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October 7, 2002

Ms. Blanca Bayo, Director
Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard, Room 110
Betty Easley Conference Center
Tallahassee, FL 32399-0850

VIA HAND DELIVERY

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COMMISSION
CLERK

Re: Docket No. 000075-TP

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of US LEC of Florida Inc. ("US LEC") are the following documents:

1. Original and fifteen copies of US LEC's Response in Opposition to Motion of Sprint-Florida, Inc.'s Motion for Reconsideration or, in the Alternative, Motion for Stay Pending Appeal;

2. Original and fifteen copies of US LEC's Response in Opposition to Motion of Verizon Florida, Inc. and Alltel Florida for Partial Reconsideration, and, in the Alternative, Motion for Stay Pending Appeal; and

3. A disk containing a copy of the documents in Word Perfect 6.0.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me.

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Thank you for your assistance with this filing.

Sincerely,

Martin P. McDonnell

MPM/rl
Enclosures
cc: All Parties of Record

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996.	))))	Docket No. 000075-TP (Phase II) Filed: October 7, 2002

US LEC OF FLORIDA INC.'S RESPONSE IN OPPOSITION TO MOTION OF VERIZON FLORIDA, INC. AND ALLTEL FLORIDA FOR PARTIAL RECONSIDERATION, AND, IN THE ALTERNATIVE, MOTION FOR STAY PENDING APPEAL

Comes now, U S LEC of Florida Inc., (hereinafter "US LEC"), by and through undersigned counsel, and pursuant to Rule 25-22.060, Florida Administrative Code, hereby submits its response in opposition to Verizon Florida, Inc. ("Verizon") and ALLTEL Florida, Inc.'s ("Alltel") Motion for Partial Reconsideration and, in the Alternative, Motion for Stay Pending Appeal.

INTRODUCTION

On September 10, 2002, in Order No. PSC-02-1248-FOF-TP, the Commission issued its Order on Reciprocal Compensation (the "Order"). Among other issues, the Order addressed a default mechanism for establishing the "local calling area" for purposes of reciprocal compensation, and the responsibilities of an originating local carrier to transport its traffic to another local carrier's point of interconnection.

On September 25, 2002, Verizon and Alltel filed their Motion for Partial Reconsideration or, in the alternative, for a stay pending appeal of the above Order. In the Motion, Verizon asked the Commission to reconsider its decision requiring the originating carrier to bear the costs of transporting traffic to a single point of interconnection. Secondly, Verizon and Alltel asked the Commission to reconsider its adoption of the originating carrier's retail local calling area as the

default mechanism for reciprocal compensation obligations.

The Commission should deny Verizon and Alltel's Motion for Reconsideration. A motion for reconsideration must identify points of fact or law that were *overlooked or not considered* in rendering the Order.[1] As demonstrated below, the Commission has already considered, and rejected the points of fact and law raised in the Verizon/Alltel Motion. Thus, Verizon and Alltel overlook the well-established rule that a motion for reconsideration should not reargue matters that have already been considered.[2] Verizon and Alltel's Motion largely parrots the same arguments that the Commission already considered and rejected in the Order, and thereby fails to meet the Commission standard for a motion for reconsideration, which must be "based upon specific factual matters set forth in the record and susceptible to review" and "not based upon an arbitrary feeling that a mistake may have been made."[3]

Unable to establish a sufficient case for reconsideration, Verizon and Alltel seek to undermine the effectiveness of the Commission's Order by requesting that the Commission stay the above portions of its Order pending conclusion of a potential appeal of the Order regarding the default local calling area. That request is premature and should be summarily denied as Verizon or Alltel have not filed an appeal of the Order and the Commission's rule addressing a stay of a Commission order only comes into play when the moving party files for an appeal.[4] Moreover, the

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[1]See *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So.2d 315 (Fla. 1974); see also *Diamond Cab Company v. King*, 146 So.2d 889 (Fla. 1962). (emphasis supplied)

[2]See *Sherwood v. State*, 111 So.2d 96 (Fla. 3rd DCA 1959).

