State of Florida

REVISED

Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: OCTOBER 26, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF COMPETITIVE SERVICES (OLLILA, AUDU, BARRETT, FULWOOD, HINTON)
DIVISION OF LEGAL SERVICES (CALDWELL)

RE: DOCKET NO. 990750-TP - PETITION BY ITC^DELTACOM COMMUNICATIONS, INC. D/B/A ITC^DELTACOM FOR ARBITRATION OF CERTAIN UNRESOLVED ISSUES IN INTERCONNECTION NEGOTIATIONS BETWEEN ITC^DELTACOM AND BELLSOUTH TELECOMMUNICATIONS, INC.

AGENDA: 11/07/00 - REGULAR AGENDA - POST HEARING DECISION - MOTION FOR RECONSIDERATION - PARTICIPATION IS LIMITED TO *COMMISSIONER AND STAFF*

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\990750E.RCM

CASE BACKGROUND

On June 11, 1999, ITC^DELTACOM Communications, Inc., d/b/a ITC^DELTACOM (DELTACOM) filed a Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 (Act)[1] seeking arbitration of certain unresolved issues in the interconnection negotiations between DELTACOM and BellSouth Telecommunications, Inc. (BellSouth). On July 6, 1999, BellSouth filed its response.

An administrative hearing was held on October 27-29, 1999, on the issues. Subsequent to the hearing, the parties filed a Joint Motion of the Parties Notifying the Commission of Recently Resolved

[1] 47 U.S.C. 252(b)

Issues, by which additional issues were removed from this arbitration proceeding. On March 15, 2000, the final order on arbitration, Order No. PSC-00-0537-FOF-TP, (Final Order) was issued.

On March 30, 2000, BellSouth filed a Motion for Reconsideration of the Final Order. On April 11, 2000, DELTACOM filed its Response to BellSouth's Motion for Reconsideration. On April 24, 2000, BellSouth filed a Motion for Leave to File a Reply Memorandum. DELTACOM filed a Motion to Strike BellSouth's Motion for Leave to File Reply Memorandum and its Response to BellSouth's Reply Memorandum on May 8, 2000. Finally, on May 16, 2000, BellSouth filed a Response to DELTACOM's Motion to Strike Motion for Leave to File Reply Memorandum. This recommendation addresses these motions.

After the recommendation was filed, a commissioner requested the item be deferred to allow the parties time to negotiate a settlement. On October 24, 2000, BellSouth filed a Notice of Partial Withdrawal of Motion for Reconsideration.

JURISDICTION

Part II of the Federal Telecommunications Act of 1996 (Act) sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act regards interconnection with the incumbent local exchange carrier and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements arrived through compulsory arbitration. Specifically, Section 252(b)(1) states:

> (1) Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(C) states that the State commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. This section requires this Commission to conclude the resolution of any unresolved issues not later than nine months after the date on

which the local exchange carrier received the request under this section.

In addition, Section (e)(5) states:

> Commission to act if state will not act.--If a State commission fails to act to carry out is responsibility under this section in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant BellSouth Telecommunications, Inc.'s Motion for Leave to file Reply Memorandum?

RECOMMENDATION: No. Staff recommends that the Commission deny BellSouth's Motion for Leave to file a Reply Memorandum. If the Commission denies the Motion to File a Reply Memorandum, DELTACOM's Motion to Strike will be moot. **(Caldwell)**

STAFF ANALYSIS: In Support of its Motion for Leave to File Reply Memorandum, BellSouth states that the three issues upon which it sought reconsideration are of critical importance and could have an impact well beyond the interconnection agreement between DELTACOM and BellSouth. (Motion for Leave to File at 1) BellSouth argues that before resolving such critical issues that could impact the entire local market in Florida, the Commission should have the benefit of all relevant information that bears on such issues, including the information set forth in its proposed Reply Memorandum. (Motion for Leave to File at 1)

