

State of Florida



Public Service Commission
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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION
CLERK

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DATE: MAY 30, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (BELLAK) *RCB*

RE: DOCKET NO. 001305-TP - PETITION BY BELLSOUTH
TELECOMMUNICATIONS, INC. FOR ARBITRATION OF CERTAIN ISSUES
IN INTERCONNECTION AGREEMENT WITH SUPRA TELECOMMUNICATIONS
AND INFORMATION SYSTEMS, INC.

AGENDA: JUNE 11, 2002 - POST HEARING DECISION - PARTICIPATION IS
LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\001305#3.RCM

CASE BACKGROUND

On April 17, 2002, Supra Telecommunications and Information Systems, Inc. (Supra) filed a Motion to Disqualify And Recuse Commission Staff And Commission Panel From All Further Consideration of The Docket And to Refer This Docket to The Division of Administrative Hearings For All Further Proceedings. (Disqualification Motion).

On April 24, 2002, BellSouth Telecommunications, Inc. filed an Opposition to Supra Telecommunications and Information System, Inc.'s Motion to Disqualify and Refer (Opposition Response).

On May 1, 2002, Supra filed a Motion to Strike and Reply to BellSouth's Opposition Response. On May 1, 2002, BellSouth filed an Opposition to Supra's Motion to Strike and Reply.

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DISCUSSION OF ISSUES

ISSUE 1: Is Supra's Motion to Strike an authorized motion?

RECOMMENDATION: No. Supra's Motion to Strike is unauthorized and cannot be considered.

STAFF ANALYSIS: According to Supra at p. 1 of its Motion to Strike and Reply, Rule 1.140(f), Florida Rules of Civil Procedure authorizes a party to move to strike certain matter "from any pleading at any time". However, neither motions nor responses in opposition thereto are "pleadings". See, Rule 1.100(a), Florida Rules of Civil Procedure. See also, Harris v. Lewis State Bank, 436 So. 2d 338, 340, n. 1 (Fla. 1st DCA 1983); Motzner v. Tanner, 561 So. 2d 1336 (Fla. 5th DCA 1990). Therefore, Supra's Motion to Strike Portions of BellSouth's Opposition Response is unauthorized and cannot be considered.

ISSUE 2: Is Supra's Reply to BellSouth's Opposition authorized by the administrative rule?

RECOMMENDATION: No, Supra's Reply is unauthorized by Rule 28.106-204 and cannot be considered.

STAFF ANALYSIS: Supra cites nothing affirmatively supporting its ability to file a "Reply" to BellSouth's Opposition Response, asserting only a lack of any express prohibition in the Florida Administrative Rules against doing so. However, Rule 28-106.204 sets out the rules governing motions and specifically states:

The original written motion shall be filed with the presiding officer. When time allows, the other parties may, within 7 days of service of a written motion, file a response in opposition.

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Thus, the administrative rules explicitly set out what shall be done and what may be done by the various parties participating in motion practice. Supra has cited no authority supporting the assumption that the movant may file a reply to an opposition, or that the movant can guess the amount of time by which a reply may be filed. Accordingly, Supra's Reply to BellSouth's Opposition Response is unauthorized and cannot be considered.

ISSUE 3: Should this docket remain open?

RECOMMENDATION: Yes. The docket should remain open.

RCB