[3]See *Stewart Bonded Warehouse, Inc. v. Bevis*, at 317.

[4]See Fla. Admin. Code R. 25-22.061.

Commission's decision is wholly consistent with federal law and likely to withstand any appellate review. Should Verizon or Alltel file a notice of appeal and a timely motion for stay, that request must be rejected if the Order is to retain the effect necessary to discharge the Commission's statutory obligation to ensure the availability of the widest possible range of consumer choice in the provision of telecommunications services for Florida consumers.

ARGUMENT

I. Verizon's motion to reconsider the Commission's decision requiring the originating carrier to bear the costs of transporting local traffic to a single point of interconnection should be denied.

In the Order, the Commission decided that an ALEC may designate a single point of interconnection (POI) within the LATA, and that the originating carrier, whether ALEC or ILEC, must deliver its traffic to that point. Verizon argues in its Motion, as it did at the hearing and in its posthearing brief, that ALECs should be required to bear Verizon's transport costs to deliver its traffic to the POI. The Commission has already considered and rejected the points argued by Verizon and should deny Verizon's motion.

In its Order, the Commission followed well-settled federal law that an ALEC has the right to choose both a single POI per LATA as well as any technically feasible method of interconnection and that all parties have an obligation to deliver their originating traffic to the POI selected by the ALEC. In order for carriers to exchange traffic between their respective customers, they must interconnect their networks as required by Section 251(c)(2) of the federal Telecommunications Act (the "Act"). The physical points at which the carriers perform the connection are called points of interconnection ("POIs"). Under the Federal Communications Commission's ("FCC") rules and orders, contrary to Verizon's arguments, the default rule is that the physical connection of the

parties' networks and the demarcation of financial responsibility is at the POI. Verizon's proposal, outlined in its posthearing brief and rehashed in its motion for reconsideration, ignores the FCC's "rules of the road" and requests that Verizon be authorized to designate the ALEC's POI or shift financial responsibility for transporting the ILEC's originating traffic from the ILEC to the ALEC.

Under 47 U.S.C. §251(c)(2)(B), ILECs must provide ALECs interconnection at any technically feasible point *selected by the ALEC.* This means that an ALEC "has the option to interconnect at only one technically feasible point in each LATA."[5] Furthermore, the Act and FCC rules place the burden on the ILECs to show that interconnection at a single POI per LATA is not technically feasible.[6] The *Local Competition Order* also bars state commissions from considering costs in determining "technically feasible" POIs.[7]

FCC Rule 51.703(d) establishes that an ILEC "may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the ILEC's network." As the FCC has noted, under this rule, "the originating telecommunications carrier bears the cost of transporting traffic to its Point of Interconnection with the terminating carrier."[8] The Commission

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[5]*Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance pursuant to Section 271 of the Telecommunications of Act of 1996 to provide in-region, interLATA services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238, ¶78 (2000) ("*Texas 271*").

[6]See 47 C.F.R. §51.305(e). *See also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd. 15499, Section 205 (1996) ("*Local Competition Order*").

[7]*Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd. 15499 (1996) ("*Local Competition Order*"), at ¶199.

[8]*Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC-01-132, ¶70 (rel. April 27, 2001) ("*Intercarrier Compensation*

has previously addressed these issues and determined that "[T]he interconnection of the parties' networks in this proceeding must be consistent with the Act, the subsequent decisions of the FCC, and federal rules cited in [the ALEC's] testimony. Therefore, we find that, for purposes of this arbitration, [the ALEC] should be permitted to designate the interconnection point(s) in each LATA for the mutual exchange of traffic, with *both parties assuming financial responsibility for bringing their traffic to the [ALEC]-designated interconnection point.*[9]

The Commission's Order in the instant case is consistent with FCC rules and this Commission's prior order, as the Commission in this docket held:

a. An originating carrier has the responsibility for delivering its traffic to the point of interconnection designated by the ALEC in each LATA; and

b. An originating carrier is precluded by FCC rules from charging a terminating carrier for the cost of transport, or for the facilities used to transport the originating carrier's traffic, from its source to the point(s) of interconnection in a LATA.[10]

The Commission adopted these policies on a going-forward basis.[11] The Commission also properly found that nothing in the hearing record supports the arguments raised by Verizon at the hearing and repeated in its Motion for Reconsideration:

NPRM").

