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Smith, Debbie N.

From: Smith, Debbie N.
Sent: Monday, January 10, 2005 1:45 PM
To: 'filings@psc.state.fl.us'
Cc: Edenfield, Kip; Fatool, Vicki; Slaughter, Brenda ; Holland, Robyn P; Sims, Nancy H; Bixler, Micheale; Hobbs, Linda
Subject: Florida Docket No. 040301-TP

Importance: High

A. Debbie Smith
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B. Docket No. 040301-TP: In Re: Petition of Supra Telecommunications and Information Systems, Inc. for arbitration with BellSouth Telecommunications, Inc.

C. BellSouth Telecommunications, Inc.
on behalf of E. Earl Edenfield, Jr.

D. 6 pages total in PDF format

E. BellSouth's Opposition to Supra's Renewed Motion for Interim Rate.


BellSouth
pposition.pdf (217 .

Tracking:

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Edenfield, Kip	Delivered: 1/10/2005 1:45 PM	Read: 1/10/2005 1:48 PM
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Sims, Nancy H	Delivered: 1/10/2005 1:45 PM	
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Hobbs, Linda	Delivered: 1/10/2005 1:45 PM	

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January 10, 2005

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 Renewed Motion for Interim Rate, 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 10th day of January, 2005 to the following:

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To receive discovery related material only
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E. Earl Edenfield, Jr.

(+) Signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Supra Telecommunications and Information Systems, Inc.'s for arbitration With BellSouth Telecommunications, Inc.	)	Docket No. 040301-TP
	)	Filed: January 10, 2005

BELLSOUTH'S OPPOSITION TO SUPRA'S RENEWED MOTION FOR INTERIM RATE

BellSouth Telecommunications, Inc. ("BellSouth") files this opposition to the Renewed Motion for Interim Rate for UNE-P to UNE-L Conversions Based on Change of Circumstances ("*Renewed Motion*") filed by Supra Telecommunications and Information Systems, Inc. ("Supra") on January 3, 2005. For the reasons set forth below, the Florida Public Service Commission ("Commission") should reject Supra's *Renewed Motion*.

BACKGROUND

In what can only be described as a bad dream that will not end, Supra has filed, yet again, a motion that is deficient both procedurally and substantively. This time Supra has filed a *Renewed Motion* aimed at having the Commission reconsider an issue that has already been decided. Specifically, in a Motion[1] dated August 10, 2004, Supra requested that the Commission set an interim rate for UNE-P to UNE-L conversions, which is precisely the same substantive relief Supra seeks in the *Renewed Motion*. On August 26, 2004, the Commission Staff issued its Recommendation regarding the need for an interim rate and found that "there does not appear to be a need or an adequate basis for an interim rate." (Staff Recommendation at 3) The Staff's Recommendation regarding Supra's Motion for Interim Rate was unanimously approved by the

[1] *See*, Supra's Motion for Reconsideration of Order No. PSC-04-0752-PCO-TP Denying Supra's Request for Expedited Relief and Reforming the Matter to a Complaint or, in the Alternative, Motion to Set Interim Rate ("Motion for Interim Rate") filed in this docket.

Commission at the September 21, 2004 Agenda and a written Order[2] was issued on September 23, 2004. Supra never sought reconsideration, nor appealed, the September 23, 2004 Order.

As demonstrated below, Supra's *Renewed Motion* is a procedurally improper attempt at reconsideration of the Commission's September 23, 2004 Order. Further, there are no new facts that would invalidate, or even call into question, the substantive reasoning behind the Commission's September 23, 2004 Order. Therefore, the Commission should deny the *Renewed Motion*.

ARGUMENT

I. SUPRA'S *RENEWED MOTION* IS PROCEDURALLY DEFICIENT.

Clearly, the issue of establishing an interim rate for UNE-P to UNE-L conversions is a substantive issue, not a procedural one. Equally clear is the fact that the Commission considered, and rejected, the notion of an interim rate and set forth that reasoning and analysis in the September 23, 2004 Order. Procedurally, Supra had ten (10) days to seek reconsideration of the September 23, 2004 Order and, to the extent appropriate, thirty (30) days to file an appeal. Supra did neither and the time for such has now expired.

There is nothing in the Commission Rules or the Florida Rules of Civil Procedure allowing renewed motions on substantive issues that have been decided and reduced to written orders. Thus, the *Renewed Motion* is procedurally improper and should be rejected. Likewise, Supra did not seek, nor could it meet the burden of, relief under *Fl. R. Civ. P.* 1.540, which addresses relief from Orders.

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[2] *See*, Order Denying Supra Telecommunications & Information Systems, Inc.'s Motion for an Interim Rate and Denying its Motion for Reconsideration ("September 23, 2004 Order"), Order No. PSC-04-0942-FOF-TP issued in this docket.

Supra's *Renewed Motion* is simply an untimely motion for reconsideration of the Commission's September 23, 2004 Order. Therefore, the Commission should deny the *Renewed Motion*.

II. SUPRA'S *RENEWED MOTION* IS SUBSTANTIVELY DEFICIENT.

Even if Supra's *Renewed Motion* was procedurally proper (which it is not), the *Renewed Motion* is substantively deficient in that it offers no argument not previously considered, and rejected, by the Commission, nor does it offer any change in circumstances that would impact the underlying rationale of the Commission's September 23, 2004 Order.

Specifically, Supra's Renewed Motion is based solely on the argument that the Press Release from the FCC dated December 15, 2004 regarding the anticipated, but not yet released, Final Unbundling Rules constitutes a change in circumstances warranting reconsideration of the Commission's September 23, 2004 Order. Supra cannot seriously be suggesting that the Press Release constitutes an actual Order from the FCC; thus, the entirety of the *Renewed Motion* is based on a fundamental flaw. Likewise, Supra's timeline for the conversion of UNE-P lines (even assuming the Final Rules actually do away with UNE-P) is flawed because any such timeline will more than likely not actually begin until 30 days after the FCC's Order is actually published in the Federal Register. Thus, Supra's attempt to create some sense of urgency as a result of the FCC's Press Release is, at best, histrionics.

Supra's arguments regarding the ability to convert 200,000 UNE-P lines as well as discussions regarding rates from other states (in this instance Georgia), are no different than those made in Supra's original request for an interim rate. The Commission's finding that "the undisputed fact that Supra has migrated over 18,000 customer lines to UNE-L arrangements, indicates there is no need for an interim rate" is undisturbed by Supra's arguments in the

Renewed Motion. (September 23, 2004 Order at 3) Likewise, the fact that there may be different UNE-P conversion rates in different states was also considered, and rejected, by the Commission. (*Id.* at 2) The remainder of Supra's *Renewed Motion* is a regurgitation of arguments already made by Supra that were rejected by the Commission.

In short, Supra offers no new fact or circumstance that would invalidate any finding or conclusion made by the Commission in the September 23, 2004 Order rejecting Supra's request for an interim rate. Further, it appears certain that the issue of whether new UNE-P conversion rates are warranted will be resolved either in this docket or the generic hot-cut docket. Supra offers no new argument that would justify a reconsideration of the Commission's September 23, 2004 Order and, therefore, the *Renewed Motion* should be denied.

CONCLUSION

For the reasons set forth herein, BellSouth respectfully requests that the Commission deny Supra's *Renewed Motion*.

Respectfully submitted this 10th day of January 2005.

BELLSOUTH TELECOMMUNICATIONS, INC.

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