

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: PETITION BY METROPOLITAN
FIBER SYSTEMS OF FLORIDA, INC.
FOR ARBITRATION WITH BELLSOUTH
TELECOMMUNICATIONS, INC.
CONCERNING INTERCONNECTION
RATES, TERMS, AND CONDITIONS,
PURSUANT TO THE FEDERAL
TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. 960757-TP

In re: PETITION BY AT&T
COMMUNICATIONS OF THE SOUTHERN
STATES, INC. FOR ARBITRATION OF
CERTAIN TERMS AND CONDITIONS OF
A PROPOSED AGREEMENT WITH
BELLSOUTH TELECOMMUNICATIONS,
INC. CONCERNING INTERCONNECTION
AND RESALE UNDER THE
TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. 960833-TP

In re: PETITION BY MCI
TELECOMMUNICATIONS CORPORATION
AND MCI METRO ACCESS
TRANSMISSION SERVICES, INC. FOR
ARBITRATION OF CERTAIN TERMS AND
CONDITIONS OF A PROPOSED
AGREEMENT WITH BELLSOUTH
TELECOMMUNICATIONS, INC.
CONCERNING INTERCONNECTION AND
RESALE UNDER THE
TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. 960846-TP
ORDER NO. PSC-98-0844-FOF-TP
ISSUED: June 25, 1998

The following Commissioners participated in the disposition of
this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER ON RECONSIDERATION

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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BY THE COMMISSION:

BACKGROUND

On December 16, 1996, we issued Order No. PSC-96-1531-FOF-TP in Docket No. 960757-TP on the Metropolitan Fiber Systems of Florida, Inc. (MFS), and BellSouth Telecommunications, Inc. (BellSouth) arbitration, in which we ordered BellSouth to file cost studies so that permanent rates could be established for specific unbundled network elements (UNEs). On December 31, 1996, we issued Order No. PSC-96-1579-FOF-TP in Docket Nos. 960833-TP and 960846-TP on the arbitrations of BellSouth with AT&T Communications of the Southern States, Inc., (AT&T) and MCI Telecommunications, Inc. and MCImetro Access Transmission Services, Inc., (MCI), in which we again ordered BellSouth to file cost studies specifically addressing those UNEs for which we had established interim rates so that permanent rates could be established. Subsequently, Docket Nos. 960833-TP, 960846-TP, and 960757-TP were consolidated and set for hearing.

On January 26 through January 28, 1998, we conducted an evidentiary hearing for these consolidated dockets. On April 29, 1998, we issued Order No. PSC-98-0604-FOF-TP, in which we set permanent recurring and non-recurring rates for specific UNEs for which we earlier had set interim rates.

On May 14, 1998, BellSouth filed a motion for reconsideration of Order No. PSC-98-0604-FOF-TP. BellSouth seeks reconsideration of our decision to disallow certain non-recurring connection, test, and engineering costs from the rates for certain UNEs. In addition, BellSouth seeks reconsideration of our decision not to disallow disconnection work times associated with directory transport. On May 26, 1998, MCI and AT&T filed responses to BellSouth's motion. On May 28, 1998, WorldCom filed a letter stating that it joined in MCI's and AT&T's objections to the motion.

In accordance with Order No. PSC-98-0604-FOF-TP, the parties were to submit amendments to their arbitration agreements memorializing and implementing our decisions in that Order by May 29, 1998. On that day, AT&T filed a Joint Motion of AT&T and BellSouth for Extension of Time to File Revisions to Interconnection Agreement. WorldCom also filed a Motion for Extension of Time to file its amended interconnection agreement.

For the reasons set forth below, we grant BellSouth's motion in part and we deny it in part. We also grant the motions for extension of time.

MOTIONS FOR EXTENSION OF TIME

In their joint motion, AT&T and BellSouth seek leave to file their agreement, including any revisions that may be required as a result of our determination on BellSouth's motion for reconsideration, within 15 days of the issuance of this Order. In its motion, WorldCom asks that it be granted a 30-day extension to file its final agreement with BellSouth. WorldCom states that this additional time is necessary not only because of BellSouth's motion, but also because the parties have not completed the changes to the agreement required by Order No. PSC-98-0604-FOF-TP. WorldCom states that BellSouth agrees with WorldCom's request for an extension of time.

We find that an extension of time to file the amended agreements is appropriate in view of BellSouth's motion for reconsideration. For the sake of consistency, we shall allow the parties to file their final agreements for approval pursuant to 47 U.S.C. §252, incorporating our decisions in Order No. PSC-98-0604-FOF-TP as well as our decisions below, within 30 days of the issuance of this Order.

