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October 21, 2002

Mrs. Blanca S. Bayó  
Director, Division of the Commission  
Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850


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

Dear Mrs. Bayó:

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

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

Sincerely,

  
Andrew D. Shore (KA)

Enclosures

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

DOCUMENT NUMBER-DATE

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

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via  
Federal Express this 21<sup>st</sup> day of October 2002 to the following:

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**(+) Signed Protective Agreement**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into Pricing of Unbundled ) Docket No.: 990649A-TP  
Network Element )  
\_\_\_\_\_ ) Filed: October 21, 2002

**BELLSOUTH'S RESPONSE IN OPPOSITION TO**  
**MOTION FOR RECONSIDERATION**

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Rule 25-22.060 of the Florida Administrative Code, hereby responds to the motion for reconsideration filed by AT&T of the Southern States, LLC ("AT&T") and MCI WorldCom, Inc. ("WorldCom").

INTRODUCTION

AT&T and WorldCom argue again in their motion for reconsideration that the Commission should have applied lower inflation rates when it established new, lower UNE rates for BellSouth. Conspicuously absent from their motion is any mention of the standard the Commission must apply to a motion for reconsideration. This is not an oversight, for AT&T and WorldCom are quite familiar with the strict standard. Indeed, they cited it on page one of their brief opposing a motion for reconsideration BellSouth filed regarding certain aspects of the Commission's May 2001 Order in phase I of this proceeding, and argued that BellSouth had failed to meet the stringent standard for reconsideration. AT&T/WorldCom have not, and cannot, show that reconsideration of the Commission's decision regarding inflation rates is warranted. AT&T/WorldCom do not even claim that the Commission overlooked a pertinent point of fact or law. Rather, they simply rehash the very same arguments they made in their testimony and post-hearing briefs, and which the Commission fully considered in rendering its

decision regarding inflation rates. Consequently, the Commission must deny the motion for reconsideration.

The Commission also should deny AT&T/WorldCom's request for "clarification of BellSouth's subsequent cost studies." First, AT&T and WorldCom admittedly are seeking much more than a "clarification" of the Commission's Final Order. They are asking that the Commission require on a prospective basis that BellSouth make certain fundamental changes to its modeling methodology that go way beyond the directives set forth in the Commission's Order. Moreover, there is no evidence that BellSouth could make the requested changes even if the Commission ordered it to do so. The fact is that for many, it could not. Finally, the Commission did not order BellSouth to make the changes in its modeling methodology as part of this proceeding, and it would be improper for it to do so in the name of "clarification" of an Order that AT&T and WorldCom acknowledge does not require the fundamental changes they now seek. AT&T and WorldCom are free to develop a cost model of their own that employs the methodology that they feel is appropriate if they think it is possible to do so. This Commission, as well as every other State Commission in BellSouth's region, and the FCC, each have concluded that BellSouth's cost methodology produces UNE costs that comply with the FCC's TELRIC rules. AT&T and WorldCom's requested "clarifications" are unnecessary, unwarranted, and inappropriate.

## ARGUMENT

### **I. THE COMMISSION SHOULD DENY AT&T/WORLDCOM'S MOTION FOR RECONSIDERATION.**

#### **A. Standard of Review.**

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. Sherwood v. State, 111 So. 2d 96, 97 (Fla. 3<sup>rd</sup> DCA 1959) (citing State ex. Rel. Jayatex 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.” Steward Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315, 317 (Fla. 1974).

**B. AT&T/WorldCom Do Not Even Purport to Meet the Stringent Standard Required for Reconsideration.**

Notably, not only do AT&T and WorldCom fail to reference the standard of review for a motion for reconsideration, they do not even purport to satisfy it. AT&T/WorldCom do not contend that the Commission overlooked some salient point in its consideration of the appropriate inflation rates to determine BellSouth’s UNE rates. Instead, they simply reargue what they argued at the hearing and in their post-hearing briefs – that BellSouth’s inflation data should be updated to use information not available at the time of the cost study, despite the fact that material prices and other factors used in the study are based on 1998 data. The Commission considered this specific issue in rendering its Order. At page 113 of its September 27, 2002, Order, the Commission concluded:

