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April 24, 1996

BY HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Resolution of Petition to Establish Non-Discriminatory Rates, Terms and Conditions for Interconnection Involving Local Exchange Companies and Alternative Local Exchange Companies Pursuant to Section 364.162, Florida Statutes; Docket No. 950985-TP

Dear Ms. Bayo:

Enclosed for filing in the above-styled docket are the original and fifteen (15) copies of the Response of AT&T Commuications of the Southern States, Inc. to BellSouth Telecommunications, Inc.'s Motion for Reconsideration. Please also find enclosed a 3.5" diskette formatted for WordPerfect 5.1 containing another copy of the Response.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to this writer.

Thank you for your assistance in this matter.

Sincerely,

Mark K. Logan

ACK ✓
AFA
APP
CAF
CMU
CTR
EAG
LEG 1
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RCH
SEC 1
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OTH

MKL/ma

Enclosures
cc: All parties of record

CERTIFICATE OF SERVICE

DOCKET NO. 950985-TP

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by next day express mail, U. S. Mail or hand-delivery to the following parties of record this 24th day of April, 1996.

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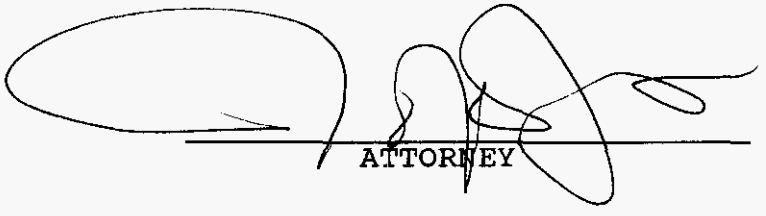

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Resolution of Petition to Establish Non-Discriminatory Rates, Terms, and Conditions for Interconnection Involving Local Exchange Companies and Alternative Local Exchange Companies Pursuant to Section 364.162, Florida Statutes)	DOCKET NO. 950985-TP Filed: April 24, 1996

RESPONSE OF AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC. TO BELLSOUTH TELECOMMUNICATIONS, INC'S MOTION FOR RECONSIDERATION

AT&T Communications of the Southern States, Inc. ("AT&T"), pursuant to Rule 25-22.060(1)(b), Fla. Admin. Code, files its response to the Motion for Reconsideration filed by BellSouth Telecommunications, Inc. ("BellSouth") and states:

1. BellSouth correctly cites Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962) and its progeny as setting the standard of review in evaluating a motion to reconsider. However, BellSouth then ignores the clearly articulated standard of that case as expressly adopted by the Commission. The purpose of a motion to reconsider is to bring to the attention of the Commission some material and relevant point of fact or law which was overlooked, or which it failed to consider when it rendered the order in the first instance. In Re: Intermedia Communications of Florida, Inc., Florida Public Service Commission Order No. PSC-95-1188-FOF-TP (September 21, 1995)(citing Diamond Cab). Thus, the burden is upon BellSouth is to demonstrate that the Commission has overlooked a particular point of fact or law that requires reconsideration. In Re: Investigation into Florida Public Service Commission Jurisdiction Over Southern States Utilities, Inc. in Florida

Florida Public Service Commission Order No. PSC-94-1040-FOF-WS (August 24, 1995). A review of the record and final order in the BellSouth docket demonstrates that BellSouth has failed to meet this standard; therefore, the Motion for Reconsideration should be denied.

2. BellSouth's first argument for reconsideration is that the Commission's adoption of mutual traffic exchange or "bill-and-keep" for the termination of local traffic is contrary to the requirements of Section 364.162, Florida Statutes (1995), as mutual traffic exchange does not establish a rate or charge. BellSouth's position is simply a regurgitation of its position at hearing and arguments contained in its post-hearing brief on the issue. The Commission's rejection of BellSouth's position on this issue does not give rise to a motion of reconsideration in and of itself. BellSouth must identify what was not considered by the Commission during its original consideration of the matter at hearing.

3. BellSouth conveniently disregards or overlooks the ten pages contained in the final order dealing specifically with the termination of local traffic. Final Order Establishing Nondiscriminatory Rates, Terms and Conditions for Local Interconnection Between BellSouth Telecommunications, Inc. and Metropolitan Fiber Systems of Florida, Inc. and MCI Metro Access Transmission Services, Inc., Florida Public Service Commission Order No. PSC-96-0445-FOF-TP (March 29, 1996) at p. 5-14 ("Final Order"). There the Commission specifically dealt with and considered the issue of the appropriateness of adopting mutual

traffic exchange pursuant to Section 364.162. The Commission specifically noted the testimony of MCI witness Dr. Cornell stated ". . . when you provide something in kind, you are essentially providing it at cost . . ." (Final Order at 12). Then the Commission concluded,

> "We disagree with BellSouth's argument that mutual traffic exchange violates Section 364.162(4), Florida Statutes. . .We agree with BellSouth that the statute must be construed as a whole so that absurd results are avoided. . . To construe the statutory language so narrowly to say that mutual traffic exchange would not be an adequate form of compensation would, in our opinion, yield an absurd result."(Final Order at p. 13-14)

In light of the clear language contained in the final order on this issue, BellSouth's conclusory assertion that the Commission did not provide any rationale to support the notion that mutual traffic exchange constituted a legitimate rate or charge under the statutes is simply fallacious. The Commission considered and rejected BellSouth's testimony and argument once. Having pointed to no other matter of fact or law which the Commission did not consider, BellSouth's Motion must fail.

