BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by MCImetro Access Transmission Services LLC and MCI WorldCom Communications, 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.	DOCKET NO. 000649-TP ORDER NO. PSC-01-1784-FOF-TP ISSUED: August 31, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
LILA A. JABER
BRAULIO L. BAEZ

ORDER ON WORLDCOM'S MOTION FOR RECONSIDERATION, MOTION FOR EXTENSION OF TIME, AND MOTION ON RESOLUTION OF DISPUTED CONTRACT LANGUAGE

BY THE COMMISSION:

I. BACKGROUND

On May 26, 2000, MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Incorporated (collectively WorldCom) filed a Petition for Arbitration pursuant to 47 U.S.C. Section 252(b) of the Telecommunications Act of 1996 (the Act), seeking arbitration of certain unresolved issues in the interconnection negotiations between WorldCom and BellSouth Telecommunications Incorporated (BellSouth). The petition enumerated 111 issues. On June 20, 2000, BellSouth filed its response. The administrative hearing was held on October 4-6, 2000.

Prior to and after the administrative hearing, the parties reached agreement on approximately half of the issues set forth in

the petition and response. By Order No. PSC-01-0824-FOF-TP, issued March 30, 2001 (the Order), we resolved the remaining issues set forth in this arbitration.

On April 16, 2001, WorldCom filed a Motion for Reconsideration of Issues 6, 18, 22, and 107. On April 23, 2001, BellSouth filed its Memorandum in Opposition to WorldCom's Motion for Reconsideration (Response). In a letter dated May 17, 2001, WorldCom stated that it was withdrawing Issues 22 and 107 from its Motion for Reconsideration.

On April 27, 2001, BellSouth and WorldCom filed a Joint Motion for Extension of Time. The parties requested an additional 21 days until May 21, 2001, to file their final interconnection agreement. On May 21, 2001, WorldCom filed its Motion for Order Regarding Agreement/Motion to Resolve Disputed Contract Language and Motion for Extension of Time to File Final Agreement. WorldCom's Motion to Resolve Disputed Contract Language (Motion) addresses Issues 36, 42 and 95. Also on May 21, 2001, BellSouth filed its Statement Regarding Disputed Issues (Statement). BellSouth's Statement addresses arbitrated Issues 36, 42, and 95, as well as two additional issues. WorldCom filed its Reply to BellSouth's Statement Regarding Disputed Issues (Reply) on May 29, 2001. This Order addresses the above-referenced motions.

II. 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 concerns 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 reached 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 9 months after the date on which the local exchange carrier received the request under this section. In this case, however, the parties have waived the 9-month requirement set forth in the Act. Pursuant to Section 252(e)(5) of the Act, if this Commission refuses to act, then the FCC shall issue an order preempting the Commission's jurisdiction in the matter, and shall assume jurisdiction of the proceeding. Furthermore, Section 252(e) requires that arbitrated agreements be submitted for approval by the state commission in accordance with the requirements of that subsection and applicable state law.

III. MOTION FOR RECONSIDERATION

As stated in the Background, on April 16, 2001, WorldCom filed a Motion for Reconsideration of Issues 6, 18, 22, and 107. On April 23, 2001, BellSouth filed its Memorandum in Opposition to WorldCom's Motion for Reconsideration (Response). WorldCom in a letter dated May 17, 2001, stated that it was withdrawing Issues 22 and 107 from its Motion for Reconsideration. Thus, this Order addresses Issues 6 and 18. We note that Issue 6 was addressed in Section VIII, Combining Unbundled Network Elements, and Issue 18 was addressed in Section XI, Unbundled Dedicated Transport to Switches or Wire Centers, in Order No. PSC-01-0824-FOF-TP.

The standard of review for a Motion for Reconsideration is whether the motion identifies a point of fact or law which was overlooked or which we failed to consider in rendering the 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. 3d 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." Stewart Bonded Warehouse, Inc., at 317.

WorldCom's Motion For Reconsideration

In its Motion for Reconsideration, WorldCom states that we overlooked or failed to consider key points in its resolution of Issues 6 and 18. WorldCom states that Issue 6 concerns whether BellSouth must combine unbundled network element (UNEs) for WorldCom that BellSouth ordinarily combines within its own network. WorldCom asserts that we based our decision on federal law in determining that BellSouth is not required to do so. WorldCom contends that despite its disagreement with our interpretation of federal law, the basis of its Motion for Reconsideration is that we overlooked WorldCom's argument that as a matter of state law we should rule in its favor. WorldCom states as it noted in its post hearing brief, that Section 364.161(1), Florida Statutes, gives us the authority to establish rates, terms and conditions for the offering of unbundled elements. WorldCom argues that based on state law authority, we should establish terms and conditions that require BellSouth to offer combinations of UNEs that are "typically combined" in its network. WorldCom argues that BellSouth's position leads to absurd results as illustrated in the cross-examination of witness Cox. WorldCom contends that nothing in federal law prohibits us from finding, as a matter of state law, that BellSouth is required to provide ordinarily combined UNEs at UNE rates.

