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October 15, 2003

BY HAND DELIVERY
Ms. Blanca Bayó, Director
The Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 020919-TP

Dear Ms. Bayó:

Enclosed for filing are an original and 15 copies of AT&T's Motion for Reconsideration and Request for Oral Argument in the above-referenced docket.

Please acknowledge receipt of this letter by stamping the extra copy of this letter "filed" and returning to me. Thank you for your assistance with this filing.

Sincerely yours,

Tracy W. Hatch

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cc: Parties of Record

(OA is DN 10081-03)

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of AT&T's Motion for Reconsideration and Request for Oral Argument on behalf of AT&T of the Southern States, LLC, Teleport Telecommunications Group, Inc. and TCG South Florida (all collectively "AT&T") was furnished by U. S. Mail this 15th day of October, 2003 to the following:

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Tracy Hatch

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint Of AT&T Communications Of The Southern States, LLC, Teleport Telecommunications Group, Inc., And TCG South Florida For Enforcement of Interconnection Agreements With BellSouth Telecommunications, Inc.	)	Docket No. 020919-TP Filed: October 15, 2003

AT&T'S MOTION FOR RECONSIDERATION

AT&T Communications of the Southern States, LLC, Teleport Communications Group, Inc. and TCG of South Florida ("AT&T"), by and through undersigned counsel, and in accordance with Rule 25-22.060, Florida Administrative Code, hereby moves the Florida Public Service Commission ("Commission") to reconsider Order No. PSC-03-1082-FOF-TP issued in this proceeding on September 30, 2003 ("Final Order").

BACKGROUND

AT&T's complaint alleged a "straightforward" breach of contract claim which the Commission should have resolved solely on the "literal words" and unambiguous provisions of the interconnection agreement executed by

AT&T and BellSouth on October 26, 2001 ("Interconnection Agreement")[1] under governing law. Instead, the Commission improperly considered "parol" evidence offered by BellSouth in direct violation of governing law and the Commission's Order No. 020919-TP issued on April 21, 2003, which denied AT&T's Motion to Strike BellSouth's "parol" evidence. In this prior Order, the Commission specifically stated " . . . *if after receiving all of the evidence, we conclude that the language is . . . clear and unambiguous, then we need not consider any 'extrinsic [parol] evidence.*"[2] Additionally, the Commission failed to properly interpret the entirety of the contract as a whole under applicable law, deciding instead to give consideration to only one provision of the contract. The standard of review for a Motion for Reconsideration is whether the Motion identifies a point of fact or law which

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[1] There are two interconnection agreements at issue in this proceeding. The first interconnection agreement ("First Interconnection Agreement") was executed by AT&T and BellSouth and approved by the Commission on June 19, 1997 in Docket No. 9600833-TP by Order No. PSC-97-0724-FOF-IP. First Interconnection Agreement was effective June 10, 1997 and was set to expire three years (3) thereafter. However, there was a "retroactivity" provision included in Section 2.3 of First Interconnection Agreement ("Retroactivity Provision") which provided that in the event First Interconnection Agreement expired before AT&T and BellSouth had executed another "follow-on" or "second" interconnection agreement, or before the Commission had issued its arbitration order in a "follow-on" or "second" arbitration, that the terms subsequently agreed to by the Parties or so ordered by the Commission in any "follow-on" or "second" arbitration, would be "retroactive" to the day following expiration of First Interconnection Agreement, or June 11, 2000. In Order No. PSC-99-1877-FOF-TP, the Commission approved TCG South Florida's adoption in its entirety of First Interconnection Agreement. Subsequently, a second interconnection agreement ("Second Interconnection Agreement) was executed by AT&T and BellSouth and approved by the Commission on December 7, 2001 in Docket No. 000731-TP by Order PSC No. PSC-01-2357-FOF-TP. Second Interconnection Agreement also was effective for a three (3) term beginning October 26, 2001 as to both AT&T Communications of the Southern States, LLC and TCG South Florida. Because the disputed language negotiated by the Parties in Second Interconnection Agreement applies to First Interconnection Agreement as of June 11, 2000 (by virtue of the Retroactivity Provision of First Interconnection Agreement), where the context is appropriate AT&T will refer to both First and Second Interconnection Agreements in this Motion for Reconsideration as the "Interconnection Agreement."

the Commission overlooked or failed to consider in rendering its order. See, *Diamond Cab Co. v. King*, 146 So. 2d 889, 891 (Fla. 1962). AT&T's Motion for Reconsideration meets this standard given that the Commission's Final Order violates (1) governing law regarding consideration of "parol" evidence; (2) the Commission's Order No. 03-0525-FOF-TP issued April 21, 2003; and (3) other governing law regarding interpreting the entirety of the contract.

