

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Supra  
Telecommunications and  
Information Systems, Inc.  
against BellSouth  
Telecommunications, Inc.  
regarding BellSouth's alleged  
use of carrier to carrier  
information.

DOCKET NO. 030349-TP  
ORDER NO. PSC-03-0981-PCO-TP  
ISSUED: August 29, 2003

ORDER GRANTING IN PART, AND DENYING IN PART, MOTION TO STRIKE

On April 18, 2003, Supra Telecommunications and Information Systems, Inc. (Supra) filed its Emergency Petition for Expedited Review of BellSouth Telecommunications, Inc.'s (BellSouth) \$75 Cash Back Promotion and Investigation into BellSouth's Pricing and Marketing Practices. On May 5, 2003, BellSouth filed its Answer to Supra's Emergency Petition. On June 9, 2003, Supra filed an Amended Emergency Petition alleging BellSouth's violation of 47 USC Section 222 and Florida Public Service Commission policies regarding the use of wholesale information in retail marketing.

On June 12, 2003, BellSouth filed a Motion for Continuance and/or Rescheduling to extend the date of the hearing. On June 17, 2003, by Order No. PSC-03-0721-PCO-TP, Supra was granted leave to amend its petition. Supra also filed its response to BellSouth's Motion for Continuance and/or Rescheduling on June 17, 2003. BellSouth's Motion for Continuance was denied by Order No. PSC-03-0763-PCO-TP, issued on June 25, 2003.

By Order No. PSC-03-0718-PCO-TP, issued June 17, 2003, the procedural and hearing dates were set for this docket. An administrative hearing is scheduled for August 29, 2003. A Prehearing Conference was held on August 4, 2003, and Order No. PSC-03-0922-PHO-TP, the Prehearing Order, was issued on August 11, 2003.

On July 25, 2003, BellSouth filed a Motion to Strike. BellSouth requested that Exhibits DAN-1, -6, -7, -8, and -19, attached to witness Nilson's Direct Testimony, be stricken. Supra's Response was filed on July 31, 2003. On August 1, 2003, BellSouth filed a Supplemental Motion to Strike Exhibit DAN-20. At the Prehearing Conference, the Motion to Strike was denied without

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prejudice regarding Exhibits DAN-1, -6, -7 and -8 based on an agreement reached between the parties, whereby Supra would identify, by August 12, 2003, and state in no more than 5 pages the relevancy of, the exhibits it intends to use at the hearing. BellSouth would provide a response, in no more than 5 pages, by August 22, 2003. If Supra failed to make the requested filing by August 12, 2003, it waived the right to use Exhibits DAN-1, -6, -7, or -8 with the Direct Testimony of David Nilson but would not be precluded from using them on cross-examination. The Motion to Strike was granted with respect to Exhibits DAN-19 and 20, which contain depositions. It was acknowledged on the record that Supra has given notice of its intent to use the depositions when the live witnesses take the stand to testify.

On August 12, 2003, Supra filed the requested Supplemental Direct Testimony of David A. Nilson, stating the relevancy of Exhibits DAN-1, -6, -7, -8. Supra also included a further justification for Exhibit DAN-19. BellSouth's Response and Motion to Strike the Supplemental Testimony of David Nilson was filed on August 22, 2003, asking that: 1) the information on page 1, lines 15-23 and page 2, lines 1-14 relating to Exhibit DAN-6, 2) Bates Stamped Nos 798-840 of Exhibit DAN-7, and 3) references to DAN-19 be stricken.

On August 27, 2003, Supra filed its Response to the Motion to Strike. In its Response, Supra states that it does not oppose BellSouth's Motion with respect to Bates Stamped Nos. 798-840 of DAN-7, or DAN-19.

#### Supra's Supplemental Direct Testimony

Supra states that Witness Nilson's Supplemental Direct Testimony on page 1, lines 15-23 and page 2, lines 1-14, relating to Exhibit DAN-6, addresses information being shared between BellSouth wholesale and retail sides obtained from knowledge of customer switch information showing the "destination" and/or "location" of where the customer now receives service. This information pertains to Issue 3.

BellSouth's Response and Motion to Strike, and Supra's Response

BellSouth states that the Supplemental Direct Testimony of David A. Nilson on page 1, lines 15-23 and page 2, lines 1-14, relating to Exhibit DAN-6, exceeds the scope and agreed upon purpose of the Supplemental Testimony. BellSouth asserts that Mr. Nilson has not provided any information as to why the exhibit is relevant to the issues in this proceeding; rather is merely a restatement of Supra's position that Operation Sunrise violates Supra's interpretation of federal CPNI laws.

Supra states in its response to the Motion, that page 1, lines 15-23 and page 2, lines 1-14, relating to Exhibit DAN-6, are also associated with Bates Stamped Nos. 000079 and 000144, in Exhibit DAN-6. Supra contends that since BellSouth has not moved to strike either of those two exhibit pages, the Supplemental Direct Testimony should not be stricken.

Decision

The Supplemental Direct Testimony of David A. Nilson on page 1, lines 15-23 and page 2, lines 1-14, relating to Exhibit DAN-6, does not exceed the scope of the issues being addressed in this proceeding and, therefore, shall not be stricken from the record. The testimony appears within the scope of issue 3, as it pertains to possible knowledge of CPNI that BellSouth's retail side may have obtained from its wholesale side. As for Bates Stamped pages 798-840 and DAN-19, the identified pages shall be stricken, as Supra has indicated no objection. Exhibit DAN-19 has already been stricken pursuant to Order No. PSC-03-0992-PHO-TP; thus, BellSouth's Motion as it pertains to DAN-19 is moot.


Based on the foregoing, it is

ORDERED by J. Terry Deason, as Prehearing Officer, that BellSouth Telecommunications, Inc.'s Motion to Strike David Nilson's Supplemental Testimony on page 1, lines 15-23 and page 2, lines 1-14, relating to Exhibit DAN-6, is denied. It is further,

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ORDERED that BellSouth Telecommunications, Inc.'s Motion to Strike David Nilson's Supplemental Testimony is granted with respect to Bates Stamped Nos. 798-840 of DAN-7.

By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 29th Day of August, 2003.

  
J. TERRY DEASON  
Commissioner and Prehearing Officer

( S E A L )

LHD

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) 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 or

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wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.