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November 10, 1999

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. 990149-TP

Dear Ms. Bayó:

Enclosed are an original and 15 copies of BellSouth Telecommunications, Inc.'s Response to MediaOne's Motion for Reconsideration and Request to File Supplemental Authority. Please file this document in the captioned matter.

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,

J. Phillip Carver (pw)

J. Phillip Carver

AFA
APP
CAF
CMU
CTR
EAG
LEG 1
MAS 3
OPC
PAI
SEC 1
WAW
OTH

6 Enclosures

cc: All parties of record
M. M. Criser, III
N. B. White
R. D. Lackey

CERTIFICATE OF SERVICE
Docket No. 990149-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail this 10th day of November, 1999 to the following:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of 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 Filed: November 10, 1999

BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE TO MEDIAONE'S MOTION FOR RECONSIDERATION AND REQUEST TO FILE SUPPLEMENTAL AUTHORITY

BellSouth Telecommunications, Inc. ("BellSouth") hereby files, pursuant to Rule 25-22.037(b), its Response to MediaOne's Motion for Reconsideration and Request to File Supplemental Authority, and states the following:

MediaOne Florida Telecommunications, Inc. ("MediaOne") has requested the Florida Public Service Commission ("Commission") to reconsider its Final Order in the above-styled case (Order No. PSC-99-2009-FOF-TP, issued October 14, 1999) as it relates to the price for CNAM databases and the provision of network terminating wire. MediaOne, however, has failed to raise any legally sustainable basis for reconsideration. Accordingly, the Motion should be denied.

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).[1] *MediaOne has failed to meet this standard.*

As to MediaOne's request that the Commission reconsider its ruling regarding the Calling Name ("CNAM") Database, MediaOne has not raised 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 is a UNE. Based upon this, MediaOne has requested that the Commission "order BellSouth to demonstrate its cost of providing . . . [CNAM] . . . service, so that the Commission can determine the appropriate charge for CNAM access." (Motion, p. 4). In effect, MediaOne is requesting that the Commission take further evidence to set the rate for CNAM as a UNE.

[1] This Commission cited specifically these same cases as setting forth the applicable standard in its recent Order No. PSC-99-2000-FOF-TP (entered October 13, 1999 in Docket No. 981121-TP).

After the filing of MediaOne's Motion (on November 5, 1999), the FCC released its Third Report and Order and Fourth Further Notice of Proposed Rulemaking (CC Docket No. 96-98), in which it did rule that CNAM is a UNE. For the reasons stated below, however, this Order does not constitute a basis for this Commission to reconsider its Order. Moreover, even if this Commission were to reconsider its Order and find that CNAM is a UNE, MediaOne's request that the Commission set a rate for CNAM (as a UNE) as if doing so were simply a ministerial act must be rejected.

To deal with the second point first, this Commission never considered what rate should be set for CNAM if it is a UNE. Instead as the Commission noted:

> Whether or not CNAM is a UNE determines the pricing of CNAM. If CNAM is a UNE as MediaOne asserts, then its rate must be based on a TELRIC cost standard. If it is not a UNE, as BellSouth asserts, then its pricing is BellSouth's prerogative.

(Order, 8)

The Commission properly ruled, based upon the evidence before it, that CNAM is not a UNE; so the task of considering evidence to arrive at a TELRIC based price was never undertaken. If this Commission were to undertake that task now, it would be necessary to have a factual record to do so, and this can only be accomplished through an evidentiary hearing. Still, even this approach is not really proper because the issue of the price to be charged for CNAM if it is a UNE was not only never before this Commission, it was never negotiated by the parties. Instead, discussions between the parties essentially "broke down" on the issue of whether or

not CNAM should be priced as a UNE. For this reason, the appropriate approach would not be to arbitrate a pricing issue that has not been negotiated, but instead to order the parties to negotiate an appropriate price.

However, even if MediaOne had requested the proper relief, it has still failed to state a basis for reconsideration, and is, therefore, not entitled to that relief. Again, MediaOne has failed to point out any error by this Commission. As the Commission's Order reflects, the touchstone in making a decision as to whether CNAM is a UNE is the pronouncement of the Supreme Court that the FCC "cannot blind itself to the availability of elements outside the incumbent's network (Order, p. 4, quoting, AT&T Corp. v. Iowa Utilities Board, 119 S. Ct. 721, Slip opinion, at 22). This Commission properly inquired as to whether alternative providers exist, and found that they do. MediaOne has cited to no error of the Commission that would require reconsideration of this finding.

