BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Supra Telecommunications & Information Systems against BellSouth Telecommunications, Inc. for violation of the Telecommunications Act of 1996; petition for resolution of disputes as to implementation and interpretation of interconnection, resale and collocation agreements; and petition for emergency relief.	DOCKET NO. 980119-TP ORDER NO. PSC-98-1467-FOF-TP ISSUED: October 28, 1998

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
JOE GARCIA
E. LEON JACOBS, JR.

FINAL ORDER ON MOTIONS FOR RECONSIDERATION, MOTION TO DISMISS, AND MOTION TO STRIKE

BY THE COMMISSION:

CASE BACKGROUND

On January 23, 1998, Supra Telecommunications & Information Systems (Supra) filed a Complaint against BellSouth Telecommunications, Inc. (BellSouth) for alleged violations of the Telecommunications Act of 1996 (Act) and Petition for resolution of certain disputes between BellSouth and Supra regarding interpretation of the Interconnection, Resale, and Collocation Agreements between Supra and BellSouth (Petition). On February 16, 1998, BellSouth filed its Answer and Response to Supra's Petition. On April 30, 1998, we held an administrative hearing on Supra's complaint. By Order No. PSC-98-1001-FOF-TP, issued July 22, 1998, we rendered our final determination regarding the complaint.

On August 6, 1998, BellSouth filed a Motion for Reconsideration and Clarification of Order No. PSC-98-1001-FOF-TP. That same day, Supra filed a Motion for Reconsideration and Clarification, as well as a Motion to Take Official Notice of the Record in Docket No. 960786-TL. On August 17, 1998, BellSouth filed its Response to Supra's Motion for Reconsideration and Clarification of Order No. PSC-98-1001-FOF-TL. BellSouth also filed its Opposition to Supra's Motion to Take Official Recognition of the Record in Docket No. 960786-TL. On August 18, 1998, Supra filed its Response to BellSouth's Motion for Reconsideration and Clarification, as well as a Request for Oral Argument. On August 21, 1998, BellSouth filed its Opposition to Supra's Request for Oral Argument.

On September 2, 1998, Supra filed a Motion to Dismiss BellSouth's Motion for Reconsideration and Clarification of Order No. PSC-98-1001-FOF-TP and a Motion to Strike BellSouth's Answer in Docket No. 980800-TP for Misconduct. Supra also requested oral argument on its motion. On September 9, 1998, BellSouth filed its Opposition to Supra's Motion to Dismiss and Motion to Strike and its own Motion to Strike and Motion for Oral Argument. BellSouth also included a Motion for Sanctions in its filing. On September 21, 1998, Supra filed its Response to BellSouth's Motion to Strike Supra's Motion to Dismiss and Motion for Sanctions. Supra also included a request to accept its response out of time. On September 23, 1998, BellSouth filed its Opposition to Supra's request.

Supra's Motion to Dismiss and Motion to Strike and BellSouth's Opposition are only addressed in this Order to the extent that they apply to Docket No. 980119-TP. To the extent that they apply to Docket No. 980800-TP, we have addressed them by a separate Order. Our determination on these post-hearing motions is set forth below.

MOTIONS

I. REQUESTS FOR ORAL ARGUMENT

Supra and BellSouth filed their requests for oral argument on the Motions to Strike in accordance with Rule 25-22.058, Florida Administrative Code. Due to the nature of Supra's and BellSouth's Motions to Strike, we granted the requests for oral argument and limited it to five minutes per side.

Supra also asked that we hear oral argument on its Motion for Reconsideration and Clarification of Order No. PSC-98-1001-FOF-TP and upon its Response to BellSouth's Motion for Reconsideration and Clarification. Supra asserted that oral argument was necessary because the issues presented in the Motions for Reconsideration were complex. Thus, Supra stated that oral argument would assist us in making our determination on this matter.

BellSouth asked that Supra's request for oral argument be denied. BellSouth noted that Supra's Response to BellSouth's Motion for Reconsideration and Clarification was not timely filed, as acknowledged by Supra in its Response. BellSouth stated that it does not object to the late-filed pleading. BellSouth argued, however, that Supra's Request for Oral Argument was not timely, in accordance with Rule 25-22.058, Florida Administrative Code. Pursuant to that Rule, a request for oral argument must be submitted at the same time as the pleading upon which oral argument is requested. BellSouth argued that Supra did not submit its request at the time that Supra filed its Motion for Reconsideration and Clarification. Furthermore, BellSouth argued that although Supra did submit its request at the time that Supra filed its Response to BellSouth's Motion, the Response was late. BellSouth argued, therefore, that the request was not timely as applied to either Supra's Motion for Reconsideration and Clarification or to Supra's Response to BellSouth's Motion for Reconsideration and Clarification. In addition, BellSouth argued that Supra failed to state with particularity how oral argument would assist us in our decision, as required by Rule 25-22.058, Florida Administrative Code. BellSouth argued that Supra's indications that the issues are complex is not sufficient to meet the requirements of Rule 25-22.058, Florida Administrative Code.

