

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-04-0810-PCO-TP
ISSUED: August 19, 2004

ORDER DENYING
BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION
TO HOLD DISCOVERY IN ABEYANCE

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.

Case Background

On April 5, 2004, Supra Telecommunications & Information Systems, Inc. (Supra) filed a petition for arbitration with BellSouth Telecommunication, Inc. (BellSouth). On June 23, 2004, Supra filed its First Amended Petition for Arbitration with BellSouth. 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 or in the Alternative, Partial Motion to Dismiss. During the pendency of the Motion to Dismiss, BellSouth filed a Motion to Hold Discovery in Abeyance (hereinafter "Motion") pursuant to Rule 28-106.211, Administrative Code.

In its Motion, BellSouth argues that granting such a motion would best serve the interests of judicial economy and conserve the parties' resources. Specifically, BellSouth contends that responding to discovery when the case may be summarily dismissed is wasteful. Further, BellSouth argues that holding discovery in abeyance will not prejudice either party.

In Supra's response, it contends that this Commission must set a new rate for the UNE-P to UNE-L conversion within one hundred and twenty days (120) of its petition and any delay in discovery at this point in time can only harm Supra. In addition, Supra contends that Rule 28-106.211, Florida Administrative Code, was designed to prevent delay, and that BellSouth's Motion is nothing more than a dilatory tactic. Further, Supra states that it "should not be unduly rushed in its review or compelling of discovery responses because of the injection of delay . . ."

Ruling

Based upon my review of the pleadings, BellSouth's Motion to Hold Discovery in Abeyance is denied. The filing of a Motion to Dismiss is not an unusual occurrence in

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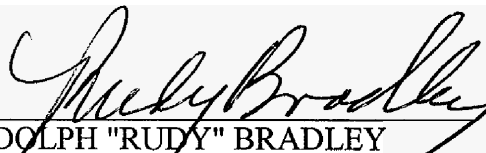
Commission practice. BellSouth has not put forth any special circumstances that persuade me to hold discovery in abeyance while the Motion is pending. Further, I understand a recommendation on the motion to dismiss will be filed in the near future, and therefore neither party will be prejudiced by my decision.

Last, I do not agree with Supra's argument that this Commission must complete this proceeding within 120 days pursuant to Section 364.161, Florida Statutes. This docket is being handled as a complaint (See, PSC-04-0752-PCO-TP, issued on August 4, 2004) and therefore does not fall within Section 364.161, Florida Statutes.

Based on the forgoing, it is

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer that BellSouth Telecommunications, Inc.'s Motion to Hold Discovery in Abeyance is denied.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this
19th day of August, 2004



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(SEAL)

JLS

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.