BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request for arbitration concerning complaint of AT&T Communications of the Southern States, LLC, Teleport Communications Group, Inc., and TCG South Florida for enforcement of interconnection agreements with BellSouth Telecommunications, Inc.	DOCKET NO. 020919-TP ORDER NO. PSC-04-0205-FOF-TP ISSUED: February 25, 2004

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER GRANTING MOTION FOR EXTENSION OF TIME, DENYING REQUEST FOR ORAL ARGUMENT, AND DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

I. BACKGROUND

On August 26, 2002, AT&T of the Southern States, LLC, Teleport Communications Group, Inc. and TCG South Florida (collectively "AT&T") filed its Complaint for enforcement of its Interconnection Agreement against BellSouth Telecommunications, Inc. (BellSouth). AT&T in its Complaint alleged that BellSouth breached, and continues to breach, its obligation to charge AT&T local reciprocal compensation rates for transport and termination of all "Local Traffic," including all "LATAwide traffic," in accordance with the terms of the parties' two interconnection agreements. On September 20, 2002, BellSouth filed its response to AT&T's Complaint.

A hearing was held on May 7, 2003. We issued our final order on the complaint, Order No. PSC-03-1082-FOF-TP, on September 30, 2003. That Order determined that for purposes of the contract, all calls that had been traditionally treated as intraLATA toll traffic, that were originated or terminated over switched access facilities, should be excluded from the definition of LATAwide local traffic. All calls that had been traditionally treated as intraLATA toll traffic, that were originated or terminated over local interconnection facilities, should be compensated as local calls. Further, all calls that had been traditionally treated as local should be so treated under the contract, regardless of the facilities used. Id. at pp. 15-16.

On October 15, 2003, AT&T filed its Motion for Reconsideration and separately filed its Request for Oral Argument on its motion. AT&T in its Motion for Reconsideration argues that this Commission's Final Order should be reconsidered for the following reasons. First, this Commission considered parol evidence even though the "parol evidence rule" under Georgia law, which governs the interconnection agreement, prohibits the consideration of parol evidence unless the interconnection agreement is found to be ambiguous. AT&T argues that this Commission found in the Final Order that the interconnection agreement was not ambiguous, therefore consideration of BellSouth's parol evidence in interpreting the interconnection agreement was improper. AT&T further argues that this Commission's finding that the interconnection agreement was not ambiguous led this Commission to improperly and summarily dismiss AT&T's arguments in its Final Order. Finally, this Commission's Final Order failed to construe the contract in its entirety.

On October 17, 2003, BellSouth filed a Request for Extension of Time to Respond to AT&T's Motion for Reconsideration of Order No. PSC-03-1082-FOF-TP until November 7, 2003. On November 7, 2003, BellSouth filed its Response to AT&T's Motion for Reconsideration. BellSouth in its response contends that AT&T's motion fails to meet the standard for reconsideration for the following reasons. BellSouth asserts that this Commission did not improperly consider parol evidence in interpreting the interconnection agreement. BellSouth contends that the Final Order does not contradict or in any way affect the definition of "Switched Access Traffic" in the Interconnection Agreement.

This Order addresses the outstanding Motion for Reconsideration and Request for Oral Argument, as well as the Motion for Extension of Time to Respond.

II. MOTION FOR EXTENSION OF TIME

As noted in the Background, BellSouth filed its Request for Extension of Time to Respond to AT&T's Motion for Reconsideration of Order No. PSC-03-1082-FOF-TP on October 17, 2003. In support of its Motion, BellSouth states that it had only seven (7) calendar days to file its response to AT&T's Motion for Reconsideration. BellSouth contends that its counsel had to travel and had other conflicts during the time when the response was due and needed additional time to prepare BellSouth's response to AT&T's motion. BellSouth states that it contacted AT&T's counsel, who had no objection to granting the extension of time for responding to the motion.

