

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-02-0808-PCO-TP
ISSUED: June 14, 2002

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER DENYING SUPRA TELECOMMUNICATIONS & INFORMATION SERVICES,
INC.'S EMERGENCY MOTION FOR STAY PENDING JUDICIAL REVIEW OF ORDER
NOS. PSC-02-0772-PCO-TP AND PSC-02-0773-PCO-TP

BY THE COMMISSION:

On June 10, 2002, Supra Telecommunications & Information
Systems, Inc. (Supra) filed an Emergency Motion for Stay Pending
Judicial Review of Order Nos. PSC-02-0772-PCO-TP and PSC-02-0773-
PCO-TP (Motion).

Rule 25-22.061(2) provides that three factors should govern
the disposition of a motion for stay pending judicial review:

- (a) Whether the petitioner is likely to prevail on appeal;
- (b) Whether the petitioner has demonstrated that he is likely
to suffer irreparable harm if the stay is not granted;
and
- (c) Whether the delay will cause substantial harm or be
contrary to the public interest.

Consideration of these factors leads us to the conclusion that
the Motion should be denied. First, we believe that the movant is
unlikely to prevail on appeal. Because the appealed orders
concluded that Supra's recusal motions were both time-barred and
premised on facts that were legally insufficient, Supra's appeal

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ORDER NO. PSC-02-0808-PCO-TP
DOCKET NO. 001305-TP
PAGE 2

would have to successfully challenge both findings to prevail, making success less likely. Indeed, the First District Court of Appeal has denied Supra's Petition, Case No. 02-2302.

As to the second factor, irreparable harm, Supra cites cases such as Spiegel v. City of Houston, 636 F. 2d 997 (5th Circuit 1981) and Tally-Ho, Inc. v. Coast Community College District, 889 F. 2d 1018 (11th Cir. 1990). However, these cases involve injunctions, not stays pending appeal. Perez v. Perez, 769 So. 2d 389, 391, n. 4 (Fla. 3d DCA 1979), on the other hand, does concern issuance of a stay pending appellate review, but does not support a stay in this case. In Perez, a case involving a custody dispute, the Court noted that "Former Wife had a likelihood of success on the merits" and that greater harm could result if the status quo [of Former Wife's continued custody of the children] were not preserved [because Former Husband might improperly use the children's visitation with him to manipulate the children's custody preference]. In this case, Supra's appeal is unlikely to succeed.

Supra also relies on the stay granted in Docket No. 980800-TP. However, the stay in Docket 980800-TP involved orders unrelated to recusal. All of Supra's appellate options as to orders not involving recusal remain including requests for stays. Moreover, the First District Court of Appeals denied Supra's Motion For Stay to Review Orders 0772 and 0773. Case No. 02-2302. Our conclusion is the same.

Finally, Supra's arguments as to the third factor, whether delay will cause harm or be contrary to the public interest, are inconsistent with issuing a stay. Supra cites a number of cases indicating that recusal motions should be ruled on immediately and with dispatch. That is consistent with resolving the issue here, rather than leaving it pending by issuing a stay. See, Fuster-Escalona v. Wisotsky, 781 So. 2d 1063 (Fla. 2000).

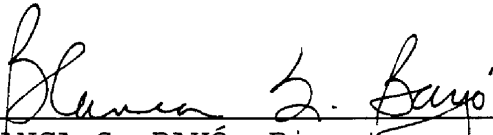
In view of the above, it is

ORDERED by the Florida Public Service Commission that Supra Telecommunications & Information Services, Inc.'s Emergency Motion for Stay Pending Judicial Review of Order Nos. PSC-02-0772-PCO-TP and PSC-02-0773-PCO-TP is denied. It is further

ORDER NO. PSC-02-0808-PCO-TP
DOCKET NO. 001305-TP
PAGE 3

ORDERED that this docket remain open.

By ORDER of the Florida Public Service Commission this 14th
day of June, 2002.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

RCB

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.

ORDER NO. PSC-02-0808-PCO-TP
DOCKET NO. 001305-TP
PAGE 4

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.