

VOTE SHEET

MARCH 5, 2002

RE: Docket No. 001305-TP - Petition by BellSouth Telecommunications, Inc. for arbitration of certain issues in interconnection agreement with Supra Telecommunications and Information Systems, Inc. (Deferred from February 19, 2002 conference; revised recommendation filed.)

ISSUE I: Should Supra's February 13, 2002, Motion for Oral Argument be granted?

RECOMMENDATION: No. Staff recommends that oral argument on Issue 1 be denied.

DENIED

COMMISSIONERS ASSIGNED: Jaber, Baez, Palecki

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

[Handwritten signatures of majority commissioners]

Michael A. Palecki (Issue 1 only)

REMARKS/DISSENTING COMMENTS: *Commissioner Palecki dissented on Issue 1*

DOCUMENT NUMBER-DATE

02561 MAR-5 02

FPSC-COMMISSION CLERK

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ISSUE II: Should Supra's February 18, 2002, Motion for Oral Argument be granted?

RECOMMENDATION: No. Staff recommends that Supra's request be denied.

DENIED

ISSUE III: Should Supra's Motion for Rehearing, Appointment of a Special Master, and Indefinite Deferral be granted?

RECOMMENDATION: No. The Commission should deny Supra's Motion for Rehearing, Appointment of a Special Master, and Indefinite Deferral.

MODIFIED

The recommendation was approved, to include denial of Supra's oral modification of its motion for referral to DOAH instead of appointment of a Special Master.

ISSUE IV: Should Supra's Renewed Motion for Indefinite Stay and In the Alternative Renewed Motion for Oral Argument be granted?

RECOMMENDATION: No. Staff recommends that Supra's motion is an improper, premature pleading not contemplated by Order No. PSC-02-0202-PCO-TP, Commission rules, or the Rules of Civil Procedure.

MODIFIED

Staff's recommendation was approved with modification to the extent that oral argument was granted.

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ISSUE B: Which agreement template shall be used as the base agreement into which the Commission's decision on the disputed issues will be incorporated?

RECOMMENDATION: BellSouth's most current template agreement should be used as the base agreement into which the Commission's decision on disputed issues will be incorporated.

APPROVED

ISSUE 1: What are the appropriate fora for the submission of disputes under the new agreement?

RECOMMENDATION: Staff believes that the appropriate forum for the submission of disputes under the new agreement is the Commission.

APPROVED

Commissioner Palecki dissented

ISSUE 4: Should the Interconnection Agreement contain language to the effect that it will not be filed with the Florida Public Service Commission for approval prior to an ALEC obtaining ALEC certification from the Florida Public Service Commission?

RECOMMENDATION: Yes. The agreement should include language that it will not be filed with the Florida Public Service Commission for approval prior to an ALEC obtaining ALEC certification from this Commission.

APPROVED

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ISSUE 5: Should BellSouth be required to provide to Supra a download of all of BellSouth's Customer Service Records ("CSRs")?

RECOMMENDATION: No. BellSouth should not be required to allow Supra to download all CSRs as that would be contrary to the Telecommunications Act's prohibitions against unauthorized access or disclosure of Customer Proprietary Network Information (CPNI).

APPROVED

ISSUE 10: Should the rate for a loop be reduced when the loop utilizes Digitally Added Main Line (DAML) equipment?

RECOMMENDATION: No. Staff recommends that BellSouth's rate for a loop should not be reduced when the loop utilizes Digitally Added Main Line (DAML) equipment. When changes are to be made to an existing Supra loop that may adversely affect the end user, BellSouth should provide Supra with prior notification.

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ISSUE 11A: Under what conditions, if any, should the Interconnection Agreement state that the parties may withhold payment of disputed charges?

ISSUE 11B: Under what conditions, if any, should the Interconnection Agreement state that the parties may withhold payment of undisputed charges?

ISSUE 63: Under what circumstances, if any, would BellSouth be permitted to disconnect service to Supra for nonpayment?

