

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-04-1017-PCO-TP
ISSUED: October 19, 2004

ORDER GRANTING IN PART AND DENYING IN PART
SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.'S
MOTION TO COMPEL

Case Background

On April 5, 2004, Supra Telecommunications and Information Systems, Inc. (Supra) filed a petition for arbitration with BellSouth Telecommunications, Inc. (BellSouth). On June 23, 2004, Supra filed a Motion For Leave to file its First Amended Petition for Arbitration with BellSouth. The Motion was granted and on July 21, 2004, BellSouth filed its Answer and Response to Supra's Amended Petition For Arbitration, as well as a Motion to Dismiss.

In its Amended Petition, Supra requests expedited relief for the purpose of resolving a rate(s) for an individual hot cut and asks that an interim rate be established during the pendency of the case. At the September 21, 2004 Agenda conference, this Commission denied the request for an interim rate.

On August 4, 2004, Order No. PSC-04-0752-PCO-TP was issued denying Supra's request for expedited treatment and reforming the proceeding as a complaint rather than an arbitration. Supra filed a Motion for Reconsideration of that Order and at the September 21, 2004 Agenda conference, this Commission denied its Motion.

On August 27, 2004, Supra filed a Motion to Compel all testimonies, transcripts, exhibits, orders and any related documents in Docket 990649-TP (BellSouth Track) which specifically support BellSouth's claim that this Commission has already set a UNE-P to UNE-L conversion rate in excess of \$57.00. In addition, Supra requests all documents identified in BellSouth's Response to Supra's First Set of Interrogatories. **Last, Supra argues that courts have unambiguously stated that equal accessibility to documents is insufficient to resist a discovery request.** St. Paul Reinsurance Co. Ltd. v. Commercial Fin. Corp., 198 F.R.D. 508, 511 (N.D. Iowa 2000); Petruska v. Johns-Manville, 83 F.R.D. 32, 35 (E.D. Pa. 1979); Associated Wholesale Grocers, Inc. v. U.S., 1989 W.L. 110300 (D.Kan. June 7, 1989).

BellSouth objects to both requests on the grounds that the request is overly broad and burdensome because most, if not all, of the documents are in Supra's possession. Further, BellSouth supports its argument by stating that the documents are publicly available on this Commission's website. Last, BellSouth argues that it is impossible to know exactly what

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portions of the testimonies, transcripts, exhibits, orders and related documents this Commission found credible. Therefore, BellSouth presumes that this Commission considered all of the aforementioned documents and thus would have to produce all of the public documents.

Standard of Review

Rule 1.280(b)(1), Florida Rules of Civil Procedure, states in part 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. Rule 1.350(b) Florida Rules of Civil Procedure, governs the procedure for a request for production of documents, and specifically requires that the request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity.

This standard is not, however, without limit. What is relevant for purposes of discovery is a broader matter than what is relevant and admissible at 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). While liberal construction is to be given to rules of discovery, the request must still seek relative matters and must not be so excessive so as to be unduly burdensome to the party ordered to produce. Riddle Airlines, Inc. v. Mann, 123 So.2d 685 (Fla.3d DCA 1960); International Business Machines Corporation v. Elder, 187 So.2d 82 (Fla.3d DCA 1966); Jones v. Seaboard Coast Line Railroad Company, 297 So.2d 861 (Fla.2d DCA 1974). However, objections to discovery that is “burdensome” or “overly broad” must be quantified. First City Developments of Florida, Inc. v. Hallmark of Hollywood Condominium Ass’n, Inc., 545 So. 2d 502, 503 (Fla. 4th DCA 1989).

Last, it should be noted that pretrial discovery was implemented to simplify the issues in a case, to eliminate the element of surprise, to encourage the settlement of cases, to avoid costly litigation, and to achieve a balanced search for the truth to ensure a fair trial. Dodson v. Persell, 390 So. 2d 704 (Fla. 1980); Surf Drugs, Inc. v. Vermette, 236 So. 2d 108 (Fla. 1970).

Ruling

Under Florida law, BellSouth’s objection that discovery is “burdensome” or “overly broad” must be quantified. First City Developments of Florida, Inc. v. Hallmark of Hollywood Condominium Ass’n, Inc., 545 So. 2d 502, 503 (Fla. 4th DCA 1989). In the case at hand, BellSouth correctly quantifies its objection as burdensome because this request can be fulfilled by Supra through this Commission’s website.¹ Requiring BellSouth to print, compile and mail

¹ www.psc.state.fl.us

ORDER NO. PSC-04-1017-PCO-TP

DOCKET NO. 040301-TP

PAGE 3

these documents to Supra is time consuming and expensive, especially when these documents are just as easily available to Supra through this Commission's website.

Although Supra argues that courts have unambiguously stated that equal accessibility to documents is insufficient to resist a discovery request, those cases differ from the case at hand. In those cases, the documents were not available via a third-party website as in this docket. Further, the court was dealing with boiler-plate objections designed to obstruct discovery. Those objections merely stated that the request was overly broad and burdensome without any reasoning as to why they were overly broad and burdensome.

In the case at hand, BellSouth's objection is supported by reasoning as to why the objection is overly broad and burdensome. BellSouth claims: (1) that most, if not all, of the documents are in Supra's possession; (2) that the documents are publicly available on our website; and (3) that it is impossible to know exactly what portions of the testimonies, transcripts, exhibits, orders and related documents this Commission found credible.

Upon consideration of the arguments, I find BellSouth's objection most persuasive. Therefore, BellSouth shall identify the following within seven calendar days of the issuance of this order: the witness(es) that testified, along with their relevant exhibits, which support BellSouth's belief that a rate for a UNE-P to UNE-L conversion was resolved in Docket 990649-TP.

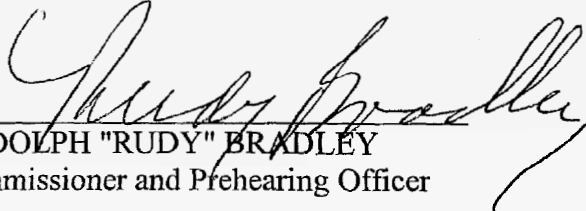
Based on the foregoing, it is

ORDERED by Rudolph "Rudy" Bradley, as Prehearing Officer, that Supra Telecommunications and Information Systems, Inc.'s Motion to Compel is granted in part and denied in part as stated in the body of this Order. It is further

ORDERED that BellSouth Telecommunications, Inc. must provide a list of its witness(es) that testified, along with their relevant exhibits, in Docket 990649-TP within seven calendar days of issuance of this Order.

ORDER NO. PSC-04-1017-PCO-TP
DOCKET NO. 040301-TP
PAGE 4

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



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

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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, 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.