ORIGINAL

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July 13, 1998

Via Hand Delivery

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

RE: Docket No. 971140-TP

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are an original and fifteen (15) copies of AT&T's Response to BellSouth's Motion for Reconsideration.

Copies of the foregoing are being served on all parties of record in accordance with the attached Certificate of Service. Thank you for your assistance in this matter.

Sincerely,

Tracy W. Hatch

Enclosures
TWH/kfj

ACK 1
AFA 1
APP
CAF
CMU
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EAG
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Motions of AT&T Communications of the Southern States, Inc., and MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. to compel BellSouth Telecommunications, Inc. to comply with Order No. PSC-96-1579-FOF-TP and to set non-recurring charges for combinations of network elements with BellSouth Telecommunications, Inc., pursuant to their agreement	)	Docket No. 971140-TP Filed: July 13, 1998

AT&T'S RESPONSE
TO BELLSOUTH'S MOTION FOR RECONSIDERATION

Now comes AT&T Communications of the Southern States, Inc., ("AT&T") pursuant to Rule 25-22.060, Florida Administrative Code, and files this Response to the motion for reconsideration of Order No. PSC-98-0810-FOF-TP (the "Order") filed in this docket by BellSouth Telecommunications, Inc. ("BellSouth") on June 29, 1998. In support, AT&T states as follows:

1. In its Motion, BellSouth raises three matters for reconsideration. First, it takes issue with the Commission's finding regarding collocation as a prerequisite for access to unbundled network elements ("UNEs"). Next, it seeks "reconsideration or clarification of . . . discussions surrounding" a holding with which it agrees. Finally, BellSouth argues with the Commission's interpretation of and reliance on testimony offered by a BellSouth witness. In none of these instances, however, does BellSouth meet the standard for reconsideration, because it fails to point to evidence that the Commission overlooked or failed to consider. AT&T will address each of BellSouth's contentions below.

Collocation and UNE Combinations

2. On page 53 of the Order, the Commission states: "We find that BellSouth's requirement that an ALEC must be collocated in order to receive access to UNEs is in conflict with the Eighth Circuit." Although BellSouth clearly disagrees with this statement, it fails to support its request for reconsideration with any discussion of information which it believes the Commission overlooked or failed to consider. Instead, after several pages of conclusory statements regarding its interpretation of the Eighth Circuit's order, BellSouth states that the Commission's decision is "in error." In other words, BellSouth simply disagrees with the Commission's finding. BellSouth failed to bring to the Commission's attention a single point which it overlooked or failed to consider when it rendered its Order. This portion of BellSouth's motion fails to meet the standard for reconsideration found in Diamond Cab Co. of Miami v. King, 146 So.2d 889 (Fla. 1962) and therefore must be rejected.

3. BellSouth's witness, Alphonso Varner, agreed that the Eighth Circuit held that "nothing in [subsection 251(c)(3) of the Telecommunications Act] requires a competing carrier to own or control some portion of a telecommunications network before being able to purchase unbundled network elements." (Tr. 522) He also admitted that the Eighth Circuit "rejected BellSouth's argument that CLECs must provide [their] own facilities in conjunction with the use of UNEs to obtain UNEs at UNE prices." (Tr. 523) Not only does BellSouth's argument on reconsideration fly in the face of Mr. Varner's testimony and the plain language of the Eighth Circuit's order, but it also fails to raise information which the Commission overlooked or failed to consider. The

Commission correctly characterized and implemented the Eighth Circuit order when it rejected BellSouth's anticompetitive policy of requiring competitors to engage in collocation in order to obtain UNEs at cost-based prices. No reconsideration is appropriate.

Issue 5 Discussion and Holding

4. Next, BellSouth takes issue with several statements in the Order, on the grounds that such statements are inconsistent with the Commission's holding. BellSouth, however, has manufactured any such inconsistency by taking the Commission's statements out of context and mischaracterizing them.

5. The portion of the holding to which BellSouth refers is found on page 33 of the Order, wherein the Commission describes its decision as to the applicability of prices found in the AT&T-BellSouth interconnection agreement:

> The issue presented is whether the AT&T-BellSouth interconnection agreement provides a pricing standard for combinations of unbundled network elements. As set forth in this part, we conclude that the agreement provides a pricing standard for combinations of network elements in existence that do not recreate a BellSouth retail service, but requires the parties to negotiate prices for those combinations of network elements not already in existence and for those that recreate a BellSouth retail service, whether in existence or not.

