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April 10, 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 Telecommunications and Information Systems, Inc.'s Motion for Reconsideration of Order No. PSC-02-0464-PCO-TP, 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 a copy to me. Copies have been served to the parties shown on the attached certificate of service.

Sincerely,


James Meza III (LA)

Enclosures

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

DOCUMENT NUMBER DATE
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**CERTIFICATE OF SERVICE
Docket No. 001305-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Facsimile and Federal Express this 10th day of April, 2002 to the following:

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James Meza III (LA)

(+) Signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Arbitration of the Interconnection) Docket No. 001305-TP
Agreement Between BellSouth Telecommunications,)
Inc. and Supra Telecommunications & Information)
System, Inc., Pursuant to Section 252(b) of the)
Telecommunications Act of 1996.)
_____) Filed: April 10, 2002

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
OPPOSITION TO SUPRA TELECOMMUNICATIONS AND
INFORMATION SYSTEMS, INC.'S MOTION FOR RECONSIDERATION OF
ORDER NO. PSC-02-0464-PCO-TP**

BellSouth Telecommunications, Inc. ("BellSouth") files this Opposition to Supra Telecommunications and Information Systems, Inc.'s ("Supra") Motion for Reconsideration of Order No. PSC-02-0464-PCO-TP. The Prehearing Officer and/or the Commission should summarily deny Supra's motion for the following reasons:

ARGUMENT

I. Commissioner Palecki Correctly Determined that the Commission Does Not Have the Authority to Grant Supra's Motion for Extension of Time.

The Commission cannot extend the time within which a party may request reconsideration of a final order. Rule 25-22.060, Florida Administrative Code, provides in pertinent part that "a motion for reconsideration of a final order shall be filed within 15 days after issuance of the order." There is no specific rule authorizing the Commission to extend the time for seeking reconsideration. Rule 1.090 of the Florida Rules of Civil Procedure provides that a court cannot "extend the time for making a motion for new trial, for rehearing, or to alter or amend a judgment"

Consistent with Civil Procedure Rule 1.090, the Commission has previously determined that it does not have the authority to extend the 15-day time period in which a party must file a motion for reconsideration. For instance, in In re: American Communication Services of Jacksonville, Inc. dba e.spire Communications, Inc., Docket No. 981008-TP, PSC Order No. 99-1453-FOF-TP, the Commission stated that “current case law indicates that it is not appropriate to grant an extension of time for filing a motion for reconsideration.” Id. at 2 (citing City of Hollywood v. Public Employees Relations Commission, 432 So. 2d 79 (4th DCA 1983)). Similarly, in In re: Application for Amendment of Certificate Nos. 17-W and 76-S in Orange County by Park Manor Waterworks, Inc., Docket No. 95-0471-WS, Order No. PSC-95-0928-PCO-WS, the Commission stated that, under the City of Hollywood decision, an agency does “not have authority to grant an extension of time to file a motion for reconsideration.”

In City of Hollywood, after the Public Employees Relations Commission (“PERC”) issued a final order, the City obtained from PERC an extension of time to file a motion for reconsideration. 432 So. 2d at 80. On appeal, the appellees argued that PERC did not have authority to grant an extension to file a motion for reconsideration. The Fourth District Court of Appeal agreed and stated:

There is no express authority either in the APA, PERC’s rules, or in the Model Rules of Procedure for extending the time for filing such a motion. Nor do we believe the agency has inherent power to do so. By analogizing an agency’s inherent power to that of a court of general jurisdiction, we conclude that if a circuit court cannot extend the time for filing a motion for new trial in a criminal case, then it would seem to follow that an agency cannot extend the time for filing

a motion for reconsideration in an administration proceeding.

Id. at 81.

In a case addressing the precise issue *Supra* has raised, the First District Court of Appeal determined that the Commission improperly granted the Office of Public Counsel (“OPC”) an extension of time to file a motion for reconsideration. See *In re: Application for Amendment of Certificate No. 247-S and for a Limited Proceeding to Impose Current Wastewater Rates, Charges, Classifications, Rules, and Regulations and Service Availability Policies for Lazy Days Mobile Village by North Fort Myers Utility, Inc.*, Docket No. 930724-SU, Order No. PSC-96-0345-FOF-SU, 1996 WL 116229 at *2. The court ruled that, because the extension of time to seek reconsideration was improper, the court did not have jurisdiction of the appeal. Id. Indeed, in response to the First Circuit’s show cause as to why OPC’s appeal should not be dismissed for lack of jurisdiction, the Commission admitted that it did not have the authority to grant the extension of time. Id. at 3.

In an effort to avoid the binding administrative and judicial decisions on this issue, *Supra* argues that Rule 28-106.24, Florida Administrative Code, expressly authorizes such an extension. This argument fails for several reasons.

First, Rule 28-106.24 simply provides that “motions for extensions of time shall be filed prior to the expiration of the deadline sought to be extended and shall state good cause for the request.” Contrary to *Supra*’s statements, such a rule does not give the Commission the express authority to extend the time period for filing a motion for reconsideration. Rather, the rule merely establishes

the general procedure in which a party must follow in order to obtain an extension, if such an extension is otherwise available. Rule 28-106.24 does not grant the Commission any substantive authority to extend any specific deadlines or otherwise create an exemption to the well-settled principle set forth in the City of Hollywood decision. In short, Rule 28-106.24 does not expressly grant the Commission the authority to extend the time in which to file a motion for reconsideration.

