

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-01-1944-PCO-TP
ISSUED: September 26, 2001

ORDER ON SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.'S
MOTION TO STAY BELL SOUTH'S REQUEST FOR ARBITRATION OF
INTERCONNECTION AGREEMENT PENDING COMPLIANCE WITH FPSC ORDERS FOR
DISCOVERY

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). On October 18, 2000, Supra filed its response, and this matter was set for hearing. Order No. PSC-01-1401-PCO-TP, issued June 28, 2001, and Order No. PSC-01-1475-PCO-TP, issued July 13, 2001, established the procedures and controlling dates for this docket.

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. On August 10, 2001, Supra served its First Set of Interrogatories upon BellSouth. In response, on August 20, 2001, BellSouth filed its Objections to Supra's First Set of Interrogatories. On August 23, 2001, Supra filed a Motion to Compel and Overrule Objections to Supra's First Set of Interrogatories. 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. Thereafter, on September 6, 2001, Supra filed its Motion to Compel More Responsive Answers to Supra's First Set of Interrogatories.

By Order No. PSC-01-1820-PCO-TP, issued September 10, 2001, the prehearing officer ruled on the August 23, 2001, Motion to Compel, wherein the prehearing officer directed BellSouth to produce certain documents to Supra by September 17, 2001. If the

DOCUMENT NUMBER-DATE

12124 SEP 26 2001

FPSC-01-1820-PCO-TP CLERK

documents provided by BellSouth in response to the order created a need for Supra to take additional depositions of BellSouth personnel, then BellSouth was directed to make such persons available for deposition by Supra on September 19th, 20th, and/or 21st, 2001.

Thereafter, by Order No. PSC-01-1846-PCO-TP, issued September 13, 2001, the prehearing officer ruled on Supra's September 6, 2001, Motion to Compel More Responsive Answers. In that Order, BellSouth was directed to provide additional responses and information to Supra by Tuesday, September 18, 2001. If the information received from BellSouth facilitated the need for additional discovery by Supra, questions were to be posed to BellSouth in the previously scheduled depositions, or the depositions which were to be scheduled pursuant to Order No. PSC-01-1820-PCO-TP. In light of these rulings, the prehearing officer also extended the deadline for the completion of discovery until Monday, September 24, 2001.

On September 24, 2001, Supra filed a Motion to Stay BellSouth's Request for Arbitration of Interconnection Agreement Pending Compliance with FPSC Orders for Discovery. While styled as a request for a "stay," Supra actually appears to request a continuance of this proceeding. Therefore, the request has been treated as such.

In its Motion, Supra contends that, in response to Order No. PSC-01-1820-PCO-TP, BellSouth produced two boxes of voluminous documents to Supra on the evening of September 17, 2001. The following evening, in response to Order No. PSC-01-1846-PCO-TP, BellSouth provided additional documents, as well as answers to Supra's First Set of interrogatories. Supra maintains that at the time this discovery was provided, it was in the process of deposing BellSouth's witnesses. The company contends that, as a result, it was unable to review the material prior to the depositions and thus, was unable to depose the BellSouth witnesses regarding the newly provided information. Supra further argues that BellSouth failed to provide certain documents that it was directed to provide, including any USOCs for UNE combinations, the LON User Guide, and training manuals. In addition, Supra argues that much of the information provided appears either non-responsive or inconsistent with previously provided information. For these

reasons, Supra argues that the proceeding should be continued until BellSouth fully complies with the Orders on the Motions to Compel and until Supra has had the opportunity to depose BellSouth employees regarding the information provided in response to the prehearing officer's Orders.

On September 26, 2001, BellSouth filed its Opposition to Supra's Motion to Stay. Therein, BellSouth argues that Supra had the opportunity to depose BellSouth's witnesses regarding the information provided as outlined in the prehearing officer's Orders on Supra's Motions to Compel. BellSouth emphasizes that Supra did not seek additional depositions of BellSouth's witnesses as allowed by the prehearing officer. Furthermore, BellSouth argues that it has provided information in accordance with the prehearing officer's decisions to the extent that there is such information in existence. As for the items that Supra claims BellSouth did not provide at all, BellSouth notes that there are no training manuals responsive to Supra's Request for Production of Documents No. 7. At the beginning of the hearing on the morning of September 26, 2001, counsel for BellSouth noted that it had confirmed that BellSouth had not provided information responsive to Request for Production of Documents No. 12, but upon discovering this error, it was in the process of obtaining the proper documentation, which would be provided to Supra by the end of the morning. In addition, BellSouth notes that Supra failed to contact counsel for BellSouth regarding these perceived inadequacies in BellSouth's responses, and that it believes that Supra's Motion for Stay is simply a delay tactic.

I have thoroughly reviewed the pleadings, the prehearing officer's Orders on Supra's Motions to Compel, and the discovery underlying Supra's request for continuance of this hearing. I emphasize that the prehearing officer's Orders clearly delineated the discovery to be produced, as well as the deadlines by which the information was to be produced. The prehearing officer's Orders also extended the time for discovery and directed BellSouth to make its witnesses available for additional depositions if Supra determined that such depositions were necessary. Supra did not seek reconsideration of either Order on its Motions to Compel, nor did it notice any of BellSouth's witnesses for additional depositions regarding the information provided on September 17 and 18, 2001. While I acknowledge Supra's concerns regarding its

ORDER NO. PSC-01-1944-PCO-TP

DOCKET NO. 001305-TP

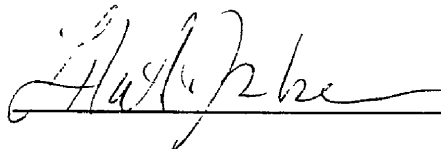
PAGE 4

opportunity to review the information provided on September 17 and 18, 2001, I also note that the discovery at issue was served on BellSouth only slightly more than a month prior to this hearing. I also note that many of the concerns raised by Supra appear to be issues that can be addressed on cross-examination of BellSouth's witnesses during the hearing. To that end, I intend to allow Supra some flexibility in its cross-examination of BellSouth's witnesses to the extent that it has relevant questions that follow-up and/or clarify the information provided by BellSouth. Supra has not, however, identified a basis for delaying the hearing in this proceeding. As such, Supra's Motion to Stay is hereby denied.

It is, therefore

ORDERED by Commissioner Lila A. Jaber, as Presiding Officer, that Supra Telecommunications and Information Systems, Inc.'s Motion to Stay BellSouth's Request for Arbitration of Interconnection Agreement Pending Compliance with FPSC Orders for Discovery is denied.

By ORDER of Commissioner Lila A. Jaber, as Presiding Officer, this 26th Day of September, 2001.



LILA A. JABER
Commissioner and Presiding Officer

(S E A L)

BK

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.