

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-03-0786-PCO-TP
ISSUED: July 2, 2003

ORDER GRANTING MOTION FOR LEAVE TO FILE
DIRECT TESTIMONY ONE DAY LATE

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 for leave to amend its petition along with an Amended Emergency Petition alleging BellSouth's violation of 47 U.S.C. 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. That same day, Order No. PSC-03-0718-PCO-TP, the Order Establishing Procedure, was issued. 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.

On June 20, 2003, BellSouth filed its Answer to Supra's Amended Petition and a Partial Motion to Dismiss. On June 24, 2003, Supra filed its response to the Motion to Dismiss. The Motion to Dismiss will be addressed at a future Commission Agenda Conference.

In its original petition Supra alleged that BellSouth's \$75 Cash Back Promotion violated Florida law and that BellSouth was

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allegedly using carrier-to-carrier information for marketing purposes in violation of 47 USC Section 222(b) and Section 364.01(4)(g), Florida Statutes. In its Amended complaint, Supra removed the allegations regarding the \$75 Cash Back Promotion.

On June 27, 2003, Supra filed a Motion for Leave to File Direct Testimony One Day Late. This Order addresses that Motion.

Rule 28-106.204(5), Florida Administrative Code, states that a motion for extension of time must show good cause. Supra states that after finding that Federal Express would not be able to meet the filing deadline, it attempted to hand-carry its direct testimony to our Clerk's Office. However, Supra's messenger arrived only minutes after the office had closed.

Supra indicates that although it did not meet the filing deadline at this Commission, BellSouth was timely served copies of the direct testimony. Therefore, BellSouth would not be unfairly prejudiced by granting Supra's motion. Rule 28-106.204(1), Florida Administrative Code, states that when time allows, other parties may file a response in opposition to the motion. This Commission has interpreted this as granting the Prehearing Officer discretion, when time is of the essence, to grant a party's motion without a response filed. This docket is scheduled for hearing at the end of August, so it appears that in order to keep to the established schedule, time is of the essence. BellSouth has indicated to staff counsel that it does not oppose the one-day extension of time.


Therefore, upon consideration, it appears reasonable and appropriate to extend the response date as requested by the Petitioner. Accordingly, the filing date for Supra's direct testimony is extended until June 28, 2003.

Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the Motion for Leave to File Direct Testimony One Day Late is hereby granted as set forth within the body of this Order.

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By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 2nd day of July, 2003.


J. TERRY DEASON
Commissioner and Prehearing Officer

(S E A L)

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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 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,

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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.