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June 29, 1998

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

Re: Docket No. 971140-TP (Recombination Docket)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunication's Inc.'s Motion for Reconsideration, which we ask that you file in the captioned matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Nancy B. White (ke)

Nancy B. White

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CMU Stuarza
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EAG ____
LEG 1
LIN 5
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RCH ____
SEC 1
WAS ____
OTH ____

Enclosures

cc: All parties of record
A. M. Lombardo
R. G. Beatty
William J. Ellenberg II

CERTIFICATE OF SERVICE
DOCKET NO. 971140-TP (Recombination Issues)

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Federal Express this 29th day of June, 1998 to the following:

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Nancy B. White (KE)
Nancy B. White

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Motions of AT&T Communications of the Southern States, Inc. and MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. to Compel BellSouth Telecommunications, Inc. to comply with Order PSC-96-1579-FOF-TP and to set non-recurring charges for combinations of network elements with BellSouth Telecommunications, Inc. pursuant to their agreement	)	Docket No. 971140-TP
	)	Filed: June 29, 1998

BellSouth Telecommunications, Inc.'s
Motion for Reconsideration

BellSouth Telecommunications, Inc. ("BellSouth"), files pursuant to Rule 25-22.060, Florida Administrative Code, its Motion for Reconsideration of Order No. PSC-98-0810-FOF-TP ("Order"), issued on June 12, 1998, by the Florida Public Service Commission ("Commission") in the above referenced docket. Reconsideration is required because the Commission overlooked or failed to consider evidence affecting the outcome of this proceeding. In support of its Motion for Reconsideration, BellSouth states the following:

I. Procedural Background

On February 8, 1996, the Telecommunications Act of 1996 (the "Act") became law. The Act required interconnection negotiations between incumbent local exchange carriers and new entrants. If negotiations were unsuccessful, the parties were entitled to seek arbitration of the unresolved issues from the appropriate state commission. 47

U.S.C. § 252(b)(1). This process resulted in the issuance of various Arbitration Orders by the Commission (Order Nos. PSC-96-1579-FOF-TP, PSC-97-0298-FOF-TP and PSC-97-0606-FOF-TP) and in Interconnection Agreements between the parties. This proceeding was instituted upon Motions to Compel Compliance that were filed by AT&T Communications of the Southern States, Inc. ("AT&T"), and MCI Telecommunications, Inc. and MCImetro Access Transmission Services, Inc. ("MCI") for the ostensible purpose of enforcing the Orders and Agreements.

On June 12, 1998, the Commission issued its Order, holding, among other things, that BellSouth's requirement that an ALEC must be collocated in order to receive access to Unbundled Network Elements ("UNEs") was in conflict with the Act and the Eighth Circuit Order. The Commission, in reaching a decision on this issue, either overlooked or failed to consider certain evidence applicable to this docket. See Diamond Cab Co. of Miami vs. King, 146 So. 2d 889 (Fla. 1962). The Commission's decision lacks the requisite foundation of competent and substantial evidence. In addition, it appears that the discussion surrounding Issue 5 is in conflict with the Commission's ultimate decision. Moreover, a statement is attributed to BellSouth's witness, Alphonso Varner, that is not supported by the record.

With regard to the evidence, the Commission must rely upon evidence that is "sufficiently relevant and material that a reasonable man would accept it as adequate to support the conclusion reached." DeGroot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1st DCA 1957) See also Agrico Chem. Co. v. State of Fla. Dep't of Environmental Reg., 365 So. 2d 759, 763, (Fla. 1st DCA 1979); Ammerman v. Fla. Board of Pharmacy, 174

So. 2d 425, 426 (Fla. 3d DCA 1965). The evidence must "establish a substantial basis of fact from which the fact at issue can reasonably be inferred." DeGroot, 95 So. 2d at 916. The Commission should reject evidence that is devoid of elements giving it probative value. Atlantic Coast Line R.R. Co. v. King, 135 So. 2d 201, 202 (1961). "The public service commission's determinative action cannot be based upon speculation or supposition." 1 Fla. Jur. 2d, § 174, citing Tamiami Trail Tours, Inc. v. Bevis, 299 So. 2d 22, 24 (1974). In this case, the Commission's decision is doubly arbitrary because it ignores competent evidence that contradicts the Commission's underlying assumptions in many instances. "Findings wholly inadequate or not supported by the evidence will not be permitted to stand." Caranci v. Miami Glass & Engineering Co., 99 So. 2d 252, 254 (Fla. 3d DCA 1957). 380 So. 2d 1028, 1031 (Fla. 1980).

The sections below examine the grounds for reconsideration.

