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March 1, 2002

Mrs. Blanca S. Bayo
Director, 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 an original and fifteen copies of BellSouth Telecommunications, Inc.'s Opposition to Supra's Motion Oral Arguments on the Procedural Question Raised by the Commission Staff and the Wrongful Denial of Due Process, 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

James Meza III (KA)

Enclosures

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

CERTIFICATE OF SERVICE
Docket No. 001305-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Facsimile and U. S. Mail this 1st day of March, 2002 to the following:

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James Meza III (KA)

(+) Signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Supra Telecommunications & Information Systems, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996.	)	Docket No. 001305-TP Filed: March 1, 2002

BELLSOUTH'S OPPOSITION TO SUPRA'S MOTION FOR ORAL ARGUMENTS ON THE PROCEDURAL QUESTION RAISED BY THE COMMISSION STAFF AND THE WRONGFUL DENIAL OF DUE PROCESS

BellSouth Telecommunications, Inc. ("BellSouth") opposes Supra Telecommunications & Information Systems, Inc.'s ("Supra") motion seeking a rehearing of the Commission Staff's February 25, 2002 revised recommendation and an indefinite deferral of the underlying issues in this matter. This opposition supplements BellSouth's opposition to Supra's original motion for rehearing and focuses on issues that Supra has raised in its latest motion.

Supra's recent motion is another desperate attempt since the fling of the petition for arbitration to delay the Commission's resolution of the merits of this proceeding.[1] As with the three other motions Supra has filed within the last two weeks, all seeking delay, Supra files its latest motion because it disagrees with Staff's positions in the revised recommendation. Although the Commission has yet to address the merits of the arbitration, Supra requests a new hearing based on alleged procedural irregularities in a separate docket. Supra, however, has made no showing of any impropriety in this proceeding. And, as the Staff rightly recommended, Supra is not entitled to a rehearing of the Staff's recommendation in any event. Further, Supra's newest claim that rehearing amounts to a denial of due process is meritless. Supra can make no

[1] Supra's attempts to delay this proceeding is not limited to the recent past. Indeed, Supra filed a Motion to Stay the hearing in July 2001 and again in September 2001, immediately prior to the hearing, which it also filed with the Supreme Court.

showing that, without a rehearing of the Staff's recommendation, Supra will suffer a deprivation of due process without notice and a hearing.

Supra's rehearing request demonstrates that Supra has no concern for the actual impact of any alleged impropriety in a separate proceeding on the merits of the Staff recommendation in this proceeding. Rather, it reveals Supra's true intent -- to delay the time by which it must enter into a new interconnection agreement with BellSouth even though the existing agreement has been expired since June, 2000. It is painfully clear that Supra's strategy is to raise meritless motions on a piecemeal basis, based solely on Staff's recommendations, in an attempt to perpetually postpone the Commission's vote on this arbitration proceeding. As the Staff correctly recommended, the Commission should deny Supra's requested rehearing and resolve the merits of the arbitration.

BACKGROUND

Over one and one-half years after the initiation of this arbitration, and following the Commission Staff's original recommendation in this docket issued on February 8, 2002, Supra moved for rehearing, relying solely on alleged improper acts in a separate proceeding -- Docket No. 001097-TP. As the Commission Staff rightly recommended, Supra's motion was both procedurally improper and substantively flawed. Thus, the Staff recommended that the Commission deny Supra's requested rehearing and resolve the merits of the arbitration in the revised recommendation issued on February 25, 2002.

Dissatisfied with Staff's revised recommendation, Supra now further attempts to hinder Commission action on the merits by asking the Commission (1) to reject the Commission Staff's recommendation, (2) to grant Supra's requested rehearing, and (3) to delay indefinitely any resolution of the merits of this matter. As before, Supra provides no legitimate basis for its last

minute request. Indeed, Supra's motion is largely a restatement of its original request for a rehearing.

