SUPREME COURT OF FLORIDA

On Appeal from Final Orders of the Florida Public Service Commission

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SPRINT-FLORIDA INC., ET AL., Appellants, Cross Appellees
v.
LILA A. JABER, ET AL., Appellees, Cross Appellees
Case No. SC03-235

and

VERIZON FLORIDA INC., ET AL., Appellants, Cross Appellees
v.
LILA A. JABER, ET AL., Appellees, Cross Appellees
Case No. SC03-236

v.

AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC
AND TCG SOUTH FLORIDA, Cross Appellants

CONSOLIDATED ANSWER BRIEF OF CROSS-APPELLEE BELLSOUTH TELECOMMUNICATIONS, INC.

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GLOSSARY

1995 Amendments	Ch. 95-403, Laws of Florida
1996 Act	Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56
ALEC	Alternative Local Exchange Carrier
APA	Florida Administrative Procedure Act
ECS	Extended Calling Service
FCC	Federal Communications Commission
ILEC	Incumbent Local Exchange Carrier
IXC	Interexchange Carrier
LATA	Local Access and Transport Area
LEC	Local Exchange Carrier
TELRIC	Total Element Long-Run Incremental Cost

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PREFACE

BellSouth Telecommunications, Inc. ("BellSouth") was a party to the January 2000 proceedings of the Florida Public Service Commission, established to investigate methods for compensating carriers for the exchange of traffic subject to Section 251 of the Telecommunications Act of 1996. BellSouth submits this Answer Brief only to respond to Appellee/Cross Appellant AT&T Communications of the Southern States, LLC's and TCG South Florida's (collectively referred to as "AT&T") Consolidated Answer Brief and Initial Brief on Cross Appeal.

Appellants and Cross Appellees Verizon Florida Inc. ("Verizon"), ALLTEL Florida, Inc. ("ALLTEL"), Northeast Florida Telephone Company d/b/a NEFCOM, TDS TELECOM/Quincy Telephone, Smart City Telecommunications LLC d/b/a Smart City Telecom, ITS Telecommunications Systems, Inc., Frontier Communications of the South, Inc., and GTC, Inc. d/b/a GT Com, are incumbent local exchange carriers in the State of Florida, are referred to collectively as "ILECs." Alternative local exchange telecommunications companies as defined by Section 364.02(1), Florida Statutes, such as AT&T, are referred to as "ALECs." The Florida Public Service Commission and its Commissioners, are referred to collectively as "the Commission."

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The Orders on review before this Court are the Commission's Order on Reciprocal Compensation, Order No. PSC-02-1248-FOF-TP, issued on September 10, 2002 (R.11:2034-97)[1] (hereinafter referred to as "Order")[2], and its Order Denying Motions for Reconsideration, Order No. PSC-03-0059-FOF-TP, issued on January 8, 2003 (R.13:2487-514) (hereinafter referred to as "Order on Reconsideration").

INTRODUCTION AND SUMMARY

BellSouth adopts and incorporates by reference the Introduction and Summary from Appellant and Cross Appellee Verizon's Consolidated Reply Brief and Answer Brief on Cross Appeal.

STATEMENT OF FACTS

BellSouth adopts and incorporates by reference the Statement of Facts from Appellant and Cross Appellee Verizon's Consolidated Reply Brief and Answer Brief on Cross Appeal.

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[1] Citations to the administrative record are by volume and page number; citations to transcripts of proceedings before the Commission are by date, volume, and page number.

[2] The Order was amended on September 12, 2002, by deleting Section III.B. That section, which was part of the Commission's discussion of the decision challenged in AT&T's cross-appeal, was included "due to a scrivener's error." Order No. PSC-02-1248A-FOF-TP, at 1 (R.11:2098).

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STANDARD OF REVIEW

BellSouth adopts and incorporates by reference the Standard of Review from Appellant and Cross Appellee Verizon's Consolidated Reply Brief and Answer Brief on Cross Appeal.