RECOMMENDATION: Both parties should be allowed to withhold payment of charges disputed in good faith during the pendency of the dispute. Neither party should be allowed to withhold payment of undisputed charges. BellSouth should be permitted to disconnect Supra for nonpayment of undisputed charges.

APPROVED

ISSUE 11B: Under what conditions, if any, should the Interconnection Agreement state that the parties may withhold payment of undisputed charges?

RECOMMENDATION: Both parties should be allowed to withhold payment of charges disputed in good faith during the pendency of the dispute. Neither party should be allowed to withhold payment of undisputed charges. BellSouth should be permitted to disconnect Supra for nonpayment of undisputed charges.

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ISSUE 12: Should BellSouth be required to provide transport to Supra Telecom if that transport crosses LATA boundaries?

RECOMMENDATION: No. BellSouth should not be required to provide transport to Supra Telecom if that transport crosses LATA boundaries.

APPROVED

ISSUE 15: What Performance Measurements should be included in the Interconnection Agreement?

RECOMMENDATION: Staff acknowledges Order No. PSC-01-1819-FOF-TP, in the generic Performance Measurements docket, Docket No. 000121-TP, established appropriate performance measurements applicable to BellSouth in the state of Florida. These measurements and BellSouth's forthcoming performance assessment plan will apply to BellSouth only. Staff does not believe that it is necessary to include those performance measurements in the parties' interconnection agreement, although the parties may choose to do so.

APPROVED

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ISSUE 16: Under what conditions, if any, may BellSouth refuse to provide service under the terms of the interconnection agreement?

RECOMMENDATION: BellSouth should not be required to provision services for which rates, terms and conditions are not identified in the interconnection agreement, prior to negotiating and executing an amendment.

APPROVED

ISSUE 18: What are the appropriate rates for the following services, items or elements set forth in the proposed Interconnection Agreement?

- (A) Resale
- (B) Network Elements
- (C) Interconnection
- (D) Collocation
- (E) LNP/INP
- (F) Billing Records
- (G) Other

RECOMMENDATION: Staff recommends that the appropriate rates to be set forth in the Interconnection Agreement for (B) Network Elements, (C) Interconnection, (E) LNP/INP, (F) Billing Records, and (G) Other are those ordered in Docket No 990649-TP, and in Docket No. 000649-TP (specifically for line-sharing). For the network elements for which rates have not been established by this Commission, the rates should be BellSouth's tariffed rates, which should not be subject to true-up, unless the parties agree otherwise.

MODIFIED

Approved with noted modification.

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ISSUE 19: Should calls to Internet Service Providers be treated as local traffic for the purposes of reciprocal compensation?

RECOMMENDATION: The FPSC currently lacks the jurisdiction to address the issue of whether calls to ISPs should be treated as local traffic for the purposes of reciprocal compensation.

APPROVED

ISSUE 20: Should the Interconnection Agreement include validation and audit requirements which will enable Supra Telecom to assure the accuracy and reliability of the performance data BellSouth provides to Supra Telecom?

RECOMMENDATION: No. The Interconnection Agreement need not include validation and audit requirements which would enable Supra Telecom to assure the accuracy and reliability of the performance data BellSouth provides to Supra Telecom. Order No. PSC-01-1819-FOF-TP in the generic Performance Measurements docket, Docket No. 000121-TP, established the appropriate validation and audit requirements applicable to BellSouth. Even though staff does not recommend requiring the parties to include the validation and audit requirements in the Interconnection Agreement, staff acknowledges that the parties may choose to do so.

APPROVED

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ISSUE 21: What does "currently combines" mean as that phrase is used in 47 C.F.R. §51.315(b)?

ISSUE 22: Under what conditions, if any, may BellSouth charge Supra Telecom a "non-recurring charge" for combining network elements on behalf of Supra Telecom?

ISSUE 23: Should BellSouth be directed to perform, upon request, the functions necessary to combine unbundled network elements that are ordinarily combined in its network? If so, what charges, if any, should apply?

