

ORIGINAL

Matilda Sanders

From: Smith, Debbie N. [Debbie.N.Smith@BELLSOUTH.COM]  
 Sent: Tuesday, December 07, 2004 3:39 PM  
 To: Filings@psc.state.fl.us  
 Cc: Edenfield, Kip; Fatool, Vicki; Slaughter, Brenda ; Nancy Sims; Holland, Robyn P; Bixler, Micheale; Linda Hobbs  
 Subject: Florida Docket No. 040301-TP  
 Importance: High

- A. Debbie Smith  
 Legal Secretary for E. Earl Edenfield, Jr.  
 BellSouth Telecommunications, Inc.  
 c/o Nancy Sims  
 150 South Monroe, Rm. 400  
 Tallahassee, FL 32301-1558  
 (404) 335-0772  
 debbie.n.smith@bellsouth.com
- B. Docket No. 040301-TP: In Re: Petition of Supra Telecommunications and Information Systems, Inc. for arbitration with BellSouth Telecommunications, Inc.
- C. BellSouth Telecommunications, Inc.  
 on behalf of E. Earl Edenfield, Jr.
- D. 7 pages total (PDF format - official filing)  
 5 pages total (WORD in lieu of disk)
- E. BellSouth's Opposition to Supra's Motion for Reconsideration.

<<BST Opposition.pdf>> <<BST Opposition.doc>>

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E. EARL EDENFIELD, JR  
Senior Attorney

BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(404) 335-0763

December 7, 2004

Mrs. Blanca S. Bayó  
Division of the Commission Clerk and  
Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

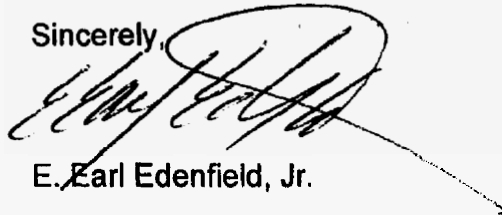
**Re: Docket No.: 040301-TP  
Petition of Supra Telecommunications and Information Systems, Inc. for  
Arbitration with BellSouth Telecommunications, Inc.**

Dear Ms. Bayó:

Enclosed is BellSouth's Opposition to Supra's Motion for Reconsideration, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



E. Earl Edenfield, Jr.

Enclosure

cc: All Parties of Record  
Marshall M. Criser III  
Nancy B. White  
R. Douglas Lackey

**CERTIFICATE OF SERVICE  
Docket No. 040301-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail, Federal Express (\*) and U.S. Mail this 7th day of December, 2004 to the following:

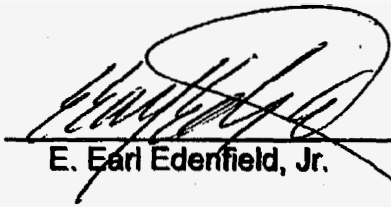
Jason Rojas  
Jeremy Susac  
Staff Counsels  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850  
Tel No. (850) 413-6179 or 6236  
Fax No. (850) 413-6250  
[vrojas@psc.state.fl.us](mailto:vrojas@psc.state.fl.us)  
[jsusac@psc.state.fl.us](mailto:jsusac@psc.state.fl.us)

Ann H. Shelfer  
Supra Telecommunications &  
Information Systems, Inc.  
Koger Center – Ellis Building  
1311 Executive Center Drive  
Suite 220  
Tallahassee, FL 32301-5067  
Tel. No. (850) 402-0510  
Fax. No. (850) 402-0522  
[ashelfer@stis.com](mailto:ashelfer@stis.com)

Brian Chaiken (+) (\*)  
Supra Telecommunications &  
Information Systems, Inc.  
2620 S. W. 27<sup>th</sup> Avenue  
Miami, FL 33133  
Tel. No. (305) 476-4248  
Fax. No. (305) 443-1078  
[bchaiken@stis.com](mailto:bchaiken@stis.com)

**To receive discovery related material only**

John Duffey  
Division of Competitive  
Markets & Enforcement  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850  
Tel No. (850) 413-6828  
[jduffey@psc.state.fl.us](mailto:jduffey@psc.state.fl.us)



E. Earl Ederfield, Jr.

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition of Supra )  
Telecommunications and Information )  
Systems, Inc. for Arbitration )  
With BellSouth Telecommunications, Inc. )  
\_\_\_\_\_ )

Docket No. 040301-TP

Filed: December 7, 2004

**BELLSOUTH'S OPPOSITION TO SUPRA'S  
MOTION FOR RECONSIDERATION**

BellSouth Telecommunications, Inc. ("BellSouth") files this Opposition to the Emergency Motion for Reconsideration ("Motion") of Order No. PSC-04-1180-PCO-TP ("*Order*") filed by Supra Telecommunications and Information Systems, Inc. ("Supra") on November 30, 2004. For the reasons discussed in detail in below, the Florida Public Service Commission ("Commission") should deny Supra's Motion.

