

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition by Supra Telecommunications
and Information Systems, Inc. for arbitration
with BellSouth Telecommunications, Inc.

DOCKET NO. 040301-TP
ORDER NO. PSC-04-0752-PCO-TP
ISSUED: August 4, 2004

ORDER DENYING

SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.'S REQUEST
FOR EXPEDITED RELIEF AND REFORMING THE MATTER TO A COMPLAINT

BY THE COMMISSION:

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which 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.

I. Case Background

A. Amended Petition

On April 5, 2004, Supra Telecommunications & Information Systems, Inc. (Supra) filed a petition for arbitration with BellSouth Telecommunications, Inc. (BellSouth). On June 23, 2004, Supra filed its First Amended Petition for Arbitration with BellSouth. In its Amended Petition, Supra requests expedited relief for the purpose of resolving a rate for an individual hot cut. Supra also request that an interim rate be established during the pendency of the case.

In support of its request, Supra contends that BellSouth's present charge acts as a barrier to facilities-based competition, and every month of delay acts to prolong the time before which consumers can realize greater savings. Supra also argues that there is much uncertainty regarding the status of Unbundled Network Element-Platform (UNE-P); thus, an expedited review and resolution is necessary so that Supra can transfer its customers to its own facilities. Further, UNE-P to Unbundled loop (UNE-L) conversion costs will only delay Supra's ability to make these transfers, according to Supra.

Supra cites an internal Commission Memorandum dated June 19, 2001 (hereinafter "Memorandum"), as the basis for its request for expedited relief. That Memorandum, Supra contends, expedited relief should be granted for disputes that rise from interconnection agreements and indicates no more than three issues involved in the dispute. Supra also cites Order No. PSC-03-0578-FOF-TP as precedent for its request for expedited relief.

DOCUMENT NUMBER-DATE

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B. BellSouth's Response

On July 21, 2004, BellSouth filed its Answer and Response to Supra's Amended Petition For Arbitration, as well as a Motion to Dismiss the Amended Petition. This Order only addresses BellSouth's Answer and Response to Supra's Amended Petition.

BellSouth argues in its Answer that Supra's Amended Petition should be reformed as a complaint rather than an arbitration, because the alleged violation rises from an existing interconnection agreement. Specifically, under Attachment 6, section 15 of the agreement, a dispute may be taken to this Commission for resolution, according to BellSouth.

BellSouth also argues that expedited relief is not appropriate, citing the same Memorandum that Supra relies on. BellSouth notes that the Memorandum established an internal process for the Commission to resolve "complaints arising from interconnection agreements approved by the Commission under Section 252 of the Telecommunications Act" and should be limited to contractual interpretation. BellSouth argues that Supra's Amended Petition is not seeking a simple contract interpretation. Instead, Supra's request would involve a complex, highly-factual and time-consuming rate setting proceeding.

Further, BellSouth cites Order No. PSC-03-0671-PCO-TP, Docket No. 030349-TP, issued on June 2, 2003, as precedent for denying Supra's request for expedited relief. In that Order, Supra was denied expedited relief on the grounds that Supra did not allege sufficient facts to warrant expedited relief. In the case at hand, BellSouth argues that Supra has not alleged sufficient facts to warrant expedited relief and implies that Supra's arguments are general in nature. BellSouth responds to Supra's general argument (that the current hot cut rate acts as a barrier to competition and thus calls for expedited relief with an interim rate) by noting Supra's willingness to order hot cuts converting 18,000 UNE-P arrangements to UNE-L over a five month period at the current rates. BellSouth implicitly argues that this fact detracts from, if not negates, the need for an interim rate as well as an expedited proceeding.

Last, BellSouth recommends that if this Commission is willing to entertain a new hot cut rate that it do so by way of a generic proceeding, and allow all interested parties to intervene.

II. Ruling

A. Denying Expedited Relief

As stated above, both parties cite the expedited procedure outlined in the Commission Memorandum. This referenced Memorandum outlines a procedure designed to address complaints arising from interconnection agreements, and its application was limited to contract interpretations with three or fewer issues. Using this Memorandum as a benchmark, it is clear that Supra's Amended petition does not warrant expedited relief. Supra's Amended Petition

calls for a cost-based analysis of a very technical nature encompassing at least four issues.¹ Therefore, Supra's request for expedited relief is beyond the scope of the expedited process outlined in the Memorandum due to the fact that this proceeding will not solely hinge upon contract interpretation and contains more than three issues.²

B. Amended Petition Will Be Processed As A Complaint

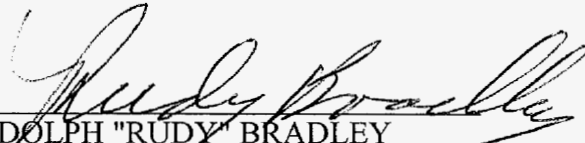
Supra's allegations arise from language in an existing Agreement.³ Thus, as a procedural matter, this docket shall be processed as a complaint and not an arbitration for interconnection.

Based on the foregoing, it is

ORDERED by Rudolph "Rudy" Bradley, as Prehearing Officer, that Supra Telecommunications & Information Systems, Inc.'s Request for Expedited Relief is hereby denied.

ORDERED that Supra Telecommunications & Information Systems, Inc.'s First Amended Petition For Arbitration With BellSouth Telecommunications, Inc., shall be processed as a Complaint against BellSouth Telecommunications, Inc.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 4th day of August, 2004.



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(SEAL)

JLS

¹ An issue identification was held on July 23, 2004, whereby both parties agreed to staff's four proposed issues.

² It should be noted that Rule 25-22.0365, Expedited Dispute Resolution Process for Telecommunication Companies, is under revision in Docket 040269-TP. The new rule explicitly lays out criteria that must be met for expedited relief, and Supra's Amended Petition would not have met these new requirements.

³ Evidence of this is Supra's own argument that expedited relief should be granted in this matter because this matter is a dispute arising from an existing interconnection agreement. (Amended Petition, ¶ 12)

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, 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.