

parties file a signed agreement, our staff may review and administratively approve the final agreement if it complies with our Order and the Telecommunications Act. If the parties do not file a signed agreement within 10 days of our Agenda Conference, the existing agreement under which the parties' have continued to operate shall be deemed terminated, and declared null and void after the close of business on August 16, 2002. Supra may, however, adopt another existing, approved interconnection agreement with BellSouth, if it so chooses.

VI. MOTION TO STRIKE JULY 15, 2002, AGREEMENT FILED BY BELL SOUTH

A. ARGUMENTS

SUPRA

Supra argues that the agreement filed by BellSouth on July 15, 2002, does not fully incorporate the parties' voluntary agreements on issues not decided by this Commission. Supra contends that because the agreement does not incorporate the parties' voluntary agreements, we cannot "shove the nonconforming agreement down Supra's throat." Supra maintains that although we directed the parties to file a jointly executed interconnection agreement, we did not order Supra to sign an agreement that does not reflect the parties' voluntary agreements. Supra therefore asks that we strike the filing by BellSouth as a filing interposed for purposes of delay, harassment, or frivolous increase in expense, in violation of Section 120.569(2)(e), Florida Statutes, Rule 2.060(c), Florida Rules of Judicial Administration, and Rules 1.140 and 1.150, Florida Rules of Civil Procedure.

BELL SOUTH

BellSouth contends that Supra has never proposed language for inclusion in any of the versions of the agreement that it has sent to Supra. BellSouth also argues that it has included the language that the parties agreed upon for the issues resolved between themselves, as well as the language required by our Orders. BellSouth further contends that Supra has erroneously identified several issues for which no negotiated resolution was reached and has referred to a three-step approval process that was never discussed by the parties. BellSouth also identifies what it believes to be a number of other inaccuracies in Supra's assertions regarding the negotiations between the parties. Finally,

BellSouth asserts that contrary to Supra's arguments, BellSouth's July 15, 2002, filing is appropriate, because it was contemplated, and in fact required, by Order No. PSC-02-0878-FOF-TP. For these reasons, BellSouth asks that Supra's Motion be denied.

B. DECISION

Upon consideration, we do not find that BellSouth's July 15, 2002, filing violates the standards of Section 120.569(2)(e), Florida Statutes, nor Rule 2.060, Florida Rules of Judicial Administration, although we note that Rule 2.060 is not directly applicable to administrative proceedings. The July 15, 2002, filing by BellSouth does not appear to be filed for purposes of delay, but instead in an effort to comply with our decisions in this Docket. As for Rule 1.140, Florida Rules of Civil Procedure, we also find the July 15, 2002, filing complies with this rule in that the pleading does not appear to be "redundant, immaterial, impertinent, or scandalous." Rather, it is a filing apparently aimed at complying with our Orders Nos. PSC-02-0637-PCO-TP and PSC-02-0878-FOF-TP. The mere fact that the agreement filed was not executed by both parties does not render the filing "redundant, immaterial, impertinent, or scandalous." Likewise, we find the pleading does not violate Rule 1.150, Florida Rules of Civil Procedure, because it is not a "sham" pleading.

Furthermore, the parties were directed to file an agreement complying with our decisions on the issues addressed at arbitration. It is the burden of the parties to properly reflect any agreements between the parties that were not presented for arbitration to this Commission. Alleged failure by BellSouth to properly reflect such voluntary agreements is not a matter reviewed by state commissions pursuant to Section 252(e)(2)(b) of the Act, nor does it constitute a "sham" or "frivolous" filing intended for delay. The Act requires the parties to present for arbitration those things that cannot be negotiated and to resolve, through good faith negotiations, those things that do not need to be arbitrated. We need only determine whether what is filed complies with the Act and with our arbitration decision. 47 U.S.C. § 252(e)(2)(b). Thereafter, it is incumbent upon the parties to develop an agreement that properly reflects our decisions, the state of the law, and the parties' negotiated provisions. We agree with Supra that we cannot require either party to sign an agreement that the parties do not believe properly reflects other agreements between the parties. However, as more fully set forth in the previous issue, we can deem the previous agreement terminated --

leaving the parties with the options of: 1) timely filing a signed version of the negotiated agreement; 2) Supra adopting an approved agreement; or 3) otherwise terminating their relationship.

Based on the foregoing, the Motion to Strike July 15, 2002, Agreement Filed by BellSouth is denied.

VII. INTERCONNECTION AGREEMENT COMPLIANCE

A. CONSIDERATION

With regard to State commission approval or rejection of an interconnection agreement, Section 252(e) of the Telecommunications Act states, in pertinent part:

(1) APPROVAL REQUIRED - Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2) GROUNDS FOR REJECTION - The State commission may only reject-

(B) an agreement (or any portion thereof) adopted by arbitration . . . if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) [pricing standards] of this section.

