State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER ● 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

D-FPSC JAN 22 PM 3:12 COMMISSION CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: 01/22/04

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF GENERAL COUNSEL (KEATING, TEITZMAN, ROJAS)
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (T. BROWN, DOWDS)

RE: DOCKET NO. 981834-TP - PETITION OF COMPETITIVE CARRIERS FOR COMMISSION ACTION TO SUPPORT LOCAL COMPETITION IN BELLSOUTH TELECOMMUNICATIONS, INC.'S SERVICE TERRITORY.

DOCKET NO. 990321-TP - PETITION OF ACI CORP. D/B/A ACCELERATED CONNECTIONS, INC. FOR GENERIC INVESTIGATION TO ENSURE THAT BELLSOUTH TELECOMMUNICATIONS, INC., SPRINT-FLORIDA, INCORPORATED, AND GTE FLORIDA INCORPORATED COMPLY WITH OBLIGATION TO PROVIDE ALTERNATIVE LOCAL EXCHANGE CARRIERS WITH FLEXIBLE, TIMELY, AND COST-EFFICIENT PHYSICAL COLLOCATION.

AGENDA: 02/03/04 - REGULAR AGENDA - POST-HEARING DECISION - MOTIONS FOR RECONSIDERATION - ORAL ARGUMENT NOT REQUESTED; ORAL ARGUMENT MAY, HOWEVER, BE ENTERTAINED AT THE COMMISSION'S DISCRETION PURSUANT TO RULE 25-22.060, F.A.C.

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\981834RECON.RCM

CASE BACKGROUND

By Proposed Agency Action Order No. PSC-99-1744-PAA-TP, issued September 7, 1999, the Commission adopted a set of procedures and guidelines for collocation, focused largely on those situations in which an incumbent local exchange company (ILEC) believes there is

DOCUMENT NUMBER-DATE
01002 JAN 22 3
FPSC-COMMISSION CLERK

no space for physical collocation. Thereafter, the Commission conducted a hearing to address further collocation guidelines. By Order No. PSC-00-2190-PCO-TP, issued November 17, 2000, various motions for reconsideration and/or clarification of the post-hearing decision regarding collocation guidelines were addressed by the Commission. By that Order, these Dockets were left open to address the remaining issues associated with collocation, including pricing.

By Order No. PSC-03-1358-FOF-TP, issued November 26, 2003, the Commission resolved a number of outstanding technical and policy issues regarding collocation. On December 11, 2003, Verizon, BellSouth, Covad, FDN, and Sprint each filed Motions for Reconsideration and/or Clarification of the Order. Thereafter, on December 18, 2003, Verizon, AT&T and Covad (filing jointly), BellSouth, and Sprint filed their responses to the Motions. FDN filed its response on December 19, 2003.

On December 24, 2003, Verizon filed a Response to FDN's response, interpreting FDN's response to be a cross-motion for reconsideration. Staff does not, however, find anything in FDN's December 19, 2003 Response that leads us to believe that it can or should be considered a cross-motion for reconsideration. FDN only responds to Verizon's original Motion in its December 19, 2003 filing and requests no other affirmative relief. As such, staff believes that Verizon's December 24, 2003 Response is a reply to a response, which is not contemplated by our rules. Staff, therefore, has not addressed Verizon's December 24, 2003 filing in this recommendation.

The Motions seek modification or clarification of a variety of aspects of the Commission's decisions on Issues 1A, 3, 5, 6a and b, and 7. At the outset, staff does not believe that any of the requests for reconsideration meet the applicable standard, but agrees there are certain aspects of the Order that should be clarified.

The Commission is vested with jurisdiction in this matter pursuant to Section 364.16, Florida Statutes, and Section 252(c)(6) of the Telecommunications Act of 1996 (1996 Act). Pub. L. No. 104-104, 104th Congress 1996, 110 Stat. 56, 47 U.S.C. §§ *et. seq.*

DISCUSSION OF ISSUES

ISSUE 1: Should the Motions for Reconsideration and/or Clarification filed by Verizon, Covad, Sprint, and FDN be granted?