Although DELTACOM filed a Response to BellSouth's Proposed Reply Memorandum, DELTACOM also filed a Motion to Strike BellSouth's Motion for Leave to File Reply Memorandum (Motion to Strike). DELTACOM argues that BellSouth's Motion for Leave to File

a Reply Memorandum is an abuse of the process and attempts to reargue issues already litigated in the case. (Response at 1) DELTACOM asserts that the Commission's rules on procedure do not provide for additional opportunities to argue positions beyond the filing for reconsideration. (Response at 1 -2) Therefore, DELTACOM requests that BellSouth's Motion for Leave to file Reply Memorandum and the Reply Memorandum be stricken.

The Uniform Rules and Commission rules do not provide for a Reply to a Response to a Motion for Reconsideration. Therefore, the Motion for Leave to File a Reply Memorandum should be denied. If staff's recommendation on this issue is granted, DELTACOM's Motion to Strike will be rendered moot.

ISSUE 2: Should the Commission grant BellSouth's Motion for Reconsideration of Order No. PSC-00-0537-FOF-TP?

RECOMMENDATION: Staff recommends that the Commission deny in part and grant in part BellSouth's Motion for Reconsideration. Staff recommends that the Commission acknowledge BellSouth's withdrawal of the portion of its Motion for Reconsideration relating to the reciprocal compensation rate issue. ~~Staff recommends that the Commission deny BellSouth's request to reconsider its finding that the rate for reciprocal compensation should be $0.009.~~ Staff further recommends that the Commission delete the statement that BellSouth failed to provision unbundled network elements in such a manner as to provide ITC^DELTACOM Communications, Inc. with a meaningful opportunity to compete with BellSouth from the Order to correct a scrivener's error. Finally, staff recommends that the Commission grant BellSouth's request for reconsideration of the application fee for collocation and set the fee at $3,248.00. **(Caldwell)**

STAFF ANALYSIS: In its Motion for Reconsideration, BellSouth raises three issues. First, BellSouth argues that the Commission should reconsider the finding that the parties should pay reciprocal compensation at a rate of $.009 per minute of use. Second, BellSouth argues that the Commission should reconsider the finding that BellSouth failed to provision unbundled network elements in such a manner so as to provide DELTACOM "with a meaningful opportunity to compete with BellSouth." Finally, BellSouth argues that the Commission should reconsider the finding

that the application fee for cageless physical collocation should be $1,279.

RECIPROCAL COMPENSATION

In its Motion, BellSouth states that the issue of reciprocal compensation has been resolved between the two parties and withdraws its Motion for Reconsideration on that issue.

~~**BELLSOUTH**: BellSouth asks the Commission to reconsider its determination that the reciprocal compensation rate should be $.009 per minute of use. BellSouth argues that the Commission is required to adhere to the standards set forth in the Act and applicable FCC rules. BellSouth asserts that because the reciprocal compensation rate of $.009 does not comply with statutory standards or FCC rules, reconsideration is warranted.[2] (Motion at 2)~~

~~In support of its position, BellSouth asserts that in an arbitration, the Act requires a state commission to establish "just and reasonable" terms for reciprocal compensation, which means that rates must "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination" of local traffic and that such rates be determined "on the basis of a reasonable approximation of the additional cost of terminating such calls."[3] (Motion at 2) BellSouth argues that in approximating the costs of the transport and termination of local traffic, the FCC rules require a state commission to apply the FCC's forward looking economic cost-based pricing methodology. (Motion at 2-3)~~

~~BellSouth argues that the Commission made no finding that the reciprocal compensation rate of $.009 was "just and reasonable," but rather established the rate because it was contained in the parties' expired interconnection agreement and because there was "insufficient record evidence to conclude that a rate other than the current rate is appropriate." (Motion at 3) BellSouth argues that the fact that the $.009 rate was contained in the parties' expired interconnection agreement does not justify adopting the same rate in this arbitration. (Motion at 3) Moreover, BellSouth argues that the Commission did not determine that the rate of $.009~~

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[2] See Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962) Reconsideration is warranted when a decision either overlooks or fails to consider certain law.

