REQUEST FOR CHANGE TO AGENDA CONFERENCE
HAND DELIVER

ORIGINAL

Date of Request: June 7, 2002 Date of Agenda Conference: June 11, 2002 Item No. 7

Docket No.: Docket No. 001305-TP Brief Title: Petition by BellSouth for Arbitration with Supra Telecom

Requested by: ☐ Staff ☒ Other Supra

Please attach a copy of the written documentation filed (if other) (Name)

RECEIVED-FPSC
02 JUN -7 PM 4:03
COMMISSION CLERK

STAFF's Recommendation to Executive Suite (IF OTHER) ☐ Approve Request ☒ Deny Request

ACTION REQUESTED [see APM 2.11 and SOP 1607]

☒ Defer Item to Agenda Scheduled Date:

☐ Change Order of Item or Take Up at Time Certain

☐ Withdraw Item

☐ Late Filed Recommendation (must be filed no later than 3:00 p.m. on the date approved for late filing) **A copy of the front page of the recommendation must be provided to CCA by 12 noon on the regular filing date for use as a place-holder during agenda preparation.**

☐ Add Item to Published Agenda [see Section 120.525(2), F.S.] - Issue an ADDENDUM and give Legal NOTICE

☐ Add Emergency Item to Published Agenda [see Section 120.525 (3), F.S.] - Issue an ADDENDUM and Give Fair NOTICE

Concise explanation, justification or comments (attach additional sheet if necessary):

Supra has requested deferral of Item 7 from the June 11, 2002, Agenda. Staff recommends that Item 7 not be deferred. The substantive matters of this recommendation are squarely before the Commission, and the reasons set forth in the request for deferral identify no new reason to delay a decision in this matter.

Signature (OPR Staff): Initials (OPR Division Director or Designee):

Signature (Legal Staff): Richard Bellak Initials (Legal Division Director or Designee):

EXECUTIVE DIRECTOR:

Recommendation to the Chairman's Office ☐ Approve Request ☑ Deny Request

Initials: MBB Date: 6/7/02

Comments: I support staff's recommendation that Supra's request for deferral be denied.

CHAIRMAN's OFFICE: ☐ Approve Request ☑ Deny Request

Initials: JC Date: 6/7/02

~~Executive~~ Suite will send the original to the Division of Commission Clerk and Administrative Services and return a copy to the requesting staff after the Chairman's Office takes action on this request. Requesting staff should distribute copies to the Division Directors (OPR & OCR) and Attorney assigned to the docket.

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PSC/EXD-1 (03/02)

DOCUMENT NUMBER-DATE
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FPSC-COMMISSION CLERK

Supra Telecom
2620 S.W. 27th Avenue Miami, FL 33133

Olukayode A. Ramos
Chairman & CEO
Email: kayramos@stis.com
Telephone: (305) 476-4220
Fax: (305) 476-4282

June 5, 2002

The Honorable Lila Jaber
Chairman, Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Re: *Docket No. 001305-TP*

Dear Chairman Jaber:

Supra Telecommunications and Information Systems ("Supra") requests that the Chairman defer all items – specifically items nos. 7, 8, 9 and 10 - from the June 11, 2002 Agenda Conference relating to Docket No. 001305-TP in the interest of Florida Consumers. Supra requests from the Chairman consider only the public interest and that of Florida Consumers.[1] In this regard, recusal of the panel and disqualification of the Staff is appropriate under the circumstances. In the public's interest and that of Florida Consumers, it is time for the Chairman, herself, to **demand** an outside investigation into the many troubling events surrounding Docket No. 001305-TP. It is time for an independent, outside party to take a careful look at the events and circumstances involving Docket No. 001305-TP. These are not the words of Supra, but the words of the South Florida Business Journal ("Journal"). On Friday, May 31, 2002, the Journal published an editorial[2] stating in part:

> **"Given what we know, it's time for an independent, outside party to take a careful look at the situation. If the state attorney finds no wrongdoing, then the air will be cleared and the PSC can do its job. If the state attorney does find wrong, then the proper penalties should be imposed. That's what the public would expect."**

A deferral of all items related to Docket No. 001305-TP from the Agenda Conference, an order on recusal and a referral to DOAH is the only appropriate course of conduct while an outside investigation is conducted. The Commission has before it a Motion, and Supplemental Motion, for Recusal of the Commission Panel and the Commission Staff. An honest review of the facts and circumstances surrounding Docket No. 001305-TP would prompt a reasonably prudent person to fear that he could not get a fair and impartial trial. This is not the conclusion of Supra, but the conclusion of the Journal. The Journal writes in part:

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[1] *See* Section 112.311(6), Florida Statutes.
[2] *See* Editorial attached hereto as Exhibit A.

> **"We want to believe [Harold] McLean when he says the PSC 'doesn't have a dog in the hunt,' but there have been a series of troubling events. On May 2, 2002, [Kim] Logue, a PSC supervisor, violated policy by sending cross-examination questions to BellSouth on the eve of a hearing. A PSC assistant director [Beth Salak] was tipped off about the e-mails on Aug. 20 and by Sept. 6, the PSC's deputy executive director [Dr. Mary Bane] knew of the situation. But nobody told Supra. A key hearing on the interconnect agreement went off as scheduled Sept. 26-27. On Oct. 4, Supra was finally told of the misconduct – a little too late, in our opinion." (Underline added for emphasis).**

Supra is not alone in believing that it cannot obtain a fair and impartial hearing before this Commission.

Richard Bellak (Commission legal counsel, Division of Appeals) issued a Recommendation, on May 30, 2002, in which he suggests that the evidence provided by Supra is insufficient to meet the standard for recusal, because the facts alleged would not prompt a reasonably prudent person to fear that he could not get a fair and impartial hearing.

Mr. Bellak is the author of the January 3, 2002 "Internal Investigation and Report" which included the following reference: "This Report will, however, leave to BellSouth any response to the suggestion that it should have informed the Commission about the receipt of Ms. Logue's e-mail." This reference is contrary to what the Chairman emphatically stated at the March 5, 2002 Agenda Conference:

> **"And I know that what Ms. Kim Logue did that I now can say definitely, because we have the affidavit from Ms. Sims[3], was completely inappropriate, and for that I want to publicly apologize to you. I want to apologize to you on behalf of this agency and on behalf of staff, because it was completely wrong to send cross-examination questions prior to the hearing.**
>
> **BellSouth, I want to send you a strong message too. It was inappropriate for you to receive the cross-examination questions, not just Supra's questions, but you should have returned BellSouth's questions too.[4]**

As described above, the Chairman characterized Logue's actions as "**completely inappropriate**" and "**completely wrong.**"[5] The Chairman went as far as to "**publicly apologize**"[6] to Supra for Logue's actions. Notwithstanding the Chairman's public description of Logue's actions, Richard Bellak still insists on characterizing Logue's conduct as "harmless, and de minimus." Supra is unaware of a

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[3] See Exhibit F, (Sims Affidavit) attached to Supra's Motion for Reconsideration for Rehearing.
[4] *See* March 5, 2002 Agenda Conference Transcript, pg. 41, lines 2-15.
[5] *See* March 5, 2002 Agenda Conference Transcript, pg. 41, lines 4-10.
[6] *See* March 5, 2002 Agenda Conference Transcript, pg. 41, lines 5-6.

