BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth Telecommunications, Inc. for arbitration of certain issues in interconnection agreement with Supra Telecommunications and Information Systems, Inc.	DOCKET NO. 001305-TP ORDER NO. PSC-02-0878-FOF-TP ISSUED: July 1, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER ON PROCEDURAL MOTIONS AND MOTIONS FOR RECONSIDERATION

BACKGROUND

On September 1, 2000, BellSouth Telecommunications, Inc. (BellSouth) filed a petition for arbitration of certain issues in a new interconnection agreement with Supra Telecommunications and Information Systems, Inc. (Supra). BellSouth's petition raised fifteen disputed issues. Supra filed its response, and this matter was set for hearing. In its response Supra raised an additional fifty-one issues. In an attempt to identify and clarify the issues in this docket, issue identification meetings were held on January 8, 2001, and January 23, 2001. At the conclusion of the January 23 meeting, the parties were asked by our staff to prepare a list with the final wording of the issues as they understood them. BellSouth submitted such a list, but Supra did not, choosing instead to file on January 29, 2001, a motion to dismiss the arbitration proceedings. On February 6, 2001, BellSouth filed its response. In Order No. PSC-01-1180-FOF-TI, issued May 23, 2001, we denied Supra's motion to dismiss, but on our own motion ordered the parties to comply with the terms of their prior agreement by holding an inter-company Review Board meeting. Such a meeting was to be held within 14 days of the issuance of our Order, and a report on the outcome of the meeting was to be filed with us within 10 days after completion of the meeting. The parties were placed

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on notice that the meeting was to comply with Section 252(b)(5) of the Telecommunications Act of 1996 (Act).

Pursuant to the Order, the parties held meetings on May 29, 2001, June 4, 2001, and June 6, 2001. The parties then filed post-meeting reports. Thereafter, several of the original issues were withdrawn by the parties. An additional twenty issues were withdrawn or resolved by the parties either during mediation or the hearing, or in subsequent meetings. Although some additional issues were settled, thirty-seven disputed issues remained.

We conducted an administrative hearing in this matter on September 26-27, 2001. On February 8, 2002, staff filed its post-hearing recommendation for our consideration at the February 19, 2002, Agenda Conference. Prior to the Agenda Conference, the item was deferred and placed on the March 5, 2002, Agenda Conference.

By Order No. PSC-02-0413-FOF-TP (Final Order), issued March 26, 2002, we resolved the substantive issues presented for our consideration, as well as several procedural motions filed by Supra on February 18, 21, and 27. A few minor scrivener's errors were corrected by Order No. PSC-02-0413A-FOF-TP, issued March 28, 2002.

On April 10, Supra filed a Motion for Reconsideration of Denial of its Motion for Rehearing of Order No. PSC-02-0413-FOF-TP. Supra also filed a separate Motion for Reconsideration and Clarification of Order No. PSC-02-0413-FOF-TP, portions of which were identified as confidential. On April 17, 2002, BellSouth filed responses in opposition to both Motions.

On April 24, 2002, Supra also filed a Motion to Strike and Reply to BellSouth's Opposition to Supra's Motion for Reconsideration for New Hearing. BellSouth filed its response in opposition on May 1, 2002.

On May 7, 2002, Supra filed a Motion for Leave to File Reply to BellSouth's Opposition to Motion to Strike, or in the Alternative, to Strike New Issues Raised in BellSouth's Opposition. On May 16, 2002, BellSouth filed its response in Opposition.

On May 13, 2002, BellSouth filed its Request for Leave to File Supplemental Authority.

On May 24, 2002, BellSouth filed a Motion for Reconsideration of Order No. PSC-02-0663-CFO-TP, wherein the Prehearing Officer denied confidential treatment of certain information contained in an April 1, 2002, letter to Commissioner Palecki.

On May 29, 2002, Supra filed a Motion for Reconsideration of Order No. PSC-02-0700-PCO-TP.

On May 31, 2002, Supra filed a Cross Motion for Clarification and Opposition to BellSouth's Motion for Reconsideration and Partial Reconsideration of Order No. PSC-02-0663-FOF-TP.

This Order addresses Supra's and BellSouth's Motions for Reconsideration, as well as the Motion to Strike, the Motion for Leave to File Reply or the Alternative to Strike, Cross Motion for Clarification and Partial Reconsideration, and the Request for Leave to File Supplemental Authority.

JURISDICTION

We have jurisdiction in this matter pursuant to Section 252 of the Act to arbitrate interconnection agreements, as well as Sections 364.161 and 364.162, Florida Statutes. Section 252 states that a state commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. Further, while Section 252(e) of the Act reserves the state's authority to impose additional conditions and terms in an arbitration consistent with the Act and its interpretation by the FCC and the courts, we utilize discretion in the exercise of such authority. In addition, Section 120.80(13)(d), Florida Statutes, authorizes us to employ procedures necessary to implement the Act.

We also retain jurisdiction of our post-hearing orders for purposes of addressing Motions for Reconsideration pursuant to Rule 25-22.060, Florida Administrative Code, and of our prehearing officers' orders pursuant to Rule 25-22.0376, Florida Administrative Code.

I. MOTION FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY

As stated in the Background, On May 13, 2002, BellSouth asked for leave to file as supplemental authority the recent Supreme Court decision in Verizon Communications Inc. et al. v. Federal Communications Commission, et al., Case Nos. 00-511, 00-555, 00-587, 00-590, and 00-602, 535 U.S. _____, 2002 WL 970643 (May 13, 2002). BellSouth contends that the decision bears directly on Issue M in this case, which pertains to the meaning of the phrase "currently combines" as it relates to UNE combinations.

Supra did not file a response to BellSouth's request.

Upon consideration, we grant BellSouth's request. To the extent, if any, that the Verizon decision impacts Issue M, the case is accepted as authority upon which we may rely.

II. Supra's Motion to Strike and Reply to BellSouth's Opposition to Supra's Motion for Reconsideration for a New Hearing in Docket No. 001305-TP (Motion to Strike) and/or Supra's Motion for Leave to File Reply to BellSouth's Opposition to Motion to Motion to Strike, or in the Alternative, to Strike New Issues Raised in BellSouth's Opposition?

A. Motion to Strike

Supra

In its Motion, Supra seeks to strike certain portions of BellSouth's response which it deems scandalous and designed to harass and embarrass. Specifically, Supra asks to have Section VI of BellSouth's Opposition stricken, wherein BellSouth contends that Supra has deliberately created delay in this proceeding. Supra also seeks to reply to BellSouth's opposition to its Motion, and states that nothing in the Florida Administrative Rules expressly prohibits the filing of a necessary reply. Supra asserts that BellSouth should not be permitted to benefit from its deliberate silence and desire to conceal information from Supra. It considers disingenuous BellSouth's assertions that Supra deliberately delayed pursuing its assertions of wrongdoing until after our staff's post hearing recommendation in this docket was filed, and that Supra

intentionally waited until after we voted before issuing its public records request. Supra notes that BellSouth cites no law or legal precedent requiring Supra to file its Motion for a new hearing in October of 2001. As such, Supra maintains that BellSouth's assertion that Supra delayed in filing for a new hearing intentionally is baseless. Supra then counters that BellSouth could have notified Supra of a Commission staff person's wrongdoing as early as May 3, 2001, but that it chose to remain silent.

Supra further maintains that a private conversation was held between Marshall Criser, BellSouth's Vice-President of Regulatory Affairs, and Dr. Mary Bane, Executive Director of the Commission, on or before September 21, 2001, regarding one of our staff, but the person was not reassigned from the instant docket. Supra presumes that Mr. Criser communicated to Dr. Bane the degree of importance BellSouth attached to Docket No. 001305-TP, and this is why the staff person was not terminated or reassigned. Supra also maintains that upon notification of the staff person's communications, Supra was assured that an internal investigation would be conducted, and was asked by our General Counsel not to take any action until after completion of that investigation. Supra then asserts that no meaningful investigation was completed, and states that any delay in its filing of a motion for a new hearing prior to February 8, 2002, was a direct consequence of the conspiracy and cover-up engaged in by both BellSouth and senior managers of this Commission. Supra asserts that our failure to notify it immediately of the staff person's conduct and remove that person from all cases involving BellSouth, is an indication of widespread bias in favor of BellSouth, and is the only reason why this information was not included in Supra's Motion for Rehearing filed on February 18, 2002.

Supra also asserts that while it and BellSouth filed a Joint Motion of Voluntary Dismissal Without Prejudice of Docket No. 001097-TP, it had sought a dismissal from the outset of that proceeding. Supra now believes that BellSouth sought the voluntary dismissal in order for BellSouth to claim that the dismissal demonstrates that Supra is not concerned with its due process rights, and to ensure that Kim Logue remained and participated in Docket No. 001305-TP.

Supra's final assertion is that the dates of its public records requests are impertinent and immaterial in light of BellSouth's and what it perceives as our silence regarding the substance of such e-mails, and BellSouth's arguments regarding such are scandalous and designed to divert attention from BellSouth's misconduct. Supra argues that BellSouth's entire argument under Part VI of its Motion must be stricken as impertinent, immaterial and scandalous.

BellSouth

BellSouth asserts that Supra's Motion is an impermissible filing. BellSouth contends that it is well-settled that reply memorandums are not recognized by our rules or the rules of the Administrative Procedures Act, and notes that Supra has raised this very argument in Docket No. 980119-TP. BellSouth also notes that Supra's Motion to Strike is pursuant to Rule 1.140(f) of the Florida Rules of Civil Procedure. BellSouth argues that the rule contemplates the striking of matter from any pleading, and asserts that Supra's Motion is not a pleading subject to the rule.

In addition, BellSouth argues that even if one considers its Opposition to Supra's Motion for Reconsideration a "pleading" as contemplated by Rule 1.140, Supra has not demonstrated that the matter to be stricken is "wholly irrelevant, can have no bearing on the equities and no influence on the decision." *Citing* McWhirter, Reeves, McGlothlin, Davidson, Rief & Bakas, P.A., 704 So. 2d 214, 216 (Fla. 2nd DCA 1998). BellSouth argues that, much to the contrary, its argument that Supra should not benefit from its delay in complaining about the "appearance of impropriety" in this Docket is very relevant to Supra's request for us to reconsider our decision to deny Supra a rehearing in this matter. Furthermore, BellSouth contends that the allegations in Section VI should not be considered libelous or defamatory simply because the matters set forth therein are based upon what it understands to be uncontroverted facts. BellSouth contends that the fact that Supra disagrees with its argument that Supra intended to delay does not amount to a "scandalous" pleading.

B. Motion for Leave to File Reply or Alternative Motion to Strike

Supra

Supra asks that it be allowed to file a Reply addressing BellSouth's request for sanctions. Supra contends that pursuant to Rule 28-106.204, Florida Administrative Code, any request for relief should be made by motion, instead of buried in a reply. If it is not allowed to file such a reply, Supra asks that the pertinent section of BellSouth's response, Section IV, be stricken.

BellSouth

BellSouth argues that Supra's Motion for Leave should be denied because such a reply is not contemplated. BellSouth also argues that simply because it raised a new issue in its response does not authorize Supra to reply; otherwise, we would be caught in cycle of perpetual filings every time a new issue arises.[1]

BellSouth further argues that "courts should look to the substance of a motion and not to the title alone." *Citing* Mendoza v. Board of County Commissioners/Dade County, 221 So. 2d 797, 798 (Fla. 3rd DCA 1969). BellSouth adds that since Supra has essentially filed its response to BellSouth's request for sanctions, Supra's alternative Motion to Strike is moot.

C. Decision

We believe that the concerns raised in Section VI of BellSouth's Opposition to Supra's Motion for Reconsideration do not violate the standard of Rule 1.140, Florida Rules of Civil Procedure, in that the assertions contained therein do not appear to be "redundant, immaterial, impertinent, or scandalous." We do, however, agree that Section IV of BellSouth's Opposition to Supra's Motion to Strike should be stricken, in that the section contains an affirmative request for relief, a request for sanctions, which

[1]We note that such already appears to be the case in this proceeding.

should have been in a motion in accordance with Rule 28-106.204, Florida Administrative Code.[2]

Upon consideration, we find that Supra's Motion to Strike, as it pertains to Section VI of BellSouth's Opposition to Supra's Motion for Reconsideration for a New Hearing in Docket No. 001305-TP, is denied. Further, regarding Supra's Motion for Leave to File Reply to BellSouth's Opposition to Motion to Strike, or in the Alternative, to Strike New Issues Raised in BellSouth's Opposition, we find that the Motion for Leave to File Reply is also denied, but the Motion to Strike New Issues Raised in BellSouth's Opposition, specifically those pertaining to BellSouth's request for sanctions, is granted.

III. Supra's Motion for Reconsideration of Denial of its Motion for Rehearing of Order No. PSC-02-0413-FOF-TP

Supra

Supra contends that in ruling upon its request for rehearing, we erred in the following respects: 1) we did not correctly apply pertinent legal precedent; and 2) we did not consider the specific facts available to us. In support of these contentions and in addition to its legal arguments set forth in the Motion, Supra has provided exhibits A - Y, which consist of our employee e-mail, memoranda of ourselves and our staff, personnel information, and the hand written notes of our staff.

Specifically, Supra argues that a new hearing should be granted because we failed to apply the proper precedential legal standard for granting a new hearing, which it contends to be "the appearance of impropriety." Supra contends this legal standard was enunciated in Order No. PSC-02-0143-PCO-TP, issued January 31, 2002, issued in Docket No. 001097-TP. Supra contends that this Order clearly established that a party has a right to new hearing

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[2]We note that the Mendoza case cited by BellSouth is distinguished in that it pertained to a "Motion Notwithstanding The Verdict" that should have been styled as a "Motion For Judgment In Accordance With Motion For Directed Verdict." The requested relief was, however, set forth in a motion, though improperly titled.

any time there is the mere appearance of any impropriety or misconduct in the case. Supra emphasizes that the Prehearing Officer's Order did not make a finding that any bias or impropriety occurred in that proceeding, but only that a new hearing should be afforded to Supra in order to "remove any possible appearance of prejudice." Order No. PSC-02-0413-PCO-TP at p. 2.

Supra further contends that our staff's recommendation on its request for rehearing mischaracterized its request as a request based upon staff's recommendation, rather than a request based upon our own precedent. Supra adds that the recommendation and the Order also inaccurately state that Supra alleged that BellSouth and our staff had conspired against it, when Supra instead maintains that it only alleged the existence of the "appearance of impropriety" as a result of Ms. Logue's conduct in Docket No. 001097-TP.

Supra adds that we improperly attempted to modify the standard set by the Prehearing Officer in Docket No. 001097-TP by requiring "evidence or an allegation of any specific improper act" and a demonstration of prejudice. Id. at p. 17-18. Supra maintains that similar variations on the established standard of "appearance of impropriety" occur throughout our decision in Order No. PSC-02-0413-FOF-TP.

Supra also maintains that we have made a mistake of fact in that Supra did identify instances that create the "appearance of impropriety," which it believes warrant a new hearing. Supra extensively references the communication regarding Docket No. 001097-TP between Ms. Logue, a staff supervisor, and the Director of BellSouth's Regulatory Affairs, and maintains that this communication certainly creates an "appearance of impropriety" in this Docket, Docket No. 001305-TP, as well. Supra also references other possible communications between BellSouth and our staff, which it believes constitute improper staff contacts that should serve as a basis for a rehearing in this Docket, including an e-mail in which a member of the legal staff indicates that BellSouth is pleased that a prehearing will be held sooner rather than later.

In addition, Supra alleges that we should have given greater consideration to the results of our own internal investigations regarding Ms. Logue's conduct and infers that our senior staff may

have participated in the falsification of information and official misconduct in violation of Section 839.25(1), Florida Statutes, by not providing accurate information regarding Ms. Logue's conduct and subsequent departure.