[3] See 47 U.S.C. § 252(d)(2)(A).

per minute of use complied with the Act or applicable FCC rules. BellSouth asserts that the standards for approval of a negotiated agreement (i.e., "not inconsistent with the public interest, convenience, and necessity[4]") are different from the standards for an arbitrated agreement[5]. (Motion at 3)

BellSouth further argues that there was sufficient evidence in the record to conclude that a rate other than the current reciprocal compensation rate of $.009 is appropriate. (Motion at 3) BellSouth cites Order No. PSC-96-1579-FOF-TP, which established the forward-looking economic cost of reciprocal compensation. (Motion at 4) While acknowledging its mistake in incorrectly citing the rates set in that order, BellSouth asserts that throughout the procedure, its position has always been that Commission-approved rates should govern. BellSouth suggests the Commission reconsider the issue by ordering the parties to incorporate the reciprocal compensation rates approved by this Commission in Order No. PSC-96-1579-FOF-TP. In support of its suggestion, BellSouth states that the Commission has already determined that these reciprocal compensation rates comply with applicable law. (Motion at 4)

BellSouth argues in the alternative, that the Commission should reconsider its decision by making clear that the rate is an interim rate subject to true-up once the Commission establishes new rates in *Docket No. 990649 TP*[6], where it is anticipated that new cost-based rates for end office and tandem switching and common transport will be established. If the rate is not made an interim rate subject to true-up, BellSouth warns that every alternative local exchange company (ALEC) in Florida will seek to adopt that rate, rendering moot whatever cost-based reciprocal compensation rates the Commission may establish in *Docket No. 990649-TP*. (Motion at 5)

Further, BellSouth argues that approving the $.009 rate would unjustly enrich the ALEC industry at the expense of BellSouth. BellSouth projects that it may end up paying ALECs approximately $130 million in reciprocal compensation for the year 2000 alone. Such a result, BellSouth argues, would be wholly inequitable and further warrants reconsideration by this Commission. (Motion at 6)

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[4] See 47 U.S.C. §252(e)(2)(A).

[5] See 47 U.S.C. §252(d)(2)(A).

[6] Investigation into the pricing of unbundled network elements.

ITC^DELTACOM. In its response, DELTACOM first argues generally the standard for reconsideration. (Response at 1) DELTACOM states that most of the cases cited in BellSouth's motion do not address the standard for granting a motion for reconsideration. Rather, DELTACOM contends, these cases concern judicial review of agency rules, agency orders, and circuit court orders. (Response at 2)

DELTACOM also disagrees with BellSouth's arguments that the Commission should reverse itself regarding the rate for reciprocal compensation. (Response at 2 - 3) First, DELTACOM argues that the Commission's reliance upon the parties' current interconnection agreement for the reciprocal compensation rate was not in error. DELTACOM argues that BellSouth's distinction between a negotiated interconnection agreement and an arbitrated agreement is irrelevant with regard to the Commission's decision in this case. DELTACOM argues that because the Commission previously approved the current interconnection agreement between the parties as nondiscriminatory and consistent with the public interest, convenience, and necessity, the Commission may rely upon its findings, and thus, the provisions of that agreement which include the reciprocal compensation rate. In addition, DELTACOM notes that its witness Rozycki discussed and supported the rate from the previous agreement in his testimony[7]. (Response at 3)

DELTACOM disagrees with BellSouth's assertion that the Commission should have utilized the elemental UNE rates approved in Order No. PSC-96-1579-FOF-TP. DELTACOM notes that the Commission did not accept the position of either BellSouth or DELTACOM with regard to the rate for inter-carrier compensation, but rather found that "there is insufficient record evidence to conclude that a rate other than the current rate is appropriate." (See Final Order at 37.) DELTACOM notes that BellSouth did not submit a cost study covering inter-carrier compensation in this case, and argues that the Commission was not required to adopt a new rate without sufficient evidence. DELTACOM concludes that the Commission appropriately applied its independent judgment and exercised its discretion to rely on its previous determination. (Response at 3)

DELTACOM contends that subsequent to the Commission's decision, the U.S. Court of Appeals for the D.C. Circuit vacated the FCC's decision regarding inter-carrier compensation for ISP

[7] See Hearing Transcripts of October 27, 1999, pp. 118-119.