WorldCom states that Issue 18 concerns the extent to which BellSouth must provide dedicated transport to WorldCom. WorldCom states that its position is that BellSouth is required to provide dedicated transport throughout its existing network, including to WorldCom network nodes and switches of other requesting carriers. WorldCom states that we found that "BellSouth is not required to provide WorldCom with unbundled dedicated transport between other carrier's locations, or between WorldCom switches." Order No. PSC-01-0824-FOF-TP at 46. WorldCom disagrees with our decision regarding transport between WorldCom switches. WorldCom contends that BellSouth's position is that it will provide dedicated transport between WorldCom's switches as separate UNEs, which we overlooked in making our decision. WorldCom argues that the Order, at a minimum, should be modified to reflect this point.

WorldCom argues that once this clarification is made in Issue 18, the only dispute remaining regarding dedicated transport between WorldCom switches or nodes is whether BellSouth should be

required to connect the dedicated transport link to provide a complete circuit between two WorldCom locations as a single UNE. WorldCom contends that BellSouth wants to provide the separate links and require WorldCom to cross connect them or pay BellSouth "market" rates to do so. WorldCom states it wants BellSouth to cross connect the transport segments just as BellSouth ordinarily does in its own network. WorldCom asserts that without such cross connects the utility of dedicated transport would be largely undermined. WorldCom contends we focused exclusively on federal law and overlooked WorldCom's request that we also consider state law. WorldCom argues that we should conclude that under state law BellSouth should be required to cross connect dedicated transport links, just as it does for its own retail customers.

BellSouth's Response

In its response, BellSouth sets forth the standard for review for a motion for reconsideration. BellSouth states that WorldCom asks this Commission to revisit its rulings on Issues 6 and 18. BellSouth states that WorldCom offers no legitimate basis for us to review our decisions on these issues.

BellSouth contends that in both Issues 6 and 18, WorldCom alleges that we overlooked its argument that we should have ruled in its favor as a matter of state law. BellSouth asserts that while we did not specifically address WorldCom's state law argument in determining these issues, we did address the impact of state law in the discussion of our jurisdiction. Specifically, BellSouth cites:

> We agree that Section 252(e) of the Act reserves the state's authority to impose additional conditions and terms in arbitration that are not inconsistent with [the] Act and its interpretation by the FCC and the courts. We find that under Section 252(e) of the Act, we could impose additional conditions and terms in exercising our independent state law authority under Chapter 364, Florida Statutes, so long as those requirements are not inconsistent with the Act, FCC rules and orders, and controlling judicial precedent.

Order No. PSC-01-0824-FOF-TP at 10. BellSouth contends that contrary to WorldCom's argument, we did not fail to address

WorldCom's state law argument. BellSouth asserts that the fact that we did not specifically address WorldCom's state law argument in resolving these issues, should not be construed as a failure to consider an argument that thus warrants reconsideration.

Further, BellSouth contends that the premise of WorldCom's argument is misplaced because we cannot act inconsistently with federal law. BellSouth cites AT&T Corp v. Iowa Util. Bd.[1] which states that "[t]he FCC has rulemaking authority to carry out the 'provisions of the Act,' which include 251 and 252, added by the Telecommunications Act of 1996." BellSouth argues that this authority also includes the rules regarding the combination of UNEs. BellSouth states that in Bell Atlantic Md.[2], the United States Circuit Court, Fourth Circuit, recently stated "[s]tate commissions are required to apply federal requirements in arbitrating and approving interconnection agreements." BellSouth further refers to 47 U.S.C. §252(c)(1) for the proposition that it requires state commissions in resolving arbitrations to "ensure that such resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the Commission pursuant to Section 251." BellSouth states that a state commission, however, can establish or enforce other requirements of state law in its review of an interconnection agreement or for promoting competition, so long as those requirements are not inconsistent with the Act and the FCC's rules under 47 U.S.C. §§ 252(e)(3), 261 (b)-(c).

BellSouth concludes that as we found, it is clear under federal law that ILECs are not required to combine UNEs that are ordinarily combined in its network.[3] BellSouth argues that we were required to abide by the Eighth Circuit's interpretation of the FCC rules in determining Issue 6. BellSouth asserts that we could not have relied on Section 364.161(1), Florida Statutes, to require it to combine UNEs that it ordinarily combines because that would be inconsistent with the FCC rules as interpreted by the Eight

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[1] AT&T Corp v. Iowa Util. Bd., 525 U.S. 366, 377-78 (1999).

[2]Bell Atlantic Md., Inc. v. MCI WorldCom, Inc. 240 F. 3d 279, 300 (4th Cir. 2001).

[3]Order No. PSC-01-0824-FOF-TP at 35-37; Iowa Util. Bd. v. FCC, 219 F.3d 744, 759 (8th Cir. 2000).

Circuit.[4] Therefore, BellSouth argues that WorldCom's request for reconsideration should be denied.

Decision

We find that WorldCom has failed to demonstrate that we made a mistake of fact or law in rendering our decision in this matter, or overlooked any of the points raised by WorldCom. We again note that Issue 6 was addressed in Section VIII and Issue 18 was addressed in Section XI of the Order.

WorldCom, contends that we failed to consider its argument that as a matter of state law we should have found in its favor on Issues 6 and 18 and, thus, we should reconsider our decision. We disagree. As noted by BellSouth, we discussed state law authority in the jurisdiction section of the Order, and in particular, stated that:

> We find that under Section 252(e) of the Act, we could impose additional conditions and terms in exercising our independent state law authority under Chapter 364, Florida Statutes, so long as those requirements are not inconsistent with the Act, FCC rules and orders, and controlling judicial precedent.