[9]*Petition by AT&T Communications of the Southern States, Inc., d/b/a AT&T for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. pursuant to 47 U.S.C. §252*, Docket No. 000731-TP, Final Order on Arbitration, Order No. PSC-01-1402-FOF-TP, at 46 (June 28, 2001). (emphasis added.)

[10]Order at 25-26.

[11]Id.

> We find that nothing in the record to support the imposition by us of the intercarrier compensation scheme advocated by the ILEC witnesses. We believe the concerns expressed by the ALEC witnesses are valid and that the mandated sharing of originating carrier transport costs proposed by the ILEC witnesses potentially conflicts with the requirements of Section 252(d)(2)(A) of the Act. Additionally, ALEC witnesses cite recent interpretations of the FCC's rules at ¶34 of the TRS Wireless Order, and in FCC Order No. 01-132, ¶112, that appear to prohibit an originating carrier from imposing any originating costs on a co-carrier.

Order at 25-26.

Verizon has raised no points of fact or law that the Commission overlooked or misinterpreted when it reached this conclusion. In its Motion, Verizon repeats arguments raised in its posthearing brief that a point of interconnection (POI) and an interconnection point (IP) are two separate entities. Verizon raised these same arguments before the FCC. As explained below, the FCC rejected Verizon's position and reasserted its position that the originating carrier bears the sole financial responsibility to deliver its traffic to the POI.

On July 17, the FCC issued an order resolving three consolidated petitions for arbitration of interconnection agreements between Verizon-Virginia, Inc., and AT&T, WorldCom and Cox Telecom.[12] In the consolidated proceeding, Verizon proposed two methods of limiting its obligation to transport traffic to the ALEC network. First, Verizon sought to include language in its

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[12] *Petition of WorldCom, Inc. pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission regarding Interconnection Disputes with Verizon Virginia, Inc. and for Expedited Arbitration*, CC Docket Nos. 00-218, et. al., Memorandum Opinion and Order, Da. 02-1731, ¶66, 68 (Wireline Competition Bureau, rel. July 17, 2002) ("*FCC Arbitration Order*"). The Virginia State Corporation Commission declined to arbitrate the petitions, after which the FCC preempted the agency and decided the matters upon request of AT&T, WorldCom and Cox pursuant to 47 USC §252(e)(5).

interconnection agreement with one ALEC that would force that ALEC to establish an IP separate from the physical POI, and asked that the IP, rather than the POI, serve as the demarcation of Verizon's financial responsibility for transport of traffic.[13] In the event that Verizon was not successful on the IP/POI issue, Verizon proposed language that would preclude ALECs from charging distance-sensitive rates for "entrance facilities." These "entrance facilities" were interconnection facilities provided by ALECs used in the transport of Verizon-originated traffic to the ALECs' networks. Verizon thus argued that its proposed language would limit its transport costs in LATAs where an ALEC establishes only one, or a few, POIs.

Not surprisingly, the FCC tersely rejected Verizon's proposals, stating simply, "We reject Verizon's proposed language."[14] In the instant docket, Verizon raised the same arguments rejected by the FCC in its *FCC Arbitration Order*, and, like the FCC, the Commission correctly rejected Verizon's attempt to transfer Verizon's financial transport obligation to ALECs. Verizon can point to no issue that the Commission overlooked or misinterpreted when making this decision, and its Motion for Reconsideration on this point should be denied.[15]

In its Motion for Reconsideration, Verizon also argues that the Commission erred in holding

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[13]FCC Arbitration Order at ¶58.