~~bound traffic[8]. As such, DELTACOM asserts that the FCC decision that formed a basis for BellSouth's arguments was vacated. DELTACOM further notes that the D.C. opinion is supportive of the Commission's decision and DELTACOM's positions. (Response at 4)~~

~~Finally, DELTACOM suggests that BellSouth's proposed alternative, to set interim rates subject to true-up, should be rejected for two reasons. First, DELTACOM argues that it is not clear what the result of the UNE pricing docket will be with regard to rates for inter-carrier compensation. Second, DELTACOM claims the parties need certainty on a going forward basis regarding the rate for inter-carrier compensation. DELTACOM argues that a true-up does not provide that certainty. DELTACOM concludes that the $.009 rate is supported by the evidence and should be incorporated in the agreement. (Response at 5)~~

RECOMMENDATION

Staff recommends that the Commission acknowledge BellSouth's withdrawal of the portion of its Motion for Reconsideration relating to the reciprocal compensation rate issue.

~~The proper standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the 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 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. 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. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).~~

~~Staff believes that BellSouth's arguments that the Commission did not determine that the rate it ordered complied with the Act or applicable FCC rules are unfounded. To the contrary, the Order provides:~~

~~[8] See Bell Atl. Tel. Cos. v. Federal Communications Comm'n, 2000 WL 273383 (D.C. Cir. Mar 24, 2000).~~

> We have conducted these proceedings pursuant to the directives and criteria of Sections 251 and 252 of the Act. We believe that our decisions are consistent with the terms of Section 251, the provisions of the FCC's implementing Rules that have not been vacated, and the applicable provisions of Chapter 364, Florida Statutes. (Order at 81)

Moreover, BellSouth appears to have overlooked the Commission's discussion and finding on the prior issue that it was reasonable for the parties continue to operate under the terms of their current interconnection agreement regarding reciprocal compensation. (See Order at 34) Immediately following the Commission's finding on this issue, the Order provides that "we believe that based on our earlier finding, we could simply order the current rate." (Order at 34) Staff believes that these findings meet the necessary requisites of the Act and FCC rules. BellSouth has failed to show otherwise; therefore, staff believes that BellSouth's Motion for Reconsideration should be denied.

In addition, the record did not provide the Commission with any evidence upon which it could rely, except for the $0.009 rate from the previous agreement. The Order discusses the evidence put forth by BellSouth and notes that the witness "mistakenly referred to the Order he cited." (Order at 35) The Order does, however, identify the correct order (No. PSC-96-1579-FOF-TP) from which the BellSouth witness quotes. Moreover, the Order further notes that BellSouth proposed different rates than those approved in Order No. PSC-96-1579-FOF-TP. (Order at 35) On the other hand, the rate proposed by DELTACOM's witness was not supported by any rationale and it appeared that he merely took the current rate and divided it in half. (Order at 35) Therefore, given the alternatives of mistaken information and unsubstantiated information, the Commission correctly set the rate based upon what little competent evidence there was in the record, and in this case, the only supportable rate was the rate from the prior agreement. Therefore, staff believes that BellSouth has not shown that the Commission has made a mistake of fact or law on this point.