Section 252(e)(3) states:

Notwithstanding paragraph (2), but subject to section 253, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

By Order No. PSC-02-0413-FOF-TP, issued March 26, 2002 (Final Order on Arbitration) and Order No. PSC-02-0878-FOF-TP, issued July 1, 2002 (Reconsideration Order), we resolved the thirty-seven substantive issues presented for arbitration by BellSouth and

Supra<sup>3</sup>. The parties were required to submit a signed agreement that complied with our decisions within 14 days of issuance of the Order on Reconsideration, by July 15, 2002.

On July 15, 2002, BellSouth filed an unsigned Interconnection Agreement. We have reviewed the document specifically to determine compliance with our Orders in this proceeding relating to the thirty-seven arbitrated issues addressed at hearing. In view of the fact that the agreement was not signed, we also reviewed the entire document to determine compliance with other applicable Florida Public Service Commission and Federal Communications Commission decisions and orders.

Upon review and consideration, we find that the Interconnection Agreement filed on July 15, 2002, complies with our Orders in this docket, Order Nos. PSC-02-0413-FOF-TP and PSC-02-0878-FOF-TP. It appears to incorporate our decisions regarding the issues arbitrated at hearing. In fact, in some cases the language contained in the Agreement almost mirrors the language in our Orders. For example, with regard to one particular issue, we ordered<sup>4</sup>:

. . . the final arbitrated agreement submitted to us for approval shall not reflect a reduced rate for a loop when the loop utilizes DAML equipment.

PSC-02-0413-FOF-TP at p. 53. The Interconnection Agreement states:

Loop rates specified in this Agreement shall not be reduced when the loop is provided to Supra using Digitally Added Main Line (DAML) equipment . . . .

Attachment 2, Section 3.2. We also ordered:

The agreement shall reflect that when changes are to be made to an existing Supra loop that may adversely affect the end user, BellSouth should provide Supra with prior notification.

PSC-02-0413-FOF-TP at p. 53. The Interconnection Agreement states:

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<sup>3</sup>The orders also addressed several procedural motions.

<sup>4</sup>The example does not represent the Commission decision on Issue E in its entirety.

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. . . in the event BellSouth wishes to add DAML equipment to an existing Supra UNE loop that may adversely affect the end user, BellSouth shall provide Supra Telecom with prior notification and must obtain Supra Telecom's authorization.

Attachment 2, Section 3.2.

While we find the Agreement complies with our Orders in this proceeding, we have identified two sections which do not comply with other applicable orders or decisions. The specific language in question is underlined below.

First, Attachment 1, Section 3.7 of the Interconnection Agreement, which addresses resale provisions, states:

Current telephone numbers may normally be retained by end user. However, telephone numbers are the property of BellSouth and are assigned to the service furnished. Supra Telecom has no property right to the telephone number or any other call number designation associated with services furnished by BellSouth, and no right to the continuance of service through any particular central office. BellSouth reserves the right to change such numbers, or the central office designation associated with such numbers, or both, solely in accordance with BellSouth's practices and procedures and on a non-discriminatory basis.

The underlined text is incorrect and conflicts with current law.

Section 3(a)(2)(46) of the Act defines number portability as the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another. While we are aware that BellSouth is the code holder for the telephone numbers at issue, the telephone numbers are BellSouth's property. The Industry Numbering Committee's Central Office Code (NXX) Assignment Guidelines (INC Code Guidelines) define a code holder as:

An assignee of a full NXX code which was allocated by the CO Code Administrator. While the Code Holder is participating in thousand-block number pooling, the Codes Holder becomes a LERG Assignee at the Block Donation Date.

Central Office Code (NXX) Assignment Guidelines, July 21, 2002, INC 95-0407-008. Furthermore the INC Code Guidelines state:

The NANP resources are considered a public resource and are not owned by the assignees. Consequently, the resources cannot be sold, brokered, bartered, or leased by the assignee for a fee or other consideration.

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<sup>5</sup>Staff notes that BellSouth is a member of the Industry Numbering Committee.

Transfer of code(s) due to merger/acquisition is permitted. (emphasis added)

Central Office Code (NXX) Assignment Guidelines, July 21, 2002, INC 95-0407-008 at p. 6.

Lastly, and most importantly, 47 C.F.R. §52.23(a), confirms that:

all local exchange carriers (LECs) must provide number portability in compliance with the following performance criteria:

(6) Does not result in a carrier having a proprietary interest;

BellSouth is clearly an assignee of codes, and as such, the sentence identified in Attachment 1, Section 3.7 of the Interconnection Agreement, which asserts telephone numbers are the property of BellSouth is contrary to current law and shall be deleted.

Second, Attachment 4, Section 6.4, which addresses collocation provisions, states, in pertinent part:

Construction and Provisioning Interval. . . . BellSouth will use best efforts to complete construction for collocation arrangements under ordinary conditions as soon as possible and within a maximum of 100 calendar days from receipt of a complete and accurate Bona Fide Firm Order.