Chairman of the Commission ever "publicly apologizing" for an employees' actions that was harmless and de minimus.

Facts ignored by Bellak

Richard Bellak repeatedly ignores all of the facts and focuses on a single e-mail from Logue to Nancy Sims (BellSouth Director of Regulatory Affairs) sent at 5:39 pm on May 2, 2001 - and that the sending of this e-mail was harmless error. The problem for Bellak – in his desire to demonstrate that Staff did nothing but act in the most ethical and proper manner – is that the 5:39 pm e-mail did not arrive at the computer terminal of Nancy Sims (BellSouth, Director of Regulatory Affairs) until 9:47 pm.[7] Bellak ignores the fact that Nancy Sims received a draft of "questions" at 1:40 pm, on the afternoon of May 2, 2001.[8] The sending of these "questions" in the early afternoon of May 2, 2001 was a violation of Rule 25-22.033, Florida Administrative Code (this rule prohibits communications with one party and not the other regarding the merits of a proceeding). This conclusion was also reached by the Journal, which writes in part: **"On May 2, 2002, [Kim] Logue, a PSC supervisor, violated policy by sending cross-examination questions to BellSouth on the eve of a hearing."** (Underline added for emphasis). Logue's actions also violated Section 112.313(8), Florida Statutes.

Section 112.313(8), Florida Statutes, which reads in part:

> **"No . . . employee of an agency, . . . shall disclose or use information not available to members of the general public and gained by reason of his or her position for . . . benefit of any other person or business entity."**

In the present matter, Logue disclosed information to BellSouth that was not available to Supra. Ms. Logue gained the cross-examination questions by reason of her position as a Senior Staff Supervisor assigned to the adversarial proceeding involving BellSouth and Supra. Finally, Ms. Logue provided this information for the benefit of BellSouth. These are not legal conclusions made as a part of a conspiracy theory as Bellak would believe. These are facts. In all respects, Logue's misconduct is a violation of Section 112.313(8), Florida Statutes. Conveniently, Bellak ignores this statute and Logue's violation of it.

Bellak also ignores all of the other e-mails between Logue and Sims on the afternoon of May 2, 2001 (the single e-mail at 5:39 pm was not the only written communication). The other e-mail transmissions are attached to Supra's Motion to Recuse as well as attached to Supra's Motion for Reconsideration for Rehearing, as Composite Exhibit A.

For example, Logue writes to Nancy Sims (BellSouth):

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[7] *See* Exhibit G, attached to Supra's Motion for Reconsideration for Rehearing.

[8] *See* Composite Exhibit G, 1st e-mail, attached to Supra's Motion for Reconsideration for Rehearing. *See* also Exhibit F, attached to Supra's Motion for Reconsideration for Rehearing: Nancy Sims' Affidavit, in which she affirms, under oath, that after she could not open the e-mail she telephoned Logue and had Logue send the cross examination questions via facsimile. Any objective review of these facts demonstrates that Logue made deliberate efforts to get these questions to Sims on May 2, 2001. Interestingly, Bellak confirms in his "Internal Investigation and Report" that Logue sent Sims a second draft of the cross-examination questions at 5:39 pm on May 2, 2001. This e-mail transmission shows, however, that this second draft of questions did not arrive at Sims's computer terminal until 9:47 pm.

"1. Regarding specifically the 1997 agreement, what is the total amount Bell believes it is owed? 35,000
2. Does this amount include interest? no, If not, what amount of interest does Bell believe it would be due? Or, in the alternative, what interest rate does Bell normally use? Is this amount not also listed in its tariffs for past due amounts? Yes
3. What amount of money has Bell received as payment regarding the terms of the 1997 agreement? Does this constitute payment in full? no If not, what amount does Bell believe to remain outstanding? 35k

If you could provide answers to these questions this afternoon, it would be greatly appreciated.

Kim"

These questions are not in the form of a discovery request – if they were all parties would have received a copy of the questions - and the questions do not involve procedure. The time for discovery had **expired on April 26, 2001**, pursuant to Order No. PSC-01-0388-PCO-TP. If the Staff failed to ask these specific questions, in the form of interrogatories during the discovery phase, then Staff was limited to making these inquiries at the evidentiary hearing through the cross-examination of BellSouth's witnesses.

A fair and honest review of the information contained in this e-mail would lead a reasonable person to conclude that these are matters that would normally be raised during the evidentiary hearing by the Staff - as the Staff attempted to develop the evidentiary record. Bellak ignores this e-mail. This e-mail touches on the merits of the proceeding. Accordingly, this written e-mail communication violated Rule 25-22.033, Florida Administrative Code (this rule prohibits communications with one party, and not the other, regarding the merits of a proceeding).

The facts, not speculation as suggested by Bellak, demonstrate that the conclusions in his "Internal Investigation and Report" are the product of a very limited understanding of what Logue did, as well as the actions of her superiors. The facts, not speculation as suggested by Bellak, demonstrate by any standard that the actions of Logue's superiors **not** to notify Supra until after the close of the evidentiary hearing in Docket No. 001305-TP is cause for recusal as well as the ordering of a new hearing. The actions of these individuals were deliberate and intentional.

Inspector General John Grayson finally initiated an investigation on October 25, 2001. At the time the Chairman entered her Order for a new hearing in Docket No. 001097-TP, Mr. Grayson's investigation was still ongoing. Contained within Mr. Grayson's file were interviews with Logue's superiors, and these interviews all took place prior to January 31, 2002.