Supra argues that the Commission should order a rehearing based on Supra's speculation that alleged impropriety in another docket creates an "appearance of impropriety" in this docket. Supra invites the Commission to assume that an impropriety has taken place in this arbitration because, in Supra's view, an impropriety occurred in another proceeding involving Supra and BellSouth. Yet Supra comes forward with absolutely no evidence of any impropriety in this proceeding. Ultimately, Supra's arguments fail because, as explained in the Staff's recommendation and in BellSouth's earlier briefs, there was no impropriety or finding of impropriety in the first docket. Moreover, even if there had been some impropriety in the first proceeding, there is no basis for assuming that the same or a similar impropriety occurred in this proceeding.

Supra's only new argument -- that Supra will be denied due process if a new hearing is not granted before the Commission even acts on the Staff's recommendation – does not amount to a due process violation. Supra fails to show that, without a rehearing, it will be deprived of rights without notice and an opportunity to be heard. In fact, the Commission's review of the Staff's recommendation precludes such a showing. Under these circumstances, the Commission should deny Supra's request for a rehearing and should resolve the merits of the arbitration.

I. A Rehearing of the Staff's Recommendation is Procedurally Improper.

As the Staff correctly recommended, Supra's request for a rehearing at this stage of the proceeding is procedurally improper. Supra premises its request for rehearing on the erroneous belief that it has been prejudiced by some unidentified, improper acts that allegedly took place in this docket. In support of its motion, Supra relies solely on the Pre-Hearing Officer's Order in

Docket No. 001097-TP. However, in that Order, the prehearing officer specifically found that neither party was prejudiced by certain procedural irregularities that occurred in that docket. Accordingly, Supra claims that it has been prejudiced but the only support it cites to specifically found that Supra suffered no prejudice.

Supra, has never expressly asked for rehearing of that Order in Docket No. 001097-TP or of the finding of no prejudice. As the Commission Staff properly found in the revised recommendation, Supra cannot attack – through a requested rehearing in this docket – a finding of no prejudice in a separate proceeding. First, any challenge to the order finding no prejudice should have been filed in the proceeding from which the Order issued. Second, by filing this Motion eighteen days after the Pre-Hearing Officer's Order was issued, Supra far exceeded the ten day deadline established in Rule 25-22.0376 of the Florida Administrative Code for review of a non-final order.

Supra's request for rehearing also improperly challenges a non-final order of the Commission Staff. [2] No procedural rule allows for rehearing of staff recommendations *before* a Commission decision. And, the lone authority that Supra cites for the proposition that the Commission can order a new hearing before rendering a decision in this docket, Ed Ricke and Sons, Inc. v. Green, 468 So.2d 908, 911 (Fla. 1985) (cited by Supra at ¶ 15 of its Motion), has no bearing on this matter. That case involved neither an administrative proceeding nor the Administrative Procedures Act. Rather, in Ricke the Court addressed whether a party waives its

[2] It should be noted that, contrary to Supra's previous positions in its Legal Brief and in its Renewed Motion for Indefinite Stay regarding the Eleventh Circuit decision, wherein Supra argued that the Commission was a quasi-legislative rate-making authority, Supra now argues in this motion that the Commission acts in a quasi-judicial capacity in an arbitration proceeding and has the power to "resolve particular facts in disputes", "adjudicat[e] disputes", "adjudicate[] rights" and "make[] findings of fact and conclusions of law on the disputed issues." Motion at 4.

right to a mistrial by coupling that motion with a request that the court reserve ruling on the motion until after the jury deliberates. Id., 469 So.2d at 909. In resolving the issue, the court merely stated that, when faced with that situation, the court could either order a new trial immediately following the motion for mistrial or could reserve ruling on the motion until after the jury deliberates. Id. at 911. Supra's suggestion that this ruling somehow permits the Commission to order rehearing of a staff recommendation before the Commission decision is simply incorrect.

In this case, the Commission has yet to consider this matter, much less to render a final decision on the matters presented to it for arbitration. Any challenges to the Commission Staff's recommendation in this proceeding can be brought only after the Commission renders a final decision in this docket, and Supra's pending motion is therefore premature. The Commission should adopt the Staff's recommendation and deny rehearing.