We agree that Supra's Request for Oral Argument was not timely filed as it applies to Supra's Motion for Reconsideration and Clarification. Furthermore, we do not believe that oral argument will assist us in making our decision, and Supra has not adequately indicated how it will, in accordance with Rule 25-22.058, Florida Administrative Code. Supra has merely indicated that the issues are not simple and that the motions demonstrate conflict in our Order. Supra did not state how oral argument will further illuminate the issues. For these reasons, Supra's Request for Oral Argument on its Motion for Reconsideration and its Response to BellSouth's Motion for Reconsideration is denied.

II. SUPRA'S FIRST REQUEST TO ACCEPT RESPONSE OUT OF TIME

In its Response to BellSouth's Motion for Reconsideration and Clarification, Supra stated that it failed to timely file its Response because it erroneously assumed the Motion had been served by U.S. Mail. Supra believed, therefore, that it had 12 days to file its Response. The Motion had, however, been served by hand delivery. As such, Supra's Response was five days late. When the error was detected, Supra served its Response by hand delivery. Supra asked, therefore, that we accept its late-filed Response.

In its Opposition to Supra's Request for Oral Argument, BellSouth indicated that it did not object to Supra's late-filed Response.

It appears that Supra's error was inadvertent and that it has not caused any undue prejudice to BellSouth. Thus, we have accepted and considered Supra's late-filed Response to BellSouth's Motion for Reconsideration and Clarification.

III. SUPRA'S SECOND MOTION TO FILE RESPONSE OUT OF TIME

Supra stated that BellSouth's Motion to Strike Supra's Motion to Dismiss was served by hand delivery on September 10, 1998. Therefore, Supra's Response was due September 17, 1998. Supra's Response was four days late. Supra stated that it was unable to timely file its response due to activities and deadlines in this docket and Docket No. 980800-TP. Supra asked, therefore, that we accept its late-filed Response.

In its response, BellSouth stated that a busy schedule does not excuse an untimely filing. BellSouth noted that Supra could have sought an extension of time to file its response before the filing deadline, but did not. BellSouth asked, therefore, that we deny Supra the right to file its response out of time.

We are aware that there have been numerous activities in this docket and Docket No. 980800-TP. This is, however, Supra's second, post-hearing request to accept a response out of time. The response deadlines set forth in Rule 25-22.037(2), Florida Administrative Code, are clear. The purpose of the rule is to ensure that pleadings and responses are filed in a timely manner and that no party is unduly burdened or inappropriately benefitted by the timing of pleadings and motions. These rules are equally

applicable to the parties in this case. Supra's request is, therefore, denied.

IV. SUPRA'S MOTION TO DISMISS AND BELLSOUTH'S MOTION TO STRIKE

SUPRA

Supra asked that we dismiss BellSouth's Motion for Reconsideration of Order No. PSC-98-1001-FOF-TP for misconduct in this proceeding. Supra alleged that BellSouth engaged in misconduct by offering a Commission staff person that had been involved in this Docket a position with BellSouth. Supra stated that the staff person was lead on this docket, as well as Docket No. 980800-TP. Because she was offered a position with BellSouth, and has now accepted that position, Supra complained that she can no longer participate in resolving this case. Supra asserted that the staff person was the key, senior staff person in formulating the staff's post-hearing recommendation in this Docket, and that she would have been the staff person to develop the recommendation regarding the Motions for Reconsideration of Order No. PSC-98-1001-FOF-TP.

Supra asserted that our decision on the Motions for Reconsideration of Order No. PSC-98-1001-FOF-TP has great import for BellSouth. Specifically, Supra asserted that requiring BellSouth to provide online edit checking to Supra could ". . . cost BellSouth a great deal of money and cause BellSouth a good deal of trouble." September 2, 1998, Motion to Dismiss at p. 3. Supra argued that in view of the importance of this case, BellSouth's actions in offering the staff person a position are clearly improper. Supra complained that BellSouth has the resources to hire anyone. Supra added that it ". . . is not an accident that this staff person was offered a position by BellSouth at this point in time." September 2, 1998, Motion to Dismiss at p. 4. Supra charged that BellSouth offered the staff person a position in order to avoid the staff person's further involvement in this docket and in Docket No. 980800-TP. Supra argued that the staff person has demonstrated her knowledge, experience, and ". . .willingness to challenge BellSouth. . .," therefore, BellSouth would prefer to have her removed from these cases so that less experienced staff members will be required to complete these cases. September 2, 1998, Motion to Dismiss at p. 5. Supra stated that no other Commission staff member is able to handle these cases as capably as the staff person hired by BellSouth. Thus, Supra argued

it is a violation of due process for BellSouth to offer the staff person a position with BellSouth.