RECOMMENDATION: No, reconsideration should not be granted, because the Motions do not identify a mistake of fact or law in the Commission's decision. The Commission should, however, clarify certain aspects of its decision as more fully set forth in the body of this recommendation. **(KEATING, T. BROWN)**

STAFF ANALYSIS:

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its 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); and Pingree v. Quaintance, 394 So. 2d 162 (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." Steward Bonded Warehouse, Inc. vs. Bevis.

Staff notes that neither the Uniform Rules of Procedure nor Commission rules specifically make provision for a motion for clarification. However, the Commission has typically applied the Diamond Cab standard in evaluating a pleading titled a motion for clarification when the motion actually sought reconsideration of some part of the substance of a Commission order. 146 So. 2d 889. In cases where the motion sought only explanation or clarification of a Commission order, the Commission has typically considered whether the order required further explanation or clarification to fully make clear its intent. See, e.g., Order No. PSC-95-0576-FOF-SU, issued May 9, 1995.

Because some of the arguments submitted overlap, the analysis of the Motions is set forth according to the issue upon which

reconsideration is being sought, rather than by each individual motion.

I. Application Fee (1A)

A. ARGUMENTS

Regarding application fees, Verizon asks that the Commission reconsider its decision forbidding ILECs to charge CLECs: (1) an application fee when they submit a collocation application; and (2) a deposit equal to 50 percent of the non-recurring construction costs Verizon incurs on the CLECs' behalf.

First, Verizon contends that the Commission erred by including contradictory statements in its Order. On the one hand, Verizon contends that the Commission correctly acknowledged that the application fee is designed to recover the costs associated with processing the CLEC's application, including assessing space requirements and developing a quote. Verizon argues, however, that the Commission's decision that a fee may not be charged if the application is not "Bona Fide" or if there is not space in the office fails to recognize that a cost is actually incurred in the process, even if the CLEC does not ask Verizon to proceed with the order. Thus, Verizon believes that the Commission erred on this point.

Verizon also believes the Commission erred by not allowing the ILEC to demand payment of the application fee at the time the CLEC submits its application. Verizon argues that this policy gives CLECs incentive to "flood" Verizon with collocation applications, whether or not they have any real intent to collocate.

Verizon further argues that it should be allowed to charge a deposit before incurring construction costs. Verizon maintains that the Commission erred in its decision not to allow a deposit by failing to distinguish, or even acknowledge, an FCC decision allowing ILECs to charge up to 50 percent of the cost of construction before the construction commences.

Verizon also argues the smaller application fee will not provide sufficient incentive for CLECs to give careful consideration of proposed arrangements before the ILEC has already incurred costs, and because it does not believe that the

stipulation reached regarding Issue 1(c)[1] will truly allow the ILECs to recover their costs. In addition, Verizon notes that the Commission also based its decision on the understanding that a CLEC makes its commitment by a firm order, which is a rate element that Verizon does not have. Verizon notes that including such a rate element would necessitate that it revise its entire billing system.

Similarly, Sprint asks that the Commission clarify what it considers to be a contradictory stance on the application fee. Sprint notes that in this Order the Commission stated that the non-recurring application fee should be paid when the ILEC responds because "by billing in this manner ILECs would avoid having to refund the fee if the application were not a Bona Fide application or if there was no space available in the requested central office." Sprint believes this is contrary to the Commission's conclusion in Order No. PSC-99-1744-PAA-TP, wherein the Commission allowed ILECs to charge CLECs for costs associated with an application, whether it was denied or not. Sprint does not ask the the Commission to reconsider its decision as to when the fee should be billed, but rather that it clarify that the Order is not intended to preclude ILECs from recovering costs they incur when processing an activity. If, however, this is contrary to the intent in the Commission's Order, Sprint asks that the Commission reconsider its decision, because the record is clear that an ILEC does, in fact, incur costs in processing an application, whether or not it is approved.

Verizon supports Sprint's Motion on this point.

