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From: Fatool, Vicki [Vicki.Fatool@BellSouth.COM]
Sent: Wednesday, July 18, 2001 12:38 PM
To: 'filings@psc.state.fl.us'
Subject: Filing in Docket No. 001305-TP

Importance: High

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The attached document is from:

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Docket No. 001305-TP - In re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Supra Telecommunications & Information System, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996.

Number of pages: 12 including letter to Ms. Bayo and certificate of service.

Pleading entitled: Opposition to Supra Telecommunications and Information System, Inc.'s Motion to Stay

A paper copy will be filed with the Division of the Commission Clerk and Administrative Services today.

By filing electronically, BellSouth accepts that the official copy is the version printed by the Public Service Commission's Division for the Commission Clerk and Administrative Services and filed in the official docket file.

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James Meza III
Attorney

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July 18, 2001

Mrs. Blanca S. Bayo
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399


RE: Docket No. 001305-TP (Supra)

Dear Ms. Bayo:

Enclosed is BellSouth Telecommunications, Inc.'s Opposition to Supra Telecommunications and Information System, Inc.'s Motion to Stay, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served on the parties shown on the attached Certificate of Service.

Sincerely,


James Meza III

Enclosures

cc: All Parties of Record
Marshall M. Criser III
Nancy B. White
R. Douglas Lackey

CERTIFICATE OF SERVICE
Docket No. 001305TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

Federal Express this 18th day of July, 2001 to the following:

Wayne Knight
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Florida Public Service Commission
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James Meza III

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Arbitration of the Interconnection) Docket No. 001305TP
Agreement Between BellSouth Telecommunications,)
Inc. and Supra Telecommunications & Information)
System, Inc., Pursuant to Section 252(b) of the)
Telecommunications Act of 1996.)
_____) Filed: July 18, 2001

**BELLSOUTH TELECOMMUNICATIONS, INC.'S OPPOSITION TO SUPRA
TELECOMMUNICATIONS & INFORMATION SYSTEM, INC.'S
MOTION TO STAY**

BellSouth Telecommunications, Inc. (“BellSouth”) respectfully requests that the Florida Public Service Commission (“Commission”) dismiss Supra Telecommunications and Information Systems, Inc.’s (“Supra”) Motion to Stay BellSouth’s Petition for Arbitration of Interconnection Agreement Pending Resolution of Supra’s Complaint Regarding BellSouth’s Bad Faith Negotiation Tactics (“Motion to Stay”). The Commission should deny Supra’s request for a stay because (1) the Commission does not have the authority to stay a Section 252 arbitration; (2) a stay is prohibited by the Telecommunications Act of 1996 (the “Act”); (3) Supra has not presented good cause for a stay; and (4) the Supplemental Order Establishing Procedure renders Supra’s request moot. As will be further explained below, Supra’s Motion to Stay is just another attempt by Supra to delay the arbitration proceeding pending between the parties and should be summarily dismissed.

INTRODUCTION AND BACKGROUND

Supra requests a stay of this arbitration proceeding until the Commission rules on its Complaint Regarding BellSouth’s Bad Faith Negotiation Tactics (“Complaint”), which it filed on June 18, 2001. Supra filed the Complaint purportedly because BellSouth has

refused to produce documents that will allow Supra to negotiate a “Follow On” Agreement. Motion to Stay at 1. Supra claims that “it would be unfairly prejudiced” if it were required to file direct and rebuttal testimony without the requested information. Id. at 2. However, as stated by BellSouth in its Response to Supra’s Complaint and its June 14, 2001 letter (with attachments) setting forth the status of BellSouth’s attempts to negotiate, the undisputed facts belie Supra’s allegation and establish, without question, that Supra has consistently attempted to avoid negotiations and to delay the resolution of the pending arbitration proceeding between the parties. BellSouth adopts the information and exhibits set forth in that letter and its Response and Motion to Dismiss and summarizes the relevant facts below:

- BellSouth’s Petition contained 15 issues, which had been previously raised by the parties during negotiations. In its response, Supra added 51 additional issues, none of which had been previously raised during negotiations with BellSouth. Instead, the issues added by Supra appear to be largely borrowed directly from arbitrations between BellSouth and either AT&T or MCI. In some instances, Supra did not even bother to remove the references to AT&T or MCI. See Response at 13.
- On January 8 and January 23, 2001, BellSouth and Supra participated in issue identification with Commission Staff, where the parties were able to withdraw or settle ten issues.
- On January 18, 2001, Supra served its First Request for Production of Documents on BellSouth. In Requests Nos. 3 1-45, Supra requested the information that it now claims it needs in order to negotiate with BellSouth. See First Request for

Production of Documents at 9-12. On February 22, 2001, BellSouth tiled its objections to Supra's First Request for Production of Documents, wherein it specifically objected to Requests Nos. 3 1-45 on the basis that they were vague, ambiguous, and unduly burdensome. See BellSouth's Response and Objections to Supra's First Request for Production of Documents at 6-8. Supra has not filed a Motion to Compel.