ISSUE 24: Should BellSouth be required to combine network elements that are not ordinarily combined in its network? If so, what charges, if any, should apply?

RECOMMENDATION: BellSouth should only be required to provide combined UNEs at TELRIC prices, if such elements are already physically combined in BellSouth's network. In all other instances, BellSouth should not be obligated to combine UNEs for Supra; however, BellSouth may agree to do so, and should be allowed to charge a market-based fee.

MODIFIED

The parties are encouraged to negotiate fees.

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ISSUE 22: Under what conditions, if any, may BellSouth charge Supra Telecom a "non-recurring charge" for combining network elements on behalf of Supra Telecom?

RECOMMENDATION: BellSouth should only be required to provide combined UNEs at TELRIC prices, if such elements are already physically combined in BellSouth's network. In all other instances, BellSouth should not be obligated to combine UNEs for Supra; however, BellSouth may agree to do so, and should be allowed to charge a market-based fee.

See vote in combined issues ~~22~~²¹ - 24.

ISSUE 23: Should BellSouth be directed to perform, upon request, the functions necessary to combine unbundled network elements that are ordinarily combined in its network? If so, what charges, if any, should apply?

RECOMMENDATION: BellSouth should only be required to provide combined UNEs at TELRIC prices, if such elements are already physically combined in BellSouth's network. In all other instances, BellSouth should not be obligated to combine UNEs for Supra; however, BellSouth may agree to do so, and should be allowed to charge a market-based fee.

See vote in combined issues ~~22~~²¹ - 24

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ISSUE 24: Should BellSouth be required to combine network elements that are not ordinarily combined in its network? If so, what charges, if any, should apply?

RECOMMENDATION: BellSouth should only be required to provide combined UNEs at TELRIC prices, if such elements are already physically combined in BellSouth's network. In all other instances, BellSouth should not be obligated to combine UNEs for Supra; however, BellSouth may agree to do so, and should be allowed to charge a market-based fee.

See vote in combined issues ²¹~~22~~-24

ISSUE 28: What terms and conditions and what separate rates, if any, should apply for Supra Telecom to gain access to and use BellSouth's facilities to serve multi-tenant environments?

RECOMMENDATION: Staff recommends that in order for Supra to gain access to and use BellSouth facilities to serve multi-tenant environments, an ALEC access terminal should be established to accommodate the necessary connections. Staff recommends that the appropriate rates for all of the addressed subloop elements should be the BellSouth rates established by this Commission in its Final Order in Docket No. 990649-TP.

APPROVED

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ISSUE 29: Is BellSouth obligated to provide local circuit switching at UNE rates to Supra to serve the first three lines to a customer located in Density Zone 1? Is BellSouth obligated to provide local circuit switching at UNE rates to Supra to serve four or more lines provided to a customer located in Density Zone 1?

RECOMMENDATION: Staff's recommendation is twofold. First, staff recommends that BellSouth should be obligated to provide local circuit switching at UNE rates to Supra to serve the first three lines to a customer located in Density Zone 1. Second, staff recommends that BellSouth should not be obligated to provide local circuit switching at UNE rates to Supra to serve four or more lines provided to a customer located in Density Zone 1, as long as the other criteria for FCC Rule 51.319(c)(2) are met.

APPROVED

ISSUE 32: (A) Under what criteria may Supra Telecom charge the tandem switching rate?

(B) Based on Supra Telecom's network configuration as of January 31, 2001, has Supra Telecom met these criteria?

RECOMMENDATION: Staff notes that Phase II of Docket No. 000075-TP will address this very issue in detail, and the criteria developed in that docket will apply. However, staff believes that the initial threshold, based on § 51.711(a)(2), is that Supra's "switch" must serve a geographic area comparable to that served by BellSouth's tandem switch. Staff believes the record indicates that Supra has not deployed a switch in the state of Florida; therefore, staff recommends that Supra does not meet the criteria for the tandem switching rate at this time.