II. Denial of Rehearing Creates No Procedural Due Process Violation.

Apparently recognizing that no procedure permits rehearing at this stage, Supra now crafts a due process argument with no foundation in law. Specifically, Supra argues that Commission Order No. PSC-02-0143-PCO-TP – an order issued in an entirely separate docket (Docket No. 001097-TP) – creates a due process right – in this proceeding – that entitled Supra to a rehearing of the entire arbitration proceeding. In that Order, the Pre-Hearing Officer concluded that, although no party to the docket had been prejudiced by any alleged impropriety in that docket, a rehearing was appropriate to avoid any appearance of impropriety. Supra then argues that, in this case, the irregularity in the prior proceeding creates an appearance of impropriety in this proceeding. Therefore, Supra concludes, the purported appearance of

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As can be seen with this argument, the Commission, according to Supra, is apparently a quasi-

impropriety in this proceeding entitles it to a rehearing as a matter of law. Supra argues that, because of the alleged impropriety and Order No. PSC-02-0143-PCO-TP, a denial of a rehearing is equivalent to a denial of procedural due process.

While the Chairman may have applied an "appearance of impropriety" standard in the first docket out of an abundance of caution, "appearance of impropriety" is not the standard for determining whether a due process violation has occurred. Procedural due process "serves as a vehicle to ensure fair treatment through the proper administration of justice where substantive rights are at issue." Keys Citizens for Responsible Government, Inc. v. Florida Keys Aqueduct Authority, 795 So.2d 940, 947 (Fla. 2001) (quoting Department of Law Enforcement v. Real Property, 588 So.2d 957, 960 (Fla. 1991)). Procedural due process only requires fair notice and a real opportunity to be heard. Keys Citizens, 795 So.2d at 947. The notice "must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. . . must be of such nature as reasonably to convey the required, and it must afford a reasonable time for those interested to make their appearance." Id. (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)). And the opportunity to be heard must "be at a meaningful time and in a meaningful manner." Id. (quoting Matthews v. Eldridge, 424 U.S. 319, 333 (1976)). Procedural due process is "flexible and calls for such procedural protections as the particular situation demands." Id. (quoting Morrissey v. Brewer, 408 U.S. 471, 481 (1972)). Thus, even the availability of "state post-deprivation remedies is relevant to whether a constitutional deprivation has occurred." Crocker v. Pleasant, 778 So.2d 978, 989 (Fla. 2001).

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judicial entity only when it is beneficial to Supra.

In this case, Supra has made no allegation and cannot establish that, without rehearing, it will be denied notice and an opportunity to be heard regarding the impact of the alleged improprieties in the preceding docket on this docket. First, in Docket No. 001097-TP, Supra knew of the alleged impropriety and had notice and an opportunity to be heard as to the impact of the impropriety on that proceeding. As discussed above, had Supra wanted to challenge the Hearing Officer's order on rehearing finding no prejudice, Supra could have done so in that proceeding. Supra had notice of its opportunity to bring a motion for reconsideration of the Order, and failed to do so. Supra's failure to challenge that Order in that proceeding does not convert Supra's inability to challenge the Order in this proceeding into a due process violation.

Second, to the extent Supra attempts to challenge, in this proceeding, the alleged impropriety in the preceding docket, Supra has already had, and will continue to have, opportunities to bring that issue to the Commission and beyond. Supra has admitted that it was aware of the issues in Docket 001097-TP no later than October 5, 2001. Supra also knew of Ms. Logue's assignment to this docket as well as her attendance at the September 26-27 hearing. Supra, however, deliberately waited until after receiving an unfavorable Staff recommendation in this docket to raise the issue of alleged impropriety. If Supra believed there was an appearance of impropriety in October, 2001 in this docket, it should have raised it at that point or at least immediately after the Pre-Hearing Officer's January 31, 2002 Order requiring a rehearing in Docket No. 001097-TP instead of after seeing the results of Staff's February 8, 2002 recommendation. Moreover, Supra did not file any pleading to address this issue until the last possible moment – one day before the Commission's scheduled vote on this docket on February 19, 2002. Supra is now raising the same allegations on the eve of the rescheduled vote. Supra's filing of this second request for rehearing just days before the March 5 Commission hearing of

this matter is likewise calculated solely to delay resolution of the merits of this arbitration. As the Commission Staff found, this "questionable" conduct should not be permitted.

