

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Supra Telecommunications and Information Systems, Inc. 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-00-0798-FOF-TP
ISSUED: April 24, 2000

The following Commissioners participated in the disposition of this matter:

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

FINAL ORDER ON MOTIONS FOR RECONSIDERATION
AND REQUEST FOR ORAL ARGUMENT

BY THE COMMISSION:

I. CASE BACKGROUND

On January 23, 1998, Supra Telecommunications and Information Systems, Inc. (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 conducted an administrative hearing in which we received testimony concerning Supra's complaint. By Order No. PSC-98-1001-FOF-TP, issued July 22, 1998, we rendered our final determination regarding the complaint.

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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 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 to accept its Response to BellSouth's Motion to Strike. By Order No. PSC-98-1467-FOF-TP, issued October 28, 1998, we denied the motions for reconsideration and to supplement the record, and clarified our post-hearing Order.

Thereafter, on November 24, 1998, BellSouth filed a Complaint in the Federal District Court for the Northern District of Florida appealing the Commission's decision, Case No. 4:98CV4041-WS. The Complaint asked that the above Commission Orders be declared invalid and that enforcement of them be enjoined "to the extent that they require BellSouth to provide Supra with on-line editing capabilities." Complaint, p. 8.

On January 11, 1999, Supra filed with this Commission a Notice that BellSouth had not complied the our final Order. On April 26,

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1999, BellSouth filed a Notice of Compliance with the Commission's Final Order, and asked that we approve BellSouth's compliance.

On June 16, 1999, BellSouth filed a Motion to Hold Proceedings in Abeyance Pending Action in Related Administrative Proceedings seeking to abate its federal appeal to enable us to determine whether BellSouth had complied with our Orders issued in this Docket. Supra opposed the motion.

The Court issued an order on September 6, 1999, abating the federal case until December 1, 1999. On December 21, 1999, the Court granted an extension.

On November 22, 1999, the parties and staff met to discuss the discovery responses, and to clarify which, if any, matters in the Commission's Order had been complied with or otherwise resolved. Staff also attempted to mediate a resolution between the parties. During those discussions, BellSouth was asked to provide further information. BellSouth provided the information on December 10, 1999.

Based upon the Notice filed by BellSouth, Supra's response, the discovery provided by the parties, and information gained as a result of our staff's November 22, 1999, with the parties, we issued Order No. PSC-00-0288-PCO-TP, on February 11, 2000. Therein, we determined that BellSouth had complied with all portions of our final decision in this case, Order No. PSC-98-1001-FOF-TP, issued July 22, 1998, as clarified by Order No. PSC-98-1467-FOF-TP, issued October 28, 1998, except for the specific requirements that BellSouth should provide Supra with on-line edit checking capability by December 31, 1998. We did, however, acknowledge that BellSouth had made significant developments in its OSS since the time that we rendered our final decision, including TAG, Robo-TAG, and LENS '99.

On February 25, 2000, Supra filed a Motion for Reconsideration of the Commission's decision, as well as a Request for Oral Argument. On March 8, 2000, BellSouth filed its Response, which included a request that we reconsider our decision not to proceed to hearing on the limited issue of on-line edit checking capability. Supra did not file a response to this apparent request/cross-motion for reconsideration. Our decision on Supra's

Motion for Reconsideration, BellSouth's apparent cross-motion contained in its Response, and the Request for Oral Argument are set forth herein.

II. REQUEST FOR ORAL ARGUMENT

Rule 25-22.058, Florida Administrative Code, requires a movant to show ". . . with particularity why Oral Argument would aid the Commission in comprehending and evaluating the issues before it."

Although Supra maintained that oral argument is necessary and BellSouth indicated that it did not oppose Supra's request, in this particular case, the matters addressed in Supra's Motion for Reconsideration were ably presented by the pleadings. Therefore, it did not appear to us that oral argument would assist us in evaluating the Motion for Reconsideration. Thus, we denied the Request for Oral Argument at our April 4, 2000, Agenda Conference.

