

SUPREME COURT OF FLORIDA

On Appeal from Final Orders of the Florida Public Service Commission

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.

Jack R. Reiter
Florida Bar No. 0028304
Effie D. Silva
Florida Bar No. 0630535
Adorno & Yoss, P.A.
2601 South Bayshore Drive,
Suite 1600
Miami, Florida 33133
(305) 858-5555
(305) 858-4777

Counsel for BellSouth Telecommunications, Inc.

Adorno & Yoss, P.A.

2601 SOUTH BAYSHORE DRIVE • SUITE 1600 • MIAMI, FLORIDA 33133 • TELEPHONE 305-858-5555 • TELEFAX 305-858-4777

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
GLOSSARY	iv
PREFACE	1
INTRODUCTION AND SUMMARY	2
STATEMENT OF FACTS	2
STANDARD OF REVIEW	3
ARGUMENT	3
CONCLUSION	6
CERTIFICATE OF SERVICE	7
CERTIFICATE OF COMPLIANCE	10

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Metropolitan Dade County Bd. of County Comm'rs v. Rockmatt Corp.</i> 231 So. 2d 41, 44 (Fla. 3d DCA 1970)	5
<u>Federal Communications Commission Orders</u>	
<i>In Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)</i> <i>of the Communications Act for Preemption of the Jurisdiction</i> <i>of the Virginia State Corporation Regarding Interconnection</i> <i>Disputes with Verizon Virginia, Inc., Memorandum Opinion</i> and Order, Da. 021737 (Jul. 17 2002)	3
<u>Florida Statutes</u>	
§ 364.02, Fla. Stat.	1
<u>Federal Statutes</u>	
47 U.S.C. § 251	1

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

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.”

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.

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).

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

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 would 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

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.

CONCLUSION

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

Respectfully submitted,

ADORNO & YOSS, P.A.

Jack R. Reiter
Florida Bar No. 0028304
Effie D. Silva
Florida Bar No. 0630535
2601 South Bayshore Drive
Suite 1600
Miami, Florida 33133
(305) 858-5555
(305) 858-4777

Attorneys for BellSouth
Telecommunications, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent
via U.S. Mail this ____ day of September, 2003 to:

Kenneth A. Hoffman, Esq.
Martin P. McDonnell, Esq.
Rutledge, Ecenia, Purnell &
Hoffman, P.A.
P.O. Box 551
Tallahassee, FL 32302

Felicia Banks, Esq.
Florida Public Service Commission
2540 Shumard Oak Boulevard,
Room 370
Tallahassee, FL 32399-0850

Michael A. Gross, Esq.
Florida Cable Telecommunications
Association
246 East 6th Avenue
Tallahassee, FL 32303

Mr. Paul Rebey
Focal Communications Corporation
of Florida
200 North LaSalle Street, Suite 1100
Chicago, IL 60601-1914

Global NAPS, Inc.
10 Merrymount Road
Quincy, MA 02169

Donna Canzano McNulty, Esq.
MCI WorldCom
1203 Governors Square Boulevard
Suite 201
Tallahassee, FL 32301-2960

Norman Horton, Jr., Esq.
Messer Law Firm
P.O. Box 1876
Tallahassee, FL 32301-1876

Jon Moyle, Esq.
Cathy Sellers, Esq.
The Perkins House
118 North Gadsden Street
Tallahassee, FL 32301

Mr. Herb Bornack
Orlando Telephone Company
4558 SW 35th Street, Suite 100
Orlando, FL 32811-6541

Peter Dunbar, Esq.
Karen Camechis, Esq.
P.O. Box 10095
Tallahassee, FL 32302-2095

Charles J. Rehwinkel, Esq.
Susan Masterton, Esq.
Sprint-Florida, Incorporated
P.O. Box 2214
MS: FLTLHO0107
Tallahassee, FL 32316

Mark Buechele, Esq.
Supra Telecom
1311 Executive Center Drive
Suite 200
Tallahassee, FL 32301

Kimberly Caswell, Esq.
Verizon Select Services, Inc.
P.O. Box 110, FLTC0007
Tampa, FL 33601-0110

Charlie Pellegrini, Esq.
Patrick K. Wiggins, Esq.
P.O. Drawer 1877
Tallahassee, FL 32302

Robert Scheffel Wright, Esq.
John T. LaVia, III, Esq.
P.O. Box 271
Tallahassee, FL 32302

Ms. Wanda G. Montano
US LEC Corporation
Morrocroft III
6801 Morrison Boulevard
Charlotte, NC 28211

Carolyn Marek
Time Warner Telecom of Florida,
L.P.
233 Bramerton Court
Franklin, TN 37069

Joseph A. McGlothlin, Esq.
Vicki Gordon Kaufman, Esq.
117 South Gadsen Street
Tallahassee, FL 32301

Michael R. Romano, Esq.
Level 3 Communications, LLC
8270 Greensboro Drive, Suite 900
McLean, VA 22102

Richard D. Melson, Esq.
Hopping Green Sams & Smith, P.A.
P.O. Box 6526
Tallahassee, FL 32314

Christopher W. Savage, Esq.
Coles, Raywid & Braverman, LLP
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington DC 20006

John P. Fons, Esq.
P.O. Box. 391
Tallahassee, FL 32302

Matthew Feil, Esq.
Florida Digital Network, Inc.
390 North Orange Avenue
Suite 2000
Orlando, FL 32801-1640

Marie Tomassi, Esq.
Verizon
Bank of America Tower
Suite 1230
200 Central Avenue
Tampa, FL 33701

Aaron M. Panner
KELLOGG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
Summer Square
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

David B. Erwin
Frontier Communications of the
South, Inc.
127 Riversink Road
Crawfordville, Florida 32327

Stephen B. Rowell
Alltel Corporate Service, Inc.
Post Office Box 2177
Little Rock, AR 72203-2177

Marvin E. Barkin
TRENAM, KEMKER, SCHARF,
BARKIN, FRYE, O'NEILL &
MULLIS
200 Central Avenue, Suite 1230
St. Petersburg, Florida 33701

CERTIFICATE OF COMPLIANCE

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