

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration concerning complaint of BellSouth Telecommunications, Inc. against Supra Telecommunications and Information Systems, Inc. for resolution of billing disputes.

DOCKET NO. 001097-TP
ORDER NO. PSC-02-0274-PCO-TP
ISSUED: March 1, 2002

ORDER ON SUPRA'S MOTION TO COMPEL AND OVERRULE
OBJECTIONS TO ITS FIRST SET OF INTERROGATORIES

BY THE COMMISSION:

On August 9, 2000, BellSouth Telecommunications, Inc. (BellSouth) filed a complaint against Supra Telecommunications and Information Systems, Inc. (Supra), alleging that Supra has violated Attachment 6, Section 13 of their present agreement by refusing to pay non-disputed sums. By Order No. PSC-00-2250-FOF-TP, issued November 28, 2000, Supra's Motion to Dismiss Complaint or, in the Alternative, Stay Proceedings and/or Compel Arbitration was granted in part and denied in part. In the Order, we retained jurisdiction over all disputes arising out of the original Agreement between the two parties, entered into on June 1, 1997. By Order No. PSC-02-0143-PCO-TP, issued January 31, 2002 (Order Setting Matter For Rehearing and Establishing Procedure), the prehearing conference, hearing, and other key activities dates were set forth for the hearing process in this case. This matter is scheduled for hearing on April 4, 2002.

On February 15, 2002, Supra filed a Motion to Compel and Overrule Objections to Supra's First Set of Interrogatories (Motion) to BellSouth. On February 20, 2002, BellSouth filed its responses to Supra's First Set of Interrogatories. However, BellSouth's responses to Interrogatories 1 and 2 restate their objection to the questions. On February 22, 2002, BellSouth filed its Opposition to Supra's Motion to Compel and Overrule Objections to Supra's First Set of Interrogatories (Response).

DOCUMENT NUMBER-DATE

02404 MAR-18

FPSC-COMMISSION CLERK

Motion to Compel

In support of its Motion, Supra asserts that the interrogatories at issue are relevant to the issues in this cause and are generally reasonably calculated to lead to the discovery of admissible evidence concerning the issues in this proceeding in accordance with Rule 1.280(b)(1), Florida Rules of Civil Procedure. Supra states that the discovery requests are well within the proceeding's scope and are reasonably calculated to lead to admissible evidence pertaining to the specific issues listed in Order No. PSC-02-0143-PCO-TP, Order Setting Matter For Rehearing and Establishing Procedure. The interrogatories at issue are restated below:

Interrogatory No. 1: Do you contend that between June 1, 1997 to October 5, 1999, BellSouth provided Supra with the ability to place orders for Unbundled Network Elements and/or Unbundled Network Element Combinations?

If yes, please detail the manner in which such orders were to be placed, and when BellSouth provided such instructions to Supra. In responding to this Interrogatory, please identify each document, and cite to the specific provisions contained therein (if any), that BellSouth is relying upon in support of its answer.

Interrogatory No. 2: If Supra had placed orders for UNES during the time period between June 1, 1997 to October 5, 1999, would BellSouth have been entitled to charge Supra for the charges set forth below, and if you answer yes, please set forth the amount that BellSouth believes it is entitled to collect for each charge, any and all formulas or calculations used to derive said charge and identify each document, and cite to the specific provisions contained therein (if any), that BellSouth is relying upon in support of its answer:

- a.) End User Common Line Charges
- b.) Charges in service, unauthorized local service changes and reconnections
- c.) Secondary service charges.

Supra argues that these Interrogatories go to the heart of Issue 2 through 4 as set forth in the Order Setting Matter For Rehearing and Establishing Procedure. Supra contends that BellSouth is refusing to respond to its interrogatories because the June 1997 BellSouth/Supra Agreement is the only agreement relevant to this matter, which Supra contends is an assertion is without merit. Supra contends that the determining factors as to what is discoverable are the Issues to be heard, and those issues as framed refer to the BellSouth/Supra interconnection and resale agreements. Supra argues that the very way in which the issues are framed makes it clear that the June 1997 Resale Agreement is not the only relevant agreement at issue.

Supra asserts that Issues 2 through 4 relate to whether or not BellSouth billed Supra correctly according to the BellSouth/Supra interconnection and resale agreements. Supra argues that whether BellSouth had the ability to bill Supra for UNES or UNE Combinations, or whether Supra had the right to place such orders is an issue which will determine whether Supra was billed correctly. Supra also contends that BellSouth's reliance on Orders Nos. PSC-00-2250-FOF-TP and PSC-01-1585-FOF-TP is misplaced and disingenuous since the Commission did not consider the applicability of the Supra/BellSouth Interconnection Agreement in issuing either order. Supra argues that BellSouth's refusal to provide such information makes no sense and raises a red flag as to the real reason behind their failure to divulge the requested material. Finally, Supra concludes that the information sought by the interrogatories is not only relevant but is necessary to support its claims as it relates to this proceeding.