AT&T's complaint involved what constitutes "Local Traffic" and "Switched Access Traffic" under the Interconnection Agreement for compensation purposes. As the Commission is aware, reciprocal compensation applies to the transport and termination of "Local Traffic," while switched access applies to the transport and termination of "Switched Access Traffic."[3] In Florida, the switched access rate is twenty five (25) times *higher* than the reciprocal compensation rate.[4] Thus, the distinction between what constitutes "Local Traffic" and what constitutes "Switched Access Traffic" is critical to the Parties regarding determining the appropriate compensation for the transport and termination of traffic and gave rise to the dispute at hand.

With respect to BellSouth's obligation to charge AT&T reciprocal compensation for the transport and termination of "Local Traffic," Section 5.3.1.1 of the Interconnection Agreement provides:

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[2] Florida PSC Order No. PSC-03-0525-FOF-TP dated April 21, 2003, page 9.
[3] Fl. Tr. 78.
[4] Id.

> The Parties agree to apply a "LATAwide" local concept to this Attachment 3, meaning that traffic that has traditionally been treated as intraLATA toll traffic will now be treated as local for intercarrier compensation purposes, except those calls that are originated or terminated through switched access arrangements as established by the State Commission or FCC.

The language in Section 5.3.1.1 "except those calls that are originated or terminated through switched access arrangements as established by the State Commission or FCC," is qualified by the definition of "Switched Access Traffic" found in Section 5.3.3. This is because the Parties specifically agreed that Section 5.3.3 is "interrelated" to Section 5.3.1.1. In particular, Section 5.3.3 defines "Switched Access Traffic" (and "interrelates" the definition of "Switched Access Traffic" with what constitutes "Local Traffic" as found in Section 5.3.1.1) as follows:

> . . . telephone calls requiring local transmission or switching services for the purpose of the origination or termination of Intrastate InterLATA and Interstate InterLATA traffic . . . This Section 5.3.3 is interrelated to Section 5.3.1.1.

As Section 5.3.3 reflects, the Parties expressly limited "Switched Access Traffic" under the Interconnection Agreement to *interLATA traffic* and excluded all *traditional intraLATA traffic.* By virtue of the "interrelatedness" of Sections 5.3.1.1 and 5.3.3, the definition of "Switched Access Traffic" (found in Section 5.3.3) clearly qualifies the language "calls that are originated or terminated through switched access arrangements as established by the State Commission or FCC" (found in Section 5.3.1.1) to mean interLATA traffic originating or terminating through such switched

access arrangements.[5] Accordingly, the Commission should interpret the "literal words" and unambiguous provisions of the contract, thus granting the relief requested in AT&T's complaint.

ARGUMENT

1. The "Parol Evidence Rule" Under The Governing Law Of The Interconnection Agreement Prohibits The Consideration Of "Parol" Evidence Unless The Interconnection Agreement Is Found To Be Ambiguous.

Although the Interconnection Agreement in dispute governs BellSouth's provision of interconnection and related services in Florida, the Parties expressly agreed that Georgia law governs this Interconnection Agreement.[6] As such, under Georgia law a contract which states that it contains the "entire agreement" of the Parties cannot be altered or changed based on "parol" evidence and related testimony of the Parties.[7] O.C.G.A. Section 13-2-2(1). *First Data POS, Inc. v. Willis,* 546 S.E.2d 781 (2001); *Choice Hotels Intern., Inc. v. Ocmulgee Fields, Inc.* 474 S.E.2d 56 (1996); *Stewart v. KHD Deutz of America, Corp.*, 980 F2d 698 (11th Cir. (Ga.) 1993). In other words, "the contract speaks for itself," and Parties cannot vary the

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[5] Fl. Tr. 38-44.