Supra further asserted that this is "misconduct of the highest order. . .," which has deprived Supra of its right to a fair hearing. Supra argued that this is analogous to jury tampering. Supra added that, according to Rule 1.540, Florida Rules of Civil Procedure, BellSouth's actions are a sufficient basis for the Commission to dismiss BellSouth's Motion for Reconsideration of Order No. PSC-98-1001-FOF-TP. Rule 1.540, Florida Rules of Procedure, states, in part:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, decree, order, or proceeding for the following reasons:
>
> (3) fraud (whether heretofore denominated intrinsic of extrinsic), misrepresentation, or other misconduct of an adverse party;

Supra stated that BellSouth's action is ". . . premeditated, targeted, and abusive of the process." September 2, 1998, Motion to Dismiss at p. 14. Supra asked, therefore, that we dismiss BellSouth's Motion for Reconsideration and Clarification.

BELLSOUTH

In its Opposition and Motion to Strike, BellSouth asserted that Supra's allegations are without merit. BellSouth stated that its offer of employment to the staff person is permissible under Section 112.313(9)(a)(6)(c), Florida Statutes. In accordance with that Section, the restrictions on employment set forth in Section 112.313, Florida Statutes, do not apply to a person employed by the agency prior to December 31, 1994. BellSouth also attached the affidavit of Nancy Sims to its Opposition and Motion to Strike. The affidavit stated that BellSouth did not offer the staff person a position in order to avoid her participation in these dockets or to influence the outcome of the dockets. BellSouth states that it had no "sinister" motive in hiring the staff person. BellSouth also asserted that the Commission staff is capable of handling these dockets without the staff person's participation and assistance. BellSouth added that Supra has offered no evidence to

substantiate its claims that BellSouth's misconduct was premeditated.

BellSouth stated that Supra knew that BellSouth's conduct was lawful.[1] BellSouth argued, therefore, that Supra's Motion should be denied as a sham pleading pursuant to Rule 1.150, Florida Rules of Civil Procedure.[2] BellSouth added that Supra's Motion contains "scandalous" matters, that should be stricken in accordance with Rule 1.140, Florida Rules of Civil Procedure. BellSouth stated that scandalous matters are accusations against another party that are unnecessary and accusatory. BellSouth argued that such things include allegations that reflect upon one's moral character or that detract from the dignity of the court.[3]

Determination

Upon consideration, we view Supra's Motion to Dismiss BellSouth's Motion for Reconsideration for Misconduct as a sham pleading.

Ms. Sims stated in her affidavit that BellSouth offered the staff person a position after Order No. PSC-98-1001-FOF-TP was issued, and before any Motions for Reconsideration of the Order were filed. At the time of BellSouth's offer, the staff person had already completed her participation in developing the staff recommendation regarding Docket No. 980119-TP and presenting the post-hearing recommendation for our consideration. Thus, BellSouth's offer could not have impaired our staff's evaluation of this case.

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[1] Citing Supra's Motion at ¶ 22, where Supra notes that the employment restrictions in Section 112.313, Florida Statutes, do not apply to the staff person hired by BellSouth, in accordance with Section 112.313(9)(a)(6)(c), Florida Statutes.

[2]Citing Menke v. Southland Specialities Corp., 637 So. 2d 285 (Fla. 2nd DCA 1994).

[3]Citing Burke v. Mesta Machinery Co., 5 F.R.D. 134 (Pa. 1946) and Martin V. Hunt, 28 F.R.D. 35 (D.C. Mass. 1961). BellSouth also cites Ropes v. Stewart, 45 So. 31 (Fla. 1907), wherein the Court granted a motion to strike scandalous allegations that the defendant had used perjury and evil influence on the judge and jury.

As for Supra's assertions that the staff person would have been the key staff person involved in evaluating the pending Motions for Reconsideration and in drafting the staff recommendation on these motions, we note that our legal staff generally has the primary role in evaluating Motions for Reconsideration of the Commission's final orders based upon the legal standard for such motions, and in drafting the staff recommendations regarding such motions. It is also noteworthy that the main point upon which BellSouth has sought reconsideration is online edit checking. The staff person hired by BellSouth was not the staff person that drafted our staff's original recommendation on this issue, although she was that staff member's supervisor. While the staff person's knowledge and experience were valuable assets to us, we are confident that the staff member responsible for addressing online edit checking provided very competent assistance to our legal staff in reviewing this point for purposes of making the staff's recommendation to us on BellSouth's Motion for Reconsideration, which is addressed herein.

Based on the facts as known by us and as set forth in Ms. Sims's uncontroverted affidavit, we believe that Supra's Motion is factually false and may be considered a sham pleading in accordance with Rule 1.150, Florida Rules of Civil Procedure.