Regarding whether BellSouth’s inflation rates should be updated to reflect the most current actual data, certainly when 1998-2000 actual inflation is now known, there is some sense to recognizing the actual data. BellSouth even agrees with this. However, as BellSouth notes, material prices and other factors in the cost study are based on 1998 data. For consistency, BellSouth continued its use of

inflation rates based on 1998 projections. We also note that UNE prices reflected in Order 1181 and the Reconsideration Order are based on 1998 data and inflation projections. Only loop rates are being considered for revision in this case as a result of the “bottoms-up” cost approach. **For consistency between all UNE rates, we believe 1998 projected inflation rates should continue to be used.**

(emphasis added). The Commission considered the consistency argument that is the basis for AT&T and WorldCom’s reconsideration motion and rejected it. The Commission should, therefore, deny AT&T/WorldCom’s request for reconsideration based on this same argument.

C. **The Commission’s Decision to Use Inflation Factors Based on 1998 Data Was Appropriate Given That Material Prices and Other Factors in the Cost Study Are Based on 1998 Data.**

Beginning with its initial cost study filing in this docket in early 2000, BellSouth has consistently used 1998 data as its base source for developing material prices and all of the factors used in its cost study, including, but not limited to inflation factors. The Commission properly determined that to require the use of updated information for one set of inputs without revising the remaining inputs would result in an inaccurate projection of cost and, accordingly, rejected AT&T’s proposal to require BellSouth to use more recent inflation data that was not available when BellSouth developed its original inflation rates. A cost study must employ data available when the study is performed, and the nature of the regulatory process is that the timeliness of the data can often be questioned during the review process. The FCC confirmed this point in its recent Order approving BellSouth’s application to provide long-distance service in North Carolina, South Carolina, Alabama, Kentucky, and Mississippi, and concluded that it is not appropriate to allow the ALECs to continually “update” selective data as it suits them. *See* Five State 271 Order, ¶ 101.

Moreover, this final phase of the proceeding addressed only loop rates. The sole issue to be addressed by the Commission was whether BellSouth accounted for the impact of inflation in

its bottoms-up study submitted in this phase of the docket consistent with the Commission's earlier Order in this docket regarding inflation. There is no question that it did, and AT&T/WorldCom do not contend otherwise. As the Commission reasoned in its September 27, 2002, Final Order, it makes good sense to use the same inflation rates to develop UNE loop rates as it used to develop the rates for other UNEs.

The Commission's Order makes clear that it considered AT&T/WorldCom's "consistency" argument in rendering its decision regarding the appropriate inflation rates. Consequently, AT&T/WorldCom's motion for reconsideration, which is based entirely on the consistency argument it made earlier, must be denied.

**D. AT&T/WorldCom's Claim That BellSouth Has Used Inconsistent Data is Incorrect.**

AT&T/WorldCom's contention that BellSouth revised certain inputs in its study and has, therefore, used inconsistent data, misses the mark entirely. AT&T/WorldCom first claim that "consistency clearly was not a concern" when BellSouth revised its Daily Usage File ("DUF") study. To the contrary, BellSouth's revised DUF study used inputs of the same vintage across the board. BellSouth updated demand, as well as investment input, to reflect a 2002-04 study period. AT&T/WorldCom argue, by contrast, that the Commission should use 1998 material prices and other inputs in the loop study, except for inflation data, which should come from later years. As noted above, the Commission rejected that proposal for good reason. BellSouth's updating of *all* of the inputs in its DUF study does not in any way undermine that decision.

AT&T/WorldCom's next argument, that revisions to BellSouth's bottoms-up study filed on January 28, 2002, would have been precluded based on "consistency," is similarly misplaced. BellSouth did not revise its study to use data that was not available at the time it performed the study, which is what AT&T/WorldCom advocate with respect to inflation data.