Since the parties have no objection to granting the motion for extension of time for BellSouth to file its response and no party is prejudiced by granting the extension, we find that it appropriate to grant the requested extension of time. Therefore, BellSouth Telecommunications, Inc.'s Request for Extension of Time to Respond to AT&T's Motion for Reconsideration of Order No. PSC-03-1082-FOF-TP shall be granted.

III. ORAL ARGUMENT

As noted previously, AT&T filed its Request for Oral Argument along with its Motion for Reconsideration. In support of its request, AT&T states that it believes that oral argument would assist this Commission in comprehending and evaluating the issues raised in its Motion for Reconsideration.

AT&T contends that the substance of the Motion is the meaning and effect of this Commission's decision in Order No. PSC-03-1082-FOF-TP, issued September 30, 2003 (Final Order). AT&T asserts that its motion identifies specific instances of conflicting provisions within the Final Order including the interpretation of the related provisions of the interconnection agreement and applicable Georgia law. AT&T contends that without oral argument, this Commission will be less likely to have answers to all of their questions on the issues. AT&T asserts that, accordingly, only through oral argument will there be assurances that the record will be complete, thus allowing this Commission to make the necessary findings in the public interest.

BellSouth filed its Response to AT&T's Motion. BellSouth states that it does not believe that oral argument would assist this Commission in its consideration of the pending motion. BellSouth contends that these issues have been briefed extensively, and BellSouth does not see what oral argument at this point would add to the process.

Rule 25-22.058(1), Florida Administrative Code, states that:

> The Commission may grant oral argument upon request of any party to a section 120.57, F.S. formal hearing. A request for oral argument shall be contained on a separate document and must accompany the pleading upon which argument is requested. The request shall state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it. Failure to file a timely request for oral argument shall constitute waiver thereof.

Rule 25-22.058, Florida Administrative Code, applies to oral argument in the post-hearing context. Rule 25-22.060(f), Florida Administrative Code, states, in part, that:

> Oral argument on any pleading filed under this rule [addressing post-hearing motion for reconsideration] shall be granted solely at the discretion of the Commission.

We find that AT&T has not provided sufficient reason as to why granting oral argument would aid us in comprehending and evaluating the issues before us. Although AT&T cites to its Motion in which it identifies instances of conflicting provisions in the Final Order including the

interpretation of related contract provisions and applicable Georgia law, we find that these issues have been fully addressed in the motion and response.

As noted above, pursuant to Rule 25-22.060(f), Florida Administrative Code, it is within our discretion to grant oral argument. Therefore, we deny AT&T's Request for Oral Argument.

IV. MOTION FOR RECONSIDERATION

As noted previously, AT&T filed its Motion for Reconsideration on October 15, 2003, and BellSouth filed its Response to the Motion on November 7, 2003.

A. AT&T's Motion for Reconsideration

In support of its Motion for Reconsideration (Motion), AT&T argues that its complaint alleged a "straightforward" breach of contract claim which this 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) under governing law. AT&T asserts that this Commission improperly considered "parol" evidence offered by BellSouth in direct violation of governing law and this Commission's Order No. PSC-03-0525-FOF-TP, issued April 21, 2003, which denied AT&T's Motion to Strike BellSouth's "parol" evidence. AT&T contends that in this prior Order, this 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.*'" (Emphasis in Motion) Motion at p. 2. AT&T argues that, in addition, this Commission failed to properly interpret the contract as a whole under applicable law, deciding instead to give consideration to only one provision of the contract.

AT&T contends that the standard of review for a Motion for Reconsideration is whether the Motion identifies a point of fact or law which this 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 states that its Motion meets this standard given that this Commission's Final Order violates: 1) governing law regarding consideration of "parol" evidence; 2) Order No. PSC-03-0525-FOF-TP, issued April 21, 2003; and 3) other governing law regarding interpreting the entirety of the contract.