We also believe that Supra's Motion may be considered a frivolous pleading in accordance with Section 120.57 (1)(b)(5), Florida Statutes, because there is no legal basis or justification for the motion. In past cases, we have stated that "In determining whether a motion is improper pursuant to Section 120.57(1)(b)(5), Florida Statutes, we must solely focus on whether there was some legal justification for its filing." Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, in Docket No. 950495, at p. 21. Supra has stated in its own Motion that the agency employment restrictions set forth in Section 112.313, Florida Statutes, are not applicable to the staff person hired by BellSouth. Supra's only other asserted legal basis for its Motion is Rule 1.540, Florida Rules of Civil Procedure, regarding dismissal for fraud or misconduct. Supra does not allege fraud, but alleges that BellSouth has engaged in misconduct. Misconduct is defined by Black's Law Dictionary as

> A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior. . .

Black's Law Dictionary, 6th Ed. (1990). Supra has not identified any rule or law which BellSouth broke when it offered the staff person a position, nor has Supra provided any factual or legal support for its assertions that BellSouth hired the staff person in an attempt to improperly influence the outcome of these two dockets. Also, Rule 1.540, Florida Rules of Civil Procedure, is applicable in this instance. Supra asks that we dismiss BellSouth's Motion for Reconsideration. Supra is not seeking relief from a judgment, decree or order. We find no basis in law or in fact for Supra's Motion. Thus, we shall consider Supra's Motion to Dismiss a frivolous motion. For these reasons, we hereby grant BellSouth's Motion to Strike Supra's Motion to Dismiss for Misconduct.

V. REQUEST FOR SANCTIONS

BELLSOUTH

BellSouth asked that sanctions be imposed upon Supra for filing the Motion to Strike for Misconduct. BellSouth argued that administrative proceedings are no place for improper or frivolous pleadings, as set forth in Section 120. 57(1)(b)(5), Florida Statutes. BellSouth argued that Supra's Motion qualifies as an improper and frivolous pleading. BellSouth further argued that the only purpose for Supra's Motion is to "throw mud," delay the case, and harass BellSouth. September 9, 1998, Opposition and Motion to Strike at p. 5. According to BellSouth, there is no legal basis for Supra's Motion. Thus, BellSouth asked that we impose reasonable sanctions on Supra, including the imposition of attorneys' fees and costs.[4]

As noted above, we did not accept Supra's late-filed response to BellSouth's Motion.

As we have indicated herein, Supra's Motion to Dismiss shall be considered a frivolous pleading in accordance with Section 120.57 (1)(b)(5), Florida Statutes. There is no legal basis or justification for Supra's motion.

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[4]Citing Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, in Docket No. 950495-WS, wherein the Commission stated that it has the authority to impose sanctions pursuant to Section 120.57(1)(b), Florida Statutes.

In Order No. PSC-96-1320-FOF-WS, we relied on Mercedes Lighting and Elec. Supply, Inc. v. State, Dep't of General Services, 567 So. 2d 272, 278 (Fla. 1st DCA 1990) in rendering its decision on a request for attorney's fees and costs. We noted that in Mercedes Lighting, the court stated:

> The rule [against frivolous or improper pleadings contained in Rule 11, Federal Rules of Civil Procedure] is not intended to chill an attorney's enthusiasm or creativity in pursuing factual or legal theories." The court further noted, that "a claim or defense so meritless as to warrant sanctions, should have been susceptible to summary disposition.

Order No. PSC-96-1320-FOF-WS at p. 21, citing Mercedes Lighting, 567 So. 2d at 276. We further considered the court's holding that improper purpose in a pleading "may be manifested by excessive persistence in pursuing a claim or defense in the face of repeated adverse rulings, or by obdurate resistance out of proportion to the amounts or issues at stake." Id. at 278. We added that ". . . it is important to consider what was reasonable at the time the pleading was filed." Order No. PSC-96-1320-FOF-WS at p. 20. We also stated that there must be some legal justification for the filing in question. Id. at p. 21.

Supra has stated in its Motion to Strike that the agency employment restrictions set forth in Section 112.313, Florida Statutes, are not applicable to the staff person hired by BellSouth. As set forth in this Order, Supra's only other asserted legal basis for its Motion is Rule 1.540, Florida Rules of Civil Procedure, regarding relief from a decree or order based upon fraud or misconduct. Misconduct is, however, defined as

> A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior. . .

Black's Law Dictionary, 6th Ed. (1990). Supra has not identified any rule or law that BellSouth violated when it offered the staff person employment. Therefore, we find that there is not any legal basis for Supra's Motion. Even if one considers that the proceedings in Docket No. 980800-TP have been quite contentious between the parties and that the end results of this case may be

quite significant for both parties, we do not believe that this pleading can be considered reasonable under the circumstances. We shall, therefore, consider Supra's Motion to Strike to be a frivolous motion.

While we find that Supra's Motion to Strike is frivolous, we acknowledge that sanctions should only be imposed when truly warranted, in order to avoid ". . .chill[ing] an attorney's enthusiasm or creativity in pursuing factual or legal theories." Order No. PSC-96-1320-FOF-WS at p. 21, citing Mercedes Lighting, 567 So. 2d at 276. We emphasize that further pursuit by Supra of such legally and factually deficient theories shall not be considered lightly. Nevertheless, we shall not grant BellSouth's request for sanctions for Supra's filing of the Motion to Strike for Misconduct.

