived by all the parties. On February 7, 1997, the Commission issued Order No. PSC-97-0128 ("Order") which "reflects the [Commission's] decisions concerning the proposals of the parties to apply the unspecified amounts, and finalizes approval of the switched access reductions that were implemented provisionally October 1, 1996."

¹ FIXCA filed a Joint Proposal on behalf of its members and AT&T Telecommunications of the Southern States, Inc. ("AT&T"), MCI Telecommunications Corporation ("MCI"), Sprint Communications Company Limited Partnership ("Sprint"), Florida Ad Hoc Telecommunications Association, Inc. ("Ad Hoc"), McCaw Communications ("McCaw"), and the Department of Defense ("DOD").

RESPONSE TO PBN'S MOTION FOR RECONSIDERATION

In its Order, the Commission rejected PBN's proposal to reduce prices for N11 service usage, explicitly finding that it was "not appropriate to use the funds at issue in this proceeding to reduce N11 Service usage rates." (Order, p. 28).

The proper standard of review for a motion for reconsideration is whether the motion identifies some point of fact or law which was overlooked or which the Commission failed to consider in rendering its order. See, Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters which have already been considered. See, 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) (the petition should not be used to reargue matters already addressed in briefs and oral argument).

PBN has not met the standard for reconsideration set forth in Diamond Cab. The Commission thoroughly considered the merits of PBN's proposed reduction of N11 service rates on pages 14-15 and 27-28 of the Order. Specifically, the

Commission took notice of the following positions set forth
by PBN witness Freeman:

1. N11 service price should be reduced to more closely reflect its cost of service;
2. Commission policy should ensure fair pricing to "captive" customers and promote the introduction of new and innovative services;
3. Fair pricing should be cost-based and eliminate cross subsidies;
4. Abbreviated dialing services (ADS) such as N11 will likely bring about increased competition for information services;
5. N11 service is currently available but underutilized;
6. N11 rates should be reduced to reflect a charge of \$.01 per minute to be applied after the minimum charge is exceeded; and
7. Making N11 service more cost-based is a low cost, no-risk, and potentially high gain proposal.

(Order, pp. 14-15).

BellSouth offered testimony generally establishing that 1) N11 codes are a limited resource; 2) the current demand exceeds the available quantity of N11 numbers in the major markets, where there is currently a waiting list for N11 codes; and 3) the current price levels of N11 service have created a viable market and that further reductions would be inappropriate. (Tr. 51, 71-72)

In its Order, the Commission referred directly to the testimony proffered by PBN witness Freeman and disagreed with his premise that current N11 service needed to be reduced to stimulate demand and the development of new offerings. Given the fact that ALECs can now offer N11 services for resale, the Commission noted that information service providers like PBN will have the opportunity to select a provider of N11 service, implicitly recognizing that competition in this area could likely reduce rates. (Order, pp. 27-28). For those reasons, the Commission concluded that "it is not appropriate to use the funds at issue in this proceeding to reduce N11 Service usage rates."

PBN's Motion for Reconsideration reflects that PBN simply disagrees with the result reached by the Commission. Beyond curiously attributing the unwanted result to the Commission's "failure" to consider PBN's post-hearing brief, PBN has identified no point of fact or law that the Commission failed to address when considering PBN's position in this matter.² PBN's motion regurgitates the same

² PBN does not reveal how it confirmed that its post-hearing brief was not considered by the Commission. BellSouth knows of no requirement compelling the Commission to affirmatively state in its Orders that it has read the briefs of any party. What is clear from the record, however, is that the Commission did consider the record evidence proffered by PBN at the hearing on each issue raised by it in its Motion for Reconsideration.

positions taken by witness Freeman and considered by the Commission, namely, that its proposal 1) will not harm BellSouth financially; 2) will bring N11 rates down over time; and 3) will serve the public interest by promoting the development of N11 services and products.

The Commission acknowledged that it was not "possible in this proceeding to resolve all the telecommunications pricing and other competitive issues facing this Commission. However, we believe approval of [the stated rate reductions] represents the best use of these funds to promote competition in the public interest." That PBN's proposed rate reductions did not compare favorably with the other reductions chosen by the Commission gives PBN no grounds to ask the Commission to reconsider its decisions and "reshuffle the deck" of reductions approved by it. Accordingly, BellSouth respectfully asks the Commission to deny PBN's Motion for Reconsideration.

