

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Supra
Telecommunications and
Information Systems, Inc.
against BellSouth
Telecommunications, Inc.
regarding BellSouth's use of
carrier to carrier information.

DOCKET NO. 030349-TP
ORDER NO. PSC-03-0763-PCO-TP
ISSUED: June 25, 2003

ORDER DENYING MOTION FOR CONTINUANCE AND/OR RESCHEDULING

On April 18, 2003, Supra Telecommunications and Information Systems, Inc. (Supra) filed its Emergency Petition for Expedited Review of BellSouth Telecommunications, Inc.'s (BellSouth) \$75 Cash Back Promotion and Investigation into BellSouth's Pricing and Marketing Practices. On May 5, 2003, BellSouth filed its Answer to Supra's Emergency Petition. On June 9, 2003, Supra filed an Amended Emergency Petition alleging BellSouth's violation of 47 United States Code Section 222 and Florida Public Service Commission policies regarding the use of wholesale information in retail marketing. On June 12, 2003, BellSouth filed a Motion for Continuance and/or Rescheduling to extend the date of the hearing. On June 17, 2003, by Order No. PSC-03-0721-PCO-TP, Supra was granted leave to amend its petition. Also on June 17, 2003, by Order No. PSC-03-0718-PCO-TP, the Order Establishing Procedure was issued. On June 18, 2003, Supra filed its response to BellSouth's Motion for Continuance and/or Rescheduling. This Order addresses the Motion for Continuance and/or Rescheduling and the response.

Motion for Continuance and/or Rescheduling

In support of its Motion for Continuance and/or Rescheduling, BellSouth states its primary counsel, Mr. Kip Edenfield, as well as its primary witness, Mr. John Ruscilli, have a preexisting conflict on August 29, 2003, the date set for the hearing in this docket. Mr. Ruscilli and Mr. Edenfield, are, according to BellSouth, participating in the Section 252 arbitration proceeding between BellSouth and ITC^DeltaCom Communications, Inc. before the Tennessee Regulatory Authority (TRA).

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BellSouth states that the defense of its case would be jeopardized and prejudiced without the ability of BellSouth's selected witness and trial attorney participating in this matter because of a preexisting conflict before another regulatory agency.

Further, BellSouth contends that the Commission's calendar is fluid, and additional dates may become available. BellSouth cites Docket No. 981834-TP (Generic Collocation Docket) as an example of where the Commission has found additional dates to hold a hearing. On June 3, 2003, the parties in that docket agreed, and the Commission approved, bifurcation of the August hearing, which resulted in the selection of two days in late October or early November 2003 for the hearing of certain issues. BellSouth contends that the selection of these additional hearing dates in October/November was made after BellSouth understood that the next available hearing date, other than August 29, 2003 was in February of 2004. Therefore, BellSouth reasons, an earlier date than February 2004 may become available for this docket.

Further, BellSouth contends, Supra would not be prejudiced by a rescheduled hearing date because I, as Prehearing Officer, have already rejected Supra's request for expedited treatment, finding that Supra did not "allege any emergency basis on which to evaluate the necessity of having an expedited schedule." In its amended complaint, BellSouth states, Supra does not even request expedited review.

In addition, BellSouth states that although it has other attorneys and witnesses available, it believes it should have the right to present its case with the witnesses and lawyers of its choosing, especially since it has no control over the Commission calendar or the fact that its selected attorney and witness have a preexisting conflict with another regulatory agency. BellSouth states it should not be substantively prejudiced or penalized as a result of the Commission's compacted trial calendar.

BellSouth goes on to state that Mr. Ruscilli is only unavailable, aside from the week in August, from September 3-5, 2003 as a witness in the BellSouth/DeltaCom Section 252 arbitration proceeding before this Commission.

Response

In its response, Supra states that it has no objection to BellSouth's motion, and would not object to a hearing date in October, November or December 2003. Supra believes only one half day will be necessary.

However, Supra goes on to argue that BellSouth would not be prejudiced if a continuance were not granted. BellSouth, Supra states, is a multi-billion dollar company with operations in nine states. Supra contends that BellSouth has the resources to supply witnesses and attorneys to defend their actions, on the schedule determined by this Commission.

Conclusion

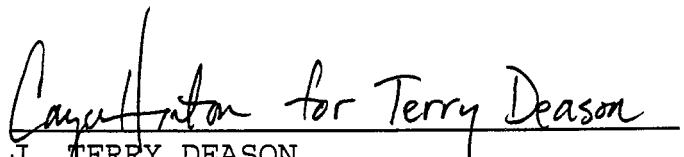
This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code. Rule 28-106.211 provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case. Any change in this hearing schedule will impact this Commission's calendar and our staff's work load. BellSouth has not demonstrated that the interests of judicial economy will be best served by granting a continuance. Accordingly, the Motion for Continuance and/or Rescheduling is denied.

Based on the foregoing it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that BellSouth Telecommunications, Inc.'s Motion for Continuance and/or Rescheduling is hereby denied.

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By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 25th day of June, 2003.


J. TERRY DEASON
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; 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 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,

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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.