ORIGINAL

HOPPING GREEN SAMS & SMITH
PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS
123 SOUTH CALHOUN STREET
POST OFFICE BOX 6526
TALLAHASSEE, FLORIDA 32314
(850) 222-7500
FAX (850) 224-8551
FAX (850) 425-3415

JAMES S. ALVES
BRIAN H. BIBEAU
KATHLEEN BLIZZARD
RICHARD S. BRIGHTMAN
KEVIN B. COVINGTON
PETER C. CUNNINGHAM
RALPH A. DEMEO
THOMAS M. DEROSE
RANDOLPH M. GIDDINGS
WILLIAM H. GREEN
KIMBERLY A. GRIPPA
WADE L. HOPPING
GARY K. HUNTER, JR.
JONATHAN T. JOHNSON
ROBERT A. MANNING
FRANK E. MATTHEWS
RICHARD D. MELSON

ANGELA R. MORRISON
GABRIEL E. NIETO
GARY V. PERKO
MICHAEL P. PETROVICH
DAVID L. POWELL
WILLIAM D. PRESTON
CAROLYN S. RAEPPLE
DOUGLAS S. ROBERTS
GARY P. SAMS
TIMOTHY G. SCHOENWALDER
ROBERT P. SMITH
CHERYL G. STUART
W. STEVE SYKES
T. KENT WETHERELL, II

OF COUNSEL
ELIZABETH C. BOWMAN

Writer's Direct Dial No.
(850) 425-2313

July 13, 1998

RECEIVED-FPSC
98 JUL 14 AM 9:53
RECORDS AND REPORTING

Ms. Blanca S. Bayó
Director, Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: MCI -- Docket No. 971140-TL

Dear Ms. Bayó:

Enclosed herein for filing on behalf of MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. (collectively MCI), are the original and 15 copies of MCI's Response to BellSouth's Motion for Reconsideration.

By copy of this letter these documents have been provided to the parties on the attached service list.

RECEIVED & FILED
FPSC-BUREAU OF RECORDS

Very truly yours,

Richard D. Melson

ACK
AFA 1
APP
CAF
CMU
CTR
EAG
LEG 1
LIN 5
OPC
RCH 104888.1
SEC 1
WAS
OTH

RDM/kcg
Enclosures
cc: Per Certificate of Service

DOCUMENT NUMBER-DATE
07409 JUL 14 98
FPSC-RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Motions of AT&T Communications of the Southern States, Inc. and MCI Telecommunications Corporation and MCImetro 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: July 13, 1998

MCI'S RESPONSE TO BELLSOUTH'S MOTION FOR RECONSIDERATION

MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. (collectively, MCI) hereby respond to BellSouth Telecommunications, Inc.'s motion for reconsideration (Motion) of Order No. 98-0818-FOF-TP (Order).

BellSouth's Motion raises three points on reconsideration. MCI responds below to BellSouth's first and third points -- relating to the invalidity of BellSouth's requirement for collocation as a prerequisite to combining UNEs and to a statement in the Order which BellSouth believes was improperly attributed to Mr. Varner. MCI takes no position on the second point, which relates solely to the BellSouth-AT&T Interconnection Agreement.

For the reasons set forth below: (1) BellSouth's Motion on point one should be denied, and (2) MCI does not object to

967

deleting from the Order the challenged statement relating to Mr. Varner's testimony.

Standard of Review

The purpose of a motion for reconsideration is to bring to the attention of the tribunal some point of fact or law which it overlooked or failed to consider when it rendered its decision. Diamond Cab Co. of Miami v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981).

When measured against these standards, BellSouth's Motion as to point one must be denied. This point presents purely a legal issue, and BellSouth has failed to show that there are any points of law that the Commission overlooked or failed to consider in reaching its conclusion. To the contrary, the Commission's conclusion clearly reflects a proper reading of the Eighth Circuit's decision.

Collocation and UNE Combinations

BellSouth asks the Commission to reconsider the portion of its Order which states:

> We find that BellSouth's requirement that an ALEC must be collocated in order to receive access to UNEs is in conflict with the Eighth Circuit. (Order at 53)

BellSouth analysis begins with the erroneous argument that the Eighth Circuit "ruled out any requirement of direct physical access to central office equipment." (Motion at 4) Building on this incorrect premise, BellSouth concludes that its requirement

that an ALEC can access UNEs only through a collocation arrangement is consistent with the Eighth Circuit ruling and with the Act.

Since the Commission's Order correctly states the effect of the Eighth Circuit's decision, there is no valid basis for reconsideration.

The Eighth Circuit's decision clearly permits a new entrant to obtain UNEs from an incumbent LEC and to combine those UNEs to provide a finished telecommunications service even though the new entrant does not own or control any portion of a telecommunications network.