[6] Section 24.6.1 of the General Terms and Conditions of the Interconnection Agreement provides ". . . the validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties shall be governed by the laws of the State of Georgia . . . except insofar as federal law may control any aspect of this Agreement, in which case federal law shall govern such aspect."

[7] The Interconnection Agreement contains such an "entire agreement" clause. Section 24.9.1 of the General Terms and Conditions provides "[t]his Agreement, which shall include the Attachments, Appendices, and other documents referenced herein, constitutes the entire Agreement between the Parties concerning the subject matter hereof and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein."

terms of the contract by stating that it means something else.

This "black letter law" is referred to as the "parol evidence rule" because it prohibits the consideration of extrinsic or "parol" evidence and related testimony of the Parties once a dispute arises. *Ochs v. Hoerner,* 510 S.E.2d 107 (1998). The only exception to this rule is when the contract is determined to be ambiguous, thus allowing the consideration of "parol" evidence and related testimony from the Parties regarding what was intended when the contract was negotiated. *Andrews v. Skinner,* 279 S.E.2d 523 (1981).

BellSouth filed the testimony of Ms. Shiroishi which contained statements regarding what BellSouth believed the Parties "intended" when they negotiated the contract, as opposed to what the contract actually states. AT&T objected to this testimony in two (2) pre-hearing motions because the contract is not ambiguous, and thus consideration of Ms. Shiroishi's "parol" testimony is improper under governing Georgia law. However, the Commission held that the contract indeed *was* ambiguous, and thus allowed Ms. Shiroishi's testimony into the record. This finding of ambiguity is the only justification under Georgia law which would allow the Commission's consideration of this BellSouth's "parol" evidence in interpreting the Interconnection Agreement.

Relative to this critical finding of ambiguity, specifically, in Docket No. 020919-TP, Order No.: PSC-03-0525-FOF-TP dated April 21, 2003, the Commission held:

> For the reasons stated in the recommendation considered at the April 1, 2003, Agenda Conference, we find that AT&T's Second Motion to Strike should be denied. . . . [s]pecifically, we find that the meaning of "switched access arrangement" as used in the "Local Traffic" section is not clear on its face at this time from simply reading the agreement. Thus, consistent with our previous vote on AT&T's First Motion to Strike considered at the April 1, 2003, Agenda Conference, we find that at this point in time there is sufficient ambiguity as to the application or meaning of this language such that AT&T's Second Motion to Strike should be denied.[8]

Furthermore, in this same Order the Commission specifically stated:

> We note that the North Carolina Commission as quoted in AT&T's motion states "... the relevant contract language is sufficiently ambiguous to permit the introduction of extrinsic evidence ..." Although the North Carolina Commission's decision is not binding on this Commission, we find that it is persuasive. We note that the North Carolina Commission found too that Georgia law was satisfied by a preliminary finding for evidentiary purposes that the contract language was "sufficiently ambiguous" to permit the introduction of the extrinsic evidence. We further note that, if after receiving all the evidence, we conclude that the language is, in fact, clear and unambiguous, *then we need not consider any "extrinsic" testimony.* The inclusion of this testimony will not prejudice either party since we can clearly differentiate what testimony we can and cannot consider when rendering our final determination. Therefore, we

[8] Florida PSC Order No. PSC-03-0525-FOF-TP dated April 21, 2003, page 8-9.

find it appropriate to deny AT&T's Motion to Strike Additional BellSouth Extrinsic Testimony.[9]

Accordingly, prior to the hearing in this proceeding, the Commission held that the contract was ambiguous, and thus allowed the consideration of BellSouth's "parol" evidence.

2. The Commission Subsequently Found The Interconnection Agreement Was Not Ambiguous; Thus Under Governing Law It Cannot Consider BellSouth's "Parol" Evidence In Interpreting The Interconnection Agreement.

Surprising, without any explanation whatsoever, in its Final Order, the Commission specifically determined that the Interconnection Agreement *was not* ambiguous, finding instead that the contract was "clear on its face" and thus it ". . . need not look beyond the agreement to determine the parties' intent . . ."[10] However, the Commission clearly *did look* "beyond the agreement" and considered "parol" evidence in construing the contract. It also used its "clear on its face" determination to justify improperly ignoring the vast majority of AT&T's record testimony and arguments in the proceeding.[11]

There are numerous provisions in the Final Order which reflect that the Commission improperly considered BellSouth's "parol" evidence in

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[9] Id. at page 9-10.