Supra emphasizes that this appearance of impropriety and of misconduct is further exacerbated by BellSouth's alleged misconduct in failing to immediately notify us regarding Ms. Logue's conduct with regard to Docket No. 001097-TP. Supra maintains that when these apparent improprieties in Docket No. 001097-TP are coupled with Ms. Logue's attendance at the hearing in this Docket, we must find that an "appearance of impropriety" arises in this Docket, and that it erred in Order No. PSC-02-0413-FOF-TP by failing to so find.

Supra also argues that the notes of Inspector General Grayson's investigation demonstrate actual "improper acts" by our staff regarding Ms. Logue's conduct and that this results in an "appearance of impropriety" in this Docket. Specifically, Supra contends that numerous individuals knew of Ms. Logue's misconduct in Docket No. 001097-TP prior to the hearing in this Docket, but that they failed to notify Supra. Supra contends that this failure to disclose information regarding Ms. Logue's acts prior to the hearing in this Docket creates an "appearance of impropriety" that we failed to consider. Supra notes that it believes that the letter sent to it on October 5, 2001, informing it of Ms. Logue's conduct was designed to intentionally misrepresent when the misconduct was discovered.

Supra also contends that we failed to consider Rule 1.540(b)(2) and (3) of the Florida Rules of Civil Procedure in rendering our decision. This rule provides, in pertinent part, that:

> (b) **Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.** On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, decree, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered

> evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) that the judgment or decree has been satisfied, released, or discharged, or a prior judgment or decree upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or decree should have prospective application. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment, decree, order, or proceeding, was entered or taken. . . .

Supra adds that even if we find that Supra's Motion was untimely, we must still order a new hearing pursuant to this Rule, because " . . . Commission Senior Staff which are responsible for overseeing Commission employees were engaged in a "conspiracy" and "cover-up" against Supra." Motion at p. 44.

Finally, Supra argues that we erred in failing to send this case to DOAH for the new hearing. Supra argues that we failed to address this point and our authority to make such an assignment pursuant to Section 350.125, Florida Statutes, and Section 120.57(1), Florida Statutes. Supra argues that this process would be more efficient, would still allow us to make the important public policy decisions, and would provide the parties with a sense of security that they would be receiving a fair and impartial hearing.

<u>BellSouth's Response</u>

BellSouth responds that "Supra's Motion offers no legitimate grounds for reconsideration." BellSouth argues that Supra's motion fails to comply with the standard for reconsideration in that it consists of new arguments, new information, and old arguments that were previously addressed and rejected by us. Furthermore, BellSouth maintains that even if we considered the arguments and information in Supra's motion, none of the information supports

that either actual or apparent impropriety attaches to this Docket and the hearing conducted in it. Therefore, BellSouth argues that Supra has failed to identify an error in our decision or any point of fact or law that we failed to consider.

Specifically, BellSouth argues that much, if not most, of what Supra has raised in its Motion constitutes reargument, which is improper within the context of a Motion for Reconsideration.[3] BellSouth maintains that we have already addressed Supra's arguments regarding alleged impropriety and assignment of this matter to DOAH.

BellSouth also argues that it would not be proper to consider Supra's exhibits A - Y, because these are extra-record exhibits, nor should we address the new arguments raised by Supra, such as its argument regarding the applicability of Rule 1.540(b), Florida Rules of Civil Procedure. BellSouth asserts that it is well-settled that it is improper to consider evidence outside the hearing record in rendering a decision on reconsideration, and that new evidence and arguments cannot be introduced.[4]

In addition, BellSouth argues that Supra cannot show any prejudice occurred in this Docket, nor can it establish even the "appearance of impropriety." BellSouth states that Supra has not shown anything that would indicate Ms. Logue improperly influenced our staff in this Docket. Furthermore, BellSouth emphasizes that it is not staff that rendered the decision but ourselves, the Commissioners, and that we did not simply adopt our staff's recommendation, but instead received additional briefing and oral arguments regarding the issues. As for the attached exhibits, BellSouth argues that these show only a clearer picture of the events that occurred in Docket No. 001097-TP, but that they do not pertain at all to this Docket. BellSouth maintains that Supra's

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[3]*Citing* Diamond Cab Co. V. King, 146 So. 2d 889, 891 (Fla. 1962); Order No. PSC-96-1024-FOF-TP, issued in Docket No. 950984-TP; Order No. PSC-96-0347-FOF-WS, issued in Docket No. 950495-WS; and Order No. PSC-95-0274-FOF-WU, issued in Docket No. 940109-WU.

[4]Order No. PSC-95-0274-FOF-WU, supra; Order No. PSC-01-2051-FOF-TP, issued in Docket No. 990649-TP; and Order No. PSC-97-1510-FOF-WS, issued in Docket No. 960235-WS.

attempts to infer that what occurred in Docket No. 001097-TP creates an "appearance of impropriety" in this Docket are "desperate" maneuvers to reach a conclusion that simply cannot be reached based on the facts presented.

BellSouth further maintains that we did not fail to consider an established standard for setting a matter for rehearing. Instead, BellSouth argues, Supra improperly attempts to convert Chairman Jaber's discretionary decision to reschedule Docket No. 001097-TP into a mandatory rule. BellSouth maintains that "The permissive standards under which the Commission *may* elect to grant a rehearing are not the same as the mandatory standard under which the Commission *must* grant a rehearing. Few would argue that the Commission *must* grant a new hearing if actual prejudice to a party has been demonstrated." (Emphasis in original) Opposition at p. 8; *citing* Reynolds v. Chapman, 253 F.3d 1337 (11th Cir. 2001); Order No. PSC-02-0413-FOF-TP at p. 20. BellSouth emphasizes that it is within our discretion to grant a new hearing upon a lesser showing, but such relief is purely discretionary and does not mandate the same result in every case.

As for Supra's argument regarding the applicability of Rule 1.540, Florida Rules of Civil Procedure, BellSouth believes that this is a "red herring." In addition to the fact that this is a new argument which BellSouth believes could be rejected on that basis alone, BellSouth also maintains that this Rule provides no basis for an administrative body to set a new hearing. BellSouth adds that even if it does, Supra has not made the proper demonstration of fraud to meet the standard of the rule.

Finally, BellSouth argues that Supra's Motion for Reconsideration, including its allegations of misconduct, is improperly interposed for the purposes of harassment and delay and as such, should be rejected in accordance with Section 120.595, Florida Statutes.

Decision

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 we failed to consider in rendering our 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). Furthermore, 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).

Upon consideration, we find that Supra's Motion for Reconsideration of our denial of its Motion for Rehearing in Order No. PSC-02-0413-FOF-TP fails to meet the standard for a motion for reconsideration. Supra's arguments regarding the linkage between apparent improprieties in Docket No. 001097-TP and this Docket were thoroughly considered and addressed in our Order, as was its request to have this matter set for rehearing and assigned to DOAH. See Order at pp. 9-23. Reargument is improper in the context of a motion for reconsideration. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959).

As for Supra's arguments regarding new information derived from its public records request, this information and the related arguments are extra-record, and as such shall not be considered. Furthermore, the information does not "identify factual matters set forth in the record and susceptible to review," but instead requires much inference in order to reach Supra's conclusions, which does not provide a proper basis for reconsideration. Steward Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); see also Order No. PSC-01-2051-FOF-TP at pp. 18-19.

With regard to Supra's arguments regarding the applicability of Rule 1.540(b)(2) and (3), Florida Rules of Civil Procedure, we not only believe that this is a new argument that should not be considered, but that even if considered, this argument fails on the merits. With regard to subsection (2), the exhibits provided, even if considered "new evidence," pertain to Docket No. 001097-TP and occurrences therein, which logically would not constitute a basis for just relief from our Final Order in this docket and would not change the ultimate result if a new hearing were granted. As set

forth in Morhaim v. State Farm Fire and Casualty Co., 559 So. 2d 1240, 1241 (Fla. 3rd DCA 1990):

> The requirements for granting a new trial on the basis of newly discovered evidence are: (1) **that the evidence is such as will probably change the result if a new trial is granted;** (2) that it has been discovered since the trial; (3)that it could not have been discovered before the trial by the exercise of due diligence; (4) that it is material to the issue; and (5) that it is not merely cumulative or impeaching. McDonald v. Pickens, 544 So.2d 261 (Fla. 1st DCA), review denied, 553 So.2d 1165 (Fla. 1989); Kline v. Belco, Ltd., 480 So.2d 126 (Fla. 3d DCA 1985), review denied, 491 So.2d 278 (Fla. 1986); King v. Harrington, 411 So.2d 912 (Fla. 2d DCA), review denied, 418 So.2d 1279 (Fla. 1982). (Emphasis added)

The Morhaim decision also emphasized that, "The rule is well-settled that 'a new trial based on newly discovered evidence must be cautiously granted and is looked upon with disfavor.'" Id. at 1242; *citing* King v. Harrington, 411 So.2d at 915; Dade National Bank of Miami v. Kay, 131 So. 2d 24 (Fla. 3d DCA), cert. denied, 135 So. 2d 746 (Fla. 1961).

As for subsection (3) of the rule, guidance may be derived from the decision in Wilson v. Charter Marketing Company, wherein the court noted that:

> . . . because the Florida Rules of Civil Procedure are modeled after the Federal Rules of Civil Procedure, federal decisions are highly persuasive in ascertaining the intent and operative effect of various provisions of the rules." Wilson v. Clark, 414 So.2d 526, 531 (Fla. 1st DCA 1982). In order to be successful under a Federal Rule 60(b)(3) motion, the moving party must establish by clear and convincing evidence that the verdict

> was obtained through fraud, misrepresentation, or other misconduct and that the conduct complained of prevented the losing party from fully and fairly presenting his case or defense. Bunch v. United States, 680 F.2d 1271 (9th Cir. 1982).

Wilson v. Charter Marketing Company, 443 So. 2d 160, 161 (Fla. 1st DCA 1983). See also Fagan v. Powell, 237 So. 2d 579, 581 (Fla. 3rd DCA 1970)(the rule allows a court, "upon the proof of certain facts to its satisfaction," to vacate its own judgment.) We do not believe that Supra's arguments or exhibits establish that fraud, misrepresentation, or other misconduct occurred with regard to this Docket. For these reasons, we believe this argument fails on the merits.

For all of the above reasons, we deny Supra's Motion regarding this issue for failure to meet the standard for reconsideration. We note that Supra filed a Reply to BellSouth's Opposition to its Motion on April 24, 2002.[5] Such a reply is not contemplated by our rules or the Rules of Civil Procedure and as such, it has not been considered.

V. Supra's Motion for Reconsideration and Clarification of Order No. PSC-02-0413-FOF-TP

In its Motion, Supra seeks reconsideration or clarification of 22 of the 37 issues arbitrated in this docket. Supra also seeks relief pursuant to Rule 1.540(b) of the Florida Rules of Civil Procedure. We now address, in turn, each issue raised by Supra. For reference purposes, the headers and letters identified in our analysis below correspond with the headers/letters of the decisions at issue as they were reflected in Order No. PSC-02-0413-FOF-TP; as such they are not necessarily alphabetical.

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[5]BellSouth objected to the reply on May 1, 2002.

A. Agreement Template.

Supra

Supra argues that it provided evidence that we and the parties are familiar with the current agreement, that BellSouth had previously used existing agreements with ALECs as a starting point for new contracts, and that we had approved such final, arbitrated agreements. Supra believes that BellSouth's claim that the new template reflects changes in the industry and law is unsubstantiated by the record. Supra asserts that BellSouth did not identify any "massive changes" in industry practice and law, and that BellSouth witness Hendrix affirmed that the changes had not been broken down into smaller parts for negotiation by the parties. Supra maintains that any "massive changes" could be incorporated into the parties' current agreement, but this was not done as BellSouth is seeking to completely overhaul the limits of its obligations. Supra also maintains that we simply accepted BellSouth's argument.

Supra also states that while we ordered that BellSouth's most current agreement be used as the parties' base agreement, BellSouth's most current template agreement is not in the record in this proceeding. Supra further states that BellSouth is not the only party to produce an interconnection agreement in its entirety, noting that Hearing Exhibit 4 was a complete copy of the 1997 AT&T/BellSouth agreement as adopted by Supra. Supra believes that BellSouth had the burden to substantiate its claim that massive changes would be required to reflect the changes in law and technology, and that in the absence of BellSouth providing such evidence, or us obtaining such evidence to enter into the record, we should reconsider our decision and require the parties to use the AT&T agreement adopted by Supra as the base agreement.

BellSouth

In its response, BellSouth claims that Supra's motion does not identify any factual or legal point that we overlooked in deciding the issue, and has offered no basis for reversal of our original decision. BellSouth disputes Supra's claim of unfamiliarity with the proposed agreement, noting that Supra was supplied with a draft on July 20, 2000. BellSouth claims that it would be the party

prejudiced if forced to use a different agreement. BellSouth states that Supra only objected to the agreement months after receiving it, and past the time BellSouth would have been able to raise additional arbitration issues. BellSouth maintains that the expired agreement submitted by Supra was not updated or modified, and would not be a meaningful alternative to the template proposed by BellSouth. BellSouth argues that Supra mischaracterizes our intent as to which template agreement should be used and that the base agreement, filed with BellSouth's petition for arbitration, is the correct one.

Decision

Supra argues that we do not point to any evidence in the record that would warrant the use of the current template agreement instead of the existing agreement. However, the Order clearly reflects that we sought an agreement which reflects the current state of the law. BellSouth produced such an agreement very early on in this proceeding. Supra did not. The Order reflects that, based upon the record available, we chose the agreement that would be most suitable. Order No. PSC-02-0413-FOF-TP at pp. 28-29. Further, Supra failed to produce an alternative agreement until after the hearing had begun, and even then it was the expired agreement with no changes or proposed modifications.

Supra also argues that BellSouth's agreement filed as part of the proceeding is not in fact the most current. This is a new argument which was not addressed in the record, and thus is not a proper basis for reconsideration. However, we note that the second full paragraph of page 29 of the Order clearly states "BellSouth's most current template agreement, filed with their petition for arbitration. . . ." (Emphasis added). Because Supra has failed to identify a mistake of fact or law we made in rendering our decision, we find that Supra's Motion regarding this issue is denied.

B. Appropriate Forum for Submission of Disputes Under the New Agreement.

Supra

Supra states that it seeks to keep the same alternative dispute resolution provisions contained in the parties' current agreement. Supra believes that in not adopting Supra's position, we have ignored Supra's evidence of BellSouth's tortuous intent to harm Supra. Supra also believes our interpretation of the decision in BellSouth Telecommunications Inc. v. MCIMetro Access Transmission Services, et al. 2002 US. App. Lexis 373 (11th Cir. 2002)(hereinafter MCIMetro), is flawed. Supra does not believe that the language of Section 364.162(1), Florida Statutes, expressly confers upon us the authority to resolve disputes arising out of previously approved agreements. Supra also contends that the Order failed to cite legal authority for our conclusion that Section 364.162(1), Florida Statutes, is an express delegation of quasi-judicial authority. Supra asserts that the language of Section 364.162(1), Florida Statutes, confers only quasi-legislative power upon us to revisit previously set rates and prices. Supra argues that its interpretation of the plain meaning of the statute requires us to limit our dispute resolution authority to terms and conditions related to prices, and prices only. This, says Supra, is consistent with what it believes is our role as a quasi-legislative ratemaking authority.