MOTION FOR RECONSIDERATION

Standard of Review

The proper standard of review for the motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which we 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); Pingree v. Quaintance, 394 So. 2d 161 (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).

Access Customer Advocacy Center (ACAC)

BellSouth

In its Motion, BellSouth states that we modified BellSouth's inputs to the Total Element Long Run Incremental Cost (TELRIC) calculator in order to derive the rates that we ultimately approved. BellSouth requested a copy of the model in order to examine the modifications and approved outputs. BellSouth asserts that its analysis of the modified model reveals that non-recurring costs for connection and testing, as well as for engineering, were deleted from the rates for certain UNEs. BellSouth further asserts that this deletion was unjustified because there was no evidence in the record to support the deletion.

Specifically, BellSouth states that the ACAC component of the Connect and Turn-up Test costs was excluded because we determined that ACAC was an Operation Support System (OSS) developed for use by alternative local exchange companies (ALECs). Noting that in this proceeding we excluded all ALEC-specific OSS costs, BellSouth argues that the ACAC was originally developed for use by interexchange carriers (IXCs), rather than ALECs. BellSouth also argues that ACAC job function codes (JFCs) relate to provisioning functions, not ordering functions. The provisioning JFCs, 471X and 4AXX, involve the preparation of layout records and orders, and testing and coordination. BellSouth asserts that we specifically stated that testing was a function that BellSouth should provide to the ALECs. For these reasons, BellSouth argues that the ACAC component of the Connect and Turn-Up costs should have been included.

MCI and AT&T

In their responses to BellSouth's Motion, MCI and AT&T both argue that we did not make a mistake in excluding the ACAC component of the Connect and Turn-Up Test costs. They argue that BellSouth's witness Landry stated on cross-examination at the hearing, and in his deposition, that the ACAC was set up to meet ALECs' needs and to address the ALECs' specific issues and concerns about services. They also argue that BellSouth's cost study input forms show that ACAC performs a manual coordination and dispatch function. They assert that the function performed by the ACAC would be more appropriately performed by an automated OSS system; thus, it was appropriate for us to exclude the ACAC component as an ALEC-specific OSS.

Conclusion

We find that BellSouth has not identified any fact that we overlooked in rendering our Order, nor has BellSouth identified any mistake we made in applying the law to this case with respect to the ACAC component of Connect and Turn-Up Test costs. We note that BellSouth witness Landry did state that:

In the case of the customer point of contact, and in the case of the ACAC, those centers were set up specifically to respond to ALEC needs as far as single points of contacts and a point where their trouble reports and turn up of certain services are coordinated through.

The ACAC's coordinating function, as described by witness Landry, relates to provisioning, repair and maintenance of UNEs for ALECs, thus identifying the ACAC as a manual OSS developed specifically for ALECs. Thus, we properly disallowed the costs for JFCs 471X and 4AXX based upon a preponderance of the evidence in the record and in accordance with Order No. PSC-98-0123-PCO-TP, issued January 22, 1998, striking testimony on costs of OSS functions developed for ALECs. See Order No. PSC-98-0604-FOF-TP, p.163. Accordingly, BellSouth's motion for reconsideration is denied as it pertains to the ACAC component of Connect and Turn-Up Test costs.

Loop Work Times and Costs

BellSouth

BellSouth asserts that we did not explain why certain engineering, testing and connection costs were excluded for 2-wire ADSL-compatible loop and 2-wire and 4-wire HDSL-compatible loops. It argues that we made our decision without justification or explanation, and should, therefore, include these costs.

MCI and AT&T

MCI and AT&T argue that the engineering and connection costs that were eliminated for the ADSL-compatible loops and the HDSL-compatible loops were those proposed by WorldCom, not by BellSouth. They state that the origin of these costs was clearly identified in our staff's March 25, 1998, recommendation on pages 112 and 113. They further state that WorldCom did not propose work times as

supplements to the work times proposed by BellSouth, but rather as replacements. Thus, they argue, if BellSouth wants WorldCom's work times to be included, then BellSouth's work times should be eliminated.

Conclusion

We note that the work times excluded on page 105 and page 108 through page 109 of Order No. PSC-98-0604-FOF-TP for 2-wire ADSL-compatible loop, and 2-wire and 4-wire HDSL-compatible loops were engineering and testing times proposed by WorldCom. WorldCom's proposed non-recurring charges for these loops are fully discussed on page 101 through page 104 of the Order. Therein, we explained that, "We do not find that there is sufficient evidence in this record to support WorldCom's claim that tariffed rates can be used to support WorldCom's rate proposal." We also stated that we believed that actual costs might exceed trial costs in response to WorldCom's assertions to the contrary. See Order, p.103.