AT&T and Covad oppose Sprint's Motion on this point. They contend that while Sprint argues that reconsideration is proper due to the apparent conflict with Order No. PSC-99-1744-PAA-TP, the Commission can overrule its own orders and change its position on a going-forward basis, as long as it explains itself and there is a sufficient record basis for the change. In this instance, AT&T and Covad contend that the Commission did make a change based upon

---

[1]Stipulation language: "When the CLEC cancels its request prior to the space ready date, there will not be a cancellation charge. All parties agree the CLEC will be responsible for reimbursing the ILEC for costs specifically incurred by the ILEC on behalf of the cancelling CLEC up to the date that the written notice of cancellation is received."

its continuing review and consideration of the issues relating to collocation. They argue that the decision was based upon record evidence and reflects no error. As such, Sprint has not met the standard for reconsideration.

They also oppose Verizon's request for reconsideration on 1A. They emphasize that Verizon has not pointed to any deficiency in the record, and that the Commission's Order clearly reflects that the Commission considered Verizon's position and arguments, but specifically rejected them. They add that Verizon's request that the Commission reconsider its decision on the 50% deposit argument is beyond the scope of a proper motion for reconsideration, because Verizon does not contend that the Commission erred in its decision, but instead simply indicates that it disagrees with the Commission's conclusion.

Sprint also asks for clarification of the Order at p. 14 regarding CLECs' use of certified vendors. Sprint argues that the Agenda discussion indicates that the Commission intended that this section only mention that this issue was raised and that the issue is addressed by FCC regulations. The language, however, included in the Order appears to require that ILECs only allow CLECs to perform work in their own collocation space. Sprint says that it is currently considering adopting BellSouth's practice, which is to allow certified contractors to also perform some work in the common areas of the central office. As such, Sprint asks that this portion either be amended or clarified, as the Commission finds appropriate in order to make clear that ILECs are not required to allow CLECs to do work outside their own collocation space, but that they may do so.

B. ANALYSIS AND RECOMMENDATION

Regarding Verizon's request for reconsideration to allow it to charge an application fee when the application is submitted, staff believes that Verizon has not identified an error in the Commission's decision, but, instead, has merely reframed its arguments that have already been considered and addressed. <u>See</u> Order at pp. 9 - 11. As such, staff recommends that Verizon's Motion on this aspect be denied.

As for Verizon's request for reconsideration to allow it to charge a 50% deposit, staff believes that this has also been fully considered by the Commission. <u>See</u> Order at p. 10 and 14. A motion

for reconsideration is not an opportunity for reargument, as reflected in the standard set forth above. As such, staff recommends that Verizon's Motion on this point also be denied.

As for Sprint's request for clarification on whether ILECs are precluded from recovering costs of processing an application, whether the application is denied or not, staff agrees that certain language in the Order could be misconstrued and, therefore, a clarification is warranted.[2] Staff does not believe that the Order intended to preclude an ILEC from recouping costs associated with engaging in a particular activity, such as the initial processing of an application. Instead, staff believes that the language referenced by Sprint was intended to reflect that billing the full application fee in the manner ordered by the Commission would diminish the occasions in which a refund would be necessary. See Order at p. 13. In other words, by billing the application fee as ordered by the Commission, the ILEC will know whether it is appropriate to assess the full application fee to the CLEC, or to assess only the costs incurred in the initial processing of an aborted or denied application. As such, staff recommends that Sprint's requested clarification on this point be granted.

As for Sprint's request that the Order be clarified to reflect that ILECs may allow certified vendors to perform work outside the CLEC's collocation space, staff notes that the language referenced by Sprint at page 14 of the Order actually agrees with the position taken by Sprint in its brief. Nevertheless, staff agrees that parties should not be precluded from negotiating terms that would allow certified vendors to work outside the CLEC collocation areas, and the record reflects that this is BellSouth's current practice. Review of the Agenda transcript seems to indicate that the Commission's decision was that use of certified vendors should be in accordance with FCC rules, and this language is clearly reflected in the Order. Staff also notes that the FCC rule on point, Rule 51.323(j), upon which the Commission's decision is based, does not specify the area in which a CLEC certified vendor may work. As such, staff recommends that the following sentence at p. 14 of the Order be deleted: "However, we also agree with Sprint

---

[2]Staff believes that resolution of Sprint's request for clarification on this point nullifies Verizon's arguments on this same aspect of the Order.

that CLECs should be restricted to work in their collocation space, as the ILEC is responsible for all the common area work."