Those interviews, as well as other material, reveal the following facts:

(1) Sally Simmons had knowledge of Logue sending cross-examination questions as early as July 2001, and that she did not inform her supervisors,

(2) A confidential source informed Beth Salak on August 20, 2001, that Logue had sent cross-examination questions to BellSouth,

(3) Beth Salak informed Sally Simmons and Walter D'Haeseleer,

(4) Walter D'Haeseleer informed Mary Bane,

(5) Grayson's notes indicate that D'Haeseleer wanted to handle Logue'a actions "**internally**," there is also a notation that says "Walter/Beth > **minimize damage**",

(6) Mary Bane called Salak and asked if she had prior knowledge, also asked Salak to conduct a search of Logue's e-mail,

(7) Salak made her initial request for a CD-ROM of Logue's e-mails on September 6, 2001,

(8) Karen Dockham, after authorization was provided to the Director of Division of Administration, provided a CD-ROM of Logue's e-mails on September 12, 2001,[9]

(9) Upon identifying an e-mail with cross-examination questions, Salak provided this information to Bane and D'Haeseleer,

(10) A second CD-ROM containing Logue's e-mails was provided to Salak on September 20, 2001,

(11) Sometime after September 12, 2001 and before September 21, 2001, Mary Bane had a "conversation" with Marshal Criser (BellSouth, Vice-President Regulatory Affairs) regarding BellSouth receiving cross-examination questions from Logue,

(12) On Friday, September 21, 2001, a meeting took place with Mary Bane, Walter D'Haeseleer, Beth Salak and Sally Simmons – they discussed (a) "what was going to be done"[10] regarding Logue's actions, and (b) demanding the resignation of Kim Logue,[11]

(13) The evidentiary hearing in Docket No. 001305-TP was held on Wednesday and Thursday, September 26 and 27, 2001, respectively,

(14) Commissioner Jaber was notified of Logue's actions on Monday, October 1, 2001,

(15) Commissioner Jaber immediately directed an inquiry into Logue's actions,

(16) Supra was notified of Logue's actions by a Letter signed by Harold McLean, dated Friday, October 5, 2001,

(17) McLean's letter to Supra dated October 5, 2001, contains a reference to the fact that McLean spoke with Logue and she "maintains that she sent Supra the same package that she sent BellSouth,"[12]

(18) Kim Logue filled out a change of address form in personnel on Monday, October 8, 2001,[13]

(19) Kim Logue was ordered to report "to base by 10/11/01" for active duty sometime between September 21, 2001 and October 8, 2001,[14]

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[9] The 5:39 pm e-mail on May 2, 2001, is contained in this first CD-ROM; this CD also contains the other transmissions between Logue and Sims that Supra was never told about.

[10] Given D'Haeseleer's and Salak's subsequent admissions to John Grayson that they wished to handle Logue's actions "internally" and with the goal to "minimize damage," Supra submits notifying Supra "immediately" *prior* to the evidentiary hearing in Docket No. 001305-TP scheduled for the following week was rejected. Supra would not be notified of Logue's actions for another fourteen (14) days.

[11] Supra submits that the Deputy Executive Director would not have demanded Logue's resignation if her actions were in fact harmless and de minimus. Bellak ignored the seriousness Dr. Bane attached to Logue's actions.

[12] McLean's interview with Logue obviously took place prior to the issuance of the October 5, 2001 Letter.

[13] *See* Exhibit Q, attached to Supra's Motion for Reconsideration for Rehearing.

[14] *See* P and X, attached to Supra's Motion for Reconsideration for Rehearing.

(20) Despite Commissioner Jaber's directive to begin an inquiry and Harold McLean's reference that he spoke with Logue about her actions prior to October 5, 2001, Inspector General John Grayson was not informed of Logue's actions until the afternoon of Tuesday, October 9, 2001,

(21) Inspector General John Grayson's February 11, 2002 Memorandum to Chairman Jaber indicated that "effective October 10, 2001, Ms. Logue reported for active duty in the US Air Force."[15]

Bane, D'Haeseleer, Salak and Simmons are in violation of Section 112.313(8), Florida Statutes. More importantly, these individuals all had knowledge of Logue's actions **prior** to the evidentiary hearing in Docket No. 001305-TP. It is fact, not speculation, that this information – regarding Logue's actions - was retained by these senior Commission personnel until **after** the close of the evidentiary hearing in Docket No. 001305-TP.

The Chairman should seriously consider the Journal's disinterested view of the events surrounding Docket No. 001305-TP - as opposed to the view of Richard Bellak, a career Commission employee - in examining whether the standard for recusal has been met. (i.e. whether the facts alleged would prompt a reasonably prudent person to fear that he could not get a fair and impartial hearing). A fair and honest assessment of the facts require that the recusal be granted and that a new hearing be ordered.

Timeliness

Bellak argues in his recommendation that Supra's Motion for Recusal is untimely because it was filed after the close of the evidentiary hearing in Docket No. 001305-TP.[16] Under Bellak's theory of justice, Supra could never be allowed to move for recusal or any other relief. Bellak would **reward** the BellSouth and Commission Staff for their "willful" and "intentional" efforts to withhold information from Supra until after the close of the evidentiary hearing.

Bellak argues that the timeliness issue is not merely a "technical" problem.[17] He goes on to suggest that "these principles do not contemplate that a litigant will wait until the trial or hearing is concluded and adjudicated and then if dissatisfied with the result, allege that the unfavorable result must have reflected bias."[18] Ironically, it is Bellak that is "speculating" about Supra's intent. Bellak makes an assumption that Supra's motivation involved dissatisfaction with the result.

Bellak ignores the fact that McLean's October 5, 2001 Letter conspicuously omitted "when" Logue's actions were first uncovered. Bellak ignores the facts involving Logue's superiors in withholding information from Supra. Ironically, the evidence demonstrates that Mary Bane reviewed the October 5, 2001 Letter before McLean sent it to Supra. Had Supra known Logue's actions and the involvement of Logue's superiors back in October 2001, Supra would have moved for recusal and new hearing at that time. This information was not forthcoming - as Supra was told by Harold McLean that the Commission was conducting its own thorough investigation. Under Bellak's theory of justice, Supra

[15] *See* Exhibit Y, attached to Supra's Motion for Reconsideration for Rehearing.
[16] *See* Page 3, of Bellak Recommendation.
[17] *See* page 4, of Bellak Recommendation.
[18] *Id.*

should be denied basic due process because members of the Commission Staff and certain BellSouth personnel were "**smart**" enough to keep this information from Supra until ***after*** the close of the evidentiary hearing. Supra submits that the First District Court of Appeal will have a different view.

Facts assumed to be true

Bellak concludes that the facts alone are insufficient to meet the standard for recusal. Ironically, Bellak states that he "will assume the truth of the facts."[19] All of the facts, outlined earlier herein – numbered (1) through (21) – are contained in Supra's Motion for Recusal. Those facts are derived from Inspector General John Grayson's investigation. Those facts alone without any conjecture meet the standard for recusal. As noted at the outset, a disinterested third party has already reviewed the events surrounding this docket and has concluded:

> **"Given what we know, it's time for an independent, outside party to take a careful look at the situation. If the state attorney finds no wrongdoing, then the air will be cleared and the PSC can do its job. If the state attorney does find wrong, then the proper penalties should be imposed. That's what the public would expect."**

It is interesting that Bellak argues – with respect to the facts – that all conclusions are those of Supra's and not of John Grayson. Bellak ignores the fact that John Grayson's investigation was cut short by the issuing of an Order for a new hearing in Docket No. 001097-TP. Bellak disputes the use of the word "misconduct." Yet, why would Mary Bane discuss demanding Logue's resignation if Bane did not believe that Logue's actions amounted to misconduct. Why would Chairman Jaber characterize Logue's actions as "**completely inappropriate**" and "**completely wrong,**"[20] and even goes as far as to "**publicly apologize**"[21] to Supra for Logue's actions – if Logue's actions did not amount to "misconduct." A fair and honest assessment of Logue's actions would lead a reasonably prudent person to state that Logue engaged in "misconduct."

