BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by MCI Telecommunications Corporation for arbitration with United Telephone Company of Florida and Central Telephone Company of Florida concerning interconnection rates, terms, and conditions, pursuant to the Federal Telecommunications Act of 1996.	DOCKET NO. 961230-TP ORDER NO. PSC-97-1059-FOF-TP ISSUED: September 9, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA

ORDER DENYING MOTION FOR RECONSIDERATION, GRANTING MOTION FOR CLARIFICATION, AND EXTENDING TIME TO FILE COST STUDIES

BY THE COMMISSION:

On May 6, 1996, MCI Telecommunications Corporation, individually and on behalf of its affiliates, including MCImetro Access Transmission Services, Inc. (collectively, MCI), formally requested negotiations with United Telephone Company of Florida and Central Telephone Company of Florida (collectively, Sprint), under Section 252 of the Telecommunications Act of 1996 (the Act). On October 11, 1996, MCI filed with the Commission a Petition for Arbitration under the Act. The Commission conducted an evidentiary hearing in the case on December 18, 1996, and issued Order No. PSC-97-1059-FOF-TPPSC-97-0294-FOF-TP on March 14, 1997, resolving the arbitration issues presented.

On March 31, 1997, Sprint filed a Motion for Reconsideration and/or Clarification of Order No. PSC-97-0294-FOF-TP and Motion for Stay. MCI filed a Response to Sprint's Motion for Reconsideration and Sprint's Motion for Stay on April 7, 1997.[1] This Order addresses Sprint's motions.

Sprint's Motion for Reconsideration

In its Motion for Reconsideration, Sprint asks the Commission to reconsider its decisions regarding resale of voice mail service; the use of TSLRIC for costing purposes; the preclusion of recovery of common costs; the requirement that Sprint provide cost studies for every end office to cost local call termination; and the requirement that Sprint include switching features in its unbundled switching price. In its Response to Sprint's Motion for Reconsideration, MCI urges the Commission to deny the motion on all points except deaveraging of unbundled local loop costs.

The standard of review for a motion for reconsideration is whether the motion identifies some point of fact or law which was overlooked or which this Commission failed to consider in rendering its order. Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So.2d 161 Fla. 1st DCA 1981). A motion for reconsideration must present to the Commission some such point by reason of which its decision is necessarily erroneous. Atlantic Coast Line R. Co. v. City of Lakeland, 115 So. 669, 680. 1927); Mann v. Etchells, 182 So. 198, 201 (Fla. 1938); Hollywood, Inc. v. Clark, 15 So.2d 175, 180 (Fla. 1943). A motion for reconsideration is not a medium by which a party may simply advise the Commission of its disagreement with the decision, present additional arguments on matters fully addressed, reargue matters presented in briefs and in oral argument, or ask the Commission to change its mind as to a matter that has already received its careful attention. Sherwood v. State, 111 So.2d 96, 97-98 (Fla. 3d DCA 1959) (quoting State ex rel Jaytex Realty Co. v. Green, 105 So.2d 817, 818-19 (Fla. 1st DCA 1958)).

---

[1] On April 14, 1997 Sprint-Florida and MCI filed their signed arbitration agreement reflecting the Commission's arbitration decision addressing all of the unresolved issues except the ones addressed in Sprint's Motion for Reconsideration. The Commission approved their agreement on May 20, 1997 in Order No. PSC-97-0565-FOF-TP. In that order the Commission also determined that Sprint's Motion for Stay was moot.

Applying this standard to Sprint's motion, we find that the motion should be denied on all points. We will, however, clarify the scope of Order No. PSC-97-0294-FOF-TP's requirement to file cost studies; and, we will extend the time to file those studies.

Resale of Voice Mail Service

As it did at the hearing in this case, and in its post-hearing brief, Sprint argues in its Motion for Reconsideration that it is not required to make voice mail service available for resale under the provisions of Section 251(c)(4) of the Act, because voice mail service is not a "telecommunications service" that must be resold. Sprint contends that voice mail is a "store and forward" technology not a "transmission" technology, as required by the Act's definition of "telecommunications." Sprint also argues that the Commission overlooked the definition of voice mail as "telemessaging" in Section 260(c) of the Act, and claims that the Section 260(c) categorization of voice mail as "telemessaging" shows that:

> the Act, in fact, has adopted and reaffirmed the FCC's classification of voice mail as an 'enhanced' service or an 'information' service. If voice mail were a 'telecommunications service', there would be no reason to define 'telemessaging service' to mean 'voice mail.' Sprint Motion, p. 3.