[14]Id. at ¶58.

[15]Specifically, Verizon witness Beauvais stated in the instant docket that the "cleanest" method from Verizon's point of view would be to have a POI in each of its local exchange/rate centers. (Tr. 325). The Commission can hardly be said to have overlooked or misinterpreted this argument, when it was noted specifically and brought to the Commission's attention in the Staff Recommendation dated November 21, 2001, and specifically rejected in the Order at page 25. Even BellSouth witness Ruscilli agreed that FCC Order No. 01-132, ¶112, precludes an ILEC from charging carriers for transport of ILEC-originated local traffic and requires ILECs to compensate a co-carrier for transport and termination. (Tr. 153).

that the transport costs for transporting traffic to the POI are *de minimus*.[16] In fact, the Commission's finding was based on undisputed evidence: "the *undisputed* testimony in the record is that the transport costs identified as being at issue in this proceeding are *de minimus*." Order at p. 26. The basis for Verizon's objection to this ruling appears to be that in an unrelated arbitration between BellSouth and Sprint, the Commission held that there were costs associated with transporting a call to a POI. Whether BellSouth presented evidence in an unrelated arbitration proceeding is totally irrelevant. Verizon's reliance on extra-record evidence that was not subject to cross-examination or challenge in this proceeding blatantly ignores the standard for reconsideration. In any case, Verizon's arguments are not compelling, since the Commission never attempted to quantify transport costs in the BellSouth-Sprint proceeding, or to determine their relative magnitude.

Verizon has not met the Commission's standard for reconsideration. For the reasons set forth above, Verizon has failed to offer any points of fact or law that have not already been considered and rejected by the Commission regarding the parties' financial responsibility to transport their local traffic to the POI.

II. Verizon's and Alltel's Motion to Reconsider the Commission's decision adopting the originating carrier's retail local calling area as the basis for determining reciprocal compensation obligations should be denied.

In the Motion for Reconsideration, Alltel and Verizon reargue the very position Verizon explicitly asserted at the hearing and in its posthearing brief: that the Commission adopt the ILEC's local calling area as the default local calling area. The legal and factual arguments raised in the Motion for Reconsideration are merely a rehash of the arguments submitted in the posthearing briefs,

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[16]Motion at p. 7.

and should be rejected. Verizon and Alltel's assertion that the Commission "overlooked" issues of fact regarding the issue is simply wrong. In fact, the Commission clearly considered, and soundly rejected Verizon's proposal:

> Verizon witness Trimble contends that the existing systems, which defines reciprocal compensation obligations based on ILEC-tariffed local calling areas, "has the advantage because it has worked well over the years and it is easier to maintain an existing, proven system than to implement and administer a new one." ... While Verizon apparently believes the use of an ILEC's retail local calling area is the basis for determining compensation is simple, we conclude that the issue of simplicity appears to be in the eye of the beholder... We are leery of the competitive neutrality argument advanced by witness Trimble.... [I]t would seem paradoxical to assume neutrality in a competitive market paradigm will result from the imposition of a compensation structure that is geographically routed in monopoly era regulation.

Order at 43-44.

Because it is clear that the Commission has already considered and rejected Verizon's proposal, it is not appropriate for Verizon and Alltel to reargue, or for the Commission to entertain, the same arguments in a Motion for Reconsideration. *See Stewart Bonding Warehouse, supra.*

A. The Commission's order does not violate federal law.

Verizon's and Alltel's claim that defining the local calling area as the originating caller's retail local calling area for reciprocal compensation violates federal law should be rejected. This argument, like the other arguments foisted on the Commission in the Motion for Reconsideration, are merely attempts to get the Commission to rule in the way that Verizon has championed all along. That is:

> If parties cannot agree on a local calling area definition in negotiations, then the ILEC's definition should be the default. (Tr. 109, Tr. 536, Verizon posthearing brief, pages 8 and 9).