Order No. PSC-01-0824-FOF-TP at 10.

We recognize that WorldCom's state law arguments were not specifically addressed in sections of the Order discussing Issues 6 and 18. However, we find that even though those sections do not include a discussion of state law, this alone does not support a Motion for Reconsideration, particularly, since the state law argument was considered in the jurisdiction section of the Order.

In Issue 6, WorldCom asked that we require BellSouth to combine UNEs that it ordinarily combines in its network. In the Order, we based our decision not to require BellSouth to combine network elements that are ordinarily combined on the Eighth Circuit's ruling in Iowa Utils. Bd. As we stated in the Order, we

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[4] See, 252(e)(3).

may impose additional terms and conditions that are not inconsistent with applicable federal judicial precedent. Order No. PSC-01-0824-FOF-TP at p. 10. For us to make a ruling that BellSouth is required to combine network elements that are ordinarily combined in its network, we would have to make a ruling inconsistent with federal law. Thus, WorldCom's argument that we should have decided in its favor and required BellSouth to combine network elements that are ordinarily combined as a matter of state law is without merit. We find that we did not overlook WorldCom's state law argument since we addressed our state authority in the Order. Neither did we make a mistake of fact or law regarding the application of federal law, which WorldCom does not argue in its Motion.

In Issue 18, WorldCom asked that we require BellSouth to provide dedicated transport throughout its existing network, including to WorldCom network nodes and the switches of other requesting carriers. Again, WorldCom argues that as a matter of state law BellSouth should be required to cross connect dedicated transport links. Our decision was based upon the FCC's rulings in the Local Competition Order and the UNE Remand Order.[5] We disagree with WorldCom's contention that we overlooked its state law argument. We note that the exercise of state law authority in an arbitration proceeding under federal law is discretionary. WorldCom's underlying premise that if federal law does not favor a position, then state law should be exercised to obtain a different result, does not rise to the level of a mistake in fact or law. We find that where federal law is sufficient to address the issue presented, we are not required specifically to address state law in an arbitration proceeding.

Further, we note that WorldCom also seeks a clarification of our decision that provides that BellSouth "... will provide dedicated transport between WorldCom switches as separate UNEs."

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[5] First Report and Order, CC Docket No. 96-98, In the Matter of Implementation of Local Competition Provisions in the Telecommunications Act of 1996, FCC Order 96-325 (August 8, 1996), (Local Competition Order); FCC's Third Report and Order, CC Docket No. 96-98, In the Matter of Implementation of the Local Competition Provision of the Telecommunications Act of 1996, Order No. FCC 99-238, (November 5, 1999), (UNE Remand Order).

Motion at 4. WorldCom argues that the parties' only dispute "... is whether BellSouth should be required to connect the dedicated transport links to provide a complete circuit between two WorldCom locations as a single UNE." Motion at 4. WorldCom states that BellSouth has offered to provide separate dedicated transport links; however, WorldCom must cross connect these separate UNEs, or pay BellSouth to do so at market rates. WorldCom proposes that BellSouth should connect these separate transport segments just as BellSouth would ordinarily do in its network. WorldCom continues that without BellSouth providing such cross connection, the utility of this dedicated transport will largely be undermined.

We observe that contrary to WorldCom's assertions there was no testimony in the record that states that BellSouth ". . . will provide dedicated transport between WorldCom switches as separate UNEs . . . ." Rather, we find that WorldCom could only draw that conclusion by imply that BellSouth would provide dedicated transport between WorldCom switches as separate UNEs from the following cross-examination of witness Cox by WorlCom's attorney:

> Q For dedicated transport from WorldCom Switch 1 to WorldCom Switch 2, first, would you provide -- would you provide us facilities necessity [*sic*] to put that circuit together, that transport?
>
> A I don't know that we would have those. That is two WorldCom locations. We would not be on one end of that.

See Hearing Transcript at p. 928, lines 8-14.

> Q I'm sorry. Would you provide that as a dedicated transport UNE?
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> A Not a single UNE. You would have a local channel from the WorldCom switch to the BellSouth Wire Center Number 1, you would have the interoffice transport between the two BellSouth wire centers, you would have a local channel between the BellSouth Wire Center Number 2 and the WorldCom Switch Number 2.

(emphasis added) See Hearing Transcript at pp. 928-929, lines 22-4.

We observe that nowhere in this cross-examination did BellSouth affirmatively state that "it will provide" dedicated transport as claimed by WorldCom. We note that one could conclude from the above cross-examination that BellSouth would provide WorldCom with separate UNEs (as dedicated transport) to complete a circuit between two WorldCom locations. However, there is no record evidence that says that BellSouth is required by either the Act or the FCC to provide dedicated transport facilities necessary to directly connect two WorldCom locations.