MCI responds that Sprint has not provided a proper basis for the Commission to reconsider its decision on the resale of voice mail service. MCI argues that Sprint simply reasserts the position it argued at the hearing and in its posthearing statement that voice mail is not "telecommunications" or a "telecommunications service" that is available for resale.

With respect to Sprint's new argument that Section 260(c) of the Act shows that voice mail is not a telecommunications service, MCI contends that nothing in that section of the Act suggested that voice mail is anything other than a "telecommunications service" for purposes of resale under Section 252. MCI states that Section 260 does not alter or override the Act's operative definitions of telecommunications and telecommunications service.

> 'Telecommunications' . . . is 'the transmission , between or among points specified by the user, of information of the user's choosing, without change in the form or

> content of the information as sent and received.' 47 U.S.C. 153(48) Since voice mail is information of the sender's choosing which is transmitted between or among points specified by the user without change in form or content of the information as sent or received, it fits squarely within the definition of 'telecommunications service'.

MCI explains that the purpose of Section 260 of the Act is to establish nondiscrimination safeguards to protect other providers of telemessaging services from potential anticompetitive behavior, and it does not act as a limitation on the definition of "telecommunications" or "telecommunications service" under the resale provisions of Section 252.

We are not persuaded that we should reconsider our decision on the resale of voice mail service. In Order No. PSC-97-0294-FOF-TP we fully considered and fully addressed Sprint's main argument that voice mail is not a telecommunications service to be resold under the provisions of Section 252 of the Act. Sprint's additional argument that the characterization of voice mail as "telemessaging" in Section 260(c) proves that the Act adopts the FCC's earlier characterization of voice mail as an "enhanced service" and not a "telecommunications" service is simply a new argument on an old theme that we considered before. It does not present a mistake of law on which we should base a decision to reconsider our initial determination on the matter.

We do not agree with Sprint's analysis of the effect of Section 260. Section 260 addresses the establishment of nondiscrimination safeguards to protect other providers of telemessaging services from anticompetitive behavior by incumbent telecommunications providers. Its characterization of telemessaging to include voice mail is expressly limited to the provisions of that section, and it does not preclude the characterization of voice mail also as "telecommunications." Section 260 does not address the provision of telecommunications services for resale under Section 252, and it does not establish the fact that the FCC has determined that voice mail service is not to be considered a telecommunications service available for resale under the Act. In fact, in its First Report and Order 96-325, issued August 8, 1996, the FCC specifically stated that it would leave the determination of what services should be available for resale to the states. In that Order the FCC said the following;

> . . . . MCI argues that we should explicitly identify the following as telecommunications services that must be made available for resale: measured-rate business, flat-rate business, measured-rate residential, flat-rate residential; custom calling features (including all CLASS services); call blocking services; voice Messaging; Integrated Services Digital Network (ISDN), Basic Rate Interface(BRI), and Primary Rate Interface(PRI); flat-rate and measured trunk services(including all types of PBX trunks); Automatic Number Identification (ANI) over T-1; data services; promotions, optional calling plans, special pricing plans; calling card, directory services; operator services. . . .
>
> Incumbent LECs on the other hand, argue for a much more limited set of services, primarily those generally thought of as basic telephone services. . .
>
> We conclude that an incumbent LEC must establish a wholesale rate for each retail service that: (1) meets the statutory definition of a "telecommunications service;" and (2) is provided at retail to subscribers who are not "telecommunications carriers." We thus find no statutory basis for limiting the resale duty to basic telephone services, as some suggest.
>
> We need not prescribe a minimum list of services that are subject to the resale requirement. State commissions, incumbent LEC's, and resellers can determine the services that an incumbent LEC must provide at wholesale rates by examining the LEC's retail tariffs. . . . Order 96-325, pps.435-438.

In our Arbitration Order in this proceeding, we fully considered whether voice mail was "telecommunications" and whether the provision of it was a "telecommunications service" pursuant to the provisions of Section 252 of the Act. Sprint has not shown that we overlooked or failed to consider a fact or point of law in our determination that voice mail was a service that Sprint was obligated to offer for resale under the Act. For the foregoing reasons we deny reconsideration of this matter.

