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February 27, 1998

Blanca Bayo, Director
Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

In re: Petition of BellSouth Telecommunications, Inc. to remove St. Joseph Telephone and Telegraph Company's interLATA access subsidy
Docket No. 970808-TL

Dear Ms. Bayo:

Enclosed please the original and 15 copies of GTC, Inc.'s Motion for Reconsideration. Copies have been provided to parties of record.

Sincerely,

David B. Erwin

ACK ✓
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APP
CAF
CMU / DBE:akh
CTR Enclosures
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of BellSouth Telecommunications, Inc., to remove St. Joseph Telephone and Telegraph Company's interLATA access subsidy	Docket No.: 970808-TL Filed: February 27, 1998

MOTION FOR RECONSIDERATION

Introduction

GTC, Inc., (hereinafter GTC) pursuant to Rule 25-22.0376(1), F.A.C., files this Motion for Reconsideration of non-final Order No. PSC-98-0300-PCO-TL.

This docket was initiated by BellSouth Telecommunications, Inc.'s (hereinafter BellSouth) petition to remove the interLATA access subsidy it pays to GTC, Inc. (formerly St. Joseph Telephone and Telegraph Company). The subsidy is $1,223,000 on an annual basis. GTC is the only remaining recipient of the interLATA access charge subsidy pool established by Order No. 14452, issued June 10, 1985, and BellSouth has acted as the administrator of the access subsidy pool.

Commissioner Deason held a pre-prehearing conference on February 16, 1998, and, among other things, held oral argument on BellSouth's Motion to Compel answers to its interrogatories and production of documents requests propounded to GTC. Commissioner Deason issued Order No. PSC-98-0300-PCO-TL. The Order partially granted BellSouth's motion. GTC must now answer many of the interrogatories propounded by BellSouth.

The interrogatories and production requests are designed to elicit information to determine GTC's earned rate of return, calculated as if GTC were subject to rate base, rate of return regulation by the Commission. In its pleadings, BellSouth has indicated that it would have the Commission use the information sought in discovery as the basis for a decision that, based on

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GTC's financial performance, GTC no longer "needs" the interLATA subsidy, and, it should therefore be discontinued.

Argument

GTC vigorously opposed production of the information sought because it has elected price cap regulation and is, therefore, exempt from any obligation to report financial information as to its rate of return. Equally important is the fact that, as a result of price cap regulation, GTC's rates are frozen and cannot be changed for a period of three, and probably five, years absent an extraordinary showing of changed circumstances. Thus, GTC cannot make a market based response to discontinuance of the subsidy at this time.

The legislation granting GTC the option of price cap regulation clearly not only enabled a small LEC to make such a choice, but encouraged it to do so. That choice becomes a trap for the unwary if it is construed to mean that while GTC may not alter its rates, the Commission may alter components of them. Perhaps anticipating this issue, the legislation contains a provision in Section 364.052(2), F.S., that the rates of any small LEC opting for price cap regulation before July 1, 1996, as GTC did, are not subject to review by the Commission; that is they are presumed reasonable. If by statute rates are prescribed to be reasonable for a time certain, there is simply no justification to look behind them to see whether a company's performance justifies continuation of a component of those rates.

This docket is a case of first impression and the Commission ought to send a clear signal that frozen rates cut both ways — they offer protection to the public as well as to the company electing price cap regulation. Furthermore the Commission ought to clearly affirm that the statute means what it says — that price cap regulation exempts a company from rate of return regulation.

This means that once price cap regulation is elected, a company cannot be compelled to produce financial information disclosing its rate of return, because that information cannot form the basis for a decision by the Commission. By operation of the statute, such information is, in the truest sense of the word, irrelevant and such irrelevancy means that discovery should be denied. Kilgore v. Bird, 6 So.2d 541 (Fla. 1942); Toyota Motor Corporation v. Green, 483 So.2d 130 (Fla. 1st DCA); Krypton Broadcasting of Jacksonville, Inc. v. MGM-Pathe Communications Co., 629 So.2d 852 (Fla. 1st DCA). Therefore, GTC requests that the prehearing officer's order compelling disclosure be reversed.

GTC submits that the Order of the Prehearing Officer, Order No. PSC-98-0300-PCO-TL, issued February 18, 1998, departs from essential requirements of the law and should be reconsidered by the full Commission.

As stated by the Commission in Order No. PSC-97-1059-FOF-TP,

> The standard for review for a motion for reconsideration is whether the motion identifies some point of fact or law which was overlooked or which this Commission failed to consider in rendering its order. Diamond Cab Co. v. King (146 So.2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So.2d 161 Fla. 1st DCA 1981). A motion for reconsideration must present to the Commission some such point by reason of which its decision is necessarily erroneous. Atlantic Coast Line R. Co. v. City of Lakeland, 115 So. 669, 680. 1927); Mann v. Etchells, 182 So. 198, 201 (Fla. 1938); Hollywood, Inc. v. Clark, 15 So.2d 175, 180 (Fla. 1943). A motion for reconsideration is not a medium by which a party may simply advise the Commission of its disagreement with the decision, present additional arguments on matters fully addressed, reargue matters presented in briefs and in oral argument, or ask the Commission to changes its mind as to a matter that has already received its carful attention. Sherwood v. State, 111 so.2d 96, 97-98 (Fla. 3d DCA 1959) (quoting State ex rel Jaytex Realty Co. v. Green, 105 So.2d 817, 818-19 (Fla. 1st DCA 1958)).

