

JAMES MEZA III
Attorney

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5561

June 18, 2001

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

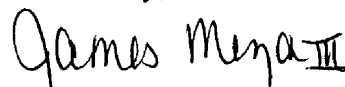
Re: Docket No. 990649-TP (UNE Docket)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Memorandum in Opposition to Motion for Reconsideration and Clarification, which we ask that you file in the captioned docket.

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

Sincerely,


James Meza III (KA)

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

DOCUMENT NUMBER-DATE

07554 JUN 18 01

FPSC-RECORDS/REPORTING

**CERTIFICATE OF SERVICE
Docket No. 990649-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
U.S. Mail this 18th day of June, 2001 to the following:

Wayne D. Knight
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6216
Fax. No. (850) 413-6217
wknight@mail.psc.state.fl.us

Joseph A. McGlothlin (+)
Vicki Gordon Kaufman (+)
McWhirter, Reeves, McGlothlin,
Davidson, Decker, Kaufman, Arnold,
& Steen, P.A.
117 South Gadsden Street
Tallahassee, FL 32301
Tel. No. (850) 222-2525
Fax. No. (850) 222-5606
Attys. For FCCA
*Atty. for BlueStar
jmcglothlin@mac-law.com

Karen Jusevitch
AT&T Communications
101 North Monroe Street
Suite 700
Tallahassee, FL 32301
Tel. No. (850) 425-6313
Fax. No. (850) 425-6361
kjusevit@att.com

Jim Lamoureux (+) (*)
AT&T Communications
1200 Peachtree Street, N.E.
Room 8068
Atlanta, Georgia 30309
Tel. No. (404) 810-4196
Fax. No. (404) 877-7648
jlamoureux@att.com

Richard D. Melson (+)
Gabriel E. Nieto
Hopping Green Sams & Smith, P.A.
Post Office 6526
123 South Calhoun Street
Tallahassee, FL 32314
Tel. No. (850) 222-7500
Fax. No. (850) 224-8551
Atty. For MCI
Atty. for Rhythms Link
rmelson@hgss.com

Dulaney L. O'Roark
MCI Telecommunications Corporation
6 Concourse Parkway
Suite 600
Atlanta, GA 30328
Tel. No. (770) 284-5498
Fax. No. (770) 284-5488
De.OROark@mci.com

Floyd Self
Messer, Caparello & Self
Post Office Drawer 1876
215 South Monroe Street, Suite 701
Tallahassee, FL 32302-1876
Tel. No. (850) 222-0720
Fax. No. (850) 224-4359
Atty. for AT&T
fself@lawfla.com

Terry Monroe
Vice President, State Affairs
Competitive Telecomm. Assoc.
1900 M Street, N.W.
Suite 800
Washington, D.C. 20036
Tel. No. (202) 296-6650
Fax. No. (202) 296-7585
tmonroe@comptel.org

Jeremy Marcus (+)
Kristin Smith
Blumenfeld & Cohen
1625 Massachusetts Ave., Ste. 300
Washington, D.C. 20036
Tel. No. (202) 955-6300
Fax. No. (202) 955-6460
Represents Rhythms Links, Inc.
jeremy@technologylaw.com
kristin@technologylaw.com

Kimberly Caswell (+)
GTE Florida Incorporated
One Tampa City Center
201 North Franklin Street
Tampa, Florida 33602
Tel. No. (813) 483-2617
Fax. No. (813) 204-8870
kimberly.caswell@verizon.com

Karen M. Camechis (+)
Pennington, Moore, Wilkinson &
Dunbar, P.A.
215 South Monroe Street, 2nd Flr.
Tallahassee, Florida 32301
Tel. No. (850) 222-3533
Fax. No. (850) 222-2126
Represents Time Warner
Karen@penningtonlawfirm.com

Carolyn Marek (+)
Vice President of Regulatory Affairs
Southeast Region
Time Warner Communications
233 Bramerton Court
Franklin, Tennessee 37069
Tel. No. (615) 376-6404
Fax. No. (615) 376-6405
Carolyn.Marek@twtelecom.com

Mark E. Buechele, Esquire
Supra Telecom
1311 Executive Center Drive
Koger Center - Ellis Building
Suite 200
Tallahassee, FL 32301-5027
Tel. No. (850) 402-0510
Fax. No. (850) 402-0522
mbuechele@stis.com

