

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Supra
Telecommunications & Information
Systems against BellSouth
Telecommunications, Inc. for
violation of the
Telecommunications Act of 1996;
petition for resolution of
disputes as to implementation
and interpretation of
interconnection, resale and
collocation agreements; and
petition for emergency relief.

DOCKET NO. 980119-TP
ORDER NO. PSC-98-0660-FOF-TP
ISSUED: May 14, 1998

The following Commissioners participated in the disposition of
this matter:

J. TERRY DEASON
JOE GARCIA
E. LEON JACOBS, JR.

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

Case Background

On January 23, 1998, Supra Telecommunications and Information Systems, Inc. (Supra) filed a Complaint against BellSouth Telecommunications, Inc. (BellSouth) for alleged violations of the Telecommunications Act of 1996 (Act) and Petition for resolution of certain disputes between BellSouth and Supra regarding interpretation of the Interconnection, Resale, and Collocation Agreements between Supra and BellSouth (Petition). Supra also requested relief on an emergency basis. On February 16, 1998, BellSouth filed its Answer and Response to Supra's Petition. The hearing in this matter was held on April 30, 1998.

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On February 26, 1998, our staff conducted an issues identification meeting. At that meeting, a dispute arose regarding the inclusion of certain issues suggested by Supra. On March 6, 1998, the parties submitted legal memoranda on the issues in dispute, and on March 11, 1998, the parties presented oral argument before the prehearing officer on the disputed issues. By Order No. PSC-98-0416-PCO-TP, issued March 24, 1998, the prehearing officer excluded certain issues proposed by Supra regarding whether BellSouth had failed to negotiate in good faith in violation of the Act, had entered into agreements containing unfair terms in violation of the Act, and had failed to give Supra access to all unbundled elements in violation of the Act. The prehearing officer also excluded issues regarding whether BellSouth is required to resell its billing services and dark fiber to Supra.

On April 3, 1998, Supra filed a Motion for Reconsideration of Order No. PSC-98-0416-PCO-TP. Therein, Supra seeks reconsideration of the prehearing officer's decision to exclude these issues. On April 9, 1998, BellSouth filed its Response to Supra's Motion for Reconsideration. Supra requested oral argument on its Motion at our April 28, 1998, Agenda Conference, at which we addressed the Motion for Reconsideration. Supra's request was granted.

This is our determination on Supra's Motion for Reconsideration.

Arguments

Supra

In its Motion, Supra argues that it has alleged that it requested negotiation with BellSouth in September 1997. Supra asserts that among the issues it sought to negotiate was the resale of BellSouth's billing service and the resale of BellSouth's dark fiber. Supra asserts that BellSouth refused to negotiate those issues; thus, there is no agreement between BellSouth and Supra regarding those issues.

Supra also asserts that at the time of the filing of this Complaint, it was approximately 120 days from the date that it first entered into negotiations with BellSouth. Supra asserts that

although its Complaint was not filed within the 135-160 day window set forth in Section 252(b)(1) of the Act for a petition for arbitration, its Complaint was filed in the vicinity of that window. Supra argues, therefore, that we should fashion issues addressing dark fiber and the resale of billing services and address those issues within this docket. In addition, Supra argues that it is within our jurisdiction to also include in this Docket issues that would address BellSouth's failure to negotiate these issues in good faith.

BellSouth

In its Response, BellSouth argues that Supra should not be allowed to include issues for arbitration for resolution in this Docket, which has been established to address Supra's complaint regarding implementation of the agreement between BellSouth and Supra. BellSouth states that the prehearing officer specifically found that these issues are not properly within the scope of this docket, although the prehearing officer did not address whether Supra could file a separate petition for arbitration of these issues.

BellSouth further argues that Supra is trying to make this complaint proceeding into an arbitration proceeding. BellSouth notes that Supra has already admitted that it has not met the time restraints of Section 252(b)(1) of the Act. BellSouth adds that Supra has offered no new arguments, nor has it shown any reason the prehearing officer's order should be reversed. BellSouth states, therefore, that Supra's Motion for Reconsideration should be denied.

Determination

In reviewing Supra's Motion for Reconsideration, we have considered whether the motion identifies a point of fact or law which was overlooked or which the prehearing officer failed to consider in rendering his 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 shall 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).

It appears to us that the arguments raised by Supra in its Motion for Reconsideration are the same arguments raised by Supra in its Memorandum of Law in Support of Specific Issues filed in support of the disputed issues. These arguments were fully addressed by the prehearing officer at pages 3 and 4 of Order No. PSC-98-0416-PCO-TP.

With regard to the issues of whether BellSouth has failed to negotiate in good faith or included unfair provisions in its agreement with Supra, the prehearing officer noted that these issues address matters relating to the relationship between BellSouth and Supra prior to our approval of the BellSouth/Supra agreement. The prehearing officer then stated that these issues were outside the scope of a proceeding to enforce the approved agreement. Furthermore, the prehearing officer found that it was not necessary to resolve these particular issues in order to grant the ultimate relief requested by Supra in its Complaint. Order No. PSC-98-0416-PCO-TP at page 4.