VI. BELLSOUTH'S MOTION FOR RECONSIDERATION AND CLARIFICATION

STANDARD OF REVIEW

The proper standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which we failed to consider in rendering our Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. V. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

BELLSOUTH

BellSouth asked that we reconsider our decision to require BellSouth to provide Supra with the same online edit checking capability that BellSouth's retail ordering systems provide. BellSouth argued that we went beyond the evidence and the testimony in reaching our decision. BellSouth stated that our decision was

arbitrary and ignored evidence that contradicts our decision.[5] In addition, BellSouth stated that we should clarify certain requirements set forth in Order No. PSC-98-1001-FOF-TL.

Specifically, BellSouth argued that online edit checking capability was never an issue in this case. BellSouth acknowledged that electronic access to Operations Support Systems (OSS) was an issue, but argued that the issue of electronic access to OSS did not include online edit checking. BellSouth asserted that Supra did not raise the issue of online edit checking in its complaint or in its testimony. BellSouth noted that Supra's witness Ramos never mentioned online edit checking; rather, witness Ramos asked that Supra be provided with the exact same systems as BellSouth. BellSouth argued that Supra's only complaint about edits was that EDI and LENS orders that contain errors go to the LCSC for handling. BellSouth emphasized that we determined at page 23 of the Order that BellSouth was not required to provide the exact same systems to Supra. We also found that BellSouth had provided all of the interfaces required by the agreement between the parties. See Order at page 23. Furthermore, we found that BellSouth had added the capability to allow ALECs to electronically supplement and correct orders in both LENS and EDI. See Order at page 22. BellSouth argued that by making a further determination that BellSouth must provide online edit checking capability, the Commission improperly went beyond the issues and the evidence.

In addition, BellSouth argued that if it is required to provide the same edit checking capability that its retail systems provide, it will have to install computer hardware and software on Supra's premises. BellSouth asserted that this would require a substantial amount of time and money. BellSouth stated that it would have to duplicate its Regional Navigation System (RNS) and its Direct Order Entry system (DOE) for Supra at Supra's premises. BellSouth argued that this goes beyond the requirements of the Act and the FCC's Interconnection Order. BellSouth noted that it has provided ALECS with the specifications to build their own systems. BellSouth further argued that if it had known this was an issue, it would have provided testimony on it. Thus, BellSouth argued that we erred in making a decision on this point.

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[5] Caranci v. Miami Glass & Engineering Co., 99 So. 2d 252, 254 (Fla. 3rd DCA 1957).

BellSouth also sought clarification of certain requirements in the Order. We required BellSouth to provide Supra with any outstanding documentation requested by Supra. With regard to database documentation, BellSouth stated that it believes it has provided everything requested, but asks us to identify what other documentation may be required, if any. BellSouth also sought clarification of the requirement to provide Supra with PLATS. BellSouth stated that PLATS is the cable layout and engineering records of BellSouth. BellSouth asserted that these records are voluminous and proprietary. BellSouth stated that providing these records goes beyond the requirements of the Act. BellSouth asked, therefore, that we clarify that BellSouth needs to provide access to these records only on a request basis when access is necessary. BellSouth stated that it would provide access in a reasonable amount of time.

SUPRA

Supra argued that Supra's inability to perform online edit checking was addressed on several occasions, including in the depositions of BellSouth's employees. Supra argued that witness Ramos's statement that Supra needs the exact same systems as those maintained by BellSouth demonstrates that the OSS provided to Supra was not adequate, and that the lack of online edit checking contributed to that inadequacy.

Supra asserted that BellSouth failed to present adequate evidence on this issue and is now trying to argue that online edit checking was not an issue, because BellSouth does not like our determination. Supra argued that we should not reconsider our decision on this issue simply because BellSouth does not like the outcome.

We note that Supra did not respond to BellSouth's request for clarification regarding the provision of PLATS.

Determination

Upon consideration, we find that BellSouth has not identified any facts that we overlooked, or any point of law upon which we made an error in requiring BellSouth to provide Supra with online edit checking capability. Supra's inability to check its orders for errors so that corrections can be made in a timely manner was addressed by Supra's witness Hamilton, and considered by us at

pages 21-22 of Order No. PSC-98-1001-FOF-TP. As set forth at page 21:

> The witness [Hamilton] stated that if an error is made by its customer service representative, Supra will not learn of this error until BellSouth processes the order. Witness Hamilton asserted that in such a case, BellSouth will send Supra a clarification form, which states that an error has been made and that a corrected order must be resubmitted. Witness Hamilton also asserted that the correction must be handled manually, because it is an update to an existing order. This, he argued, makes it impossible for Supra to provide reliable, timely service to its customers.