On page 104 through page 107 of the Order, we further stated that we approved the work times shown in Tables X and XI based upon our discussion regarding non-recurring charges. We conclude that our decision to exclude WorldCom's proposed work times and associated costs was based upon a preponderance of the evidence that WorldCom's proposal was not adequately supported. Therefore, we find BellSouth has not identified a point of fact or law that we overlooked or failed to consider with respect to work times for 2-wire ADSL-compatible loops, and 2-wire and 4-wire HDSL-compatible loops. On this point, BellSouth's motion for reconsideration is also denied.

Job Function Code 31XX

BellSouth

BellSouth argues that we improperly deleted engineering, testing, and connection costs from DS-1 Local Channel and DS-1 Level Facility Termination for Directory Assistance Transport and Dedicated Transport. BellSouth argues that we should not have eliminated the engineering costs for JFC 31XX associated with switching equipment without providing some additional rationale or justification for excluding these costs.

MCI and AT&T

MCI and AT&T argue that the elimination of the costs for JFC 31XX is explained on page 174 of our staff's March 25, 1998, recommendation. They note that the recommendation states that the JFC 31XX costs were recovered in recurring rates. They argue, therefore, that it was appropriate for us to eliminate these costs from the non-recurring rates to avoid double recovery.

Conclusion

We note that Hearing Exhibit 45 demonstrates that the costs for JFC 31XX are recovered through recurring rates. Our staff's recommendation refers to this at footnote 1 of Table 1e-3 on page 174. We also note that Hearing Exhibit 14 shows that JFC 31XX develops and monitors plans for space required for facilities, equipment, and operations support system, in addition to performing other functions. Monitoring obviously is a recurring activity. We find that it is appropriate, therefore, to recover the costs associated with this function through recurring rates.

Our decision to disallow the costs associated with JFC 31XX was based upon a preponderance of the evidence in the record. BellSouth has not identified a point of fact or law that we overlooked or failed to consider in this respect. Accordingly, BellSouth's motion for reconsideration is denied as it relates to the JFC 31XX costs. We observe that footnote 1 of Table 1e-3 in the staff recommendation was inadvertently omitted from Table XVII on page 151 of the Order. Hence, we clarify Order No. PSC-98-0604-FOF-TP to reflect that since JFC 31XX engineering costs are recovered through recurring costs, these costs have been excluded from non-recurring charges.

Disconnection Work Times

BellSouth

BellSouth states that we did not eliminate the disconnection work times for Directory Transport - installation NRC, per trunk or signaling connection. BellSouth states that although it does not believe that these work times should be excluded, we should modify our Order to be consistent with the elimination of these costs from other UNEs.

Conclusion

We find that BellSouth is correct that we improperly included disconnection work times in the non-recurring rate for Directory Transport - installation, per trunk or signaling connection. The correct rate for this UNE is \$206.06 for the first installation and \$4.71 for each additional installation. We also note that on page 152 of our Order, the work times for JFC 4N5X are not reflected in Table XVIII. The work times for this function were, nevertheless, included in the calculation of the rate for Directory Transport - installation NRC, per trunk or signaling connection. Therefore, we hereby approve work times of 0.1000 hour for the first installation and 0.0500 hour for each additional installation for JFC 4N5X, Trunk & Center Group, Engineering. Thus, we hereby grant BellSouth's motion for reconsideration as it relates to the disconnect work times and clarify Order No. PSC-98-0604-FOF-TP as set forth herein.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc.'s Motion for Reconsideration of Order No. PSC-98-0604-FOF-TP is granted in part and denied in part as set forth in the body of this Order. It is further

ORDERED that Order No. PSC-98-0604-FOF-TP is hereby clarified as set forth in the body of this Order. It is further

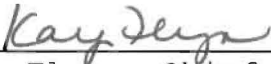
ORDERED that the parties shall file their amended interconnection agreements reflecting our decisions set forth herein and in Order No. PSC-98-0604-FOF-TP within 30 days of the issuance of this Order. It is further

ORDERED that these dockets shall remain open pending approval of the agreements submitted in compliance with this Order.

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By ORDER of the Florida Public Service Commission, this 25th
day of June, 1998.

BLANCA S. BAYÓ, Director
Division of Records and Reporting



Kay Flynn, Chief
Bureau of Records

(S E A L)

BK/CJP

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 judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).