Supra then provides its interpretation and analysis of the applicable statute. Supra states that after having examined the legislative intent behind subsection 364.162(1), Florida Statutes, the statute may be read as a whole to properly construe its effect. Supra believes that a reading of the statute affirms our role as a quasi-legislative ratemaking authority. Supra argues that the Florida Supreme Court has affirmed that our essential function is as a "regulator of rates" Southern Bell Tel. and Tel. Co. v. Florida Pub. Serv. Comm'n, at 783, and that this reading is consistent with the 11th Circuit's decision in BellSouth v. MCImetro.

Supra also states that Section 364.162(1), Florida Statutes, is susceptible to more than one reasonable interpretation, and as such requires a review and application of the rules of statutory

construction to discern whether the legislature intended Section 364.162(1) to be an express delegation of quasi-judicial authority. Supra compares the language of Section 364.162(1), Florida Statutes, with that of Section 364.07(2), Florida Statutes, which it deems an explicit delegation of quasi-judicial authority. Through its review of the canons of construction as applied to the above Sections, Supra concludes that the language utilized by the legislature in Section 364.162(1), Florida Statutes, is limiting in nature and does not utilize any of the same terms used in Section 364.07(2), Florida Statutes. As such, says Supra, it cannot be relied upon as authority to adjudicate disputes arising out of previously approved interconnection agreements.

Supra also believes that our decision failed to acknowledge the binding and controlling nature of the 11th Circuit's decision in MCImetro. Supra argues that in its February 7, 2002, Recommendation, our staff reached the incorrect conclusion regarding the force of law of the MCImetro decision, and then revised its position in the February 25, 2002, Revised Staff Recommendation. Supra maintains that the MCImetro decision does have the force of law in Florida, and this requires the analysis of our authority to adjudicate disputes outlined above. Supra believes that the 11th Circuit's decision is binding and controlling until reversed, and that we have not reviewed the record. Supra maintains that our staff has blindly accepted BellSouth's assertions as to the state of the law, and this demonstrates bias in favor of BellSouth

BellSouth

BellSouth believes that Supra's arguments are essentially the same as those included in Supra's post-hearing brief. BellSouth contends that Supra's two assertions, that we misinterpreted our authority under state law and that we failed to acknowledge the binding and controlling nature of the Eleventh Circuit's decision in MCImetro, do not provide a basis for reconsideration. BellSouth asserts that Supra's position amounts to a disagreement with our conclusion. BellSouth believes the record indicates that we did consider the 11th Circuit's decision in MCIMetro. According to BellSouth, the record indicates that neither the Eleventh Circuit nor any court has considered whether we, under Florida law, have jurisdiction to resolve disputes, or whether we have the authority

to compel the parties to submit to binding arbitration. BellSouth reiterates its position that there is no legal support for Supra's position that BellSouth be compelled to submit to arbitration, and concludes that we supported that position in our ruling in the AT&T-BellSouth arbitration in Docket No. 000731-TP.

Decision

Supra has failed to demonstrate that we either failed to consider or overlooked any point of fact or law. The Order clearly demonstrates that we considered the arguments raised by Supra. Thus, Supra's motion on this point is mere reargument, which is inappropriate for a motion for reconsideration. See Order No. PSC-02-0413-FOF-TP at pp. 29-37. Supra's motion regarding this issue is denied.

C. Filing of Agreement by Non-Certificated ALECs.

Supra

Supra maintains that we erroneously relied upon Section 364.33, Florida Statutes in reaching our conclusion, and have read beyond the plain and unambiguous language of the statute. By Supra's reading, any ALEC, whether certified or not, has the right to legally conduct test orders in Florida, so long as the ALEC is not providing telecommunications services to consumers. Supra also questions our authority to impose such a condition, stating that in Issues DD and EE, we declined to impose the adoption of a liability in damages and specific performance provisions on the basis that such provisions were not required to implement an enumerated item under Sections 251 and 252 of the Act. According to Supra, our mere belief that the inclusion of such a provision is in the best interest of Florida consumers fails to meet the conditions mandated by MCI v. BellSouth, 112 F. Supp. 2d 1286.

BellSouth

BellSouth maintains that Supra argues that we misinterpreted Florida law, and disagrees with our conclusion. This, says BellSouth, is not a basis for reconsideration. BellSouth believes that Supra has not identified a factual or legal point that we overlooked in reaching our decision.

Decision

Supra's Motion clearly does not meet the criteria for reconsideration on this point. Supra has failed to identify a point of fact or law that we overlooked when considering our Order. Supra simply reargues that we should have adopted its view of Section 364.33, Florida Statutes. We have considered Supra's arguments and rejected them. See Order No. PSC-02-0413-FOF-TP at pp. 41-43. Accordingly, reconsideration is denied on this point.

Additionally, Supra questions our authority to render a decision on this issue because Supra believes such a decision is not necessary to comply with section 251. According to Supra, in arbitrating Issues DD (damages liability clause) and EE (specific performance clause) we declined to rule on the merits because such a ruling was not required to implement an enumerated item under Sections 251 and 252 of the Act. Supra contends the same logic we used in addressing damage liability and specific performance should apply to this issue as well. We disagree with Supra's assertion. Pursuant to 47 U.S.C. 252(i)(3), a state commission is not prohibited from establishing or enforcing other requirements of state law in its review of an agreement. The Order clearly demonstrates our intent to effectuate state law.

D. Customer Service Records.

Supra

Supra argues that we erroneously determined that Supra should not be able to download Customer Service Records (CSRs) from BellSouth. More specifically, Supra asserts that there is no evidence in the record, other than allegations by BellSouth, that CSRs contain customer proprietary network information (CPNI). Id. Supra believes it is BellSouth's burden to prove that CSRs contain CPNI and that BellSouth failed to meet its burden. As such, Supra requests we reconsider its conclusion that downloading CSRs would violate Section 222 of the Act.

BellSouth

BellSouth contends Supra ignores both the testimony of witness Pate and Supra's own witness Ramos in arguing the record does not

show that CSRs do not contain CPNI. BellSouth also states that Supra is rearguing its interpretation of the Act, which we previously rejected in our Order.

Decision

Supra did not contest BellSouth's assertion that CSRs contain CPNI at hearing or in its post-hearing brief. BellSouth's witness Pate testified that CSRs contain CPNI. See Order No. PSC-02-0413-FOF-TP at p. 44. Furthermore, Supra witness Ramos testified that the Act required individual customer permission to view CSRs. See Order No. PSC-02-0413-FOF-TP at p. 45. Since individual customer permission is necessary only to access material that contains CPNI, it was reasonable for us to infer Supra agreed that CSRs contained CPNI. While Supra may now disagree with our conclusion that CSRs contain CPNI, it is unable to cite any affirmative evidence to the contrary, nor can Supra rebut its own evidence to the contrary. Supra has not met the standard for reconsideration on this point and as such, the Motion regarding this issue is denied. See Sherwood v. State, 111 So. 2d 96 (Fla. 3d DCA 1959).

Additionally, Supra asserts that we erred because paragraph 3 of the FCC's Second Report and Order, FCC 98-27, specifically states that carriers are required to share aggregate information with third parties on non-discriminatory terms and conditions. Furthermore, Supra suggests we conduct an investigation into BellSouth's use of aggregate CPNI, citing BellSouth's own stated policy of providing unlimited access to CPNI, which Supra asserts is enunciated in a BellSouth training manual. However, this also does not identify an error in our decision regarding access to CSRs, because CSRs contain individual customer information, not aggregate CPNI; thus, Supra's argument regarding its right to access CPNI in the aggregate does not identify a mistake in our decision.

Finally, Supra requests reconsideration of this issue because Supra contends downloading CSRs provides the best solution to BellSouth's OSS system that is frequently down. This is the same argument Supra made at hearing and in its post-hearing brief. We have considered this argument and rejected it. See Order No. PSC-02-0413-FOF-TP at pp. 43-48.

For the above reasons, we deny reconsideration of this issue.

E. Rate for a Loop Utilizing Digitally Added Main Line (DAML).

Supra

Supra maintains that our decision on this issue is based not on the record, but from a derivation of Hearing Exhibit 17, from which it concluded that "situations in which DAML equipment is actually deployed are minuscule." Supra believes we relied on the testimony of BellSouth witness Kephart in reaching our decision, but that witness Kephart's testimony was incorrect and later recanted. Supra also contends that we ignored confidential Hearing Exhibits 16 and 17 in arriving at our conclusion. Supra asserts that as a result of such clear error, it is entitled to reconsideration. By way of example, Supra notes that we ignored the fact that for each additional line provisioned via DAML, one old line, served by copper must be degraded onto DAML service to allow the new line to be provisioned.

Supra also believes that it has shown through the impeachment of witness Kephart, that there are several situations where DAML is more cost effective than alternative solutions. Supra also seeks clarification of our Order because the Order addresses the notification which must be given to Supra, but fails to address authorization requirements. Supra believes that BellSouth will do nothing to repair DAML lines which meet the performance specified under the parties' current agreement, despite BellSouth's stated policy to the contrary. As such, Supra believes that it should not only be notified, but allowed to reject the use of such technologies.

Supra also asks that language allowing Supra the right to request that lines be brought up to the speeds defined by Table 1 of Hearing Exhibit 16, where technically feasible, or to have service rotated to a standard loop, should be ordered inserted into the interconnection agreement.

BellSouth

BellSouth believes that Supra has failed to provide any grounds under which we may revisit our original ruling, and has mischaracterized the record evidence. BellSouth asserts that Supra's statement that DAML is a line-sharing technology is incorrect. Rather, says BellSouth, DAML is a loop technology. BellSouth contends that Supra's assertion that DAML is cost effective is not supported by a comparative showing of the relative cost of copper loops versus DAML provided loops. BellSouth believes that Supra's assertion that DAML technology is less reliable than bare copper is not supported by Supra through reliability studies or mean time between failure statistics. According to BellSouth, Supra also misquotes the assertions of witness Kephart regarding DAML and the ability of CLECs to ascertain loop makeup. BellSouth agrees with Supra that loop makeup information is available through LFACs, pursuant to the terms and conditions of the proposed interconnection agreement. BellSouth contends that witness Kephart's testimony is consistent with its assertion that DAML is useful in limited circumstances, and is not impeached by the cross-examination questions of Supra. BellSouth concludes that the DAML equipment is not more cost effective than the loop provisioning technique modeled in BellSouth's cost studies using TELRIC.

Decision

As stated at page 51 of Order No. PSC-02-0413-FOF-TP, "In cases where BellSouth makes changes to one of Supra's existing loops that may adversely affect a Supra end user, it is reasonable to require BellSouth to provide prior notification." We find that Supra has identified a matter that we failed to address -- that being the issue of authorization. The record reflects that in a UNE environment in which a UNE loop has been purchased, BellSouth should not only have to notify Supra, but also obtain Supra's authorization before provisioning DAML equipment on a Supra UNE loop, because, as lessee of the UNE loop, Supra is entitled to all of the features, functions and capabilities of that UNE loop. Thus, we reconsider our decision and require that BellSouth obtain authorization from Supra when BellSouth provisions DAML equipment on a Supra UNE loop.

There also appears to be a point that requires clarification. In situations where Supra provides service to customers via resale of BellSouth services, BellSouth shall not be required to notify Supra of its intent to provision DAML equipment on Supra customer lines, as long as it will not impair the voice grade service being provisioned by Supra to its customers. This is consistent with our finding at page 51 of our Order that BellSouth should provide notice when the change may adversely affect a Supra customer.

Supra also asserts that we considered evidence not in the record regarding how much or how little DAML is actually used. Hearing Exhibit 17, a proprietary document, was part of the record in this proceeding and was properly considered in rendering our decision. Thus, reconsideration on this point is denied.

For all these reasons, we grant, in part, and deny, in part, reconsideration on this issue as set forth in this analysis, and provide clarification of the notice requirement outlined herein.

F. Withholding Payments of Disputed and Undisputed Charges/Disconnection.

Supra

Supra argues that we failed to consider its evidence that BellSouth would use its financial leverage and threaten disconnection during a billing dispute to drive Supra out of business. (Motion at 53). Specifically, Supra alleges we failed to consider evidence that BellSouth wrongly disconnected Supra and that BellSouth is illegally withholding access revenues due to Supra. (Motion at 54).

BellSouth

BellSouth argues Supra is distorting our order and is trying to cloud the issue with new testimony. (Opposition at 14). BellSouth argues that Supra's claim about withholding access revenues was not part of the record of this case and therefore cannot be considered for reconsideration. Id.

Decision

Supra's argument with regard to BellSouth using its financial leverage is the same as that presented by Supra during hearing and in its post-hearing brief. We have considered these arguments by Supra and have rejected them. See Order No. PSC-02-0413-FOF-TP at pp. 57-59. As such, we deny Supra's motion for reconsideration on this issue.

Second, Supra makes a request that we clarify how and when charges are to be properly disputed. (Motion at 55). In cases where the motion sought only explanation or clarification of a Commission order, we have typically considered whether our order requires further explanation or clarification to fully make clear our intent. See, e.g., Order No. PSC-95-0576-FOF-SU, issued May 9, 1995. Supra's request for clarification is unwarranted. Our Final Amended Order made it clear that Supra must submit a complaint to us or another appropriate tribunal for a dispute to be valid. See Order No. PSC-02-0413-FOF-TP at p. 58. Further, it is clear that Supra cannot refuse to pay charges simply because it believes BellSouth owes it money. Id. Such unpaid charges constitute valid grounds for disconnection, and Supra cannot avoid disconnection by filing a claim against BellSouth under such circumstances. The intent of our Order was clearly explained, and there is no need for clarification on this point.

Finally, Supra argues that we should reconsider this issue because of alleged inappropriate conduct by this Commission and our staff. More specifically, Supra is referring to an email request by Commissioner Palecki seeking the exact amount of money that BellSouth claims Supra owes it. (Motion at 58). The request, according to Supra, was answered by both General Counsel Harold McLean and Supervising Attorney for the Competitive Markets Section Beth Keating. Id. Supra alleges that both staff members McLean's and Keating's responses were generated from ex-parte communication with BellSouth. (Motion 59-61). BellSouth contends such information should not be considered because it is outside of the record of this case. (Opposition at 15) BellSouth argues, even if it is considered, it does not provide grounds for reconsideration, because Supra provided no evidence that ex-parte conduct occurred other than mere allegations. Id.

This alleged misconduct is not grounds for reconsideration. A motion for reconsideration must "be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc., at 317. There is nothing in the record regarding this e-mail exchange. Therefore, this is not grounds for reconsideration, and Supra's motion regarding this issue is denied.

G. InterLATA Transport.

Supra

Supra asserts that BellSouth submitted no record evidence on this issue, that we ignored Supra's evidence, and found in favor of BellSouth without any competent supporting authority. Supra believes the Order is discontinuous, not in accord with the evidence, and contradictory to itself, FCC Order 96-325, 47 C.F.R. and the U.S. Supreme Court. As such, Supra request reconsideration of the issue.

BellSouth

BellSouth believes we resolved this issue by properly construing 47 U.S.C. § 271(a) as holding that it specifically precludes BellSouth from currently providing interLATA services to any carrier. Thus, BellSouth contends that there is no basis for reconsideration of the issue.

Decision

Supra has not identified a point of fact or law which was overlooked or which we failed to consider in rendering our decision. Supra believes that we failed to consider its "mountain of evidence" on this issue. The "mountain of evidence" submitted by Supra fails to show that the leasing of an interLATA transport UNE is not an interLATA service. Though a different conclusion could possibly be drawn based upon an analysis of the term "telecommunications," and whether or not the statutory definition could be construed to possibly differentiate between service to an end user and service provided to a carrier, neither party sought to establish such a distinction on the record in this docket. See

Order No. PSC-02-0413-FOF-TP at pg. 62. As such, we deny reconsideration on this issue.