BellSouth acknowledges that the FCC has now made the determination that CNAM is a UNE, in large part based upon the conclusion that "incumbent LECs are the only providers of CNAM database information." (FCC Order, Par. 416). Given the evidence that was presented before this Commission, (specifically, the availability of Illuminant as an alternate provider) it would appear that the FCC's ruling is, at best, questionable.[2] However, this Commission

[2] Also, the FCC Order specifically notes Comments filed by MediaOne to the effect that BellSouth is attempting to charge in Florida a rate that is many times what MediaOne pays in Georgia. (Id., fn 815). Based on the evidence that was present before this Commission, it is obvious that this is a misstatement of the facts. The "Georgia rate" is the temporary recurring flat rate that has been available through the pre-existing agreement between the parties. The "Florida rate" is the proposed rate that will replace the interim

should not premise its decision regarding reconsideration on whether the FCC was correct. Instead, this Commission's Order should stand because of the current limitations on the legal effect of the not yet final FCC Order.

First, the FCC Order will not be effective until 120 days after publication in the Federal Register (FCC Order, Par. 526). During this time period parties may file comments, and the Order may be modified. Even if it is not modified, given the proposed scope and content of the Order, it will almost certainly be appealed. If it is appealed, and a stay is granted (as occurred the last time that Rule 319 was appealed), then the order will have no legal effect until a final decision on appeal is rendered. This Commission should not reverse its well-reasoned decision based on an FCC Order that could change, and that will not be in effect for at least four months (and perhaps much longer).

On the other hand, if the FCC Order is either not appealed, or it is appealed and no stay is granted, then MediaOne would have the ability as soon as the Order becomes effective to demand that BellSouth negotiate a cost-based rate for CNAM, based upon the FCC's finding that it is a UNE. In other words, assuming that this Commission's decision stands and the FCC's Order becomes effective, the FCC Order will prevail, and MediaOne can act upon it to demand negotiation of the cost-based price for CNAM. This same result is the only relief that this Commission could properly grant if MediaOne were to prevail on its Motion for Reconsideration.

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rate on a permanent basis, not only in Florida, but anywhere that this service is purchased. (See, Order, p. 6).

Therefore, MediaOne's remedy in the event that the FCC's decision is not stayed (or implausibly, not appealed) is precisely the same whether this Commission reconsiders the subject Order or not: MediaOne will have the opportunity to negotiate a rate with BellSouth, and if these negotiations fail, it will be able to have an arbitration on the single issue of the price of CNAM. Therefore, there is no practical need for this Commission to reconsider its prior order—even if MediaOne had raised a legally sustainable basis for reconsideration.

The bulk of MediaOne's Motion for Reconsideration focuses on Network Terminating Wire ("NTW") rather than CNAM. MediaOne raises a variety of arguments to the effect that the Commission should have ruled differently than it did. In none of these arguments, however, does MediaOne raise anything new. Instead, MediaOne merely reiterates arguments that this Commission has already rejected.

First, MediaOne makes a somewhat nonsensical argument that the Commission erred in making the common sense determination that because BellSouth was willing to voluntarily treat NTW as a UNE, there is no need to formally rule that it is or is not a UNE. MediaOne, despite having the full benefit of this concession by BellSouth, makes the perplexing demand that the Commission formally declare that NTW is a UNE. Even if this Commission were to do so, this ruling would not change the end result of the Order (i.e., treating NTW as a UNE) one bit. More to the point, in making this demand, MediaOne

has raised nothing new, but instead, merely restates its previous arguments that NTW is a UNE.

Beyond this, MediaOne undertakes to quibble with the discretionary rulings of the Commission by arguing that there was no evidentiary basis to find that MediaOne's proposal to tamper with BellSouth's network without the presence or knowledge of BellSouth personnel is both technically infeasible and unrealistic. MediaOne, however, merely reargues the evidence upon which this Commission has already ruled. 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, MediaOne's reargument regarding NTW fails to satisfy the legal requirements for reconsideration.

MediaOne has failed to state a basis to satisfy the legal requirements of a Motion for Reconsideration. Although the FCC's ruling regarding CNAM does cast some doubt as to whether this Commission's decision will ultimately be pre-empted, the existence of this currently non-effective decision does not provide a basis to require reconsideration. Further, MediaOne's essential reargument of its positions regarding network terminating wire raises nothing new, and is insufficient as the matter of law to sustain a motion for reconsideration.

WHEREFORE, for the reasons stated above, BellSouth respectfully requests the entry of an Order denying MediaOne's Motion for Reconsideration.

Respectfully submitted this 10th day of November, 1999.

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