

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth  
Telecommunications, Inc. for  
arbitration of certain issues in  
interconnection agreement with  
Supra Telecommunications and  
Information Systems, Inc.

DOCKET NO. 001305-TP  
ORDER NO. PSC-02-0159-PCO-TP  
ISSUED: February 1, 2002

ORDER GRANTING MOTION FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY  
AND STRIKING PORTIONS OF MOTION

II. CASE BACKGROUND

On September 1, 2000, BellSouth Telecommunications, Inc. (BellSouth) filed a petition for arbitration of certain issues in an interconnection agreement with Supra Telecommunications and Information Systems, Inc. (Supra). Supra filed its response, and this matter was set for hearing. In an attempt to identify and clarify the issues in this docket, issue identification meetings were held on January 8, 2001, and January 23, 2001. At the conclusion of the January 23 meeting, the parties were asked by staff to prepare a list with the final wording of the issues as they understood them. BellSouth submitted such a list, but Supra did not, choosing instead to file a motion to dismiss the arbitration proceedings, on January 29, 2001. On February 6, 2001, BellSouth filed its response. In Order No. PSC-01-1180-FOF-TI, issued May 23, 2001, the Commission denied Supra's motion to dismiss, but on its own motion ordered the parties to comply with the terms of their prior agreement by holding an Inter-company Review Board meeting. Such meeting was to be held within 14 days of the issuance of the Commission's order, and a report on the outcome of the meeting was to be filed with the Commission within 10 days after completion of the meeting. The parties were placed on notice that the meeting was to comply with Section 252(b)(5) of the Telecommunications Act of 1996 (Act).

Pursuant to the Commission's Order, the parties held meetings on May 29, 2001, June 4, 2001, and June 6, 2001. The parties then filed post-meeting reports with the Commission. Several of the original issues were withdrawn by the parties. These include Issues 2, 3, 6, 8, 30, 36, 37, 39, 43, 50, 54, 56, 58, and 64. A mediation conference was held on September 19, 2001, and an administrative hearing was held on September 26-27, 2001. Twenty

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additional issues were either withdrawn or resolved during the mediation, the hearing, or in subsequent meetings thereafter. These include Issues A, 7, 9, 13, 14, 17, 25A, 25B, 26, 27, 31, 35, 41, 44, 45, 48, 51, 52, 53, and 55. Issues 18 and 57 were partially resolved.

Post-hearing briefs were submitted by the parties on October 26, 2001. On January 30, 2002, Supra filed a Motion for Leave to File Supplemental Authority.

#### Discussion and Determination

Supra asks this Commission to accept, as supplemental authority, the decision of the United States Court of Appeals, Eleventh Circuit (hereinafter "11<sup>th</sup> Circuit"), Cir. Order Nos. 00-12809 and 00-12810, the consolidated appeals of BELLSOUTH TELECOMMUNICATIONS, INC. v. MCIMETRO ACCESS TRANSMISSION SERVICES, INC., D.C. Docket No. 99-00248-CV-JOF-1 and BELLSOUTH TELECOMMUNICATIONS, INC. v. WORLDCOM TECHNOLOGIES, INC. AND E.SPIRE COMMUNICATIONS, INC., D.C. Docket No. 99-00249-CV-JOF-1, respectively.

In its motion, Supra gives the 11<sup>th</sup> Circuit's holdings in the above decision, then gives its opinion of the legal weight to be given the decision in this docket. Supra explains that it has only recently become aware of this decision and has not delayed in filing this Motion in order to bring the authority to the attention of this Commission.

While we have no rules directly addressing the procedures for the filing of supplemental authority, we have generally considered supplemental authority pursuant to the provisions of Rule 9.255, Florida Rules of Appellate Procedure (Rule 9.255). Rule 9.255 provides:

Notices of supplemental authority may be filed with the court before a decision has been rendered to call attention to decisions, rules, statutes, or other authorities that are significant to the issues raised and that have been discovered after the last brief served in the cause. The notice may identify briefly the

points argued on appeal to which the supplemental authorities are pertinent, but shall not contain argument.

Upon consideration, I find it appropriate to grant Supra's motion, in part, and deny it, in part. In applying Rule 9.255, this Commission has placed particular focus on whether the notice itself contained argument. While portions of Supra's motion do contain argument, I do not believe that Supra has submitted the ruling of the 11<sup>th</sup> Circuit solely for the purpose of argument. I believe Supra is calling to our attention a ruling on a similar issue to one contained in this docket. As such, all argumentative portions of the motion shall be stricken and are not to be considered part of the record. In particular, I find that the fifth word in paragraph four of the motion shall be stricken. In the second sentence of paragraph five, the seventeenth word shall also be stricken.

Further, this Commission has traditionally been liberal in allowing leave to file supplemental authority. In Order No. PSC-00-1568-PCO-TP, we granted a BellSouth motion for leave to file supplemental authority that had been filed long before the attendant docket had even proceeded to hearing. We have stated that "a notice of supplemental authority drawing our attention to authority newly discovered and devoid of argument would be properly received." Order No. PSC-97-0283-FOF-WS (citing In Re: Petition for Limited Proceeding to Implement Conservation Plan in Seminole County by Sanlando Utilities Corporation Order No. PSC-94-0987-FOF-WS (August 15, 1994)). Here the decision of the 11<sup>th</sup> Circuit was rendered after the post-hearing briefs were due on October 26, 2001, but before this matter has proceeded to an Agenda Conference. As such, it shall be properly considered.

Based on the foregoing, it is

ORDERED by Commissioner Michael A. Palecki, as Prehearing Officer, that Supra Telecommunications and Information Systems' Motion for Leave to File Supplemental Authority is granted, in part, and denied as to the portions which are deemed argumentative in the body of this Order. Said portions shall be stricken from the record. It is further

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ORDERED that this docket shall remain open.

By ORDER of Commissioner Michael A. Palecki, as Prehearing Officer, this 1st Day of February, 2002.



MICHAEL A. PALECKI  
Commissioner and Prehearing Officer

( 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial

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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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.