I. Refusal to Provide Service.

Supra

Supra asserts that BellSouth cannot refuse to provide services ordered by Supra under any circumstances. Supra contends that until prices are set under the agreement or by us, BellSouth must provide the service at prices no less favorable than what it charges itself, an affiliate, or another ALEC, and bill Supra retroactively once charges are set. Supra notes that this is what BellSouth does to its advantage in the arena of collocation, and that this practice is established in the parties' current agreement. Supra believes that in reaching our decision we relied on evidence outside the record that Supra's request for an amendment would be executed in 30 days. Further, according to Supra, our reliance on the conclusion that 47 C.F.R. § 251(e)(1) requires the parties to operate under an approved interconnection agreement is evidence that we failed to understand Supra's position and the record. Supra asks that we reconsider our position and incorporate the language in the parties' current agreement as set forth in the Motion. Such language, asserts Supra, would reduce our workload and provide a standard for each party to be held to for the ordering and payment of new elements and services not invented or envisioned when the agreement becomes effective.

BellSouth

BellSouth contends that Supra provides no basis for reconsideration of this matter, other than the reproduction of provisions of the parties' expired agreement.

Decision

Again, Supra has not identified a point of fact or law which was overlooked or which we failed to consider in rendering our decision. In its Motion, Supra, for the first time, proffers language that it would like inserted into the parties' agreement. No prior request was made on the record. Supra's proposal at this late jucture is inappropriate to be considered within the context

of a Motion for Reconsideration. As such, Supra's motion for reconsideration on this issue is denied.

K. Reciprocal Compensation for calls to Internet Service Providers.

Supra

Supra asks us to include the language setting forth the FCC's new interim recovery mechanism in the new agreement. Supra maintains that the ordering paragraph of the FCC's Order on Remand and Report and Order, FCC 01-131, is clear in that it only precludes the "rates" in existing interconnection agreements, but does not preclude us from allowing Supra to include the same "interim recovery mechanism" language already approved by BellSouth in Section 9.4.7 of the MCI/BellSouth agreement. Supra disagrees that the FCC order requires BellSouth to remove Section 9.4.7 from the MCI agreement involving compensation for ISP bound traffic, and believes that it is clearly entitled as a matter of law to the inclusion of the interim recovery mechanism in the new agreement.

BellSouth

BellSouth believes that Supra's motion offers nothing to justify a reversal of our decision that it does not have jurisdiction to address this issue in light of the FCC's Order on Remand and Report and Order, FCC 01-131.

Decision

Supra has not identified a point of fact or law which was overlooked or which we failed to consider in rendering our decision. Supra quotes us as stating "We would agree that FCC 01-131 does not explicitly state that the FCC allows - or restricts- us from ordering the FCC rates into specific interconnection agreements." This statement was made in agreement with Supra witness Nilson's statement that "[t]he FCC has done nothing that prevents a state commission from ordering the FCC rates into specific interconnection agreements." See Order No. PSC-02-0413-FOF-TP at p. 77. We question Supra's objection to our agreement with a statement of its witness. Supra appears to now be arguing that what it seeks is not the rate, but the compensation mechanism.

Yet the testimony of witness Nilson is replete with the term "rate" in reference to what Supra seeks, noting that "[t]his Commission does not have the authority to set its own rates, but it certainly has the authority to order the FCC interim rates be memorialized within the follow on agreement." It is clear that the compensation regime contemplated by Supra's witness included the formalizing of rates within the new agreement. We properly considered the positions of the parties on this issue, and as such reconsideration of this issue is denied.

L. Validation and Audit Requirements

Supra

Supra contends that in deciding this issue, we erroneously relied upon BellSouth's contention that this issue is among the issues included in our Generic Performance Measurements Docket No. 000121-TP, and addressed in Final Order No. PSC-01-1819-FOF-TP. Supra asserts that the audit in that Order can only be performed at the regional level, and is not OSS specific. Supra believes that since all data are averaged, and all ALECs are treated as one, BellSouth can beat discriminatory practices in one state by manipulating the data in another. Supra asserts that BellSouth has admitted that its retail OSS and ALEC OSS are not at parity, and performance data applicable to Supra cannot be lumped with other ALECs. Supra seeks language in the new agreement which mandates that BellSouth have an independent audit conducted of its performance measurement systems, annual audits, and when requested by Supra, audits when performance measures are changed or added, and that such audits be paid for by BellSouth.

BellSouth

BellSouth believes that the validation and audit requirements set forth in Order No. PSC-01-1819-FOF-TP are appropriate, and that Supra's motion does not identify a point of fact or law that we failed to consider.

Decision

Supra has not identified a point of fact or law which was overlooked or which we failed to consider in rendering our

decision. We note that there was no specific proposal by Supra regarding any additional or alternative validation or audit requirements which were to be included in the agreement. Thus, reconsideration on this issue is denied.

M. The Meaning of "Currently Combines" and other charges.

Supra

Supra seeks to provide telecommunications services to any customer using any combination of elements that BellSouth routinely combines in its own network, and to purchase such combinations at TELRIC rates. Supra believes that as long as it is providing telecommunications service, and not interfering with other users, BellSouth cannot dictate the use of UNEs. Supra states that it is the duty of ILECs to provide unbundled network elements at a level equal to or greater than what the ILEC provides itself. At issue, notes Supra, is who should be responsible for combining such network elements. Supra believes that our reliance on the fact that the FCC specifically declined to adopt the broad interpretation of Rule 51.315(b) that Supra is seeking, is misplaced. Supra contends that the FCC did not rule against the commentators, it merely reserved judgment until the pending appeals illuminated the law.

Supra also contends that our determination that FCC Rule 51.315(b) only requires ILECs not to separate UNEs that are currently combined relies on an Eighth Circuit ruling currently on appeal. In taking this stance, Supra argues that we chose to rule against supporting competition, and instead seek to protect BellSouth's market share.

In addition, Supra believes that we failed to consider the testimony of witness Nilson regarding the issue of State's rights versus Federal rules. Supra asserts that in accommodating Supra's urging in this matter, we would be doing so in areas where there is no prevailing law, definition, or Rule subsection that is currently vacated. Supra also believes that our staff erred in stating that we should not impose requirements that conflict with federal law. The FCC, according to Supra, has recognized that state commissions share a common commitment to creating opportunities for efficient

new entry into the local telephone market, and provide for state commissions to ensure that states can impose varying requirements.

Finally, Supra contends that where the FCC has failed to address the issue, the burden falls upon the state commissions to set specific rules. Supra concludes that it should not be bound by our reliance on previous cases we have heard, where the ALEC failed to properly argue its case. Supra believes we are empowered to foster local competition, and are given extraordinary powers to set local regulations that exceed the Federal regulations in order to do so. Supra asks that UNEs ordinarily combined in BellSouth's network continue to be combined at TELRIC costs, thus avoiding a second conversion step to overcome the legal impediments argued by BellSouth.

BellSouth

BellSouth has argued that the FCC's UNE Remand Order confirmed that it had no obligation to combine network elements for ALECs, when those elements are not currently combined in BellSouth's network. Further, asserts BellSouth, the FCC also confirmed that "except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines." 47 C.F.R. § 51.315(b). BellSouth believes our decision in each previous case has correctly interpreted federal law, and that Supra's motion argues that we should have accepted witness Nilson's legal interpretations. As such, BellSouth believes there is no basis for a reconsideration of this legal issue.

Decision

Supra has not identified a point of fact or law which was overlooked or which we failed to consider in rendering our decision. Our decision was based on prevailing law at the time it was rendered. However, the Supreme Court in Verizon Communications Inc., et al. v. Federal Communications Commission, et al., Case Nos. 00-511, 00555, 00587, 00-590, 00-602, 535 U.S. ____, 2002 WL 970643 (May 13, 2002) has issued a ruling which is controlling and calls for the reassessment of our decision.

FCC Rule 51.315(b) states that "an incumbent LEC shall not separate requested network elements that the incumbent currently

combines." In this proceeding, we mainly considered the meaning of "currently combines" versus "ordinarily combines." Supra has demonstrated no error in our decision as it pertains to the meaning of "currently combines."

This distinction is now moot given the Court's holding in Verizon validating 47 U.S.C. § 51.315(c), which requires an incumbent LEC to "perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined" in the incumbent's own network. According to the Verizon decision, this obligation would only arise when Supra is unable to do the combining itself. BellSouth would do the combining, for a reasonable cost-based fee, unless: 1) Supra can combine the elements itself; 2) combining the UNEs for Supra would impede BellSouth's own ability to retain responsibility for the management, control, and performance of its own network; or 3) that combining UNEs for Supra would place other competing carriers at a competitive disadvantage.

We previously found that BellSouth must combine UNEs only if the elements are already physically combined in BellSouth's network. See Order No. PSC-02-0413-FOF-TP at p. 88. The Order also states that "we do not believe that FCC Rule 51.309 requires ILECs to combine network elements for ALECS when requested." Order No. PSC-02-0413-FOF-TP at p. 89. These findings are affected by the Verizon decision. As such, we deny reconsideration regarding the meaning of the words "currently combines,". We do, however, find that the new agreement shall contain language stating that BellSouth shall, for a reasonable, cost-based fee, combine elements upon request by Supra, even if they are not ordinarily combined in BellSouth's network, when the following conditions are met: 1) Supra is unable to combine the elements itself; 2) the requested combination does not place BellSouth at a disadvantage in operating its own network; and 3) the requested combination will not place competing carriers at a disadvantage. Based upon our determinations above, reconsideration of this issue is granted, in part, and denied, in part.

N. Rates, Terms, and Conditions for Access to Serve Multi-Tenant Environments.

Supra

It is Supra's position that where single points of interconnection (POIs) do not exist, BellSouth should construct such POIs and Supra should be charged no more that its fair share of the forward-looking cost. Supra maintains that such interconnection points should be fully accessible to Supra technicians without a BellSouth technician being present. Supra believes that we fail to give consideration to the evidence presented by Supra, and instead lean on BellSouth's verbal presentations. Supra believes we violated the FCC UNE Remand Order which calls for a single point of interconnection, increased the lead-time and cost for installing panels, put the full cost burden on each ALEC one at a time, and increased the time to provision new installations without properly defining all of the time intervals involved. Supra asks that we resolve the time frames to complete the work required for non-standard Florida ALEC access terminals.

BellSouth

BellSouth contests Supra's assertions that we have violated Federal rules, pointing out that Supra fails to cite the rules it believes we have violated. Further, BellSouth contends that the FCC has not ignored BellSouth's concerns, but rather addressed network reliability and control in its First Report and Order. Concerning the three points raised by Supra, BellSouth first believes that we correctly determined that access terminals are a technically feasible method of providing ALEC access while maintaining network reliability and security. We noted that once the ALEC makes that investment in access terminals, other ALECs should not be able to use that ALEC's investment without permission. BellSouth also maintains that Supra failed to identify the provisioning intervals it wants us to address. BellSouth believes we should rejected Supra's proposal.

Decision

Supra has not identified a point of fact or law which was overlooked or which we failed to consider in rendering our

decision. Supra states that we failed to consider its arguments after stating that Supra's arguments merited consideration. Supra argues that we cited to other conclusions arrived at in other proceedings and not in this record, instead of dealing with Supra's new arguments directly. However, we did consider Supra's arguments, and indicated in the Order that "It does not appear that any new facts or arguments have been presented in this proceeding to merit a change from our prior decision." Order No. PSC-02-0413-FOF-TP at p. 94. While we did acknowledged that Supra's arguments were worthy of consideration, after reviewing of all the evidence presented on this issue, we did not ultimately find Supra's arguments persuasive. Supra has not identified any error in this decision, but only a disagreement with our conclusion.

Supra also states that we fail to address the issue of the ALECs' access terminal being a violation of the FCC UNE Remand Order (FCC Order 99-238). We did not address this point because there is no violation of the FCC UNE Remand Order. The Order states: "If parties are unable to negotiate a reconfigured single point of interconnection at multi-unit premises, we require the incumbent to construct a single point of interconnection that will be <u>fully accessible and suitable for use by multiple carriers</u>." FCC 99-238, ¶226 (emphasis added). The Order does not dictate that the point be the same point that BellSouth or any LEC uses for its own purposes, but rather one point of connection that is fully accessible and suitable for multiple carriers. Thus, our decision is not contrary to the FCC UNE Remand Order.

Supra also requests that we resolve the issue of time frames for provisioning Florida ALEC access terminals. The issue as worded was not designed to address provisioning intervals of ALEC access terminals, nor was there any testimony on the record in reference to this matter. We find that this is a new argument, and is inappropriate for reconsideration. Given this determination, Supra's Motion for Reconsideration of this issue is denied.

O. Local Circuit Switching Rates.

<u>Supra</u>

Supra believes that its customers should be allowed to freely choose their local service provider regardless of the number of

lines that customer purchases. Supra asserts that we have improperly implemented the FCC's order in this regard. Supra contends that our decision is grounded in the erroneous finding that BellSouth does not bear the burden of proof to show that it offers EELs throughout Density 1 in the top 50 MSAs, and can simply claim that it does in order to deny ALECs local circuit switching at UNE rates. Supra asserts that our position is that BellSouth does not have to prove it has met the pre-conditions of 47 C.F.R. § 51.319(c)(2) before it denies ALECs local switching at UNE rates.

Supra further maintains that there is a world of difference between BellSouth's assertion that it will provide EELs at UNE rates, and its obligation to provide non-discriminatory access to the combinations of unbundled loops and transport throughout Density Zone 1. Supra compares this to our decision on the tandem-switching rate, which we also address within this Order. There, Supra argues, we require Supra to prove that its switches are installed and cover a comparable geographic area before language authorizing Supra to charge tandem rates may be inserted into the final, arbitrated agreement. Supra asks that we reconcile these decisions, because we did not require proof that BellSouth has met the requirement of FCC Rule 51.319(c)(2) before it denied Supra local switching at UNE rates. Supra contends that we have applied a double standard in favor of BellSouth by not requiring BellSouth to submit such proof.

Supra also maintains that there is no evidence in the record that would support a conclusion that alternative providers of local circuit switching exist in Miami, Fort Lauderdale or Orlando. Supra contends that the high markup of BellSouth's "market rate" for unbundled local switching is a clear signal that there is no viable competition in the top three MSAs in Florida. Supra also believes that we failed to consider the effect on UNE-P providers if EELs were available throughout these MSAs. Supra believes that the ability to provide basic residential or business service in the top 50 MSAs by UNE-P would be severely curtailed. Additionally, says Supra, no agreements currently exist for EEL and port combinations, so they must already be combined under Florida's definition of currently combined.

Supra requests that BellSouth not be allowed to charge "market rates" until BellSouth makes a substantive showing that alternative

local switching providers exist and that non-discriminatory access to EELs is available throughout Density Zone 1 in the three affected Florida MSAs. Further, Supra asks that we order BellSouth to make available combinations of EELs and unbundled local switching, whether or not currently combined in any and all end offices and tandems outside Density Zone 1 of the three affected MSAs, and provide the necessary customer premises equipment to which EEL service is delivered within Density Zone 1 of the three affected MSAs.

In addition, Supra argues that we failed to consider that a shorter collocation interval should reduce costs.

BellSouth

BellSouth notes that Supra is seeking reconsideration on this point even though we rejected BellSouth's interpretation of the FCC rules regarding the exemption for unbundling local circuit switching. BellSouth contends that Supra offered no evidence at the hearing to support its claim that remote terminal collocation would take less time. Moreover, BellSouth contends that whatever the interval actually is would have no bearing on unbundled switching costs, and that there is no evidence in the record to support that it would.