Second, Rule 28-106.24, was promulgated in 1997 and the Commission began complying with that rule and the other rules set forth in the APA's Uniform Rules of Procedure on July 1, 1998. Notwithstanding this fact, the Commission stated in Order No. 99-1453-FOF-TP in July 1999, over one year after the adoption of Rule 28-106.24, that "current case law indicates that it is not appropriate to grant an extension of time for filing a motion for reconsideration." Thus, the Commission has held that it does not have the authority to grant extensions of time to file motions for reconsideration even after Rule 28-106.24 was promulgated and in effect.

Third, as evidenced by the Commission's decision in Order No. 99-1453-FOF-TP, the City of Hollywood decision is still good law in Florida. No court has found that the adoption of the Uniform Rules of Procedure, including Rule 28-106.24, somehow renders that case invalid. In fact, Florida Jurisprudence, Second Edition, updated April 2002, states that "there is no express authority in the Florida Administrative Procedure Act (APA) for extending the time for filing [a motion for reconsideration], nor does an agency have the inherent power to do

so.” 2 Fla. Jur. 2d Administrative Law § 332 (1998), Updated April 2002. In support of this statement, the treatise cites to the City of Hollywood decision. Importantly, the Second Edition of the treatise was issued in 1998, which was after the promulgation of Rule 28-106.24 and was recently updated in April 2002.

For the above reasons, any argument that Rule 28-106.24 renders previous Commission or judicial precedence invalid should be summarily rejected. To hold otherwise would require this Commission to reject previous Commission decisions and binding appellate decisions

II. An Extension Should Not Be Granted Because Supra’s Basis for Reconsideration Is Improper.

Even if the Commission had the authority to grant Supra’s request for an extension of time (which is denied), Supra’s request for an extension in this case is improper. Specifically, Supra claims that an extension is needed so that it can include information it expects to receive in response to numerous public records requests as grounds for reconsideration. Supra claims that the Commission must review such information, information that is currently not in the record, in order to rule on its request that the Commission reconsider its decision to deny its Motion for Rehearing.

The glaring flaw in this argument is that a motion for reconsideration cannot be based on new evidence or on new arguments. 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 an order. See Diamond Cab Co. v. King, 146 So. 2d 889, 891 (Fla. 1962). Further, it is well settled that it is inappropriate to raise new arguments in

a motion for reconsideration or base a motion for reconsideration on information not in the record. In re: Establish Nondiscriminatory Rates, Terms, and Conditions, Docket No. 950984-TP, Order No. PSC 96-1024-FOF-TP, Aug. 7, 1996, 1996 WL 470534 at *3 (“It is not appropriate, on reconsideration, to raise new arguments not mentioned earlier.”); In re: Southern States Utilities, Inc., Docket No. 950495-WS, Order No. PSC-96-0347-FOF-WS, Mar. 11, 1996, 1996 WL 116438 at *3 (“Reconsideration is not an opportunity to raise new arguments.”); In re: St. George Island Util. Co., Ltd., Docket No. 940109-WU, Order No. PSC-95-0274-FOF-WU, Mar. 1, 1995, 1996 WL 116782 at *2 (striking new evidence attached as an exhibit to a motion for reconsideration because the Commission’s “decision, even on reconsideration, must be based solely upon the record.”).

Accordingly, even if the Commission had the authority to grant Supra’s extension, the Commission should deny such a request because a motion for reconsideration cannot be based on evidence not in the record.

III. Supra’s Failure to Previously Introduce Evidence at the Hearing Is Supra’s Own Fault.

Since the Commission’s March 5, 2002 vote in this arbitration, Supra has submitted at least two public records requests to the Commission. Based on its Motion for an Extension of Time, it appears that Supra is attempting to elicit information from the Commission through these public records requests to support its claim that a rehearing of this docket is warranted.

In addition to the obvious reason that there is no evidence to support any argument that a rehearing is warranted, Supra has been dilatory in its submission

of its public records requests. Supra was aware of the procedural issues relating to Docket No. 001097 as early as October 2001. Supra also knew as of January 31, 2002 that Chairman Jaber had ordered a rehearing of Docket No. 001097 based on those procedural issues.

Despite these facts, Supra did not issue its first public records requests until March 6, 2002 – the day after the Commission's vote in this proceeding. Supra submitted the request at that time even though Supra's counsel, the same counsel who submitted the public records request, informed this Commission at the March 5, 2002 agenda conference that Supra had submitted its public records request prior to the agenda conference.

COMMISSIONER PALECKI: And what was your timing on that public document request?

MR. CHAIKEN: It was very recent, in the last few days.

See March 5, 2002 agenda transcript at 44.

Thus, even if the Commission had the authority to grant Supra's extension and the Commission could rely on information outside of the record to support the reconsideration, the Commission should not grant Supra's extension because Supra had more than ample time to obtain any evidence to support its Motion for Rehearing but has chosen not to. Instead, contrary to Supra's statements at the March 5, 2002 agenda conference, Supra waited until after the vote in this proceeding to issue its public records request.

CONCLUSION

For the foregoing reasons, BellSouth respectfully requests that the Prehearing Officer and/or Commission deny Supra's Motion for Reconsideration of Order No. PSC-02-1464-PCO-TP.

Respectfully submitted this 10th day of April, 2002.

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