II. Collocation and UNE Combinations

In the Order, the Commission held that BellSouth's requirement that an ALEC must be collocated in order to receive access to UNEs is in conflict with the Eighth Circuit and the Act. (Order, p. 53). The issue under consideration was not what constituted access to UNEs. Rather, the issue under consideration was the standard that should be used to identify what combinations of UNEs recreated existing BellSouth retail telecommunications services. (Issue 7). The Commission however, appeared to premise this conclusion upon the ruling of the Eighth Circuit that a new entrant need not own all or part of its own network as a prerequisite to purchasing UNEs from an

incumbent, i.e. the new entrant may purchase all network elements it wishes from the incumbent. This Commission appeared to have read this decision by the Eighth Circuit as a decision that an appropriate form of rebundling must necessarily require no equipment or materials whatsoever on the part of the ALEC.

An incumbent LEC may rely on collocation arrangements to satisfy its obligation under Section 251(c)(3) of the Act to provide UNEs in a manner that permits their recombination. Although the Eighth Circuit never directly addressed which methods of UNE access would satisfy Section 251(c)(3), the Eighth Circuit did indicate that direct LEC access to an incumbent's central office equipment -- on par with the incumbent's own access -- was not required. To the contrary, the Court of Appeals explained: "the degree and ease of access that competing carriers may have to incumbent LECs' networks is . . . far less that the amount of control that a carrier would have over its own network" 120 F. 3d at 816.

Having ruled out any requirement of direct physical access to central office equipment, the Eighth Circuit did not need to address specifically whether physical collocation was an acceptable method of access under section 251(c)(3) because the Act itself confirms that it is. Congress imposed upon Bell companies the "duty to provide . . . for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier." 47 U.S.C. §251(c)(6). Congress thus envisioned that ALECs would obtain access to UNEs under section 251(c)(3) -- and the ability to combine those UNEs -- through collocation.

The Eighth Circuit concluded from incumbent LECs' stated reluctance to combine UNEs for ALECs, that these incumbents "would rather allow [ALECs] access to their networks than have to rebundle the unbundled network elements for them." 120 F. 3d at 813. This observation is wholly consistent with a statutory scheme under which incumbent LECs must afford "access to their networks" within the central office only through collocation. Indeed, the Eighth Circuit simply stated the obvious : If the incumbent LEC does not combine UNEs for the ALEC and the ALEC itself must "do [some] of the work," id., then the ALEC of course must have some form of physical access to the necessary network pieces for this purpose.

While the Court of Appeals noted the Federal Communications Commission's ("FCC") concern that giving ALECs "access" for combining UNEs might in some way "interfer[e] with [incumbents] networks," there is no basis for concluding that the court itself had in mind physical entry into the central office beyond collocation. Id. "Network access" is a term of art encompassing a variety of arrangements that range from utilization of a collocation cage, to accommodations that do not involve any form of entry into the incumbent's central office. For instance, the FCC's rules list meet point arrangements as a "metho[d] of obtaining . . . access to unbundled network elements, "47 C.F.R. §51.322(b), yet such arrangements do not entail direct physical access to the incumbent's central office equipment.

At the same time, the Eighth Circuit also held that ALECs "may obtain the ability to provide finished telecommunications services entirely through the unbundled access provisions in subsection 251(c)(3)." 120 F. 3d at 815. The Court of Appeals thus

rejected arguments that "a competing carrier should own or control some of its own local exchange facilities before it can purchase and use unbundled elements from an incumbent LEC to provide a telecommunications service." Id. at 814.

This endorsement of end-to-end UNEs, which will be reviewed by the Supreme Court next fall, is also consistent with a statutory scheme that relies upon physical collocation as the principal method of access to UNEs. While it is true that ALECs may need some materials to combine network elements delivered to a collocation cage, these same items would be needed regardless of whether the ALEC has "its own telephone exchange facilities" or buys from the incumbent the full set of unbundled elements that comprise a finished retail service. In other words, the Eighth Circuit's decision that ALECs must combine UNEs for themselves necessarily requires that the ALECs obtain the materials (which could range from a termination frame to electrical tape) necessary to perform the combinations. The incumbent is not required to provide these materials because they are not network elements used in its own network. See 120 F. 3d at 813 ("subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC's existing network -- not to a yet unbuilt superior one"). And the incumbent certainly is not required to provide physical access to its central office transmission equipment just because this might lessen (but not eliminate) the ALEC's need to obtain the materials used to accomplish combinations of UNEs. See id at 813 ("incumbent LECs" need not "cater to every desire of every requesting carrier").

