

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition to review and cancel, or in the alternative immediately suspend or postpone, BellSouth Telecommunications, Inc.'s PreferredPack Plan tariffs, by Supra Telecommunications and Information Systems, Inc.

DOCKET NO. 040353-TP  
 ORDER NO. PSC-04-1002-PCO-TP  
 ISSUED: October 15, 2004

**ORDER GRANTING SUPRA'S MOTION TO COMPEL**

**I. Case Background**

On April 20, 2004, Supra Telecommunications & Information Systems, Inc. (Supra) filed its Petition to Review and Cancel BellSouth's Promotional Offering Tariffs (Petition) offered in conjunction with its new flat rate service known as the PreferredPack Plan. On May 17, 2004, BellSouth Telecommunications, Inc. (BellSouth) filed its Answer to Supra's Petition (Answer). On May 27, 2004, Order No. PSC-04-0549-PCO-TP, was issued to initiate an expedited discovery procedure.

On September 17, 2004, Supra filed its Motion to Compel BellSouth to respond to Supra's Request for Production No. 18 (Motion). On September 24, 2004, BellSouth filed its response.

**II. Standard of Review**

Rule 1.280(b)(1), Florida Rules of Civil Procedure, states that:

. . . Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party. . . . It 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.

This standard is not, however, without limit. Relevancy for purposes of discovery is broader than relevancy and admissibility for purposes of a hearing. Discovery may be permitted on information that would be inadmissible at trial, if it would likely lead to the discovery of relevant, admissible evidence. Also see Allstate Insurance Co. v. Langston, 655 So.2d 91 (Fla. 1995). Furthermore, objections that discovery is "burdensome" or "overly broad" must be supported by a substantive demonstration as to why the discovery is objectionable. First City Developments of Florida, Inc. v. Hallmark of Hollywood Condominium Ass'n, Inc., 545 So. 2d 502, 503 (Fla. 4<sup>th</sup> DCA 1989) Finally, assertions that information sought is subject to privilege as

a “trade secret” must be set forth in such a way that parties (and the tribunal) can assess the applicability of the alleged privilege. See TIG Ins. Corp. of America v. Johnson, 799 So. 2d 339 (Fla. 4<sup>th</sup> DCA 2001).

### **III. Disputed Request**

In its Motion, Supra seeks to compel BellSouth to respond to the following request for production:

#### Request for Production No. 18

Produce BellSouth’s Privacy Director Cost Study, as testified to by Daonne Caldwell before the United States Bankruptcy Court, Southern District, in Case No. 02-41250.

Supra contends that by its Petition initiating this docket, it seeks a determination as to whether or not BellSouth’s Promotional Offering Tariffs, which are offered in conjunction with the PreferredPack Plan violate Florida Statutes or are otherwise illegal. Supra asserts that this discovery request is relevant because it is related to the establishment of BellSouth’s cost for provisioning its privacy director service, which is a component of the PreferredPack Plan tariff. Supra argues further that BellSouth has previously testified before the United States Bankruptcy Court, Southern District, that it has created a cost study for its Privacy Director Service and Because the costs for this service are in dispute in this proceeding, Supra argues it is entitled to review such.

In its Response, BellSouth argues that according to Supra’s own interpretation of Section 364.051(5)(c), Florida Statutes, the relevant inquiry is not what BellSouth’s costs are to provide Privacy Director but what it costs Supra to purchase Privacy Director. BellSouth contends further that even if this request was relevant, BellSouth has already provided Supra with its TSLRIC costs for Privacy Director Service, and therefore, Supra’s Motion is moot. Additionally, BellSouth asserts that Supra’s sole motivation for attempting to obtain BellSouth’s Privacy Direct cost study is to resurrect its billing dispute that Privacy Director is a UNE and thus should be available at TELRIC rather than at the resale discount, an argument the Bankruptcy Court has already rejected.

### **IV. Decision**

In this proceeding Supra and BellSouth have each asserted a different methodology to calculate the costs associated with providing the PreferredPack Plan. Furthermore, under either methodology, it is unclear at this time whether BellSouth is covering its costs. At a minimum, it appears the cost study Supra has requested will lead to the discovery of relevant

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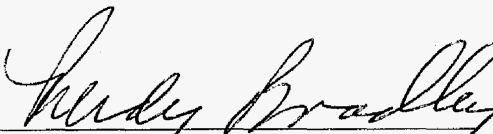
evidence. Therefore, I hereby grant Supra's Motion to Compel. BellSouth shall provide the compelled response by October 20, 2004.

Based on the foregoing, it is

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that Supra's Motion to Compel is granted as set forth in the body of this Order. It is further

ORDERED that BellSouth shall provide the response compelled herein by Wednesday, October 20, 2004, as set forth in the body of this Order.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 15th day of October, 2004

  
RUDOLPH "RUDY" BRADLEY  
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.

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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, 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.