III. MOTIONS FOR RECONSIDERATION

A. Standard of Review

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 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).

B. Commission's Orders in Docket No. 980119-TP

In our post-hearing decision in this case, Order No. PSC-98-1001-FOF-TP, we required BellSouth to implement the following:

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1. Provide Supra with Carrier Access Billing System (CABS) formatted bills, rather than Customized Large User Bill (CLUB) formatted bills.
2. Identify to Supra which Uniform Service Order Code (USOC) codes are discounted and which are not. Also, to the extent that BellSouth's electronic interfaces provide information or automatically populate fields with USOC codes, BellSouth shall provide this same capability to Supra through the ordering interfaces available to Supra.
3. Provide Supra with the ability to reserve the same number of telephone numbers through Local Exchange Navigation System (LENS) as BellSouth can through Regional Negotiation System (RNS). BellSouth shall also modify LENS to automatically assign a telephone number to an end user when the customer's address is validated.
4. Either provide Supra with all of BellSouth's central office addresses so that Supra is able to reserve telephone numbers for Remote Call Forwarding service to its end users, or BellSouth shall work with Supra to find another mutually agreeable solution.
5. Modify the ALEC ordering systems so that the systems provide the same online edit checking capability to Supra that BellSouth's retail ordering systems provide.
6. Retrain its employees on the proper procedures for handling ALEC repairs and Inside Wire Maintenance problems.
7. If contacted by Supra customers regarding any complaints against Supra, BellSouth shall direct the customer to Supra.
8. Provide any outstanding documentation requested by Supra. This requirement included the provision of

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PLATS, which is the cable layout and engineering records of BellSouth.

Order at pgs. 47-48.

We further determined that Supra should pay its bills, and also not misrepresent itself as BellSouth to customers. Id.

Subsequently, by Order No. PSC-98-1467-FOF-TP, issued October 28, 1998, (Reconsideration Order), we clarified that BellSouth would only be required to provide PLATS to Supra on a per request basis, and could do so subject to a protective agreement between the parties, if necessary. Reconsideration Order PSC-98-1467-FOF-TP at pgs. 15-16. We further clarified that

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 (Field Identifier, USOC, and Edit Library) and Solar (Service Order Layout Assembly Routine) 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.

Reconsideration Order at p. 21. (Parenthetical explanations added).

We also clarified that BellSouth did not need to provide the exact same interfaces that it uses at Supra's premises. Reconsideration Order at p. 15.

By Order No. PSC-00-0288-PCO-TP, issued February 11, 2000, we rendered our decision on BellSouth's Notice of Compliance with our final orders in this proceeding. Therein, we determined that

. . . BellSouth has complied with all portions of our final decision in this case, Order No. PSC-98-1001-FOF-TP, issued July 22, 1998, as clarified by Order No. PSC-98-1467-FOF-TP, issued October 28, 1998, except for the specific requirements that BellSouth should provide Supra with on-line edit checking capability by December 31, 1998. We do, however, acknowledge that BellSouth has made significant developments in its OSS (operational support systems) since the time that we rendered our final decision, including TAG (Telecommunications Applications Gateway), Robo-TAG, and LENS '99. Thus, while it appears that BellSouth is not literally in compliance, technology has been developed that may provide on-line edit checking. Nevertheless, it would not be appropriate for us to revisit our decision in this case to consider these newly developed alternatives in response to BellSouth's Notice of Compliance.

Order at p. 12. (Parenthetical explanations added).

C. Arguments

1. SUPRA

In its Motion, Supra argues that we erred in our decision by determining that BellSouth had complied with the Commission's final decisions in this Docket without allowing either party to present evidence on the issues. Supra maintains that it presented un rebutted evidence through sworn statements that BellSouth had not complied with our Orders; therefore, it was improper for us to determine otherwise without a hearing on the subject.