As for the issues on the resale of billing services and dark fiber, the prehearing officer found that these issues did not relate to provisions in the current BellSouth/Supra agreement. The prehearing officer determined, therefore, that these issues were not properly addressed within a complaint proceeding.

As indicated by the prehearing officer, this case concerns a complaint regarding implementation of a Commission-approved agreement. The prehearing officer noted that the Eighth Circuit Court has stated that with regard to state commission-approved agreements, the state commission's authority is limited to enforcement of the provisions in the agreement. The prehearing officer further stated that "We cannot revisit the circumstances

that led to the signing and subsequent Commission approval of the agreement." Order No. PSC-98-0416-PCO-TP at pages 3 and 4. Supra has not shown, or even argued, that the prehearing officer misapplied the law with regard to enforcement of Commission-approved agreements.

Instead, Supra argues that it should now be allowed to arbitrate additional matters that it was unable to resolve in its negotiations with BellSouth. As noted by the prehearing officer, however, this is a case involving enforcement of the Commission-approved BellSouth/Supra agreement. It is clear that the Act does not contemplate arbitrating issues within a complaint proceeding. In addition, Supra has admitted that it has not requested arbitration of these issues within the time requirements set forth in Section 252(b)(1) of the Act.

We note that the prehearing officer made no determination as to the validity of Supra's excluded issues. Order No. PSC-98-0416-PCO-TP at 4. The prehearing officer simply determined that these issues are not appropriate for determination in this complaint proceeding. We agree with the prehearing officer that these issues, particularly the issues regarding dark fiber and the resale of billing services, would be more appropriately resolved within the context of a properly filed request for arbitration. Id.

We also note that on January 30, 1998, Supra did submit a Petition for Generic Proceeding to Arbitrate Rates, Terms and Conditions of Interconnection with BellSouth, or, in the alternative, Petition for Arbitration of Interconnection Agreement. On March 31, 1998, however, we issued Order No. PSC-98-0466-FOF-TP, granting BellSouth's Motion to Dismiss Supra's Petition. In that Order, we determined that the Act does not contemplate a generic arbitration proceeding. We also found that Supra had not demonstrated that its Petition had been filed within the time restraints set forth in Section 252(b)(1) of the Act. In addition, we determined that the Act does not contemplate arbitration of issues between parties that are contained within an effective, approved agreement between the same parties. Supra sought arbitration of all issues with BellSouth. Furthermore, we found that some of the concerns raised by Supra in its Petition would be better addressed within this complaint proceeding in Docket No. 980119-TP. Order No. PSC-98-0466-FOF-TP at 6-8. Many of the

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concerns raised by Supra in Docket No. 980155-TP will, in fact, be addressed in this complaint proceeding, as indicated by the approved issues. Issues that do not relate to the BellSouth/Supra agreement are, however, not properly addressed in this proceeding.

Again, we emphasize that there do appear to be issues between BellSouth and Supra that could be resolved in an arbitration proceeding properly submitted in accordance with Section 252 of the Act. Neither Supra's Complaint nor its January 30, 1998, Petition can, however, be considered proper requests for arbitration under the Act. Furthermore, if Supra's assertion is accurate that its Complaint was filed on the 120th day, then Supra's Petition for Generic Proceeding to Arbitrate Rates, Terms and Conditions of Interconnection with BellSouth, or, in the alternative, Petition for Arbitration of Interconnection Agreement was submitted on the 127th day. Relying on that count, the period during which Supra could have sought to arbitrate any issues that were not resolved in its negotiations initiated in September 1997, was between February 7, 1998, and March 4, 1998.

Upon consideration, we hereby deny Supra's Motion for Reconsideration of Order No. PSC-98-0416-PCO-TP. Supra has not identified a point of fact that the prehearing officer overlooked or a mistake in the prehearing officer's application of the law.

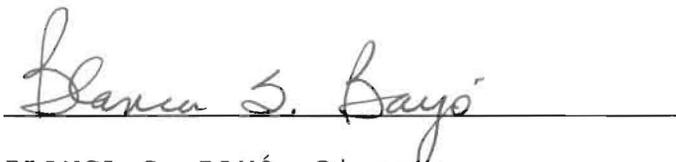
Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that Supra Telecommunications and Information Systems, Inc.'s Motion for Reconsideration of Order NO. PSC-98-0416-PCO-TP is denied. It is further

ORDERED that this Docket shall remain open pending our final determination on the issues addressed at the April 30, 1998, hearing in this Docket.

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By ORDER of the Florida Public Service Commission this 14th
day of May, 1998.

A handwritten signature in cursive script, reading "Blanca S. Bayó", is written over a solid horizontal line.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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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 Records and Reporting, 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; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice

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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.