

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by MediaOne  
Florida Telecommunications, Inc.  
for arbitration of an  
interconnection agreement with  
BellSouth Telecommunications,  
Inc. pursuant to Section 252(b)  
of the Telecommunications Act of  
1996.

DOCKET NO. 990149-TP  
ORDER NO. PSC-00-0256-FOF-TP  
ISSUED: February 7, 2000

The following Commissioners participated in the disposition of  
this matter:

J. TERRY DEASON  
SUSAN F. CLARK  
E. LEON JACOBS, JR.

FINAL ORDER ON MOTION FOR RECONSIDERATION, MOTION FOR STAY,  
AND REQUESTS TO FILE SUPPLEMENTAL AUTHORITY

BY THE COMMISSION:

I. Case Background

On December 1, 1995, this Commission approved a stipulated agreement between MediaOne Florida Telecommunications, Inc. (MediaOne), and BellSouth Telecommunications, Inc. (BellSouth), providing for interconnection services between the two companies. That agreement expired on January 1, 1998, but the parties mutually agreed to extend the contract pending finalization of a successor agreement. Negotiations for a successor agreement failed, and on February 9, 1999, MediaOne filed with this Commission a Petition for Arbitration. On October 14, 1999, we entered our Final Order setting forth our findings on the arbitrated issues, Order No. PSC-99-2009-FOF-TP. On October 29, 1999, MediaOne filed a Motion for Reconsideration and Clarification of our Order, as well as a Request to File Supplemental Authority. On November 10, 1999, BellSouth filed its Response. On November 12, 1999, MediaOne filed a Motion for Stay. BellSouth responded to the Motion for Stay on November 19, 1999. On January 4, 2000, MediaOne filed its Second Request to File Supplemental Authority. BellSouth did not respond

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to MediaOne's Second Request to File Supplemental Authority prior to our decision on this matter.

## II. Request to File Supplemental Authority

MediaOne argues that an FCC Order on unbundled network elements (UNEs) is scheduled for release that will significantly impact our decision in considering MediaOne's Motion for Reconsideration. BellSouth responds that the FCC Order will not be effective until 120 days after publication in the Federal Register. Parties may file comments during this time period, and the FCC Order may be modified. Even if it is not modified, BellSouth argues that given the proposed scope and content of the Order, it will almost certainly be appealed. If it is appealed, and a stay is granted, then the order will have no legal effect until a final decision on appeal is rendered. Thus, BellSouth argues that we should not reverse our well-reasoned decision based on an FCC Order that could change, and that will not be in effect for months, and perhaps much longer.

We agree that the FCC action is not a final order, and that there is a possibility that the FCC Order will be stayed, pending an appeal. Our decisions in this case were based on the evidence in the record at the time of the decision. We believe it is unnecessary to reopen the record for supplemental authority of such uncertain status. Accordingly, we deny both of MediaOne's requests to file supplemental authority.

## III. Motion for Reconsideration

In its Motion, MediaOne urges us to reconsider our finding that Calling Name (CNAM) database is not a UNE. MediaOne reports that, in a September 15, 1999 finding, the FCC reconsidered 47 C.F.R. §51.319 of its rules, which established the network elements to be offered on an unbundled basis by the incumbent local exchange carriers. Though the FCC Order had not been issued at the time MediaOne filed its Motion for Reconsideration, based on the FCC's news release, MediaOne argues that it appears that CNAM will be listed as a UNE in FCC Rule 47 C.F.R. §51.319. MediaOne further asks that we order BellSouth to demonstrate its costs of providing that service so that the appropriate charge for CNAM access can be determined.

MediaOne also requests that we reconsider our decision regarding network terminating wire (NTW) in three respects, and clarify one other matter. First, we are asked to reconsider our determination that NTW is not to be priced as a UNE. Also, MediaOne asks that we reconsider our determination that MediaOne's proposed means of accessing NTW is not technically feasible, as well as our finding that MediaOne's proposal is unrealistic. MediaOne argues that BellSouth's current willingness to provide access to its NTW cannot negate the fact that NTW meets the standard for treatment as a UNE. MediaOne disagrees with our finding that "network reliability, integrity, and security could be impaired by giving competitors open access to BellSouth's terminals and wiring." See Order No. PSC-99-2009-FOF-TP at p. 16. Finally, MediaOne asks that we clarify our Order as it relates to BellSouth's proposal to require MediaOne to install a network interface device (NID) whenever it utilizes NTW to serve a customer.

BellSouth responds that the standard for a motion for reconsideration is well-settled. A sustainable motion for reconsideration must identify a point of fact or law that was overlooked or that 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 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). Also, 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) (emphasis added). BellSouth states that MediaOne has failed to meet this standard regarding CNAM and NTW. BellSouth argues that MediaOne has not identified an error made by this Commission at all, but instead premises its request on a press release by the FCC, which could be read to indicate that the FCC will determine that CNAM and NTW are UNEs. BellSouth urges that MediaOne has raised nothing on reconsideration that is new, or that can otherwise serve as a basis to disturb this Commission's well-supported evidentiary rulings. Clearly, argues BellSouth, MediaOne's reargument regarding CNAM and NTW fails to satisfy the legal requirements for reconsideration.

We agree with BellSouth as to the proper standard of review for reconsideration and its application to MediaOne's Motion on this point. MediaOne has failed to identify any point of fact or law that we failed to address in our Order, or any mistake made in rendering our decision. MediaOne has simply attempted to reargue points that we have already addressed. Therefore, we find that MediaOne has not met the burden required for reconsideration of our decision on this point.

A. CNAM

Regarding CNAM, MediaOne's Motion for Reconsideration is, also, based entirely on a press release issued by the FCC subsequent to the hearing in this Docket. The release could be read to contradict the two findings for which relief is requested. As noted above, although the FCC Order referred to by the news release has now been issued, that Order has not become final.

