BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Determination of Funding for Universal Service and Carrier of Last Resort Responsibilities.	DOCKET NO. 950696-TP ORDER NO. PSC-96-0730-FOF-TP ISSUED: May 31, 1996

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER DENYING PETITION FOR RECONSIDERATION

BY THE COMMISSION:

Background

During 1995, the Legislature enacted a number of modifications to Chapter 364, Florida Statutes. In addition to allowing incumbent local exchange companies (LECs) to opt for price regulation and authorizing local exchange competition by alternative local exchange companies (ALECs), the Legislature clearly stated that universal service (US) is of paramount importance, as evidenced by the following:

> It is the intent of the Legislature that universal service objectives be maintained after the local exchange market is opened to competitively provided services. (Section 364.025(1), Florida Statutes)

Section 364.025, Florida Statutes, also established two major tasks for this Commission. First, it required us to implement "an interim mechanism for maintaining universal service objectives and funding carrier-of-last-resort obligations. . . ." by January 1, 1996. Section 364.025(2), Florida Statutes. Second, it directs this Commission to "research the issue of a universal service and carrier-of-last-resort mechanism and recommend to the Legislature [and the Governor, the President of the Senate, the Speaker of the House, and the minority leaders of the Senate and the House] what the commission determines to be a reasonable and fair mechanism for providing to the greatest number of customers basic local exchange

telecommunications service at an affordable price. . . ." by January 1, 1997. Section 364.025(4), Florida Statutes.

This docket was initially opened to address the issue of the appropriate interim US/carrier of last resort (COLR) mechanism. We held hearings on the interim US/COLR mechanism between October 16 and 18, 1995. By Order No. PSC-95-1592-FOF-TP, issued December 27, 1995, we determined that the appropriate interim US/COLR mechanism consisted of two components:

> First, for the present, LECs should continue to fund US/COLR obligations the way they currently do -- through markups on the various services they offer.
>
> Second, we created an expedited process for addressing petitions for US/COLR funding, on a case-by-case basis, wherein a LEC must demonstrate that competition has eroded its ability to maintain its US/COLR obligations and quantify the shortfall in support due to competition.

On January 11, 1996, Indiantown Telephone System (ITS) filed a petition for reconsideration of Order No. PSC-95-1592-FOF-TP. ITS requests "that the Commission enter an order that insures that a company-specific remedy that is not onerous, prejudicial and untenable is available to ITS (or any other small local exchange company that may elect price regulation before implementation of a permanent universal service funding mechanism)."

On January 23, 1996, the Florida Cable Telecommunications Association (FCTA), AT&T Communications of the Southern States, Inc. (ATT-C), and McCaw Communications of Florida, Inc. (McCaw) filed responses to ITS' petition. FCTA, ATT-C, and McCaw argue that this Commission did not overlook or fail to consider any issue in Order No. PSC-95-1592-FOF-TP. In addition, they argue that reconsideration is not an appropriate vehicle for ITS to reargue the case simply because it disagrees with the outcome.

Both ATT-C and McCaw note that, under Section 364.052, Florida Statutes, small LECs remain under rate base regulation until January 1, 2001, unless a company opts to elect price cap regulation. ALECs may not serve in those areas served by small LECs until that date, unless the small LEC elects price cap regulation. McCaw argues that this gives small LECs ample opportunity to seek rate rebalancing, to request other rate relief, or to present a funding proposal if the company does opt to elect price regulation. ATT-C agrees that ITS has adequate remedies to address its concerns.

FCTA asserts that the evidence was simply not afforded the weight that ITS thinks it deserves. FCTA points out that ITS inappropriately equates a petition process with a "zero funding" requirement. According to FCTA, "ITS simply presents arguments for an immediately funded interim mechanism which the Commission has rejected based upon the record in this proceeding." FCTA also argues that ITS lacks standing to petition for reconsideration.

ITS' Standing to Petition for Reconsideration

According to FCTA, ITS lacks standing to petition for reconsideration of Order No. PSC-95-1592-FOF-TP because it is not a party to this proceeding. Under Rule 26-22.060(1)(a), Florida Administrative Code, reconsideration is only available to parties. In addition, under Rule 25-22.039, Florida Administrative Code, persons must intervene at least five days prior to a final hearing. According to FCTA, ITS failed to intervene at least five days prior to the hearing in this proceeding. We do not agree.