4. In light of the failure of BellSouth to meet its burden in moving the Commission for reconsideration of its decision to adopt mutual traffic exchange, it is unnecessary for AT&T to address the statutory construction arguments of BellSouth. However, for the record, AT&T notes that the Commission's interpretation of its own statutes is to be given great weight and may not be overturned unless it is contrary to the language of the statute. Smith v. Crawford, 645 So. 2d 513 (Fla. 1st DCA 1994).

If the agency's construction is reasonably defensible, it should not be rejected simply because there is another view of the statute. Ford Motor Co. v. N.L.R.B., 441 U.S. 488, 497 (1979). Here, the Commission has adopted a readily defensible interpretation of the statute which achieves the legislatively mandated purpose of fostering competition. Accordingly, the Commission's Order with respect to mutual traffic exchange comports with Section 364.162 and should not be disturbed.

5. BellSouth's second argument is that mutual traffic exchange does not cover the costs of interconnection thus the final order again violates Section 364.162. However the evidence presented at hearing and considered by the Commission suggests otherwise. The Commission found that:

> ". . . a company's costs for furnishing local interconnection consist of two parts: the company's internal costs for terminating calls, and the rate it pays to other companies for terminating its calls. These are the true economic costs of furnishing local interconnection. By mutual traffic exchange, each company avoids the cost of the rates it pays to the other company, and therefore receives benefits equal to the benefits it provides." (Final Order at p. 12)

There was competent, substantial evidence presented on this point and accepted by the Commission. See Final Order at p. 12. BellSouth's disappointment with the Commission's decision on this point does not give rise to a reason for the Commission to consider its well-founded decision.

6. BellSouth also argues that there was no competent and substantial evidence presented which would suggest a balance of

traffic between LECs and ALECs. This ignores the expert opinion testimony of several petitioning and intervening witnesses. Furthermore, the Commission's order provides an express mechanism for recovery of costs by BellSouth should it be able to demonstrate that traffic is, in fact, out of balance. Thus, BellSouth's argument that is cannot recover its costs under the mandates of the Final Order is meritless.

7. BellSouth's assertion that the Commission's Final Order results in a taking in violation of the U.S. and Florida Constitutions is also without substance. First that argument is expressly predicated upon the assumption that BellSouth is required to provide a service or use of its property without compensation. As already discussed, the record in this docket is clear that BellSouth will receive compensation for its provision of interconnection services to ALECs. BellSouth simply wants to pretend that the "mutual" components of mutual traffic exchange do not exist. Yet they do. BellSouth will receive the benefit of having its traffic terminated by ALECs. If traffic is found to be out of balance in favor of an ALEC, BellSouth can recover those costs upon presentation to the Commission. Therefore, BellSouth has suffered and will not suffer a deprivation or loss of any of its property.

8. BellSouth's argument with respect to the Telecommunications Act of 1996 ("the Act") is misplaced. This case was considered under Florida law, not the Act. Furthermore. the Commission has not taken any action in the Final Order which is

inconsistent with the Act. Mutual traffic exchange allows for the recovery of costs by both parties and, as noted previously, Bell South can petition the Commission to charge an actual rate if it can successfully provide evidence of traffic imbalance.

9. BellSouth asserts that the Final Order determination that the carrier terminating a call shall bill and collect the RIC was not based upon competent and substantial evidence. Again BellSouth ignores the testimony of several petitioning and intervening witnesses.[1] See Final Order at. p. 18. This evidence plus that presented by BellSouth was weighed and evaluated by the Commission. As the Final Order noted, "We disagree with Bell South's arguments." Final Order at 19. Thus having considered and rejected BellSouth's testimony and arguments, BellSouth cannot now resuscitate a failed position under the guise of a Motion to Reconsider.

10. To the extent not addressed in the Final Order the rate that should be set for the intermediary function of transporting a local call from one ALEC interconnected to BellSouth to another ALEC interconnected with BellSouth but not with each other should be the total service long run incremental cost for that function ("TSLRIC").

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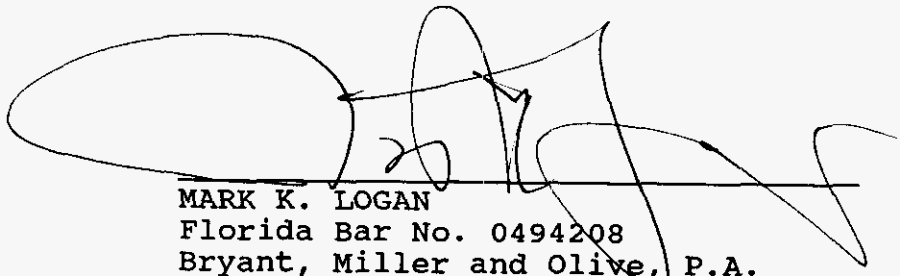
[1] BellSouth, in its Motion to Reconsider, erroneously attributes certain positions regarding the RIC to AT&T. BellSouth Motion for Reconsideration, at p. 29. According to BellSouth's transcript references, such positions were taken by MFS witness Devine.



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