Moreover, we find that the clarification WorldCom seeks is captured in the second part of the Commission's decision which states that ". . ., outside the provisions of this proceeding, the parties are not foreclosed from negotiating a dedicated transport configuration between WorldCom and other carrier's locations as they see fit." Order No. PSC-01-0824-FOF-TP at 44. Indeed, we conclude that WorldCom's request for a clarification of our decision to include the phrase that BellSouth ". . . will provide dedicated transport between WorldCom switches as separate UNEs, ..." is not germane to the issue of whether BellSouth is "required" to provide dedicated transport between two WorldCom locations. The fact that BellSouth agrees to "provide" cannot, and should not, be construed to be synonymous with BellSouth being "required" to perform. However, we note that outside the provisions of this proceeding, the parties are not foreclosed from negotiating a dedicated transport configuration between WorldCom and other carrier's locations as they see fit. Order No. PSC-01-0824-FOF-TP at 46.

For the foregoing reasons, we find that WorldCom failed to identify a mistake of fact or law made by us in rendering our decision. In addition, we find that to the extent WorldCom's Motion for Reconsideration seeks clarification of Order No. PSC-01-0824-FOF-TP regarding Issue 18, that request for clarification should be denied. Therefore, WorldCom's Motion for Reconsideration shall be denied.

IV. MOTION FOR EXTENSION OF TIME

As stated in the Background, on April 27, 2001, BellSouth and WorldCom filed a Joint Motion for Extension of Time. On May 21, 2001, WorldCom filed its Motion for Order Regarding Agreement and Motion for Extension of Time to File Final Agreement.

In the Joint Motion for Extension of Time filed April 27, 2001, WorldCom and BellSouth stated that they needed an additional 21 days to file an interconnection agreement until May 21, 2001. The parties stated that they needed the additional time to negociate the final agreement. The parties represented that no party would be prejudiced since they are both seeking the extension.

In its Motion for Extension of Time filed May 21, 2001, WorldCom requested that the parties be granted an extension until 14 days from the date of the Commission order ruling on the remaining disputed language and the Motion for Reconsideration, in which to file the final interconnection agreement. WorldCom asserted that this will allow the parties to include all of the Commission's final rulings in the agreement. WorldCom stated that it is authorized to represent that BellSouth supports the Motion for Extension of Time.

BellSouth and WorldCom filed motions to resolve disputed contract language simultaneously with the second Motion for Extension of Time. Due to the parties' unresolved dispute over the appropriate language to be added to the final interconnection agreement, we find that it is appropriate to allow the parties the additional time for filing the agreement. We agree that it is reasonable to allow the parties to submit the final agreement after our resolution all of the outstanding disputes. In addition, the parties are in agreement regarding the extension of time and, thus, no party is prejudiced by granting the motion.

For the foregoing reasons, the Joint Motion for Extension of Time filed April 27, 2001, and the Motion for Extension of Time filed May 21, 2001, shall be granted. The parties are required to file the final interconnection agreement 14 days from the issuance date of this Order.

V. MOTION ON RESOLUTION OF DISPUTED CONTRACT LANGUAGE

A. Routing of Access Traffic, Issue 42

In WorldCom's Motion to Resolve Disputed Contract Language (Motion), filed May 21, 2001, WorldCom proposes that Attachment 4, §2.3.8 of the contract read:

> Neither Party shall be permitted to commingle local traffic and access traffic (interLATA or intraLATA) on a single trunk and route access traffic directly to the other Party's end offices. Both Parties shall route their access traffic (interLATA and intraLATA) to the other Party's access tandem switch, or switch in the case of MCIm, via access trunks.

Motion at 3.

Arguments

WorldCom propounds that we determined WorldCom should not be able to commingle local and access traffic over local interconnection trunks at end offices, because of concerns raised by BellSouth regarding its ability to bill properly. Motion at 3. WorldCom asserts that the agreement language should implement our decision in a carrier-neutral manner. Motion at 4.

BellSouth maintains that its proposed language replicates our order verbatim, except for replacing "MCIm" with "WorldCom." Statement at p. 2. Further, BellSouth argues that the mutual agreement language, which WorldCom suggests, is nonsensical. BellSouth is solely a local exchange carrier and does not originate access traffic.

However, WorldCom challenges BellSouth's assertion claiming:

> . . . BellSouth does originate intraLATA toll traffic today. BellSouth must pay terminating access charges to WorldCom when such BellSouth originated toll traffic terminates to WorldCom's local exchange customer. Moreover, BellSouth provides access tandem services to many third party carriers, and thus delivers a large volume of access traffic to ALECs such as WorldCom.

Reply at pp. 1-2.

Nevertheless, BellSouth asserts that MCIm did not raise the issue of how BellSouth's traffic should be routed, and the issue was not a part of the arbitration proceeding. Therefore, BellSouth concludes that there is no record evidence to support WorldCom's proposed language. Statement at p. 3.

As an alternative, WorldCom proposes language that it believes complies with the Order.

> Because the Commission has determined that BellSouth's ability to bill subtending companies in an accurate manner is in doubt if the local and switched access traffic were delivered on the same trunk group, unless and until MCIm provides BellSouth with the standard EMI records necessary for BellSouth to bill the appropriate carrier for access traffic transited by MCIm to BellSouth, MCIm shall not be permitted to commingle local and access traffic on a single trunk and route access traffic directly to BellSouth's end office. Until such time, MCIm shall route its access traffic to BellSouth access tandem switches via access trunks.

WorldCom's Motion at p. 4.