- On April 5, 2001, BellSouth sent its first request to Supra to conduct the Intercompany Review Board meeting to discuss some of the issues set forth in the arbitration. On May 23, 2001, the Commission ordered BellSouth and Supra to convene an Intercompany Review Board Meeting within 14 days of the date of the Order by June 6, 2001 to discuss "any and all disputed issues" that remain in the arbitration. Order No. PSC-OI-1180-FOF-TI at 8. Until June 5, 2001, Supra refused to participate in such a meeting, claiming that it would not discuss the issues raised in the arbitration until BellSouth provided the requested documents to BellSouth. Even at that time, Supra only agreed to discuss 32 of the 53 remaining issues.
- Supra did not mention or refer to the requested documents in its response to BellSouth's Petition or in the two full days of issue identification with the Commission Staff in January. In fact, it was not until after the Commission Staff recommended that the parties meet in an Intercompany Review meeting and after BellSouth requested such a meeting, that Supra mentioned the documents. Further, it was not until BellSouth received Supra's response to its April 5, 2001

letter that it became aware of Supra's position that it could not negotiate the new interconnection agreement without certain network information.

- The information requested by Supra consists of a portion of a task force report prepared by the Network Reliability Council in January 1996 – a month before the Act became law. The part of the report that Supra basis its document request on is a general listing guide for carriers that are planning to establish an interface between their networks and is nothing more than a checklist of topics. See Exh. 2 to BellSouth's Response and Motion to Dismiss. As previously stated by BellSouth, this general listing could only serve as a meaningful basis for a request for documentation if Supra provided BellSouth specific information about the type of interconnection interfaces that it plans to implement in its network, which is has not done. Instead, it simply sent BellSouth this checklist with the unreasonable demand that BellSouth produce all information that relates to these topics in any way. Thus, Supra demands that BellSouth produce all information that relates to over 100 vaguely defined topics, including "tariff identification," "interface specifications," and "network design."

LAW AND ANALYSIS

I. The Commission does not have the authority to stay a Section 252 arbitration proceeding.

A. There is no Commission Rule authorizing the Commission to stay a Section 252 arbitration.

Without citing any statute, Commission rule, or any authority whatsoever in support, Supra requests that this Commission stay this arbitration proceeding until the Commission rules on Supra's Complaint. Supra's request for a stay should be denied because there is no procedural vehicle authorizing the Commission to stay an arbitration proceeding brought under the Act. Indeed, Rule 25-22.061, Florida Administrative Code, which is the sole Rule that addresses the Commission's authorization to issue a stay, grants the Commission the discretion to grant a stay only when a party seeks judicial review of a Commission order. Rule 25-22.061, Florida Administrative Code.

That is not the case here. Supra is not seeking a stay pending judicial review of a Commission order. Rather, Supra is requesting that the Commission ignore its statutory duty as mandated by Congress and indefinitely postpone the resolution of an arbitration proceeding until it resolves its Complaint, which is not authorized under Florida law. For this reason alone, the Commission should deny Supra's motion.

B. Section 120.80(d)(13) does not authorize the Commission to grant Supra's request for a stay.

Additionally, Section 120.80(d)(13), Florida Statutes, does not provide the Commission with the authority to stay a Section 252 arbitration proceeding because such a result would be inconsistent with the Act. Section 120.80(d)(13), Florida Statutes,

allows the Commission, in implementing the Act, to employ procedures that would be consistent with the Act. § 120.80(d)(13), Florida Statutes.

The Act provides that a party requesting arbitration must petition a State commission for arbitration “[d]uring the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section.” 47 U.S.C. § 252(b)(1). The non-petitioning party then has twenty-five days to respond to the petition. *Id.* at § 252(b)(3). Importantly, the Commission has nine months after the date on which the LEC receives a request for negotiation to “conclude the resolution of any unresolved issues.” *Id.* at § 252(b)(4)(C).

These provisions clearly establish that Congress intended for the arbitration process to conclude expeditiously, without unnecessary delay, and with a date certain. As stated by the Indiana Public Service Commission, “[t]aken as a whole, the purpose of Section 252 is to ensure that by or before nine months from the date a requesting telecommunications carrier’s request for interconnection is received . . . , those two parties will have an Interconnection Agreement that can be submitted to the State commission for approval.” In re: Sprint Communications Company, L.P., No. 40625-INT-02, Ind. U.R.C., Jan. 1.5, 1997, 1997 WL 178834 at *5.

Granting a stay of the BellSouth/Supra arbitration proceeding would conflict with Congress’ express requirement that the resolution of Section 252 arbitrations be completed as expeditiously as possible and without delay because the stay would indefinitely postpone the resolution of the arbitration until the Commission resolved

Supra's Complaint.' Such a result is directly contrary to the express requirements and purpose of the Act.' Simply put, there is nothing about the stay of an arbitration of a Section 252 arbitration that is consistent with the Act.