Top Tier

Bellak suggests that Supra's Motion for Recusal is based on "conclusory" arguments.[22] Supra's Motion for Recusal with respect to the top tier of the telecommunications portion of the Commission is based on the facts, and facts only, as outlined in Supra's Motion and Supplemental Motion for Recusal and as restated earlier herein, as numbered paragraphs (1) through (21). The top tiers of the Division of Competitive Services [i.e. telecommunications], including section supervisors, review all recommendations and provide changes as deemed necessary. These same Commission Staff oversaw the recommendations in both Docket Nos. 001097-TP and 001305-TP – the only two (2) dockets before the Commission that both BellSouth and Supra were parties to.

Bellak argues that Supra's argument, if accepted, would lead to the paradox that the less serious the incident, the more drastic the consequences for the agency and the more complete the disruption of

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[19] *See* page 5, of Bellak Recommendation.
[20] *See* March 5, 2002 Agenda Conference Transcript, pg. 41, lines 4-10.
[21] *See* March 5, 2002 Agenda Conference Transcript, pg. 41, lines 5-6.
[22] *See* Page 5, of Bellak Recommendation.

the agency process.[23] What Bellak ignores is the fact that this is exactly what Chairman Jaber has already done: without finding any "inappropriate conduct" or "bias," Chairman Jaber, on her own motion, **halted and disrupted** the proceedings in Docket No. 001097-TP and ordered a new hearing:

- This docket had gone to hearing on May 3, 2001;
- A Commission Panel, of three (3), voted unanimously in favor of BellSouth on July 10, 2001;
- Supra filed a Motion for Reconsideration;
- On September 20, 2001, Staff recommended denial of Supra's Motion;
- The recommendation for denial was scheduled for a vote on October 2, 2001,
- On October 1, 2001, Commissioner Jaber **halted and disrupted** the proceedings, by requesting that Supra's Motion for Reconsideration, scheduled for the next day, be deferred;
- On January 31, 2002, Chairman Jaber issued an Order for a new hearing, despite the fact that Bellak's Report concluded Supra was not prejudiced by Logue's actions.[24]

The problem for Bellak, and the other Staff who wish to sweep this incident under the proverbial rug, is the fact that Chairman Jaber set a precedent by ordering a new hearing.

There is **no** difference between Docket No. 001097-TP and Docket No. 001305-TP. The only perceived difference is the "degree of importance" BellSouth attaches to the second docket. The "degree of importance", however, is not a basis that the Commission can cite as authority for choosing to apply a *different standard* for a new hearing in the two dockets.

Chairman Jaber was clear: "The Commission is sensitive to the mere appearance of impropriety. Accordingly, in order to remove any possible appearance of prejudice, I find that this matter should be afforded a rehearing."[25] Chairman Jaber wanted to remove the "**appearance**" of prejudice, as opposed to actual prejudice. Bellak ignores this fact.

Supra only seeks a process that is fair and impartial. Supra seeks a Commission that applies the same standard irrespective of the "degree of importance" BellSouth decides its attaches to any particular case. Neither party is prejudiced by this Commission recusing itself and referring this matter to DOAH. The parties can and will continue to operate under its present contract. If this Commission does not address the troubling events that did in fact take place in this docket, then it will be the public and the public's trust in our government that will be prejudiced and harmed.

BellSouth Admits different Standard Applied in 001305-TP

On the question regarding whether the Commission applied the same standard for a new hearing in Docket Nos. 001097-TP and 001305-TP, BellSouth **admits**[26] that the Commission Staff recommended that

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[23] *Id.*

[24] It must also be noted that Supra never filed a motion requesting a new hearing in Docket No. 001097-TP.

[25] *See* Order No. PSC-02-0143-PCO-TP.

[26] *See* Pg. 9, first full paragraph of BellSouth's Opposition to Supra's Motion for Reconsideration for a new hearing in Docket No. 001305-TP filed on April 17, 2002.

the Commissioners apply a "different" standard with a greater burden in Docket No. 001305-TP. BellSouth writes:

> " . . . in the exercise of its vast discretion, the Commission *may* grant a rehearing upon a lesser showing, such as the suggestion of an appearance of impropriety, even without a showing of prejudice, as Commissioner Jaber ordered in Docket No. 001097-TP." (Italicize in the original, underline added for emphasis).[27]

First, BellSouth fails to cite to any authority for this proposition. Second, BellSouth agrees with Supra that the Commission in fact utilized the "appearance of impropriety" standard in Docket No. 001097-TP. This standard requires a "lesser showing," as acknowledged by BellSouth above, than the standard utilized by the Commission in Docket No. 001305-TP. BellSouth is forced to make this admission in order to support its argument that the Commission is under no obligation to apply the same standard for rehearing in **this** docket.[28] Third, BellSouth cites to no legal authority that would permit the Commission to openly discriminate against Supra by arbitrarily applying a different standard requiring a greater burden before a new hearing will be granted in Docket No. 001305-TP. BellSouth's only authority for its new position is the following statement:

> "The fact that the Commission *may*, **upon considering all the pertinent factors**, grant a rehearing pursuant to an appearance of impropriety standard does not mean that the Commission *must* grant a rehearing every time a party believes that there is an appearance of impropriety, regardless of the circumstances involved."[29] (Bold and underline added for emphasis).

The operative phrase is "upon considering all the pertinent factors." Of course, there is only one difference between Docket No. 001097-TP and Docket No. 001305-TP, namely: the degree of importance that BellSouth attributes to each case.

Docket No. 001097-TP was initiated by BellSouth for the resolution of billing disputes between the parties. In fact, BellSouth's affirmative claims were all dismissed.[30] Supra sought to dismiss the entire case, but the Commission allowed BellSouth's claims raising Supra's affirmative defenses to stand. As a result, at the time of the hearing in said docket, only Supra had affirmative claims pending. Interestingly, Supra even moved for reconsideration of Order No. PSC-02-2250-FOF-TP as Supra sought to dismiss the entire docket. BellSouth, on the other hand, did not seek reconsideration of such, and gladly proceeded on Supra's affirmative claims.

Docket No. 001305-TP, on the other hand, is an arbitration regarding a Follow-on Interconnection Agreement between the parties, which will govern the way in which the companies do business in the future (e.g. BellSouth seeks the right to disconnect Supra's service during pendant billing

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[27] Id.

[28] *See* Pg. 8, second full paragraph of BellSouth's Opposition to Supra's Motion for Reconsideration for a new hearing in Docket No. 001305-TP filed on April 17, 2002.

[29] *See* Pg. 9, first full paragraph of BellSouth's Opposition to Supra's Motion for Reconsideration for a new hearing in Docket No. 001305-TP filed on April 17, 2002.

