

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth
Telecommunications, Inc. for
arbitration of certain issues in
interconnection agreement with
Supra Telecommunications and
Information Systems, Inc.

DOCKET NO. 001305-TP
ORDER NO. PSC-01-1820-PCO-TP
ISSUED: September 10, 2001

ORDER ON SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.'S
MOTION TO COMPEL, REQUEST TO OVERRULE BELLSOUTH'S OBJECTIONS, AND
FOR A CONTINUANCE

On September 1, 2000, BellSouth Telecommunications, Inc. (BellSouth) filed a petition for arbitration of certain issues in an interconnection agreement with Supra Telecommunications and Information Systems, Inc. (Supra). Supra filed its response, and this matter was set for hearing. In an attempt to identify and clarify the issues in this docket, issue identification meetings were held on January 8, 2001, and January 23, 2001. At the conclusion of the January 23 meeting, the parties were asked by staff to prepare a list with the final wording of the issues as they understood them. BellSouth submitted such a list, but Supra did not, choosing instead to file a motion to dismiss the arbitration proceedings, which it filed on January 29, 2001. On February 6, 2001, BellSouth filed its response. In Order No. PSC-01-1180-FOF-TI, issued May 23, 2001, the Commission denied Supra's motion, but on its own motion ordered the parties to comply with the terms of their prior agreement by holding an Inter-company Review Board meeting. Such meeting was to be held within 14 days of the issuance of the Commission's order, and a report on the outcome of the meeting was to be filed with the Commission within 10 days after completion of the meeting. The parties were placed on notice that the meeting was to comply with Section 252(b)(5) of the Telecommunications Act of 1996 (Act).

Pursuant to the Commission's Order, the parties held meetings on May 29, 2001, June 4, 2001, and June 6, 2001. The parties then filed post-meeting reports with the Commission. Several of the original issues were withdrawn by the parties. These include the issues numbered 2, 3, 6, 8, 30, 36, 37, 39, 43, 50, 54, 56, 58, and 64.

DOCUMENT NUMBER-DATE

11249 SEP 10 2001

FPSC-COMMISSION CLERK

On June 28, 2001, Order No. PSC-01-1401-PCO-TP set forth the procedures to be followed in this docket. On July 13, 2001, Order No. PSC-01-1475-PCO-TP identified the issues to be addressed in this docket. Supra filed with this Commission a copy of its Second Request for Production of Documents to BellSouth, dated August 6, 2001, and received by us on August 7, 2001. On August 10, 2001, Supra then filed its First Set of Interrogatories upon BellSouth. On August 20, 2001, BellSouth filed its objections to Supra's First Set of Interrogatories. On August 23, 2001, BellSouth filed its objections to Supra's Second Request for Production of Documents. Also on that date, Supra filed a Motion to Compel and Overrule Objections to Supra's First Set of Interrogatories. On August 28, 2001, Supra filed a Motion to Compel Production of Documents Requested in its Second Request for Production, Overrule BellSouth's Objections and for a Continuance. On August 30, 2001, BellSouth filed an Opposition to Supra's Motion to Compel regarding Supra's First Set of Interrogatories as well as its responses to Supra's First Set of Interrogatories. BellSouth followed this on August 31, 2001, with its Opposition to Supra's Motion to Compel Responses to Request for Production of Documents and for Continuance. Supra's August 28, 2001, Motion to Compel Production of Documents Requested in its Second Request for Production, Overrule BellSouth's Objections and for a Continuance and BellSouth's August 31, 2001, Opposition to the August 28, 2001 Motion by Supra are addressed herein.

BellSouth claims that the Second Request for Production of Documents, allegedly sent out by Supra on August 6, 2001, were not received by BellSouth until they got a copy by fax on August 20, 2001. BellSouth then filed its objections on August 23, 2001. Our staff received a copy of the request on August 7, 2001, along with a letter of notification. The certificate of service was issued by Supra's attorney indicating that the items were sent to BellSouth on August 6, 2001. Also, Supra produced a FedEx letter confirming delivery to the office of Mike Twomey, counsel for BellSouth, on the morning of August 8, 2001. The letter indicates that on that date, an individual named B. Rhodes signed to accept the document on behalf of BellSouth. BellSouth challenges this delivery on the grounds that the sender's address was suspect, that they receive many packages per day, and that there is no way of knowing if what they received from Supra was the Second Request for Production. BellSouth does not challenge the authority of the person signing on

its behalf, nor is BellSouth able to identify a different document received from Supra on that date. Based on the totality of the circumstances, I find that BellSouth received Supra's Second Request for Production of Documents on August 8, 2001.

Having established BellSouth's receipt of service, BellSouth's objections to Supra's requests were due August 18, 2001. BellSouth did not submit its objections until August 23, 2001. As such, BellSouth's objections are untimely.

