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December 16, 2002

Ms. Blanca S. Bayo, Director
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and Administrative Services
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Re: Docket No. 990649B-TP
Investigation into Pricing of Unbundled Network Elements (Sprint/Verizon
Track)

Dear Ms. Bayo:

Please find enclosed for filing in the above matter an original and 15 copies of Verizon Florida Inc.'s Opposition to AT&T Communications of the Southern States, LLC and WorldCom, Inc.'s Motion for Reconsideration. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this matter, please contact me at 813-483-2617.

Sincerely,



Kimberly Caswell

KC:tas
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into pricing of) Docket No. 990649B-TP
unbundled network elements) Filed: December 16, 2002
(Sprint/Verizon Track))
_____)

**VERIZON FLORIDA INC.'S OPPOSITION TO
AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC,
AND WORLDCOM, INC.'S MOTION FOR RECONSIDERATION**

Verizon Florida Inc. ("Verizon") asks the Commission to deny the Motion for Reconsideration of portions of Order No. PSC-02-1574-FOF-TP¹ that AT&T Communications of the Southern States, LLC ("AT&T") and WorldCom, Inc. ("WorldCom") (collectively, "AT&T/WorldCom") filed on December 2, 2002 ("Motion").²

A motion for reconsideration will not be granted unless it identifies a point of fact or law the Commission overlooked or failed to consider in rendering its decision.³ Reargument of matters already considered is not an appropriate basis for a motion for reconsideration.⁴ As discussed more fully below, AT&T/WorldCom's Motion fails to meet the standard for reconsideration, and therefore must be denied.

ARGUMENT

I. AT&T/WORLDCOM'S MOTION IS AN IMPROPER ATTEMPT TO REARGUE ISSUES THE COMMISSION HAS ALREADY CONSIDERED AND REJECTED

The Commission has already considered and rejected all of the points raised in AT&T/WorldCom's Motion. Lacking any legal basis upon which to alter the Commission's decision, AT&T/WorldCom resort to rehashing discredited arguments and mischaracterizing the

¹ In re: Investigation into Pricing of Unbundled Network Elements, Docket No. 990649B-TP, *Final Order on Rates for Unbundled Network Elements Provided by Verizon Florida* (issued Nov. 15, 2002) ("Order").

² AT&T/WorldCom's Motion was adopted by KMC Telecom III, LLC on December 2, 2002.

³ See e.g., *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962).

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record in an effort to convince the Commission that the rulings at issue are wrong.

AT&T/WorldCom point to nothing in the record to justify reconsideration; they merely disagree with the Commission's decisions on the matters at issue. . .

A. The Commission Properly Concluded that Verizon's Cost Model Is TELRIC-Compliant and Appropriate for Use in Setting Verizon's Forward-Looking Costs of Providing UNEs in Florida

In their Motion, AT&T/WorldCom erroneously claim that “[t]he network architecture of Verizon's ICM-FL cost model suffers several fatal flaws that the Commission has overlooked or failed to consider in its assessment that the model is sufficient to set TELRIC rates.”⁵

Specifically, AT&T/WorldCom allege that the Commission “erred . . . as a matter of fact and law”⁶ in approving ICM-FL because it uses existing digital loop carrier (“DLC”) locations and because it allegedly places DLC equipment where it “would not otherwise exist” to model feeder routes in Verizon's network.⁷ AT&T/WorldCom argue that Verizon's model is thus not TELRIC-compliant and inconsistent with the “scorched node” approach to a forward-looking network design.⁸ AT&T/WorldCom are wrong.

AT&T/WorldCom point to nothing that suggests the Commission overlooked or failed to consider any point of law or fact relative to this issue. Indeed, the Commission took explicit notice of the fact that ICM-FL locates DLCs “at locations where a DLC presently exists,”⁹ and that, “in order to preserve existing feeder routes, additional [DLC] locations were modeled in

⁴ See, e.g., *Sherwood v. State*, 111 So. 2d 96 (Fla. 3d DCA 1959).
⁵ Motion at 1.
⁶ Motion at 3.
⁷ Motion at 2-3.
⁸ Motion at 1-2.
⁹ Order at 67.

some instances.”¹⁰ The Commission concluded that ICM-FL’s modeling of existing DLC locations and feeder routes is entirely consistent with the TELRIC methodology.¹¹