In this case, the Prehearing Officer failed to properly consider the impact of Sections 364.051(1)(c) and 364.052(2), F.S., and, as a consequence the decision reached by Order No. PSC-98-0300-PCO-TL is erroneous.

Section 364.052(2), F.S., states in pertinent part as follows:

> A small local exchange telecommunications company shall remain under rate base, rate of return regulation until the company elects to become subject to s. 364.051, or January 1, 2001, whichever occurs first. After July 1, 1996, a company subject to this section, electing to be regulated pursuant to s. 364.051, will have any over earnings attributable to a period prior to the date on which the company makes the election subject to refund or other disposition by the commission....

GTC elected price regulation before July 1, 1996.

Section 364.051(1)(c), F.S., states as follows:

> Each company subject to this section shall be exempt from rate base, rate of return regulation and the requirements of ss. 364.03, 364.035, 364.037, 364.05, 364.055, 364.14, 364.17, and 364.18.

All of the information sought by BellSouth in its interrogatories and requests for production of documents is designed to elicit information to determine GTC's earnings under a rate base/rate of return calculation. Interrogatory number 1 asks for Surveillance Reports for 1996 and 1997, and these reports have always been the Commission's basic tool for determining a rate base regulated company's rate of return (earnings). All small LECs which are still rate base regulated must file Surveillance Reports. Price regulated LECs do not have to file Surveillance Reports. See Rule 25-4.1352, F.A.C.

Order No. PSC-98-0300-PCO-TL admits that GTC is no longer subject to rate of return regulation, but it goes on to say that earnings is the criteria the Commission has used in the past

to consider the propriety of access subsidies. Clearly, the Commission intends to consider earnings in this case, since BellSouth has been given approval by the Order to obtain Surveillance Reports from GTC, along with other information useful in calculating earnings. This theory of the case assumes that the Commission can end the subsidy based on rate base/rate of return earnings calculations.

GTC asserts the Commission cannot, as a matter of law, and should not, as a matter of policy, selectively alter one component of rates during the period they are frozen. The price cap regulation established in Section 364.051 is a series of checks and balances that are, in essence, a legislatively crafted compromise between traditional, pervasive rate base regulation and no regulation at all. The quid pro quo of price cap regulation is that a company is freed from regulation of its rate of return, but, its rates are frozen for a period of at least three, and probably, five years. Thereafter, price increases are capped by the rate of inflation less one percent. Section 364.051(4), F.S. During the period of time rates are frozen, GTC's ability to respond to a significant adverse regulatory event is curtailed; a fair reading of the statute is that the Legislature did not anticipate that this would be a problem, because it did not anticipate that there would be on-going regulatory adjustments for a company electing price cap regulation, particularly adjustments based on traditional rate of return calculations.

In marked contrast to its specificity on other points, the legislation makes no provision with respect to the interLata subsidy; the legislative history is silent as well. At the time GTC elected price cap regulation, the subsidy was an integral part of its annual revenue, and its rates were based on the subsidy continuing in place. In confirming GTC's election of price cap regulation, continuation of the subsidy was not raised as an issue by either the Commission or

BellSouth. Moreover, the statute provides that the Commission's ability to review or alter rates of a small LEC opting for price cap regulation only arises if the LEC chooses price cap regulation after July 1, 1996. This statutory provision means that a small LEC who, like GTC, chose price cap regulation before July 1, 1996 is entitled to a finding that its present rates are fair and reasonable and continue to be so during the period rates are frozen. It would thwart legislative intent to hold that a component of those rates could be altered while the rates are frozen.

This statutory interpretation is consistent with good administrative policy as well. So long as GTC's rates remain frozen, the better course of regulatory wisdom would be not to review or change any component of them in isolation. Frozen rates for a time certain is a condition that ought to cut both ways. The Legislature, the Commission, and the consuming public are entitled to rely on the rates for the period of time they are frozen. The Legislature has made a determination that GTC's rates, which were approved by the Commission as fair and reasonable under rate of return regulation would continue to be so for a period of at least three years after price cap regulation is elected. In return, a company electing price cap regulation ought to be able to rely on an absence of regulatory adjustment of rate components for a like period of time. While the statute does not directly address the subsidy issue, it does explicitly exempt a price regulated company from rate of return regulation. The legislation intends that a company electing price cap regulation should be challenged by the uncertainties of the market place, but that the challenge should be faced against a back drop of regulatory stability.

GTC submits that the Commission intends to review the earnings of GTC, using tools of the past, contrary to the law of the present and the intent of the Legislature. The Prehearing Officer's order should be reconsidered and reversed by the full Commission.

Respectfully submitted this 27th day of February, 1998,

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CERTIFICATE OF SERVICE
DOCKET NO. 970808-TL

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail or by hand delivery this 27th day of February, 1998 to the following:

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