6. The discussion which BellSouth believes to be inconsistent is found on page 44 of the Order. A review of the language, in context, reveals that there is no inconsistency with the Commission's holding. Instead, the Commission clearly identifies its holding as an exception to the general holding:

> Thus, we find that the prices set forth in Part IV of AT&T's agreement with BellSouth are limited in applicability to

> unbundled network elements when ordered individually, with one exception, which we discuss immediately below.
>
> * * *
>
> Having found that the prices in Part IV apply generally only to individually ordered UNEs, we find as an exception that the agreement provides a pricing standard for combinations of network elements already in existence that do not recreate an existing BellSouth retail service. We are persuaded by witness Falcone's testimony that an existing customer, for which an assembled loop and switch port is in place, can be migrated from BellSouth to AT&T electronically. Indeed, Section 4.5 of Attachment 4 of the AT&T – BellSouth agreement provides that BellSouth shall not disconnect assembled network elements, but shall provide them to AT&T interconnected and functional without any disconnection or disruption of functionality. Therefore, for network element combinations that do not recreate an existing BellSouth retail service and that exist at the time of AT&T's order, we find, as an exception, that the price AT&T shall pay is the sum of the prices for the component elements shown in Table 1 of Part IV. For the specific case of migration of an existing BellSouth customer to AT&T, the price AT&T shall pay is the sum of the prices for the loop and switch port. This exception is sustainable since the elements are already assembled and cannot be disassembled. BellSouth will not incur a cost for assembling or reassembling them, or any other combining related cost.

Order at 44, 45, emphasis added. The Order clearly identified the migration pricing as an exception to its holding, so it cannot be inconsistent as argued by BellSouth. BellSouth further mischaracterizes the Order to argue that it will be forced to provide "the entire existing service" for the price of a loop and port when it migrates customers from BellSouth to AT&T. The true import of BellSouth's argument is that the Commission erred in its determination that a loop – port combination does not recreate an existing retail service. The Commission firmly should reject this backhanded attempt to obtain reconsideration.

7. As noted by BellSouth, the Commission specifically held that a loop and switch port are not sufficient to recreate a retail service (Order at 59), and also stated that "[a] new market entrant needs more than a loop and the local switching element to provide local service to an end user." It is clear that the Commission understood that new entrants may obtain from BellSouth or provide for themselves network elements in addition to the loop and port. The portion of the Order cited by BellSouth simply does not stand for the proposition imagined by BellSouth.

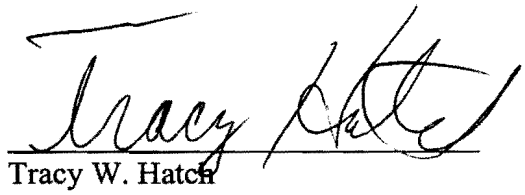
Statement by BellSouth Witness Varner

8. Finally, BellSouth argues that a statement attributed to Alphonso Varner should not be taken as authority for the proposition that BellSouth "voluntarily agreed to combine UNES for AT&T." (Motion at 10) The portions of the Order and staff recommendation cited by BellSouth, however, refer to the MCI–BellSouth interconnection agreement. Although AT&T does not agree that the Order requires correction, the reference to AT&T appears to be a typographical error. A similar provision in AT&T's agreement was voluntary: BellSouth and AT&T agreed to include this language in the agreement in accordance with the then-governing FCC rules. BellSouth did not contest or attempt to litigate this language, nor did it raise the issue on reconsideration.

Conclusion

BellSouth has not met the standard for reconsideration because it has not pointed to evidence that the Commission overlooked or failed to consider. Wherefore, AT&T requests that the Commission deny BellSouth's Motion for Reconsideration for the reasons stated herein.

Respectfully submitted,



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ATTORNEY FOR AT&T
COMMUNICATIONS OF THE
SOUTHERN STATES, INC.

CERTIFICATE OF SERVICE
Docket No. 971140-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 13th day of July, 1998 to the following:

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