BellSouth also challenges Supra's assertion that there is no evidence in the record that would support a conclusion that alternative providers of local circuit switching exist in Miami, Fort Lauderdale, or Orlando. BellSouth also states that Supra ignores the fact that other parties besides BellSouth have self-provisioned switch functionality. Further, BellSouth opines that Supra could self-provision local switching, and apparently intends to do so, according to comments in its Motion.

Decision

Here, Supra reargues the points it raised in its filings, at hearing, and in its post-hearing brief. We have deliberated and rendered a decision based upon all applicable laws, rules, and decisions. See Order No. PSC-02-0413-FOF-TP at pp. 100-101. The pertinent FCC Rule on this point does not require that BellSouth make an affirmative demonstration of its compliance and Supra's

disagreement with our failure to include its own requirement that BellSouth make such a demonstration does not identify an error in our decision. As such, reconsideration of this issue is denied.

P. Tandem Switching.

Supra

Supra requests the reconsideration of our Order declining to address tandem switching. Supra's position is that when Supra's switches serve a geographic area comparable to that served by BellSouth's tandem switch, then Supra should be permitted to charge tandem rate elements. Supra asserts that it seeks language assuring its right to charge the tandem-switch rate upon installation of its switches, in order to avoid further legal challenges and arbitrations with BellSouth. Supra notes that if no switch were ever deployed, no tandem rate may be charged. But once a switch is deployed in a BellSouth central office, Supra would begin to charge the same rate as BellSouth charges, and we would be spared future litigation on this point.

BellSouth

BellSouth believes that a carrier cannot receive the tandem switching rates unless it proves that its tandem switches serve geographic areas comparable to the ILECs' tandem switches. BellSouth contends that we rightly declined to declare Supra's entitlement to the tandem switching rate.

Decision

Supra has not identified a point of fact or law which was overlooked or which we failed to consider in rendering our decision. Supra states that our staff ignored its request for language to be included in the agreement in anticipation of installing a switch. The issue as phrased does not request such language, but rather asks under what criteria can Supra charge the tandem-switching rate, and whether Supra had a switch as of January 1, 2001. Our Order addressed the issue as phrased, and noted that Docket No. 000075-TP will provide further guidance on the subject. See Order No. PSC-02-0413-FOF-TP at pp. 101, 103-104.

Q. Provision of Unbundled Local Loops for DSL Service.

Supra

Supra requests reconsideration of our Order regarding the provision of unbundled local loops for DSL service. Supra asserts that when existing loops are provisioned on digital loop carrier facilities, and Supra requests such loops in order to provide xDSL service, BellSouth should provide Supra with access to other loops or subloops so that Supra may provide xDSL service to a customer. Supra believes that, pursuant to 47 C.F.R. §51.319, an ILEC is required to provide nondiscriminatory access to unbundled packet switching capability only where each of the four stated conditions are satisfied. Here, Supra contends that BellSouth has refused to allow Supra to collocate in remote terminals, and has not supplied Supra with the information necessary to locate and identify existing terminals, or properly complete, the collocation applications. Supra states that the FCC has addressed this in the Final Order of the UNE Remand Order, FCC 99-238 at ¶ 313, which holds that:

> . . . if a requesting carrier is unable to install its DSLAM at the remote terminal. . . the incumbent LECs must provide requesting carriers with access to unbundled packet switching in situations in which the incumbent has placed its DSLAM in a remote terminal.

Supra maintains that we have the authority to provide contractual support for this prong of the issue, and requests that we order BellSouth to provide Supra, at Supra's option, the ability to order collocated DSLAM and unbundled access to packet switching as a UNE at TELRIC cost, wherever BellSouth deploys local switching over DLC facilities, at Supra's request.

Supra also asserts that we denied it discovery of network information. We then opined that Supra failed to meet the "impair" standard of 47 C.F.R. § 51.317(b)(1) says Supra. Our assertion that BellSouth's offer to permit requesting carriers to collocate DSLAM equipment at the RT within about 60 days of a request, is of little comfort in Supra's eyes. Supra believes that given BellSouth's track record with Supra, BellSouth will come up with a plethora of excuses to delay nearly forever the collocations.

Further, Supra asserts that as a UNE-P provider, it should not be required to collocate in order to provide DSL service. It contends that the availability of third-party DSL services that does not use the BellSouth FCC #1 tariffed ADSL transport is non-existent. Supra states that BellSouth has refused to allow this or any other BellSouth DSL component to be deployed over a Supra UNE-P line. Thus, says Supra, there is no third-party market capable of supporting DSL over UNE-P lines except BellSouth, which has claimed a legal right not to serve that market. Supra believes it has no alternative but to attempt to collocate in the estimated 3125 remote terminals in Florida to achieve ubiquitous coverage. Supra believes that our endorsement of BellSouth's position amounts to a barrier to entry. Supra notes that had BellSouth been compelled to provide this level of network information, it could have properly addressed the "impair" standard with information that has since been made accessible to the public as of December 31, 2001.

Finally, Supra believes that a double standard has been applied in favor of BellSouth. Supra contends that this is evidenced by our findings regarding BellSouth's provision of collocation at remote terminals in this issue. Supra argues that we simply accepted BellSouth's representation that collocation in remote terminals could be accomplished in 60 days. Supra contends that its own evidence that for three years BellSouth has delayed implementation of our Orders in Docket No. 980800-TP, FPSC Order PSC-99-0060-FOF-TP, and the findings of the commercial arbitrators was not given due consideration.

Supra believes that we should resolve this problem by moving beyond the rules the FCC established, as provided in FCC Order 96-325, First Report and Order on Local Competition, paragraphs 135-137. Supra states that our ability to resolve this problem by going beyond the FCC's requirements was not seriously considered and is due reconsideration.

<u>BellSouth</u>

BellSouth states that in the UNE Remand Order at paragraph 311, the FCC expressly declined "to unbundle specific packet switching technologies incumbent LECs may have deployed in their networks." Thus, contends BellSouth, Supra is not entitled by law to unbundled packet switching unless four circumstances exist

simultaneously as set out in the FCC rules.[6] BellSouth asserts that Supra does not intend to collocate DSLAM equipment in BellSouth's remote terminals, but seeks a "free ride" off BellSouth's network investment.

BellSouth also contends that while Supra disputes BellSouth's claim that collocation in remote terminals could be accomplished in 60 days, Supra offered no evidence at the hearing to support its claim that remote terminal collocation would take less time. As such, BellSouth argues that Supra has no basis for disputing BellSouth's estimate.

Decision

Supra has not identified a point of fact or law which was overlooked or which we failed to consider in rendering our decision. See Order No. PSC-02-0413-FOF-TP at pp. 116-118. Supra also takes the position that data released to the public after December 31, 2001, demonstrates how badly Supra's case was prejudiced by our earlier denial of a discovery request. This new argument does not lay the foundation for reconsideration. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974). Thus, Supra's request for reconsideration of this issue is denied.

S. Access to Databases.

Supra

Supra argues that BellSouth's ALEC OSS interfaces provide discriminatory access and that pursuant to the 1996 Act and FCC rules and orders, Supra is entitled to nondiscriminatory access to BellSouth's OSS. Supra believes that the evidence it has presented establishes that, absent direct access to BellSouth's own OSS, Supra will never be on equal footing with BellSouth, and will therefore always be at a competitive disadvantage. Supra believes

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[6]The record reflects that BellSouth actually allows collocation in its remote terminals; thus, at least one of the four conditions is not met.

that its confidential exhibits, witness testimony, substantial citations, and the

> . . . mountain of evidence put forth by Supra was virtually ignored by this Commission, and without pointing to any record evidence, the Commission simply accepted BellSouth's argument that its OSS interfaces provide ALECs with nondiscriminatory access in accordance with FCC rules.

Motion at p. 127.

Supra also believes that we failed to acknowledge the 10.9% of ALEC LSRs that are electronically submitted through BellSouth's ALEC OSS but which fall out for manual/human intervention. This compares, says Supra, to the 0% mechanized fallout experienced by BellSouth, and is in addition to the 11% of ALEC submitted LSRs that must be manually submitted in the first place. Supra questions our findings of technical infeasibility in ALECs obtaining direct access to BellSouth's OSS interfaces. Supra does not believe that BellSouth has met its burden of proof of that infeasibility. Supra also believes we could have used our ability to propound discovery to resolve this matter if we believed that direct access is not technically feasible. Supra believes that it provided thousands of pages of evidence, while BellSouth proffered non-credible exhibits and allegations of infeasibility. Supra contends that we should reconsider this issue, and BellSouth should be ordered to provide Supra with direct access to its OSS.

<u>BellSouth</u>

BellSouth maintains that the variety of interfaces available to ALECs provide them with non-discriminatory access to BellSouth's OSS as required by the 1996 Act. BellSouth believes that Supra seeks a process which must be identical to every function, system, and process used by BellSouth. According to BellSouth, this does not conform to the legal standard established by the Act and the FCC. BellSouth asserts that the FCC requires an ILEC such as BellSouth to provide access to OSS functionality for pre-ordering, ordering, provisioning, maintenance and repair, and billing functionality for resale services in substantially the same time and manner as BellSouth provides for itself. In the case of UNEs,

states BellSouth, it must provide a reasonable competitor with a meaningful opportunity to compete. BellSouth maintains that the FCC follows a two-step approach to determine if a BOC has met the non-discrimination standard for each OSS function; (1) whether there are in place the necessary systems and personnel to provide sufficient access to each of the necessary functions, and (2) whether the BOC is adequately assisting competing carriers to understand how to implement and use all the OSS functions available to them. Then, says BellSouth, the FCC will determine whether the OSS functions deployed are operationally ready.

BellSouth responds that if Supra were to actually obtain access to the retail ordering systems used by BellSouth, it could only submit orders for BellSouth retail services. BellSouth does not believe that Supra has made a showing that the interfaces available to it are insufficient, and requests that the Motion be denied.

Decision

Supra has not identified a point of fact or law which was overlooked or which we failed to consider in rendering our decision. See Order No. PSC-02-0413-FOF-TP at pp. 120-122. We find Supra's reading of the FCC's Third Report and Order flawed. By way of example, Supra places considerable emphasis on paragraph 433, which states that "We therefore require incumbent LECs to offer unbundled access to their OSS nationwide." A proper reading would recognize that the LEC has to provide nondiscriminatory access to the functionality of the incumbent's OSS in order for the ALEC to have a meaningful opportunity to compete. We do not construe The FCC's Order to require unbridled access to all of the incumbent's databases. The balance of Supra's discussion reargues points raised in various forms throughout the proceeding, and as such do not establish a basis for reconsideration.

T. Standard Message Desk Interface-Enhanced (SMDI-E) and Corresponding Signaling associated with Voice Mail Messaging.

Supra

Supra's position is that SMDI and Inter-Switch Voice Messaging Service (ISVM) signaling provided to voicemail systems are comprised of core hardware and software components of the Class 5 end office switch combined with SS7 signaling. As such, says Supra, they are already included in the cost models used to derive the UNE rate. Supra believes that BellSouth's own testimony on this matter is consistent with Supra's position. Supra contends that witness Kephart's testimony which focused largely on the transport facility used to carry the SMDI, and not the signal itself, was confused to be part of SMDI. Supra notes that the "data link" referenced by witness Kephart is not included in the BellSouth FCC #1 tariff for SMDI and even under the tariff must be ordered separately, or provisioned by a UNE or by Supra. Supra does not believe we understood the technical nature of this issue. Supra asserts that an error in the testimony of witness Kephart was refuted by Mr. Nilson, yet made its way into our Order.

Supra believes our analysis is flawed in that it is based upon the misleading conclusion of witness Kephart, which asserts that Supra was trying to provide an information service or a non-telecommunications service. Supra contends that it never represented what it intended to make with the unbundled SMDI, ISVM and its links, and it believes such information is irrelevant to this issue. According to Supra, 47 C.F.R. § 51.309(c) protects it from this very sort of discrimination. Supra believes we ignored evidence that such functionality was already part of the cost basis of ULS.

It is Supra's contention that we went on to reverse our earlier finding that voicemail is a telecommunications service, and without any consideration of the legal issues, we found that BellSouth did not have to provide SMDI or SMDI-E as a feature, function, and capability of the ULS UNE. Supra states that we failed to consider the argument in witness Nilson's direct testimony which shows that there is no separate signaling network required to transmit messages switch to switch. Supra asserts that

it is all part of the basic switch port functionality, and has been so for many years. Supra also states that the Lucent documentation cited by witness Nilson shows that there are no elements in witness Kephart's definition of SMDI-E that are not required to place a voice call between two switches, except the data link. Supra agrees with BellSouth that the data link is a separately priced transport facility, but maintains that the SMDI and SMDI-E (ISMDI) signaling are inseparable from the cost of providing basic local service.

Supra also believes that we failed to recognize that BellSouth and Supra actually agreed that SMDI is a feature of the ULS. We incorrectly focused on the data link, says Supra, an item that was not in contention between the parties. Supra argues that we, therefore, fashioned our own findings which are not supported by the record.

BellSouth

BellSouth believes that Supra attempts to combine various network elements in its discussion of unbundled local switching. BellSouth argues that Supra defines unbundled SMDI as part of the signaling network, rather than as part of unbundled local switching, which BellSouth asserts is the issue at hand. Indeed, says BellSouth, access to unbundled local switching and access to unbundled signaling and call related databases are covered under two different 271 checklist items in the 1996 Act. BellSouth believes that Supra's Motion might lead to the erroneous conclusion that everything is part of unbundled local switching if it is used during a call. BellSouth urges us to ignore Supra's attempt to blur the clear lines drawn by the Telecommunications Act, such that Supra would receive SMDI functionality for free.

Decision

Supra has failed to identify a point of fact or law which was overlooked or which we failed to consider in rendering our decision. We properly considered the evidence and record presented and rendered a decision based upon the material proffered. See Order No. PSC-02-0413-FOF-TP at pp. 128-131. The fact that we arrived at a different conclusion from Supra is not grounds for

reconsideration. As such, Supra's Motion regarding this issue is denied.

V. Capacity to Submit Orders Electronically.

Supra

Supra seeks a contractual provision requiring BellSouth to provide Supra with the capacity to submit orders electronically for all wholesale services and elements. Supra believes that we, as well as BellSouth, simply miss the point on this issue. Supra does not submit service orders because BellSouth refuses to provide Supra with the ability to do so. Rather, according to Supra, it submits LSRs, which BellSouth then processes into service orders. This is different from BellSouth's retail operation, says Supra, which does submit service orders. Supra then incorporates its arguments addressing access to databases (Section/Issue S), and contends that our decision is grounded in the erroneous finding that BellSouth does not have to provide nondiscriminatory access to BellSouth's OSS.

BellSouth

BellSouth asserts that there is no requirement that every LSR be submitted electronically, claiming that its own retail operations use manual processes for certain order types. BellSouth believes that Supra's Motion points to no fact or legal principle that we failed to consider, and as such reconsideration is not appropriate.

Decision

We find that Supra has not identified a point of fact or law which was overlooked or which we failed to consider in rendering our decision. As noted in the Order, Supra presented very limited testimony on this issue. See Order No. PSC-02-0413-FOF-TP at p. 133. Although Supra more fully develops its argument in its Motion for Reconsideration, this is inappropriate at this stage and essentially constitutes new argument. Thus, Supra's additional, more fully developed arguments on this point shall not be considered, because these arguments could have been addressed by Supra in its prior pleadings. Furthermore, they do not identify a

mistake of fact or law in our decision. As such, Supra's Motion regarding this issue is denied.