Rather, it corrected a few errors in its study. *See* letter filed with the Commission on January 24, 2002, for explanation of the corrections. Specifically, BellSouth revised its engineering factors because the BSTLM did not use the inputs in the same manner as the system that was the source for the original factors; it corrected a mathematical error regarding placing hours; and it corrected an error in the excavation and manhole cost development. BellSouth's revised engineering factors, like the other inputs used in the model, are based on 1998 data. The filing in this proceeding was the first time the BSTLM was used to conduct a bottoms-up study. It is hardly surprising that there were a couple of errors in a complex study such as this one the first time it was used. BellSouth revised its study to correct these errors, not because it had more recent data that it could use with other inputs of a different vintage to produce a more favorable result for itself, like AT&T/WorldCom would like to do here. In fact, as AT&T/WorldCom point out, some of the corrections were in the ALECs' favor. Importantly, none of the revisions had anything to do with consistency. BellSouth consistently used data of the same vintage, as the Commission has recognized is appropriate, and its corrections do not in any way support AT&T/WorldCom's proposal to use inflation data of a different vintage than the material prices and other inputs used in the study.

AT&T/WorldCom want to selectively use more recent data that was not available at the time BellSouth performed its original study. They do not argue that it would be inconsistent to do so. Rather, they try to argue that BellSouth has itself used inconsistent data. As demonstrated above, they are wrong. Consequently, in the event the Commission allows AT&T/WorldCom to reargue this issue, it should affirm its prior decision to employ inflation data from the same source year as the other inputs BellSouth used in its cost study.

**II. THE COMMISSION SHOULD NOT “CLARIFY” ITS SEPTEMBER 27<sup>TH</sup> ORDER TO REQUIRE BELL SOUTH TO CHANGE ITS COST MODELING METHODOLOGY IN SOME UNKNOWN FUTURE PROCEEDINGS.**

The Commission should refuse AT&T/WorldCom’s request to “clarify” the September 27<sup>th</sup> Order to require BellSouth to make fundamental changes to its cost modeling methodology in unspecified future filings. First, to require BellSouth to do so would be to require much more than a simple “clarification.” The Commission should, accordingly, deny AT&T/WorldCom’s requests on that basis alone. Second, this proceeding was to establish UNE rates for BellSouth. The Commission has now set final (lower) UNE rates. There will be no “future filings” in this docket. Consequently, there is no need for BellSouth to have to make fundamental changes to its costing methodology. Moreover, there is absolutely no evidence in the record to suggest that BellSouth could change its model as requested at this late date by AT&T/WorldCom. It would be fundamentally unfair to require BellSouth to make changes to its modeling methodology without even an opportunity to be heard on the practicality of such changes, not to mention the merits. This Commission has concluded, and the FCC will confirm in its docket regarding BellSouth’s application to provide long-distance service in Florida, that BellSouth’s cost model produces UNE costs that comply with the FCC’s TELRIC rules. Indeed, the FCC has held in approving BellSouth’s long-distance applications for seven other states that UNE rates developed in each of those seven states using in-plant factors rather than a “bottoms-up” study were TELRIC compliant. BellSouth should not be required to make any additional fundamental changes to its modeling methodology.

In addition to the above stated reasons why the Commission should deny AT&T/WorldCom’s requests for “clarification,” none of the requests is appropriate on a substantive basis. Each is discussed below:

*Engineering Factor.* AT&T argued that BellSouth should be required to modify its BSTLM to yield engineering costs that eliminate material cost as a driver. The Commission did not conclude that it would be appropriate to do so. Indeed, it never discussed the merits of such an approach in its Order. Consequently, it would be much more than a simple “clarification” of its Order for the Commission to require BellSouth to make such a change. In addition, such an approach would also necessarily apply a factor to develop engineering costs and would be no more “bottoms-up” than the methodology BellSouth used or that the Commission employed to set UNE rates.