Decision

At issue is whether the Order that prohibits WorldCom from commingling local and access traffic over a single trunk should apply equally to BellSouth. We note that both parties' proposed language is nearly identical to the ordered language, which reads:

> Therefore, we find that WorldCom shall not be permitted to commingle local and access traffic on a single trunk and route access traffic directly to BellSouth end offices. WorldCom shall route its access traffic to BellSouth access tandem switches via access trunks.

Order No. PSC-01-0824-FOF-TP at p. 98.

BellSouth contends that it does not originate access traffic; therefore, applying the order to BellSouth would be "nonsensical." However, WorldCom asserts that BellSouth "does originate intraLATA toll traffic today," which is access traffic. We are persuaded that BellSouth does deliver access traffic.

Although we believe that WorldCom's argument is reasonable, we agree with BellSouth that WorldCom did not raise the issue during this proceeding. Thus, we find that it is inappropriate to raise this routing issue now. Moreover, we believe that the absence of

a record basis for WorldCom's argument prevents us from imposing WorldCom's proposed language.

Since the Order denied WorldCom the right to commingle traffic was based on BellSouth's inability to accurately bill subtending companies, we infer that WorldCom would encounter the same billing difficulties. Therefore, we believe that the exclusion of how BellSouth's traffic should be routed as an issue, does not imply that BellSouth may commingle traffic. We note that BellSouth did not raise the issue regarding its ability to commingle traffic either. We note that BellSouth had the opportunity to broaden the issue, if BellSouth sought to commingle traffic.

Therefore, we shall adopt the language proposed by BellSouth regarding the routing of access traffic. However, we note that the exclusion of BellSouth's name in Attachment 4, §2.3.8 of the agreement, should not imply that BellSouth may commingle local and access traffic. It does not appear that this language addresses BellSouth's commingling of traffic, neither was BellSouth's commingling of traffic addressed at hearing. Furthermore, BellSouth had the opportunity to broaden the issue, if it wanted to commingle traffic, and did not.

B. Demarcation Points, Issue 36

In its Motion, WorldCom contends the inclusion of its proposed language in Attachment 5, §2.1.4 of the agreement is consistent with our decision in Order No. PSC-01-0824-FOF-TP. In Order No. PSC-01-0824-FOF-TP, we stated:

> Accordingly, we find that WorldCom, as the requesting carrier, has the exclusive right pursuant to the Act, the FCC's Local Competition Order and FCC regulations, to designate the network point (or points) of interconnection at any technically feasible point for the mutual exchange of traffic.

Order No. PSC-01-0824-FOF-TP at p. 81. In its motion, WorldCom proposes language that it alleges reserves its right to designate the point of interconnection by requiring BellSouth to provide cross-connects between the point of interconnection and the demarcation point. Motion at p. 5.

WorldCom's proposed language appears intended to guard against what WorldCom perceives as a potential erosion of its ability to designate interconnection points. WorldCom proposes the following addition to the agreement:

> BellSouth's right to designate the demarcation point(s) shall not affect MCIm's right to designate any technically feasible interconnection points within the Premises. BellSouth shall provide cross-connects, from the interconnection point(s) designated by MCIm to the demarcation points designated by BellSouth.

Motion at p. 6. WorldCom argues in its motion that, "[u]nless WorldCom's proposed clarifying language is included in the Interconnection Agreement, BellSouth could take a position that the point of demarcation equates to the point of interconnection." Motion at p. 6. Should this scenario unfold, WorldCom argues, both the intent of the Order and WorldCom's rights under the Act would be compromised. Motion at p. 6.

In its Statement, BellSouth argues that because WorldCom has chosen collocation as the means of interconnection, the dispute must be settled by decisions, rules and orders governing collocation, not by decisions governing interconnection. Statement at p. 6.

BellSouth makes a three-pronged argument in support of its position. First, BellSouth argues this Commission's generic collocation order, Order No. PSC-00-0941-FOF-TP[6], is dispositive in this matter. Statement at p. 4. Second, BellSouth contends that the GTE Service Corp. decision by the Circuit Court of Appeals for the District of Columbia[7] disputes WorldCom's assertions. Statement at p. 5. Third, BellSouth argues that 47 C.F.R. 51.323(d)(1) gives incumbent LECs the authority to determine where

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[6]Order No. PSC-00-0941-FOF-TP, issued May 11, 2000, in Docket No. 981834-TP, In re: Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth Telecommunication, Inc.'s Service Territory.

[7]GTE Service Corp. v. Federal Communications Commission, 205 F.3d 416, D.C.Cir. 2000.

within an incumbent LEC's premises the actual physical connection between two networks will occur. Statement at p. 6.

BellSouth asserts that in Order No. PSC-00-0941-FOF-TP in the generic collocation docket (Docket No. 981834-TP), we found that parties are free to negotiate any demarcation point they choose, but in the absence of an agreement, the default would be at a point at the perimeter of the collocation space designated by BellSouth. Statement at p. 4.

BellSouth alleges that in GTE Service Corp., the court addressed the issue of whether an ILEC or a CLEC has the right to designate a demarcation point. In BellSouth's perception, "[t]he Court determined that this right should belong to the ILEC: to permit the CLEC to designate where collocation occurs in an ILEC's premises may amount to an unnecessary taking of an ILEC's premises." Statement at p. 5. BellSouth also raises the "takings" issue *vis-a-vis* GTE Service Corp., and asserts that federal rules govern interconnection points within an ILEC's premises when collocation is the chosen means of interconnection.