The Commission should reject this argument, just as it did in its Order. To support their position that the decision violates federal law, Verizon and Alltel argue that the rule requiring the local calling area to be determined by the originating caller's local calling area is "not symmetrical." Specifically, Verizon and Alltel erroneously argue that the Commission's decision violates the federal requirement that reciprocal compensation rates be symmetrical. Verizon and Alltel argue that the *ISP Remand Order* at ¶1089 requires states to establish symmetrical reciprocal compensation *rates*, unless the state commission finds, based on a cost study, the costs of the ILEC's and ALEC's system justify a different compensation rate. Motion at p. 12. Clearly, this Commission's Order does not violate the rule requiring symmetrical *rates*. It only addresses the scope of the local calling area, a matter clearly within the Commission's jurisdiction. As the Commission stated in its Order:

> FCC 96-325, ¶1035 appears unequivocal in granting authority to state commissions to determine what geographic area should be considered "local areas" for the purpose of applying reciprocal compensation obligations under Section 251(b)(5) of the Act. ILEC parties nothing to dispute what appears to be a clear delegation of authority from the FCC to state commissions to make determinations as to the geographic parameters of a local calling area.

Order p. 41. The Commission exercised its authority consistent with federal law and its ruling should not be disturbed.

B. The Commission order does not violate state law.

The Commission's decision to set the calling party's local calling area is well within its authority. Sections 364.01(4)(b) and 364.01(4)(g), Florida Statutes, grant the Commission broad powers to support local competition, and direct the Commission to:

> (b) Encourage competition through the flexible regulatory treatment among providers of telecommunications services in order to insure the availability of the widest possible range of consumer choice in the

provision of all telecommunications services.

* * *

(g) Insure that all providers of telecommunications services are treated fairly by preventing anti-competitive behavior and eliminating unnecessary regulatory restraint.

The Commission's jurisdiction to establish a local calling area for reciprocal compensation purposes also is enunciated in *Florida Interexchange Carriers v. Beard*, 624 So.2d 248, 251 (Fla. 1993), wherein the Florida Supreme Court stated:

> The exclusive jurisdiction in Section 364.01 to regulate telecommunications gives us the authority to determine local routes.

Verizon and Alltel must concede that the Commission has authority to determine a proper local calling area for reciprocal compensation purposes, as both Verizon and Alltel put forth the proposition that the ILEC's local calling area should be the default mechanism.

Verizon and Alltel argue that Sections 364.16(3)(a) and 364.163, Florida Statutes, preclude the Commission from establishing a local calling area. This is simply not the case. Section 364.16(3)(a) states:

> (a) No local exchange telecommunications company or alternative local exchange telecommunications company shall knowingly deliver traffic, *for which terminating access charges would otherwise apply*, through a local interconnection agreement without paying the appropriate charges for such terminating access service.

Clearly, section 364.16(3)(a) precludes a local (or alternative local) exchange telecommunications company from delivering access traffic without paying the appropriate terminating access charges to the terminating carrier for such traffic. It is equally clear, however,

that Section 364.16(3)(a) does not address and certainly does not impede the Commission's authority to establish local calling areas. While the Commission's decision defining a "local calling area" may alter the compensation scheme for particular traffic routes in the state, it does not violate Section 364.16(3)(a), because all carriers will still be required to pay terminating access charges where applicable.

Verizon's and Alltel's reliance on Section 364.163, Florida Statutes, to assert that the Commission does not have the authority to define the default local calling area is equally misplaced. As the Commission pointed out in the Order:

> [T]he ILEC parties are failing to distinguish between access rates and access revenues. It is clear from the plain language of Section 364.163, Florida Statutes, that the Legislature has reserved for itself the authority to determine access charge *rates*. What is not clear from the ILEC's brief is how Section 364.163 governs access charge *revenues*. We do not believe a decision by us to [establish LATAs as] a default local calling area translates into rate-setting. Order, p. 41.