The 100 calendar days provisioning interval for collocation arrangements conflicts with the interval established by this Commission in Order PSC-99-1744-PAA-TP issued in Docket No. 981834-TP. Specifically, that order states:

Upon firm order by an applicant carrier, the ILEC shall provision physical collocation within 90 days or virtual collocations within 60 days.

Order at p. 17. As such, we find that BellSouth must modify the language in Attachment 4, Section 6.4 to reflect this Commission's

decision that 90 calendar days is the appropriate provisioning interval for physical collocation.

**B. DECISION**

Upon consideration, the July 15, 2002, Interconnection Agreement complies with our Orders in this docket. However, the language contained in Attachment 1, Section 3.7, and Attachment 4, Section 6.4 shall be modified as noted in the body of this Order to comply with other applicable orders and laws.

**VIII.**

**CONCLUSION**

This Docket shall remain open pending administrative approval, on an expedited basis, of a signed interconnection agreement or notice of adoption filed by close of business on August 16, 2002. Upon administrative approval of an agreement, or if no signed agreement or notice of adoption is filed by close of business on August 16, 2002, we direct our staff to administratively close this Docket after the time for filing an appeal has run.

We will not entertain any motions for reconsideration of our decisions set forth herein. By this Order, we address several motions that appear to be thinly-veiled motions for reconsideration for which our rules do not provide for further reconsideration. See Rule 25-22.060, Florida Administrative Code. Furthermore, this proceeding has been conducted pursuant to the Telecommunications Act of 1996, which does not contemplate further review by the state commission of its own decisions in proceedings conducted pursuant to the Act. While Chapter 120, Florida Statutes, and Commission rules do provide for reconsideration of final orders, Section 120.80(13), Florida Statutes, also allows us to adopt processes and procedures necessary to implement the Act. In this particular instance, we find that proper, timely implementation of this case consistent with the Act necessitates that the opportunity for reconsideration of our decisions on the issues addressed in this Order shall not be provided.

We have conducted these proceedings pursuant to the directives and criteria of Sections 251 and 252 of the Act. We believe that our decisions are consistent with the terms of the Section 251, the provisions of FCC rules, applicable court orders and Chapter 364, Florida Statutes.

Based on the foregoing, it is

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ORDERED by the Florida Public Service Commission that Supra Telecommunications and Information Systems, Inc.'s Motion to Strike BellSouth's Letter of October 30, 2001, to Blanca Bayo; Strike BellSouth's Post-hearing Position/Summary with Respect to Issue B; and to Alter/amend Final Order Pursuant to F.R.C.P. 1.540(b) is denied. It is further

ORDERED that Supra Telecommunications and Information Systems, Inc.'s Motion to Compel BellSouth Telecommunications, Inc. to Continue Good Faith Negotiations of a Follow-Up Agreement is denied. It is further

ORDERED that BellSouth Telecommunications, Inc.'s Motion for Expedited Commission Action is granted, in part, and denied, in part, as set forth in the body of this Order. It is further

ORDERED that Supra Telecommunications and Information Systems, Inc.'s Motion to Strike July 15, 2002, Agreement filed by BellSouth Telecommunications, Inc. is hereby denied. It is further

ORDERED that the July 15, 2002, Interconnection Agreement submitted by BellSouth Telecommunications, Inc. is deemed compliant with the Commission Orders in this Docket. It is further

ORDERED that BellSouth Telecommunications, Inc. shall amend the language contained in Attachment 1, Section 3.7, and Attachment 4, Section 6.4 of its July 15, 2002, Interconnection Agreement as noted in the body of this Order to comply with other applicable orders and laws. It is further

ORDERED that this Docket shall remain open pending administrative approval, on an expedited basis, of a signed interconnection agreement or notice of adoption filed by close of business on August 16, 2002. It is further

ORDERED that if an interconnection agreement signed by both parties is not filed by close of business on August 16, 2002, and we are not otherwise notified of Supra Telecommunications and Information Systems, Inc.'s adoption of another approved interconnection agreement with BellSouth Telecommunications, Inc., the current interconnection agreement under which the parties have continued to operate shall be deemed terminated and no longer effective between Supra Telecommunications and Information Systems, Inc. and BellSouth Telecommunications, Inc. It is further

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ORDERED that upon administrative approval of an agreement, or if no signed agreement or notice of adoption is filed by close of business on August 16, 2002, this Docket shall be closed administratively after the time for filing an appeal has run.

By ORDER of the Florida Public Service Commission this 9th Day of August, 2002.

/s/ Blanca S. Bayó  
BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

This is a facsimile copy. Go to the Commission's Web site, <http://www.floridapsc.com> or fax a request to 1-850-413-7118, for a copy of the order with signature.

( S E A L )

BK/WDK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure. Judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6) may be available as allowed by law.