



# Public Service Commission

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REC'D DIVISION OF PSC

**DATE:** JANUARY 25, 2001

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF LEGAL SERVICES (FORDHAM) *2-PT - mad*  
DIVISION OF COMPETITIVE SERVICES (FULWOOD) *STS for LF DA*

**RE:** DOCKET NO. 001097-TP - REQUEST FOR ARBITRATION CONCERNING COMPLAINT OF BELL SOUTH TELECOMMUNICATIONS, INC. AGAINST SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC. FOR RESOLUTION OF BILLING DISPUTES.

**AGENDA:** FEBRUARY 6, 2001 - REGULAR AGENDA - MOTION FOR RECONSIDERATION AND CLARIFICATION - PARTIES MAY PARTICIPATE AS PRIOR TO HEARING.

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:/PSC/LEG/WP/001097OD.RCM

**CASE BACKGROUND**

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

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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. At the November 6, 2000 Agenda Conference, the Motion to Dismiss was granted in part and denied in part.

On November 17, 2000, prior to the entry of an Order reflecting the Agenda Conference decision, Supra filed its Motion for Reconsideration or Clarification. Eleven days thereafter, on November 28, 2000, the Order disposing of Supra's Motion to Dismiss was entered. On November 29, 2000, BellSouth filed its timely Response to Supra's Motion for Reconsideration or Clarification, alleging, primarily, that the Supra Motion was untimely.

This recommendation addresses Supra's Motion for Reconsideration or Clarification.

#### **JURISDICTION**

This matter was filed under Section 252 of the Federal Telecommunications Act of 1996 (Act). Section 252 sets forth the procedures to be followed, and empowers this Commission to act on those matters filed under Rule 252.

#### **DISCUSSION OF ISSUES**

**ISSUE 1:** Should Supra's Motion for Reconsideration or Clarification of Order on Supra's Motion to Dismiss be granted?

**RECOMMENDATION:** No. The Commission should deny Supra's Motion for Reconsideration or Clarification of Order on Supra's Motion to Dismiss. (FORDHAM)

**STAFF ANALYSIS:** 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, it is the position of staff that the Commission need not reach the merits of Supra's Motion for Reconsideration or Clarification. As urged by BellSouth in its response, staff believes 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, nor did Supra contact staff to inquire whether its earlier filed Motion could be refiled. Accordingly, the Motion for Reconsideration or Clarification is premature, and should be denied on that basis.

Even if the Motion were timely filed, staff would have recommended denial 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. Staff, however, believes 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, staff fails to understand how the Commission's 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.

As to the second claim, the Commission specifically acknowledged and considered the Federal Arbitration Act in determining the cut-off date for those claims which it 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 this Commission has exclusive jurisdiction over claims arising under that agreement.

Regarding the request for clarification, staff believes that the challenged Order was clear and concise. The above comments in this recommendation should provide adequate and appropriate clarification. Accordingly, both reconsideration and clarification should be denied.

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** No. The Docket is presently set for hearing and should remain open pending the outcome of the hearing. (FORDHAM)

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**STAFF ANALYSIS:** This docket is presently set for hearing. Accordingly, it should remain open pending the outcome of the hearing.