Lacking any basis upon which to conclude that the Commission overlooked or failed to consider a point of law or fact, AT&T/WorldCom merely repeat arguments that the Commission already considered and rejected. The Commission found no merit in AT&T/WorldCom’s argument that TELRIC’s scorched node methodology necessarily requires a wholesale re-design of the existing telephone network. TELRIC only requires Verizon to allow for the *possibility* that all inputs (except wire center locations) will be changed -- it in no way *requires* that all inputs be instantaneously changed.¹² It is plainly appropriate under TELRIC to model network elements where they currently exist, as long as doing so is efficient. As Verizon witness Tucek testified, Verizon’s existing feeder routes and DLC placements are a realistic and economical reflection of the operating constraints, local requirements, existing rights-of-way, and current customer and wire center locations with which any real-world carrier operating in Verizon’s service territory would need to contend.¹³ AT&T/WorldCom would have the Commission base costs on a network that ignores these real-world constraints, by proposing a modeled network in which everything between the customers and the wire centers is discarded. There is nothing in the record -- indeed AT&T/WorldCom cite to nothing in their Motion -- to suggest that these existing routes and placements are not the most cost-effective and forward-looking options available, and their use in ICM-FL is entirely consistent with TELRIC standards.

¹⁰ Order at 67.

¹¹ Order at 66-67.

¹² In re: Investigation into Pricing of Unbundled Network Elements, Docket No. 990649B-TP, *Hearing Transcript* (April 29, 2001) at 831 (“April 29 Transcript”); In re: Investigation into Pricing of Unbundled Network Elements, Docket No.990649B-TP, *Deposition of David G. Tucek* (April 17, 2001) at 88-89 (“Tucek Depo”).

¹³ Tucek Depo. at 89 (noting that it “would inefficient to move [the DLCs] from where they are today”).

Moreover, even if such evidence did exist, AT&T/WorldCom are incorrect that there is no remedy for the “flaw” they allege. The DLC locations are, in fact, inputs to ICM-FL and can be changed by any party, including AT&T/WorldCom. That AT&T/WorldCom did not propose alternative inputs while the record was open shows that they could find no real flaw related to the DLC inputs. Instead, they have waited until now to attempt to discredit ICM-FL by mischaracterizing the record.

B. Neither the FCC’s Default Proxy Rates nor the Rates Established for BellSouth Are Permissible Alternatives to the Rates Set Using ICM-FL

As discussed above, the Commission correctly concluded that ICM-FL is TELRIC-compliant, so there is no need to look for an alternative basis upon which to set UNE rates. The Commission cannot, in any event, accept AT&T/WorldCom’s suggestion to use either the FCC’s default proxy rates, which were vacated by the Eighth Circuit two years ago,¹⁴ or the rates it set for BellSouth in its UNE proceeding. Both approaches violate the directive from the Telecommunications Act of 1996 (the “Act”) that a company’s UNE rates must be based on that company’s costs of providing UNEs.¹⁵

The FCC established default interim proxy rates in 1996, in its First Report and Order implementing the Act.¹⁶ These rates were intended to be used “in conducting initial rate arbitrations, especially in the time period prior to completion of a cost study.”¹⁷ The FCC permitted states to use its interim default proxy rates only when states were “unable to analyze an economic costing study within the statutory time constraints” for rendering pricing decisions.¹⁸ The FCC’s proxy rates no longer have any relevance, as the FCC itself has explicitly recognized

¹⁴ *Iowa Utils. Board. v. FCC*, 219 F.3d 744,757(8th Cir. 2000), judgment vacated in part on other grounds, 301 F.3d 957 (8th Cir. 2002) (“*Iowa Utils. Board*”).

¹⁵ 47 U.S.C. § 252(d)(1).

¹⁶ *Implementation of the Local Competition Provisions in the Telecomm. Act of 1996*, 11 FCC Rcd 15499, First Report and Order (“First Report and Order”), at ¶¶ 767-819 (1996).