W. Manual Intervention on Electronically Submitted Orders.

Supra

According to Supra, we failed to address Supra's evidence in the record that 10.9% of LSRs that are electronically submitted through BellSouth's ALEC OSS fall out for manual/human intervention, while in comparison BellSouth experiences 0% fallout of its submitted service orders. Supra indicates that some complete and correct LSRs do fall out for manual intervention. Supra maintains that BellSouth raised, as a red herring, the argument regarding manual handling of complex orders prior to their electronic submission. Supra does not believe that our decision addresses the evidence as submitted by Supra, and requests that we require BellSouth to ensure that 100% of Supra's complete and correct LSRs submitted electronically flow through without manual intervention, in the same manner as BellSouth provides itself.

BellSouth

BellSouth maintains that disagreement with our decision is not a basis for a party to obtain reconsideration. BellSouth states that because the same manual processes are in place for both ALEC and BellSouth retail orders, the processes are competitively neutral, as required by the Act and the FCC.

Decision

Supra does not identify a point of fact or law which was overlooked or which we failed to consider in rendering our decision. The Order clearly reflects that we considered all of the evidence, and was persuaded that some manual handling occurs even when BellSouth processes complex orders for itself. As such, we concluded:

> Based on the testimony which affirms that the same manual processes are in place for both ALEC and BellSouth retail orders and that BellSouth processes the orders in a non-

> discriminatory manner, we agree with witness Pate's assertion that BellSouth's practices with respect to manual handling are competitively neutral. Unless or until such practices change for all ALECs, when processing Supra's complex orders, BellSouth should be permitted to manually process those orders that would be processed similarly for retail orders.

Order No. PSC-02-0413-FOF-TP at p. 137. Supra's additional arguments rehash points previously raised. Therefore, they do not warrant reconsideration, and Supra's Motion seeking such for this issue is denied.

X. Sharing of the Spectrum on a Local Loop.

Supra

Supra asserts that when it uses the voice spectrum of the loop and another carrier utilizes the high frequency spectrum (or vice versa), Supra must be compensated on half of the local loop cost. Supra states that BellSouth refuses to pay line sharing charges for customers with BellSouth xDSL whether provisioned as the FastAccess® or its ADSL Transport product, as tariffed under the FCC #1 access tariff. Now, says Supra, BellSouth has refused to provide either product on UNE-P circuits, and has disconnected the ADSL of any customer provisioned by UNE-P, as well as customers served by resale. Supra asserts that as a feature of the loop, BellSouth should not be allowed to disconnect already combined facilities. This, says Supra, would be in violation of 47 U.S.C. § 251(c)(3), 47 C.F.R. § 51.315(b), and the Supreme Court's ruling in AT&T v. Iowa Utilities Bd., 525 U.S. 366, 119 S.Ct 721 (1999). Supra notes that BellSouth witness Cox agreed that this conduct would violate the Supreme Court's ruling and FCC rules. Supra points out that such conduct in other states has been viewed as a significant barrier to competition. Supra believes that BellSouth incorrectly relies in this issue on FCC Order No. 01-26 and our Order No. PSC-01-0824-FOF-TP, stating it is not required to provide service to a UNE-P circuit. Those matters do not, however, contemplate the issue of disconnecting already combined networks, according to Supra.

Supra states that when it purchases a UNE-P loop, it becomes the owner of all the features, functions, and capabilities that the switch and loop is capable of providing. Supra believes our ruling on this issue exceeds our authority and that of FCC Order 01-26.

BellSouth

Here, BellSouth believes that Supra rehashes its prior arguments and attempts to introduce new evidence in this case. Neither, asserts BellSouth, is grounds for us to reconsider our decision. BellSouth maintains that if Supra wants its end users to have DSL service, then it must offer the ADSL service itself or in conjunction with another provider. BellSouth believes it is under no obligation to provide its own xDSL services over loops when it is no longer the voice provider. This is supported, says BellSouth, by the FCC's decision in its Line Sharing Order.

Decision

Although Supra has not met the standard for reconsideration on this point, we, on our own motion, reconsider our decision on this point in view of our decision regarding BellSouth's policy of disconnecting FastAccess in the FDN/BellSouth arbitration in Docket No. 010098-TP.

In the FDN/BellSouth arbitration, we concluded that BellSouth's policy of disconnecting its FastAccess service when a customer switched its voice service to an ALEC using UNE-P impeded competition in the local exchange market. Therefore, we ordered BellSouth to discontinue this practice. See Order No. PSC-02-0765-FOF-TP.[7] We acknowledge that the FDN/BellSouth decision on this point was made in the context of an arbitration, and we note that we have generally determined that such decisions are restricted to the particular arbitration docket under consideration and the facts presented therein. In this instance, however, the decision regarding BellSouth's policy on FastAccess went to the legality of that policy under Florida law and our jurisdiction to address it. Thus, the decision at issue here does not hinge on any different or

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[7]Order correctly subject to pending Motions for Reconsideration.

additional facts present in Docket No. 010098-TP that are not present in this Docket. As such, our decision is not restricted solely to that arbitration.

We make a consistent finding in this proceeding that the practice of disconnecting FastAccess Internet Service when the customer switches voice providers creates a barrier to competition in the local exchange telecommunications market. We fashion an appropriate remedy for the situation pursuant to our authority under Section 364.01(4)(g), Florida Statutes, which provides, in part, that we shall, "[e]nsure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior. . . ." We are also authorized to act to remedy this barrier to competition by Sections 364.01(4)(b) and (d), Florida Statutes. Additional support for this recommended action may be derived from Section 706 of the Telecommunications Act, wherein Congress has directed state commissions to encourage competition and the deployment of advanced services, as well as from Section 202(a) of the Act, in which carriers are prohibited from engaging in any unjust discrimination in their practices or provision of services. Therefore, in the interest of promoting competition in accordance with the state statutes and the federal Telecommunications Act, we reconsider, on our own motion, our decision on Issue X and require BellSouth to continue providing FastAccess even when BellSouth is no longer the voice provider.

Y. Downloads of RSAG, LFACS, PSIMS and PIC databases.

Supra

Supra believes that BellSouth has failed to provide any evidence that the download of these databases is improper. In Supra's assessment, the record clearly indicates that BellSouth is providing discriminatory access to its OSS as well as the RSAG and LFACS databases. As such, Supra requests that we require BellSouth to provide Supra with a download of the RSAG and LFACS databases with no licensing agreements or charges.

BellSouth

BellSouth believes that Supra rehashes its arguments from prior submissions to in this docket, and Supra's arguments do not meet the standard for reconsideration.

Decision

Supra states that we failed to address credible evidence that BellSouth's ALEC OSS is discriminatory. We disagree. In the Order at page 142, we noted witness Ramos' concerns that the ALEC interface provided by BellSouth to access its OSS, including relevant databases, is inadequate, but disagreed that anything less than direct access to these databases constituted discriminatory conduct. The difference of opinion that we may have with Supra as to a point of fact, or the interpretation of a point of law, is not sufficient basis for reconsideration. Therefore, reconsideration of this issue is denied.

AA. Identification of Order Errors.

Supra

Supra incorporates its earlier arguments in Issues S, V, and W, and asserts that identifying all errors at once will prevent the need for submitting the order multiple times and reduce cost. Additionally, says Supra, BellSouth should be required to immediately notify Supra of such clarification in the same manner BellSouth notifies itself. Supra believes we fail to respond to the arguments and evidence put forth by Supra on this issue, and confuses the term "service order" with the more appropriate industry term "local service request." Supra points out that only ALECs submit LSRs. If BellSouth claims infeasibility, then BellSouth has the burden to substantiate such a claim, says Supra. Supra asserts that the record cannot support a conclusion which it believes ignores FCC Rules, and asks that BellSouth be required to provide Supra with the capability to submit orders electronically for all wholesale services and elements.

BellSouth

BellSouth believes that this is another issue of Supra demanding direct access to BellSouth's OSS, and of Supra rehashing its earlier arguments. As such, states BellSouth, these are not legitimate grounds for reconsideration.

Decision

We find that Supra has identified an error which warrants reconsideration. While the majority of the decision correctly differentiates between LSRs and Orders, and while Supra's brief uses the term "order" and not "LSR," we note that the Order requires BellSouth to identify all readily apparent errors in Supra's order at the time of rejection. (Emphasis added) The record and our apparent intent as highlighted by the discussion at the Agenda Conference supports reconsideration such that BellSouth should be required to identify all readily apparent errors **in the LSR** at the time of rejection.

BB. Purging Orders.

Supra

Supra contends that we simply accepted BellSouth's arguments and modified the issue so that we failed to review Supra's issue or assess Supra's evidence. It is Supra's belief that BellSouth has not substantiated its claim that it is Supra's failure to submit complete and correct LSRs that results in dropped and purged LSRs. There is no substantial evidence in the record to support our decision, says Supra, and it asks that BellSouth be required to only drop or purge ALEC LSRs in the same manner in which BellSouth drops or purges its service orders.

BellSouth

BellSouth does not believe it has the burden to prove that it would be technically infeasible to prevent Supra's orders from being purged. BellSouth agrees with our determination that the responsibility for a complete and accurate LSR rests with the ALEC. BellSouth contends that the request for reconsideration is devoid of merit.

Decision

Supra has not identified a point of fact or law which was overlooked or which we failed to consider in rendering our decision. We find nothing to reconcile Supra's claim that we modified the issue. Our Order is responsive to the issue as worded. See Order No. PSC-02-0413-FOF-TP at pp. 149, 151-152. As such, Supra's Motion regarding this issue is denied.

CC. Completion Notices for Manual Orders.

Supra

Supra seeks completion notices for manual orders in the same manner that BellSouth provides itself. Supra believes that we simply accepts BellSouth's argument of technical infeasibility and the availability of the CSOTS alternative, failed to create our own record on the issue, and failed to consider Supra's arguments on the issue. Supra asserts that BellSouth failed to meet its burden of proof regarding technical infeasibility and the existence of an acceptable alternative. As such, says Supra, we should reconsider our decision and require BellSouth to provide Supra with completion notices on manual orders.

BellSouth

BellSouth maintains that it does not have to prove technical infeasibility regarding this issue. It states that CSOTS provides ALECs access to the same service order information available to BellSouth's own retail units, and that Supra is not entitled to more.

Decision

Supra again fails to identify a point of fact or law which was overlooked or which we failed to consider in rendering our decision. We considered the evidence presented, and concluded, as set forth at page 155 of our Order, that:

> Although a process in which BellSouth provides an electronic or manual completion notice may be simpler for Supra, BellSouth is not

> obligated to provide completion notification to Supra that it does not provide to other ALECs or for its own retail service orders. Since information regarding the status of orders is made available to all ALECs on BellSouth's web-based CSOTS system, Supra is provided with sufficient real-time completion notification.

Supra has identified only a difference of opinion with our decision on this point, which does not give rise to reconsideration of this issue. As such, Supra's Motion for reconsideration of this issue is denied.

DD/EE. Liability in Damages/Specific Performance.

Supra

Supra believes that the decision here is inconsistent with our decisions in at least issues A, B, and C. Supra asserts that these issues are not required by Sections 251 and 252 of the 1996 Act, but that such rulings were made at the convenience of BellSouth.

BellSouth

BellSouth believes that Supra's argument is simply an accusation that we display favoritism towards BellSouth, and does not justify a reconsideration of the issues.

Decision

Here, Supra has not identified a point of fact or law which was overlooked or which we failed to consider in rendering our decision on either of these issues. Our posture on these issues does not conflict with any other issue. Supra fails to recognize the difference between matters upon which we must act to effectuate state or federal law and those, such as the matters at issue here, in which we are obligated to arbitrate the issue pursuant to the Act, but have discretion in requiring the inclusion of provisions in an agreement. See MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc., Order on the Merits, issued June 6, 2000, in Case No. 4:97cv141-RH, 112 F.Supp. 2d 1286, 1298 (distinguishing

between our obligation to arbitrate and our obligation to adopt a provision of this type). As such, Supra has not brought forth an argument which merits reconsideration, and reconsideration of this issue is denied.

IV. BellSouth's Motion for Reconsideration of Order No. PSC-02-0637-PCO-TP

BellSouth

In support of its Motion, BellSouth asserts that the Prehearing Officer failed to consider significant points of fact and law that require the denial of Supra's Motion. BellSouth argues that consistent with Supra's goal to frustrate the arbitration process and delay executing a new Interconnection Agreement with BellSouth, Supra filed its Motion for Extension of Time the day before the parties were required to file the Agreement pursuant to Order No. PSC-02-0413-FOF-TP, issued April 25, 2002. BellSouth contends that Supra has made at least 12 filings since the Final Order was issued in this matter, all of which have sought delay.

BellSouth argues that it raised five arguments in opposition to Supra's request for extension of time which were: (1) that Supra's request was moot because BellSouth had already executed and filed an Interconnection Agreement pursuant to our Final Order; (2) that it would be extremely prejudiced by a postponement; (3) that Supra would not be prejudiced if the Motion was denied; (4) that Supra's request for an extension was nothing but a bad faith attempt to delay the proceedings; and (5) that its research revealed no prior Commission order granting an extension of time to file an executed interconnection agreement when one party would be prejudiced and/or both parties did not consent to the extension. BellSouth asserts that the Prehearing Officer in granting in part Supra's Motion did not address all of its arguments, but only (1) distinguished the case it cited for the proposition that a party cannot refuse to sign an interconnection agreement following arbitration; and (2) cited to a previous and distinguishable Commission Order, wherein we granted BellSouth a 14-day extension of time to file an executed interconnection agreement.

BellSouth asserts that the only authority on which the Prehearing Officer relied in granting Supra's request was an order issued by us in 1997 in Docket No. 960833-TP. BellSouth states that in that docket we granted its motion for extension of time despite MCI's objection. BellSouth argues that in that docket it requested an extension because the agreement was due to be filed before the written order reflecting our rulings was due to be issued. BellSouth states that it therefore asked that the final agreement be postponed until after the written order was released so there would be no confusion about what the order actually required. BellSouth contends that in this case there is a clear, written order from us deciding the issues that were raised in the arbitration, and the parties have had ample time to incorporate those decisions into the new agreement. BellSouth states that, to date, Supra has steadfastly refused to participate in any discussions that would lead to a final agreement, even with regard to issues on which reconsideration has not been sought. BellSouth contends that the Prehearing Officer's reliance on that Order was entirely misplaced. BellSouth asserts that under the circumstances of this case, the Prehearing Officer should not have granted Supra's Motion.

BellSouth further argues that in the instant matter, the Prehearing Officer failed to consider several facts that should have been considered in deciding Supra's Motion. BellSouth asserts that the most detrimental fact that the Prehearing Officer failed to consider is that Supra's reason for the extension was predicated on a falsity. BellSouth contends that specifically, the Prehearing Officer overlooked the fact that Supra's premise for an extension - to avoid negotiating the "necessary and final language more than once" - is a sham and nothing but a ruse to camouflage its real intent. BellSouth argues that contrary to Supra's stated intent, the uncontroverted evidence establishes that Supra has not even attempted to negotiate "necessary final language" for any provision in the new agreement. BellSouth cites to correspondence and e-mails between the parties to support its position that Supra has refused to negotiate final language. BellSouth states that Supra's reason was because Supra believed it was premature since all administrative remedies had not yet been exhausted. BellSouth contends that Supra's refusal to discuss the final language of the new agreement continues today.

BellSouth asserts that Section 120.569, Florida Statutes, requires that a filing cannot be interposed for an improper purpose such as to harass or delay. BellSouth further asserts that Rule 28-106.204(5), Florida Administrative Code, requires that any request for an extension state good cause for the request. BellSouth contends that misleading us as to the reason for the extension in order to delay the proceeding violates these rules. BellSouth asserts that by ignoring the fact that Supra's reasoning for the extension is a complete falsehood, the Prehearing Officer effectively sanctioned Supra's bad faith filing. BellSouth concludes that we should reconsider the Prehearing Officer's decision and deny Supra's Motion for an extension in its entirety because it is not based on a valid, good faith request.

