

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration  
concerning complaint of  
BellSouth Telecommunications,  
Inc. against Supra  
Telecommunications and  
Information Systems, Inc. for  
resolution of billing disputes.

DOCKET NO. 001097-TP  
ORDER NO. PSC-01-0493-FOF-TP  
ISSUED: February 27, 2001

The following Commissioners participated in the disposition of  
this matter:

LILA A. JABER  
BRAULIO L. BAEZ

ORDER DENYING MOTION FOR RECONSIDERATION OR CLARIFICATION  
OF ORDER ON MOTION TO DISMISS

BY THE COMMISSION:

BellSouth Telecommunications, Inc. (BellSouth) provides local exchange telecommunications services for resale pursuant to the Telecommunications Act of 1996 and to resale agreements entered into between BellSouth and various Alternative Local Exchange Companies (ALECs). Supra Telecommunications and Information Systems, Inc. (Supra) is an ALEC certified by this Commission to provide local exchange services within Florida.

On August 9, 2000, BellSouth filed a complaint against Supra, alleging that Supra has violated Attachment 6, Section 13 of their present agreement by refusing to pay non-disputed sums. The complaint also alleges billing disputes arising from the prior resale agreement with Supra. On August 30, 2000, Supra filed a timely Motion to Dismiss or, in the Alternative, to Stay Proceedings and/or Compel Arbitration. Supra also, in a separate document, filed a timely Request for Oral Argument on its Motion. On September 8, 2000, BellSouth filed a timely Response to Supra's Motion to Dismiss or Stay.

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PRSC RECORDS REPORTING

On November 28, 2000, we issued Order No. PSC-00-2250-FOF-TP, granting oral argument, and Granting in Part and Denying In Part Supra's Motion to Dismiss. On November 17, 2000, prior to the issuance of our written Order, Supra filed a Motion for Reconsideration or Clarification of that Order. We now address that Motion.

State commissions retain primary authority to enforce the substantive terms of agreements they have approved pursuant to Sections 251 and 252 of the Act. Iowa Utils. Bd. v. Federal Communications Commission, 120 F. 3d 753, 804 (8th Cir. 1997). A Petition has been filed requesting our review of an agreement we previously approved to determine if the parties are in compliance with that agreement. Based on Iowa Utils. Bd. and Section 252(c)(1), we have the authority to review the complaint.

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 its 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).

In this case, however, we need not reach the merits of Supra's Motion for Reconsideration or Clarification. As urged by BellSouth in its response, the motion is, simply, untimely.

Supra states that its Motion for Reconsideration or Clarification is filed pursuant to Rule 25-22.0376, Florida Administrative Code. This rule provides that "Any party who is adversely affected by a non-final order may seek reconsideration by the Commission panel assigned to the proceeding by filing a motion in support thereof within ten days after issuance of the order...."

(Emphasis added) It should be noted that the Order for which reconsideration is sought was a final order, subject to reconsideration under the guidelines of Rule 25-22.060, Florida Administrative Code. Though Supra erred in proceeding under an incorrect rule, the same result would prevail. Under either of the rules, a motion for reconsideration may not be filed until after the order is issued. In the case at hand, the Order had not yet been issued on November 17, 2000, when Supra filed its Motion for Reconsideration or Clarification. It was 11 days thereafter, on November 28, 2000, when the challenged Order was issued. Attached to the Order, as is done with every Commission Order, is a Notice of Further Proceedings. The Notice recites that Reconsideration may be filed "within fifteen days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code." Supra did not file a Motion for Reconsideration after the issuance of the Order. Accordingly, the Motion for Reconsideration or Clarification is premature, and should be denied on that basis.

Even if the Motion were timely filed, we would have denied it for the following reasons. Supra alleges in its Motion for Reconsideration or Clarification that the two basis for its Motion are: (1) The Commission overlooked the complications which arise by allowing BellSouth to raise Supra's defenses/affirmative causes of action, including a determination of burden of proof and the order of the presentation of evidence, and (2) the Commission did not properly apply or consider the Federal Arbitration Act in determining the cut-off date for those claims which it did not dismiss. We find, however, that Supra has not identified in those two claims "a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order."

As to the first claim, the fact that complications may result from following the law does not meet the criteria for reconsideration. In addition, we fail to understand how our Order has impacted on burden of proof and order of presentation of evidence. Either party, under the 1997 Agreement, can raise billing disputes. Since the billing disputes under that Agreement were raised by BellSouth, BellSouth has the burden of proof. The order of presenting evidence is not changed by the challenged Order. The parties both present prefiled direct and rebuttal testimony at the same time. BellSouth presents its witnesses first and Supra has first cross examination.

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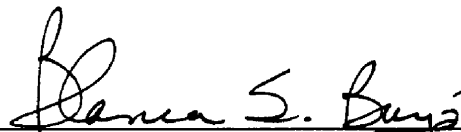
As to the second claim, we specifically acknowledged and considered the Federal Arbitration Act, 9 USCA §3, in determining the cut-off date for those claims which we did not dismiss. The challenged Order dismissed any and all claims arising under the 1999 Agreement, because of the arbitration clause. It did not dismiss any claims arising under the 1997 agreement because that agreement had no arbitrating clause and we have exclusive jurisdiction over claims arising under that agreement.

Regarding the request for clarification, we find that the challenged Order was clear and concise. The above comments in this Order should provide adequate and appropriate clarification. Accordingly, both reconsideration and clarification are denied.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Supra Telecommunications and Information Systems, Inc.'s Motion for Reconsideration or Clarification is denied.

By ORDER of the Florida Public Service Commission this 27th Day of February, 2001.



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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

CLF

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.