Despite Supra's contentions, the denial of rehearing will not deprive Supra of procedural due process. To the contrary, Supra will have an opportunity to challenge the denial of rehearing and any other issues which it might want to raise after the Commission issues a final order in this matter. In particular, Supra can petition the Commission itself for reconsideration and can seek review in state court. These additional layers of review provide ample additional opportunity for Supra to have notice and a hearing concerning any issues that might arise in this arbitration. Supra's procedural due process argument, therefore, should be rejected.

III. Supra Has Failed to Show Any Impropriety in This Proceeding.

Finally, if rehearing were required upon a showing of an "appearance of impropriety", Supra has failed to introduce a shred of evidence concerning the appearance of impropriety in this proceeding. As the Staff correctly found, the "appearance of impropriety" standard does not entirely dispense with the requirement that some evidence must be introduced to demonstrate at least the appearance of impropriety in the present proceeding. Nor does the "appearance of impropriety" standard allow speculation about the existence of prejudice in the absence of any supporting evidence. Simply put, there is nothing in the present proceeding that suggests even the "appearance of impropriety."

Because Supra is unable to introduce any evidence of impropriety in this proceeding, it is reduced to arguing that the alleged "appearance of impropriety" in the first docket should automatically carry over to the present proceeding because (1) the same parties are involved and (2) the same staff member who was involved in the incident in the other proceeding, participated in portions of the present proceeding (but played no role in the staff recommendation). As the

Staff itself correctly recognized, Supra "has offered no proof or even allegations of any specific act that caused it to be prejudiced in this docket." See Recommendation, p. 25. Supra should not be permitted to "bootstrap" the alleged prejudice it suffered in the first docket "across the divide between dockets into the arbitration docket." See id. p. 23.

In light of the foregoing unfounded, baseless claims of misconduct and prejudice, Supra's claim that it is entitled to rehearing of the Staff's Recommendation and to an indefinite delay of the resolution of the merits of this arbitration is simply preposterous. The Commission should therefore refuse Supra's requested rehearing and should resolve the merits of the arbitration.

IV. Supra's Request for Oral Argument.

Finally, BellSouth urges the Commission to adopt the Staff's recommendation regarding Supra's request for oral argument for the reasons set forth in the recommendation.

CONCLUSION

BellSouth respectfully requests that the Commission deny Supra's motion and proceed with its consideration of all issues pending in this matter at the next Agenda.

Respectfully submitted, this 1st day of March, 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Supra Telecommunications & Information Systems, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996.	)	Docket No. 001305-TP Filed: March 1, 2002

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BellSouth Telecommunications, Inc. ("BellSouth") opposes Supra Telecommunications & Information Systems, Inc.'s ("Supra") motion seeking a rehearing of the Commission Staff's February 25, 2002 revised recommendation and an indefinite deferral of the underlying issues in this matter. This opposition supplements BellSouth's opposition to Supra's original motion for rehearing and focuses on issues that Supra has raised in its latest motion.

Supra's recent motion is another desperate attempt since the fling of the petition for arbitration to delay the Commission's resolution of the merits of this proceeding.[1] As with the three other motions Supra has filed within the last two weeks, all seeking delay, Supra files its latest motion because it disagrees with Staff's positions in the revised recommendation. Although the Commission has yet to address the merits of the arbitration, Supra requests a new hearing based on alleged procedural irregularities in a separate docket. Supra, however, has made no showing of any impropriety in this proceeding. And, as the Staff rightly recommended, Supra is not entitled to a rehearing of the Staff's recommendation in any event. Further, Supra's newest claim that rehearing amounts to a denial of due process is meritless. Supra can make no

[1] Supra's attempts to delay this proceeding is not limited to the recent past. Indeed, Supra filed a Motion to Stay the hearing in July 2001 and again in September 2001, immediately prior to the hearing, which it also filed with the Supreme Court.

showing that, without a rehearing of the Staff's recommendation, Supra will suffer a deprivation of due process without notice and a hearing.