In the event the pertinent portions of the FCC Order do become final, there are means to address changes in the law. MediaOne may petition BellSouth for negotiations regarding that specific portion of their Agreement. In the event there is not a successful conclusion to those negotiations, the parties could petition this Commission for arbitration of that issue. Accordingly, we will not reconsider our decision. Nothing MediaOne has raised identifies a point of fact or law overlooked by us in rendering our decision on this issue. See Order No. PSC-99-2009-FOF-TP at p. 5-1.

B. NTW

In addition to requesting that we now find that NTW is a UNE, and priced accordingly, MediaOne has asked for reconsideration of the actual procedures to be used in accessing BellSouth's NTW. Again, MediaOne has not met the legal burden for reconsideration of this issue. Accordingly, we shall not now reconsider our decision that NTW is not a UNE.

Regarding the procedures for accessing NTW, MediaOne had not raised any point of fact or law that we did not consider in rendering our decision. Accordingly, that finding, also, will not be revisited, because MediaOne has failed to identify a point of fact or law overlooked by us in rendering our decision. See Order No. PSC-99-2009-FOF-TP at p. 11-21.

C. NID

Upon review of MediaOne's request for clarification of Order No. PSC-99-2009-FOF-TP as it relates to the NID, we agree that clarification is required. Although we clearly stated that MediaOne must be allowed to use BellSouth's NTW first pair, unless BellSouth is using it, our assessment of the impact of that decision on the NID issue is not clearly stated. Accordingly, it should be clarified that whether or not MediaOne will be required to install a NID within a given multi-dwelling unit (MDU) residence depends upon the unique technical circumstances of that particular MDU residence.

Therefore, we will grant MediaOne's request and clarify Order No. PSC-99-2009-FOF-TP to explain that MediaOne is not required to install a condominium NID within a MDU residence when the first pair of NTW is provided by BellSouth for MediaOne's use. MediaOne will, however, be required to install a condominium NID when technical circumstances dictate.

IV. Motion for Stay

MediaOne asks for a stay of our final order pending our decision on the Motion for Reconsideration and Clarification. MediaOne explains that it is not clear whether the Motion for Reconsideration, in itself, stays the implementation of our Final Order. The Final Order directs the parties to submit written agreements implementing the findings of the Order within 30 days. MediaOne asserts that its Motion for Reconsideration is well founded, and that relief may be granted. Accordingly, it argues, it would serve no purpose for the parties to expend time and resources negotiating final written agreements, which may be altered as a result of the Motion for Reconsideration.

BellSouth responds that there is no ambiguity, and that the Motion for Reconsideration does not stay the effectiveness of our Final Order, pursuant to Rule 25-22.061, Florida Administrative Code, regulating stays pending appeal. BellSouth asserts that the criteria set forth in Rule 25-22.061, Florida Administrative Code, should be no different in a matter pending a decision on a Motion for Reconsideration than in a case pending appeal. Moreover, BellSouth maintains that MediaOne has not established any likelihood that the findings in the Final Order will be disturbed.

Rule 25-22.060(c), Florida Administrative Code, states in pertinent part:

A final order shall not be deemed rendered  
For the purpose of judicial review until the  
Commission disposes of any motion and cross  
motion for reconsideration of that order, but  
this provision does not serve automatically  
to stay the effectiveness of any such final  
order.

Although the rule clearly states that the filing of a motion for reconsideration does not automatically stay our Final Order, MediaOne has formally requested a stay so that the parties will not have to file their agreement memorializing our final decision until we render our decision on the issues raised in MediaOne's Motion for Reconsideration. Although we hereby deny the Motion for Stay, we shall extend the time for filing the agreement in accordance with Order No. PSC-99-2009-FOF-TP. The parties will be required to file their agreement memorializing our decisions in Order No. PSC-99-2009-FOF-TP, as clarified herein, within 15 days of the issuance of this Order.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that MediaOne Florida Telecommunications, Inc.'s Motion for Reconsideration and Clarification is hereby granted, in part, and denied, in part, as set forth in the body of this Order. It is further

ORDERED that MediaOne Florida Telecommunications, Inc.'s First and Second Requests to File Supplemental Authority are denied. It is further

ORDERED that MediaOne Florida Telecommunications, Inc.'s Motion for Stay is denied. It is further

ORDERED that the agreement memorializing our decisions in Order No. PSC-99-2009-FOF-TP, as clarified herein, shall be submitted for approval in accordance with Section 252(e)(2)(b) of the Telecommunications Act of 1996 within 15 days of the issuance of this Order. It is further

ORDERED that this docket shall remain open pending approval of the agreement submitted in compliance with this Order.

ORDER NO. PSC-00-0256-FOF-TP  
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By ORDER of the Florida Public Service Commission this 7th  
day of February, 2000.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

CLF

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).

M E M O R A N D U M

February 4, 2000

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RECORDS AND  
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (FORDHAM) *clt. DR*

RE: DOCKET NO. 990149-TP - PETITION BY MEDIAONE FLORIDA  
TELECOMMUNICATIONS, INC. FOR ARBITRATION OF AN  
INTERCONNECTION AGREEMENT WITH BELLSOUTH  
TELECOMMUNICATIONS, INC. PURSUANT TO SECTION 252(B) OF  
THE TELECOMMUNICATIONS ACT OF 1996.

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Attached is a FINAL ORDER ON MOTION FOR RECONSIDERATION,  
MOTION FOR STAY, AND REQUESTS TO FILE SUPPLEMENTAL AUTHORITY, to be  
issued in the above-referenced docket. (Number of pages in order  
- 7)

CLF/anc  
cc: Division of Communications  
I: 990149f2.clf

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