II. Transfers (3)

Issue 3 dealt with the rights and obligations of parties when collocation space is transferred from one CLEC to another.

A. ARGUMENTS

Regarding Issue 3, Verizon asks that the Commission clarify: (1) that the Order is not intended to change any contractual rights or other legal rights and obligations arising in the course of a transfer, including Verizon's right to demand as part of the transfer that the transferring CLEC cure all outstanding debts arising under the parties' interconnection agreement; and (2) that Verizon is not prohibited from holding the acquiring CLEC jointly and severally liable for any outstanding balances. Verizon notes that the Commission's analysis on this point is very brief, creating opportunities for it to be misconstrued.

Specifically, while the Order states that the acquiring CLEC must satisfy all requirements of its interconnection agreement with the ILEC, it does not specifically state that the transferring CLEC must do the same. Verizon is concerned that a transferring CLEC could read the Order to require it to only comply with the specifics of the Order itself, and ignore any independent contractual obligations in the parties' interconnection agreement.

In addition, while the Commission's Order requires the transferring CLEC and the acquiring CLEC to enter into a transfer agreement with the ILEC, Verizon asks that this requirement be clarified such that the ILEC may require the transfer agreement to include a provision whereby the ILEC may hold the acquiring CLEC jointly and severally liable with the transferring CLEC for any undisputed amounts, as well as disputed balances later determined to be valid. Otherwise, without this clarification, Verizon is concerned that it will be left holding the proverbial bag should transferring CLECs file for bankruptcy relief.

FDN also seeks reconsideration on this issue. FDN, however, asks that the Commission reconsider its decision that transfers be restricted to "in-place" collocation facilities. FDN contends that BellSouth witness Gray actually testified that transferring space

without in-place equipment would not be a problem. FDN notes that the Order does not mention this testimony; therefore, FDN contends it was overlooked. FDN also offers the additional argument that requiring that there be "in-place" equipment makes little sense, further emphasizing that witness Gray testified that if a space has no in-place equipment, the only prohibition should be against a simultaneous request for transfer and reconditioning. FDN agrees with witness Gray's suggestion that in instances where a transfer involves a space with no in-place equipment, the transfer should conclude before reconditioning proceeds. As such, FDN seeks reconsideration or clarification of the Order to permit transfers of collocation without in-place equipment, provided the transfer is complete before the ILEC must process any reconditioning request.

FDN also seeks reconsideration on the issue of using a transfer to circumvent the waiting list in offices with limited space. Again, looking to witness Gray's testimony, FDN argues that BellSouth agreed that avoidance of the waiting list should not be a concern if the CLEC is selling all of its assets in a market. FDN notes that neither Verizon nor Sprint disagreed with this point. FDN contends that the Order, however, takes an apparently broader approach in that it addresses only the transfer of "all or substantially all" of a CLEC's assets, but does not limit it to a particular market. FDN argues that a CLEC would not sell its entire national holdings to avoid a waiting list. As such, FDN asks that the Commission reconsider or clarify that the sale of assets is in a particular market, not necessarily a sale of assets in their entirety.

Verizon opposes FDN's Motion on this point. Verizon contends that FDN simply misunderstands the Commission's decision on transfers and emphasizes that the Commission should affirm its decision that collocation space in central offices at or near exhaust should not be transferrable directly from one CLEC to another. Furthermore, Verizon argues that unused collocation space should be returned to the ILEC, not put up for bid.

Sprint also opposes FDN's Motion on this issue. Sprint argues that the Commission specifically limited its decision on this issue to situations in which the central office was not at exhaust, because there was testimony that if the office were near exhaust, the transfer would violate the FCC's first-come, first-served rules. Sprint contends that FDN has not identified a mistake of fact or law in the Commission's decision on this point.

FDN, in turn, opposes Verizon's Motion. FDN contends that Verizon's Motion simply seeks to impose additional obstacles to transfers of collocation space between CLECs and also maintains that Verizon's requested clarification regarding an acquiring CLEC's liability for the transferring CLEC's debt has no record support. FDN argues that Verizon's requests are "over-reaching and unfair," and as such, should be rejected.