AT&T contends that its complaint involved what constitutes "Local Traffic" and "Switched Access Traffic" in the interconnection agreement for compensation purposes. AT&T argues that 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. AT&T again argues that by virtue of the "interrelatedness" of Section 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. AT&T states that accordingly, this Commission should interpret the "literal words" and unambiguous provisions of the contract, thus granting the relief requested in AT&T's complaint.

AT&T argues that, first, under the governing law of the interconnection agreement, consideration of parol evidence is prohibited unless the interconnection agreement is found to be ambiguous. AT&T states that the Parties expressly agreed that Georgia law governs the Interconnection Agreement. AT&T asserts that 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.[1]

AT&T contends that 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.[2] AT&T asserts that 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 contact was negotiated.[3]

AT&T cites to pages 8 through 10 in Order No. PSC-03-0525-FOF-TP, issued April 23, 2003, to support its proposition that prior to the hearing in this proceeding, this Commission held that the contract was ambiguous, and thus allowed the consideration of BellSouth's "parol" evidence. AT&T argues, however, that this Commission subsequently found in the Final Order that the interconnection agreement was not ambiguous; therefore, under governing law it could not consider BellSouth's parol evidence in interpreting the interconnection agreement. AT&T argues that this Commission, nevertheless, did look beyond the agreement and considered parol evidence in construing the contract. In contrast, AT&T contends that this Commission inexplicably 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.

AT&T asserts that there are numerous provisions in the Final Order which reflect that this Commission improperly considered BellSouth's "parol" evidence in interpreting the contract. AT&T cites to our staff's recommendation in which the contract's term switched access "arrangements" in Section 5.3.1.1 was substituted with the word "facilities" (based on the

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[1]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 F. 2d 698(11th Cir. (Ga.) 1993).

[2]Ochs v. Hoerner, 510 S.E. 2d 107(1998).

[3]Andrews v. Skinner, 279 S.E. 2d 523 (1981).

"parol" evidence from the Parties). AT&T claims that during this Commission's discussion with our staff regarding its recommendation, our 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. AT&T states that Ms. Shiroishi testified as to what the Parties "discussed during negotiations," and argues that our staff improperly relied upon Ms. Shiroishi's parol evidence of these discussions to concluded that "switched access arrangements as established by the State Commission or FCC" meant "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.

AT&T asserts that our staff had to rely upon the Parties' discussions during negotiations (although in the 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. AT&T contends that the interconnection agreement itself does not state that "switched access arrangements" means the Parties' access tariffs.

AT&T also argues that this Commission improperly and summarily dismissed AT&T's arguments in its Final Order. AT&T contends that this Commission 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." Motion at 11. AT&T asserts that this summary dismissal was improper because this Commission did not interpret the contract from a "plain language standpoint." AT&T contends further that once this Commission considered evidence regarding the "discussion during negotiations," this Commission should have also considered BellSouth's position on VOIP and ISP-bound traffic in determining whether AT&T's position made sense from a "plain language standpoint."

Finally, AT&T argues that this Commission's Final Order failed to construe the entirety of the contract. AT&T cites to Section 13-2-2(4), O.C.G.A., for the proposition that under Georgia law a contract is to be construed in its entirety rather than isolated sections of the contract.[4] AT&T contends that although the Final Order acknowledged its argument 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"), this Commission failed to address the impact of the interrelatedness of these two Sections. AT&T also argues that this was a fatal flaw given that the definition of "Switched Access traffic" is expressly limited to interLATA traffic.

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[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. 282(Ga. App. 1995); Maiz v. Virani, 253 F. 3d 641, 659(11th Cir. (Ga.) 2001).

