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April 23, 2001

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. 000649-TP (MCI Arbitration)

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Memorandum In Opposition to WorldCom MCImetro Access Transmission Services LLC and MCI WorldCom Communications, Inc.'s Motion for Reconsideration, which we ask that you file in the captioned docket.

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,

T. Michael Twomey

T. Michael Twomey

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

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CERTIFICATE OF SERVICE
Docket No. 000649-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail this 23rd day of April, 2001 to the following:

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T. Michael Twomey

(#) Signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by MCImetro Access Transmission Services LLC and MCI WorldCom Communications, 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. 000649-TP

BELLSOUTH'S MEMORANDUM IN OPPOSITION TO WORLDCOM'S MOTION FOR RECONSIDERATION

BellSouth Telecommunications, Inc. ("BellSouth") submits this Memorandum in Opposition to the Motion for Reconsideration filed by MCI WorldCom ("WorldCom"). For the reasons set forth below, WorldCom's motion should be denied, except to the extent that the Commission addresses the recent Federal Communications Commission ("FCC") order addressing line sharing.

ARGUMENT

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 an order. See Diamond Cab Co. v. King, 146 So. 2d 889, 891 (Fla. 1962). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. See Sherwood v. State, 111 So. 2d 96, 97 (Fla. 3rd DCA 1959) (citing State ex. Rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958)). Moreover, a motion for reconsideration is not intended to be "a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or the order." Diamond Cab Co., 394 So. 2d at 891. Indeed, a motion for reconsideration should not be

granted "based upon an arbitrary feeling that a mistake may have been made, but should be based on specific factual matter set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

In its Motion for Reconsideration, WorldCom asks the Commission to revisit its rulings on Issues 6, 18, 22, and 107. With the exception of clarification of Issue 22, WorldCom offers no legitimate basis for the Commission to review its decisions on these issues.

ISSUE 6: For purposes of the interconnection agreement between WorldCom and BellSouth, should BellSouth be directed to perform, upon request, the functions necessary to combine unbundled network elements that are ordinarily combined in its network?

In its motion for reconsideration, MCI argues that the Commission erred in finding that BellSouth is not required to combine UNEs that are not "in fact" already combined. Motion at 1. The only basis for WorldCom's request for reconsideration of the Commission's ruling on this issue is WorldCom's claim that the Commission "overlooked WorldCom's argument that the Commission also should rule in WorldCom's favor as a matter of ***state*** law." Motion for Reconsideration, at p. 2. MCI argues that, based on § 364.161(1), Florida Statutes, the Commission should "establish terms and conditions that require BellSouth to offer combinations of UNEs that are 'typically combined' in its network." Motion at 2.

While the Commission did not address MCI's state argument in its determination of Issue 6, it did address the impact of state authority generally in its discussion of Commission jurisdiction. Specifically, the Commission stated the following:

> We agree that Section 252(e) of the Act reserves the state's authority to impose additional conditions and terms in arbitration that are not inconsistent wit [the] Act and its interpretation by the FCC and the courts.

> We find that under Section 252(e) of the Act, we could impose additional conditions and terms in exercising our independent state law authority under Chapter 364, Florida Statutes, so long as those requirements are not inconsistent with the Act, FCC rules and orders, and controlling judicial precedent.

See Order at 10.

Thus, contrary to MCI's argument, the Commission did not fail to address or consider MCI's state law argument. The fact that the Commission did not specifically address MCI's state law argument in resolving Issue 6 should not be construed as a failure to consider the argument warranting reconsideration.

Moreover, the premise of WorldCom's argument is misplaced because, as the Commission itself noted, the Commission cannot act in manner inconsistent with federal law. "The FCC has rulemaking authority to carry out the 'provisions of the Act,' which include 251 and 252, added by the Telecommunications Act of 1996." AT&T Corp. v. Iowa Util. Bd., 525 U.S. 366, 377-78 (1999). This authority includes the rules regarding the combination of UNEs. Consequently, as recently stated by the United States Court of Appeals, Fourth Circuit, "State commissions are required to apply federal requirements in arbitrating and approving interconnection agreements."); Bell Atlantic Md., Inc. v. MCI Worldcom, Inc., 240 F.3d 279, 300 (4th Cir. 2001); see also, 47 U.S.C. § 252(c)(1) (requiring State commissions in resolving arbitrations to "ensure that such resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the Commission pursuant to Section 251."). State commissions, however, can establish or enforce other requirements of state law in its review of an interconnection agreement or for promoting competition, so long as those requirements are **not inconsistent** with the Act and the FCC's rules. See 47 U.S.C. §§ 252(e)(3), 261(b)-(c).

As the Commission found, it is clear under federal law that ILECs are not required to combine UNEs that are ordinarily combined in its network. See Order at 35-37; Iowa Util. Bd v. FCC, 219 F.3d 744, 759 (8th Cir. 2000). Thus, the Commission was required to abide by the FCC rules as construed by the Eighth Circuit in determining Issue 6. Therefore, the Commission could not rely on 364.161(1), Florida Statutes, as interpreted by MCI, to find that BellSouth is obligated combine UNEs that it ordinarily combines in its network because such a ruling would be inconsistent with the FCC rules as interpreted by the Eighth Circuit. See 252(e)(3). The request for reconsideration of this issue should be denied.