BellSouth argues that should we decide not to reverse the Prehearing Officer's decision, we should, in the alternative, expedite the decision on the pending motions for reconsideration and several other procedural issues. First, BellSouth requests that we decide the pending motions for reconsideration and the instant Motion at the June 11, 2002, Agenda Conference. Second, BellSouth asks that we expedite the process for issuing a written order once the motions for reconsideration have been decided. Specifically, BellSouth asks that the order be issued within five (5) days of the June 11, 2002, Agenda Conference.

Third, BellSouth requests that we provide specific instructions to the parties in our written order and detail the consequences of a party's refusal to sign the agreement. Specifically, BellSouth asks that we (a) prescribe the language changes, if any, to the agreement submitted by BellSouth on April 25, 2002, that are necessary to effect whatever ruling we make on the reconsideration motions; (b) order the parties to submit a signed agreement containing the conforming language within seven (7) days of the order; (c) order BellSouth to file the Agreement with its signature within the time specified and approve the contract as submitted if Supra fails to sign the agreement within the ordered time period; and (d) order the parties to immediately operate under the new Agreement in accord with Section 2.3 of the October 1999 Agreement or relieve BellSouth of the obligation to provide wholesale service to Supra in Florida if Supra refuses to sign the follow-on Agreement within the time specified. BellSouth asserts that a one month delay will be extremely prejudicial to it.

BellSouth suggests as an alternative protective measure, we could order Supra to submit to us all payments it is withholding from BellSouth while the administrative process is concluded.

Fourth, BellSouth requests that we sanction Supra for the bad faith actions described in its Motion and in various motions filed in this docket by BellSouth and award BellSouth attorney fees and all other appropriate relief. BellSouth concludes that if we are unwilling to reverse the Prehearing Officer's ruling, we should nevertheless recognize the untenable position in which it believes Supra has placed us and BellSouth, and should take whatever action is necessary to expedite the execution of the follow-on agreement and thereby put an end to the virtual free ride that Supra has enjoyed since October 1999.

Supra

Supra filed its Response in Opposition of BellSouth's Motion for Reconsideration of Order No. PSC-02-0637-PCO-TP, on May 22, 2002. In support of its Response, Supra contends that we did not overlook or fail to consider a point of fact or law in rendering Order No. PSC-02-0637-PCO-TP.

Supra states that in its Motion for Extension of Time, it argued that submitting a joint interconnection agreement prior to the resolution of the motion for reconsideration directed to the merits, could potentially require the parties to negotiate final interconnection agreement language twice. Supra argues that contrary to BellSouth's position, there is nothing false about this statement. Supra cites to Order No. PSC-01-1951-FOF-TP at page 8, for the proposition that we held that "[u]ntil the question of reconsideration is determined, the final agreement can not be drafted." Supra further cites to Docket No. 000731-TP, in which BellSouth argued, and we accepted, the proposition that the parties cannot finalize an interconnection agreement until resolution of any motion for reconsideration addressed the merits of the arbitration. Supra contends that currently there are motions for reconsideration pending which if granted in whole or part would require the parties to negotiate different language. Supra asserts that there was nothing false in the reasons provided for the extension of time. Supra also contends that it not wanting to negotiate a final interconnection agreement twice is not evidence

of bad faith or intent, but rather simply an acknowledgment of practical considerations. Further, Supra argues that BellSouth already raised these positions in its Opposition to the extension of time. Therefore, Supra contends that BellSouth has failed to show that the Prehearing Officer overlooked or failed to consider any point of fact, and thus BellSouth failed to establish a basis for reconsideration.

Further, Supra contends that BellSouth failed to establish that the Prehearing Officer overlooked or failed to consider any point of law. Supra argues that Order No. PSC-02-0637-PCO-TP, is completely consistent with our prior rulings in the MCI-BellSouth arbitration in Docket No. 960833-TP, and the AT&T-BellSouth arbitration in Order No. PSC-01-1951-FOF-TP. Supra asserts that in both proceedings, BellSouth sought and was granted an extension of time in which to file a joint interconnection agreement after resolution of the pending motions for reconsideration addressed the merits of those arbitrations. Supra contends that BellSouth does not now argue that the rule of law allowing such extensions is flawed, but rather that we should not have granted an extension of time under the purported circumstances of this case. Supra concludes that because BellSouth does not question the rule of law allowing such extension of time (as established by BellSouth in the MCI-BellSouth and AT&T-BellSouth arbitrations), BellSouth has failed to demonstrate that we overlooked or failed to consider any point of law, and thus BellSouth has failed to establish a basis for reconsideration.

Supra further maintains that BellSouth's requests for alternative relief are ludicrous and without any basis in fact or law. Supra asserts that BellSouth has failed to support these requests with any legal authority or precedent. Supra states that there is no legal basis for BellSouth's request for expedited treatment. Supra argues that BellSouth's request for expedited treatment of its motions for reconsideration is both untimely and would violate our obligation to first address Supra's pending motions for recusal. Supra cites to Fuster-Escalona v. Wisotsky, 781 So.2d 1063 (Fla. 2002), for the proposition that the Florida Supreme Court held that courts must immediately act upon motions for recusal when presented, and that any ruling upon the merits prior to addressing a motion for recusal is reversible error. Supra contends that BellSouth is seeking to "leap-frog" the recusal

motions and obtain a rush to judgement on its pending reconsideration motions in an effort to force a new interconnection agreement on Supra. Supra argues that this "leap-frog" attempt is directly contrary to the Florida Supreme Court's holding in Fuster-Escalona, and therefore should be denied.

Supra also argues that BellSouth's request for expedited treatment is simply a plea for preferential treatment. Supra contends that BellSouth is seeking further favors by requesting expedited consideration of matters which require no expedited attention. Supra states that BellSouth's basis for its request is that Supra has failed to pay for BellSouth's improper billing and has dared to dispute such bills before an Arbitration Tribunal. Supra contends that it is important to note that BellSouth is not claiming that Supra will not pay BellSouth for service, but rather that Supra has disputed BellSouth's improper billing and continues to bring such improper billing to an Arbitration Panel for resolution. Supra asserts that according to BellSouth, the fair and impartial rulings being issued by the Arbitration Panel are somehow causing BellSouth harm; perhaps because BellSouth is not accustomed to being denied biased and preferential treatment. Supra thus concludes that BellSouth's request should be denied.

Supra also states that there is no legal basis for BellSouth's request to force a new interconnection agreement upon Supra, irrespective of its consent. Supra contends that BellSouth's proposed interconnection agreement does not appear to incorporate the voluntary agreements made by the parties which had not been submitted for arbitration. Supra argues that the proposed interconnection agreement is merely BellSouth's interpretation of Order No. PSC-02-0413-FOF-TP. Supra cites to Order No. PSC-97-0550-FOF-TP, issued May 13, 1997, in Docket No. 961173-TP, in which we stated that:

> [t]he process of approving a jointly filed agreement by the Commission consists of approving language that was agreed to by the parties, discarding the non-arbitrated language that was not agreed upon and determining the appropriate contract language for those sections that were arbitrated, yet still in dispute.

Order No. PSC-97-0550-FOF-TP at pp. 12-13. Supra argues that, accordingly, any final ruling by us on arbitrated language is only one part of the process used in arriving at a final interconnection agreement.

Supra also argues that Order No. PSC-97-0550-FOF-TP requires the parties to jointly execute a final interconnection agreement before the same is submitted to us for approval and that a party which fails to sign an arbitrated interconnection agreement may be subject to a show cause order and fines in the event there is no good cause for failing to execute the agreement. Order No. PSC-97-0550-FOF-TP at pages 20-21. Supra contends that Sections 350.127 and 364.015, Florida Statutes, set forth our powers to enforce our orders and rulings and nothing in these statutes or any other law gives us the authority to execute interconnection agreements on behalf of any telecommunications company or to otherwise impose an interconnection agreement on any telecommunication company which has not executed such document. Supra asserts that nothing in the current Interconnection Agreement allows BellSouth to terminate that agreement by having us adopt a new agreement for Supra. Supra argues that therefore, there is no legal authority for any of the relief requested by BellSouth.

In addition, Supra contends that BellSouth has not provided any factual or legal basis to support its request for sanctions, attorneys' fees and other relief. Supra asserts that it has done nothing inappropriate or violative of any rules, statutes, case law, or other legal authority. Thus, Supra concludes that any such request by BellSouth should be denied.

Decision

As noted previously, 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 we failed to consider in rendering our 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). Further, 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).

In its Motion for Reconsideration of Order No. PSC-02-0637-PCO-TP, BellSouth attempts to reargue points of fact and law that were raised in its Motion in Opposition to Supra's Request for Extension of Time, and which were properly considered. BellSouth argues, however, that since there is no detailed point-by-point analysis of the five arguments it raised in its Motion in Opposition in Order No. PSC-02-0637-PCO-TP, the Prehearing Officer must have failed to consider or have overlooked these arguments. BellSouth nevertheless concedes that these same arguments were raised in its Motion in Opposition of Supra's extension of time, thereby bringing these arguments to the Prehearing Officer's attention and consideration. Moreover, BellSouth's arguments that Supra's request for an extension was purely for delay and that it would be prejudiced by an extension of time were specifically noted in Order No. PSC-02-0637-PCO-TP. Therefore, BellSouth's argument that the Prehearing Officer failed to consider or overlooked the facts raised and the arguments made in its Opposition to the requested extension of time is without merit.

Moreover, BellSouth's contention that the Prehearing Officer misapplied Order No. PSC-97-0309-FOF-TP, issued in Docket 960833-TP, simply because the circumstance are different is also without merit. BellSouth appears to argue that because it has alleged bad faith on Supra's part in attempting to further delay these proceedings that the Prehearing Officer should not have granted the extension based on Order No. PSC-97-0309-FOF-TP. BellSouth acknowledges that in Docket No. 960833-TP, BellSouth was granted an extension of time over MCI's objection. In Order No. PSC-02-0637-PCO-TP, Order No. PSC-97-0309-FOF-TP was specifically cited for the proposition that we have granted extensions of time even though one of the parties objects. Thus, the law has been correctly applied. BellSouth's reargument regarding Supra's alleged delay and bad faith does not constitute a point of law which was overlooked or which the Prehearing Officer failed to consider. Furthermore, these facts, as well as the pertinent law, were considered by the Prehearing Officer since BellSouth raised these facts in its Motion in Opposition. Because these arguments are now being raised a second time, they constitute improper reargument. Thus, we agree with Supra that BellSouth has failed to demonstrate that the

Prehearing Officer failed to consider or overlooked any point of fact or law in rendering Order No. PSC-02-0637-PCO-TP.

In addition, it does not appear that Supra's request for an extension of time was based on a falsity as BellSouth claims. Supra's request was based on the fact there are several pending motions for recusal and reconsideration of the final order. Further, in its request, Supra states that it does not want to negotiate final language twice. Due to the fact that the outstanding motions for reconsideration may impact on the final language of the interconnection agreement, we do not find that Supra's statement that it does not want to negotiate final language twice can be construed as a falsehood. The request in this instance may merely be for practical considerations rather than nefarious bad faith motives. As evidenced by Order No. PSC-97-0309-FOF-TP, even BellSouth has requested extensions of time over the objection of the opposing party without implication of nefarious motives.

BellSouth has also requested expedited approval of the agreement in the alternative, should we deny its request to reconsider Order No. PSC-02-0637-PCO-TP. First, some, if not all, of BellSouth's proposed request is a request for reconsideration under a different guise. Specifically, BellSouth requests that Supra and BellSouth be ordered to submit a signed interconnection agreement within seven (7) days of the order on reconsideration. Staff notes that Order No. PSC-02-0637-PCO-TP grants the parties fourteen (14) days after the final order disposing of Supra's Motion for Reconsideration in which to file their final, signed interconnection agreement. Further, BellSouth asks for sanctions and attorney fees for Supra's alleged bad faith acts. As noted previously, this issue was specifically brought to the Prehearing Officer's attention and consideration in BellSouth's Motion in Opposition to Supra's request for extension of time.

BellSouth's request that we decide the pending motions for reconsideration and the instant motion at the June 11, 2002, Agenda Conference, is moot. The motion for recusal was addressed prior to the pending motions at the June 11, 2002, Agenda Conference. The final order on Supra's Motion for Reconsideration will be issued at the soonest practicable date after our decision on the Motion at Agenda Conference. As such, BellSouth's request for a five (5) day time frame on issuing the final order is denied.

Since Supra has not yet failed to execute a final arbitrated interconnection agreement under the terms of Order No. PSC-02-0637-PCO-TP, it is premature to address BellSouth's other requests. As noted by Supra, we have the authority to show cause a party which fails to sign an arbitrated interconnection agreement in the event there is no good cause for failing to execute the agreement. We now place the parties on notice that if the parties or a party refuses to submit a jointly executed agreement as required by Order No. PSC-02-0637-PCO-TP and Order No. 02-0143-FOF-TP within fourteen (14) days of the issuance of a final order on Supra's Motion for Reconsideration, we may impose a $25,000 per day penalty for each day the agreement has not been submitted thereafter in accordance with Section 364.285, Florida Statutes.

For the foregoing reasons, we find that BellSouth has failed to identify a mistake of fact or law in the Prehearing Officer's decision. Therefore, we deny BellSouth's Motion for Reconsideration of Order No. PSC-02-0637-PCO-TP.

V. BellSouth's May 24, 2002, Motion for Reconsideration of Order No. PSC-02-0663-CFO-TP

BellSouth

BellSouth contends that we should reconsider the decision to deny confidential treatment to the information in Supra's April 1, 2002, letter to Commissioner Palecki because: 1) the decision overlooks or fails to consider several points of fact and law; 2) it potentially violates a Federal Court's order; 3) it rewards Supra for violating terms of its interconnection agreement with BellSouth, as well as terms in our Order and a Federal Court order; 4) it misinterprets Section 364.183, Florida Statutes; 5) it "eviscerates" the right to have certain information protected in accordance with Our rules and Chapter 364, Florida Statutes; and 6) it will have a "chilling effect" on the disclosure of confidential information between parties in Our proceedings.

Specifically, BellSouth contends that the information contained in the letter must remain protected and that the Order must be reconsidered because the Prehearing Officer failed to consider that the parties are contractually bound to keep this information confidential. BellSouth emphasizes that Section 15.1

of the parties' interconnection agreement requires that they treat this information as confidential. BellSouth also emphasizes that the CPR Rules for Non-Administered Arbitration, which BellSouth contends were applicable to the commercial arbitration, requires,. in pertinent part, that, " . . . the parties, the arbitrators and CPR shall treat the proceedings, and related discovery and the decisions of the tribunal, as confidential. . . unless otherwise required by law or to protect the legal right of a party." *Citing* CPR Rules, Rule 17.

BellSouth argues that the Prehearing Office erred by finding that the information should be deemed public simply because it was submitted for public filing, in spite of the contractual obligations to keep the information confidential. BellSouth maintains that Supra's breach of the parties' contractual obligations provides BellSouth certain legal remedies against Supra, but the breach does not "strip" the subject information of its confidential status. BellSouth contends, however, that the Order actually rewards Supra for its breach and that it will encourage other parties to follow similar tactics in the future. Furthermore, BellSouth asserts that the decision defeats the purpose of protective or non-disclosure agreements between parties. BellSouth contends that the Prehearing Officer's decision fails to properly consider these points, and should, therefore, be reversed.

BellSouth also believes that the Order effectively allows Supra to violate an order from the Federal District Court, wherein Judge King, in Civil Action No. 01-3365, determined that the substance of the commercial arbitration proceeding:

> . . . may contain proprietary or confidential information, which the parties agreed to be held in confidence in accord with the terms of the Agreement. Therefore, to unseal the filings in this case would contravene the confidentiality provision with which the parties agreed.

