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August 27, 2003

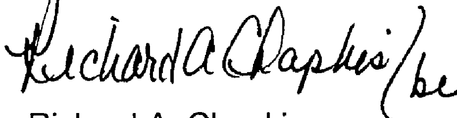
Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 990649B-TP
Investigation into Pricing Of Unbundled Network Elements (Sprint/Verizon Track)

Dear Ms. Bayo:

Please find enclosed for filing an original and 15 copies of Verizon Florida Inc.'s Opposition to AT&T's Motion For Reconsideration of Order Granting Motion Stay in the above matter. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this matter, please contact me at (813) 483-1256.

Sincerely,



Richard A. Chapkis

RAC:tas
Enclosures

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Opposition to AT&T's Motion for Reconsideration of Order Granting Motion Stay in Docket No. 990649B-TP were sent via U.S. mail on August 27, 2003 to the parties on the attached list.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into Pricing Of Unbundled Network Elements (Sprint/Verizon Track)	))))	Docket No. 990649B-TP Filed: August 27, 2003

VERIZON FLORIDA INC.'S OPPOSITION TO
AT&T'S MOTION FOR RECONSIDERATION OF
ORDER GRANTING MOTION STAY

Verizon Florida Inc. ("Verizon") opposes AT&T's Motion for Reconsideration of the Commission's Order number PSC-03-0896-PCO-TP ("Stay Order"), granting a stay of the November 15, 2002 Order establishing rates for unbundled network elements ("UNEs") for Verizon. The Commission should deny AT&T's Motion because it fails to meet the standard for reconsideration.

To obtain reconsideration, a party must identify a point of fact or law that the Commission overlooked or failed to consider in rendering its order. *See, e.g., Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962). It is not appropriate to reargue matters that the Commission has already considered. *See, e.g., Sherwood v. State*, 111 So. 2d 96 (Fla. 3d DCA 1959).

AT&T does not cite the standard for reconsideration and makes no attempt to satisfy it. Instead, AT&T makes the same arguments it made at least twice before and that the Commission explicitly considered and rejected.

AT&T argues that the Commission must reconsider and rescind its Stay Order because it purportedly deviates from the Commission's Order in *Complaint of WorldCom Technologies, Inc. Against BellSouth for Breach of Terms of Florida Partial*

Interconnection Agreement, issued April 20, 1999 in Docket number 971478-TP ("*BellSouth Order*"). AT&T contends that the Commission in that case did not treat a competitive local exchange carrier ("CLEC") as a customer for purposes of the mandatory stay rule (25-22.061(1)(a)), so the Commission cannot treat CLECs as customers for purposes of applying the stay rule in this case, either. AT&T alleges that the Commission provided no factual or policy basis for the alleged "deviation" from the *BellSouth Order*. AT&T is wrong; the Commission plainly distinguished between this case, which involves a rate decrease, and the BellSouth case, which did not.

As the Stay Order plainly states, AT&T made the same argument before the Commission ruled on the stay request.[1] In its Opposition to Verizon's Motion for Stay and at the oral argument on that Motion, AT&T repeatedly advised the Commission that it had to follow the BellSouth Order because there was no meaningful distinction between the facts in that case and in Verizon's UNE case.[2]

The BellSouth case was discussed at length during the oral argument and in the parties' filings. At oral argument and in its Motion for Stay, Verizon pointed out that the Commission refused to apply the mandatory stay rule in the BellSouth arbitration because the case involved "payment of money pursuant to contractual obligations," rather than a "refund" or "decrease" in rates. [3] The Commissioners focussed on this distinction at oral argument. In response to questions from the Commission, AT&T's counsel admitted that the BellSouth case was not a "rate decrease situation" and that the issue was, instead, "whether reciprocal compensation was payable with respect to

[1] Order at 5-6.

[2] *See generally* Response of AT&T, FDN and WorldCom in Opposition to Verizon's Motion for Stay (Dec. 30, 2002); Transcript of April 9, 2003 Special Agenda Conference in Docket No. 990649B-TP (Ag. Conf. Tr.), at 22-24, 29

ISP-bound traffic." (Ag. Conf. Tr. 22-23.) When Commissioner Deason suggested that a payable due (as in the BellSouth case) was not the same as a rate decrease (as in the Verizon case), AT&T's counsel agreed that that "may have been a valid additional reason for not applying the [stay] rule in that case." (Ag. Conf. Tr. at 23-24.) AT&T's counsel also admitted that CLECs were, in fact, Verizon's "customers." (Ag. Conf. Tr. at 24.)

Before voting, Chairman Jaber made clear that a decision to grant Verizon's stay was not inconsistent with the BellSouth Order:

> As I look at the ruling, the BellSouth stay order...the previous Commission specifically stated that the rule is designed to apply to rate cases or other proceedings involving rates and charges to end use ratepayers or consumers. And I think that's consistent with what I just said. I mean, for whatever reason, the Commission made a distinction between end use ratepayers or consumers. And that's good enough for me. If we grant the stay, I think it's consistent with previous decisions."
>
> (Ag. Conf. Tr. at 53-54.)

In its Stay Order, the Commission reiterated that the situation in the BellSouth Order was distinguishable from Verizon's UNE case, because the BellSouth decision "was premised largely upon the facts of that case, which was not a proceeding to set rates and charges for end use ratepayers or customers." (Stay Order at 8-9.)

It is thus abundantly clear that the Commission thoroughly considered and rejected AT&T's argument that the *BellSouth Order* was irreconcilable with granting a stay of Verizon's UNE rate-setting Order. Instead of raising anything the Commission overlooked or failed to consider, AT&T's Motion for Reconsideration simply ignores the specific factual distinction the Commission drew between the BellSouth and Verizon

[3] Verizon's Motion for Stay, filed Dec. 16, 2002, at 3-4, *quoting BellSouth Order* at 6; .Ag. Conf. Tr. at 6-7.

cases—that is, the BellSouth case involved a dispute over reciprocal compensation payments under a contract, while this UNE case involves a general rate decrease to Verizon's wholesale customers. The Commission applied the mandatory stay rule in Verizon's case (and not BellSouth's case), because the terms of the rule require "a decrease in rates charged to customers." (Rule 25-22.061)1)(a).)

AT&T also fails to recognize that the Commission's application of the mandatory stay rule in this case is consistent with the Commission's longstanding treatment of the CLECs as customers (*see* Stay Order at 8) and its decision in another BellSouth case, in which the Commission granted a mandatory stay where the customer was a telecommunications carrier, rather than an end user. *Petition of BellSouth Tel., Inc. to Remove InterLATA Access Subsidy Received by St. Joseph Tel. & Tel. Co.*, Order on Motions for Reconsideration and Granting Stay of Order No. PSC-98-1169-FOF-TL, 98 FPSC 12:119 (1998), *cited in* Verizon's Motion for Stay, at 5-6.

AT&T's Motion for Reconsideration must be denied because it does nothing more than reargue matters the Commission already considered.

Respectfully submitted on August 27, 2003.

By:

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