

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-04-0930-PCO-TP  
ISSUED: September 22, 2004

ORDER DENYING SUPRA'S MOTION TO STRIKE

On April 20, 2004, Supra Telecommunications & Information Systems, Inc. (Supra) filed its Petition to Review and Cancel BellSouth's Promotional Offering Tariffs (Petition) offered in conjunction with its new flat rate service known as the PreferredPack Plan. On May 17, 2004, BellSouth Telecommunications, Inc. (BellSouth) filed its Answer to Supra's Petition (Answer). On May 27, 2004, Order No. PSC-04-0549-PCO-TP, was issued to initiate an expedited discovery procedure.

On July 27, 2004, Supra filed its Motion for Summary Final Order requesting the Commission find, pursuant to undisputed facts and as a matter of law, that BellSouth's PreferredPack Plan Tariff (General Subscriber Service Tariff, A.3.4.6) (Tariff) violates Sections 364.08(2) and 364.051(5)(a)(2), Florida Statutes. On July 29, 2004, BellSouth filed an Emergency Motion to Suspend Proceedings or Motion for Extension of Time. On August 6, 2004, Supra filed its response. By Order No. PSC-04-0806-PCO-TP, issued August 19, 2004, BellSouth's motion was granted in part and denied in part, requiring BellSouth to file its response to Supra's motion and any outstanding discovery on August 16, 2004. BellSouth filed its response on August 16, 2004.

On August 24, 2004, Supra filed a Motion to Strike Portions of the BellSouth Response. On August 31, 2004, BellSouth filed an Opposition to Supra's Motion to Strike.

According to Supra, Rule 1.140(f), Florida Rules of Civil Procedure authorizes a party to move to strike certain matter "from any pleading at any time." However, neither motions nor responses in opposition thereto are "pleadings". See, Rule 1.100(a), Florida Rules of Civil Procedure. See also, Harris v. Lewis State Bank, 436 So. 2d 338, 340, n. 1 (Fla. 1<sup>st</sup> DCA 1983); Motzner v. Tanner, 561 So. 2d 1336 (Fla. 5<sup>th</sup> DCA 1990). See also, Order No. PSC-02-799-PCO-TP, issued June 12, 2002, in Docket 001305-TP. Therefore, Supra's Motion to Strike Portions of BellSouth's Opposition Response will not be considered.

Based on the foregoing, it is

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ORDERED by Commissioner Rudolph "Rudy" Bradley, Prehearing Officer, that Supra Telecommunications & Information Systems, Inc.'s Motion to Strike Portions of the BellSouth Response is hereby denied.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 22nd day of September, 2004.



RUDOLPH "RUDY" BRADLEY  
Commissioner and Prehearing Officer

(SEAL)

AJT

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

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remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.