

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-02-0701-PCO-TP
ISSUED: May 23, 2002

ORDER ON MOTION TO STRIKE

The background of this proceeding is set forth in Order No. PSC-02-0464-PCO-TP.

On May 7, 2002, Supra Telecommunications and Information Systems, Inc. (Supra) filed a Motion to Strike BellSouth's Letter of April 25, 2002, to Blanca Bayó with Attached Proposed Interconnection Agreement. Therein, Supra contends that BellSouth's letter and the attached interconnection agreement should be stricken from this record in accordance with Rule 1.140(f), Florida Rules of Civil Procedure, which provides that a party may move to strike or the court may strike redundant, immaterial, impertinent, or scandalous matter from any pleading at any time. Supra maintains that the April 25 filing by BellSouth meets this criteria for a number of reasons.

First, based on Rule 28-106.204(1), Florida Administrative Code, Supra believes that the filing should have been styled as a "motion" instead of a letter because it seeks affirmative relief. Therefore, Supra believes the filing is procedurally improper and should be stricken as "immaterial, impertinent, or scandalous."

Supra also believes the filing is premature in view of the pending Motions for Reconsideration of our Final Order, and because at the time BellSouth filed its letter, Supra had already filed a Motion for Extension of Time for the parties to file their arbitrated interconnection agreement. The Motion for Extension of Time was granted, in part, and denied, in part, by Order No. PSC-02-0637-PCO-TP, issued May 8, 2002.

In addition, Supra contends that the attached interconnection agreement should not have been filed, because Supra had not had an opportunity to review it and had not signed it. Supra notes that based on statements in BellSouth's letter, it does not appear that

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the agreement would comply with the Act, because it does not include changes to the agreement template negotiated by the parties during this proceeding. As such, Supra contends that the letter and attached agreement should be stricken as "unauthorized, irrelevant, impertinent and immaterial."¹

On May 15, 2002, BellSouth Telecommunications, Inc. (BellSouth) filed its Opposition to Supra's Motion. BellSouth contends that it simply filed the agreement in accordance with Order No. PSC-02-0413-FOF-TP. BellSouth notes that although Supra had requested an extension of time the day before the agreement was due according to Order No. PSC-02-0413-FOF-TP, that request had not yet been granted. Therefore, BellSouth maintains that it timely filed the agreement in an effort to comply with our mandate.

BellSouth also contends that it did not seek relief, per se, by its April 25 letter. Instead, it sought to file the agreement for approval in accordance with our Order. However, even if we were to construe its letter as a request for relief, it would comply with the pertinent rule, according to BellSouth, because the letter was in writing.²

For these reasons, BellSouth maintains that its April 25 letter with the attached interconnection agreement was a timely, proper filing, and as such, should not be stricken.

Upon consideration, Supra's Motion to Strike is hereby denied. At the time BellSouth filed the interconnection agreement, our mandate in Order No. PSC-02-0413-FOF-TP that the agreement be filed by April 25, 2002, was still in effect. Although Supra had filed its Motion for Extension of Time, a ruling had not yet been made on that Motion. Furthermore, Supra had acknowledged in its request for an extension that BellSouth opposed such request. As such, I do not find that the April 25, 2002, letter and the attached agreement constitute immaterial, impertinent, or scandalous matter

¹Citing Rule 2.060(c), Fl. Rules of Jud. Admin.; Section 120.569(2)(e), Florida Statutes; and Rules 1.140 and 1.150, Fla.R.Civ.P.

²Citing Mendoza v. Board of County Commissioners/Dade County, 221 So. 2d 797, 798 (Fla. 3rd DCA 1969).

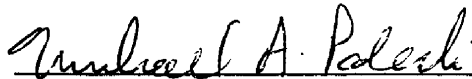
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as contemplated by Rule 1.140(f), Florida Rules of Civil Procedure. However, the agreement filed on April 25, 2002, by BellSouth was not executed by Supra, and I have granted an extension of time for the filing of the final executed interconnection agreement between these parties. As such, it appears that no action is necessary with regard to the agreement that BellSouth filed on April 25, because a subsequent filing is now contemplated.

It is therefore

ORDERED by Commissioner Michael A. Palecki, as Prehearing Officer, that Supra Telecommunications and Information Systems, Inc.'s Motion to Strike BellSouth Telecommunications, Inc.'s April 25, 2002, letter and attached proposed interconnection agreement is hereby denied.

By ORDER of Commissioner Michael A. Palecki, as Prehearing Officer, this 23rd Day of May, 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 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.