Supra further argues that we erred with regard to our determination that BellSouth had complied with our decision on

provision of USOCs. Supra contends that in the original hearing, it emphasized that it required updated USOCs from BellSouth in order to properly bill customers. We directed BellSouth to provide the USOCs so that Supra could properly bill its customers. Supra maintains that BellSouth is not providing the updated USOCs; therefore, Supra cannot properly bill its customers. As such, BellSouth is not in compliance with the Commission's Orders.

Supra adds that our staff's conclusion that a new complaint must be filed with the Commission "every month or two" to obtain updates is unnecessary and pointless.

For these reasons, Supra asks that we reconsider our decision in Order No. PSC-00-0288-PCO-TP, grant a hearing regarding this matter, or simply refuse to consider BellSouth's Notice of Compliance.

2. BELLSOUTH

In its Response, BellSouth argues that Supra's Motion for Reconsideration clearly fails to meet the standard for reconsideration of a Commission decision. BellSouth maintains that Supra has not identified a fact overlooked by us or a mistake of law made by us in rendering our decision. BellSouth adds that Supra's Motion for Reconsideration simply reargues points raised by Supra in consideration of BellSouth's Notice of Compliance. BellSouth contends that these points have already been fully considered and addressed in Order No. PSC-00-0288-PCO-TP; therefore, Supra has failed to provide a basis for reconsideration. Therefore, BellSouth believes that Supra's Motion should be denied.

BellSouth argues, however, that it agrees with Supra that a hearing would be appropriate to give the parties further guidance on the issue of on-line edit checking and whether TAG satisfies the Commission's requirements. BellSouth explains that it filed the Notice of Compliance in the hope that it would provide a practical means to resolve the issue. If we had agreed that BellSouth had complied with our decisions in this Docket and determined that TAG complies with the on-line edit checking requirement, BellSouth states that it would have dismissed its complaint at the federal court.

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BellSouth notes that we indicated in our Order on the Notice of Compliance that we believe that TAG may meet the on-line edit checking requirement, but would not make a final determination on that point because we believed it would be inappropriate in view of the ongoing federal proceeding. BellSouth adds that it believes a hearing would be appropriate to resolve this issue.

BellSouth further argues that the ongoing federal proceeding is actually a strong basis for the Commission to conduct an evidentiary proceeding on the Notice of Compliance. BellSouth contends that such a proceeding may negate the need for further proceedings at the federal level.

For these reasons, BellSouth asks that we reconsider our decision in Order No. PSC-00-0288-PCO-TP regarding on-line edit checking and set this matter for hearing to determine whether TAG meets the Commission's on-line edit checking requirements.

IV. DETERMINATION

Upon consideration, we find that both Supra and BellSouth have failed to identify a point of fact overlooked or a mistake of law made by us in rendering our decision in this matter. Supra has simply reargued matters it raised in its Response to BellSouth's Notice of Compliance and that were addressed in Order No. PSC-00-0288-PCO-TP. We have also already addressed the issue argued by BellSouth of whether this matter should be set for hearing at this time.

As for Supra's assertion that our staff's conclusion that a new complaint must be filed with the Commission "every month or two" to obtain updates is unnecessary and pointless, we have been unable to determine to what Supra is referring.

With regard to USOCs, we emphasize that in our Final Order, we stated that we believed that BellSouth had provided Supra with "several sources that contain USOC codes," including regular updates on BellSouth's Interconnection Services Web Page. Order PSC-98-1001-FOF-TP at p. 15. We added, however, that BellSouth should still identify which USOCs are discounted and which ones are not. We also indicated that

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. . . to the extent that BellSouth's electronic interfaces provide information or automatically populate fields with USOC codes, this capability shall be provided through the ordering interfaces available to Supra, in accordance with the parity provision in the parties' agreement.

Order at p. 15.

We emphasize that we only required BellSouth to provide USOC codes and identify for Supra which USOC codes were discounted and which ones were not. We considered this aspect and found that it appears BellSouth has complied with this requirement. Order No. PSC-00-0288-PCO-TP at p. 8.