AT&T and Covad also oppose Verizon's request for reconsideration of the Commission's decision on this point. They argue that clarification is not proper, nor is it contemplated by the Commission's rules. They further argue that all but one argument Verizon has raised in its Motion regarding transfers was specifically considered by the Commission in its Order. As for the additional argument regarding Verizon's request that acquiring CLECs be held jointly and severally liable, AT&T and Covad maintain that this is a wholly new argument raised for the first time in Verizon's Motion for Reconsideration. As such, they argue that it is not an appropriate basis for reconsideration.

B. ANALYSIS AND RECOMMENDATION

On the issue of transfers, staff does not believe Verizon's requested clarification regarding the applicability of parties' contractual obligations is warranted. The Order is clear that the Commission did not intend to abrogate any parties' contractual rights, as reflected in footnote 4 on page 19. As such, staff believes that clarification on this point is not warranted.

Staff also does not agree that the Commission should include any additional clarification or reconsideration regarding Verizon's right, if any, to demand the acquiring CLEC cure all outstanding debts by holding the acquiring CLEC jointly and severally liable for the debts of the transferring CLEC. The Order at page 19 clearly sets forth the responsibilities of all parties to the collocation transfer. The Order is also clear that there must be no unpaid, undisputed collocation balances between the ILEC and the <u>transferring</u> CLEC. While the Order does not preclude the ILEC and the acquiring CLEC from working something out in order to facilitate the transfer through payment of any of the transferring CLEC's outstanding balances, the Order does not require the <u>acquiring</u> CLEC to assume responsibility for such balances. It does, however, allow the ILEC to put the transfer on hold until such balances are paid. The Commission considered Verizon's

arguments on this issue, but reached a clear, albeit different, conclusion. Furthermore, the specific arguments raised by Verizon in its Motion on this point appear to be wholly new arguments inappropriate for consideration through a Motion for Reconsideration. As such, Verizon's request for reconsideration or clarification on this point should be rejected.

As for FDN's request for reconsideration of the language in the Order that limits transfers to "in-place" collocation facilities, staff does not believe that this rises to the level of reconsideration or clarification. Instead, staff believes that FDN's motion identifies, if anything, a misunderstanding of the Commission's Order. The Commission's Order does not require that there actually be equipment in place in order for a transfer to occur; instead, it requires that if there is equipment already installed in the space, the transfer can only occur if the collocation equipment is also transferred to the same CLEC. See Order at p. 19. This requirement was to eliminate the concern that if only the space was transferred, the ILEC would be left with the added cost and responsibility of removing the equipment to prepare the space for the acquiring CLEC. Since the Order does not say what FDN contends it says and there does not appear to be any lack of clarity, staff recommends that FDN's Motion on this point be denied.

FDN's request for reconsideration or clarification that the transfer should be allowed to occur if the CLEC is transferring its collocation facilities in a particular market also appears to be slightly off the mark. FDN contends first that the Commission should not be concerned about a CLEC attempting to circumvent the waiting list, as long the CLEC is transferring all of its collocation assets in a market. Thus, FDN asks that the Commission delete the reference at page 19 of the Order to a CLEC transferring "all, or substantially all, of the in-place collocation equipment" and replace it with a reference to a CLEC's ability to transfer its collocation assets in a particular market. As with the request identified above, staff does not believe that this request identifies a mistake of fact or law, or even a need for clarification, but rather a misapprehension of the Order. At page 19 of the Order, the Commission clearly set forth the circumstances in which a transfer of collocation space could and could not occur. The Order is clear that a transfer cannot occur if the space in the office is near exhaust. If the office is not near exhaust, the transfer can proceed if three other criteria are met: 1) the ILEC

approves it (noting that the ILEC should not unreasonably withhold permission); 2) there are no unpaid, undisputed collocation balances; and 3) the transfer includes any equipment that may have already been installed, as clarified in the preceding paragraph. The Order does not say that the CLEC must be in the process of transferring all of its collocation facilities company-wide, nor does it even require that the CLEC be transferring all of its collocation assets in a particular market. Instead, the Order focuses on transfers in each individual central office. Thus, staff believes that FDN's request for reconsideration or clarification on this point should be denied. Not only has FDN not identified a mistake of fact or law in the Order, FDN has not identified a point that needs to be clarified.

