

ORIGINAL

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October 7, 2002

Mrs. Blanca S. Bayó  
Director, Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
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Re: 000075-TP (Generic ISP Docket) (Phases II and IIA)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Opposition to AT&T's, TCG'S, and AT&T Broadband's Motion for Reconsideration and BellSouth's Cross Motion for Reconsideration, which we ask that you file in the captioned docket.

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

Sincerely,  
*James Meza III*  
James Meza III (KA)

Enclosures

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

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**CERTIFICATE OF SERVICE**  
**Docket No. 000075-TP (Phases II and IIA)**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

Electronic Mail and First Class U.S. Mail this 7th day of October, 2002 to the following:

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**(+) Signed Protective Agreement**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Investigation Into Appropriate)      Docket No. 000075-TP  
Methods to Compensate Carriers )      (Phases II and IIA)  
For Exchange of Traffic Subject to )  
Section 251 of the )  
Telecommunications Act of 1996 )      Filed: October 7, 2002

**BELLSOUTH'S OPPOSITION TO AT&T'S, TCG'S,  
AND AT&T BROADBAND'S MOTION FOR RECONSIDERATION  
AND BELLSOUTH'S CROSS MOTION FOR RECONSIDERATION**

BellSouth Telecommunications, Inc. ("BellSouth") submits this Opposition to the Motion for Reconsideration of Order No. PSC-02-1248-FOF-TP ("Order") filed by AT&T Communications of the Southern States, Inc., TCG South Florida, AT&T Broadband Phone of Florida, LLC (collectively "AT&T") and all other ALECs who adopted AT&T's Motion.<sup>1</sup> The Commission should reject AT&T's Motion because it fails to identify any point of fact or law that the Florida Public Service Commission ("Commission") failed to consider. In addition, pursuant to Rule 25-22.060, Florida Administrative Code, BellSouth hereby files a Cross Motion for Reconsideration regarding the Point of Interconnection ("POI") issue by adopting, in toto, the Motion for Reconsideration filed by Verizon and ALLTEL as to this issue.

**ARGUMENT**

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 the Commission failed to consider in rendering an order. See Diamond Cab Co. v. King, 146 So. 2d 889, 891 (Fla. 1962). In a motion for reconsideration, it is not

appropriate to reargue matters that have already been considered. See Sherwood v. State, 111 So. 2d 96, 97 (Fla. 3<sup>rd</sup> DCA 1959) (citing State ex. Rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1<sup>st</sup> DCA 1958)). Moreover, a motion for reconsideration is not intended to be “a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or the order.” Diamond Cab Co., 394 So. 2d at 891. Indeed, a motion for reconsideration should not be granted “based upon an arbitrary feeling that a mistake may have been made, but should be based on specific factual matter set forth in the record and susceptible to review.” Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

In its Motion, AT&T requests that the Commission reconsider its decision regarding tandem switching and virtual NXX. The Commission should reject AT&T’s Motion because it fails to identify any point of fact or law that the Commission failed to consider.

**I. The Commission Should Not Reconsider Its Decision on Tandem Switching.**

AT&T argues that the Commission erred by requiring an ALEC to prove it is entitled to the tandem switching rate by establishing that (1) it has deployed a switch in a comparable geographic area; (2) it has deployed NPA/NXXs to serve the exchanges within the area; and (3) it is serving the area through its own facilities or a combination of owned and leased facilities connected to its collocation arrangements in an ILEC’s central office. Motion at 4; Order at 20. In support of its Motion, AT&T solely relies on the Federal Communication

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<sup>1</sup> Time Warner, FCTA, and FCCA adopted AT&T’s Motion for Reconsideration without adding any

Commission's ("FCC") decision in In Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Regarding Interconnection Disputes with Verizon Virginia, Inc., Memorandum Opinion and Order, Da. 021731 (Jul. 17 2002) ("Virginia Order"). AT&T erroneously argues that this decision has "preempted" the tandem switch rate issue and thus the Commission erred in requiring ALECs to "meet a greater burden than that set by the FCC." Motion at 8.

The fatal flaw in AT&T's argument is that the FCC's decision in the Virginia Order carries no more weight before the Commission than does a decision from any other state commission. This is so because the FCC issued the Virginia Order pursuant to Section 262(e)(6) of the Act. Accordingly, the FCC stood in the shoes of the Virginia Commission and its ruling applies only to carriers in Virginia. Indeed, the FCC recognized this fact in the Order:

In this proceeding, the Wireline Competition Bureau, acting through authority expressly delegated from the Commission, stands in the stead of the Virginia State Corporation Commission. We expect that this order, and the second order to follow, will provide a workable framework to guide the commercial relationships between interconnecting carriers before us in Virginia.

