

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Emergency petition for expedited review and cancellation of BellSouth Telecommunications, Inc.'s \$75 cash back promotion tariffs (T-03-0132) and for investigation into BellSouth's promotional pricing and marketing practices, by Supra Telecommunications and Information Systems, Inc.

DOCKET NO. 030349-TP
ORDER NO. PSC-03-0671-PCO-TP
ISSUED: June 2, 2003

ORDER DENYING REQUEST FOR EXPEDITED REVIEW

On April 18, 2003, Supra Telecommunications and Information Systems, Inc. (Supra) filed an Emergency Petition for Expedited Review and Cancellation of BellSouth Telecommunications Inc.'s (BellSouth) \$75 Cash Back Promotion Tariffs (T-030132) and Investigation into BellSouth's Promotional Pricing and Marketing Practices. In its petition, Supra requests immediate review and cancellation, or alternatively, suspension of the \$75 Cash Back Promotion tariff (Cash Back Tariff), and any similar tariffs filed by BellSouth. Supra further requests that a comprehensive investigation be conducted regarding BellSouth's promotional pricing and marketing practices pursuant to Section 364.3381(3), Florida Statutes. On May 8, 2003 BellSouth filed its Answer to Supra's Petition. BellSouth did not address Supra's request for expedited review.

In its petition, Supra states that expedited review is necessary to prevent Supra and other ALECs from suffering irreparable harm caused by the Cash Back Tariff. However, Supra does not explain the irreparable harm they will suffer other than to allege generally that the Cash Back Tariff undercuts the prices Supra and most ALECs are able to offer and still remain viable, and Supra has and will continue to lose market share. The tariff, Supra states "cannot be adequately compensated by damages or readily measured by pecuniary standards." Supra does not support these allegations with data showing the percentage of market share they will lose through the Cash Back tariff.

DOCUMENT NUMBER-DATE

04875 JUN-28

FPSC-COMMISSION CLERK

Decision

Although our rules do not specifically address expedited review of petitions, procedures for the expedited resolution of complaints arising from interconnection agreements under Section 252 of the Act were set forth Order No. PSC-02-0935-PCO-TL, issued July 12, 2002, citing to a June 10, 2001, Commission memorandum from the Director of Legal Services to the Chairman. Three criteria were set forth for expeditious processing of interconnection agreement complaints:

1. Complaint limited to three issues (no subparts).
2. Complaint limited to issues of contract interpretation
3. Parties do not dispute the actions each took (rightly or wrongly) under the contract.

Since this docket is not a complaint involving an interconnection agreement limited to issues of contract interpretation, it is beyond the scope of the expedited process outlined in the memorandum. However, applying the standard set forth in the Order to this docket would result in rejection of any expedited process. This docket involves three or more complicated issues, which are not solely legal disputes and in which the parties dispute factual and legal issues. Further, Supra has not alleged any emergency basis on which to evaluate the necessity of having an expedited schedule.


Although the request for expedited review is denied, the hearing has been set for August 29, 2003, to facilitate resolution of the issues in this docket as rapidly as possible.

Based on the foregoing, it is

ORDERED by J. Terry Deason, as Prehearing Officer, that Supra Telecommunications and Information Systems, Inc.'s Emergency Petition for Expedited Review of BellSouth Telecommunications Inc.'s \$75 Cash Back Promotion Tariffs (T-030132) is denied.

ORDER NO. PSC-03-0671-PCO-TP
DOCKET NO. 030349-TP
PAGE 3

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 2nd day of June, 2003.



J. TERRY DEASON
Commissioner and Prehearing Officer

(S E A L)

LHD

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; or (2) 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

ORDER NO. PSC-03-0671-PCO-TP

DOCKET NO. 030349-TP

PAGE 4

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.