Last, BellSouth argues that 47 C.F.R. 51.323(d)(1) offers unequivocal language in determining where the interconnection points in a facility are to be located. The rule reads:

> (d) When an incumbent LEC provides physical collocation, virtual collocation, or both, the incumbent LEC shall:
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> (1) Provide an interconnection point or points, physically accessible by both the incumbent LEC and the collocating telecommunications carrier, at which the fiber optic cable carrying an interconnector's circuits can enter the incumbent LEC's premises, provided that the incumbent LEC shall designate interconnection points as close as reasonably possible to its premises;

From this BellSouth concludes, "When collocation is the method chosen by the CLEC to obtain interconnection, the FCC expressly distinguished this from the interconnection point requirements of 47 C.F.R. 51.305, electing, rather, to specify a precise interconnection point for collocation arrangements." Statement at p. 6.

In response, WorldCom argues in its Reply, that BellSouth occludes the matter by shifting the tenor of the dispute from interconnection points to demarcation points:

> In its statement, BellSouth confuses the matter by focusing the right to select the demarcation point (Statement, p.5.) Although the Commission did not directly address the issue of which party has the right to select demarcation points, WorldCom has proposed that BellSouth be allowed to do so. There is, therefore, no controversy regarding demarcation points.

Reply at p. 3. WorldCom contends that when it filed its petition for arbitration in this case, the issue of which party has the right to designate the demarcation point for UNEs obtained in a collocation arrangement was included as part of Issue 36, regarding the right to select interconnection points. WorldCom continues, "The parties treated the demarcation point issue as ancillary to the main dispute, and the Commission in its Order did not directly address the demarcation point aspect of the issue . . . " Reply at p. 2.

Decision

In the underlying arbitration case that spawned the issue currently before us, we found that WorldCom was within its rights to designate the point or points of interconnection within a LATA at which it would exchange traffic with BellSouth. Owing to the inability of the parties to adopt mutually acceptable contract language affecting interconnection, we are being asked to determine which party's proposed language should be adopted.

The contract language submitted by the parties on this issue is identical with the exception of the two additional sentences advocated by WorldCom, which read:

> BellSouth's right to designate the demarcation point(s) shall not affect MCIm's right to designate any technically feasible interconnection points within the Premises. BellSouth shall provide cross-connects, from the interconnection point(s) designated by MCIm to the demarcation points designated by BellSouth. (emphasis added)

We find the contract language proposed by WorldCom problematic for a number of reasons, not the least of which is that the effect of WorldCom's proposal would be to extend our decision on interconnection points into the realm of demarcation points. Such an extension would be inappropriate, in our view, because the record evidence presented to us on this issue did not address demarcation points. While we recognize the inextricable relationship between interconnection points and demarcation points, any conclusion involving demarcation points in this issue would be unsustainable, as it would lack a basis in the record. Although WorldCom asserts in its Reply that its original petition in this case included designating demarcation points, we find nothing in the record to support this contention. WorldCom's position statement on Issue 36 -- taken from its post-hearing brief -- states its position as follows:

> WorldCom has the right to designate the network point (or points) of interconnection at any technically feasible point. This includes WorldCom's right to designate a single point of interconnection (such as at BellSouth's access tandem) for termination of traffic throughout the LATA.

WorldCom BR at p. 34. Notable for its absence from this post-hearing brief position statement is any indication of WorldCom's posture with regards to points of demarcation, an absence that similarly pervades WorldCom's prefiled direct testimony, prefiled rebuttal testimony, cross-examination testimony, and redirect examination testimony. We cannot agree, therefore, with WorldCom's argument that points of demarcation were submitted for arbitration in this proceeding.

We are also concerned that WorldCom appears to be changing the context of the Order on this issue. The decision before us on Issue 36 dealt exclusively with interconnection matters. WorldCom witness Olson framed his testimony for Issue 36 against the backdrop of the FCC's Local Competition Order, FCC 96-325[8], at

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[8]First Report and Order, CC Docket No. 96-98, In the Matter of Implementation of Local Competition Provisions in the Telecommunications Act of 1996, FCC Order 96-325 (August 8,

¶172, ¶176, ¶198, and ¶220, 47 C.F.R. §51.305(a)(2), §51.319, and §51.321(a), and the FCC's Texas Order, FCC 00-238[9]. We note that all of witness Olson's cites to the FCC's Local Competition Order fall under Section IV, which deals with interconnection. The FCC rules cited by witness Olson relate to the interconnection and unbundling obligations of incumbents and to the requirement that unbundling and interconnection be provided under terms and conditions that are just, reasonable and non-discriminatory. Witness Olson used the Texas 271 Order to substantiate WorldCom's claim that it is entitled to a single interconnection point per LATA. None of witness Olson's testimony addressed a WorldCom position on demarcation points.

The contract language WorldCom proposes to add, however, would give WorldCom decision-making authority over demarcation points within BellSouth's premises. We believe WorldCom's position fails to recognize an essential distinction: An ALEC has a unilateral right to designate the technically feasible point(s) on an ILEC's network at which it will interconnect for the mutual exchange of traffic, but that right does not extend to selecting demarcation points within an ILEC central office.