[30] Commission Order PSC-02-2250-FOF-TP

disputes). BellSouth clearly attributes a great deal of importance to Docket No. 001305-TP. Contrary to BellSouth's repeated assertions, Supra has never refused to pay **undisputed** amounts.

The "degree of importance" that BellSouth attaches to a case has no legal relevance whatsoever regarding whether the Commission should apply the same standard to both dockets. The "degree of importance" BellSouth attaches to Docket No. 001305-TP is the only difference between the two cases. For the Commission to even consider this as a basis for employing a different and more difficult standard for granting a rehearing is unduly discriminatory.

After eliminating BellSouth's meritless argument, the only option for the Commission is to apply the same standard in Docket No. 001305-TP that was applied in Docket No. 001097-TP. Any other decision would be unduly discriminatory. For these reasons, a new hearing based on the precedent established by Chairman Jaber is warranted in Docket No. 001305-TP.

Failure to timely notify the Inspector General

In his desire to discredit the facts, Bellak argues that Supra alleges an "unsupported conspiratorial view of Commission actions"[31] in untimely notifying Inspector General John Grayson. Because Bellak insist on ignoring the facts, Bellak speculates that Supra's statement of the obvious is an unsupported conspiratorial view. To address this point, Supra must restate the undisputed facts:

- Beth Salak was informed by a confidential source of Logue's actions,
- Mary Bane asked Beth Salak to conduct a search of Logue's e-mail,
- Salak made her initial request for a CD-ROM of Logue's e-mails on September 6, 2001,
- Karen Dockham, after authorization was provided to the Director of Division of Administration, provided a CD-ROM of Logue's e-mails on September 12, 2001,[32]
- Upon identifying the e-mail with cross-examination questions, Salak provided this information to Bane and D'Haeseleer,
- Sometime after September 12, 2001 and before September 21, 2001, Mary Bane had a "conversation" with Marshal Criser (BellSouth, Vice-President Regulatory Affairs) regarding BellSouth receiving cross-examination questions from Logue,
- On Friday, September 21, 2001, a meeting took place with Mary Bane, Walter D'Haeseleer, Beth Salak and Sally Simmons – they discussed (a) "what was going to be done"[33] regarding Logue's actions, and (b) demanding the resignation of Kim Logue,[34]
- The evidentiary hearing in Docket No. 001305-TP was held on Wednesday and Thursday, September 26 and 27, 2001, respectively,
- Commissioner Jaber was notified of Logue's actions on Monday, October 1, 2001,

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[31] *See* Page 6, of Bellak Recommendation.

[32] The 5:39 pm e-mail on May 2, 2001, is contained in this first CD-ROM; this CD also contains the other transmissions between Logue and Sims that Supra was never told about.

[33] Given D'Haeseleer's and Salak's subsequent admissions to John Grayson that they wished to handle Logue's actions "internally" and with the goal to "minimize damage," Supra submits notifying Supra "immediately" *prior* to the evidentiary hearing in Docket No. 001305-TP scheduled for the following week was rejected. Supra would not be notified of Logue's actions for another fourteen (14) days.

[34] Supra submits that the Deputy Executive Director would not have demanded Logue's resignation if her actions were in fact harmless and de minimus. Bellak ignored the seriousness Dr. Bane attached to Logue's actions.

- **Commissioner Jaber immediately directed an inquiry into Logue's actions,**
- Supra was notified of Logue's actions by a Letter signed by Harold McLean, dated Friday, October 5, 2001,
- McLean's letter to Supra dated October 5, 2001, contains a reference to the fact that McLean interviewed Logue and she "maintains that she sent Supra the same package that she sent BellSouth,"
- Kim Logue filled out a change of address form in personnel on Monday, October 8, 2001,[35]
- Kim Logue was ordered to report "to base by 10/11/01" for active duty sometime between September 21, 2001 and October 8, 2001,[36]
- Despite Commissioner Jaber's directive to begin an inquiry and Harold McLean's reference – in the October 5, 2001 Letter - that McLean "spoke" with Logue regarding her actions prior to her departure on Leave Without Pay, **Inspector General John Grayson was not informed of Logue's actions until the afternoon of Tuesday, October 9, 2001,**
- Inspector General John Grayson's February 11, 2002 Memorandum to Chairman Jaber indicated that "effective October 10, 2001, Ms. Logue reported for active duty in the US Air Force."[37]

Bellak, to his credit, states that he assumes the **truth of the facts**. As such, the Commission – for purposes of Supra's Motions for Recusal – must presume all of the above facts as true. Sally Simmons was Kim Logue's immediate supervisor, it is reasonable to conclude that she knew after October 1, 2001 and before October 8, 2001 that Logue would be reporting to active duty. Inspector Grayson's notes also indicate that Mary Bane held on to Logue's letter of resignation.[38] It is not unreasonable to expect that Bane would have been informed by Simmons that October 8, 2001, would be Logue's last day. Given the undisputed facts, the delay in notifying Inspector General John Grayson does raise troubling questions.

Supra does not expect Bellak to see the "forest for the trees." The South Florida Business Journal, however, wrote the following:

> **"The PSC started an investigation, [Inspector General John Grayson's investigation] but never finished it. The center of the controversy, Logue, reported to active military on Oct. 10, but nobody apparently had the sense to tell the PSC's inspector general that he might want to talk to her before she left."**

The Chairman, and this Commission, should seriously consider the Journal's disinterested view of the events surrounding the untimely notification of Inspector General John Grayson - as opposed to the view of Richard Bellak, a career Commission employee.

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[35] *See* Exhibit Q, attached to Supra's Motion for Reconsideration for Rehearing.
[36] *See* P and X, attached to Supra's Motion for Reconsideration for Rehearing.
[37] *See* Exhibit Y, attached to Supra's Motion for Reconsideration for Rehearing.
[38] *See* Exhibit W, attached to Supra Motion for Reconsideration for Rehearing.

BellSouth is delighted

Bellak next addresses the e-mail exchange between Lee Fordham and Kim Logue a week before an Order was issued rescheduling a hearing. Bellak examines this e-mail and suggests an innocent explanation. The South Florida Business Journal wrote the following: "The phrase "called their hand" and "EARLIER" in all capital letter might raise one's eyebrows about game playing." No one expects Bellak to view these incidents as anything other than innocent. This is precisely why the Staff cannot fairly evaluate the evidence in this Motion for Recusal.

Oddly, Bellak writes: "Of course, Chairman Jaber would want to know that BellSouth was 'delighted.'" A disinterested, unbiased public official is not concerned with the delight of one party or the other, and is certainly not concerned with "calling [the] hand of one party" – as if to suggest that Supra's motives were anything other than legitimate. Apparently, Chairman Jaber did not care to know whether Supra was "delighted." Bellak's conclusion reinforces the prevalence of bias in favor of BellSouth, at the Commission.

