

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Supra Telecommunications and Information Systems, Inc. to set aside 2/3/98 order approving resale, interconnection and unbundling agreement with BellSouth Telecommunications, Inc., and to approve agreement actually entered into by parties.

DOCKET NO. 981832-TP

In re: Petition of Supra Telecommunications and Information Systems, Inc. to initiate investigation into unfair practices of BellSouth Telecommunications, Inc. in negotiating agreements with alternative local exchange carriers (ALECs) and in filing such agreements with the Florida Public Service Commission.

DOCKET NO. 981833-TP
ORDER NO. PSC-99-1092-FOF-TP
ISSUED: June 1, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

ORDER DENYING MOTIONS TO DISMISS OR
IN THE ALTERNATIVE, TO STRIKE PETITIONS AS SHAM

BY THE COMMISSION:

These dockets were opened upon the filing of two petitions by Supra Telecommunications and Information Systems, Inc. (Supra) to:
(1) set aside Order Number PSC-98-0206-FOF-TP, issued February 3,

DOCUMENT NUMBER-DATE

06699 JUN-18

FPS-RECORDS/REGISTRAR

1998, approving a resale, interconnection and unbundling agreement with BellSouth Telecommunications, Inc. (BellSouth) and approve the agreement actually entered into by the parties; and (2) initiate an investigation into unfair practices of BellSouth in negotiating agreements with alternative local exchange carriers (ALECs) and in filing such agreements with this Commission. On February 1, 1999, BellSouth filed Motions to Dismiss, Or in the Alternative, to Dismiss Petitions as Sham. On April 16, 1999, BellSouth filed Supplements to Motion to Dismiss Supra's Petition.

The facts, as alleged by Supra and not disputed by BellSouth, are that Supra executed the first agreement received from BellSouth in October of 1997. Thereafter, BellSouth informed Supra that this agreement was a draft and that a modified agreement with certain specified changes, such as the addition of Supra's name to the contract, would be prepared. This "final" agreement was executed by Supra. BellSouth then submitted an agreement to the Commission for approval and an order approving the agreement was issued on February 3, 1998. However, the agreement submitted to the Commission for approval was not the same as the one executed by Supra.

Supra alleges that the agreement submitted by BellSouth included amended attachments that Supra did not agree to and about which Supra was not informed. According to Supra, this substitution constitutes fraud or gross negligence on the part of BellSouth. It is BellSouth's position that the difference in the attachments was simply an error. However, if this is the case or if BellSouth is willing to make the correct substitutions, it is not clear why the parties have been unable to bring an amended agreement to the Commission for approval, nor is it clear why Supra is asking that the entire contract be replaced.

Supra's first petition, filed in Docket No. 981832-TP, seeks the following relief: (1) a hearing before the full Commission; (2) an investigation into BellSouth's contract practices; (3) a site visit to the Interconnection Department of BellSouth to determine which equipment was used to create the contracts in dispute; (4) a finding of fraud and gross negligence as well as violations of Section 251 and 252 of the Act by imposing unreasonable, discriminatory conditions and limitations on the provision of services; (5) to vacate the order approving the interconnection agreement with BellSouth; (6) to replace that agreement with the agreement filed by Supra with the complaint; (7) to inform other states of BellSouth's actions in entering into interconnection

agreements; and (8) to reprimand BellSouth and impose monetary sanctions for failure to file the true interconnection, resale agreement.

Supra's other petition filed in Docket No. 981833-TP requests that this Commission conduct a hearing to fully investigate the change in the attachments to the agreement, what procedures are in place to prevent recurrence, and the extent this conduct and other abuses have been perpetuated against Supra and other ALECs. Supra requests the following relief: (1) a finding that gross negligence or willful fraud occurred; (2) the establishing of procedures for investigating BellSouth's contracting practices; (3) informing other states of BellSouth's actions in entering into interconnection agreements; (4) if fraud is proven, referral to Attorney General's Office for antitrust investigation; and (5) reprimand of BellSouth and imposition of monetary sanctions.

We believe that Supra's pleadings do not state causes of action on which this Commission may grant relief. In the pleading filed in Docket No. 981832-TP, Supra requests a full Commission hearing and an investigation, including a site visit with Supra to the "Interconnection Department of BellSouth." The purpose of the requested proceedings are to prevent agreements from being altered in the future and determining which computer was used to alter the agreement. The ultimate determination sought by Supra is a finding that BellSouth committed gross negligence or willful fraud when it substituted the attachments to Supra's agreement. We believe that we have the authority to set a matter for hearing and to fully investigate matters if they are within the Commission's jurisdiction. However, matters of contract fraud and gross negligence in contracts are matters for the courts, not this Commission. Our role in approving contracts between local exchange companies (LECs) and alternative local exchange companies (ALECS) is limited to matters related to the provision of competitive services, such as terms and conditions of interconnection and resale. The Commission has consistently declined to rule on more general contract matters, such as the content of a liability clause or the imposition of damages. See, Docket No. 960757-TP - Petition by Metropolitan Fiber Systems of Florida, Inc. for arbitration with BellSouth Telecommunications, Inc. concerning interconnection rates, terms, and conditions, pursuant to the Federal Telecommunications Act of 1996; Docket No. 960847-TP - Petition by AT&T Communications of the Southern States, Inc. for arbitration of certain terms and conditions of a proposed agreement with GTE Florida Incorporated concerning interconnection and resale under