¹⁷ *Id.* at ¶ 782.

in arguments before the U.S. Supreme Court in 1998 that “the Commission’s temporary and optional ‘default proxies’ were designed for a past period in which no cost studies could have been made available to the state commissions.”¹⁹ Indeed, in vacating the FCC’s default proxy rates, the Eighth Circuit held that “[s]etting specific prices goes beyond the FCC’s authority to design a pricing methodology and intrudes on the states’ right to set the actual rates pursuant to § 252(c)(2).”²⁰ It is plainly ridiculous for AT&T/WorldCom to suggest using the FCC’s interim default proxy rates from six years ago, let alone in a proceeding where a cost study was fully litigated by the parties and analyzed by the Commission. Indeed, the FCC’s interim default proxy rates do not even allow for the deaveraging of loop rates or the assignment of Verizon’s wire centers to the deaveraged zones required by the FCC.²¹

Equally ridiculous is AT&T/WorldCom’s claim that the rates established for BellSouth are an appropriate alternative to rates set using ICM-FL.²² As noted, the Act requires the Commission to set UNE rates based upon *Verizon’s* costs of providing UNEs in Florida. BellSouth’s rates are not based on Verizon’s costs, and do not reflect the company-, state-, and area-specific operating conditions pursuant to which Verizon provides service.²³ As such, under no circumstances would it be appropriate for the Commission to impose BellSouth’s UNE rates on Verizon.²⁴

¹⁸ *Id.* at ¶ 787; *see also id.* at 767.

¹⁹ Reply Brief for the Federal Petitioners and Brief for the Federal Cross-Respondents, *FCC v. Iowa Utils. Board, et al. and Related Cases*, Nos. 97-826, et al., 1997 U.S. Briefs 826 at n.5 (June 17, 1998) (citations omitted).

²⁰ *Iowa Utils. Board* at 757.

²¹ *See* First Report and Order at ¶ 797.

²² Motion at 4.

²³ BellSouth serves the majority of access lines in Florida and has a more varied customer base (both urban and rural), whereas Verizon’s serving area is concentrated in the densely populated, highly competitive, Tampa Bay/St. Petersburg area. In re: Investigation into Pricing of Unbundled Network Elements, Docket No. 990649B-TP, *Verizon Florida Inc.’s Post-Hearing Statement and Brief* (May 28, 2002) at 32; *see also* April 29 Transcript at 368-69.

²⁴ April 29 Transcript at 620-21.

C. The Commission Did Not Overlook or Fail to Consider Any Point of Fact or Law in Deciding that GTD-5 Switches Were Forward-Looking and Appropriate for Use in ICM-FL

AT&T/WorldCom urge the Commission to “reconsider its decision regarding the GTD-5 and eliminate it from the consideration of appropriate TELRIC switching costs.”²⁵ The Commission considered all the record evidence on this matter and correctly determined that GTD-5 digital switches were a forward-looking technology, suitable for use in ICM-FL. Indeed, AT&T/WorldCom do not even try to argue that the Commission overlooked a pertinent point with respect to GTD-5 -- in fact, they admit that the Commission considered the issue and identified four separate reasons to support its “endorsement of the GTD-5 as forward looking technology.”²⁶ Accordingly, the standard for reconsideration again has not been met, and AT&T/WorldCom’s claim that the Commission somehow erred on this point is nothing more than an improper attempt to reargue issues that the Commission rejected in its Order.²⁷

Moreover, it is simply illogical for AT&T/WorldCom to contend that Verizon should replace all of its GTD-5 digital switches -- it would be inefficient, unnecessarily costly, and may not even be feasible.²⁸ As Mr. Tucek explained:

Obviously, Verizon’s network and any real-world network evolve through time and reflect a mix of technologies. Neither Verizon nor any other business immediately replaces its plant or technology whenever a new product or technology enters the market. For example, American Airlines does not retire its fleet and replace it whenever a new plane is introduced. Likewise, accounting firms do not throw away all their desktop computers every six months just because a more efficient computer becomes available.²⁹

²⁵ Motion at 6.

²⁶ Motion at 5.

²⁷ Order at 141-144.

²⁸ Tucek Depo. at 27 (noting that AT&T/WorldCom’s suggested replacement of all GTD-5 switches in Verizon’s network does not consider the ability of switch vendors to actually provide the switches); *see also* In re: Investigation into Pricing of Unbundled Network Elements, Docket No. 990649B-TP, *Hearing Transcript* (April 30, 2001) at 899 (“April 30 Transcript”); In re: Investigation into Pricing of Unbundled Network Elements, Docket No. 990649B-TP, *Deposition of James Vander Weide* (April 8, 2001) at 46-47.

²⁹ April 29 Transcript at 765 (“Direct Testimony of David G. Tucek”).