In their Motion for Reconsideration, Verizon and Alltel continue to rely on the Commission's decision in the Telenet Order, Order No. PSC-97-0462-FOF-TP. This same argument has been considered and rejected by the Commission in its Order. The Commission stated:

> We note, however, the Telenet Order was issued in 1997 on an issue involving call forwarding. Given that the Telenet Order addressed a specific issue in an arbitration proceeding, we appreciate its conclusion but do not believe that decision has precedential value in the instant proceeding.

In short, in the Motion for Reconsideration, Verizon and Alltel merely ask the Commission to change its ruling to a position more beneficial to them. The legal arguments addressing both federal and state law in the Motion for Reconsideration are merely a rehash of the very same

arguments Verizon already presented. These arguments were considered by the Commission and were firmly rejected.

C. Using the originating party's local calling area as a mechanism for determining reciprocal compensation is consistent with current practice in Florida.

BellSouth witness Shiroishi testified that using an originating carrier's local calling area as the default mechanism is technically feasible. (Order, p. 46). In fact, Ms. Shiroishi asserted that BellSouth currently has implemented the very process Verizon insists would cause "massive administrative problems."

> for purposes of determining the applicability of reciprocal compensation, a "local calling area" can be defined as mutually agreed to by the parties and pursuant to the terms and conditions contained in the parties' negotiated interconnection agreement *with the originating parties' local calling area determining the intercarrier compensation between the parties. BellSouth currently has the arrangement [sic] described in many of its interconnection agreements, and is able to implement such agreement through the use of billing factors.* These factors allow the originating carrier to report to the terminating carrier the percent of usage that, is interstate, intrastate, and local. (See Order, pg. 46-47).

Verizon's arguments that the ruling is arbitrary because it fails to consider the "massive administrative problems" and "enormous costs" is belied by BellSouth's testimony in this docket. It is interesting to note that Verizon's assertion regarding administrative problems and enormous costs are speculative. Verizon witnesses testified that Verizon does not currently use the originating caller's local calling area as a default in its intercarrier agreements and therefore has not properly determined what costs would be involved. BellSouth, on the other hand, currently has the arrangement in many of its interconnection agreements and is able to implement the arrangement

through the use of billing factors.[17] Therefore, Verizon's claims of massive administrative problems and enormous costs should again be rejected.

III. Verizon's and Alltel's Motion for Stay Pending Appeal Also Should be Denied

Verizon and Alltel alternatively seek a stay if the Commission declines to reconsider its local calling area decision. In such event, as Verizon/Alltel put it, "an appeal will be necessary...".[18] Verizon and Alltel have the same appellate rights as any other party to this proceeding. If and when they choose to file an appeal, they can then request a stay. Until that happens, their request for a stay is premature and should be summarily denied. There is nothing in Rule 25-22.061 which even remotely authorizes the granting of a stay absent the timely filing of a notice of appeal.

Should the Commission decide to address Verizon/Alltel's arguments regarding a stay--in the event that Verizon or Alltel decide in the future to file an appeal--their arguments supporting a stay should be rejected.

Rule 25-22.061(1)(a), Florida Administrative Code requires the Commission to stay an order pending judicial review "when the order being appeal involves the refund of monies to customers or a decrease in rates charged to customers..." Verizon's argument that Rule 25-22.061 is implicated by the Commission's order regarding the local calling area is erroneous. Verizon and Alltel argue that if the ALEC defines its local calling area larger than the ILECs' tariffed local calling area, the ALEC will then pay reciprocal compensation rates instead of access charges on traffic traversing an ILEC's local calling area. The Commission ruling only impacts intercarrier compensation, and

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[17]Clearly, BellSouth doesn't believe this arrangement violates state or federal law, nor did the Commission when it approved these interconnection arrangements.