AT&T contends that in this respect, staff failed to advise this Commission that if this Commission adopted our staff's recommendation regarding what constituted "Local Traffic" under Section 5.3.1.1, then this Commission would be contradicting the definition of "Switched Access Traffic" in Section 5.3.3, which is expressly limited to interLATA traffic. AT&T asserts that this is because the upshot of our 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). AT&T argues that this is the fatal flaw in our staff's recommendation and this Commission's Final Order because, by definition, "Switched Access Traffic," under Section 5.3.3, can never include intraLATA traffic. AT&T contends that in this respect, our staff's recommendation, and consequently the Final Order eviscerate the contract's definition of "Switched Access Traffic" by including certain intraLATA traffic in this definition.

AT&T asserts that in comparison, AT&T's "literal words" interpretation of these two Sections of the contract is complementary and construes the entirety of the contract as required by Georgia law. AT&T contends that its 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. AT&T asserts that 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. AT&T contends that it also allows this Commission to interpret the contract based on the "literal words" and unambiguous provisions of the contract and not consider any parol evidence. AT&T asserts that its interpretation of these two Sections upholds the entirety of the contract.

B. BellSouth's Response

In its Response to AT&T's Motion, BellSouth contends that AT&T not only rehashes a contract interpretation argument that this Commission concluded previously "[f]rom a plain language standpoint, [] makes no sense," but AT&T also misrepresents this Commission's evidentiary rulings in this docket, misconstrues the parol evidence rule, and invents a purported consequence of the Final Order that does not in fact exist. BellSouth asserts that although AT&T claims that its motion satisfies the standard for reconsideration, it does not. BellSouth contends that AT&T's motion, to the extent it is not merely rearguing matters this Commission already considered and rejected, relies on a foundation of misrepresentations that does not provide a legitimate basis for this Commission to modify its Final Order.

BellSouth contends that first, this Commission did not hold in denying AT&T's pre-hearing motions to strike evidence that the definition of local traffic in the parties' interconnection agreement was ambiguous and that this Commission would therefore consider parol evidence in construing the definition, as AT&T contends that it did. BellSouth states that,

rather, this Commission ruled that it would not strike extrinsic evidence contained in pre-filed testimony, because if this Commission concluded when it reached the merits of the case that the definition of local traffic set forth in the agreement was not clear on its face, then governing law would require it to examine evidence other than the contract language.

BellSouth states that when it came time to address the merits of AT&T's complaint, this Commission found, however, that the contract is clear on its face in that calls that have traditionally been treated as intraLATA toll traffic and that are carried over switched access arrangements are expressly excluded from the definition of local traffic. BellSouth contends that AT&T's argument to the contrary is wholly undermined by its own witness who agreed on cross-examination that the local traffic definition "on its face" excludes calls that traverse switched access facilities from treatment as local traffic and further testified that the interpretation AT&T sought was, at best, "spin." BellSouth argues that there is no dispute that controlling law mandates that this Commission give effect to the plain words of the contract, and this Commission properly concluded that it was required to interpret the contract to mean exactly what even AT&T's witness acknowledged that it plainly says.

BellSouth asserts that AT&T's second contention, that this Commission ran afoul of the parol evidence rule in construing the plain words of the contract, has no basis in law or fact. BellSouth contends that the parol evidence rule bars the use of extrinsic testimony of a prior or contemporaneous agreement to alter or vary the terms of an unambiguous contract.[5] BellSouth asserts that "[t]o be ambiguous, a word or phrase must be of uncertain meaning and fairly understood in multiple ways."[6] BellSouth contends that AT&T's claim that this Commission improperly considered parol evidence was based upon AT&T's assertion that the rule "bans consideration of all 'parol' evidence except where the contract language is ambiguous." BellSouth asserts that the parol evidence rule does not bar evidence of the meaning of an unambiguous term and in fact Georgia law permits such evidence. BellSouth states that since words must be construed in their "popular sense,"[7] and be given the meaning they have in a particular trade or business,[8] a court, or in this case this Commission, is permitted to hear evidence of a word or phrase's popular and/or specialized meaning. BellSouth asserts that allowing evidence for that purpose does not even implicate, not to mention run afoul, of the parol evidence rule.