This is confirmed by the Eighth Circuit's observation that "the degree and ease of access that competing carriers may have to incumbent LECs' networks is . . . far less

than the amount of control that a carrier would have over its own network." Id. at 816. The Eighth Circuit knew that ALECs choosing to compete on a facilities basis without constructing even part of a network of their own would face different technical challenges than the incumbent or a network-based ALEC. Such challenges, however, are an inherent part of "the costs and risks associated with unbundled access as a method of entering the local telecommunications industry, " id. at 815, and they are matched by unique benefits associated with this mode of entry. Therefore, the Order's holding that BellSouth's collocation requirement is in conflict with the Eighth Circuit and the Act is in error.

III. Issue 5 Discussion Versus Holding

Issue 5 in this docket dealt with the pricing of combinations of UNEs, under the BellSouth - AT&T interconnection agreement, both when those combinations do and do not recreate an existing BellSouth retail telecommunications service. The Commission held in its Order that the BellSouth - AT&T agreement provided a pricing standard for combinations of UNEs in existence that did not recreate a BellSouth retail service. Thus, the Commission ordered the parties to negotiate prices for UNE combinations not in existence, as well as for those that recreate a BellSouth retail service, whether in existence or not. (Order, p. 33). [P. 46]. BellSouth is not seeking reconsideration of this holding. Rather, BellSouth is seeking reconsideration or clarification of the discussions surrounding this holding because the discussion appears to be inconsistent with the holding.

First, the Order states that, in the case of a migration of an existing BellSouth customer to AT&T, the price AT&T shall pay is the sum of the prices for the loop and switch port. (Order, p. 45). This statement is inconsistent with the Commission's holding that the price has not been determined for combinations of UNEs that recreate an existing BellSouth retail service. Moreover, the Commission also held specifically that a loop and switch port does not recreate an existing BellSouth retail service. (Order, p. 59). Thus under this approach when an existing customer migrates from BellSouth to AT&T, AT&T will receive the benefit of more UNEs than just the loop and port, but AT&T will be required to pay only for the loop and port. Moreover, the migration of an existing customer from BellSouth to AT&T, with all UNEs and services intact does recreate an existing BellSouth retail service. However, the above-noted discussion appears inconsistent with the holding, in its implementation that by purchasing only these elements AT&T can have the entire existing service without paying for the other necessary elements. (Order, p. 33).

Second, again, the Order states that the BellSouth - AT&T agreement provides a pricing standard for UNE combinations that are not in existence and for those that recreate a BellSouth retail service, whether in existence or not. (Order, p. 46). That statement is likewise inconsistent with the holding. (Order, p. 33).

Moreover, during the Special Agenda Conference held on May 14, 1998 in this docket, Chairman Johnson asked for clarification of the motion connected with this issue. (Special Agenda Transcript, p. 93). As she stated, the Commission was "requiring AT&T to negotiate if they are dealing with elements that were not combined,

or if they are dealing with elements that were combined and recreate . . ." an existing retail service. (Id.) Again, the discussion in the Order noted-above appears to be inconsistent with the holding. (Order, p. 33).

IV. Statement By BellSouth Witness Varner

In its Order, the Commission found that BellSouth's witness, Alphonso Varner, testified that, in connection with the BellSouth - MCI Interconnection Agreement, BellSouth voluntarily undertook the bundling obligation only because 47 C.F.R. §51.315(a) was then in effect. (Order, p. 24). No cite is given for this statement. This statement is, nevertheless, relied upon for the conclusion the BellSouth voluntarily undertook to provide combinations of network elements to MCI. In the Staff Recommendation on this docket, dated May 1, 1998, this same rendition of Mr. Varner's testimony appears with cites to Exhibit 24, pp. 23-24 and pages 621-622 of the Transcript. (Staff Rec., p. 25).

Review of both citations reveals no support for this contention. Indeed, in testimony, Mr. Varner stated that it was the Commission that ordered that MCI should be allowed to purchase combinations of UNEs. (Transcript, p. 622). The BellSouth - MCI Interconnection Agreement, therefore, contained the bundling obligation because it was ordered by this Commission. The bundling obligation was not a voluntary and negotiated obligation as stated by the Order. The Order should be corrected to reflect that BellSouth would agree that, at this time, BellSouth is contractually obligated to provide UNE combinations to MCI, as correctly noted by the Order. The Order should

not leave the impression that BellSouth voluntarily agreed to combine UNEs for AT&T. This is supported by the citations discussed above.

Conclusion

BellSouth requests that its Motion for Reconsideration be granted and that the Commission adopt BellSouth's position on the issues discussed herein.

Respectfully submitted this 29th day of June, 1998.

BELLSOUTH TELECOMMUNICATIONS, INC.

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