

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition to review and cancel, or in the alternative immediately suspend or postpone, BellSouth Telecommunications, Inc.'s PreferredPack Plan tariffs, by Supra Telecommunications and Information Systems, Inc.

DOCKET NO. 040353-TP
ORDER NO. PSC-04-0806-PCO-TP
ISSUED: August 19, 2004

ORDER GRANTING IN PART AND DENYING IN PART
MOTION FOR EXTENSION OF TIME
OR IN THE ALTERNATIVE TO SUSPEND DISCOVERY

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

On April 20, 2004, Supra Telecommunications & Information Systems, Inc. (Supra) filed its Petition to Review and Cancel BellSouth's Promotional Offering Tariffs offered in conjunction with its new flat rate service known as the Preferred Pack Plan. On May 17, 2004, BellSouth Telecommunications, Inc. (BellSouth) filed its Answer to the Supra's Petition. On May 27, 2004, I issued an Order to Initiate Expedited Discovery Procedure. On July 27, 2004, Supra filed a Motion for a Summary Final Order contending there exist no genuine issues of material fact.

On July 29, 2004, BellSouth filed a motion seeking to suspend any pending motions and discovery in the proceedings until after this Commission issues a Proposed Agency Action (PAA) or, in the alternative, grants BellSouth an extension of time until August 17, 2004 to file a response to Supra's Motion for Final Summary Order. In arguing for suspension of pending motions and discovery, BellSouth contends that upon issuance of the scheduled PAA Order by the Commission on the Complaint, the parties will be able to: (1) assess the Commission's proposed findings; (2) decide whether to protest such findings; and (3) then narrow the scope of discovery and issues. BellSouth argues, in the alternative, that it be allowed an extension of time to respond to Supra's Motion for Final Summary Order in order to effectively respond both to the Motion and Supra's Third Set of Requests for Admissions (Nos. 32 - 103), which were served on the same date it filed its Motion for Final Summary Order with the Commission.

On August 6, 2004, Supra filed its objections to BellSouth's Emergency Motion to Suspend Proceedings or Motion for Extension of Time stating there is no legal support for BellSouth's request to suspend proceedings. Supra contends further that an extension of time to file a response to Supra's Motion for Final Summary Order should not be granted because BellSouth has not substantively complied with the Commission's Order to Initiate Expedited Discovery Procedure, Order No. PSC-04-0549-PCO-TP, issued in this docket on May 27, 2004.

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Supra alleges that BellSouth has consistently delayed the filing of each response beyond the 10-day expedited period allowed.


Upon consideration, it appears reasonable and appropriate to extend the response due date as requested by Petitioner based on the time required to respond to Supra's additional requests for Admissions made simultaneously with the filing of the Motion. Accordingly, the filing date for BellSouth's response to Supra's Motion for Final Summary Order is extended until August 17, 2004. However, I find BellSouth's request for an immediate suspension of discovery is without merit and not appropriate at this time since, as a practical matter, the discovery process aids the Commission in its proposed findings. Accordingly, BellSouth shall file its responses on August 17, 2004. Therefore, BellSouth's Emergency Motion to Suspend Proceedings or Motion for Extension of Time is granted, in part, and denied, in part, as set forth herein.

Based on the foregoing, it is

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that BellSouth Telecommunications, Inc.'s Emergency Motion to Suspend Proceedings or Motion for Extension of Time is granted, in part, and denied, in part as set forth herein. It is further

ORDERED that BellSouth Telecommunications, Inc. shall have until August 17, 2004, to file its response to Supra's Motion for Final Summary Order.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 19th day of August, 2004.



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(SEAL)

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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, 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.