Legal Department

E. EARL EDENFIELD, JR.
Senior Attorney
BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0763

August 17, 2004

Mrs. Blanca S. Bayó
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

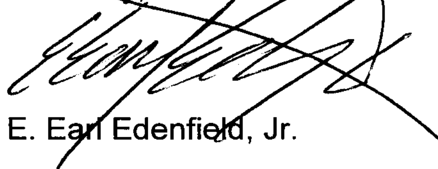
Re: Docket No.: 040301-TP
Petition of Supra Telecommunications and Information Systems, Inc. for Arbitration with BellSouth Telecommunications, Inc.

Dear Ms. Bayó:

Enclosed is BellSouth's Opposition to Supra's Motion for Reconsideration, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



E. Earl Edenfield, Jr.

Enclosure

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

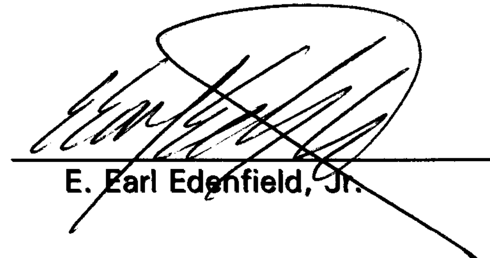
CERTIFICATE OF SERVICE
Docket No. 040301-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and U.S. Mail this 17th day of August, 2004 to the following:

Jason Rojas
Jeremy Susac
Staff Counsels
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
Tel No. (850) 413-6179 or 6236
Fax No. (850) 413-6250
jrojas@psc.state.fl.us
Jsusac@psc.state.fl.us

Ann H. Shelfer
Supra Telecommunications &
Information Systems, Inc.
Koger Center - Ellis Building
1311 Executive Center Drive
Suite 220
Tallahassee, FL 32301-5067
Tel. No. (850) 402-0510
Fax. No. (850) 402-0522
ashelfer@stis.com

Brian Chaiken
Supra Telecommuncations &
Information Systems, Inc.
2620 S. W. 27th Avenue
Miami, FL 33133
Tel. No. (305) 476-4248
Fax. No. (305) 443-1078
bchaiken@stis.com



E. Earl Edenfield, Jr.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Supra Telecommunications and Information Systems, Inc. for Arbitration With BellSouth Telecommunications, Inc.	)))))	Docket No. 040301-TP Filed: August 17, 2004

BELLSOUTH'S OPPOSITION TO SUPRA'S
MOTION FOR RECONSIDERATION

BellSouth Telecommunications, Inc. ("BellSouth") files this Opposition to the Motion for Reconsideration ("Motion") of Order No. PSC-04-0752-PCO-TP ("*Order*") filed by Supra Telecommunications and Information Systems, Inc. ("Supra") on August 10, 2004. For the reasons discussed in detail in below, the Florida Public Service Commission ("Commission") should deny Supra's Motion.

INTRODUCTION AND ARGUMENT

In support of its Motion, Supra makes four arguments: (1) that the Commission ignored Florida Statutes §§ 364.161 and 364.162; (2) that the Commission violated Supra's due process; (3) that BellSouth's arguments demonstrate that the matter should be expedited; and, (4) that existing law and new circumstances warrant expedited treatment.[1] As discussed in greater detail below, these arguments have been considered, and rejected, by the Commission or are new arguments that Supra failed to present in their initial request. Either way, these arguments fail to meet the legal standards

[1] In its Motion, Supra presents four pages of background information that have nothing to do with any of the grounds Supra alleges constituted error by the Commission. In fact, Supra's Motion (12 pages) is significantly longer than the request for expedited treatment found in Supra's Amended Complaint (2 pages). In order to keep this Opposition on point, BellSouth will not address the specifics of Supra's background allegations except to say that, once again, Supra's claims are unfounded mischaracterizations of the facts.

applicable to reconsideration motions and, therefore, should be rejected by the Commission.

I. SUPRA'S MOTION FAILS TO MEET THE LEGAL STANDARD FOR RECONSIDERATION.

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). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. See Sherwood v. State, 111 So. 2d 96, 97 (Fla. 3rd DCA 1959) (citing State ex. Rel. Jayatex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Moreover, a motion for reconsideration is not intended to be "a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or the order." Diamond Cab Co., 394 So.2d at 891. Indeed, a motion for reconsideration should not be granted based upon an arbitrary feeling that a mistake may have been made, but should be based on specific factual matter set forth in the record and susceptible to review." Steward Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315, 317 (Fla. 1974).

Further, it is well settled that it is inappropriate to raise new arguments in a motion for reconsideration. 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."). Because Supra fails

to meet any of the legal requisites for granting reconsideration, the Commission should deny Supra's Motion.

