

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Communications Authority,
Inc. for arbitration of Section 252(b)
interconnection agreement with BellSouth
Telecommunications, LLC d/b/a AT&T
Florida.

DOCKET NO. 140156-TP
ORDER NO. PSC-15-0344-PCO-TP
ISSUED: August 25, 2015

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO
STRIKE AND DENYING REQUEST FOR ATTORNEY'S FEES

On August 20, 2014, Communications Authority (CA) filed a Petition for Arbitration seeking resolution of certain issues arising between BellSouth Telecommunications, LLC d/b/a/AT&T Florida (AT&T Florida) and CA in negotiating an interconnection agreement. A hearing was held on May 6 through May 7, 2015, and post hearing briefs were filed June 5, 2015. On June 19, 2015, AT&T Florida filed a Motion to Strike and for Attorney's fees. On June 26, 2015, CA filed a Response in Opposition (Response).

Motion to Strike

In its motion, AT&T Florida requests, pursuant to Rule 28-106.204, Florida Administrative Code (F.A.C.), that the Commission issue an order striking four exhibits CA attached to its post-hearing brief that were never introduced in evidence, four assertions based on the improperly filed exhibits, and an additional twenty-one assertions AT&T Florida argues are not supported by evidence in the record. AT&T Florida requests the Commission direct CA to refile its post-hearing brief without the four exhibits and with all the identified passages deleted.

Commission staff previously notified the parties the additional exhibits CA attached to its post-hearing brief were viewed as new information not included in the hearing record and as such, will not be considered. Further, the assertions based upon the four improper exhibits would also not be considered. In its response, CA does not oppose the removal of these statements and the four exhibits.¹ In its response, CA argues the additional assertions AT&T Florida wishes the Commission to strike are supported by the record.

As always, staff will ensure that the facts asserted in the parties' post-hearing briefs are supported in the hearing record, when making its recommendation to the Commission. Based on the concerns raised by AT&T Florida in its Motion and review of CA's Response, there appears to be no foundation in the evidentiary record to support the assertions made by CA in AT&T Florida's challenges Nos. 1-5, 7-10, 12, 22, 23. It is appropriate to strike these assertions from CA's post-hearing brief. However it is not deemed necessary for CA refile its post-hearing brief as staff is instructed not to rely upon the above-referenced information.

¹ CA's Response, Page 5.

Upon review of AT&T Florida's remaining challenges Nos. 6, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 24, 25, it appears information is in the evidentiary record to support the aforementioned assertions not necessarily as delineated by CA. Overall it appears to be a failure by CA to properly cite to the record rather than a purposeful attempt to introduce new evidence into the record. These assertions appear to be arguments, opinions, or conclusions with which AT&T Florida disagrees. These assertions are CA's interpretation of the evidence. Again, this Commission will give the information the weight it is due.

Request for Attorney's Fees

Section 120.569(2)(e), Florida Statutes (F.S.), requires all pleadings, motions, or other papers must be signed by the party, the party's attorney, or the party's qualified representative certifying the filing is not used for an improper purpose including to harass, or cause unnecessary delay, or for a frivolous purpose or to needlessly increase the cost of litigation. Under section 120.569(2)(e) F.S., the presiding officer has authority to impose sanctions upon a person who has signed a pleading, motion, or other papers violating these requirements. AT&T Florida argues, in a footnote, that CA knew it was improper to rely on evidence outside the record but proceeded to do so regardless. AT&T Florida has requested the Commission, to discourage parties' "cavalier approach to complying with its rules," impose attorney's fees caused by the need to address CA's improper conduct. Although CA's brief does contain references to evidence not supported by the hearing record, it does not rise to the level of a frivolous action nor does it appear to be for an improper purpose. I caution parties, however, to stay within the hearing record when preparing post-hearing filings. Therefore, the request for sanctions in the form of attorney's fees is denied.

Rule 28-106.211, F.A.C., specifically provides that the presiding officer before whom a case is pending may issue any order necessary to effectuate discovery, prevent delay and promote the just, speedy, and inexpensive determination of all aspect of the case. This Order is issued pursuant to that authority.

Based on the foregoing, it is

ORDERED by Commissioner Ronald A. Brisé, as Prehearing Officer, that BellSouth Telecommunications, LLC d/b/a AT&T Florida's Motion to Strike is hereby granted in part and denied in part, as described in the body of this Order. It is further

ORDERED that BellSouth Telecommunications, LLC d/b/a AT&T Florida's request for attorney's fees is hereby denied.

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By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 25th day
of August, 2015.



RONALD A. BRISÉ
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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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; 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 or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, 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.