Bellak can argue that Supra's motives are one sided, but it is the South Florida Business Journal that wrote the following: "We want to believe McLean when he says that the PSC 'doesn't have a dog in the hunt,' but there has been a series of troubling events." The Chairman, and this Commission, should seriously consider the Journal's disinterested view of the events surrounding Docket No. 001305-TP

271 application

Bellak ironically mentions in footnote number 5, of his recommendation, that "271 is a massively complex determination by the PSC of whether an incumbent former monopoly of local phone service meets FCC criteria to be allowed to compete in long-distance markets." Attached hereto as Exhibit B is an e-mail dated April 4, 2001, at 9:40 am, from Kim Logue to the Commission aides. In the e-mail Logue writes:

> **"As supervisor of the carrier services section, I have the dubious task of overseeing this [271 application] proceeding."**

Harold McLean has been quoted as characterizing Logue's actions as a "mistake." Bellak argues that her actions were unintentional. It has even been suggested that the reason for the e-mails to and from Logue and Nancy Sims was a "lack of training." Yet, Kim Logue was assigned the responsibility of – as Bellak characterizes the 271 process - this "massively complex determination." The public is supposed to believe that this individual [Logue] who was assigned such a "massively complex" project lacked training when it came to *ex parte* communications and proper Commission procedure. In Bellak's world this may be reality, but outside of the Commission, Logue's actions were deliberate and focused – as opposed to a mere "mistake" as suggested by Commission Staff.

Supra's e-mail involved procedure – only

Bellak suggests that Supra allegations of *ex parte* are unfounded because Supra fails to address a single e-mail Bellak references between Supra and Wayne Knight.[39] This e-mail is dated January 31, 2001, at 3:18 pm, from Brian Chaiken (Supra General Counsel) and Wayne Knight (Commission legal counsel). The e-mail states in part:

> "in light of Supra's recently filed Motion to Dismiss, Supra would not be submitting proposed language regarding the issues identified last week in Tallahassee. Should you wish to speak to me regarding this matter, please feel free to call . . . Thank you."

Rule 25-22.033, Florida Administrative Code, is the Commission regulation regarding *ex parte* communications. Subsection (1) of this regulation allows parties to exchange information with the Commission Staff regarding procedure. An honest review of Mr. Chaiken's e-mail demonstrates that he was simply informing Mr. Knight that Supra "would not be submitting proposed language regarding issues identified." Bellak states that because Supra did not provide an analysis of this e-mail that somehow this de-legitimizes all of the other "evidence" of *ex parte* communications between and among Commission Staff and BellSouth.

Bellak can cite to no e-mail in which Supra and the Commission Staff engaged in discussion involving the merits of a pending proceeding – none. Supra has never alleged that the sending of an e-mail, alone, constitutes an *ex parte* communication. Each Supra allegation is grounded in the substance of the e-mail exchanges between BellSouth and the Commission Staff.

Logue's e-mails were **not** "discovery"

Bellak attempts to argue that Logue's actions, at most, amount to "discovery" requests. Rule 25-22.033, F.A.C., correctly allows for an exception to the *ex parte* regulation for "discovery requests."[40]

The problem for Bellak is that all of the questions contained in each Logue e-mail, referenced by Supra, are not in the form of a discovery request – if they were all parties would have received a copy of the questions. More importantly, the time for discovery had **expired on April 26, 2001**, pursuant to Order No. PSC-01-0388-PCO-TP. If the Staff failed to ask any of the specific questions, in the form of interrogatories during the discovery phase, then Staff was limited to making these inquiries at the evidentiary hearing through the cross-examination of BellSouth's witnesses.

A review of the information contained in Logue's e-mails to Sims would lead a reasonable person to conclude that these are matters that would normally be raised during the evidentiary hearing by the Staff - as the Staff attempted to develop the evidentiary record. Bellak ignores these e-mails. Logue's e-mails touch on the merits of the proceeding. Accordingly, the written e-mail communications violated Rule 25-22.033, Florida Administrative Code (this rule prohibits communications with one party, and not the other, regarding the merits of a proceeding).

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[39] *See* Page 6, of Bellak Recommendation.
[40] *See* Rule 25-22.033, F.A.C., subsection (1).

Logue's e-mails were in fact "written" communications

Bellak next argues that Logue's e-mails to Nancy Sims on May 2, 2001, involving the questions going to the merits of the proceeding as well as the cross-examination questions, do not amount to a "written communication" in accordance with subsection (2) of Rule 25-22.033, F.A.C. Bellak suggests that the e-mails between Logue and Sims on May 2, 2001, were in actuality a "one-to-one telephone conversation."[41] Of course, one-to-one telephone conversations are not subject to a public records requests, but "written communications" [i.e. "**e-mails**"] are subject thereto.

Section 119.011(1), Florida Statutes, defines "**public records**" to mean:

> **"all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." (Underline added for emphasis).**

The e-mails at issue were made and received in connection with the transaction of official business by Commission employees. Moreover, Section 66850(2)(m) defines "**record**" to mean:

> **"information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form, including public records as defined in s. 119.011(1)."**

The creation of an e-mail transmission requires the basic act of "writing" the sender's message. It is so obvious that an e-mail is a "written" communication, such that it is inscribed and stored in an "electronic" medium and is retrievable in its original state. Telephone calls that are not recorded do not fit this definition. Logic, as well as common sense, dictates that e-mails are "written communications" - and not telephone calls as suggested by Bellak (an attorney).

Bellak argues, gratuitously, that the "Staff's practice, pending the definition [of written communication] is to treat them [e-mails] as one-to-one telephone conversations."[42] It is ironic, that Bellak's own argument here acknowledges that Logue's actions very likely violated Rule 25-22.033, F.A.C. But, in Bellak's desire to protect the Staff, he argues that the Rule should be interpreted, now, to ensure that Logue's actions are not found to be in violation of the Rule. **This is simply ridiculous**. This entire episode cries out for a fair and impartial review of Logue's actions and the actions of her superiors prior to, and after, the evidentiary hearing in Docket No. 001305-TP.

Bellak's theory permits the sending of cross-examination questions via e-mail because they are more akin to one-to-one telephone conversations If this were true, then there would be no need to "suggest" that a similar one-to-one [e-mail or] telephone conversation would need to be made to the other party. In other words, if Bellak ever suggested that Logue's e-mail to BellSouth, should have also, at a minimum, been sent to Supra, then Bellak would be suggesting that he "believed" that the Logue e-

[41] *See* Page 8, of Bellak Recommendation

[41] *See* Page 8, of Bellak Recommendation.

mails were more akin to a "written communication." Consistent with this belief, Bellak conveniently forgets that in his "Internal Investigation and Report" he wrote the following:

> **"Neither Ms. Logue, who is not currently employed[43] at the Commission, nor anyone else associated with the Commission claims that e-mailing draft cross-examination questions to one party and not the other is correct or reasonable."** (Underline added for emphasis).