Further, BellSouth did not produce responses beyond its objections to Supra's First Request for Production of Documents. For this reason, I do not believe that Supra has exceeded its 150-request limit as laid out in the June 28, 2001, procedural order. It is apparent that Supra submitted questions in the second set of production requests which were identical to, or served to consolidate, requests submitted in the First Request for Production of Documents. It is clear that Supra treated the Second Request for Production as coming under the ambit of the procedural orders of June 28, 2001, and July 13, 2001. Since the first 150 requests were not responded to by BellSouth, I find that Supra's Second Request for Production of Documents does not exceed its 150-request limit as laid out in the June 28, 2001, procedural order.

Notwithstanding the lateness of BellSouth's objections and the finding that Supra has not exceeded its 150-request limit, I will limit Supra's right to seek the production of documents to requests which are not unduly burdensome or overly broad and which are calculated to lead to the discovery of admissible evidence. This docket is limited in its scope to the 56 issues presented by the parties in the petition for arbitration and the response thereto. The Second Request for Production, as formulated by Supra, delves into areas well outside the purview of this docket. Pursuant to Chapter 28-106.204, Florida Administrative Code, to effectuate the purpose of discovery, to prevent delay, and in the interest of justice and fairness, I have independently examined the Second Request for Production submitted by Supra. As a result of this examination, I make the following determinations regarding the relevancy to this docket of each request:

- Item 1. Relevant. BellSouth shall provide all documents that are identified in BellSouth's Responses to

Supra's 1st Set of Interrogatories which have not previously been provided to Supra by BellSouth.

- Item 2. As worded, most of the requests are overly broad and unduly burdensome for BellSouth to provide a comprehensive response. Notwithstanding this, BellSouth shall provide documents that are available on its interconnection website, including but not limited to, its technical specifications manual (TR 73600).
- Item 3. Irrelevant to the issues raised in this docket.
- Item 4.
 - a) Relevant. BellSouth shall provide the USOCs with rates.
 - b) Irrelevant to the issues raised in this docket.
 - c) This information is readily available in Docket No. 990649.
- Item 5. Irrelevant to any issue in this proceeding.
- Item 6. Irrelevant to any issue in this proceeding.
- Item 7. Irrelevant to Issue 13. BellSouth shall provide the requested documents relating to Issue 20.
- Item 8. Irrelevant to any issue in this proceeding.
- Item 9. Irrelevant to any issue in this proceeding.
- Item 10. Irrelevant to any issue in this proceeding.
- Item 11. Relevant to Issue 15. BellSouth shall provide the requested information.
- Item 12. Relevant to Issue 61. BellSouth shall provide the requested information.

- Item 13. Relevant to Issue 12. BellSouth shall provide the requested information.
- Item 14. Relevant to Issue 38. BellSouth shall provide the requested information.
- Item 15. Irrelevant to any issue in this proceeding.
- Item 16. Overly broad and burdensome.
- Item 17. Irrelevant to any issue in this proceeding.
- Item 18. BellSouth shall provide all documents regarding BellSouth's spectrum management standards.

For items deemed to be irrelevant, BellSouth shall not be compelled to respond. For items deemed relevant, or where BellSouth is directed to provide documentation, BellSouth shall provide such documentation within a week of the issuance of this order. In its motion to compel, Supra indicates that the documents requested were to be used to prepare for depositions scheduled for BellSouth's witnesses. Those depositions shall go forward as currently scheduled. However, if the documents provided by BellSouth responsive to this order create a need for Supra to take additional depositions of BellSouth personnel, then BellSouth will present such persons to be deposed by Supra on September 19th, 20th, and/or 21st, 2001.

The above schedule is achievable. The parties are encouraged to continue in their ongoing effort to reduce and narrow the issues in this proceeding. The information to be provided, along with that already submitted, should allow this Commission to fully address the issues at hand. The parties are cautioned that this docket will be strictly focused on the issues raised in the parties' petition for arbitration and response thereto, as well as the additional Issue A. As such, a continuance of this proceeding is unnecessary, and Supra's motion for a continuance is denied.

Based on the foregoing, it is

ORDERED that BellSouth's filing of objections to Supra Telecommunications and Information Systems, Inc.'s Second Request

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for Production of Documents to BellSouth Telecommunications, Inc., was untimely. It is further

ORDERED that Supra's Second Request for Production of Documents to BellSouth falls within the 150-request limit set forth in the June 28, 2001, procedural order. It is further

ORDERED that a portion of Supra's Second Request for Production of Documents, as submitted, goes beyond the scope of the issues identified by the July 13, 2001, order in this docket, are unduly burdensome, or are overly broad. Such requests have been identified within the body of this Order and require no response from BellSouth. It is further

ORDERED that BellSouth shall make such documents available to Supra as indicated within the body of this Order, within one week of the issuance of this Order. It is further

ORDERED that BellSouth shall make its personnel available for depositions by Supra as outlined in the body of this Order. It is further

ORDERED that Supra's Motion for a Continuance is denied.

By ORDER of Commissioner Michael A. Palecki, as Prehearing Officer, this 10th Day of September, 2001.



MICHAEL A. PALECKI
Commissioner and Prehearing Officer

(S E A L)

WDK

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, 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 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.