[10] Florida PSC Order No. PSC-03-1082-FOF-TP dated September 30, 2003, page 14-15.

[11] For example, the Commission determined that because the contract was clear and unambiguous, ". . . there [was] no need to look to the discussions during negotiations." Id. However, as discussed further below in this Motion for Reconsideration, the Commission *did* rely upon BellSouth's Ms. Shiroishi's "parol evidence" regarding what happened during discussions to support its findings in the Final Order regarding what constituted "Local Traffic." In this respect, not only does Final Order violate Georgia's "parol" evidence rule, it also is internally inconsistent.

interpreting the contract. Consider the following regarding what constituted "switched access arrangements" in Section 5.3.1.1 where the Commission adopted Staff's Recommendation[12] and substituted the word "facilities" (based on "parol" evidence from the Parties) regarding this key provision of the contract:

> The parties *agreed on the record* that the term *"switched access arrangements"* means *facilities.* If the word facilities is substituted into the contract language, the definition of local traffic becomes, "traffic" that has traditionally been treated as intraLATA toll will now be treated for as local for intercarrier compensation purposes, except for those calls that are originated or terminated through switched access *facilities* as established by the State Commission or FCC.[13]

During the Commission's discussion with Staff regarding Staff's Recommendation, Staff expressly stated that it was relying on Ms. Shiroishi's "parol" evidence in determining that "switched access arrangements" were defined in BellSouth's tariff:

> Q. (From Commissioner Deason): What's the relevance "as determined" by regulatory body?" I mean, it's a factual situation. Either it flows through a switched access facility or it does not. That's a factual situation. That doesn't mean that it's subject to a regulatory agency determination.
>
> A. (From Staff): I think it speaks to witness Shiroishi's testimony that what determines whether it's a switched access facility or not is based on whether it comes out of a tariff or whether it comes

[12] Florida PSC Staff Recommendation dated September 4, 2003 ("Staff's Recommendation").
[13] Florida PSC Order No. PSC-03-1082-FOF-TP dated September 30, 2003, page 14.

> out of an interconnection agreement. She testified at some length to that . . . [14]

Regarding determining what constituted "switched access arrangements as established by the State Commission or FCC" in Section 5.3.1.1, Ms. Shiroishi testified as to what the Parties "discussed during negotiations." As discussed above, Staff improperly relied upon Ms. Shiroishi's "parol" evidence of these "discussions" to conclude that "switched access arrangements as established by the State Commission or FCC" meant offered "through the [P]arties' intrastate and interstate tariffs," and not as Mr. King testified, that the language referred to certain traffic which appeared to be intraLATA (e.g., Voice Over Internet Protocol ("VOIP") traffic and ISP-bound traffic), but which the State Commission or the FCC may determine in fact is interLATA traffic.

Specifically, Staff had to rely upon the Parties' discussions during negotiations (although in Staff's Recommendation it stated it need not do so in that the contract was "clear on its face") because this is the only place in the record where Ms. Shiroishi was able to explain that the language regarding "switched access arrangements" meant the Parties' access tariffs. Specifically, the Interconnection Agreement itself does not state that "switched access arrangements" means the Parties' access tariffs. Yet, Ms. Shiroishi testified:

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[14] Florida PSC Agenda Conference Transcript, September 16, 2003, at Page 9-10.

> BellSouth originally proposed that the exclusion language read "except for those calls that are originated and terminated through switched access arrangements as established by the ruling regulatory body." After discussion around what was meant by the term "ruling regulatory body," the Parties modified the words to read "except for those calls that are originated or terminated through switched access arrangements as established by the State Commission or FCC." In the course of these discussions, the Parties discussed the fact that this reference was to the switched access arrangements that are offered to purchase through each Party's switched access tariffs, which are approved by the State Commission for intrastate switched access) or the FCC (for interstate switched access).[15]

Thus, based on the foregoing, there is no doubt that Staff and the Commission improperly considered BellSouth's "parol" evidence in interpreting the contract.