ARGUMENT

BellSouth adopts and incorporates by reference the following Argument Sections from Appellant and Cross Appellee Verizon's Consolidated Reply Brief and Answer Brief on Cross Appeal: Section II; II(A); II(B); and II(C).

In addition, this Court should affirm the Commission's interpretation of the FCC's tandem-rate rule. AT&T erroneously argues that the Commission erred by requiring an ALEC to prove it is entitled to the tandem switching rate by establishing that: (1) it has deployed a switch in a comparable geographic area; (2) it has deployed NPA/NXXs to serve the exchanges within the area; and (3) it is serving the area through its own facilities or a combination of owned and leased facilities connected to its collocation arrangements in an ILEC's central office. (AT&T Ans./Init. Br. at 35; Order at 20). In support of its argument AT&T relies on the Federal Communication Commission's ("FCC") decision in *In Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Regarding Interconnection Disputes with Verizon Virginia, Inc.*, Memorandum Opinion and Order, Da. 021737 (Jul. 17 2002) ("Virginia Order"). AT&T erroneously argues that this decision has "preempted" the tandem switch rate issue and contends that the

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Commission erred in requiring ALECs to meet "additional requirements for the tandem rate imposed by the Commission." (AT&T Ans./Init. Br. at 41).

The fatal flaw in AT&T's argument is that the FCC's decision in the Virginia Order carries no more weight before the Commission than does a decision from any other state commission. This is so because the FCC issued the Virginia Order pursuant to Section 262(e)(6) of the Act. Accordingly, the FCC stood in the shoes of the Virginia Commission and its ruling applies only to carriers in Virginia. Indeed, the FCC specifically narrowed its Order:

> In this proceeding, the Wireline Competition Bureau, acting through authority expressly delegated from the Commission, stands in the stead of the Virginia State Corporation Commission. We expect that this order, and the second order to follow, will provide a workable framework to guide the commercial relationships **between interconnecting carriers before us in Virginia.**

Virginia Order at ¶ 1 (emphasis added).

Moreover, the FCC expressly recognized that its decision was limited to "the record of these hearing, the evidence presented therein, and the subsequent briefing materials filed by the parties." Id. at ¶ 2. Because BellSouth does not operate in Virginia, BellSouth was not a party to that proceeding. Applying a decision involving Virginia carriers and arising out of different facts to BellSouth in Florida world violate BellSouth's due process rights, undermine the regulatory process, and is inconsistent with *res judicata*. See *Metropolitan Dade County Bd. of County Comm'rs v. Rockmatt Corp.*, 231 So. 2d 41, 44 (Fla. 3d DCA 1970) (noting that the doctrine of administrative *res judicata* is applicable to rulings or decisions of administrative

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bodies. Accordingly, the Virginia Order is not binding and does not preempt the Commission's decision regarding tandem switching.

Assuming, *arguendo*, that the Virginia Order applies, this does not alter the analysis. In the Virginia Order, the FCC held that, in order to obtain the tandem switching rate, an competitive LEC (or ALEC) must prove that the "competitive LEC's switch is capable of serving a geographic area that is comparable to the architecture served by the incumbent LEC's tandem switch." Virginia Order at ¶ 309. The Commission's Order is entirely consistent with this decision. Namely, the Commission's requirement that the ALEC deploy a switch and also obtain a list of NPA/NXXs telephone numbers that it has opened to serve exchanges in the area, is fundamentally necessary to satisfy the standard set forth by the FCC for Virginia carriers. This is so because without a switch or a list of NPA/NXX telephone numbers, an ALEC would not be "capable" of providing any service to any customers, regardless of where potential customers may be located. Accordingly, this Court should affirm the Commission's decision on the tandem switching issue.

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CONCLUSION

For the foregoing reasons, this Court should affirm the Commission's interpretation of the FCC's tandem-rate rule.

Respectfully submitted,

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I hereby certify that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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