In its petition to intervene, the Small Company Committee (SCC) requested "the Commission to allow it and its members to intervene in this docket." (Emphasis added.) ITS is a member of the SCC. In support of its petition, the SCC alleged that:

> Each member of the Committee is a telecommunications company, as that term is defined in CS/SB 1554 (Section 364.02(12), F.S.). Each member is also a small local exchange telecommunications company, as that term is defined in CS/SB 1554 (Section 364,052(1), F.S.).

The SCC further alleged that "[a]ny decision the Commission makes in this docket will affect the substantial interests of each of the members of the Committee." The SCC's petition was granted by Order No. PSC-95-0952-PCO-TP, issued August 7, 1995.

It is clear that the SCC's intent was that each of its members would be a party. It is also clear that ITS did participate as a party; the SCC sponsored the rebuttal testimony of Thomas M. Beard, which was clearly identified as being on behalf of ITS. We, therefore, reject FCTA's argument that ITS lacks standing to petition for reconsideration of Order No. PSC-95-1592-FOF-TP.

Standard for Reconsideration

The purpose of a motion for reconsideration 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. Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). Reconsideration is not an appropriate vehicle for rearguing matters which were already considered, or for introducing new material that was not before the forum in the first place.

ITS' Petition for Reconsideration

ITS asserts that the Commission overlooked or failed to properly consider the significance of certain evidence in this docket. Additionally, ITS argues that "[t]he 'mechanism' adopted is prejudicial and untenable to ITS and could adversely affect any small LEC that may elect price regulation before implementation of a permanent universal service funding mechanism."

ITS argues that there is no mention made in Order No. PSC-95-1592-FOF-TP of the proposal offered by ITS, which is significantly different from any other proposal. ITS further argues that we ignored "undisputed evidence" that demonstrates significant differences between the large and small LECs.

In its direct testimony, the SCC proposed an interim mechanism based upon minutes of use (MOUs). It suggested a fund based upon the Carrier Common Line (CCL) charge and the residual interconnection charge (RIC), but did not provide any further detail as to how this number would be derived.

The SCC's MOU-based mechanism is virtually identical to one proposed by BellSouth Telecommunications, Inc. (BellSouth). BellSouth's alternative number 3 would have created an MOU-based "US preservation charge," derived by summing the weighted average interstate and intrastate CCL charge and the weighted average intrastate and interstate Interconnection Charge (IC) associated with switched access transport. Although we did not expressly reject the SCC's MOU-based mechanism, it was at least impliedly rejected for the same reasons we rejected BellSouth's alternative mechanism number 3.

ITS also argues that we ignored specific evidence relating to small LECs that elect price regulation. According to ITS, this evidence is company-specific to ITS and clearly supports its position on the direct and immediate impact of competition in its territory. ITS focuses on "four factors that are delineated, three of which are directly related to US/COLR obligations, and two of which are support mechanisms specifically targeted at US and that

will be lost as a direct result of future competition." ITS refers to its own testimony, which actually states that:

> If we ignore revenues lost due to true competition, and focus only on the reduced contribution as mandated in the law along with the current interstate support mechanism, the necessary support can be established.

Thus, the factors ITS refers to describe the current support ITS receives and how it could be impacted by legislative mandates totally unrelated to competition.

ITS further argues that Order No. PSC-95-1592-FOF-TP states that all telecommunications companies other than ALECs already contribute to US and COLR obligations and that ALECs are the only providers for whom a mechanism does not exist. According to ITS, by exempting ALECs from contributing their fair share, we have ignored the Legislature's intent that "each telecommunications company contribute" its fair share to maintaining US/COLR obligations and have, in effect, established a privileged class of telecommunications companies.

We believe that ITS has taken our words out of context. The statement to which ITS refers actually reads as follows:

> The statutory provisions clearly state the Legislature's intent that all telecommunications companies, as defined under Section 364.02(12), Florida Statutes, and CMRS providers, as defined by Section 364.02(3), Florida Statutes, should contribute toward the support of US objectives and COLR obligations. However, virtually all of the parties agreed that existing providers, including LECs, IXCs, IPPs, and CMRS providers, presently contribute US/COLR support through various implicit or explicit mechanisms. ALECs are the only providers for whom a mechanism does not exist. Accordingly, for purposes of the interim mechanism, we find that, to the extent any additional US/COLR funding is needed, such support should, at a minimum, be collected from ALECs.