At page 22, we found that

> We do, however, note that Supra contended that BellSouth's ALEC ordering systems do not provide the same online edit checking capability that BellSouth's retail ordering systems provide. We believe the same interaction and edit checking capability must take place when an ALEC is working an order as when BellSouth's retail ordering systems interact with BellSouth's FUEL and Solar databases to check the accuracy of BellSouth's orders.

Although we determined that BellSouth had adequately addressed Supra's concerns regarding supplementing orders electronically, we found that BellSouth must also provide the same edit checking capability in order to comply with the terms of the agreement.

In addition, we find that edit checking capability clearly falls within Issue 1 (d), which was identified by the prehearing officer in Order No. PSC-98-0416-PCO-TP, issued March 24, 1998, as an issue to be addressed at the hearing. This issue states:

> Issue 1: Has BellSouth Telecommunications, Inc., failed to properly implement the following provisions of its

> Resale, Collocation, and Interconnection Agreements with Supra such that Supra is to provide local exchange service on parity with that which BellSouth provides:
>
> (d) Electronic access to Operational Support Systems (OSS) and OSS interfaces (Ordering and Provisioning, Installation, Maintenance and Repair)

Furthermore, BellSouth's witness Stacy addressed the ALECs' ability to process an order, including how errors are handled, in his testimony. See Transcript pages 578 and 573. This testimony was considered and addressed by us at pages 21-22 of the Order. Based upon the testimony already considered by us, it is clear that BellSouth's online edit checking capability results in a disparity in how errors are handled and orders are processed.

For these reasons, we hereby deny BellSouth's Motion for Reconsideration. In view of BellSouth's assertions that it would be necessary to place equipment at Supra's premises, we shall, however, clarify that BellSouth does not need to provide the exact same interfaces that it uses. As set forth in our order, BellSouth's FUEL and Solar databases have simultaneous interaction with BellSouth's ordering interfaces, so that errors in an order being worked by a service representative are immediately identified. If an error is identified, the BellSouth service representative can make corrections before the order is completed. BellSouth shall provide Supra with this same capability through the ordering interfaces provided to it, as identified in the parties' agreement.

BellSouth has also asked that we clarify the requirement to provide PLATS to Supra. BellSouth has indicated that PLATS contains proprietary information and is quite voluminous. BellSouth asks, therefore, that it be allowed to provide this information on a per request basis, as needed. We note that in Order No. PSC-98-1001-FOF-TP, at page 35, we found that Supra had not supported its claims that it had requested this information from BellSouth. In view of this finding, and BellSouth's assertions that the material is proprietary and voluminous, we hereby clarify Order No. PSC-98-1001-FOF-TP to reflect that BellSouth shall provide PLATS to Supra on a per request basis, and

may do so subject to a protective agreement between the parties, if necessary.

VII. MOTION TO TAKE OFFICIAL NOTICE OF RECORD IN DOCKET NO. 980786-TL

SUPRA

Supra asked that we take official notice of the record of Docket No. 960786-TL, Consideration of BellSouth Telecommunications, Inc.'s Entry into InterLATA Services pursuant to Section 271 of the Federal Telecommunications Act of 1996. Supra argued that this is necessary because BellSouth's witness Stacy presented evidence at the April 30, 1998, hearing in this Docket that is contradicted by evidence presented in Docket No. 960786-TL. Supra asserted that BellSouth's witness Stacy testified at the April 30, 1998, hearing that AT&T did not have any serious problems with EDI. Citing Transcript at p. 574. Supra alleged, however, that AT&T's witness Bradbury presented testimony in Docket No. 960786-TL that AT&T had extensive problems with EDI and LENS and that neither was an adequate interface with BellSouth's OSS. Supra noted that we took official notice of our final order in Docket No. 960786-TL in this proceeding. Supra stated that it is appropriate for us to also recognize the record upon which that Order was based.

In addition, Supra asserted that it was previously unaware of witness Bradbury's testimony in Docket No. 960786-TL. Supra stated that due to the number of proceedings before this Commission in which interconnection issues have been addressed, it was not possible for Supra to identify this testimony before now. Now that this information has been discovered, Supra argued that we should take official notice of it, because it is sworn testimony, which BellSouth had the opportunity to rebut during the proceedings in Docket No. 960786-TL.

BELLSOUTH

In response, BellSouth argued that Supra's request is inappropriate and untimely. BellSouth also argued that it is only proper to take official notice when other parties have been given the opportunity to address the propriety of the official notice and of the nature of the matter noticed, in accordance with Section 90.204(1), Florida Rules of Evidence. BellSouth further argued that a party must demonstrate good cause for not having given

timely notice of its request to take official notice. BellSouth argued that Supra's assertions that it was impossible to be aware of the relevance of prior testimony in other dockets does not amount to good cause.