As BellSouth points out in its Statement, we found in Order No. PSC-00-0941-FOF-TP, that demarcation points up to the conventional distribution frame are subject to negotiation between the ALEC and the ILEC and that if terms could not be reached, "the ALEC's collocation site shall be the default demarcation point." Order No. PSC-00-0941-FOF-TP at p. 55.

To accept WorldCom's position on this issue would have the effect of approving contract language between the parties that conflicts directly with our order in the generic collocation proceeding. We find nothing in the record of this arbitration to support a premise that we embarked on such a course.

1996), (Local Competition Order)

[9] Memorandum of Opinion and Order, CC Docket No. 00-65, In the Matter of Application by SBC Communications Inc., et. al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, FCC 00-238, (June 30, 2000), (Texas Order)

Based on the foregoing, we find that the substance of the additional contract language proposed by WorldCom on this issue is not germane to the issue before us. WorldCom's proposed language is not supported by testimony in the record of this proceeding. Further, WorldCom's proposed language poses a conflict with a previous ruling of this Commission and would contravene a federal court decision and FCC rules. Therefore, we find that BellSouth's language shall be adopted for purposes of the interconnection agreement between the parties.

C. Billing Records, Issue 95

As noted previously, Order No. PSC-01-0824-FOF-TP, set forth our decision on the various issues that had been arbitrated in this docket. By subsequent filings, the parties were unable to develop final contract language regarding billing records. In its Motion, WorldCom asks that we determine which party's language properly implements our decision based upon Order No. PSC-01-0824-FOF-TP. Motion at pp.1-2.

Arguments

In its Motion, WorldCom contends that its proposed contract language addressing the billing records issue is identical to that contained in the party's prior interconnection agreement. Motion at p. 6. WorldCom believes our finding in Order No. PSC-01-0824-FOF-TP "that 'BellSouth shall be required to provide WorldCom with billing records in the industry-standard EMI format, with all EMI standard fields'" is a decision in its favor. Motion at p. 7. WorldCom states that BellSouth now proposes to offer a "bare bones" contract provision that mirrors our finding. Motion at p.7. WorldCom proposes:

> . . . to implement the Commission's decision by including in the agreement the exact language that was in dispute in the arbitration. This language . . . contains numerous supporting provisions which are required to fully implement BellSouth's obligation to provide customer usage data as ordered by the Commission. Since the Commission . . . ruled in WorldCom's favor, the Commission should not allow BellSouth to unilaterally insist on less comprehensive language addressing the subject matter of the dispute. Instead, the Commission

> should order BellSouth to sign an Interconnection Agreement containing WorldCom's proposed language.

Motion at p.7.

WorldCom's actual proposed language is set forth in Attachment 8 of the draft interconnection agreement. The language was attached as Exhibit C to the original Petition for Arbitration, and consists of 18 pages. Motion at p.6.

In its Statement, BellSouth reiterates that BellSouth and WorldCom have negotiated in good faith, but have been unable to agree on language with respect to certain sections of the interconnection agreement. Statement at p. 1. BellSouth believes that its proposed language tracks our finding in Order No. PSC-01-0824-FOF-TP, which reads as follows:

> BellSouth shall continue to provide MCIm [WorldCom] customer usage data in the same format that it currently provides. Further, BellSouth shall provide MCIm [WorldCom] with billing records in the standard EMI [Exchange Message Interface] format with all EMI standard fields.

Statement at p. 9.

We found in Order No. PSC-01-0824-FOF-TP that:

> . . . concerns over the type and format of the billing records can be reduced, if not totally eliminated, by deciding that the parties adhere to an industry-standard EMI format, with all EMI standard fields. Therefore, we find that BellSouth shall be required to provide WorldCom with billing records in the industry-standard EMI format, with all EMI standard fields. (Order No. PSC-01-0824-FOF-TP at p.165)

Statement p. 9.

BellSouth states that WorldCom's proposed language specifies that records should be provided that may not be in compliance with EMI industry standards. Statement at pp. 9-10. BellSouth believes that the record of this proceeding does not substantiate whether or

not the WorldCom language comports with EMI standards, and it is concerned that WorldCom should not be permitted to include language that does not comply with our Order. Statement at p. 10.

BellSouth concludes that it is ". . . fully willing to provide billing records to MCIm [WorldCom] 'in the industry-standard EMI format, with all EMI standard fields'" per our Order. Statement at p. 10.

Decision

The issue in dispute in the arbitration concerned whether BellSouth should be required to provide WorldCom with EMI standard fields for billing purposes. The issue also centered on the type and format of the billing records. By our finding in Order No. PSC-01-0824-FOF-TP, we stated:

> We believe that BellSouth should be required to provide WorldCom with billing records in the industry-standard EMI format, with all EMI standard fields, as opposed to a record which only provisions a portion of the EMI standard fields.

Order No. PSC-01-0824-FOF-TP at p. 164.

By its Motion, WorldCom asks us to determine which party's language properly implements our decision thereof. Motion at pp. 1-2.

WorldCom contends that our decision was rendered in its favor. Motion at p. 7. WorldCom states that BellSouth now proposes to offer a "bare bones" contract provision that recites our finding, but does not contain the supporting provisions which are required to fully implement BellSouth's obligation to provide customer usage data as ordered by us. Motion at p. 7.