Supra's rehearing request demonstrates that Supra has no concern for the actual impact of any alleged impropriety in a separate proceeding on the merits of the Staff recommendation in this proceeding. Rather, it reveals Supra's true intent -- to delay the time by which it must enter into a new interconnection agreement with BellSouth even though the existing agreement has been expired since June, 2000. It is painfully clear that Supra's strategy is to raise meritless motions on a piecemeal basis, based solely on Staff's recommendations, in an attempt to perpetually postpone the Commission's vote on this arbitration proceeding. As the Staff correctly recommended, the Commission should deny Supra's requested rehearing and resolve the merits of the arbitration.

BACKGROUND

Over one and one-half years after the initiation of this arbitration, and following the Commission Staff's original recommendation in this docket issued on February 8, 2002, Supra moved for rehearing, relying solely on alleged improper acts in a separate proceeding -- Docket No. 001097-TP. As the Commission Staff rightly recommended, Supra's motion was both procedurally improper and substantively flawed. Thus, the Staff recommended that the Commission deny Supra's requested rehearing and resolve the merits of the arbitration in the revised recommendation issued on February 25, 2002.

Dissatisfied with Staff's revised recommendation, Supra now further attempts to hinder Commission action on the merits by asking the Commission (1) to reject the Commission Staff's recommendation, (2) to grant Supra's requested rehearing, and (3) to delay indefinitely any resolution of the merits of this matter. As before, Supra provides no legitimate basis for its last

minute request. Indeed, Supra's motion is largely a restatement of its original request for a rehearing.

Supra argues that the Commission should order a rehearing based on Supra's speculation that alleged impropriety in another docket creates an "appearance of impropriety" in this docket. Supra invites the Commission to assume that an impropriety has taken place in this arbitration because, in Supra's view, an impropriety occurred in another proceeding involving Supra and BellSouth. Yet Supra comes forward with absolutely no evidence of any impropriety in this proceeding. Ultimately, Supra's arguments fail because, as explained in the Staff's recommendation and in BellSouth's earlier briefs, there was no impropriety or finding of impropriety in the first docket. Moreover, even if there had been some impropriety in the first proceeding, there is no basis for assuming that the same or a similar impropriety occurred in this proceeding.

Supra's only new argument -- that Supra will be denied due process if a new hearing is not granted before the Commission even acts on the Staff's recommendation – does not amount to a due process violation. Supra fails to show that, without a rehearing, it will be deprived of rights without notice and an opportunity to be heard. In fact, the Commission's review of the Staff's recommendation precludes such a showing. Under these circumstances, the Commission should deny Supra's request for a rehearing and should resolve the merits of the arbitration.

I. A Rehearing of the Staff's Recommendation is Procedurally Improper.

As the Staff correctly recommended, Supra's request for a rehearing at this stage of the proceeding is procedurally improper. Supra premises its request for rehearing on the erroneous belief that it has been prejudiced by some unidentified, improper acts that allegedly took place in this docket. In support of its motion, Supra relies solely on the Pre-Hearing Officer's Order in

Docket No. 001097-TP. However, in that Order, the prehearing officer specifically found that neither party was prejudiced by certain procedural irregularities that occurred in that docket. Accordingly, Supra claims that it has been prejudiced but the only support it cites to specifically found that Supra suffered no prejudice.

Supra, has never expressly asked for rehearing of that Order in Docket No. 001097-TP or of the finding of no prejudice. As the Commission Staff properly found in the revised recommendation, Supra cannot attack – through a requested rehearing in this docket – a finding of no prejudice in a separate proceeding. First, any challenge to the order finding no prejudice should have been filed in the proceeding from which the Order issued. Second, by filing this Motion eighteen days after the Pre-Hearing Officer's Order was issued, Supra far exceeded the ten day deadline established in Rule 25-22.0376 of the Florida Administrative Code for review of a non-final order.