Virginia Order at ¶ 1.

Moreover, the FCC expressly recognized that its decision was limited to "the record of these hearings, the evidence presented therein, and the subsequent briefing materials filed by the parties." Id. at ¶ 2. Not surprisingly,

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additional arguments.



because BellSouth does not operate in Virginia, BellSouth was not a party to that proceeding. Thus, applying a decision involving Virginia carriers and different facts and parties to BellSouth in Florida would arguably violate BellSouth's due process rights and undermine the regulatory process.

Accordingly, the Virginia Order does not preempt the Commission's decision regarding tandem switching. Rather, the Commission should treat the Virginia Order as any other decision rendered by another state commission - a nonbonding order that contains no precedential value.

In any event, assuming arguendo that the Virginia Order applied to the Commission's analysis, it does not require a different conclusion. In the Virginia Order, the FCC held that, in order to obtain the tandem switching rate, a CLEC must prove that the "competitive LEC's switch is capable of serving a geographic area that is comparable to the architecture served by the incumbent LEC's tandem switch." Virginia Order at ¶ 309. The Commission's Order is entirely consistent with this decision. Namely, the Commission's requirement that the ALEC deploy a switch and also obtain NPA/NXXs are fundamentally necessary to satisfy the standard set forth by the FCC for Virginia carriers. This is so because without a switch or NPA/NXXs, an ALEC would not be "capable" of providing any service to any customers, regardless of where potential customers may be located. Accordingly, even accepting AT&T's argument, the Commission is not required to reconsider its decision on the tandem switching issue.

## **II. The Commission Should Not Reconsider Its Decision on Virtual NXX.**

Next, AT&T argues that the Commission should reconsider its finding that “intercarrier compensation for calls to [virtual NXX] numbers shall be based upon the end points of the particular calls” and that “calls terminated to end users outside the local calling area in which their NPA/NXXs are homed are not local calls for purposes of intercarrier compensation.” Order at 33. In support, AT&T first argues that the Commission’s decision to rate calls based upon the NPA/NXX of the call is improper because the “Commission misinterpreted or overlooked the difficulty and expense associated with implementing the decision.” Motion at 11.

The Commission should reject this argument because it fails to satisfy the standard for reconsideration as AT&T fails to raise any point of fact or law that the Commission failed to consider. Specifically, the Commission considered the cost argument, as it was raised by witness Gates (“Witness Gates suggests we ‘keep the status quo,’ and not require these costly changes be made to the switching architecture.” Order at 32), but held that there was insufficient factual evidence to address any cost concerns. Id. (“However, we believe that the balance between costly modifications and traffic volumes should be considered when determining what, if any, intercarrier compensation should be applied to virtual NXX/FX traffic.”). The Commission also held that “whether reciprocal compensation or access charges should apply to virtual NXX/FX traffic is better left for parties to negotiate in individual interconnection agreements.” Id.

Clearly, the Commission fully considered AT&T's argument and rejected it, finding that there was insufficient record evidence to make a finding. Now, when faced with an adverse decision, AT&T attempts to rehabilitate this argument in a motion for reconsideration, which is improper.

Second, AT&T argues that the Commission's erred by failing to consider "FCC precedent" – i.e. the Virginia Order. For the reasons discussed above, the Virginia Order is not "FCC precedent" as it only applies to the carriers in Virginia and only to the parties that participated in that decision. Indeed, the passage quoted by AT&T recognizes this fact as it provides that "Verizon offered no viable alternative to the current system" and that the "parties agree that rating calls by their geographic starting and ending points raises billing and technical issues that have no concrete workable solution at this time." Virginia Order at 301. None of these facts, including an agreement on the infeasibility of the billing and technical issues, were at issue in the instant docket. Simply put, the Commission is not obligated to subvert its express findings based upon the record in this proceeding to a finding by the FCC acting as the Virginia Commission. Accordingly, AT&T's Motion for Reconsideration as to the Virtual NXX issue should be denied.

### **III. Cross Motion for Reconsideration on the POI Issue.**

BellSouth adopts, in toto, Verizon's and ALLTel's Motion for Reconsideration as to the Commission's decision regarding the POI issue. For the reasons discussed in detail therein, the Commission should reconsider its decision and find that that each originating carrier has the right to designate its

POI on the ILEC's network and that ALECs should be responsible for the costs BellSouth incurs in hauling calls to an ALEC's POI outside the local calling area.

**CONCLUSION**

For the foregoing reasons, BellSouth requests that the Commission deny AT&T's Motion for Reconsideration and grant BellSouth's Cross Motion for Reconsideration.

Respectfully submitted this 7th day of October, 2002.

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