We partially agree with WorldCom's assertions. We agree that our decision is more favorable for WorldCom than BellSouth. WorldCom witness Price contends that BellSouth's proposal would provision to WorldCom a "subset of the fields contained in an EMI record." He asserts:

> The EMI format is the industry standard used by all other Bell companies. WorldCom should be entitled to receive complete billing information with all EMI fields. BellSouth should be contractually obligated to provide EMI billing records; otherwise, it will be free to move away from the industry standard and develop proprietary records, if it has not done so already.

Order No. PSC-01-0824-FOF-TP at p. 164.

By our decision, we agreed with the witness that WorldCom was entitled to complete EMI information. However, in its argument, WorldCom stated a need for "the supporting provisions which are required to fully implement BellSouth's obligation to provide customer usage data as ordered by the Commission." Motion at p. 7. We did not, however, address, nor reach any conclusions, regarding "supporting provisions."

BellSouth states that WorldCom's proposed language specifies that records should be provided that may not be in compliance with EMI industry standards. Statement at pp.9-10. Our Order is clear in this respect " . . . that the parties adhere to an industry-standard EMI format, with all EMI standard fields. Therefore, we find that BellSouth shall be required to provide WorldCom with billing records in the industry-standard EMI format, with all EMI standard fields." Order No. PSC-01-0824-FOF-TP at p. 165.

Therefore, because BellSouth's proposed language accurately reflects the letter and spirit of Order No. PSC-01-0824-FOF-TP, we find that BellSouth's proposed language shall be adopted regarding billing records.

D. Disputed Language Not Consider in Proceeding

As stated in the Background, BellSouth in its Statement included two additional issues which were not addressed in this arbitration proceeding. Specifically, the issues identified by BellSouth are: 1) whether BellSouth must permit WorldCom to place within BellSouth's central office all equipment used or useful for interconnection or access to unbundled network elements, or whether BellSouth must permit only that equipment necessary for interconnection or access to unbundled network elements; and 2) whether BellSouth is required to permit co-carrier cross-connects.

BellSouth is requesting a change in the language in Attachment 5, Sections 7.1.1 and 7.2

In its Statement, BellSouth asserts that the parties agreed to address certain changes in the law subsequent to the arbitration decision being rendered. BellSouth contends that although the parties have agreed to several changes based upon the D.C. Circuit's decision in GTE Service Corp[10] and the generic collocation docket, Docket No. 981834-TP, the language regarding the above issues is still in dispute.

In its Motion, WorldCom stated that BellSouth is attempting to delete from the agreement portions of Section 7.1.1 and 7.2 which is language that was negotiated and agreed to prior to the filing of the Petition for Arbitration and was not included in the arbitration proceeding. WorldCom asserts that BellSouth is relying on a federal court decision which predates the petition and the language which was agreed upon by the parties. Furthermore, WorldCom states that BellSouth did not object to this language in its Response to the Arbitration Petition.

WorldCom in its Reply argues that had BellSouth wished to arbitrate issues based upon the GTE Service Corp. decision, BellSouth was free to do so. However, WorldCom asserts that now that the case is litigated and decided, BellSouth may not now interject new issues into the case. WorldCom also argues that BellSouth is relying on the collation orders although it did not seek reconsideration based on those orders and again it is too late for BellSouth to argue for changes based on collation orders.

As noted by WorldCom, the above issues were not identified in either WorldCom's petition for arbitration or BellSouth's response. Since we are limited to considering only those issues raised in the petition for arbitration and any response thereto, pursuant to Section 252(b)(4)(a) of the Telecommunications Act of 1996, we do not believe it is appropriate for us to address these issues in this proceeding. Therefore, we shall not incorporate into the final interconnection agreement BellSouth's proposed language in resolution of these issues. We observe that our decision not to

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[10]GTE Service Corp. v. Federal Communications Commission, 205 F.3d 416 (D.C. Cir. 2000).

incorporate this language is consistent with our decisions in Dockets Nos. 960833-TP, 960847-TP, and 991220-TP.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Incorporated, collectively WorldCom's, Motion for Reconsideration is hereby denied. It is further

ORDERED that the Joint Motion for Extension of Time filed April 27, 2001, and the Motion for Extension of Time filed May 21, 2001, shall be granted. The parties are required to file the final interconnection agreement 14 days from the issuance date of this Order. It is further

ORDERED that MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Incorporated and BellSouth Telecommunications, Inc. shall adopt in their final interconnection agreement the language proposed by BellSouth regarding the routing of access traffic, Issue 42. It is further

ORDERED that MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Incorporated and BellSouth Telecommunications, Inc. shall adopt in their final interconnection agreement the language proposed by BellSouth regarding the demarcation point, Issue 36. It is further

ORDERED that MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Incorporated and BellSouth Telecommunications, Inc. shall adopt in their final interconnection agreement the language proposed by BellSouth regarding billing records, Issue 95. It is further

ORDERED that MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Incorporated and BellSouth Telecommunications, Inc. shall not adopt in their final interconnection agreement, BellSouth's proposed language change to Attachment 5, Sections 7.1.1 and 7.2. It is further

ORDERED that this docket shall remain open pending the parties filing their final interconnection agreement and resolution of this docket.

By ORDER of the Florida Public Service Commission this 31st Day of August, 2001.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal

and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.