Donna Canzano McNulty, Esq. (+)(*)
MCI WorldCom, Inc.
325 John Knox Road
The Atrium Bldg., Suite 105
Tallahassee, FL 32303
Tel. No. (850) 422-1254
Fax. No. (850) 422-2586
donna.mcnulty@wcom.com

Michael A. Gross (+)
VP Reg. Affairs & Reg. Counsel
Florida Cable Telecomm. Assoc.
246 East 6th Avenue
Tallahassee, FL 32303
Tel. No. (850) 681-1990
Fax. No. (850) 681-9676
mgross@fcta.com

Florida Public Telecomm. Assoc.
Angela Green, General Counsel
125 South Gadsden Street
#200
Tallahassee, FL 32301-1525
Tel. No. (850) 222-5050
Fax. No. (850) 222-1355
abgreen@nettally.com

Intermedia Communications, Inc.
Scott Sapperstein (+)
Sr. Policy Counsel
One Intermedia Way
MCFLT-HQ3
Tampa, FL 33647
Tel. No. (813) 829-4093
Fax. No. (813) 829-4923
SASapperstein@intermedia.com

Charles J. Rehwinkel (+)
1313 Blair Stone Road
Tallahassee, FL 32301
Tel. No. (850) 847-0244
Fax. No. (850) 878-0777
Counsel for Sprint
charles.j.rehwinkel@mail.sprint.com

John P. Fons (+)
Ausley & McMullen
227 South Calhoun Street
Tallahassee, FL 32301
Tel. No. (850) 224-9115
Fax. No. (850) 222-7560
Counsel for Sprint
jfons@ausley.com

Brian Sulmonetti
MCI WorldCom, Inc.
6 Concourse Parkway
Suite 3200
Atlanta, GA 30328
Tel. No. (770) 284-5500
Brian.Sulmonetti@wcom.com

Catherine F. Boone, Esq. (+)
Regional Counsel
Covad Communications Company
10 Glenlake Parkway
Suite 650
Atlanta, GA 30328-3495
Tel. No. (678) 579-8388
Fax. No. (678) 320-9433
cboone@covad.com

Charles J. Beck
Deputy Public Counsel
Office of the Public Counsel
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400
Tel. No. (850) 488-9330
Fax. No. (850) 488-4491
beck.charles@leg.state.fl.us

Eric J. Branfman (+)
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116
Tel. No. (202) 424-7500
Fax. No. (202) 424-7645
Represents Florida Digital Network, Inc.
ejbranfman@swidlaw.com

John McLaughlin
KMC Telecom. Inc.
Suite 170
3025 Breckinridge Boulevard
Duluth, GA 30096
Tel. No. (770) 931-5260
Fax. No. (770) 638-6796
jmclau@kmctelecom.com

Bettye Willis (+)
ALLTEL Communications
Services, Inc.
One Allied Drive
Little Rock, AR 72203-2177
bettye.j.willis@alltel.com

J. Jeffrey Wahlen (+)
Ausley & McMullen
227 South Calhoun Street
Tallahassee, FL 32301
Tel. No. (850) 425-5471
Fax. No. (850) 222-7560
Atty. for ALLTEL
jwahlen@ausley.com

Stephen P. Bowen
Blumenfeld & Cohen
4 Embarcadero Center
Suite 1170
San Francisco, CA 94111
Tel. No. (415) 394-7500
Fax. No. (415) 394-7505
stevebowen@earthlink.net

Norton Cutler (+)
General Counsel
BlueStar Networks, Inc.
5 Corporate Centre
801 Crescent Centre Drive
Suite 600
Franklin, Tennessee 37067
Tel. No. (615) 778-7316
norton.cutler@bluestar.com

Charles J. Pellegrini
Wiggins & Villacorta, P.A.
2145 Delta Boulevard, Suite 200
Tallahassee, FL 32303
Represents Intermedia
cjpellegrini@nettally.com

George S. Ford (+)
Chief Economist
Z-Tel Communications, Inc.
601 South Harbour Island Blvd.
Tampa, FL 33602
Tel. No. (813) 233-4630
Fax. No. (813) 233-4620
gford@z-tel.com

Jonathan E. Canis
Michael B. Hazzard
Kelley Drye & Warren, LLP
1200 19th Street, NW, Fifth Floor
Washington, DC 20036
Tel. No. (202) 955-9600
Fax. No. (202) 955-9792
jcanis@kelleydrye.com
mhazzard@kelleydrye.com
Counsel for Z-Tel Communications, Inc.

