

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-02-0700-PCO-TP
ISSUED: May 23, 2002

ORDER ON EMERGENCY MOTION FOR STAY AND
NOTIFICATION OF EXERCISE OF RIGHTS
UNDER RULE 25-22.006(10)

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. An administrative hearing was held on September 26-27, 2001. Additional background regarding this proceeding is more fully set forth in Order No. PSC-02-0464-PCO-TP.

On April 1, 2002, Supra's Chairman and CEO, Olukayode A. Ramos, sent a letter, with attached exhibits (Document No. 04493-02 and cross-referenced Documents Nos. 03731-02 and 03690-02), to this office and copied the other Commissioners, the docket file, the General Counsel's office, the State Attorney's office, and BellSouth's attorney.

On April 23, 2002, BellSouth filed a Request for Specified Confidential Classification for the letter. On April 24, 2002, BellSouth filed an Amended Request for Confidential Classification regarding this same information to correct a typographical error in its initial Request. On May 1, 2002, Supra filed an Objection to BellSouth's Request.

In its Request, BellSouth argued that the information in the letter pertains to commercial arbitration proceedings between the two parties, which BellSouth contended the parties are contractually obligated to keep confidential. Because the parties' contract required that the information be kept confidential, BellSouth maintained this information must be protected pursuant to Section 364.183, Florida Statutes.

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By Order No. PSC-02-0663-CFO-TP, issued May 15, 2002, BellSouth's request for confidential treatment for the information in the April 1, 2002, letter was denied, because the information had already been publicly disclosed, and such disclosure was not made pursuant to ". . . a statutory provision, an order of a court or administrative body, or private agreement," as allowed by Section 364.183, Florida Statutes. Order No. PSC-02-0663-CFO-TP at p. 3.

On May 16, 2002, BellSouth filed an Emergency Motion for Stay Pending Reconsideration by Panel and/or Judicial Review of Order No. PSC-02-0663-CFO-TP and Notification of Exercise of Rights Under Rule 25-22.006(10), Florida Administrative Code. Therein, BellSouth argues that pursuant to Rule 25-22.061(2), Florida Administrative Code, it is entitled to a stay of a Commission order if the Commission determines that: 1) the petitioner will likely prevail on appeal; 2) the petitioner has demonstrated that he will likely suffer irreparable harm if the stay is not granted; and 3) that the delay will not cause substantial harm or be contrary to the public interest. BellSouth believes that it can meet each of the criterion of this rule.

BellSouth argues that the parties were contractually bound to keep this information confidential and that the same information had previously been granted confidential treatment by a previous Order. BellSouth also maintains that failure to grant confidential treatment directly violates an order of the Federal District Court of the Southern District of Florida. BellSouth adds that it does not believe that the contents of the letter have been publicly disclosed. Therefore, BellSouth argues it is likely to prevail on appeal.

BellSouth also believes that it will be irreparably harmed if the information is disclosed by failure to stay Order No. PSC-02-0663-CFO-TP, because the information will certainly become public at that point. BellSouth maintains that the courts have consistently held that nonfinal orders requiring the release of confidential or privileged documents are reviewable because the release of the information could constitute irreparable harm that

cannot be remedied through the appellate process.¹ BellSouth notes that our own Rule 25-22.006(10), Florida Administrative Code, acknowledges that irreparable harm that may occur as a result of the release of confidential information.

In addition, BellSouth argues that a stay of Order No. PSC-02-0663-CFO-TP will not cause substantial harm or be contrary to the public interest, because it does not give anyone affirmative relief. Instead, it simply denies BellSouth's request for confidential treatment of certain information.

Finally, BellSouth asks that the Commission acknowledge that the information will continue to be treated as confidential pending judicial review of Order No. PSC-02-0663-CFO-TP in accordance with Rule 25-22.006(10), Florida Administrative Code.

Rule 25-22.006(10), Florida Administrative Code, provides:

Judicial Review. When the Commission denies a request for confidential classification, the material will be kept confidential until the time for filing an appeal has expired. The utility or other person may request continued confidential treatment until judicial review is complete. The request shall be in writing and filed with the Division of the Commission Clerk and Administrative Services. The material will thereafter receive confidential treatment through completion of judicial review.

BellSouth's May 16, 2002, Notification to this Commission of its intent to exercise its rights under this Rule meets the requirements set forth in the Rule. Therefore, the material for which confidential treatment was denied by Order No. PSC-02-0663-CFO-TP shall continue to receive confidential treatment in accordance with Rule 25-22.006(10), Florida Administrative Code, through completion of judicial review. As such, BellSouth's

¹Citing Prudential Ins. Co. of Am. v. Florida Dept. Ins., 694 So. 2d 772, 773 (Fla. 2nd DCA 1997); Florida Cypress Gardens, Inc. v. Murphy, 471 So. 2d 203 (Fla. 2nd DCA 1985);, and Strasser v. Yalamanchi, 669 So. 2d 1142, 1145 (Fla. 4th DCA 1996).

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request for a stay of Order No. PSC-02-0663-CFO-TP is rendered moot by operation of the Rule.

Based on the foregoing, it is therefore

ORDERED by Commissioner Michael A. Palecki, as Prehearing Officer, that BellSouth Telecommunications, Inc.'s Notification of Exercise of Rights Under Rule 25-22.006(10), Florida Administrative Code, is acknowledged as set forth in the body of this Order. It is further

ORDERED that the Emergency Motion for Stay Pending Reconsideration by Panel and/or Judicial Review of Order No. PSC-02-0663-CFO-TP is rendered moot by operation of Rule 25-22.006(10), Florida Administrative Code. It is further

ORDERED that the material denied confidentiality by Order No. PSC-02-0663-CFO-TP shall retain confidential status through completion of judicial review.

By ORDER of Commissioner Michael A. Palecki, as Prehearing Officer, this 23rd Day of May, 2002.



MICHAEL A. PALECKI
Commissioner and Prehearing Officer

(S E A L)

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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.