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[5]First Data POS, Inc. v. Willis, 273 Ga. 792, 546 S.E.2d 781(2001).

[6]Resolution Trust Corp. v. Artley, 24 F.3d 1363, 1366(11th Cir. 1994)(citations omitted).

[7]Henderson v. Henderson, 264 S.E.2d 299 (Ga. App 1979).

[8]Ga. Code Ann. §13-2-2(2).

BellSouth asserts that the parol evidence that AT&T contends this Commission should not have considered - testimony that the phrase "switched access arrangements" refers to facilities purchased out of tariffs - is not evidence of a prior or contemporaneous oral agreement, and it did not alter or change the contract. BellSouth contends that indeed, notwithstanding AT&T's characterization of such evidence as BellSouth's parol evidence, the truth, which this Commission recognized in its Final Order, is that AT&T's witnesses agreed that the phrase "switched access arrangements" means exactly what BellSouth understood it to mean. See, Final Order, at pages 6, 13, 14. BellSouth asserts that that testimony does not describe a prior agreement, nor does it in any way vary the meaning of the contract. BellSouth contends it confirmed that the phrase "switched access arrangements" is capable of only one reasonable interpretation - the one both parties placed on it at the time of contracting - and is therefore unambiguous.

Finally, BellSouth addresses AT&T's claim that calls carried over "switched access arrangements" is synonymous with "Switched Access Traffic," as that term is defined in another provision in the contract. BellSouth contends that nevertheless, AT&T asserts again that this Commission's conclusion to give effect to the plain words of the contract "eviscerates the contract's definition of 'Switched Access Traffic.'" BellSouth asserts that AT&T's argument is premised on its claim that traffic that does not meet the definition of "local traffic" must meet the contract's definition of "Switched Access Traffic." BellSouth contends that as AT&T's witness also acknowledged, that is not true.

BellSouth asserts that, as this Commission has already concluded, the contract is clear - intraLATA traffic that was formerly treated as toll traffic and is carried over switched access arrangements is expressly excluded from the definition of local traffic. BellSouth contends that even if this Commission were to believe that AT&T, at the time the parties were negotiating their interconnection agreement, wanted the contract to say something different, the fact remains that the law does not permit this Commission to ignore the plain words of the contract. BellSouth concludes that AT&T has failed to identify a point of fact or law that this Commission overlooked or that this Commission failed to consider in rendering its Final Order. BellSouth contends that consequently, this Commission should deny the motion for reconsideration.

C. Decision

As noted by the Parties, the standard for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which this Commission failed to consider in rendering our Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974);Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 162 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex.rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling

that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

AT&T's arguments hinge on its belief that Georgia's parol evidence rule bars **all** extrinsic evidence in a contract matter unless the contract language is found to be ambiguous. BellSouth, however, correctly points out that AT&T's characterization of the parol evidence rule is incorrect. The Official Code of Georgia Annotated § 13-2-2(1) states that

> Parol evidence is inadmissible to add to, take from, or vary a written contract. All the attendant and surrounding circumstances may be proved and, if there is an ambiguity, latent or patent, it may be explained; so, if only a part of a contract is reduced to writing (such as a note given in pursuance of a contract) and it is manifest that the writing was not intended to speak the whole contract, then parol evidence is admissible.

Under Georgia's parol evidence rule, evidence outside the contract is inadmissible to the extent it adds to, takes from, or varies a written contract, which is not the case regarding the extrinsic evidence that AT&T complains about. AT&T complains that the consideration of testimony of both AT&T and BellSouth's witnesses that the term "arrangements" in "switched access arrangements" means facilities, was improper under Georgia's parol evidence rule. This assumption is incorrect for two reasons. First, as indicated by BellSouth, when both parties agree that the term "arrangements" is synonymous with facilities in the contract, there is no adding to, taking from, or varying of the contract by the extrinsic evidence since it confirms that the term "arrangements" has only one reasonable interpretation, which is the meaning both parties agreed to as evidenced by the testimony. Specifically, the Order notes that witness King does not dispute that a switched access arrangement is a ". . . facility that supports the delivery of switched access traffic." Id. at p. 6.