(3)

MODIFIED

Approved with noted correction.

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ISSUE 33: What are the appropriate means for BellSouth to provide unbundled local loops for provision of DSL service when such loops are provisioned on digital loop carrier facilities?

RECOMMENDATION: Staff recommends that either of BellSouth's two proposed solutions would permit Supra to provide unbundled local loops for the provision of DSL service when such loops are provisioned on DLC facilities. The first solution would move the end user to a loop that is suitable for xDSL service. The second solution is to allow Supra to collocate its DSLAM equipment in the same RT housing where BellSouth's DSLAM equipment is located. If BellSouth cannot accommodate collocation at a particular RT where a BellSouth DSLAM is located, staff recommends that BellSouth unbundle the BellSouth packet switching functionality at the RT in accordance with FCC requirements.

APPROVED

ISSUE 34: What coordinated cut-over process should be implemented to ensure accurate, reliable and timely cut-overs when a customer changes local service from BellSouth to Supra Telecom?

RECOMMENDATION: The coordinated cut-over process proposed by BellSouth should be implemented to ensure accurate, reliable and timely cut-overs when service is transferred from a BellSouth switch to a Supra switch. Additionally, staff recommends that BellSouth should be required to implement a single "C" (Change) order process in lieu of its "D" (Disconnect) and "N" (New) order process when provisioning UNE-P conversions.

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ISSUE 38: Is BellSouth required to provide Supra Telecom with nondiscriminatory access to the same databases BellSouth uses to provision its customers?

RECOMMENDATION: No. BellSouth is only required to provide Supra with nondiscriminatory access to OSS functionality, and not to provide direct access to the same databases BellSouth uses to provision its customers.

APPROVED

ISSUE 40: Should Standard Message Desk Interface-Enhanced ("SMDI-E"), Inter-Switch Voice Messaging Service ("IVMS") and any other corresponding signaling associated with voice mail messaging be included within the cost of the UNE switching port? If not, what are the appropriate charges, if any?

RECOMMENDATION: No. SMDI-E, IVMS, and any other corresponding signaling associated with voice mail messaging should not be included within the cost of the UNE switching port. The appropriate rates are those found in BellSouth's FCC No. 1 tariff. In addition, if Supra chooses to provide its own link, it should notify BellSouth and BellSouth should determine within a reasonable time frame whether or not there are any other unbundled elements associated with completing that service and what, if any, additional charges are associated with that service.

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ISSUE 42: What is the proper time frame for either party to render bills?

RECOMMENDATION: The proper time frame for either party to render bills is one year, unless the bill was in dispute, meet point billing guidelines require either Party to rely on records provided by the other Party, or customer provided data such as PLU or PIU factors or other ordering data is incorrect.

APPROVED

ISSUE 46: Is BellSouth required to provide Supra Telecom the capability to submit orders electronically for all wholesale services and elements?

RECOMMENDATION: No. BellSouth is not required to provide Supra with the capability to submit orders electronically for all wholesale services and elements, as long as BellSouth provisions orders for complex services for itself and ALECs in a like fashion and in substantially the same time and manner.

APPROVED

ISSUE 47: When, if at all, should there be manual intervention on electronically submitted orders?

RECOMMENDATION: BellSouth should be allowed to manually intervene on Supra's electronically submitted orders in the same manner as it does for its own retail orders.

APPROVED

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ISSUE 49: Should Supra Telecom be allowed to share with a third party the spectrum on a local loop for voice and data when Supra Telecom purchases a loop/port combination and if so, under what rates, terms and conditions?

RECOMMENDATION: Yes. Staff recommends that Supra Telecom be allowed to share with a third party the spectrum on a local loop for voice and data when it purchases a loop/port combination (alternatively referred to as "line splitting"). In addition, staff recommends that BellSouth should not be required to provide its DSL services to Supra's voice customers served via UNE-P.