*Structure Costs.* This issue has to do with the recovery of costs associated with placement and restoration operations necessitated by the placement of cable. The Commission rejected BellSouth’s application of a miscellaneous contractor charge and thus disallowed recovery of certain costs that the Commission acknowledged are legitimate. *See* Order at pp. 17-18. Incredibly, AT&T/WorldCom ask the Commission to require BellSouth to submit more granular costs in unspecified future filings so that BellSouth can recoup these legitimate costs, even though their witness made the “overarching assertion” that such costs do not meet TELRIC. *Id.* at 17. This is surprising, since the Commission’s ruling precludes recovery of these costs in their entirety. It certainly must make the Commission question the true motive behind AT&T/WorldCom’s requests for “clarification.” In any case, whether BellSouth can implement an approach that groups the costs reflected in its miscellaneous contractor charge by type of placement is presently unknown. Given the Commission’s ruling on this issue, the decision of whether to do so should be left to BellSouth.

*Buried Excavation Contract Labor.* AT&T/WorldCom claim that “the Commission expressed frustration that the record did not allow detailed findings that would support detailed

individual inputs for each type of buried excavation rather than the one size fits all approach proposed by BellSouth.” It did not. The Commission recognized that there was no evidence in the record to dispute the fact that BellSouth does utilize a melded, one price fits all approach for excavation work. The Commission further noted that AT&T had failed to offer any support for their discrete proposed excavation values, despite ample opportunity to do so. There is absolutely no basis to require BellSouth to modify its modeling approach regarding buried excavation contract labor.

*Underground Excavation Contract Labor.* The Commission “decline[ed] to adopt witness Donovan’s proposal to reapportion restoration costs in the model,” and approved BellSouth’s inputs. AT&T/WorldCom state in their motion that the Commission stated in its Order that witness Donovan’s proposal “has merit.” The Commission did not say that, however. It said that there “*may* be merit in witness Donovan’s proposal.” *Id.* at 30 (emphasis added). The Commission then explained that it had questions about whether it did in fact have merit. If BellSouth had discrete restoration costs, then it would have to supply inputs on the percentage of time that each type of restoration occurs (e.g., how often does BellSouth have to restore asphalt in a suburban, urban and rural area). There is no empirical data to support these inputs. There is no legitimate basis to require BellSouth to substitute a methodology that *may* have merit for one that the Commission approved.

*Conduit Material.* Here again, AT&T/WorldCom mischaracterize the Commission’s Order in an attempt to convince the Commission to impose requirements on BellSouth in “future filings” that go way beyond the Commission’s Order. In determining the appropriate engineering factor component of the conduit material loading factor, the Commission used an average of its approved engineering factors for underground copper cable and fiber because “the

available data do not support a distribution of conduit between copper and fiber cable on this issue.” *Id.* at 32. The Commission did not, as AT&T/WorldCom contend, conclude that BellSouth should have provided such a figure. Consequently, there is no reason for BellSouth to provide such information in any “future filings.”

*Copper Cable Stub Investment.* AT&T/WorldCom, consistent with their mischaracterization of other portions of the Commission’s Order, allege that “the Commission noted that copper stub cable investment should be removed. . . .” The Commission did not say that – it said that it found “*some* merit to witness Donovan’s argument to eliminate copper cable stub investment.” *Id.* at 52 (emphasis added). Importantly, the Commission “decline[ed] to adopt changes to the copper cable stub investment.” There is nothing for the Commission to clarify – It expressly rejected AT&T/WorldCom’s position on this issue.

*Modifications to Loop Rates or Rate Structure.* AT&T/WorldCom state in this section of their so-called motion for clarification that the Commission should require that all subsequent cost filings by BellSouth be “strictly bottoms-up to insure that UNE prices are accurately set according to TELRIC standards.” First, the FCC, which itself invented TELRIC and promulgated the TELRIC standards for State Commissions to apply in setting UNE rates, has concluded in approving BellSouth’s 271 applications that the use of loading factors do not violate TELRIC. *See, e.g.,* Five State Order, ¶ 76. Moreover, many of the costs that BellSouth will incur to provision UNEs simply cannot reasonably be developed without the use of some linear factors. No Commission anywhere has required the total elimination of all linear factors from a UNE cost study. This Commission should not issue such an impractical directive.



CONCLUSION

For the reasons set forth above, the Commission should deny AT&T/WorldCom's motions for reconsideration and for "clarification."

Respectfully submitted this 21<sup>st</sup> day of October, 2002.

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