Supra's request for rehearing also improperly challenges a non-final order of the Commission Staff. [2] No procedural rule allows for rehearing of staff recommendations *before* a Commission decision. And, the lone authority that Supra cites for the proposition that the Commission can order a new hearing before rendering a decision in this docket, Ed Ricke and Sons, Inc. v. Green, 468 So.2d 908, 911 (Fla. 1985) (cited by Supra at ¶ 15 of its Motion), has no bearing on this matter. That case involved neither an administrative proceeding nor the Administrative Procedures Act. Rather, in Ricke the Court addressed whether a party waives its

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right to a mistrial by coupling that motion with a request that the court reserve ruling on the motion until after the jury deliberates. Id., 469 So.2d at 909. In resolving the issue, the court merely stated that, when faced with that situation, the court could either order a new trial immediately following the motion for mistrial or could reserve ruling on the motion until after the jury deliberates. Id. at 911. Supra's suggestion that this ruling somehow permits the Commission to order rehearing of a staff recommendation before the Commission decision is simply incorrect.

In this case, the Commission has yet to consider this matter, much less to render a final decision on the matters presented to it for arbitration. Any challenges to the Commission Staff's recommendation in this proceeding can be brought only after the Commission renders a final decision in this docket, and Supra's pending motion is therefore premature. The Commission should adopt the Staff's recommendation and deny rehearing.

II. Denial of Rehearing Creates No Procedural Due Process Violation.

Apparently recognizing that no procedure permits rehearing at this stage, Supra now crafts a due process argument with no foundation in law. Specifically, Supra argues that Commission Order No. PSC-02-0143-PCO-TP – an order issued in an entirely separate docket (Docket No. 001097-TP) – creates a due process right – in this proceeding – that entitled Supra to a rehearing of the entire arbitration proceeding. In that Order, the Pre-Hearing Officer concluded that, although no party to the docket had been prejudiced by any alleged impropriety in that docket, a rehearing was appropriate to avoid any appearance of impropriety. Supra then argues that, in this case, the irregularity in the prior proceeding creates an appearance of impropriety in this proceeding. Therefore, Supra concludes, the purported appearance of

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impropriety in this proceeding entitles it to a rehearing as a matter of law. Supra argues that, because of the alleged impropriety and Order No. PSC-02-0143-PCO-TP, a denial of a rehearing is equivalent to a denial of procedural due process.

While the Chairman may have applied an "appearance of impropriety" standard in the first docket out of an abundance of caution, "appearance of impropriety" is not the standard for determining whether a due process violation has occurred. Procedural due process "serves as a vehicle to ensure fair treatment through the proper administration of justice where substantive rights are at issue." Keys Citizens for Responsible Government, Inc. v. Florida Keys Aqueduct Authority, 795 So.2d 940, 947 (Fla. 2001) (quoting Department of Law Enforcement v. Real Property, 588 So.2d 957, 960 (Fla. 1991)). Procedural due process only requires fair notice and a real opportunity to be heard. Keys Citizens, 795 So.2d at 947. The notice "must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. . . must be of such nature as reasonably to convey the required, and it must afford a reasonable time for those interested to make their appearance." Id. (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)). And the opportunity to be heard must "be at a meaningful time and in a meaningful manner." Id. (quoting Matthews v. Eldridge, 424 U.S. 319, 333 (1976)). Procedural due process is "flexible and calls for such procedural protections as the particular situation demands." Id. (quoting Morrissey v. Brewer, 408 U.S. 471, 481 (1972)). Thus, even the availability of "state post-deprivation remedies is relevant to whether a constitutional deprivation has occurred." Crocker v. Pleasant, 778 So.2d 978, 989 (Fla. 2001).

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judicial entity only when it is beneficial to Supra.