RESPONSE TO PETITION FOR RELIEF FROM UNJUST RATES

Not to be deterred, PBN alternatively petitions the Commission for "relief from unjust rates and inadequate service pursuant to Section 364.051" in the event the Commission denies PBN's Motion for Reconsideration. The

Commission should resist this naked attempt by PBN to achieve the relief it could not gain in this rate reduction docket through creation of a new docket using a "different" cause of action. BellSouth submits its Response to the Petition as follows:

1.

With respect to the allegations set forth under the subheading "Grounds for Relief," the statements that either recite or purport to interpret Florida statutory law do not constitute factual allegations per se and, accordingly, do not require a response by BellSouth. BellSouth admits that PBN subscribes to BellSouth's N11 service. Except as expressly admitted, BellSouth denies the remaining factual allegations under the subheading "Grounds for Relief."

2.

The allegations contained under the subheading "Standard for Relief" are legal in nature, do not constitute factual allegations per se and, accordingly, do not require a response by BellSouth. BellSouth denies that it has violated any of the prohibitions set forth in Section 364.051(6)(a) or (b).

3.

With respect to the allegations set forth under the subheading "PBNI's Claim for Relief," BellSouth denies every allegation stating or implying that BellSouth's pricing and provisioning of N11 service violates any prohibition in Section 364.051(6)(a) or (b). BellSouth further denies that its N11 service is anticompetitive, discriminatory, inadequate, or offered at "exorbitant rates."

4.

No matter how PBN couches its alternative "Petition," it remains a thinly-veiled attempt to gain the rate "relief" that the Commission denied it in the Commission's Feb. 7 Order. If BellSouth's N11 rates were as "exorbitant" and oppressive as alleged by PBN, the Commission could have corrected this so-called "discrimination" in its Order. Instead, the Commission expressly found that waiting lists exist for these numbers, which is hardly probative evidence that rates are unreasonably high, and that it was possible that information service providers like PBN can purchase resold N11 services in the future from CLECs.

PBN identifies no evidence to show that BellSouth has discriminated in any manner--whether through pricing or

otherwise--among the subscribers to its N11 service in Florida. N11 service subscribers are charged the same rates for the same service, and that service is offered to those similarly-situated subscribers under the same terms and conditions.

5.

Finally, Florida's price regulation statute, Section 364.051, does not grant the Commission the authority to reduce N11 service rates in the manner suggested by PBN. In accordance with the requirements of Section 364.051(6)(a), BellSouth maintains tariffs with the Commission containing the "terms, conditions, and rates" for its N11 service and

may set or change, on 15 days' notice, the rate for each of its nonbasic services, except that a price increase for any nonbasic service category shall not exceed 6 percent within a 12-month period until there is another provider providing local telecommunications service in an exchange area at which time the price for any nonbasic service category may be increased in an amount not to exceed 20 percent within a 12-month period, and the rate shall be presumptively valid.

PBN does not allege that BellSouth has increased its N11 service rates in violation of the above-quoted language, and no other language in Section 364.051 authorizes the Commission to grant PBN's requested "relief from the current rates for its N11 Service."

Although Section 364.051(6)(b) grants the Commission:

continuing regulatory oversight of nonbasic services for purposes of ensuring resolution of service complaints, preventing cross-subsidization of nonbasic services with revenues from basic services, and ensuring that all providers are treated fairly in the telecommunications market,

the relief sought by PBN herein is a reduction of N11 service rates. Furthermore, the only "service complaint" alluded to by PBN--that BellSouth is "unable to turn off N11 billing for selected days"--is actually a billing issue between PBN and its customers. BellSouth bills the service provider (PBN), without interruption, for the central office-based three-digit dialing capability of N11 service. It is PBN's decision to provide free service for its own customers for selected periods if it so desires. In any event, the cost incurred by BellSouth to "turn on/turn off" N11 service to a provider like PBN would be substantial and would have to be recovered from that provider.

As for cross-subsidization, PBN alleges that the N11 rates are too high, not too low, so cross-subsidization is not an issue. Finally, PBN's allegation of "unfair treatment" under Section 364.051(6)(b) stems directly from

its desire to pay less money for the service and nothing else.

For all of the reasons stated above, BellSouth respectfully asks the Commission to dismiss PBN's alternative Petition for Relief.

Respectfully submitted this 4th day of March, 1997.

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CERTIFICATE OF SERVICE
Docket No. 920260-TL

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by United States Mail this 4th day of March, 1997 to:

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