> Initially, we believe that the plain language of subsection 251(c)(3) indicates that a requesting carrier may achieve the capability to provide telecommunications services **completely** through access to the unbundled elements of an incumbent LEC's network. Nothing in this subsection requires a competing carrier to own or control some portion of a telecommunications network before being able to purchase unbundled elements.

Iowa Utilities Board v. F.C.C., 120 F.2d 753, 814 (8th Cir. 1997) (emphasis added). Under BellSouth's approach, a competing carrier seeking to purchase loop-port combinations would have to control a collocation space and would have to own at least some facilities within that space (e.g. a frame) in order to combine those elements for the purposes of providing a telecommunications service. As the Commission properly concluded, BellSouth's requirement flies in the face of the Eighth Circuit's decision.

The sole basis for BellSouth's assertion that the Eighth Circuit does not require a LEC to provide direct access to its central office equipment is the Court's statement 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." (Motion at 4) When put into its original context, however, it is clear that this statement says nothing that authorizes BellSouth to deny a competitor direct access to its central office equipment.

> Initially, we note that we have already vacated...several of the unbundling rules that the petitioners claim violate the purpose of the Act. *See* 47 C.F.R. §§ 51.305(a)(4) (interconnection superior in quality), 51.311(c) (network elements superior in quality), 51.315 (combination duty on incumbent LECs). Consequently, the degree and ease of access that competing carriers may have to incumbent LEC networks is not as extensive as envisioned by the petitioners and far less than the amount of control that a carrier would have over its own network. . . .Once a new entrant has established itself and acquired a sufficient customer base to justify investments in its own facilities, a carrier that develops its own network gains independence from the incumbent LEC and has more flexibility to modify its network elements to offer innovative services.

Iowa Utilities Board, 120 F.3d at 816-817. In its proper context, the Court is merely stating the obvious -- an ALEC that uses the only the incumbent's network elements to provide a telecommunications service is limited by the incumbent's technology and quality of service choices and hence has less control than a competitor that builds its own network.

BellSouth acknowledges the Eighth Circuit's conclusion that the incumbent LECs "would rather allow entrants access to their networks than have to rebundle the unbundled elements for them." (Motion at 813) BellSouth then states that this language is consistent with a scheme under which such access is provided solely through collocation. BellSouth's reading of this language is simply erroneous. First, the Court was responding here to arguments by the FCC and intervenors:

> ...that because the incumbent LECs maintain control over their networks it is necessary to force them to combine the network elements, and they [the FCC and intervenors] believe that the incumbent LECs would prefer to do the combining themselves to prevent the competing carriers from interfering with their networks. . . .[T]he fact that the incumbent LECs object to this rule indicates to us that they would rather allow entrants access to their networks than have to rebundle the unbundled elements for them.

Iowa Utilities Board, 120 F.3d at 813. This language is not, as BellSouth suggests (Motion at 5), simply a reference to access via collocation. Since the incumbent LEC has an explicit statutory duty to provide collocation, 47 U.S.C. §251(c)(6), such collocation could not be the type of "interference" with the incumbents' networks that the FCC, the intervenors, and the Court were addressing.

BellSouth's analysis of the Eight Circuit decision is based on piecing together out-of-context quotations from the Court's opinion to reach a fundamentally flawed conclusion. The Commission properly interpreted the Eight Circuit's requirements,

and did not overlook any matter of fact or law in making that interpretation. Reconsideration must therefore be denied.

Statement by BellSouth Witness Varner

BellSouth challenges the accuracy of the statement in the Order that:

> Witness Varner testifies, however, that BellSouth voluntarily undertook the bundling obligation only because 47 C.F.R. §51.315(a), since vacated, was then in effect.
>
> Order at 24.

MCI has not been able to locate any testimony by Mr. Varner which directly supports the challenged statement in the Order. Unless the staff is aware of some statement by Mr. Varner that MCI has overlooked, MCI would not object to deleting the quoted sentence from the Order.

RESPECTFULLY SUBMITTED this 13th day of July ,1998.

HOPPING GREEN SAMS & SMITH, P.A.

By: _____

Richard D. Melson
P.O. Box 6526
Tallahassee, FL 32314
(850) 425-2313

and

MICHAEL J. HENRY
MCI Telecommunications Corporation
780 Johnson Ferry Road
Suite 700
Atlanta, GA 30342

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties by hand delivery this 13th day of July, 1998.

Charlie Pellegrini
FL Public Service Commission
Gerald L. Gunter Building
2540 Shumard Oak Blvd. # 370
Tallahassee, FL 32399-0850

Nancy B. White
c/o Nancy H. Sims
Southern Bell Telephone Company
150 S. Monroe St. Suite 400
Tallahassee, FL 32301

Tracy Hatch
AT&T Communications of
the Southern States, Inc.
101 N. Monroe Street
Suite 700
Tallahassee, FL 32301

ATTORNEY

104890.1