TSLRIC versus TELRIC

Sprint claims in its motion that the Commission improperly required the use of TSLRIC as the costing methodology for interconnection and unbundled network elements when there was no record evidence that either MCI or Sprint requested or supported TSLRIC for that purpose. Sprint argues that our authority under the arbitration provisions of the Act and under Florida arbitration law is limited to the issues submitted by the parties. Sprint also argues that no evidence was presented at the hearing that TSLRIC is the appropriate cost methodology, and therefore there is no record basis for the Commission's use of TSLRIC. Sprint claims that both parties relied upon and supported the TELRIC methodology for the costs presented.

Sprint also complains that our decision to use TSLRIC costing methods led us to the burdensome decision to require Sprint to conduct "extensive, new TSLRIC studies for unbundled loops", rather than the proxy models both parties used during the proceeding. Sprint requests that we reconsider our decision on TSLRIC and make a determination that a TELRIC-based unbundled loop study using Sprint's proxy is appropriate.

Sprint suggests that if we do not reconsider our TSLRIC decision, we should at least allow Sprint an extension of time to complete the unbundled loop studies. Sprint asks for a minimum of six months from the date of the Order on Reconsideration to submit the studies. Sprint also states that it would need additional time to file TSLRIC estimates for loop distribution. Sprint asks that it be granted an extension of time to prepare those studies to 60 days after MCI furnishes Sprint with forecasts of loop distribution demand and locations where loop distribution will be ordered.

Sprint also asks us to reconsider or clarify our order so that Sprint may use TELRIC and its proxy studies to develop deaveraged unbundled loop costs, and if not, Sprint asks for an extension of time of at least six months from the issuance of the Order on Reconsideration to submit deaveraged unbundled loop costs.

MCI opposes reconsideration of our TSLRIC vs. TELRIC decision and any extension of time to file cost studies upon which permanent rates may be set. MCI states that even though Sprint and MCI supported TELRIC at the hearing, Sprint has raised no point of fact or law that would require us to reconsider our choice.

MCI does agree with Sprint that the record supports the use of deaveraged prices for unbundled local loops. MCI claims that there is no record support for imposing an averaged unbundled loop rate even on an interim basis. MCI suggests that the cost studies submitted in the record of the proceeding could provide the basis for us to construct deaveraged interim prices pending Sprint's submittal of required TSLRIC cost studies.

Sprint has not provided any grounds at all that comply with the standard for reconsideration to support its request that we reconsider our decision to apply a TSLRIC methodology to set prices for unbundled elements. We fully addressed the question of which methodology to use to price unbundled elements. We reviewed the parties' proposals extensively, and rejected them. We explained in detail why we preferred the TSLRIC methodology over the methodologies the parties proposed. We devoted an entire section, 12 pages in all, to an analysis of those issues. See Order No. PSC-97-0294-FOF-TP, pps. 11-23.

Sprint disagrees with our decision, but it has not shown that we made any mistake of fact or law that would cause us to reconsider that decision. As previously stated, a motion for reconsideration is not a medium by which a party may simply advise the Commission of its disagreement with the decision, present additional arguments on matters fully addressed, reargue matters presented in briefs and in oral argument, or ask the Commission to change its mind as to a matter that has already received its careful attention. Sherwood v. State, 111 So.2d 96, 97-98 (Fla. 3d DCA 1959) (quoting State ex rel Jaytex Realty Co. v. Green, 105 So.2d 817, 818-19 (Fla. 1st DCA 1958)). Based on our standard of review for reconsideration, we deny reconsideration of this matter.

Common Costs

Sprint claims that the Commission's decision to offset an alleged overstatement of its annual charge factors in its TELRIC estimates against the recovery of common costs that it requested is not based on competent substantial evidence in the record and is therefore arbitrary and capricious. Sprint requests that we reconsider our decision and permit Sprint to increase the costs of its unbundled elements by 14.58%.

MCI responds that Sprint offered no proper basis for its request that we reconsider our decision regarding common costs. MCI claims that Sprint was simply requesting that it be permitted to increase the costs of its unbundled elements by 14.58%, just as it did in the hearing and in its posthearing statement. MCI argues that the record supports our finding that the 14.58% common cost factor proposed by Sprint was overstated. MCI also argues that Sprint has not shown any point of fact or law that we overlooked or failed to consider when we made our determination that Sprint's common costs were offset by the annual charge factor.

Again, it is our determination that Sprint has not provided any grounds to support its request that we reconsider our decision to deny Sprint recovery of its common costs in the price of unbundled elements. We specifically found that Sprint's annual charge factors were overstated, and determined that those charge factors were sufficient to obviate the need for additional common costs in the calculation of rates for unbundled elements. See Order No. PSC-97-0294-FOF-TP, p. 21. Sprint may disagree with our decision; Sprint may criticize the decision and the reasoning on which it was based; but Sprint has not shown any mistake of fact or law that would cause us to reconsider our decision. For these reasons we deny reconsideration on this matter.