18: Is BellSouth required to provide all technically feasible unbundled dedicated transport between locations and equipment designated by WorldCom so long as the facilities are used to provide telecommunications services, including interoffice transmission facilities to network nodes connected to WorldCom switches and to the switches or wire centers of other requesting carriers?

The Commission correctly decided that "BellSouth is not required to provide WorldCom with unbundled dedicated transport between other carriers' locations, or between WorldCom switches." Order at p 45. The Commission's decision is consistent with the FCC's definition of "dedicated transport," which refers to the "incumbent LEC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers." 47 C.F.R. § 51.319(d)(1)(A). In its Motion, WorldCom offers no basis for reconsideration other than the issue of "currently combined" discussed in Issue 6, above. For the reasons discussed in Issue 6, the Commission should deny WorldCom's motion on Issue 18.

ISSUE 22: For purposes of the interconnection agreement between WorldCom and BellSouth, should the Interconnection Agreements contain WorldCom's proposed terms addressing line sharing, including line sharing in the UNE-P and unbundled loop configurations?

In its motion, WorldCom asks the Commission to "modify its ruling to permit WorldCom to engage in line sharing when it provides voice service via UNE-P, and specifically to require BellSouth to accommodate line splitting when a voice customer served by an xDSL provider migrates its voice service to WorldCom." Motion for Reconsideration at p. 6. The basis for WorldCom's request for reconsideration on this issue is the FCC's Third Report and Order on Reconsideration, *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 96-98 and 98-147 (rel. Jan. 19, 2001) ("*Line Sharing Reconsideration Order*").

BellSouth does not object to the Commission modifying its decision on Issue 22 to reflect the FCC's recent order, provided that the Commission reflects the order in full. That order addressed a number of issues which WorldCom did not discuss in its motion. In the *Line Sharing Reconsideration Order*, the FCC stated that ILECs are obligated to permit line-splitting arrangements only "where the competing carrier [1] purchases the entire loop and [2] provides its own splitter." Id. at ¶19. Thus, when BellSouth is providing neither voice nor data to a customer being served by a line-splitting arrangement, one of the ALECs must purchase the unbundled loop and BellSouth may require the ALECs involved in that arrangement to provide their own splitter.

A splitter is not a UNE and BellSouth is not required to provide a splitter when WorldCom enters a line splitting arrangement with a third party. Moreover, line splitting

does not involve a loop that is directly connected to a port. Instead, it involves: (1) a loop that is connected to equipment that is not a UNE and that typically is not part of BellSouth's network; and (2) a port that is connected to equipment that is not a UNE and that is not part of BellSouth's network. WorldCom, therefore, is not entitled to pay UNE-P rates in a line splitting arrangement because such an arrangement simply is not a UNE-P. The FCC explained:

> For instance, if a competing carrier is providing voice service using the UNE-platform, it can order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport, to replace its existing UNE-platform arrangement with a configuration that allows provisioning of both data and voice services. As we described in the Texas 271 Order, in this situation, the incumbent must provide the loop that was part of the existing UNE-platform as the unbundled xDSL-capable loop, unless the loop that was used for the UNE-platform is not capable of providing xDSL service.

Line Sharing Reconsideration Order, at ¶ 19. The FCC, therefore, made it clear that if the loop that is a component of the existing UNE-P that is serving an end user is capable of providing xDSL service, the incumbent must provide that same loop to two ALECs who wish to provide voice and data to the same end user by way of a line splitting arrangement.

The FCC, however, also stated in plain and unmistakable language that "the incumbent must provide the loop that was part of the existing UNE-platform" so the ALEC can use that loop in implementing a configuration "to replace its existing UNE-platform arrangement . . ." Clearly, the UNE-platform that existed before the ALEC-owned splitter was introduced between the loop and the port no longer exists after that ALEC-owned splitter is introduced between the loop and the port. WorldCom, therefore, is not entitled to pay UNE-P rates for a line splitting arrangement.

Moreover, accommodating a line splitting arrangement often requires BellSouth to perform additional work. It is only fair and equitable for WorldCom and other ALECs to compensate BellSouth for performing that work.

ISSUE 107: For purposes of the interconnection agreement between WorldCom and BellSouth, should the parties be liable in damages, without a liability cap, to one another for their failure to honor in one or more material respects any one or more of the material provisions of the Agreements?

Prior to the hearing, the parties appeared to agree that a liability cap was appropriate. Negotiations between the parties produced Part A, Sections 11.1.1 and 11.1.2, which contain language approved by both parties. The dispute concerned WorldCom's desire to exempt from the liability cap actions that constitute a "material breach of the Agreement." BellSouth objected to that provision and the Commission decided that the disputed provision should not be included in the agreement. Order at p. 177. Now, WorldCom appears to be asking the Commission to strike language which was not in dispute. The arbitration process in intended to move the parties forward, not backward. The Commission should not order previously agreed-to language stricken from the parties' agreement.

CONCLUSION

The Commission should deny WorldCom's motion, except to the extent the Commission modifies its decision to take into consideration the FCC's recent order concerning line sharing.

Respectfully submitted this 23rd day of April, 2001.

BELLSOUTH TELECOMMUNICATIONS, INC.

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