

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Supra  
Telecommunications & Information  
Systems against BellSouth  
Telecommunications, Inc. for  
violation of the  
Telecommunications Act of 1996;  
petition for resolution of  
disputes as to implementation  
and interpretation, resale and  
collocation agreements; and  
petition for emergency relief.

DOCKET NO. 980119-TP  
ORDER NO. PSC-98-0605-PCO-TP  
ISSUED: April 30, 1998

ORDER DENYING SUPRA TELECOMMUNICATIONS & INFORMATION  
SYSTEMS' EMERGENCY MOTION REQUESTING PREHEARING OFFICER TO ISSUE  
REQUEST TO THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA TO  
ISSUE OUT-OF-STATE-SUBPOENAS

On January 23, 1998, Supra Telecommunications and Information Systems (Supra) filed a Complaint against BellSouth Telecommunications, Inc. (BellSouth) for alleged violations of the Telecommunications Act of 1996 (Act) and Petition for resolution of certain disputes between BellSouth and Supra regarding interpretation of the Interconnection, Resale, and Collocation Agreements between Supra and BellSouth (Petition). Supra also requested relief on an emergency basis. On February 16, 1998, BellSouth filed its Answer and Response to Supra's Petition. This matter has been set for hearing on April 30, 1998.

On April 27, 1998, Supra filed an Emergency Motion requesting that the Prehearing Officer issue an order requesting an Alabama Circuit Court to issue subpoenas on BellSouth employees compelling them to appear at the April 30, 1998 Hearing in Tallahassee. Supra asserts its entitlement to have several Alabama-based BellSouth employees appear at hearing in Tallahassee, Florida. Supra bases this assertion on its belief that the Commission, as a regulatory authority for BellSouth, is entitled to compel any BellSouth employee with relevant information to appear before it.

On April 27, 1998, BellSouth responded to Supra's motion contending that Supra's motion was an attempt to convert the

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Commission's subpoena power into a Florida long arm statute violative of constitutional due process protections. BellSouth notes that it is not opposed to producing employees that are party witnesses in the case. BellSouth also points out the fact that the non-Florida resident employees in question are not party witnesses to this case. BellSouth maintains that an employee must be an officer, director, or managing agent to be considered a party witness. BellSouth further notes that it has produced the non-resident employees for deposition and Supra has deposed those employees and is able to offer the deposition transcripts at hearing.

Supra maintains that the Commission is empowered to compel any employee of an entity that we regulate to appear before us, no matter where that employee may reside. Supra has not offered the Commission any legal authority upon which we can rely to reach such a decision. The analysis seems to turn on whether or not the non-resident employees can be considered party witnesses. BellSouth has cited the Commission to several cases that define employee "party witnesses" as those employees who are officers, directors, or managing agents. See, United Teachers Assoc. Insur. Co. V. Vanwinkle, 657 So.2d 1232 (Fla.3d DCA 1995); Fortune Insurance Co. v. Santelli, 612 So.2d 546 (Fla. 3d DCA 1993) Supra has not alleged that any of the non-resident employees are officers, directors or managing agents.

Supra asserts that we have issued subpoenas to out-of-state witnesses on previous occasions. The Commission has issued orders compelling out-of-state witnesses to appear for deposition at the deponent's locale. There is no record of the Commission ever compelling an out-of-state witness to appear at a hearing in Tallahassee, Florida. Therefore, I must deny Supra's "Motion Requesting Prehearing Officer to Issue Request to the Circuit Court of Jefferson County, Alabama, Issue Out-Of- State Subpoenas."

I note that although Supra has not alleged that any of the sought-after BellSouth employees should be considered party witnesses, it appears that Wayne Carnes can be considered a managing agent of BellSouth in his role as Account Manager. Thus, Mr. Carnes should be treated as a party witness.

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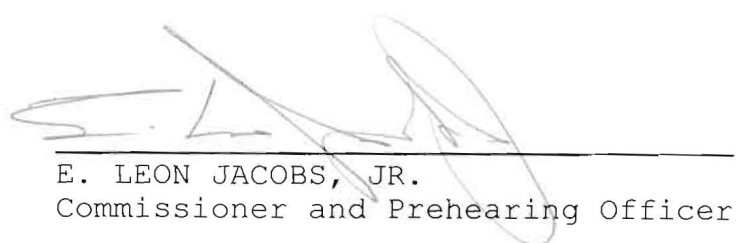
On April 24, 1998, BellSouth filed an Emergency Motion to Quash Witness Subpoenas. That motion is hereby rendered moot in light of this Order.

Based on the foregoing, it is therefore

ORDERED by Commissioner E. Leon Jacobs, Jr., as Prehearing Officer, that the Motion Requesting Prehearing Officer to Issue Request to the Circuit Court of Jefferson County, Alabama filed by Supra Telecommunications and Information Systems is denied. It is further

ORDERED that Wayne Carnes shall be considered a party witness for the purpose of this proceeding and BellSouth Telecommunications, Inc., is directed to produce Mr. Carnes for Hearing at the Public Service Commission in Tallahassee, Florida, on April 30, 1998 at 9:30 a.m.

By ORDER of Commissioner E. Leon Jacobs, Jr., as Prehearing Officer, this 30th Day of April, 1998.



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E. LEON JACOBS, JR.  
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 Records and Reporting, 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.