We also indicated that BellSouth should provide Supra with the capability to automatically populate fields with USOC codes, to the extent that BellSouth has this capability. Order PSC-98-1001-FOF-TP at p. 15. While we did state that BellSouth should automatically populate fields with USOCs, to the extent that BellSouth has this capability, we did not make a specific finding that BellSouth does actually have this capability. We also did not indicate that BellSouth had to provide USOC updates specifically to Supra. In fact, we clearly indicated in our post-hearing order that BellSouth had provided Supra with adequate sources for USOCs, including the Web Page, discussed by BellSouth witness Stacy, to which BellSouth posts USOC updates. Order PSC-98-1001-FOF-TP at p. 15. As such, it is clear the Commission has not failed to overlook any point of fact or made a mistake of law in rendering its decision on this point.

Regarding both Supra and BellSouth's indication that we should have handled BellSouth's Notice of Compliance through an evidentiary proceeding, we emphasize that Order No. PSC-00-0288-PCO-TP was issued as a procedural order. Therein, we clearly explained the reason for the posture of our Order:

At the outset, we emphasize that we are unaware of any other Notice of Compliance ever filed with or ruled upon by this Commission. There is nothing in Chapter 120, Florida

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Statutes, or our rules governing such a filing. Upon consideration, we believe that it would be inappropriate to reopen the record of this docket to revisit the issues addressed by us in this case, because we believe that to do so would be contrary to the doctrine of administrative finality. We do, however, believe that we can review the Notice and Response filed by the parties and rule upon BellSouth's Notice as a procedural matter. It is our understanding that the essential purpose of such a decision is to assist the federal District Court in making its determination in this case.

Order No. PSC-00-0288-PCO-TP at p. 3. We also clearly explained that we did not believe it appropriate to reopen the record to receive further evidence regarding these issues in view of the pending federal proceeding and the implications of the doctrine of administrative finality, which stands for the proposition that:

. . . orders of administrative agencies must eventually pass out of the agency's control and become final and no longer subject to modification. This rule assures that there will be a terminal point in every proceeding at which the parties and the public may rely on a decision of such an agency as being final and dispositive of the rights and issues involved therein. This is, of course, the same rule that governs the finality of decisions of courts. It is as essential with respect to orders of administrative bodies as with those of courts.

Peoples Gas Sys. V. Mason, 187 So. 2d 335, 338-339 (Fla. 1966). Nevertheless, we noted that an argument could be made that the development of TAG, LENS, and Robo-TAG amounts to changed circumstances, thereby, providing a basis for rehearing by the Commission in this case, citing McCaw Communications of Florida, Inc., Appellant, vs. Susan F. Clark, 679 So. 2d 1177 (Fla. 1996). Order at p. 11. We added that "We do not, however, believe that

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this is appropriate in this instance, in view of the matter pending before the federal District Court." Order at p. 11.

We clearly explained that we believed it would be inappropriate to conduct an evidentiary hearing in this case with a proceeding pending at the federal court. We did not, however, preclude the possibility that should the federal proceeding be dismissed, we might find that an evidentiary proceeding is warranted based on changed circumstances. On this point, neither of the parties has identified a fact overlooked or a mistake of law made by the Commission in rendering its decision. Therefore, Supra's Motion for Reconsideration is hereby denied, as well as BellSouth's apparent cross-motion for reconsideration, contained in its Response, requesting that the matter be set for hearing on the issue of on-line edit checking capability.


It is therefore

ORDERED by the Florida Public Service Commission that Supra Telecommunications and Information Services, Inc.'s Motion for Reconsideration is denied. It is further

ORDERED that BellSouth Telecommunications, Inc.'s apparent cross-motion for reconsideration is denied. It is further

ORDERED that this Docket shall remain open pending the outcome of the federal proceeding.

By ORDER of the Florida Public Service Commission this 24th day of April, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF 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 judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).