3. The Commission's Finding That The Interconnection Agreement Was Not Ambiguous Led The Commission To Improperly And Summarily Dismiss AT&T's Arguments In Its Final Order.

Regarding Ms. Shiroishi's allegation as what the Parties discussed during negotiations, Staff summarily dismissed Mr. King's explanation of what constituted "switched access arrangements" stating that "from a plain language standpoint, AT&T's position makes no sense" in that "InterLATA traffic is not intraLATA traffic, so it does not need to be excluded."[16]

However, this summary dismissal was improper because the Commission did not interpret the contract from a "plain language

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[15] BellSouth Direct Testimony of Beth Shiroishi at Page 7; lines 9-18.

standpoint." Instead, by adopting Staff's Recommendation, the Commission indeed looked to "discussions during negotiations" as described by Ms. Shiroishi. Having opened Pandora's box regarding what was discussed during negotiations, Staff and the Commission were obligated to address BellSouth's own advocacy at the time of the negotiations was that certain calls (e.g., VOIP traffic and ISP-bound traffic) were interLATA rather than intraLATA (even though such calls appear to originate and terminate within the LATA) in order to determine whether AT&T's position made sense from a "plain language standpoint."

For example, in the North Carolina hearing, BellSouth's counsel stated " . . . BellSouth's position is and always has been that such calls [ISP-bound traffic] are interLATA in nature."[17] Additionally, regarding VOIP traffic, Ms. Shiroishi testified that "[t]he point of using voice over IP is that you might even dial it locally, it might look locally, but the end points might be in different LATAs or different states."[18] Moreover, during her Florida deposition, Ms. Shiroishi admitted that it is possible that a State Commission or the FCC could determine that certain interLATA traffic is "Local Traffic."[19] However, Staff totally ignored that BellSouth itself admitted that certain traffic which appeared to stay within a LATA could be determined by a State Commission or the FCC to be interLATA traffic.

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[16] Staff's Recommendation at 17.

[17] N.C. Tr., Vol. 1, 87. (The North Carolina hearing transcript was admitted into the record in Florida.)

Additionally, in accepting the testimony of Ms. Shiroishi and summarily dismissing Mr. King's, Staff failed to address the fact that Ms. Shiroishi admitted in both her North Carolina deposition and at the North Carolina hearing that she never discussed with AT&T what constituted "switched access arrangements,"[20] and that her testimony ". . . calls originated or terminated over 'switched access arrangements' would be governed by BellSouth's switched access tariffs. . ." was nothing more than her own personal conclusion.[21] Based on the foregoing, Staff's and the Commission's blind reliance on Ms. Shiroishi's "discussions during negotiations" to interpret what constitutes "switched access arrangements as established by the State Commission or FCC" clearly was improper.

4. <u>There Is No Doubt That The Commission Improperly Considered BellSouth's "Parol" Evidence In Interpreting The Interconnection Agreement</u>.

Not satisfied with Staff's repeated attempts to explain its Recommendation, Staff was furthered questioned by the Commissioners regarding its interpretation of the Interconnection Agreement. Staff's response again reveals its reliance on improper "parol" evidence offered by BellSouth's Ms. Shiroishi which the Commission improperly adopted:

> A. (From Staff): . . . And I believe the way the recommendation accomplishes the interpretation of all that is just as I have laid it out here. The first

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[18] Florida Tr. 335-336.
[19] Beth Shiroishi Deposition in FL PSC Docket 020919-TP, dated April 25, 2003, pages 132-133.
[20] N.C. Tr., Vol. 3, 9.
[21] N.C. Tr., Vol. 3, 13; See also, Beth Shiroishi Florida Deposition dated April 25, 2003, pages 74-75.