Now, four (4) months *after* the issuance of Bellak's "Internal Investigation and Report," Bellak himself is "**claiming**" that the sending of the cross-examination questions "to one party and not the other" is correct and reasonable. Supra submits that it has met its burden for recusal.

Bellak adds in his "Internal Investigation and Report":

> **"However, assuming the worst case scenario that the draft questions were, whatever the cause, only sent to BellSouth, the issue remains as to the effect of the error."**

In the above reference, Bellak does not suggest that the sending of the e-mail was a "one-to-one telephone conversation." This argument is only now being made because Bellak has discovered that the undisputed facts demonstrate that Logue only sent the cross-examination questions to BellSouth and not to Supra. This attempt at creating new arguments, as the old ones are refuted, only harms the public trust. Again, Supra submits that it has met its burden for recusal. The facts speak for themselves.

McLean's e-mail responding to Commissioner Palecki

Bellak's last argument involves McLean's e-mail in response to Commissioner Palecki's initial inquiry. Bellak argues: "Since Supra assumes that every contact between staff and BellSouth . . . is "ex parte" and a "violation," if a Commissioner seeks information from staff and Supra can magically impute to the Commissioner "knowledge" that staff would seek the information from BellSouth rather than by other means, then the staff has violated subsection (5)."[44]

Supra has never suggested a Commissioner is imputed with "knowledge" with "**where**" the staff acquired its information. The problem for Bellak is that McLean specifically references "**where**" he obtained his information in response to Commissioner Palecki's inquiry. This is not speculation or conjecture or the imputation of knowledge. But the facts are not as Bellak suggests. The facts are that McLean did reference "**where**" he obtained his information.

The facts also demonstrate that McLean sent an e-mail to Commissioner Palecki on March 1, 2002, claiming falsely that Supra owed BellSouth $3.5 million. The facts demonstrate that this

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[43] On January 3, 2002, the day Richard Bellak issued his "Internal Investigation and Report" Kim Logue was **still** an employee of the Commission – contrary to Bellak's claim. Logue was on "Leave Without Pay" which ran through March 31, 2002. *See* Composite Exhibit O, attached to Supra's Motion for Reconsideration for Rehearing.

[43] *See* Page 9, of Bellak Recommendation.

information did not satisfy Commissioner Palecki's inquiry. The facts demonstrate that Commissioner Palecki was the prehearing officer in Docket No. 001305-TP. The facts demonstrate that Commissioner Palecki issued Order No. PSC-01-2457-PCO-TP in which the Commissioner granted Supra leave to file an October 22, 2001, Award entered by an Arbitration Tribunal – and an October 31, 2001 Order of the Southern District Court of Florida confirming this Award - with respect to amounts owed to BellSouth.[45] Commisioner Palecki "knew" that the **false** information McLean had provided the Commissioner did not answer his inquiry. Commissioner Palecki "knew" the information could not be obtained from the record in Docket No. 001305-TP. The information could only have been obtained by directly contacting BellSouth. This is not speculation, just simple logic (i.e. recognition of the obvious).

The truth is that as of the date that McLean sent his e-mail to Commissioner Palecki – as well as of the date of this Letter – Supra has paid in full all undisputed amounts owed to BellSouth.

Once Commission Palecki received the information responsive to his inquiry, then pursuant to Section 350.042(4), Florida Statutes, Commissioner Palecki was under a duty to place a copy of these e-mails in the record, and allow Supra 10 days in which to respond. If Supra were afforded the opportunity to respond Supra would have provided documentation to refute the false information McLean provided the Commissioner. Supra was denied the opportunity to respond to the false information prior to the March 5, 2002 Agenda Conference.

Bellak's next argument involves a characterization of how subsection (5) of Rule 25-22.033, F.A.C., actually operates. He writes: "staff should not allow itself to be used by parties as conduits for ex parte communications initiated by parties that are intended for Commissioners, and to recognize that if it happens."[46] (Underline in original). The problem for Bellak is this instance is that neither the Commission regulation nor the statute limit ex parte communications to those "initiated by parties." In fact, Section 350.042(1), Florida Statutes, *expressly* prohibits Commissioners from "initiating" themselves, or considering ex parte communications. This is the opposite of what Bellak argues.

Bellak completes his argument by suggesting that in the event of a conflict that the statute shall control over the rule.[47] Supra agrees with Bellak on this point. There can be no doubt that Commissioner Palecki should have afforded Supra the opportunity to respond to the false information he received directly from McLean – and indirectly from BellSouth.

Commission continues to act – ignoring pending Motions to Recuse

On April 17, 2002, Supra filed a Motion to Recuse the Commission Panel and the Commission Staff from Docket No. 001305-TP. On April 26, 2002, Supra filed a Supplemental Motion to Recuse. Despite these pending motions for recusal, the Commission Staff continued to draft recommended orders. Based on these recommendations Commissioner Palecki issued the following orders: (1) PSC-02-0700-PCO-TP [Order on Emergency Motion for Stay], (2) PSC-02-0702-CFO-TP [Order on Confidential Classification] and (3) PSC-02-0701-PCO-TP [Order on Motion to Strike].

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[44] The sentence is directly from the **public** Order issued by the Commission: Order No. PSC-01-2457-PCO-TP. It is necessary to make this reference, because BellSouth is always trying to claim confidentiality over matters that are already **public**.

[46] *See* Page 9, of Bellak Recommendation.

[47] *Id.*

The first Order referenced above was issued without considering or even mentioning any of the law or arguments included within Supra's timely filed Response to BellSouth's Emergency Motion for Stay. The Commission's failure to properly consider Supra's timely Response caused Supra to timely file a Motion for Reconsideration.

The Second Order referenced above did not need to be issued. For example, Supra filed for confidential classification of certain material on September 19, 2001. The Commission did not issue its Order until March 7, 2002. As such, there was no compelling reason why the Commission needed to issue this order at this time – especially when a Motion for Recusal was pending.

The Third Order referenced above dealt with a Motion to Strike. There is absolutely no compelling reason why this Order had to be issued on that day.

The issuance of these Orders go to the heart of Supra's claim of bias. This Commission and its Staff do not consider the public interest in how it conducts its business. Supra's pending motions for recusal, for bias, were just ignored – as if they did not exist. This "fact" alone substantiates Supra's claim of BellSouth favoritism.

Bellak's admits he considered "outside" influence in evaluating Motions for Recusal

Another example of bias can be found in Bellak's own recommendation filed on May 30, 2002. Bellak was the individual assigned to review Logue's actions back in December 2001. McLean promoted Bellak as a fair and unbiased staff member who could evaluate the events involving Logue. Fundamental fairness would dictate that if Bellak was the individual assigned to review Supra's Motions for Recusal, then he would examine the facts without any outside influence and draft an unbiased recommendation for the Commissioners.