Rodney L. Joyce
Shook, Hardy & Bacon, LLP
600 14th Street, N.W., Suite 800
Washington, D.C. 20005-2004
Tel. No. (202) 639-5602
Fax. No. (202) 783-4211
rjoyce@shb.com
Represents Network Access Solutions

h.colantonio@cais.com

Russell M. Blau
Thomas R. Lotterman (+)
Michael Sloan (+)
Robert Ridings (+)
Swidler Berlin Shereff Friedman
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007-5116
Tel. No. (202) 424-7755
Fax. No. (202) 424-7643
Attys. for Broadslate Networks, Inc.
Attys. for Cleartel Comm.
MCSloan@swidlaw.com
rdblau@swidlaw.com
rjridings@swidlaw.com
trlotterman@swidlaw.com


James Meza III (KA)

(+) Signed Protective Agreement

219337

John Spilman
Director Regulatory Affairs and
Industry Relations
Broadslate Networks, Inc.
675 Peter Jefferson Parkway
Suite 310
Charlottesville, VA 22911
Tel. No. (804) 220-7606
Fax. No. (804) 220-7701
john.spilman@broadslate.net

Gary Cohen (+)
Blumfeld & Cohen
1625 Massachusetts Ave., N.W.
Suite 320
Washington, D.C. 20036
Represents Rhythms Links, Inc.
gary@technologylaw.com

Hope G. Colantonio
Legal & Regulatory Manager
Cleartel Communications, Inc.
1255 22nd Street N.W., 6th Floor
Washington, D.C. 20037
Tel. No. (202) 715-1300

be “a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or the order.” Diamond Cab Co., 394 So. 2d at 891. Indeed, a motion for reconsideration should not be granted “based upon an arbitrary feeling that a mistake may have been made, but should be based on specific factual matter set forth in the record and susceptible to review.” Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

In its motion, the ALECs request that the Commission revisit its ruling on four issues: (1) the use of three cost models; (2) the appropriateness of using inputs from the USF docket; (3) shared cost allocation; and (4) drop routing. The ALECs offer no legitimate basis for the Commission to review its decision on these issues.

I. Use of Three Cost Models

The ALECs argue that the use of three scenarios in the BSTLM model was improper. As noted by the Commission in its Order, the ALECs’ witnesses argued at the hearing and in their testimony that “. . . the BSTLM should construct a single network that estimates the forward-looking costs of providing the underlying services using existing technology.” Order at 121 (emph. added). The ALECs are making this same argument in their Motion for Reconsideration but are now arguing that the Commission erred because it failed to consider FCC Rule 51.505(b) in rejecting their argument and finding that BellSouth’s use of three scenarios was reasonable.

Rule 51.505(b) according to the ALECs, requires that UNE rates “be set based on ‘the lowest cost network configuration’” that “takes into account ‘the

incumbent LEC's provision of other elements.” Motion at 3. The ALECs, except for Covad, however, failed to raise this argument in their brief or in their testimony.¹ It is well settled that it is inappropriate to raise new arguments in a motion for reconsideration. In re: Establish Nondiscriminatory Rates, Terms, and Conditions, Docket No. 950984-TP, Order No. PSC 96-1024-FOF-TP, Aug. 7, 1996, 1996 WL 470534 at *3 (“It is not appropriate, on reconsideration, to raise new arguments not mentioned earlier.”); In re: Southern States Utilities, Inc., Docket No. 950495-WS, Order No. PSC-96-0347-FOF-WS, Mar. 11, 1996, 1996 WL 116438 at *3 (“Reconsideration is not an opportunity to raise new arguments.”). Accordingly, the ALECs’ Motion for Reconsideration as to this issue should be denied because their Rule 51.505(b) argument is a new argument, not previously asserted.