In this case, Supra has made no allegation and cannot establish that, without rehearing, it will be denied notice and an opportunity to be heard regarding the impact of the alleged improprieties in the preceding docket on this docket. First, in Docket No. 001097-TP, Supra knew of the alleged impropriety and had notice and an opportunity to be heard as to the impact of the impropriety on that proceeding. As discussed above, had Supra wanted to challenge the Hearing Officer's order on rehearing finding no prejudice, Supra could have done so in that proceeding. Supra had notice of its opportunity to bring a motion for reconsideration of the Order, and failed to do so. Supra's failure to challenge that Order in that proceeding does not convert Supra's inability to challenge the Order in this proceeding into a due process violation.

Second, to the extent Supra attempts to challenge, in this proceeding, the alleged impropriety in the preceding docket, Supra has already had, and will continue to have, opportunities to bring that issue to the Commission and beyond. Supra has admitted that it was aware of the issues in Docket 001097-TP no later than October 5, 2001. Supra also knew of Ms. Logue's assignment to this docket as well as her attendance at the September 26-27 hearing. Supra, however, deliberately waited until after receiving an unfavorable Staff recommendation in this docket to raise the issue of alleged impropriety. If Supra believed there was an appearance of impropriety in October, 2001 in this docket, it should have raised it at that point or at least immediately after the Pre-Hearing Officer's January 31, 2002 Order requiring a rehearing in Docket No. 001097-TP instead of after seeing the results of Staff's February 8, 2002 recommendation. Moreover, Supra did not file any pleading to address this issue until the last possible moment – one day before the Commission's scheduled vote on this docket on February 19, 2002. Supra is now raising the same allegations on the eve of the rescheduled vote. Supra's filing of this second request for rehearing just days before the March 5 Commission hearing of

this matter is likewise calculated solely to delay resolution of the merits of this arbitration. As the Commission Staff found, this "questionable" conduct should not be permitted.

Despite Supra's contentions, the denial of rehearing will not deprive Supra of procedural due process. To the contrary, Supra will have an opportunity to challenge the denial of rehearing and any other issues which it might want to raise after the Commission issues a final order in this matter. In particular, Supra can petition the Commission itself for reconsideration and can seek review in state court. These additional layers of review provide ample additional opportunity for Supra to have notice and a hearing concerning any issues that might arise in this arbitration. Supra's procedural due process argument, therefore, should be rejected.

III. Supra Has Failed to Show Any Impropriety in This Proceeding.

Finally, if rehearing were required upon a showing of an "appearance of impropriety", Supra has failed to introduce a shred of evidence concerning the appearance of impropriety in this proceeding. As the Staff correctly found, the "appearance of impropriety" standard does not entirely dispense with the requirement that some evidence must be introduced to demonstrate at least the appearance of impropriety in the present proceeding. Nor does the "appearance of impropriety" standard allow speculation about the existence of prejudice in the absence of any supporting evidence. Simply put, there is nothing in the present proceeding that suggests even the "appearance of impropriety."

Because Supra is unable to introduce any evidence of impropriety in this proceeding, it is reduced to arguing that the alleged "appearance of impropriety" in the first docket should automatically carry over to the present proceeding because (1) the same parties are involved and (2) the same staff member who was involved in the incident in the other proceeding, participated in portions of the present proceeding (but played no role in the staff recommendation). As the

Staff itself correctly recognized, Supra "has offered no proof or even allegations of any specific act that caused it to be prejudiced in this docket." See Recommendation, p. 25. Supra should not be permitted to "bootstrap" the alleged prejudice it suffered in the first docket "across the divide between dockets into the arbitration docket." See id. p. 23.

In light of the foregoing unfounded, baseless claims of misconduct and prejudice, Supra's claim that it is entitled to rehearing of the Staff's Recommendation and to an indefinite delay of the resolution of the merits of this arbitration is simply preposterous. The Commission should therefore refuse Supra's requested rehearing and should resolve the merits of the arbitration.

IV. Supra's Request for Oral Argument.

Finally, BellSouth urges the Commission to adopt the Staff's recommendation regarding Supra's request for oral argument for the reasons set forth in the recommendation.

CONCLUSION

BellSouth respectfully requests that the Commission deny Supra's motion and proceed with its consideration of all issues pending in this matter at the next Agenda.

Respectfully submitted, this 1st day of March, 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.

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