> piece establishes a LATAwide local concept, so you start with all the intraLATA toll and all the intraLATA local traffic. If it's local, it's going to be within the LATA. You start with all that traffic. Then you have to determine what you're taking out with the exception. And it was my substitution of the word "facilities" for the word "arrangements" that tells me that this has something to do with calls that were terminated or originated over a switched access facility. And then the "as established by the State Commission or FCC," *I relied there on the testimony of witness Shiroishi that that means basically that you're determining -- where you're getting your arrangement from or your facility from is subject to where you purchase it from.* It's not just that they're purchased from the tariff, but you obtain that facility or that arrangement for the purpose of routing toll traffic, and that's why you got it out of there. And the same with the local interconnection . . .[22]

This response from Staff clearly reflects that not only did Staff rely upon BellSouth's "parol" evidence in defining what constituted a switched access arrangement in making Staff's Recommendation, but Staff also *substituted* words found in such "parol" evidence with words found in the contract language itself to arrive at its interpretation of the contract. *This is the ultimate abuse of Georgia's "parol evidence rule" which bans consideration of all "parol" evidence except where the contract language is ambiguous.*

Staff attempted to minimize its reliance on BellSouth's "parol" evidence by implying that it was only precluded from ". . . look[ing] to the

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[22] Florida PSC Commission Agenda Transcript, dated September 16, 2003, at Pages 21-22. Emphasis Added.

discussions during negotiations"[23] implying that it could consider *other* types of extrinsic evidence, such as Ms. Shiroishi's statements discussed above. Although such clearly violates Georgia's "parol evidence rule," even more importantly, it also violates the Commission's own order denying AT&T's motion to strike "parol" evidence in which the Commission specifically stated that ". . . *if after receiving all the evidence, we conclude that the language is, in fact, clear and unambiguous, then we need not consider any "extrinsic" [parol] testimony.*"[24]

Additionally, the Commission also concluded that if a call was considered "local" under the Parties' prior or "old" interconnection agreement, then it remained "local" under the Interconnection Agreement, regardless of whether the call traversed switched access arrangements under the Interconnection Agreement. This conclusion also was based solely on "parol" evidence improperly included in the record and not on any language found in the contract. Specifically, Staff stated:

> Witness King testified that BellSouth is now treating traffic as switched access traffic that was formerly treated as local. Witness Shiroishi's statement supports AT&T's allegation. Staff sees nothing in the contract that states traffic that has been traditionally treated as local will be treated as switched access if originated over switched access facilities. Local traffic is not the same as traffic that has traditionally been treated as intraLATA toll. To the extent that an intraLATA call is dialed as a local call, regardless of the

[23] Staff's Recommendation at Page 18.

[24] Florida PSC Order No. PSC-03-0525-FOF-TP dated April 21, 2003, page 8-9.

> facilities it is carried over, BellSouth should bill it as a local call. [25]

Staff could not have come to the foregoing conclusion, and the Commission could not have accepted Staff's Recommendation, except after hearing the "parol" evidence of Mr. King and Ms. Shiroishi. However, just as was the case with Staff's and the Commission's substitution of "facilities" for "switched access arrangements" (after hearing the Parties testify about facilities), and using Ms. Shiroishi's statement that "switched access arrangements" meant "as determined by the Parties' tariffs," the Commission improperly relied upon "parol" evidence to conclude that any "traditional local traffic" (meaning traffic that was considered local traffic under the "old" interconnection agreement) would remain local traffic under the current Interconnection Agreement. Thus, once again, the Commission interpreted the contract based on what the Parties said about the contract, rather than looking to the literal words of the contract.

To prove the point, consider that without having heard Mr. King's and Ms. Shiroishi's "parol" evidence regarding the Parties' past treatment of what constituted local traffic under the "old" interconnection agreement, Staff and the Commission would have never been able to conclude what types of calls were considered "local" in the past. Thus, on a going forward basis, it would not have been able to conclude that "[c]alls that *have not* been treated as toll, such as calls whose origination and termination points

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[25] Id. at 17-19.

make such calls local in nature [irregardless of the facilities they are carried over] should be billed as "local" under the current Interconnection Agreement.[26]

5. The Commission's Final Order Failed To Construe The Entirety Of The Contract.

As discussed in AT&T's post-hearing brief, under Georgia law a contract is to be construed in its entirety rather than isolated sections of the contract. O.C.G.A. Section 13-2-2(4). *First Capital Life Insurance Company v. AAA Communications, Inc.*, 906 F. Supp. 1546 (1995); See, also, *Richard Haney Ford, Inc. v. Ford Dealer Computer Services*, 461 S.E.2d 282 (Ga. App. 1995); *Maiz v. Virani*, 253 F. 3d 641, 659. (11th Cir. (Ga.) 2001).