In addition, BellSouth argued that Supra is incorrect in its assertion that witness Stacy's testimony in this docket is contradicted by evidence in Docket No. 960786-TL. BellSouth incorporated its argument in its Response to Supra's Motion for Reconsideration and Clarification, and stated that AT&T witness Bradbury testified in Docket No. 960786-TL regarding whether the EDI interface meets the criteria of Section 271 of the Act. Witness Bradbury indicated that AT&T was testing the EDI interface in Georgia, but was not using it commercially. BellSouth argued that witness Stacy testified that there were no operational problems placing orders using EDI. BellSouth stated that it does not dispute that AT&T alleged that the EDI interface did not meet the Section 271 requirements. BellSouth argued, however, that the testimony in Docket No. 960786-TL does not contradict witness Stacy's testimony, because witnesses Stacy and Bradbury did not address the same issue. BellSouth added that witness Bradbury's testimony was offered over a year ago, and that many changes and modifications have been made to BellSouth's OSSs since that time.

Determination

Upon consideration, Supra's Motion to Take Official Notice shall be denied. The testimony that Supra asks us to accept is clearly intended to be submitted for purposes of impeachment. Supra has submitted its request after our hearing and after we have rendered our post-hearing decision in this docket. It would not be proper to take official recognition of this testimony without giving BellSouth an opportunity to examine and contest the material, as required by Section 120.569(2)(g), Florida Statutes. See Citizens of State of Florida v. Florida Public Service Commission, 383 So. 2d 901 (Fla. 1980)(finding that Section 120.61, Florida Administrative Code, *renumbered as Section 120.569(2)(g), Florida Administrative Code,* guarantees parties notice and opportunity to contest material before the Commission relies upon it).[6]

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[6] See also Florida Gas Co. v. Hawkins, 372 So. 2d 1118(Fla. 1979)(quashing Commission order apparently based upon presumption that circumstances in existence in previous case were still

BellSouth's response and opposition to Supra's request is not the same as an opportunity to examine and contest the material that Supra asks us to recognize. See Citizens of State of Florida v. Florida Public Service Commission, 383 So. 2d 901 (Fla. 1980)(opposition to motions was not 'opportunity to examine and contest the material' under Section 120.61, Florida Statutes). Furthermore, BellSouth's prior opportunity to cross-examine witness Bradbury in proceedings conducted over a year ago is not a basis for granting Supra's request. It is likely that circumstances have changed since the hearing in Docket No. 960786-TL, and, thus, the relevance of the testimony here is questionable. Also, the testimony offered by witness Bradbury in Docket No. 960786-TL was offered to address issues different than those addressed in this docket. As such, cross-examination of the witness in the prior docket may not be adequate or comparable to cross-examination in this docket. For these reasons, we hereby deny Supra's request.

VIII. SUPRA'S MOTION FOR RECONSIDERATION

STANDARD OF REVIEW

As previously set forth, the proper standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which we overlooked or which we failed to consider in rendering our Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. V. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

SUPRA

Supra argued that we should reconsider and clarify our decision that BellSouth has provided Supra with adequate access to BellSouth's OSS systems. Supra asserted that there is ample

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applicable.)

evidence in the record that faxing orders to BellSouth causes problems for ALECs, and that ALECs only do so because BellSouth has not provided a viable alternative. Supra asserted that we have overlooked this evidence, much of which, Supra alleged, comes from BellSouth's own witnesses.

Supra alleged that BellSouth's witness Stacy explained how BellSouth employees take orders for new service and provide telephone numbers to customers in the same conversation. Supra stated that this capability comes from BellSouth's RNS systems. Supra contrasted this capability with the capability provided by the interfaces BellSouth offers to ALECs. Supra asserted that none of the interfaces offered to ALECs allow the ALECs to electronically access and check new orders. Referring to the depositions of BellSouth employees Stephanie Hurt and Teresa Gentry, Supra stated that there is extensive manual intervention in the ALEC's ordering process, which causes delays and an increase in errors.

Supra also argued that BellSouth's LCSC employees can check the accuracy of orders easily and with minimal training. Supra alleged that ALECs do not have this same capability, which causes significant delays in processing orders for ALECs. Supra argued that this is a serious competitive disadvantage.

Supra also referred to the testimony offered by AT&T's witness Bradbury in Docket No. 960786-TL, but we have not considered this testimony in view of our decision on Supra's Request to Take Official Notice.

In addition, Supra argued that we have overlooked our statements in Order No. PSC-97-1459-FOF-TL, issued in Docket No. 960786-TL. In that Order, we stated that BellSouth's interfaces and functions do not allow an ALEC to perform the same OSS functions that BellSouth can. Supra argued that BellSouth is still not providing the same capabilities to ALECs that it provides to itself.

Finally, Supra stated that we directed BellSouth to take several specific actions by Order No. PSC-98-1001-FOF-TL. We ordered BellSouth to modify LENS to give Supra the same ordering capability that BellSouth's RNS system provides to BellSouth and to provide online edit checking capability. Supra asked that we clarify when and how BellSouth is to complete these requirements.