Finally, BellSouth proposes that, in the alternative, the Commission should make clear that the rate is an interim rate subject to true-up once the Commission establishes new rates in Docket No. 990649-TP. Staff does not believe that such a finding is appropriate because there is no basis in the record for the Commission to make the rates interim rates. In addition, the Order provides "any decision this Commission makes presumably will be

~~preempted if it is not consistent with the FCC's final rule." (Order at 34) Therefore, staff believes that it is not necessary for the Commission to establish rates as interim nor provide for a true-up provision.~~

MEANINGFUL OPPORTUNITY TO COMPETE

BELLSOUTH: In its Motion, BellSouth argues that the Commission should reconsider its finding that DELTACOM has been denied a meaningful opportunity to compete against BellSouth as the Commission overlooked the evidence in the record and the decision is inconsistent with other findings of the Commission. BellSouth argues that the Commission should reconsider this finding because it lacks the requisite foundation of competent and substantial evidence. (Motion at 6) BellSouth argues that there is no record evidence upon which the Commission could find that DELTACOM has been denied a meaningful opportunity to compete against BellSouth. BellSouth asserts that the only evidence presented by DELTACOM was limited and therefore, the Commission could not possibly draw any such conclusion. Finally, BellSouth asserts that this finding is impossible to reconcile with other findings in the Final Order. (Motion at 7)

DELTACOM: In its response, DELTACOM argues that because BellSouth has not been aggrieved by the finding, this part of its motion should be denied on that basis alone. (Response at 4) However, DELTACOM further argues that BellSouth is incorrect when it argues that the Commission's finding lacks the requisite foundation of competent and substantial evidence. DELTACOM notes general and specific testimony of its witness Hyde with regard to specific incidents of BellSouth's failure to provide UNEs at parity and modem degradation resulting from IDLC conversions. DELTACOM argues that the Commission's conclusion was supported by competent evidence and reconsideration of the same evidence is unnecessary. (Response at 5)

RECOMMENDATION

The proper standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the 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 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. 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. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

Staff believes that the Commission need not reconsider its decision on this issue, but should correct the scrivener's error that incorrectly included this language. At the January 11, 2000, Special Agenda Conference, a commissioner stated the conclusion in the staff analysis that BellSouth had not provided DELTACOM with a meaningful opportunity to compete, was not in staff's actual recommendation and was confusing. (TR at 43) Staff agreed to take the sentence out completely. (TR at 45) Based upon the transcript of the Commission's decision, the sentence was to be removed from the Order. Due to a scrivener's error, the sentence was not removed. Therefore, staff recommends that BellSouth's Motion for Reconsideration be denied and Order No. PSC-00-0537-FOF-TP, page 16, be corrected to delete the incorrect language. The first paragraph currently states:

> We agree that the ALECs will be denied "a meaningful opportunity to compete" with BellSouth if the quality of access to a UNE and the UNE itself are lower than BellSouth provides to itself.

Staff recommends that the language should be deleted. The third paragraph currently reads:

> Upon consideration, based on the testimony in the record and provisions of the Act and FCC Order 96-325, the quality of the access to the UNEs or the UNEs that BellSouth has provisioned in this proceeding do not provide ITC^DELTACOM with a meaningful opportunity to compete with BellSouth.

Staff recommends that this language should also be deleted. The first sentence of the third full paragraph should correctly read:

> Upon consideration, we find that for competition to flourish in the local market, customers must come to rely on the ALECs' service just as they have come to depend on

the timeliness and quality of the ILECs' services.

CHARGES FOR CAGELESS AND SHARED COLLOCATION - Application Fee/Planning Fee

BELLSOUTH: BellSouth argues that the finding that the cageless physical collocation application fee should be $1,279 is arbitrary, not supported by substantial evidence, and is contrary to existing law. BellSouth argues that while DELTACOM proposed that the cageless physical collocation application fee should be set at the application fee established by the Commission for virtual collocation, it proposed that the Commission-approved application fee for physical collocation should apply to cageless collocation as well. BellSouth stated that the Commission did not accept either of these proposals, but instead made a series of adjustments to the approved physical collocation application fee to arrive at a rate of $1,279. (Motion at 9)