the Telecommunications Act of 1996; and Docket No. 960980-TP - Petition by MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. for arbitration of certain terms and conditions of a proposed agreement with GTE Florida Incorporated concerning resale and interconnection under the Telecommunications Act of 1996. Accordingly, we decline to act on that portion of Supra's petitions that seeks a finding of fraud or gross negligence.

Supra also requests that Order No. PSC-98-0206-FOF-TP, issued February 3, 1998, be vacated. The above-cited order is the order approving BellSouth and Supra's agreement for resale, interconnection and unbundling. While the Commission may have such authority, absolutely nothing in the pleading explains why it would be appropriate to vacate the entire agreement. Supra also asks us to approve the agreement that it filed with the petition. Clearly, the Commission has the authority to approve or not approve the agreement. However, BellSouth states that the parties may have a disagreement as to the meaning of part of the agreement that was substituted. We believe that the parties should conclude their discussions and negotiations concerning the substitution of the attachments to the agreement and if they cannot reach an agreement on the terms to be amended to reflect the correct agreement, they may bring their dispute to the Commission for arbitration. We do not believe that vacating the previous order is appropriate.

Included in the relief sought in the first pleading (Docket No. 981832-TP) is Supra's request that this Commission contact all of the states in which BellSouth operates and inform them of BellSouth's conduct. The Commission can do this, but so can Supra. In fact, Supra filed the same complaints with the Georgia Commission. See, Georgia Public Service Commission Order issued March 16, 1999, in Dockets Nos. 8338-U and 10331-U. We believe that Supra is perfectly capable of bringing these issues to the attention of the other states, if it has not already done so.

Finally, Supra requests the imposition of a fine for BellSouth's violation of Section 364.07, Florida Statutes, by failing to file the true or correct agreement. The subject contract is a resale, interconnection and unbundling agreement entered into under Section 251 of the Act, not an "intrastate interexchange service contract" subject to the provisions of Section 364.07, Florida Statutes, as Supra argues. Thus, Supra's request that the Commission fine BellSouth for willful violation of

Section 364.07, Florida Statutes, by failing to file the correct agreement, is not a request on which relief may be granted.

Based on the foregoing, we dismiss on our own motion the first petition, Petition of Supra to Set Aside 2/3/98 Order Approving Resale, Interconnection and Unbundling Agreement Between BellSouth Telecommunications and Supra Telecommunications; And to Approve Agreement Actually Entered Into By the Parties, for failure to state a cause of action on which relief may be granted. However, the parties are directed to bring a corrected agreement to the Commission at their earliest convenience and if the parties cannot agree on the corrections, the dispute as to those terms should be brought to this Commission for arbitration.

In the pleading in Docket No. 981833-TP, Supra seeks to have this Commission conduct a hearing and investigate Supra's allegation of gross negligence or fraud in contract actions with Supra and other ALECs. Similar to the first pleading, Supra requests a hearing and investigation, sanctions and notice to other states. In addition, if the Commission were to conclude that there was fraud, Supra requests that the matter be referred to the Attorney General's Office. As discussed above, the determination of fraud or gross negligence is a matter within the purview of the courts, not of this Commission. Further, we have had no indication from other ALECs that there is a problem with BellSouth's substituting attachments to contracts. This is so even though Supra sent a letter to 75 ALECs apprising them of this docket and encouraging them to check their agreements. Based on the foregoing and for the same reasons stated above in the discussion on Docket No. 981832-TP above, we also find it appropriate to dismiss this petition.

Further, because we dismiss Supra's pleadings on our own motion, BellSouth's Motions to Dismiss or in the Alternative, to Strike Supra's Petitions as Sham Pleadings, are moot.

CONCLUSION

Based on the foregoing, the Commission on its own motion hereby dismisses Supra's petitions without prejudice. We find that Supra has failed to file petitions on which the Commission may grant relief. The petitions shall be dismissed with leave for the parties to file a corrected copy of the agreement for approval, or a request for arbitration on the changed portions of the contract that remain in dispute.

ORDER NO. PSC-99-1092-FOF-TP
DOCKETS NOS. 981832-TP, 981833-TP
PAGE 6

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that on our own motion, we dismiss the petitions filed by Supra Telecommunications and Information Systems, Inc., for failure to state a cause of action on which relief may be granted. It is further

ORDERED that the motions filed by BellSouth Telecommunications, Inc. are moot. It is further

ORDERED that these dockets shall remain open.

By ORDER of the Florida Public Service Commission this 1st day of June, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

CB

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.