[18]Verizon/Alltel Motion, at 33.

thereby, by definition does not involve the refund of "monies to customers" or a "decrease" in rates charged to customers. Indeed, as the Commission stated in a 1999 order denying BellSouth's request for a stay of its Commission ordered obligation to pay reciprocal compensation for ISP traffic terminated by certain ALECs pending BellSouth's appeal:

> This rule (Rule 25-22.061(1)(a)) does not apply to this case, because, contrary to BellSouth's assertion, the complainants, competitive telecommunications carriers, are not "customers" for purposes of this rule. The rule is designed to apply to rate cases or other proceedings involving rates and charges to end user ratepayers or customers, not to contract disputes between interconnecting telecommunications providers. Furthermore, this case does not involve a "refund" or a "decrease" in rates. It involves payment of money pursuant to contractual obligations.

In re: Complaint of WorldCom Technologies, Inc. against BellSouth Telecommunications, Inc., et. al., ("*WorldCom*"), Order No. PSC-99-0758-FOF-TL, at 4.

The Commission should further deny the request for a stay because Verizon and Alltel have not, and cannot, establish all of the conditions for obtaining a discretionary stay pending judicial review pursuant to Rule 25-22.061(2). Rule 25-22.061(2) states, in pertinent part:

> In determining whether to grant a stay, the Commission may, among other things, consider: (a) whether the petitioner is likely to prevail on appeal; (b) whether the petitioner has demonstrated that he is likely to suffer irreparable harm if the stay is not granted; and (c) whether the delay will cause substantial harm or be contrary to the public interests.

Verizon and Alltel state that they are likely to prevail on appeal based upon their arguments made in their Motion for Reconsideration. The Commission order establishing a default local calling area is consistent with federal and state law, although inconsistent with Verizon's desired result. In any potential future appeal, the Commission's ruling regarding local calling areas, clearly a matter

within the Commission's field of expertise, would be entitled to great deference from the appellate court and is not likely to be overturned. (See *BellSouth Communications, Inc. v. Johnson*, 708 So.2d 594, 596 (Fla. 1998) "An agency's interpretation of the statute it is charged with enforcing is entitled to great deference.") The legal hurdles facing Alltel and Verizon on appeal from this Order, as well as the fact that the Commission's decision is consistent with federal and state law, renders a successful appeal unlikely.

Verizon and Alltel also state that they will likely suffer irreparable harm if a stay is not granted. This is not the case. Verizon and Alltel merely complain about competitive losses to the ALECs. Whether Verizon and Alltel will actually suffer *any* losses in speculative, however, there is nothing "irreparable" about a company's competitive losses due to the Commission's revisions to the out-moded monopoly era local calling areas.

Finally, Verizon and Alltel argue that a delay in the implementation of this Commission's ruling regarding local calling areas will not cause substantial harm or be contrary to the public interest. This argument is equally untenable. Again, referring to the *WorldCom* decision and the Commission's rejection of BellSouth's assertions under Rule 25-22.061(2) that BellSouth would be irreparably harmed if a stay was not granted but there would be no harm to the public by ordering a stay, the Commission held:

> The harm to the development of competition from further delay is the discernible harm in this case. Harm to the development of competition is harm to the public interest.

Order No. PSC-99-0758-FOF-TP, at 8.

The Commission's rationale in *WorldCom* is equally applicable in the instant case. The Commission's decision, which is well within its authority, was made precisely because the

Commission determined it to be in the public interest. The public interest in the development of local exchange competition is not served by further delay. A stay, if timely sought upon the filing of an appeal, would relegate the ALECs back to the time and expense of arbitrating this issue in the future - - contrary to the basic purpose of this generic docket - - at the expense of Florida's consumers who await the promise and benefits of full local exchange competition.

CONCLUSION

The Commission's Order complies with state and federal law and is well within its authority. Verizon and Alltel have raised no issues which the Commission overlooked or misapplied. Instead, they merely rehash the very same arguments the Commission specifically rejected. The Commission should reject these arguments once more and deny the Motion for Partial Reconsideration and Alternative Motion for Stay.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail to the following this 7th day of October, 2002:

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