Second, under Georgia law, testimony is permitted to explain technical terms. Specifically, the Official Code of Georgia Annotated § 13-2-2(2) states that

> Words generally bear their usual and common signification; but technical words, words of art, or words used in a particular trade or business will be construed, generally, to be used in reference to this peculiar meaning. The local usage or understanding of a word **may be provided** in order to arrive at the meaning intended by the parties.

(Emphasis added). Clearly, under Georgia statutes parties may present extrinsic testimony regarding the meaning of a technical phrase to arrive at the meaning. Thus, it is appropriate for us to consider such testimony in arriving at its decision and consideration of such testimony does not violate the parol evidence rule. Thus, we did not make a mistake of fact or law.

In addition, AT&T's argument that we improperly relied on witness Shiroishi's testimony that the term switched access "arrangements" meant facilities and such switched access arrangements are sold out of BellSouth's tariffs, is without merit. As noted above, it is permissible to rely on testimony to arrive at the parties' intended meaning regarding the use of a technical word or phrase. Witness Shiroishi's testimony referencing where the switched access arrangement could be purchased from, merely provided additional support that the parties both agreed to the meaning of the term "arrangements." Contrary to AT&T's argument, this does not violate Georgia's parol evidence rule, as noted by BellSouth.

Moreover, we find that AT&T's argument that the Order dismissed AT&T's witness testimony is also without merit. We agree with BellSouth that AT&T's argument in this regard is merely an attempt to rehash arguments presented in its brief. Substantively, there is no change in the arguments raised in the motion regarding AT&T's witness's testimony which was rejected by us in rendering our decision.

Similarly, AT&T's complaint that the Order was fatally flawed because we failed to interpret the entirety of the contract because of the "interrelatedness" of the two sections of the contract is also an attempt to reargue its position from its brief. Again, as BellSouth points out, AT&T's argument was rejected. Pursuant to the standard for a motion for reconsideration, solely rearguing one's position is not a basis for a motion for reconsideration. Moreover, AT&T is simply wrong when it claimed that the "upshot" of the Order 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). AT&T's argument assumes that intraLATA toll traffic falls within the definition of "Switched Access Traffic" in the contract. However, the definition of "Switched Access Traffic" in the contract specifically refers to only interLATA traffic, not intraLATA traffic. In fact, witness King testified that Section 5.3.3 defines Switched Access Traffic as ". . . telephone calls requiring local transmission or switching service for the purpose of the origination or termination of Intrastate InterLATA traffic." (Emphasis added) Order No. PSC-03-1082-FOF-TP at pp. 6-7. The definition of "Local Traffic" encompassed intraLATA traffic. We agree with BellSouth in accordance with language of the Final Order, traffic need not satisfy a definition of "Switched Access Traffic" for switched access rates to apply, rather than reciprocal compensation rates, under the interconnection agreement. For the foregoing reasons, AT&T's Motion for Reconsideration shall be denied.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc.'s Request for Extension of Time to Respond to AT&T's Motion for Reconsideration of Order No. PSC-03-1082-FOF-TP is hereby granted. It is further

ORDERED that AT&T of the Southern States, LLC, Teleport Communications Group, Inc. and TCG South Florida's Request for Oral Argument is hereby denied. It is further

ORDERED that AT&T of the Southern States, LLC, Teleport Communications Group, Inc. and TCG South Florida's Motion for Reconsideration is hereby denied. It is further

ORDERED that upon the expiration of the appellate period if no filings are received from the parties within 30 days of the issuance of the order, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 25th day of February, 2004.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(SEAL)

PAC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the

form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.