Citing October 31, 2002 Order at pp. 5-6. BellSouth adds that the Court's Order did not allow for disclosure of the subject information in quasi-judicial proceedings such as those before us.

BellSouth further asserts that Order No. PSC-02-0663-CFO-TP violates our previous Order, Order No. PSC-02-0293-CFO-TP, which granted confidentiality to some of the same information at issue in Order No. PSC-02-0663-CFO-TP. Therefore, BellSouth contends that these Orders are in conflict and that the prior Order granting confidentiality should control. Furthermore, if Order No. PSC-02-0663-CFO-TP stands, BellSouth argues that it essentially sanctions Supra's violation of Order No. PSC-02-0293-CFO-TP.

In addition, BellSouth argues that the decision in Order No. PSC-02-0663-CFO-TP misinterprets and misapplies Section 364.183, Florida Statutes. BellSouth maintains that the decision reaches an unreasonable conclusion not contemplated by lawmakers in that it could allow Supra, or any party privy to confidential information, to eliminate the confidential status of the information simply by submitting it for public filing.[8] BellSouth maintains that this would appear to be contrary to Section 364.183(3), Florida Statutes, which acknowledges that information is not considered to be "publicly disclosed" if provided to another party pursuant to a protective agreement. BellSouth contends that this acknowledgment would not have been included in the statute had the Legislature intended another party to be able to disclose confidential information contrary to such a protective agreement.

BellSouth further contends that the information has not been disclosed because it filed a Notice of Intent to seek confidential classification the day after the letter was received by us, and that it has followed the provisions of Rule 25-22.006, Florida Administrative Code, regarding seeking confidential classification of the material.

BellSouth also notes that it is seeking enforcement of its rights on this issue in another forum. BellSouth states that it is asking the Court to consider whether Supra violated the Agreement and other prohibitions by disclosing the information.

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[8]BellSouth notes that one should not "blindly follow statutory language in derogation of common sense." Sainz v. State, 811 So. 2d 683, 693, (Fla. App. 3rd DCA 2002)(concurring opinion of Judge Ramirez).

Finally, BellSouth argues that the public interest requires that Order No. PSC-02-0663-CFO-TP be reconsidered and reversed. BellSouth contends that we are, otherwise, acquiescing to Supra's malfeasance, which will have a chilling effect on future cases because parties will be hesitant to share information pursuant to a protective agreement.

Decision

As previously noted, 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 we 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). Furthermore, 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).

On April 1, 2002, Supra's Chairman and CEO, Olukayode A. Ramos, sent a letter, with attached exhibits (Document No. 04493-02 and cross-referenced Documents Nos. 03731-02 and 03690-02), to Commissioner Palecki's office and copied the other Commissioners, the docket file, the General Counsel's office, the State Attorney's office, and BellSouth's attorney.

On April 23, 2002, BellSouth filed a Request for Specified Confidential Classification for the letter. On April 24, 2002, BellSouth filed an Amended Request for Confidential Classification regarding this same information to correct a typographical error in its initial Request. On May 1, 2002, Supra filed an Objection to BellSouth's Request.

By Order No. PSC-02-0663-CFO-TP, issued May 15, 2002, the Prehearing Officer denied confidential treatment for the material contained in the letter, finding that:

> Based on the definition of proprietary confidential business information in Section 364.183(3), Florida Statutes, I find that BellSouth's Request for Confidential Classification should be denied. The letter submitted by Supra on April 1, 2002, was submitted as a public document and as such, became a matter of the public record.

Order at p. 3.

Subsequently, by Order No. PSC-02-0700-PCO-TP, issued May 23, 2002, the Prehearing Officer acknowledged BellSouth's May 16, 2002, Notification to us of its intent to exercise its rights under Rule 25-22.006(10), Florida Administrative Code, in accordance with the requirements set forth in that subsection of the rule. Therefore, the material for which confidential treatment was denied by Order No. PSC-02-0663-CFO-TP will continue to receive confidential treatment in accordance with Rule 25-22.006(10), Florida Administrative Code, through completion of judicial review.

On May 24, 2002, BellSouth filed its Motion for Reconsideration of the Order Denying Request for Confidential Classification, Order No. PSC-02-0663-CFO-TP. Supra did not file a response.

BellSouth has not identified a mistake of fact or law in the prehearing officer's decision to deny confidential treatment to the information contained in Supra's April 1, 2002, letter. Instead, BellSouth mainly reargues points already presented and addressed, articulates its disagreement with the Prehearing Officer's decision as a matter of policy, and more fully alleges how it believes that Supra has violated a variety of our rules and Orders as well as those of the Federal District Court. BellSouth has not, however, identified an error in the decision. Mere disagreement with the conclusion reached does not satisfy the standard for reconsideration.

Specifically, with regard to BellSouth's allegations that the parties were obligated by contract, by CPR rules, and by the Federal Court's October 31, 2001, Order to keep the information confidential, the Prehearing Officer fully considered the

contractual obligation arguments at pages 1 and 2 of Order No. PSC-02-0663-CFO-TP.[9] He concluded, however, that, "The information has been disclosed and such disclosure was not made pursuant to ". . . a statutory provision, an order of a court or administrative body, or private agreement," as allowed by Section 364.183, Florida Statutes." Order at p. 3. Therefore, confidential treatment was denied. As for the more specific arguments regarding the Order of the Federal Court and the CPR Rules, staff notes that these are new arguments which are not appropriate for a Motion for Reconsideration. Nevertheless, even if considered, they do not demonstrate an error in the Prehearing Officer's decision in that these arguments, like those regarding the parties' contractual obligations, raise issues regarding whether the parties themselves complied with pertinent rules and orders. Neither the contract, the CPR Rules, or the Federal Court's October 31, 2001, Order address how an administrative body should handle the subject information once it is submitted as a public record. As such, BellSouth has not identified a mistake of fact or law in Order No. PSC-02-0663-CFO-TP.

As for the contention that the decision violates another of our orders, this is also another new argument that is not appropriate on reconsideration. Nevertheless, this argument also does not demonstrate an error in the decision in Order No. PSC-02-0663-PCO-TP. BellSouth contends that there is a conflict between Order No. PSC-02-0293-CFO-TP and Order No. PSC-02-0663-CFO-TP in that certain information granted protection by the first Order is denied similar protection by the second Order. We note, however, that Order No. PSC-02-0293-CFO-TP was issued on March 7, 2002, before Supra submitted its April 1, 2002, letter.[10] As such, when Order No. PSC-02-0293-CFO-TP was issued, the information had not yet been publicly disclosed. Order No. PSC-02-0663-CFO-TP represents a change in circumstances regarding any information that

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[9]Staff notes that BellSouth's line-by-line justification was also attached to the Order as Attachment A, further demonstrating the Prehearing Officer's consideration of all of BellSouth's arguments.

[10]Order No. PSC-02-0293-CFO-TP was also issued prior to BellSouth's Request for Confidential Classification, but was not referenced therein.

had previously been granted confidential status by Order No. PSC-02-0293-CFO-TP. Furthermore, whether or not Order No. PSC-02-0663-CFO-TP effectively allows Supra to get away with violating Order No. PSC-02-0293-CFO-TP, as BellSouth contends, is not a proper issue for reconsideration in that it is a new argument and does not identify an error in the decision.[11] Instead, it demonstrates only that BellSouth disagrees with the Prehearing Officer's conclusion from a policy and fairness perspective.

Similarly, BellSouth's argument that the decision is contrary to public policy considerations does not identify a mistake of fact or law in the Prehearing Officer's decision. BellSouth contends that Order No. PSC-02-0663-CFO-TP will have a "chilling effect" on parties' willingness to share with each other confidential information in Our proceedings. Again, this does not identify an error in Order No. PSC-02-0663-CFO-TP, and it is a new argument raised for the first time on reconsideration. Thus, it is rejected. Nevertheless, we do not believe that the Order will have the argued effect, because it only addresses how the agency will handle the information; it does not seek to enforce or otherwise construe the parties' protective agreement. To the extent that a "chilling effect," if any, occurs along the lines argued by BellSouth, we anticipate that it would more likely occur as a result of litigation regarding the parties' contractual obligations to maintain the confidentiality of the subject information.

As for BellSouth's argument that the Prehearing Officer has misconstrued Section 364.183(3), Florida Statutes, BellSouth is incorrect and has not identified an error in the decision. Section

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[11] We interpret Order No. PSC-02-0293-CFO-TP as setting forth how the agency will treat the information that has been filed with it pursuant to Section 364.183, Florida Statutes, and Chapter 119, Florida Statutes. We do not interpret the Order to require anything of the parties, other than that they continue to treat the information as confidential and file a renewed request in 18 months if they wish to maintain the confidential status of the information. The parties' agreements, the CPR Rules, and the Federal Court's October 31, 2001, Order address more directly the confidentiality requirements applicable to the parties themselves.

364.183(3), Florida Statutes, defines "proprietary confidential business information as:

> . . . information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. (Emphasis added)

The prehearing officer's interpretation of this plain language is correct that the information can only be afforded confidential classification if it has not otherwise been disclosed. The statute also includes specifically identified exceptions that allow information to be treated as confidential by this agency even if the information has been previously disclosed, if the information was previously disclosed pursuant to "a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public." The Prehearing Officer concluded that the information disclosed in Supra's April 1, 2002, letter was not disclosed pursuant to one of the exceptions elucidated in the statute; therefore, he found that the information should not be afforded confidential treatment. BellSouth has not identified an error in this interpretation, but instead a desire for a broader reading of the statute. We find, however, that the Prehearing Officer's interpretation comports with the "plain meaning" of the statute; and as such, BellSouth's argument does not meet the standard for a Motion for Reconsideration.

Finally, with regard to BellSouth's contention that the information was not disclosed and that it timely filed a Notice of Intent in accordance with Rule 25-22.006(3)(a)(1), Florida Administrative Code, we note that the information was, in fact,

made public in that it was filed as a public document in this Docket, as well as sent to our staff and other agencies, without any indication that the document should be treated as confidential.[12] Such disclosure was apparently not made pursuant to any of the allowed exceptions set forth in Section 364.183(3), Florida Statutes. As noted at page 2 of Order No. PSC-02-0663-CFO-TP:

> Florida law presumes that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the 'sunshine.'

The Prehearing Officer acknowledged that the information had already been disclosed before BellSouth notified us that it wished the information to be treated as confidential, noting that, "Once disclosed, it is not possible to 'put the chicken back in the egg' so to speak." Order No. PSC-02-0663-CFO-TP at p. 3. BellSouth has not identified a mistake of fact or law in this conclusion.

For all of the above reasons, BellSouth's Motion for Reconsideration is denied. However, in accordance with Rule 25-22.006(10), Florida Administrative Code, and Order No. PSC-02-0700-PCO-TP, issued May 23, 2002, the information should continue to retain confidential treatment through judicial review.

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[12]We note that before BellSouth's Notice of Intent was received on April 2, 2002, the April 1, 2002, letter had been briefly posted on our's web site, which allowed the document to be even more easily accessed by the public.

VI. Supra's Motion for Reconsideration of Order No. PSC-02-0700-PCO-TP

Supra

Supra asks that we reconsider the Prehearing Officer's decision acknowledging BellSouth's compliance with Rule 25-22.006(10), Florida Administrative Code, and requiring that the information that had previously been denied confidential classification by Order No. PSC-02-0663-CFO-TP continue to receive confidential treatment pending resolution of appeal in accordance with Rule 25-22.006(10), Florida Administrative Code. Supra asserts that it was not given adequate time to respond to BellSouth's Motion as allowed by Rule 28-106.204(1), Florida Administrative Code. Under the Rule, Supra contends that it had until May 23, 2002, to respond. Supra notes, however, that the Order was issued on May 23, 2002, without benefit or consideration of Supra's response.

Supra further contends that had the Prehearing Officer considered Supra's response, he would have seen that the Rule and the case law presume that the information at issue has not already been publicly disclosed. Thus, Supra asks that Order No. PSC-02-0700-PCO-TP be reconsidered for the Prehearing Officer's failure to properly consider Supra's arguments.

BellSouth

BellSouth filed a response to Supra's Motion on June 7, 2002.

Decision

As previously noted, 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 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). Furthermore, 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).

Supra has not identified a mistake of fact or law in the Prehearing Officer's decision.

Specifically, as recognized by the Prehearing Officer, Rule 25-22.006(10), Florida Administrative Code, states:

> Judicial Review. When the Commission denies a request for confidential classification, the material will be kept confidential until the time for filing an appeal has expired. The utility or other person may request continued confidential treatment until judicial review is complete. The request shall be in writing and filed with the Division of the Commission Clerk and Administrative Services. The material will thereafter receive confidential treatment through completion of judicial review.

See also Order No. PSC-0700-PCO-TP at p. 3. The meaning of the rule is clear that upon notice in writing, material denied confidential treatment will continue to receive confidential treatment through completion of judicial review. There are no presumptions, allusions, or otherwise to the contrary. Furthermore, while referring to what it believes to be pertinent case law, Supra has provided no citations. As such, Supra has not identified an error in the Prehearing Officer's decision.

In addition, we emphasize that Rule 28-104.204(1), Florida Administrative Code, provides, in pertinent part, that, " *When time allows*, the other parties may, within 7 days of service of a written motion, file a response in opposition." (Emphasis added). This Rule leaves it to the Prehearing Officer's discretion to determine "when time allows" for the filing of responses. BellSouth's Motion was styled as an "Emergency" motion, and the subject matter pertained to the handling of information that BellSouth believes meets the standard for confidential

classification--an issue which is sensitive and worthy of expedited resolution. While the Prehearing Officer disagreed that the information meets the standard for confidential classification, his Order recognizes that our rules require that parties have a meaningful opportunity to pursue judicial relief if they disagree with a decision that information should be declassified. While Supra may disagree with the Prehearing Officer's decision to issue an expedited ruling without benefit of Supra's response, Supra has not identified an error in the Prehearing Officer's decision to do so.

For these reasons, Supra's Motion for Reconsideration of Order No. PSC-02-0700-PCO-TP is denied.

VII. Supra's Cross Motion for Clarification and Opposition to BellSouth's Motion for Reconsideration and Partial Reconsideration of Order No. PSC-02-0663-FOF-TP

Pursuant to Rule 25-22.0376, Florida Administrative Code, the filing of a motion for reconsideration of non-final orders is due within 10 days of the issuance of the order. Supra seeks redress of Order No. PSC-02-0663-FOF-TP, issued by the Prehearing Officer on May 15, 2002. However, Supra filed its Motion on May 31, 2002. While Supra maintains that a cross-motion for reconsideration is appropriate under Rule 25-22.060(1)(b), Florida Administrative Code, that rule is applicable only to final orders of this Commission, and as such, is inapplicable to Order No. PSC-02-0663-FOF-TP. Thus, Supra's Motion is untimely, and is hereby denied.

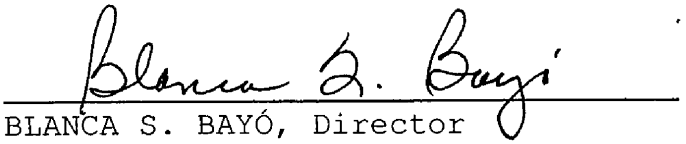
Based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motions identified in this Order are resolved as set forth within the body of this Order. It is further

ORDERED that the parties shall submit a signed agreement that complies with our decisions in this docket for approval within 14 days of issuance of this Order. It is further

ORDERED that this docket shall remain open pending our approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.

By ORDER of the Florida Public Service Commission this 1st Day of July, 2002.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

WDK

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: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15)

days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; 2) judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6) or 3) 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 the Commission Clerk and Administrative Services 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.