As with AT&T/WorldCom's suggestion that DLC locations and feeder routes should be modeled without regard to the limitations imposed on a real-world network, AT&T/WorldCom's recommendation that GTD-5 digital switches be excluded from Verizon's cost study is similarly inappropriate. The Commission's approval of the use of the GTD-5 digital switch in ICM-FL, as well as the modeling of Verizon's existing DLC locations and feeder routes, is consistent with the TELRIC requirement that the modeled network employ the most efficient technology currently available and the lowest cost network configuration.³⁰

Verizon's forward-looking technology choices are informed by its experience operating an actual telephone network in Florida. Contrary to AT&T/WorldCom's contentions,³¹ what may be the most efficient technology for one company may not be for another due to, among other things, pricing differences and transition costs. Indeed, at the Special Agenda Conference to consider Staff's Recommended Decision, the Commission correctly recognized that GTD-5 switches continue to be marketed and supported by their manufacturer (AGCS), and Verizon plans to make additional purchases in the future.³² As such, the Commission appropriately found that, going forward, it would be economically efficient to grow (instead of replace) the GTD-5 digital switches in Verizon's Florida network.³³

AT&T/WorldCom argue that the Commission's decision on the GTD-5 in this case is inconsistent with Order No. PSC-99-0068-FOF-TP in its generic docket to determine basic local

³⁰ 47 C.F.R. § 51.505(b)(1).

³¹ Motion at 5.

³² In re: Investigation into Pricing of Unbundled Network Elements, Docket No. 990649B-TP, *Special Agenda Conference Transcript* (Oct. 14, 2002) at 85-87 ("Special Agenda Tr."); *see also* April 29 Transcript at 807-08.

³³ April 29 Transcript at 807-08; Tucek Depo. at 25; *see also* Special Agenda Tr. at 87 (Commissioner Deason recognizing that "the bottom line is you all are comfortable that [GTD-5] is a cost-effective, efficient, forward-looking technology *as it pertains to Verizon*") (emphasis added).

service costs for universal service funding (“USF”) purposes.³⁴ They claim that the Commission in that case “found GTD-5 switches to not be forward-looking for the purpose of determining the cost of basic local service.”³⁵ Again, AT&T/WorldCom try to mislead the Commission. In its Generic Cost Order, the Commission plainly stated that there was insufficient evidence to conclude that the GTD-5 was not a forward-looking technology.³⁶ More importantly, AT&T/WorldCom incorrectly claim that the Commission “erroneously” distinguished this UNE ratesetting proceeding from the generic universal service docket.³⁷ Specifically, the Commission observed: “What differentiates between the USF docket and the present proceeding is that the USF docket was a generic proceeding where the outcome was applicable to every ILEC. In the current proceeding, the decision from the Verizon track will be applicable to Verizon alone.”³⁸

The Commission has correctly characterized its USF proceeding. Contrary to AT&T/WorldCom’s claim, the Commission did not determine Verizon’s specific costs in that case, as it did here. Rather, that proceeding was intended to “develop the cost of an efficient provider in Florida, not necessarily an LEC’s cost in its service territoryit is important to remember that any hypothetical efficient provider may or may not operate only in historic LEC territories.”³⁹ The current proceeding, of course, was instituted to determine the costs that are “applicable to Verizon alone.”⁴⁰ The Commission excluded the GTD-5 switch in Docket 980696-TP because it “did not feel it was representative of costs that would be suitable for

³⁴ Determination of the Cost of Basic Local Telecommunications Service, Docket No. 980696-TP, *Order No. PSC-99-0068-FOF-TP* (Jan. 7, 1999) (“Generic Cost Order”).

³⁵ Motion at 5. This argument is particularly curious given that WorldCom witness Wells acknowledged during the generic cost proceeding that a cost model “is not always required to incorporate forward-looking technology.” Generic Cost Order at p. 31.

³⁶ Generic Cost Order at 327.

³⁷ Motion at 5-6.

³⁸ Order at 143.

³⁹ Generic Cost Order at 204.

⁴⁰ *See* Order at 143.

generic costs in the USF docket.”⁴¹ The Commission has never determined that the GTD-5 switch is not representative of Verizon’s costs.⁴²

Finally, AT&T/WorldCom’s argument that, because Verizon has no “plans to add any new GTD-5s as a host switch is a clear indication that it is not forward looking even for Verizon,” is baseless and would lead to ridiculous results. Verizon has no plans to purchase GTD-5 host switches because its network is already 100 percent digital in Florida. Thus, AT&T/WorldCom’s argument could be used to exclude any vendor’s switch, thereby leading to the absurd conclusion that no switches are forward-looking.