The problem for Bellak is that he did not evaluate the "facts" in Supra's Motions for Recusal in an unbiased manner. Bellak *expressly* references two (2) Orders that had **not** been issued on the day Bellak issued his recommendation. Bellak writes:

> **"Although both the Motion and Supplemental Motion seek the recusal of the Commission staff, allegations of fact are directed against Chairman Jaber and Commissioner Michael A. Palecki concerning their communications with staff. Their respective Orders Declining Tp recuse From Docket No. 001305-TP are therefore incorporated by reference herein."** (Underline added for emphasis).

Bellak references these Orders in the past tense as if they had been issued. Bellak reviewed these "draft" Orders. It must have been a draft because a Commission "draft" Order does not legally become an "official" Order until it is filed with the Division of Records and Reporting at the Commission. On May 30, 2002, this had not been done. The "**facts**" demonstrate that Bellak was "influenced" by the "draft" orders of both Commissioners in the drafting of his own recommendation.

It is well within the bounds of reason to conclude that Bellak did not provide a fair and impartial review of Supra's Motion for Recusal. For these reasons, now more than ever, this Commission should decide to recuse itself and its staff from any further matters in Docket No. 0010305-TP.

Conclusion

Supra respectfully requests from the Chairman to put aside any personal considerations and consider only the public interest[48] and that of Florida's consumers. In this regard, recusal of the panel and disqualification of the Staff is appropriate under the circumstances.

It is time for the Chairman, herself, to **demand** an outside investigation into the many troubling events surrounding Docket No. 001305-TP.

It is time for an independent, outside party to take a careful look at the events and circumstances involving Docket No. 001305-TP. These are not the words of Supra, but the words of the South Florida Business Journal in its editorial of Friday, May 31, 2002.

Sincerely,

Olukayode A. Ramos
Chairman & CEO

cc: The Honorable Jeb Bush, Governor State of Florida
Attorney General Robert Butterworth
Commissioner Micheal Palecki
Commissioner Braulio Baez
Commissioner J. Terry Deason
Commissioner Rudy Bradley
Nancy White (BellSouth General Counsel)
T. Michael Twomey (BellSouth Counsel)

[48] *See* Section 112.311(6), Florida Statutes.

EDITORIAL

Deregulation's rough road

Congress promised consumers that telecommunications deregulation would create competition and lead to more choices and better prices to consumers. What we didn't fully understand is how much bureaucracy and red tape would be involved.

Exhibit No. 1 in Florida is an ongoing fight involving the Public Service Commission, BellSouth and Supra Telecom of Miami. Supra is among the upstarts envisioned by Congress in the 1996 deregulation act.

Supra offers local service and has emerged as BellSouth's biggest in-state rival with 270,000 customers. But like many startups, it has to rely on leasing a Baby Bell's network elements, such as switches and lines, to serve its customers. Doing so generally means that profit margins are slender, which means the PSC has to be scrupulously even-handed for competition to work.

At issue between Supra and BellSouth is arbitration of the interconnect agreement, which governs how the two do business together. BellSouth filed with the PSC for arbitration on the agreement on Sept. 1, 2000. Three months short of the two-year anniversary, the index of filings fills (by our count) 27 computer screens.

Supra has apparently worn thin on some PSC staffers and commissioners. "Supra files on the order of 10 times the filings of any other regulated company," said Harold McLean, the PSC's general counsel.

On March 16, 2001, Lee Fordham, PSC staff legal counsel, sent an e-mail to staff supervisor Kim Logue about a motion by Supra to reschedule a hearing.

"Commissioner [Lila] Jaber came up with what I thought was an excellent plan on this motion," the e-mail stated. "Obviously, Supra's real motive was to get the prehearing so late that the hearing would need to be continued. However, we called their hand and granted the motion to reschedule, but made it EARLIER. The prehearing is now scheduled on April 6 instead of April 16. BellSouth is delighted with this resolution."

The phrase "called their hand" and "EARLIER" in all capital letters might raise one's eyebrows about game playing. The phrase "BellSouth is delighted with this resolution" has been interpreted by Supra as the PSC aiming to please.

We want to believe McLean when he says the PSC "doesn't have a dog in the hunt," but there have been a series of troubling events. On May 2, 2001, Logue, a PSC supervisor, violated policy by sending cross-examination questions to BellSouth on the eve of a hearing.

A PSC assistant director was tipped off about the e-mails on Aug. 20 and by Sept. 6, the PSC's deputy executive director knew of the situation. But nobody told Supra. A key hearing on the interconnect agreement went off as scheduled Sept. 26-27. On Oct. 4, Supra was finally told of the misconduct – a little too late, in our opinion.

The PSC started an investigation, but never finished it. The center of the controversy, Logue, reported to active military duty on Oct. 10, but nobody apparently had the sense to tell the PSC's inspector general that he might want to talk to her before she left.

To her credit, Jaber apologized for the incident in March.

Supra isn't relenting, though. It's alleging misconduct to the state attorney in Leon County. It has collected a small mountain of documents that have to do with broader issues of PSC conduct. Given what we know, it's time for an independent, outside party to take a careful look at the situation.

If the state attorney finds no wrongdoing, then the air will be cleared and the PSC can do its job. If the state attorney does find wrong, then the proper penalties should be imposed.

That's what the public would expect.

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From: JoAnn Chase
Sent: Wednesday, April 04, 2001 1:10 PM
To: Kim Logue
Cc: Maria Woodward
Subject: RE: BellSouth's 271 filing

We will not need the entire filing. The testimony of the parties will be sufficient. Great idea to have a "271 room"; I'm sure we'll all be visiting it from time to time.

thanks for checking.

-----Original Message-----
From: Kim Logue
Sent: Wednesday, April 04, 2001 9:40 AM
To: Melinda Butler; Bill Berg; JoAnn Chase; Ignacio Ortiz; Katrina Tew
Subject: BellSouth's 271 filing
Importance: High

Good Morning, everyone.

By now I'm sure each of you is aware that BellSouth is preparing to submit its 271 filing. We've maintained the original docket number, 960786, for this subsequent filing. As supervisor of the carrier services section, I have the dubious task of overseeing this proceeding.

I am attempting to determine which of your respective offices would like to receive the entire filing, or as an alternative, if you would like to receive only the testimony of the parties. At this time, we're expecting to receive approximately 24-25 paper-sized boxes. To give you an idea of the enormity of this filing, one of the exhibits is in excess of 9,000 pages.

I am requesting that BellSouth's filing be submitted in binders, although two sets will have to be "unbound" for the Record Division's purposes. Although requested, I've not yet received a full description/index of what will be filed. Also, should your offices choose to receive only the testimony filed by the parties, I'd like for you to know that copies of everything filed will be readily available for viewing. I've set up an empty office in my group to be used as the "271 room."

If each of you could please advise as to your preference, it would be greatly appreciated.

Thank you in advance for your assistance in this matter.

Kim