



Public Service Commission
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DATE: SEPTEMBER 20, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF LEGAL SERVICES (FORDHAM) *c.f.f. DL*
DIVISION OF COMPETITIVE SERVICES (LOGUE) *SAS fuKL*

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: OCTOBER 2, 2001 - REGULAR AGENDA - MOTION FOR RECONSIDERATION-ORAL ARGUMENT NOT REQUESTED

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\001097.RCM

CASE BACKGROUND

On August 9, 2000, BellSouth Telecommunications, Inc. (BellSouth) filed a complaint against Supra Telecommunications and Information Systems, Inc. (Supra) seeking resolution of billing disputes arising under interconnection and resale agreements entered into between BellSouth and Supra. BellSouth and Supra, hereafter also referred to as the "Parties," entered into a resale agreement effective June 1, 1997, approved by the Florida Public Service Commission (Commission or FPSC) in Docket No. 970783-TP, Order No. PSC-97-1213-FOF-TP, dated October 8, 1997 and hereafter referred to as the "1997 agreement."

Additionally, the parties entered into an interconnection and resale agreement on November 30, 1999, Docket No. 991696-TP, wherein Supra adopted an AT&T/BellSouth agreement, hereafter referred to as the "AT&T/BellSouth agreement." Further, BellSouth

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and Supra also entered into a separate interconnection and unbundling agreement effective October 23, 1997. The 1997 agreement was in effect from June 1, 1997 until October 4, 1999. Supra's adoption of the AT&T/BellSouth agreement became effective on October 5, 1999.

On August 30, 2000, Supra filed its Motion to Dismiss Complaint or, in the Alternative, Stay Proceedings and/or Compel Arbitration. Supra simultaneously filed on August 30, 2000, its Request for Oral Argument on its Motion to Dismiss. On September 8, 2000, BellSouth filed its Response to Supra's Motion to Dismiss. In Order No. PSC-00-2250-FOF-TP, issued November 28, 2000, Granting Oral Argument and Granting in Part and Denying in Part Supra's Motion to Dismiss, the Commission found that the portion of BellSouth's complaint alleging Supra's failure to pay for services received under the AT&T agreement was bound by the exclusive arbitration clause provided for in that agreement. The Commission further found that Supra's Motion to Dismiss should be denied in part because Section XI of its prior agreement with BellSouth (the 1997 resale agreement) provides that all disputes under that agreement are to be resolved by petition to the FPSC.

On November 17, 2000, Supra filed its Motion for Reconsideration or Clarification of the Commission's decision on its Motion to Dismiss, although the Commission's Order had not been issued. Subsequently, on November 29, 2000, BellSouth timely filed its response to Supra's Motion for Reconsideration or Clarification. By Order No. PSC-01-0493-FOF-TP, issued February 27, 2001, the Commission found that it need not reach the merits of Supra's Motion for Reconsideration or Clarification because not only had Supra erred in proceeding under an incorrect rule, but Supra's Motion was untimely. However, the Commission found that even if the Motion were timely filed, it would have been denied on the merits.

On May 3, 2001, an evidentiary hearing was held in this proceeding. Staff filed its recommendation on June 28, 2001, and at the July 10, 2001 Agenda Conference, this Commission voted to adopt that recommendation. The Final Order on Complaint was issued on July 31, 2001, and on August 15, 2001, Supra filed its Motion for Reconsideration of Final Order on Complaint. On August 22, 2001, BellSouth filed its Opposition to Motion for Reconsideration. This recommendation addresses Supra's Motion for Reconsideration of Final Order on Complaint.

DISCUSSION OF ISSUES

ISSUE 1: Should the Motion for Reconsideration filed by Supra be granted?

RECOMMENDATION: No. The Motion for Reconsideration filed by Supra should not be granted. (FORDHAM)

STAFF ANALYSIS: Supra's Motion for Reconsideration sets forth two bases for the Motion. The first of these is: (1) The analysis found in the Final Order On Complaint is based upon an erroneous Staff Recommendation which failed to consider, or even make a single reference to, the arguments raised in Supra Telecom's post-hearing brief; 2) its arguments in its brief regarding corrective payments not being ordered were not considered; 3) availability of UNE combinations to Supra was not addressed; and 4) its arguments regarding the requirement for written letters of authorization for changes, were ignored.

As indicated, BellSouth filed a timely response to Supra's Motion for Reconsideration. BellSouth asserts that Supra has not identified any point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. Additionally, BellSouth asserts that other claims in the Supra Motion are irrelevant to this proceeding. Therefore, BellSouth urges that Supra's Motion for Reconsideration be denied.

Rule 25-22.060(1)(a), Florida Administrative Code, governs Motions for Reconsideration and states, in pertinent part: "Any party to a proceeding who is adversely affected by an order of the Commission may file a motion for reconsideration of that order." 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. 3d 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

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based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc., at 317.

Supra is correct that the arguments in its brief were not addressed by the Commission's Order. Supra's arguments were, however, based on an erroneous premise which had been determined, contrary to Supra's interest, by this Commission prior to the hearing. In Order No. PSC-00-2250-FOF-TP, issued November 28, 2000, the Commission ruled that the billing disputes in question arose from and are controlled by the 1997 resale agreement. That finding was further clarified and reaffirmed in the Final Order which is the subject of Supra's Motion for Reconsideration. In disregard for those earlier findings, Supra continues to argue, even in its present Motion, that all of the questioned billing practices are controlled by the AT&T Agreement adopted by Supra in 1999. The Commission has already decided this issue and there is no need to revisit the question. All billing practices and obligations identified in this Docket should be and have been examined only within the context of the 1997 Resale Agreement. There is no evidence within the record to support Supra's claim to the contrary. Indeed, there is no record evidence indicating that Supra even requested adoption of the AT&T agreement prior to the 1999 adoption date.

Additionally, a large portion of Supra's Post-Hearing Brief and the present Motion for Reconsideration are devoted to matters clearly not within the scope of this Docket. Supra appears to be basing virtually all of its present claims on past alleged wrongs which have been previously adjudicated in this and other venues. Matters such as the "fraudulent agreement" and availability of UNE combos have been considered by this Commission in prior dockets, as well as other agencies and venues, and findings have been made. It appears that Supra is attempting to use the present Docket to resurrect those issues and reargue them. None of these arguments, however, identify a mistake of fact or law in the Commission's decision in this case. In the present Motion, Supra alleges that the Commission staff recommendation did not address Supra's "revised positions" in its Post-Hearing Statement. Staff believes that it properly addressed all issues, within the scope of the record. Little of Supra's argument is within the scope of the record. Furthermore, Supra has merely reargued that which was argued at the hearing, and added many facts which are not within the record. Accordingly, Supra has not met the criteria for reconsideration.

An additional basis for reconsideration alleged in Supra's Motion is a finding from a commercial arbitration held subsequent to the conclusion of the hearing which is the subject of this Motion. Staff believes that the referenced arbitration should not be considered in any way in deciding the Motion for Reconsideration. It was this Commission which dismissed part of the original claim in this Docket, finding that it should only be addressed pursuant to the binding arbitration clause contained in the AT&T/BellSouth agreement adopted by Supra. Such arbitration is, however, in no way binding on actions of this Commission on the remaining claims, nor does it affect the legal criteria for reconsideration. In addition, the results were not made part of the record in this Docket. Accordingly, the Motion for Reconsideration should be denied because Supra has not identified a mistake of fact or law in the Commission's decision.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed (FORDHAM)

STAFF ANALYSIS: No further action is required on this Docket, and it should be closed.