Assuming arguendo that the ALECs previously argued that Rule 51.505(b) required the use only of the Combo scenario, it is clear that the Commission properly considered all applicable FCC rules in establishing UNE rates, which includes Rule 51.505(b). As stated by the ALECS in their motion, “[t]he Commission properly concluded that its decision on appropriate UNE rates ‘is bound by the FCC rules as they currently stand’ . . . and that the UNE rates must be set using the forward-looking cost standards authorized by . . . the FCC’s rules and orders implementing [Section 252(d)(1)] of the Act” Motion at 2 n.1 (citing Order at 26, 34). Indeed, regarding other issues, BellSouth and

¹ Unlike the other parties who raised this motion, Covad specifically cited to Rule 51.505 in support of its argument that the “network design assumptions should be based on a single

the ALECs cited to Rule 51.505(b) numerous times in their briefs and the Commission's Order cites to the Rule at least three times. There can be no question that even though the Commission did not cite to Rule 51.505(b) in reaching its decision, the Commission was aware of and properly considered all relevant FCC rules, including Rule 51.505(b) in finding that the use of three cost scenarios was reasonable. Accordingly, the ALECs' motion should be denied even if the ALECs previously raised the Rule 51.505(b) argument.

Likewise, assuming arguendo that the Commission had not considered Rule 51.505(b) in reaching its decision, the motion should still be denied because this modeling technique fully adheres to the principles outlined in that Rule. For instance, BellSouth considered the "total quantity of facilities" in each scenario – i.e., each scenario had the same overall line count. Thus, the use of three cost scenarios fulfilled the FCC's directive that "a reasonable projection of the sum of the total number of units" be considered. Moreover, this methodology is appropriate because BellSouth cannot anticipate the ultimate use for any particular loop. A loop delivering voice grade service today potentially can be utilized to provide digital service tomorrow.

Additionally, BellSouth does not possess any ALEC's marketing plans. Consequently, BellSouth cannot anticipate where ALEC customers will be located and what type of loop they will purchase. Any attempt to assign a loop type to a specific customer location would be an exercise doomed to futility. By

forward-looking network designed to support all UNEs." Covad Brief at 31.

assuming all customer locations are potential candidates for a particular unbundled loop, BellSouth has eliminated the arbitrary assignment process.

Further, contrary to the ALECs' argument, BellSouth's methodology does reflect the economies of scale and scope. In fact, the universe is larger in BellSouth's proposal as larger sized cables can be considered and efficient network configuration can be established. This results in lower costs. For these reasons, the Commission should deny the ALECs' motion as to this issue.

II. Appropriateness of Using Inputs from the USF Docket

The ALECs request in their motion that the Commission clarify its decision to refuse to use the inputs from the USF proceeding in Order No. PSC-99-0068-FOF-TP to establish UNE rates. In reaching this decision, the Commission specifically found that "inputs ordered in PSC-99-0068-FOF-TP were for a specific purpose and are not appropriate in this instance." Order at 241. Now, the ALECs want the Commission to state that its decision does not (1) imply that it is appropriate to use "different network designs or underlying cost information for UNE costing and USF purposes;" and (2) prohibit company specific data and network design information developed for UNE costing purposes from being used in future USF proceedings. Such a "clarification" is improper for the following reasons.

First, although no Commission rule authorizes motions for clarification, they are generally used when the Commission's intent is not readily apparent from the Order. In re: BellSouth Telecommunications, Inc., Docket No. 991854-TP, Order No. PSC-01-1015-FOF-TP, Apr. 24, 2001, 2001 WL 584259 at 8. In

this case, the Commission's intent is absolutely clear – the USF rates promulgated in Order No. PSC-99-0068-FOF-TP are not appropriate in this proceeding. Indeed, the subject of whether the USF rates should be used for UNEs was raised only by the Florida Competitive Carriers Association (“FCCA”) and only at the hearing. Order at 240. Neither the ALECs who filed this motion nor the FCCA raised this issue in their briefs. Thus, the Commission properly disposed of the only issue relating to the use of the USF inputs and no clarification is necessary.

Further, such a clarification would effectively result in the Commission establishing precedence for a future USF proceeding. Such a result is beyond the issue as presented to the Commission by the parties and this proceeding. If and when the Commission establishes future USF rates, it can, in that proceeding, determine if “company-specific data and network design information” developed in UNE costing purposes can be used. To reach this conclusion now is premature and beyond the scope of this proceeding.