Inclusion of switching features in unbundled local switching price

Sprint claims that we have misinterpreted the Act in requiring Sprint to include switching features, such as call waiting, Call Id, and Centrex, in its local switching price. Sprint states that our erroneous conclusion requires Sprint to price unbundled local switching at a level that is below the cost of providing those features. Sprint claims that the Act did not require that switching features must be incorporated into the unbundled switching rate. Sprint claims that switching features may also be unbundled and offered separately. Since we did not include the costs of the switching features, Sprint argues that the switching price we set does not cover the total cost. Sprint states; "If the Commission does not grant Sprint's request for reconsideration of the Commission's erroneous legal interpretation, the Commission must allow Sprint to submit a revised unbundled switching rate that covers all of the costs."

MCI responds that we properly determined that the Act requires the unbundled switching rate to include the vertical features of the switch. MCI states that the decision is consistent with the FCC's interpretation of the Act's definition of network element. MCI cites the FCC's First Report and Order, August 8, 1996 par. 412, where the FCC said;

> The 1996 Act defines network element as 'a facility or equipment used in the provision of a telecommunication service' and 'the features, functions, and capabilities that are provided by means of such facility or equipment.' Vertical switching features, such as call waiting, are provided through the hardware and software comprising the 'facility' that is the switch, and thus are 'features' and 'functions' of the switch. . . . Therefore, we find that vertical switching features are part of the unbundled local switching element.

MCI states that we considered Sprint's suggestion that an additional 22% of retail rates should be added to the unbundled switching rate to cover vertical features, but we rejected Sprint's proposal. Therefore, MCI argues, Sprint has not presented any point of fact or law that we failed to consider in our initial decision.

We conclude that Sprint has not presented sufficient grounds for us to reconsider our decision to include vertical features of the switch in the price for unbundled switching. We considered this question specifically in Order No. PSC-97-0294-FOF-TP at page 22, where we said;

> Sprint has also proposed that switching features such as Caller Id, Call Waiting, and Centrex, normally included in unbundled local switching, be priced separately at 22% of retail rates. We disagree with this approach and find that no separate prices shall be approved for switching features. Rather, the features shall be incorporated into the unbundled switching rate itself, as required by the Act.

Sprint may disagree with our interpretation of the Act, but as previously stated, disagreement with the decision does not meet the standard for reconsideration. We hereby deny Sprint's motion for reconsideration of this matter.

Sprint's Motion for Clarification

In its motion Sprint asks that we clarify the language of our decision on page 6 of Order No. PSC-97-0294-FOF-TP to indicate that Sprint is not required to study each and every end office switch for purposes of costing call termination. Sprint claims that costing procedures consistently and effectively rely on sampling as an effective costing technique rather than studying the entire universe. Sprint suggests that we did not intend to impose such a burdensome requirement on it.

MCI agrees with Sprint's request to the extent that it would not be appropriate to include outdated technology in a forward-looking costing methodology.

We find it appropriate to clarify our directive on page 6 to explain that Sprint need not file cost studies for every end office switch. As we pointed out in our Order, Sprint did not provide the information necessary to determine the appropriate zones for its remaining end offices for purposes of call termination. We did not intend to impose any additional burdensome requirement on the company. Therefore, we direct Sprint to conduct studies only to the extent necessary to identify the appropriate zone for each central office. This requirement essentially will complete the schedule that was filed with the Commission and identified at the hearing as Exhibit 21, p. 80 of 122.

Extension of time to file cost studies

Considering the fact that our calendar is very full, we will not be able to review Sprint's cost studies until the first quarter of 1998. Therefore, it is reasonable to allow Sprint an additional 120 days to prepare and file the studies.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Sprint's Motion for Reconsideration is denied. It is further

ORDERED that, as described in the body of this Order, Sprint's Motion for Clarification is granted. It is further

ORDERED that Sprint's request for an extension of time to file the cost studies required by Order No. PSC-97-0294-FOF-TP is granted for 120 days from the date this Order is issued. It is further,

ORDERED that this docket shall remain open pending review of the cost studies Sprint is required to provide by Order No. PSC-97-0294-FOF-TP.

By ORDER of the Florida Public Service Commission this 9th day of September, 1997.

Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

MCB

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 by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.