D. The Commission Appropriately Declined to Model ATM Switching Technology in Its Forward-Looking UNE Cost Model

AT&T/WorldCom’s claim that ATM switches are “forward-looking,”⁴³ and therefore should be modeled in ICM-FL, is not only incorrect, it is based on sheer speculation. Verizon’s entire Florida network contains only one ATM switch -- a trial deployment that is the “first of its kind in the entire Verizon network.”⁴⁴ The record shows that ATM switching remains an untried technology; Verizon has no plans to deploy ATM switches in Florida on a widespread basis until (and if) it determines that ATM switches are efficient and viable for use in that state.⁴⁵ Thus, it would be inconsistent with TELRIC principles to model this experimental technology.⁴⁶ In declining to incorporate untested technology in Verizon’s cost model, the Commission properly accorded AT&T/WorldCom’s argument all the attention it deserves.

⁴¹ April 30 Transcript at 897 (emphasis added).

⁴² Order at 143.

⁴³ Motion at 7.

⁴⁴ April 29 Transcript at 877.

⁴⁵ *Id.*

⁴⁶ If the Commission were to include ATM switches in its UNE cost study, UNE cost estimates for the tandem switch would increase -- all other UNE cost estimates, including those of the loop, 2-wire port, and UNE-P, would be unaffected. April 29 Transcript at 877-80.

E. The Commission Considered Every Point of Law and Fact in Concluding that Verizon's a la Carte Pricing Structure for Switching Features Is TELRIC-Compliant

Attempting, unsuccessfully, to cast doubt the Commission's adoption of Verizon's a la carte pricing structure for switching features, AT&T/WorldCom once again ignore the standard for reconsideration, making no mention of any point of law or fact the Commission allegedly overlooked or failed to consider. On this basis alone, AT&T/WorldCom's request for reconsideration should be denied.

The fact remains, however, that the Commission properly took into account all the record evidence and correctly concluded that Verizon's a la carte switch pricing structure should be adopted.⁴⁷ AT&T/WorldCom cite no record evidence that would support a contrary conclusion. For example, AT&T/WorldCom claim that Verizon's a la carte pricing structure is inconsistent with Verizon's cost structure,⁴⁸ but are unable to point to any record evidence to dispute the fact that feature costs include: (1) the cost of the feature software, (2) the cost of the processor usage, and (3) the cost of feature-specific hardware. Similarly, AT&T/WorldCom's allegation that the ALECs will somehow be harmed by the adoption of an a la carte pricing structure⁴⁹ reiterates cost recovery arguments that Verizon has already discredited and the Commission has rejected.⁵⁰ The Commission correctly concluded that Verizon's a la carte proposal ensures that consumers (i.e., ALECs) "pay for what is used, or can be traced to the cost causer."⁵¹

Finally, AT&T/WorldCom's claim that Verizon only identified one feature that required specific hardware (i.e., conference bridging)⁵² demonstrates their utter lack of familiarity with the record. Contrary to AT&T/WorldCom's claim, Verizon identified numerous switch features

⁴⁷ Order at 149-50.

⁴⁸ Motion at 7.

⁴⁹ Motion at 8.

⁵⁰ Order at 149-50.

that require specialized hardware.⁵³ AT&T/WorldCom has presented nothing to justify reversal of the Commission's well-considered conclusion that "Verizon's *a la carte* proposal is reasonable and defensible as established by the record in this proceeding."⁵⁴

CONCLUSION

For the foregoing reasons, Verizon respectfully requests that the Commission deny AT&T Communications of the Southern States, LLC, and WorldCom, Inc.'s Motion for Reconsideration.

Respectfully submitted on December 16, 2002

By: 
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⁵¹ Order at 150.

⁵² Motion at 8.

⁵³ These features are identified in the following PDF files contained in the CD-ROM filed with ICM-FL: "FL SESS WHOLESALE FEATURE RUNS SET 1 (1ST HALF)," "FL DMS100 WHOLESALE FEATURE RUNS SET 1," and "FL_GTD5W."

⁵⁴ Order at 139-40.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Opposition to AT&T Communications of the Southern States, LLC and WorldCom, Inc.'s Motion for Reconsideration in Docket No. 990649B-TP were sent via U.S. mail on December 16, 2002 to the parties on the attached list.


for Kimberly Caswell

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