III. Shared Cost Allocation

The ALECs argue that the Commission overlooked certain information in adopting BellSouth's “per-DS0” allocation methodology for shared investments instead of a “per pair” methodology. The ALECs base their argument on the FCC's First Report and Order and Section 364.01(4), Florida Statutes. They state that the definition overlooked the fact that items “which are truly shared costs have no causal linkage to any single service.” Motion at 8. The basis of the ALECs' argument is that “[w]hen applied to the allocation of shared costs . . .

[the] pro-competitive requirements of the FCC's rule and Chapter 364 require the Commission to 'give the nod' to allocating those costs in a way that minimizes any adverse impact on competition." Motion at 9.

As with their argument in Section I, this argument is a new argument raised for the first time in the Motion for Reconsideration. As a result, the Commission must deny the motion as to this issue because it is inappropriate to raise new arguments in such a motion. See Order No. PSC-96-1024-FOF-TP at *3; Order No. PSC-96-0347-FOF-WS at *3.

Additionally, assuming arguendo that the ALECs previously raised these arguments, as stated by the ALECs in their motion, the Commission properly considered all FCC rules in developing the appropriate UNE rates, which necessarily includes the First Report and Order. See Motion at 2 n.1 (citing Order at 26, 34). Further, it is disingenuous for the ALECs to argue that the Commission ignored its legislative mandate to promote competition in a docket whose primary purpose is to foster competition in the State of Florida. To the contrary, the Commission, after specifically weighing the potential competitive effect and based on the evidence in the record, found that "allocating shared investments based on DS0 equivalents is reasonable." Order at 134. Accordingly, assuming that the ALECs' arguments were previously asserted, the motion should be denied as to this issue because the ALECs point to no fact or law that the Commission overlooked or failed to consider.

IV. Drop Routing

Regarding drop routing, the ALECs appear to argue that the Commission failed to consider Rule 51.505(b) in accepting BellSouth's approach for drop routing, which "employed angle routing but implicitly assume[d] that some terminals are not in lot corners." Order at 135. As with the arguments made in Sections I and III, this argument is a new argument raised for the first time through a motion for reconsideration. In their testimony, the ALECs' witnesses testified primarily that the "BSTLM should always assume that the drop is placed at the corner of a customer's lot." (Tr. 2169). They did not address or even mention Rule 51.505(b) in their analysis of this issue. Furthermore, the ALECs did not specifically address the drop routing issue in their briefs.

Now, faced with an adverse result, the ALECs argue that Rule 51.505(b) "requires the use of the 'lowest cost network configuration' and that angular drop placement necessarily produces shorter drop distances than a rectilinear method, and thereby produces the lowest cost configuration." Motion at 10. This is factually inaccurate because BellSouth has adopted the angle drop approach. In addition, this new argument is improperly raised in a Motion for Reconsideration and therefore should be denied. See Order No. PSC-96-1024-FOF-TP; Order No. PSC-96-0347-FOF-WS.

Again, assuming arguendo that the ALECs previously raised this argument, a different conclusion would not be required because the Commission considered all relevant FCC rules, including Rule 51.505(b), in determining the appropriate UNE rates. See Motion at 2 n.1 (citing Order at 26, 34).

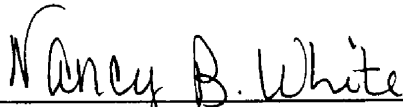
Additionally, there is no record evidence to support the ALECs' claim that terminals placed in lot corners would be more efficient. Consequently, assuming that the ALECs previously asserted their Rule 51.505(b) argument, the motion should still be denied.

CONCLUSION

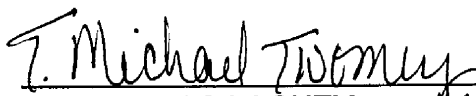
For the foregoing reasons, the Commission should deny the ALECs' Motion for Reconsideration and Clarification.

Respectfully submitted this 18th day of June, 2001.

BELLSOUTH TELECOMMUNICATIONS, INC.



NANCY B. WHITE (KA)
JAMES MEZA III
c/o Nancy Sims
150 South Monroe Street, #400
Tallahassee, Florida 32301
(305) 347-5555



R. DOUGLAS LACKEY (KA)
T. MICHAEL TWOMEY
675 W. Peachtree Street
Suite 4300
Atlanta, Georgia 30375
(404) 335-0747