

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

Petition of AT&T Communications
of the Southern States, Inc., TCG
South Florida, and MediaOne Florida
Telecommunications, Inc. for Structural
Separation of BellSouth Telecommunications, Inc.

Docket No.: 010345-TP
Filed: May 2, 2001

PETITIONERS' MOTION FOR RECONSIDERATION

Petitioners AT&T Communications of the Southern States, Inc., TCG South Florida, and Media One Florida Telecommunications, Inc., pursuant to Rule 25-22.060, Florida Administrative Code, file this motion for reconsideration of the Commission's order dated November 6, 2001 ("Order.")

The Commission should grant reconsideration because its Order overlooks or misapprehends essential points of law, any one of which demonstrates manifest error. Specifically, the Commission overlooked or misapprehended at least the following:

1. The Commission's Order decides this case on the merits, but without benefit of due process or compliance with established rules. There was no discovery, sworn testimony or exhibits, or opportunity for cross-examination. The Order acknowledged the impropriety of deciding a motion to dismiss on the merits, in the absence of evidentiary proceedings, but did so anyway.
2. At the Agenda Conference on May 29, 2001, the Commission also acknowledged that its workshop on issues relating to structural separation would not supplant evidentiary proceedings, and that the Commission's decision on jurisdiction would be restricted to "looking at the four corners of the document [petition]." Yet in the Order under review, the Commission

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purports to rely upon unsworn statements made at the workshop (and not subject to cross examination or discovery) to decide the merits of AT&T petition. This violates Petitioners' right to due process just as surely as it violates previous orders of this Commission and accepted rules of procedure.

3. The Order implies, but does not explicate, that Petitioners can protect their interests in other unnamed pending dockets. Most fundamentally, Petitioners have a statutory and constitutional right to initiate their own proceeding. Further, the Commission has misapprehended that no existing dockets provide a clear point of entry to protect Petitioners' interests. The law is crystal clear – Petitioners are entitled to a meaningful, effective point of entry in the administrative process, and a full evidentiary hearing, to protect their substantial interests. *Friends of the Everglades, Inc. v. State, Dep't of Community Affairs*, 495 So. 2d 1193, 1194 (Fla. 3d DCA 1986); *NME Hospitals, Inc. v. Dep't of Health and Rehabilitative Services*, 492 So. 2d 379, 385 (Fla. 1st DCA 1986). No pending docket provides that point of entry. Solely by way of example, in BellSouth's 271 docket, mentioned by the Commission as a possible "alternative," the evidence is already closed. In addition, at the Agenda Conference of October 16, 2001, staff advised the Commission on pages 36 through 37 that other existing dockets were not appropriate for consolidation with this Petition, at least in part because they involved entirely different "approaches." As a matter of fact and law, the Commission has failed to provide an effective point of entry to Petitioners.

4. Petitioners adopt and specifically incorporate herein the dissenting opinion of Commissioner Palecki as additional grounds for reconsideration.

5. Petitioners also adopt and specifically incorporate all prior pleadings, memoranda of law and arguments made in support of the original and amended petitions, and in opposition to the motions to dismiss.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail service this 21 day of November 2001 to the following:

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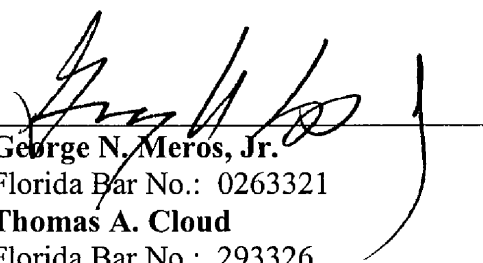
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