

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-04-1215-PCO-TP  
ISSUED: December 8, 2004

ORDER ON JOINT MOTION FOR ABEYANCE

BY THE COMMISSION:

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 PreferredPack Plan. On May 17, 2004, BellSouth Telecommunications, Inc. (BellSouth) filed its Answer to Supra's Petition. 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 a Motion for a Summary Final Order contending there exist no genuine issues of material fact. BellSouth filed its response on September 24, 2004. Supra's Motion was denied by Order No. PSC-04-0975-PCO-TP, issued October 8, 2004.

On November 23, 2004, Supra and BellSouth filed their Joint Motion for Abeyance. The Joint Movants state that on or about October 26, 2004, Supra entered into a Purchase Agreement with Endeavor Capital Management LLC, David L. Struwas, and HIG Supra, Inc. Pursuant to Section 4.2(d) of the Final Purchase Agreement<sup>1</sup>, the parties request that this docket be held in

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<sup>1</sup> Section 4.2(d) of the Final Purchase Agreement states, in pertinent part:

(a) In connection with the FPSC hearing known as *In re: Petition of Supra Telecommunications and Information Systems, Inc. to Review and Cancel BellSouth's Promotional Offering Tariffs Offered in Conjunction with its New Flat Rate Service known as the Preferred Pack Plan*; FPSC; Docket No. 040353-TP (the "PreferredPack Claim"), BellSouth may, by written notice to Purchaser on or before 5:00 p.m. on Monday, November 16, 2005, elect, in its sole discretion, to keep the Preferred Pack Claim on the docket, or if BellSouth does not so elect, the Preferred Pack Claim will be assigned to the Company at the Effective Date and will be dismissed without prejudice immediately thereafter. If the Closing is extended past December 30, 2004, unless BellSouth has elected to keep the Preferred Pack Claim on the docket for trial on January 5, 2005, then the Company will take whatever action is appropriate to cause any proceedings in this litigation to be deferred until after the Effective Date (at which time it will be dismissed without prejudice for not less than 180 days). BellSouth will not assert or interpose a defense in any subsequent action alleging that it has been negatively impacted by the dismissal and re-filing of the Preferred Pack Claim. The parties agree that (i) they will execute any tolling agreement if necessary in connection with any statute of limitations, and (ii) all work product and other materials (such as deposition transcripts or discovery) will be available for use in any subsequent proceedings.

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abeyance until five (5) days after the Closing Date of the transaction contemplated by the Final Purchase Agreement. The parties assert that the Closing Date is anticipated to occur sometime in January, 2005. The parties request suspension of all obligations, deadlines, and scheduled events in this proceeding during the abeyance period including but not limited to the hearing scheduled for January 6, 2005.

Upon consideration, I find it reasonable and appropriate to grant the Joint Motion for Abeyance. Parties shall notify staff of the Closing Date of the Final Purchase Agreement once it has been established.

Based on the foregoing, it is,

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that Supra Telecommunications & Information Systems, Inc. and BellSouth Telecommunications, Inc.'s Amended Joint Motion for Abeyance is hereby granted.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 8th day of December, 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 remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.