BellSouth asserts that while the Commission noted that the calculation was derived based upon testimony and evidence presented in this case (Final Order at 81), the Final Order never identifies the testimony and evidence relied upon. BellSouth argues that it is not aware of any testimony or evidence in the record that would justify the adjustments to the work times assumed by the Commission in the calculation, since neither party advocated any such adjustments. (Motion at 10)

BellSouth suggests that the Commission's apparent reliance on the FCC's Advanced Services Order, that requires ILECs to make space availability information accessible to LECs who may want to collocate, even if correct, does not reduce the work time involved in processing an application for physical collocation, whether cageless or caged. BellSouth adds that two days after the Final Order was issued, the United States Court of Appeals for the District of Columbia Circuit reversed and vacated certain portions of the FCC's Advanced Services Order[9]. BellSouth states that certain portions of paragraph 42 were vacated. In particular, BellSouth asserts it is the portions of Paragraph 42 that requires incumbent local exchange carriers to "give competitors the option of collocating equipment in any unused space within the incumbent's premises, to the extent technically feasible, and not require

[9] See GTE Service Corp. v. FCC, 2000 US App. LEXIS 4111 (D.C. Cir. March 17, 2000).

competitors to collocate in a room or isolated space separate from the incumbent's own equipment" that were vacated. (Motion at 10) BellSouth argues that this language was relied upon by DELTACOM witness Don Wood in support of DELTACOM's view that cageless physical collocation resembles virtual collocation[10]. (Motion at 10) BellSouth concludes that the Court of Appeals' decision eliminates the rationale ostensibly relied upon by the Commission for treating the price and rate structure for cageless physical collocation different from the prices and rate structure for caged physical collocation. (Motion at 11)

DELTACOM: In its Response, DELTACOM argues that the facts belie the claim that the $1,279 application fee for cageless collocation established by the Commission was arbitrary. DELTACOM argues that the Commission agreed with its witness Wood's testimony that the labor costs involved in processing an application will be lessened by the FCC's requirement in its Advanced Services Order. (Response at 6) DELTACOM asserts that BellSouth's argument based on the FCC's Advanced Services Order was vacated is without merit. DELTACOM asserts that because the Commission relied on witness Wood's testimony and paragraph 40 of the Advanced Services Order, which was left undisturbed by the D.C. Circuit's decision, that the Commission's decision was reasonable and supported by witness Wood's expert testimony. (Response at 6 - 7)

RECOMMENDATION

Upon further review of the record, staff acknowledges that the record does not support a specific derivation of the application fee that was recommended to the Commission. While staff agrees in theory with DELTACOM's witness Wood that the application fee for cageless collocation should be less, there is no record evidence to support the fee established. Therefore, staff recommends that BellSouth's Motion for Reconsideration of the Commission's finding that the cageless physical collocation application fee should be $1,279 be granted. Staff further recommends that the Commission set the application fee at $3,248.00 which was approved in Order No. PSC-98-0604-FOF-TP[11], at page 166. This rate is reasonable for

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[10] See Final Order at 75.

[11] Dockets No. 960833-TP - Petition by AT&T Communications of the Southern States, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act 1996; 960757-TP - Petition by

this proceeding and supported by the record because Order No. PSC-98-0604-FOF-TP was on the Official Recognition List of this proceeding. This Commission has adopted other rates from that Order for this proceeding.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: No, the parties should be required to submit a signed agreement that complies with the Commission's decisions in this docket for approval within 20 days of issuance of the Commission's Order. This docket should remain open pending Commission approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996. **(Caldwell)**

STAFF ANALYSIS: The parties should be required to submit a signed agreement that complies with the Commission's decisions in this docket for approval within 30 days of issuance of the Commission's Order. This docket should remain open pending Commission approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.

Metropolitan Fiber Systems of Florida, Inc. for arbitration with BellSouth Telecommunications Inc. concerning interconnection rates, terms, and conditions, pursuant to the Federal Telecommunications Act of 1996; and 960846-TP - Petition by MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996.