Although Staff's Recommendation acknowledged that AT&T argued that Section 5.3.1.1 of the contract (which determined what constituted "Local Traffic") was expressly "interrelated" to Section 5.3.3 of the contract (which defined "Switched Access Traffic"), Staff failed to address the impact of the "interrelatedness" of these two Sections. This also was a fatal flaw given that the definition of "Switched Access Traffic" is expressly limited to interLATA traffic.

In this respect, Staff failed to advise the Commission that if the Commission adopted Staff's Recommendation regarding what constituted "Local Traffic" under Section 5.3.1.1, then the Commission would be contradicting the definition of "Switched Access Traffic" in Section 5.3.3,

[26] Id. at 19.

which is expressly limited to interLATA traffic. This is because the "upshot" of Staff's Recommendation regarding what constitutes "Local Traffic" is that all intraLATA traffic terminated over switched access arrangements *would* be considered "Switched Access Traffic" (unless it was considered local traffic under the "old" interconnection agreement). This is a fatal flaw in Staff's Recommendation and the Commission's Final Order because, by definition, "Switched Access Traffic," under Section 5.3.3, can never include intraLATA traffic. In this respect, Staff's Recommendation and the Commission's Final Order eviscerates the contract's definition of "Switched Access Traffic" by including certain intraLATA traffic in this definition.

In comparison, AT&T's "literal words" interpretation of these two Sections of the contract is complimentary and construes the entirety of the contract as required by Georgia law. AT&T's position is that what constitutes "Local Traffic" and "switched access arrangements as established by the State Commission or the FCC" are those certain calls which the State Commission or the FCC may determine are interLATA calls even though such calls may "appear" to originate or terminate within the same LATA. This interpretation is totally consistent with what constitutes "Local Traffic" in Section 5.3.1.1 with the definition of "Switched Access Traffic" in Section 5.3.3 which is limited to interLATA calls. It also allows the Commission to interpret the contract based on the "literal words" and unambiguous provisions of the contract and not consider any "parol"

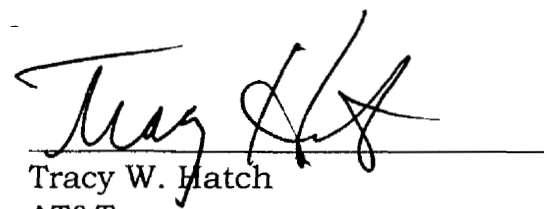
evidence. Accordingly, AT&T's interpretation of these two Sections upholds the entirety of the contract. On the other hand, Staff's Recommendation and the Commission's Final Order addresses only one Section of the contract, specifically Section 5.3.1.1. As a result, Staff's Recommendation and Commission's Final Order are wholly improper under Georgia law which governs the Interconnection Agreement.

CONCLUSION

As required by Georgia law, AT&T asked the Commission to resolve this interconnection dispute based solely on the "literal words" and unambiguous provisions of the contract. AT&T timely and properly objected to BellSouth's "parol" evidence regarding the same. The Commission denied AT&T's objections specifically finding that the Interconnection Agreement *was* ambiguous, while at the same time promising AT&T that if the Commission subsequently found that the contract *was not* ambiguous, it would *not* consider any "parol" evidence in interpreting the contract. As discussed above, the Commission broke this commitment, finding that the Interconnection Agreement was "clear on its face," yet at the same time also considering BellSouth's "parol" evidence in interpreting the contract. Furthermore, the Commission interpretation of the contract fails to interpret the contract in its entirety, having ignored the critical and express "interrelatedness" of Sections 5.3.1.1 and 5.3.3. For these very clear errors in law, AT&T respectfully requests that the Commission reconsider its Final

Order and interpret the contract based on the "literal words" and unambiguous provisions of the contract, thus granting the relief requested in AT&T's complaint.

Respectfully submitted, this 15th day of October, 2003.

By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of AT&T's Motion for Reconsideration and Request for Oral Argument on behalf of AT&T of the Southern States, LLC, Teleport Telecommunications Group, Inc. and TCG South Florida (all collectively "AT&T") was furnished by U. S. Mail this 15th day of October, 2003 to the following:

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