II. THE COMMISSION CONSIDERED AND PROPERLY REJECTED SUPRA'S ARGUMENTS REGARDING FLORIDA STATUTES §§ 364.161 AND 364.162.

The Commission was eminently correct in rejecting Supra's arguments regarding the applicability § 364.161, *Fla. Stat.*, 1998 and §364.162, *Fla. Stat.*, 1995. Notwithstanding Supra's attempt to give these statutes broad application, the express language of these statutes limits their applicability to requests for arbitration under state law. Indeed, these statutes are the corollary to §252 of the Telecommunications Act of 1996 ("1996 Act"), through which a competitive local exchange carrier ("CLEC") can request arbitration of an interconnection agreement in the event negotiations of such an agreement are not successful.

The fallacy of Supra's argument is highlighted by the fact that the Interconnection Agreement Supra seeks to have interpreted in this proceeding was negotiated and arbitrated pursuant to federal law, not state law. Supra's attempt to portray this proceeding as an "arbitration" under state law, as opposed to a dispute regarding an Interconnection Agreement approved under federal law, is transparent. The Commission was obviously not impressed by Supra's attempt to bootstrap federal law and correctly determined that this is a complaint proceeding, not an interconnection arbitration under state law. The Commission correctly rejected Supra's scheme to have the timing provisions (120 days) of §§ 364.161 and 364.162 apply to this proceeding.

Supra's remaining arguments in this section of their Motion are simply more fluff and do not offer any argument (legal or factual) that either was not already considered,

and summarily rejected, by the Commission or is new material that was not found in Supra's request for expedited treatment. Thus, the Commission should affirm its *Order*.

III. THE COMMISSION DID NOT VIOLATE SUPRA'S DUE PROCESS.

Supra's argument regarding due process is simply irrational and nonsensical. Clearly, Supra's request that this matter be treated as a state-law arbitration is so blatantly egregious to the express provisions of Florida Statutes §§ 364.161 and 364.162 and contradictory to the allegations in Supra's Amended Complaint that the Commission exercised its discretion to treat this matter as exactly what it is....a complaint.

Further, the Commission's decision stems directly from the resolution of the issue presented by Supra, which was to have this matter treated in an expedited manner based on state statutes (that apply only to arbitration proceedings). Thus, Supra squarely presented this issue for resolution in the context of its own request for the Commission to expedite this proceeding. Supra's complaints are merely "sour grapes" and should be summarily rejected by the Commission.

IV. BELLSOUTH HAS IN NO WAY AQUIESCED TO EXPEDITED TREATMENT OF THIS COMPLAINT PROCEEDING.

Supra's twisted logic (or illogic) is virtually impossible to follow. Apparently, Supra wants the Commission to reconsider its *Order* based on assumptions and expectations that BellSouth might make an admission regarding a cost study and testimony. Clearly, these arguments are as new as they are misplaced. BellSouth has not, and does not, concede that this matter is ripe for any type of expedited treatment. Thus, the Commission should affirm its *Order*.

V. <u>"EXISTING LAW" AND "NEW CIRCUMSTANCES" DO NOT WARRANT EXPEDITED TREATMENT.</u>

In addition to re-hashing its same argument regarding Florida Statutes §§ 364.161 and 364.162, Supra suggests that the recent D.C. Circuit Court of Appeals vacature of the FCC's Triennial review Order ("TRO") somehow impacts whether this proceeding should be expedited. This argument was made by Supra in its request for expedited treatment and was considered by the Commission (*Order* at 1) and rejected. Supra makes no reasonable argument that the Commission failed to consider this argument. Therefore, the Commission should reject these arguments and affirm its *Order*.

VI. <u>THE COMMISSION WAS CORRECT IN NOT SETTING AN INTERIM RATE FOR HOT CUTS.</u>

Finally, Supra requests, in its Motion, that the Commission set an interim rate for hot cuts pending resolution of this proceeding. BellSouth presumes that this is a part of Supra's request for reconsideration and not a separate motion for some type of relief. Obviously, the Commission considered Supra's request for an interim rate in rendering the *Order* and simply rejected that request.[2] To the extent Supra is attempting to raise this issue yet again as a new motion, BellSouth avers that the Commission should reject this same tired request for the same reasons previously asserted by BellSouth and on the same analysis set forth in the Commission's *Order*.

<u>CONCLUSION</u>

For the foregoing reasons, BellSouth requests that the Commission deny Supra's Motion.

---

[2] *Order* at 1 ("Supra also requests that an interim rate be established during the pendency of the case.").

Respectfully submitted, this 17th day of August, 2004,

BELLSOUTH TELECOMMUNICATIONS, INC.

NANCY B. WHITE
c/o Nancy H. Sims
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301-1558
(305) 347-5558

R. DOUGLAS LACKEY
E. EARL EDENFIELD, JR.
675 West Peachtree Street
Suite 4300
Atlanta, Georgia 30375-0001
(404) 335-0763