III. Standardized Power Increments (5)

A. ARGUMENTS

BellSouth asks that the Commission reconsider or clarify its decision that DC power of 70 amps or greater may be provisioned directly from the ILEC main power board. BellSouth contends that this may lead to CLECs trying to custom order feeds that are not standard, requiring BellSouth to incur additional costs to meet these customized requests. Furthermore, if it is required to meet customized requests, BellSouth argues that it will not be able to meet the provisioning intervals. Thus, it asks that the Commission confirm that the interval for providing power from the main power board in non-standard increments is a matter for negotiation between the ILEC and CLEC.

Verizon supports BellSouth's request.

B. ANALYSIS AND RECOMMENDATION

Staff does not believe that BellSouth has identified a mistake of fact or law in the Commission's Order, nor has it identified a necessary or proper clarification. Staff can find nothing in the record to indicate that BellSouth opposed using non-standard fusing increments because it would cause BellSouth to incur additional costs. To the extent BellSouth raises this argument for the first time on reconsideration, staff believes it is improper and should be denied. Beyond that, the Order simply does not address how the ILEC may charge for provisioning power in non-standard increments. Instead, the Order requires only that the ILEC must, subject to

technical feasibility, commercial availability, and safety limitations, provide DC power in 5-amp increments up to 100 amps, and that 70 amps or greater, given industry standard sizing, may be provisioned from the ILEC main power board. See Order at p. 28. As such, BellSouth has not identified a mistake of fact or law in the Commission's decision, nor has it identified any need for clarification. If anything, BellSouth has identified an issue that perhaps should have been identified and addressed in the proceeding, but was not.

IV. Power Rate Based on Amps Used and Charges Based on CLEC Requested Draw (6A and B)

Issues 6A and 6B addressed whether the per amp rate should be based on the amps used or fused, and how the recurring and non-recurring charges for DC power should be calculated.

A. ARGUMENTS

FDN asks that the Commission clarify that its decision on Issues 6A and B does not permit ILECs to bill recurring charges for dual feed redundancy. FDN argues that this clarification is necessary to avoid future disputes. FDN does not identify any specific reasons that the Order is not clear, other than that it does not reference FDN's position and arguments with sufficient specificity to avoid future arguments on this issue.

Covad also seeks reconsideration or clarification on this part of the Order. Covad, however, asks that the Commission reconsider its decision to go only with the Sprint option, whereby a CLEC may order a power feed designed to meet a future, higher demand level but initially fusing this power feed so that a lesser amount of power can be drawn, and instead, provide two options - the Sprint option and the one proposed by Covad, which would allow a nonrecurring charge or a monthly recurring charge for infrastructure costs. Since there would be two options available to CLECs, the Commission's concern regarding barriers to entry would be mitigated. Thus, Covad asks that the Commission reconsider or clarify its Order to provide for two options for recovery of infrastructure costs.

Covad further seeks reconsideration or clarification of the Order to require BellSouth to credit CLECs for any overpayments made to date under the monthly recurring charge element. Covad

argues that the record shows that overpayment will occur at some point under a monthly recurring charge for infrastructure that is applied in perpetuity. Covad notes the FCC limits the application of a monthly recurring charge for such costs to a reasonable time period. Covad contends that, therefore, a non-recurring charge option should be made available in order to avoid such potential overpayment, and BellSouth should be required to refund any overpayments made under the current monthly recurring charge.

BellSouth asks that the Commission clarify that the ILEC does not need to build infrastructure in a central office to meet a CLEC's forecasted demand. Instead, BellSouth asks that the Commission confirm that an ILEC need only build infrastructure to meet the current demand. Thereafter, if the CLEC requests the maximum feed, the ILEC can make any necessary augments at that time to provide the requested feed. BellSouth notes that such augments could take quite some time, though, even as much as a year. BellSouth believes that this clarification is, nonetheless, necessary, because otherwise the ILEC will be building infrastructure that is not covered in the CLECs' per-amp-used-rate.