Order No. PSC-95-1592-FOF-TP, at page 14.

We neither overlooked the fact that ALECs do not presently contribute to US/COLR obligations nor did we establish a "privileged class" of telecommunications companies. ALECs are not exempted from contributing to US/COLR obligations. ITS is merely dissatisfied that we did not establish an immediately funded interim US/COLR mechanism.

ITS also points out that we stated that LECs should continue to fund US/COLR obligations through mark-ups on their services. Order No. PSC-95-1592-FOF-TP, at page 20. ITS argues that this ignores the legislative intent that the Commission do nothing "that would create an unreasonable barrier to competition."

ITS has pointed to no evidence that we failed to consider. Rather, it bases its argument on legislative intent. ITS, again, is merely dissatisfied with the result.

ITS next points to that portion of our decision which states that, if a LEC's ability to sustain its US/COLR obligations becomes jeopardized due to competition, it may file a petition, including an incremental cost study, for company specific relief. Order No. PSC-95-1592-FOF-TP, at page 20. ITS argues that a small LEC would have to be in a dire financial straits before it could petition the Commission. Additionally, ITS argues that an incremental cost study would be cost prohibitive for a small LEC. ITS, therefore, believes that the practical result of our decision is that a small LEC would never be able to avail itself of interim US/COLR relief.

ITS has failed to identify any evidence that we overlooked or failed to consider. Again, it is merely dissatisfied with the result.

ITS further argues that we ignored evidence which demonstrates the financial impact on ITS, on a customer-by-customer basis, that would result from competition in a small LEC's territory. ITS argues that the absence of US/COLR contribution by the ALEC is anti-competitive and non-neutral.

Once again, ITS has not identified any evidence that supports its argument. We cannot determine to what evidence ITS refers; there appears to be no such information in the record.

Next, ITS argues that we overlooked material and relevant points of law that render Order No. PSC-95-1592-FOF-TP deficient. Section 364.025(2), Florida Statutes, states as follows:

> The Legislature finds that <u>each telecommunications company should contribute</u> its fair share to the support of the universal service objectives and carrier-of-last report obligations. For a transitional period not to exceed January 1, 2000, an interim mechanism for maintaining universal service objectives and <u>funding</u> carrier-of-last-report obligations shall [be] established by the commission, pending the implementation of a permanent mechanism. (Emphasis added by ITS.)

According to ITS, Order No. PSC-95-1592-FOF-TP is deficient because ALECs make no contribution and there is no funding by ALECs under the approved mechanism. ITS argues that this makes ALECs the only class of telecommunications companies that contribute nothing, either implicitly or explicitly, to the maintenance of US objectives during the transitional period leading up to the implementation of a permanent US mechanism, absent the use of an unworkable petition procedure for small LECs.

This is a restatement of a point already argued. ALECs have not been excluded from the interim mechanism. ITS simply has not identified any evidence that we overlooked or failed to consider.

ITS further argues that Order No. PSC-95-1592-FOF-TP implies that the interim mechanism will last only a short time. According to ITS, we overlooked statutory provisions which indicate that the interim US/COLR mechanism may last for up to four years. ITS points out that it is not up to this Commission how long it will be until a permanent mechanism is implemented. However, ITS did not identify any evidence that we overlooked or failed to consider.

Finally, ITS argues that we failed to consider the different impact competition might have on a small LEC under price regulation and its probable need for support. Again, however, ITS failed to identify any evidence that we overlooked or failed to consider.

ITS has failed to meet the appropriate standard for reconsideration. The purpose of a motion for reconsideration is to bring to the attention of the Commission some relevant point of fact or law which was overlooked, or which it failed to consider when it rendered the order in the first instance. It is not an appropriate vehicle for rearguing matters which were already considered. ITS has not identified any matter that we overlooked or failed to consider. Accordingly, its petition for reconsideration is denied.

It is, therefore,

ORDERED by the Florida Public Service Commission that Indiantown Telephone System's petition for reconsideration is denied. It is further

ORDERED that Docket No. 950696-TP shall remain open until September 30, 1996.

By ORDER of the Florida Public Service Commission, this 31st day of May, 1996.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

RJP

NOTICE OF JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 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 or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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.