The fact that, pursuant to the Commission Staffs request, BellSouth waived the nine month statutory limitation set forth in Section 252(b)(4)(C) does not alter this conclusion. BellSouth tiled its waiver in response to Staffs request, under protest, and "with the understanding that the Commission will set a new timeframe for the arbitration in as an expeditious a manner as possible." See Letter of Nancy B. White, dated June 5, 2001, attached hereto as Exh. 1. By filing this waiver letter, BellSouth did not agree to a stay of the proceeding while the Commission resolves motions filed by Supra.

II. The Act prohibits a State Commission from staying an arbitration proceeding.

Assuming arguendo that the Commission has state statutory authority to stay a Section 252 arbitration proceeding, such a result is inconsistent with the Act and thus prohibited. As stated above, Section 252(b) of the Act requires that the Commission decide arbitration proceedings as expeditiously as possible, without unnecessary delay, and with a date certain. For the reasons stated above, the Act prohibits the Commission from granting a stay, because it would conflict with the express provisions and purposes of the Act. See In re: Petition by MCImetro Access Transmission Services LLC and MCI

¹ Meanwhile, during this time period, the parties would be forced to continue to operate under an antiquated, expired agreement, thereby preventing both parties from receiving the benefit of operating under a recent agreement that more accurately reflects that current state of the telecommunications industry.

² This result would also conflict with the Commission's Supplemental Order Establishing Procedure, Order No. PSC-0 1 •1475-PCO-TP ("Supplemental Order"), issued on July 13,

WorldCom Communications, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996, Docket No. 000649-TP, Order No. PSC-01-0824-FOF-TP, Mar. 30, 2001 at 11 (“We agree that Section 252(e) of the Act reserves the state’s authority to impose additional conditions and terms in arbitration that are not inconsistent with the Act . . .”).

III. Supra has not presented good cause for a stay.

Setting aside the issue of the Commission’s authority to grant the relief requested, Supra has made no showing that it is entitled to the relief it seeks. The dispute that forms the basis for Supra’s Motion to Stay is essentially a simple discovery disagreement. Supra states that it needs certain information to file testimony and BellSouth believes that Supra’s request is vague, overly broad, and unduly burdensome. Despite the fact that Supra formally requested these documents in January 2001 and BellSouth filed its objections in February 2001, Supra has not filed a motion to compel, which would have enabled the Commission to resolve this issue several months ago without delaying the hearing of this matter. Instead, inexplicably, Supra has chosen not to file a motion to compel or to bring this matter to the Commission over the last four and one-half months and has sought only to delay this proceeding through its Complaint and now its unauthorized Motion to Stay.

Additionally, even though this arbitration proceeding has been pending for over ten months and Supra knew of BellSouth’s objections to Supra’s request in February

200 1, wherein it stated that “[i]t is important that this docket moves toward resolution in a timely manner.” Order No. PSC-0 1 - 1475-PCO-TP at 7-8.

2001, Supra waited until July 11, 2001 to file its Motion to Stay, which was one week before direct testimony was originally due³ and three weeks after it filed its Complaint. If Supra truly intended to use the requested information to prepare testimony, it would have filed a motion to compel or its Motion to Stay within the last four and one-half months. It did not and has provided no explanation for this inexcusable delay.

In sum, Supra's actions lead to one inescapable conclusion – Supra intends to delay entering into a new interconnection agreement with BellSouth as long as possible, which should not be sanctioned by the Commission.

IV. The Commission's Supplemental Order Establishing Procedure renders Supra's Motion to Stay moot.

On July 13, 2001, the Commission issued its Supplemental Order, wherein it acknowledged Supra's Complaint and BellSouth's Response and Motion to Dismiss and ordered a new issue addressing Supra's claim that BellSouth failed to negotiate in good faith. Specifically that new issue states: "Has BellSouth or Supra violated the requirement in Commission Order PSC-OI-1180-FOF-TI to negotiate in good faith pursuant to Section 252(b)(5) of the Act?"

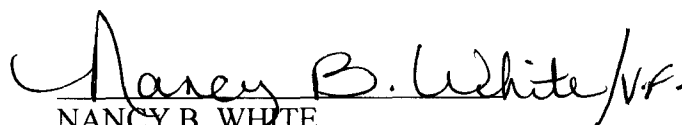
As stated above, the sole basis for Supra's Motion to Stay is that the arbitration proceeding should be stayed pending the resolution of Supra's Complaint. Although the Supplemental Order does not explicitly resolve Supra's Complaint, the practical effect of the Supplemental Order is that it moves the substance of Supra's Complaint to the arbitration proceeding. Accordingly, the substance of Supra's Complaint will be resolved at the same time as the arbitration, thereby rendering Supra's Motion to Stay moot.

³ In its Supplemental Order, the Commission changed the due date for direct testimony to

CONCLUSION

For the foregoing reasons, BellSouth respectfully requests that the Commission deny Supra's Motion to Stay BellSouth's Petition for Arbitration of Interconnection Agreement Pending Resolution of Supra's Complaint Regarding BellSouth's Bad Faith Negotiation Tactics.

Respectfully submitted this 18th day of July, 2001.



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END OF DOCUMENT

July 27, 2001. Order No. PSC-01 • 1475-PCO-TP.