BellSouth also asks that the Commission modify its Order to allow ILECs to audit at any time the amount of power that is actually being used by a CLEC. BellSouth contends that the use of a fuse to "police" a CLEC's usage is imprecise, because a fuse does not precisely limit the amount of power being drawn. Furthermore, because the fuses themselves are placed by the CLECs' contractors, BellSouth maintains that it has no way of being sure that the fuse placed is what the CLEC says it is.

Verizon supports BellSouth's Motion as it pertains to power issues, except to the extent that it does not oppose Covad's request for an optional power NRC. Verizon emphasizes, however, that the power billing option advocated by Covad would be difficult and costly to implement.

Verizon also notes that it does not oppose FDN's request for clarification regarding charges for dual feed redundancy, but argues that the clarification requested is inappropriate because no ILEC actually bills for redundant power feeds. Verizon emphasizes that how power is billed is based on how it is ordered by the CLEC, such that if a CLEC is powering a piece of equipment that load shares, it should order half of the amps required on its A feed and

the other half on the B feed. Verizon believes that this clarification will negate FDN's request for reconsideration.

BellSouth opposes, in principle, FDN's Motion to the extent that it seeks clarification that the Order does not allow duplicate charges for redundant power feeds. BellSouth notes that while it does not oppose the request, since it does not apply duplicate charges for redundant feeds, it also does not believe there is any ambiguity in the Order.

BellSouth opposes Covad's motion to the extent that it proposes that a monthly recurring charge results in over-recovery of infrastructure costs and asks the Commission to require BellSouth to refund any over-recovered amounts. BellSouth contends that Covad's motion on this point "mischaracterizes" the evidence at hearing, as well as the charges included in the infrastructure cost, and is contrary to FCC accounting rules. BellSouth argues that its own witness Milner conceded that while some over-recovery may occur for the actual energy used, there was no over-recovery on infrastructure costs. BellSouth further maintains that Covad's Motion relies upon testimony that does not really support Covad's arguments and that the proposal is, at its heart, fundamentally flawed.

Sprint also opposes Covad's Motion to the extent it asks for a NRC option for power infrastructure. Sprint contends that Covad's arguments were fully addressed and considered by the Commission. The Commission, however, rejected Covad's proposal. Sprint argues that Covad has not identified an error in that decision.

AT&T and Covad oppose BellSouth's request as it pertains to these issues. They contend that the Commission fully considered the evidence presented on this issue (devoting 4 pages of the Order to Issue 6A and 13 pages to Issue 6B), and that BellSouth has not identified a mistake of fact or law on these issues. They further argue that, with regard to 6B, BellSouth mischaracterizes the use of fuses. They contend that fuses are used to protect equipment, not to "police" usage. They maintain that BellSouth's argument on this issue is without merit and does not meet the standard for reconsideration. Nevertheless, they note that they are not opposed to BellSouth monitoring usage, as long as it does so at its own expense.

B. ANALYSIS AND RECOMMENDATION

Regarding FDN's request that a clarification be made to the Order stating that ILECs cannot bill recurring charges for dual feed redundancy, staff does not believe that clarification is necessary or appropriate. FDN does not identify what in the Order it believes is unclear or where clarification should be made. FDN simply seeks an additional affirmative statement in the Order. The Order is, however, clear that the CLEC should be billed, ". . . based upon the amount of power it requests to draw at any given time." Order at p. 40. Staff, therefore, recommends that FDN's request for clarification be denied.

As for Covad's request that the Commission reconsider or clarify its decision to allow a non-recurring charge for power infrastructure, staff believes that there is some merit to Covad's request. While staff does not believe that Covad has identified an error in the Commission's Order, staff does believe that clarification is warranted. In its Order, the Commission did acknowledge that a separate, non-recurring charge for power infrastructure was a sound theory, but it expressed concern about the CLECs' ability to pay such costs up front. Thus, it found Sprint's proposal to be more reasonable. See Order at pp. 39 - 40. Staff does not believe that the Commission intended to prohibit the CLEC and ILEC from negotiating a non-recurring charge for power infrastructure if the CLEC believed this method to be preferable. Thus, staff recommends that clarification on this point should be granted to give CLECs the option of negotiating a separate, non-recurring charge for power infrastructure.

