

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-02-0799-PCO-TP  
ISSUED: June 12, 2002

The following Commissioners participated in the disposition  
of this matter:

LILA A. JABER, Chairman  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI

ORDER DENYING SUPRA'S MOTION TO STRIKE AND REPLY

BY THE COMMISSION:

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.

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

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(Fla. 1<sup>st</sup> DCA 1983); Motzner v. Tanner, 561 So. 2d 1336 (Fla. 5<sup>th</sup> DCA 1990). Therefore, Supra's Motion to Strike Portions of BellSouth's Opposition Response is unauthorized and will not be considered.

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.

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 will not be considered.

While not every unauthorized filing is automatically in violation of Section 120.569(2)(e), Florida Statutes, Supra should consider the application of that provision to its filings with the level of care reflecting the serious purposes of that requirement.

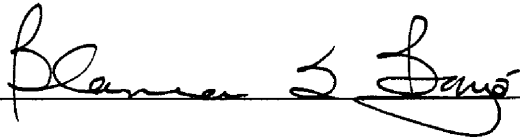
In view of the above, it is

ORDERED by the Florida Public Service Commission that the Motion to Strike And Reply of Supra Telecommunications And Information Services, Inc. is denied. It is further

ORDERED that this docket remain open.

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By ORDER of the Florida Public Service Commission this 12th  
day of June, 2002.



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BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

RCB

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 review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in

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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.