Supra argued that clarification on this point will ensure that the requirements are met.

BELLSOUTH

BellSouth argued that Supra's Motion for Reconsideration and Clarification reargues matters fully addressed in the Commission's Order, and, therefore, should be denied. BellSouth stated that we addressed manually faxed orders at page 18 of Order No. PSC-98-1001-FOF-TL. There, we stated that the evidence did not support Supra's assertions. BellSouth also argued that Supra's assertion that there is no alternative to manually faxing orders is inaccurate, nor was it the issue addressed at hearing. BellSouth stated that the issue was whether BellSouth had made the interfaces specified in the parties' agreement available to Supra. BellSouth noted that we found that BellSouth had provided access to interfaces in accordance with the parties' agreement. See Order No. PSC-98-1001-FOF-TL at page 23. BellSouth further noted that whether the interfaces specified in the agreement are acceptable was also not an issue in this case. BellSouth stated that we should not ignore the agreement between the parties.

In addition, BellSouth stated that it has outlined in its own Motion for Reconsideration and Clarification when and how it plans to meet the requirements of Order No. PSC-98-1001-FOF-TL. BellSouth added that we have continuing jurisdiction over our Order for enforcement purposes.

Determination

Having considered the arguments presented, we find that the arguments raised by Supra in its Motion for Reconsideration have been thoroughly addressed by us in Order No. PSC-98-1001-FOF-TL. At pages 17-19 of the Order, we addressed manual faxing of orders. We determined that there was not sufficient evidence to support Supra's assertions that BellSouth required Supra to manually fax all of its orders. We did, however, require BellSouth to modify LENS to allow Supra to have the same ordering capability that BellSouth's employees have through RNS. We addressed access to OSS at pages 22-23 of the Order. We determined that BellSouth is not required to provide the exact same interfaces that BellSouth uses for its retail operations. We further determined that BellSouth had made electronic interfaces available to Supra, in accordance with the parties' agreement. Supra has presented nothing new, nor has it demonstrated that we erred in our decision. Supra has

simply reargued its case, which is improper. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. V. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Therefore, we hereby deny Supra's Motion for Reconsideration.

Regarding Supra's request for clarification of when and how BellSouth must fulfill the requirements set forth in Order No. PSC-98-1001-FOF-TL, we agree that some clarification is appropriate. In BellSouth's response to Supra's Motion for Reconsideration and Clarification, BellSouth referred to its own Motion for Reconsideration and Clarification. There, BellSouth indicated that it expects to have the modifications to LENS that were required by us to be completed by February, 1999. This appears reasonable, but we encourage BellSouth to complete the modifications by the end of 1998. As for the online edit checking capability, we again emphasize, as explained above, that we shall not require BellSouth to duplicate its RNS and DOE interfaces at Supra's premises. In accordance with Order No. PSC-98-1001-FOF-TL, BellSouth shall provide Supra with the same interaction and online edit checking capability through its interfaces that occurs when BellSouth's retail ordering interfaces interact with BellSouth's FUEL and Solar databases to check orders. Order No. PSC-98-1001-FOF-TL at pages 22 and 47. BellSouth shall be required to do so by December 31, 1998. If, however, BellSouth is able to sufficiently demonstrate that it is not possible to provide online edit checking by that date, BellSouth may file a Motion for Extension of Time for our consideration.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that Supra Telecommunications & Information Systems' request that we consider its late-filed response to BellSouth Telecommunications, Inc.'s Motion for Reconsideration is granted. It is further

ORDERED that the Motion to File its Response to BellSouth Telecommunications, Inc.'s Motion to Strike filed by Supra Telecommunications & Information Systems is denied. It is further

ORDERED that the Motion to Strike filed by BellSouth Telecommunications, Inc. is granted. It is further

ORDERED that the request for sanctions filed by BellSouth Telecommunications, Inc. is denied. It is further

ORDERED that the Motion for Reconsideration filed by BellSouth Telecommunications, Inc. is denied. It is further

ORDERED that the Motion for Reconsideration filed by Supra Telecommunications & Information Systems is denied. It is further

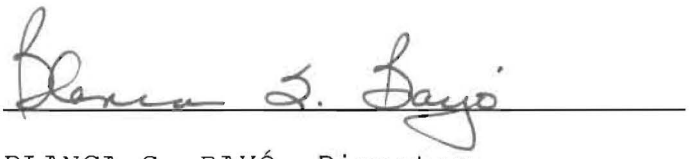
ORDERED that the Motion to Take Official Notice of the Record in Docket No. 960786-TL filed by Supra Telecommunications & Information Systems is denied. It is further

ORDERED that Order No. PSC-98-1001-FOF-TP is clarified as set forth in the body of this Order. It is further

ORDERED that Order No. PSC-98-1001-FOF-TP is reaffirmed in all other respects. It is further

ORDERED that this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 28th day of October, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

BK

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.