The Commission should not, however, grant Covad's request for reconsideration or clarification to require BellSouth to credit CLECs for alleged overpayments made using a monthly recurring charge element for power infrastructure. While the Commission did recognize that such a method does appear to likely result in overcharges, Covad's request goes beyond the issues addressed at hearing and is improper in the context of a Motion for Reconsideration. See Order at p. 38. This Docket was not designed or noticed to address specific over- or under-billing issues between individual companies. As such, Covad's request on this point should be denied.

The Commission should grant BellSouth's request for clarification that the ILEC does not need to build central office

power infrastructure to meet a CLEC's forecasted demand. While the Commission encouraged rational forecasting by the CLECs, it did not require that the ILECs actually build to meet CLEC forecasted demand, but rather required the ILECs to allow CLECs to "order a power feed that is capable of delivering a higher DC power level. . . ." See Order at p. 40. This was intended to reduce costs for CLECs when and if they decided to increase fuse sizes, but does not appear intended to make the ILEC bear the risk of building power infrastructure that might never be used. Id. As such, staff believes that BellSouth's requested clarification should be made, clarifying that the ILEC need not build infrastructure now to meet CLEC future demand. Staff does register some concern, however, over BellSouth's statements that such augments could take as much as a year, particularly in view of the fact that the Commission's approval of Sprint's plan was based on its finding that the plan not only allocated costs better, but allowed a CLEC to grow more efficiently. See Order at p. 40. As such, staff suggests that ILECs be cautioned not to unduly delay augments to power infrastructure necessary to allow a CLEC to increase fuse size within the range allowed by the feed ordered.

As for BellSouth's request that the Commission reconsider or clarify that ILECs are allowed to audit power being used by a CLEC, staff does not believe BellSouth has identified a mistake of fact or law in the Commission's decision or anything that requires clarification. Nevertheless, staff notes that AT&T and Covad do not appear opposed to BellSouth's proposal. The Commission's Order does not preclude negotiating such an audit provision in future interconnection agreements.

V. AC Power Feed Option (7)

A. ARGUMENTS

Sprint asks that the Commission reconsider its decision requiring ILECs to allow CLECs to have the option of obtaining an AC power feed for their collocation arrangements, as long as they comply with applicable safety regulations. Sprint notes that the Commission's decision appears to rely on statements made by Sprint's witness Fox and Verizon's witness Bailey modifying their testimony such that they agreed that AC power could be used in limited circumstances. Sprint contends that the Commission's decision on this point, however, fails to include all the conditions set forth in the witnesses' concession on this point.

Sprint emphasizes in particular that the Order does not include the requirement that AC power could only be used if it would not pose potential harm to the ILEC's equipment or operations. Sprint argues that the record is replete with examples of the harm that can be caused by a CLEC's use of AC power, and notes that the Commission recognized these concerns, but did not adequately reflect those concerns in its decision.

Verizon supports Sprint on this point.

AT&T and Covad, however, oppose Sprint on this point. They contend that Sprint has not met the standard for reconsideration on this aspect of the Commission's decision, noting that the Commission's Order reflects full consideration of all parties' arguments and a reasoned analysis. Thus, they believe Sprint's request for reconsideration should be denied.

B. ANALYSIS AND RECOMMENDATION

Staff does not believe that Sprint has identified a mistake of fact or law in the Commission's decision on this point. Staff also does not believe that clarification is warranted, because staff believes that the Commission's decision, which states that the provision of such a feed would be subject to the constraints of the National Electric Code, as well as all other applicable electric and building codes, adequately addresses Sprint's safety concerns regarding its own equipment. Order at pages 47-48. As such, staff recommends that Sprint's request be denied.

ISSUE 2: Should these Dockets be closed?

RECOMMENDATION: No. These Dockets should remain open to address the remaining pricing issues. **(KEATING)**

STAFF ANALYSIS: These Dockets should remain open to address the remaining pricing issues, which are currently set for hearing January 28-30, 2004.