APPROVED

ISSUE 57: Should BellSouth be required to provide downloads of RSAG, LFACS, PSIMS and PIC databases without license agreements and without charge?

RECOMMENDATION: No. BellSouth should not be required to provide downloads of RSAG and LFACS without license agreements and without charge.

APPROVED

ISSUE 59: Should Supra Telecom be required to pay for expedited service when BellSouth provides services after the offered expedited date, but prior to BellSouth's standard interval?

RECOMMENDATION: No. This Commission should not require Supra to pay for expedited service when BellSouth provides the service after the promised expedited date, but prior to BellSouth's standard interval.

APPROVED

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ISSUE 60: When BellSouth rejects or clarifies a Supra Telecom order, should BellSouth be required to identify all errors in the order that caused it to be rejected or clarified?

RECOMMENDATION: No. BellSouth should not be required to identify all errors in the order. Because it may not be feasible for BellSouth to process the order beyond the point where the rejection occurred, BellSouth should only be required to identify the error that triggered the rejection.

MODIFIED

Approved with the modification that BellSouth should be required to identify all readily apparent errors in the order.

ISSUE 61: Should BellSouth be allowed to drop or "purge" orders? If so, under what circumstances may BellSouth be allowed to drop or "purge" orders, and what notice should be given, if any?

RECOMMENDATION: Yes. BellSouth should be allowed to "purge" orders on the 11th business day after a clarification request, if a supplemental LSR is not submitted by Supra that is responsive to the clarification request on the original LSR. Furthermore, staff recommends that no additional notification is necessary on the 11th business day when an LSR is about to be purged, provided that the BellSouth Business Rules are universally available to Supra and all ALECs.

APPROVED

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ISSUE 62: Should BellSouth be required to provide completion notices for manual orders for the purposes of the interconnection agreement?

RECOMMENDATION: No. BellSouth should not be required to provide completion notices for manual orders for the purposes of the interconnection agreement.

APPROVED

ISSUE 63: Under what circumstances, if any, would BellSouth be permitted to disconnect service to Supra for nonpayment?

RECOMMENDATION: Both parties should be allowed to withhold payment of charges disputed in good faith during the pendency of the dispute. Neither party should be allowed to withhold payment of undisputed charges. BellSouth should be permitted to disconnect Supra for nonpayment of undisputed charges.

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ISSUE 65: Should the parties be liable in damages, without a liability cap, to one another for their failure to honor in one or more material respects any one or more of the material provisions of the Agreement for purposes of this interconnection agreement?

RECOMMENDATION: No. Staff believes that it is appropriate for the Commission to make its determination on whether or not to impose a condition or term based upon whether the term or condition is required to ensure compliance with the requirements of Sections 251 or 252. Liability for damages, without a liability cap, is not an enumerated item under Sections 251 and 252 of the Act. Further, Staff believes that the record does not support a finding that a liability for damages provision, without a liability cap, is required to implement an enumerated item under Sections 251 and 252 of the Act. Staff recommends that the Commission not impose adoption of such a provision.

APPROVED

ISSUE 66: Should Supra Telecom be able to obtain specific performance as a remedy for BellSouth's breach of contract for purposes of this interconnection agreement?

RECOMMENDATION: No. Staff believes that it is appropriate for the Commission to make its determination on whether or not to impose a condition or term based upon whether the term or condition is required to ensure compliance with the requirements of Sections 251 or 252. Specific performance is not an enumerated item under Sections 251 or 252 of the Act. Further, Staff believes that the record does not support a finding that a specific performance provision is required to implement an enumerated item under Sections 251 or 252 of the Act. Staff recommends that the Commission not impose a specific performance provision when it is not required under Section 251 or 252 of the Act.

APPROVED

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ISSUE 67: Should this docket be closed?

RECOMMENDATION: No. The parties should be required to submit a signed agreement that complies with the Commission's decisions in this docket for approval within 30 days of issuance of the Commission's Order. This docket should remain open pending Commission approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.

APPROVED