**INTRODUCTION AND ARGUMENT**

In support of its Motion, Supra makes four arguments: (1) that one hour and thirty-five minutes was an insufficient amount of time for the Pre-hearing Officer to fully consider BellSouth's Emergency Motion for Continuance and Supra's response thereto; (2) that the *Order* contradicts prior discussions by the Commission regarding the need for this hearing; (3) that Supra had already traveled to Tallahassee for the hearing; and, (4) that the Pre-hearing Officer did not take oral argument on BellSouth's Emergency Motion for Continuance. As discussed in greater detail below, these arguments have either been considered, and rejected, by the Pre-hearing Officer, or been rendered moot by the passage of time, or are new arguments that Supra failed to present in their initial

request. Either way, these arguments fail to meet the legal standards applicable to reconsideration motions and, therefore, should be rejected by the Commission.

**I. SUPRA'S MOTION FAILS TO MEET THE LEGAL STANDARD FOR RECONSIDERATION.**

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering an order. See Diamond Cab Co. v. King, 146 So. 2d 889, 891 (Fla. 1962). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. See Sherwood v. State, 111 So. 2d 96, 97 (Fla. 3<sup>rd</sup> DCA 1959) (citing State ex. Rel. Jayatex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1<sup>st</sup> DCA 1958). Moreover, a motion for reconsideration is not intended to be "a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or the order." Diamond Cab Co., 394 So.2d at 891. Indeed, a motion for reconsideration should not be granted based upon an arbitrary feeling that a mistake may have been made, but should be based on specific factual matter set forth in the record and susceptible to review." Steward Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315, 317 (Fla. 1974).

Further, it is well settled that it is inappropriate to raise new arguments in a motion for reconsideration. In re: Establish Nondiscriminatory Rates, Terms, and Conditions, Docket No. 950984-TP, Order No. PSC 96-1024-FOF-TP, Aug. 7, 1996, 1996 WL 470534 at \*3 ("It is not appropriate, on reconsideration, to raise new arguments not mentioned earlier."); In re: Southern States Utilities, Inc., Docket No. 950495-WS, Order No. PSC-96-0347-FOF-WS, Mar. 11, 1996, 1996 WL 116438 at \*3 ("Reconsideration is not an opportunity to raise new arguments."). Because Supra fails

to meet any of the legal requisites for granting reconsideration, the Commission should deny Supra's Motion.

**II. THE PRE-HEARING OFFICER HAD AMPLE TIME TO CONSIDER BELLSOUTH'S EMERGENCY MOTION FOR CONTINUANCE AND SUPRA'S RESPONSE THERETO WITHOUT THE NEED FOR ORAL ARGUMENT.**

Supra's contention that the Pre-hearing Officer could not comprehend the scope of a contested motion for continuance in one hour and thirty-five minutes is as erroneous as it is insulting. We are not building rocket ships here and there was nothing inherently complex about BellSouth's Motion for Continuance and Supra's response thereto. Further, Supra does not, and cannot, cite to any authority that sets forth a minimum time factor in ruling on motions for continuance, Supra's suggestion that oral argument was needed (or required) is likewise unsupported by the law or the facts of this case. Oral argument is within the discretion of the Pre-hearing Officer and, given the particularly benign nature of the issues surrounding a motion for continuance, completely unnecessary in this instance. Because Supra fails to establish any abuse of discretion by the Pre-hearing Officer, the Commission should affirm the *Order*.

**III. THE PRE-HEARING OFFICER ALREADY CONSIDERED AND REJECTED SUPRA'S ARGUMENT THAT THE ORDER IS INCONSISTENT WITH PRIOR COMMISSION DISCUSSIONS REGARDING THIS PROCEEDING.**

Supra's argument regarding prior discussions surrounding this proceeding were considered and rejected by the Pre-hearing Officer. Thus, Supra fails to identify any fact or law overlooked by the Pre-hearing Officer. Further, there is nothing in the *Order* that suggests that the Commission will not ultimately have a ratemaking proceeding to consider the rates for conversions. The continuance simply gives the Commission time to

decide whether the issue should be considered on a state-wide basis in a generic proceeding as recently requested by a coalition of CLECs. Further, the request for a generic docket was made after the Commission initially set this matter for hearing. Having failed to identify any fact or law overlooked by the Pre-hearing Officer, or any abuse of discretion, the Commission should affirm the *Order*.

**IV. SUPRA'S ARGUMENT THAT IT HAD ALREADY TRAVELED TO TALKLAHASSEE WAS CONTRIVED AND IS NOW MOOT.**


Supra's argument that it had already traveled to Tallahassee for the hearing has been rendered moot by the passing of the hearing dates. Regardless, Supra was aware of BellSouth's pending Emergency Motion for Continuance and had also joined with BellSouth in requesting that the hearing not start until December 2, 2004, a request that had been granted by the Pre-hearing Officer. To the extent Supra actually traveled on November 30, 2004, it appears to have been motivated as a means to try and defeat BellSouth's pending Emergency Motion for Continuance, not as a necessity for the hearing. Thus, the Commission should affirm the *Order*.

**CONCLUSION**


For the foregoing reasons, BellSouth requests that the Commission deny Supra's Motion.

Respectfully submitted, this 7<sup>th</sup> day of December 2004,

BELLSOUTH TELECOMMUNICATIONS, INC:



NANCY B. WHITE  
c/o Nancy H. Sims  
150 South Monroe Street  
Suite 400  
Tallahassee, Florida 32301-1558  
(305) 347-5558



R. DOUGLAS LACKEY  
E. EARL EDENFIELD, JR.  
675 West Peachtree Street  
Suite 4300  
Atlanta, Georgia 30375-0001  
(404) 335-0763

562121