BellSouth's Response

In its Response, BellSouth argues that between 1997 and 1999, four different agreements controlled the contractual relationship between BellSouth and Supra: (1) the June 1997 Resale Agreement; (2) the June 1997 Interconnection Agreement; (3) the June 1997 Collocation Agreement; and (4) the 1997 AT&T/BellSouth Agreement adopted by Supra on October 5, 1999. BellSouth contends that it filed its complaint against Supra for violation of the AT&T/BellSouth Agreement and the 1997 Resale Agreement for failing to pay the non-disputed amount. BellSouth states that in Order No. PSC-00-2250-FOF-TP, the Commission found that it had exclusive

jurisdiction over billing disputes arising under the Resale Agreement, but no jurisdiction over any billing disputes arising under the AT&T/BellSouth Agreement. BellSouth asserts that the Commission held that the only dispute remaining at the Commission was BellSouth's billing claims arising prior to October 5, 1999, under the Resale Agreement. BellSouth asserts that the scope of the issues set forth in this proceeding were defined by the Commission in Orders Nos. PSC-00-2250-FOF-TP (Order on Motion to Dismiss), and PSC-01-0493-FOF-TP (Order Denying Motion for Reconsideration or Clarification of Order on Motion to Dismiss). BellSouth argues that these Orders limit the scope of this proceeding to billing disputes arising under the 1997 Resale Agreement. BellSouth cites to the Final Order on Complaint, Order No. PSC-01-1585-FOF-TP, issued July 31, 2001, to support its view.

BellSouth argues that it objected to Interrogatories 1 and 2 on the grounds that they were irrelevant to the instant proceeding because they dealt solely with Supra's ability or inability to order UNEs or UNE Combinations prior to October 5, 1999 and the rates for certain charges if Supra had order UNEs or UNE Combinations. BellSouth argues that Orders Nos. PSC-00-2250-FOF-TP and PSC-01-1585-FOF-TP limit the scope of this proceeding to the 1997 Resale Agreement. BellSouth contends that, accordingly, whether or not Supra had the ability to order UNEs or UNE combinations and/or what the charges for said UNE orders were prior to October 5, 1999, the date which Supra adopted the AT&T/BellSouth Agreement, is irrelevant to this complaint proceeding.

BellSouth asserts that Supra's argument that the issues include the BellSouth/Supra interconnection and resale agreements somehow trump the Commission's explicit orders stating that only agreement at issue is the Resale Agreement should be summarily rejected. BellSouth contends that Commission has made it clear that this proceeding only addresses BellSouth's billing claims arising under the 1997 Resale Agreement. BellSouth argues that neither the AT&T Agreement, the Interconnection Agreement, nor any other agreement is relevant to this determination.

BellSouth further contends that Supra's argument that its ability to order UNEs or UNE combinations is relevant to determine if BellSouth properly charged Supra should be rejected. BellSouth argues that whether or not Supra could order UNEs or UNE

combinations and the corresponding rates and charges for said orders are matters clearly not relevant to whether BellSouth properly billed and Supra improperly failed to pay for resold services received pursuant to this resale agreement.

BellSouth also asserts that Supra incorrectly states that the requested information is relevant to Issue 1: "Should the rates and charges contained (or not contained) in the 1997 AT&T/BellSouth Agreement apply to the BellSouth bills at issue in this Docket?" BellSouth contends that this issue has nothing to do with whether or not Supra was allowed to order UNES or UNE combinations and the corresponding rates and charges; rather, the issue simply revolves around whether the rates and charges set forth in the AT&T/BellSouth Agreement should apply to Supra's resale bills arising under the 1997 Resale Agreement. BellSouth concludes that nothing in this issue opens the door for Supra to expand the scope of this proceeding from resale bills to "fictitious" and "hypothetical" UNE bills.

BellSouth concludes that Interrogatories 1 and 2 are totally irrelevant to the limited issues set forth in this complaint proceeding. BellSouth argues that whether or not Supra could order UNES or UNE combinations and the corresponding rates and charges for said orders has nothing to do with BellSouth's billing and Supra's failure to pay for resold service provided pursuant to the 1997 Resale Agreement; and therefore, Supra's Motion should be denied.

Decision

BellSouth argues that the requested information is beyond the scope of this proceeding and, therefore, not properly discoverable. This argument does not consider the standard of review regarding a discovery request. Rule 1.280(b)(1), Rules of Civil Procedure, states that "[i]t is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Supra's Interrogatories 1 and 2 appear to be reasonably calculated to lead to the discovery of admissible evidence. As such, Supra's Motion to Compel and Overrule Objections to Supra's First Set of Interrogatories is hereby granted.


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Based on the foregoing, it is

ORDERED by Chairman Lila A. Jaber, as Prehearing Officer, that Supra Telecommunications and Information Systems, Inc.'s Motion to Compel and Overrule Objections to Supra's First Set of Interrogatories is hereby granted. It is further

ORDERED that BellSouth Telecommunications, Inc. shall provide responses to Supra Telecommunications and Information Systems, Inc.'s Interrogatories 1 and 2 by March 13, 2002.

By ORDER of Chairman Lila A. Jaber, as Prehearing Officer, this 1st day of March, 2002.



LILA A. JABER
Chairman and Prehearing Officer

(S E A L)

PAC

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.