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November 10, 2003

Mrs. Blanca Bayo, Director
Division of Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

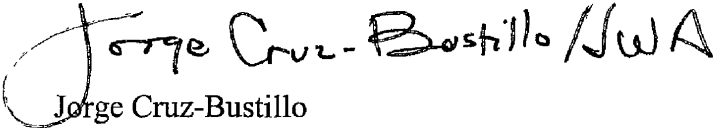
**RE: Docket No. 980119-TP -
SUPRA'S PETITION FOR FORMAL PROCEEDING
IN ACCORDANCE WITH ORDER NO. PSC-03-1178-PAA-TP**

Dear Mrs. Bayo:

Enclosed for filing on behalf of Supra Telecommunications and Information Systems, Inc.'s (Supra) are an original and seven (7) copies of Supra's Petition For Formal Proceeding In Accordance With Order No. PSC-03-1178-PAA-TP to be filed in the above referenced dockets.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return it to me.

Sincerely,


Jorge Cruz-Bustillo
Assistant General Counsel

DOCUMENT NUMBER DATE
11235 NOV 10 8
FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE

Docket No. 980119-TP

I HEREBY CERTIFY that a true and correct copy of the following was served via Hand Delivery, Facsimile, U.S. Mail, and/or Federal Express this 10th day of November 2003 to the following:

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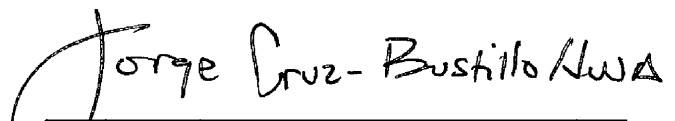
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SUPRA TELECOMMUNICATIONS
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Telephone: 305/ 476-4252
Facsimile: 305/ 443-1078



By: Jorge Cruz-Bustillo

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Supra Telecommunications and Information Systems, Inc., against BellSouth Telecommunications, Inc., for violation of the Telecommunications Act of 1996; petition for resolution of - disputes as to implementation and interpretation of Interconnection, resale and collocation agreements; and petition for emergency relief.

DOCKET NO. 980119-TP

FILED: November 10, 2003

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.,
PETITION FOR FORMAL PROCEEDING
IN ACCORDANCE WITH ORDER NO. PSC-03-1178-PAA-TP

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC. ("Supra"), by and through its undersigned counsel and pursuant to Rules 28-106.201 and 25-22.029, Florida Administrative Code, files this Petition for a Formal Proceeding in accordance with Florida Statutes § 120.57(2), in Docket No. 980119-TP.

1. Supra is a competitive local exchange carrier certified by the Florida Public Service Commission ("Commission") to provide telecommunications services in Florida.

Supra's service of process address is

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2. Supra's substantial interests are affected by Order No. PSC-03-1178-PAA-TP. Supra will suffer injury in fact if a hearing is not granted. Supra is materially impacted by BellSouth's failure to comply with the Commission's previous Order [PSC-98-1001-FOF-TP]

requiring BellSouth to provide the same on-line editing checking capability through the two CLEC ordering systems available to Supra, namely, LENS and EDI.

3. Supra's substantial interests are of the type and nature, which this proceeding is designed to protect. This Commission expressly stated in Order No. PSC-00-1777-PCO-TP that if the KPMG third-party testing did not resolve the issue regarding whether BellSouth was providing the same on-line edit checking capability – used in RNS - through EDI and LENS, then the Commission would “proceed to a hearing in this [980119] Docket to address any unresolved matters, including the issue of whether BellSouth timely complied with our post-hearing orders.” Order No. PSC-00-1777-PCO-TP, pg. 8. Supra is seeking an evidentiary hearing to demonstrate (1) that the KPMG third-party testing did not evaluate nor determine whether EDI and LENS provided the same on-line edit checking capability, and (2) that BellSouth has still not timely complied with this Commission's previous orders.

In Order No. PSC-00-0288-PCO-TP, issued on February 11, 2000, this Commission stated that:

“Based upon close review of our original decisions in this case and the record upon which those decisions were based, we do not believe BellSouth has met the specific requirements of Order No. PSC-98-1001-FOF-TP, as clarified by Order No. PSC-98-1467-FOF-TP. In our proceeding, only LENS and EDI interfaces were actually addressed in the record. Our decision was based upon the evidence of the capabilities of only these ALEC interfaces.”

Accordingly, as of February 11, 2000, BellSouth was found to have failed to comply with the Commission's previous orders on this issue.

BellSouth's basic position was and is that “TAG allows CLECs to access all of the online edit capabilities available through the Local Exchange Ordering (LEO) and Local Exchange Service Order Generator (LESOG) databases.” Order No. PSC-00-0288-PCO-TP, pg. 13. BellSouth claims that TAG had been available for use with LENS since November 1, 1998. Id.

pg. 6. TAG was also available to be used with EDI, according to BellSouth since July 1998. The burden to develop and implement similar on-line edit checking through EDI is left to the CLEC. See PSC-03-1178-PAA-TP, pg. 6, ¶1. Despite the existence of TAG, this Commission found that BellSouth had failed to make available the same on-line edit capabilities – it uses in RNS – through either EDI or LENS.

Prior to the issuance of the February 11, 2000 Order, Supra explained to the Commission that the existence of TAG was not sufficient to comply with the Commission's orders. Specifically, TAG is not a CLEC ordering interface. TAG is a computer programming language that is supposed to allow CLECs to access different BellSouth databases. BellSouth acknowledges this much. In order to use TAG, Supra must install equipment and software to make digital connection to BellSouth, then hire a C++ programmer to create a program like LENS that will interact with BellSouth's system's using TAG commands. Thus, the TAG system leaves it up to the CLEC – as opposed to BellSouth – to develop a system that has the capabilities required. This could take over a year and costs hundreds of thousands of dollars to complete the computer modifications and programming necessary to use TAG. The necessity of hiring a C++ programmer was corroborated by the Commission. In the section entitled "New Interfaces – Informational Analysis Only" of Order No. PSC-00-0288-PCO-TP the Commission made the following acknowledgment: "Robo-TAG [no longer provided by BellSouth] is another option for those ALECs that want to avoid the extensive C++ programming required to implement TAG." (Underline added for emphasis).

The Commission evaluated the parties' positions and concluded that the present capabilities of EDI and LENS do not provide the same on-line edit checking capabilities as ordered by the Commission. See Order No. PSC-00-0288-PCO-TP issued February 11, 2000.

On or after April 1, 2000, according to the Commission's order, BellSouth made available to Supra and other CLECs a version of LENS known as "LENS '99." See Order No. PSC-00-0288-PCO-TP issued February 11, 2000, pg. 13, 2nd ¶. Noteworthy is that as of the date of this February 11, 2000 Order, BellSouth had not yet made available LENS '99. LENS '99 allegedly allows CLECs to use LENS' Graphic User Interface to access TAG. Even if this were possible after April 1, 2000, the question still remains whether the edit capability available through LENS '99 is the same as that used in BellSouth's RNS. None of these issues were addressed in KPMG's third-party testing. Finally, even if LENS '99 were found to be the "same," at best, BellSouth could only be in compliance with this Commission's orders as of April 1, 2000 and no sooner.

As noted earlier herein, on September 28, 2000, the record in this docket – despite this Commission's explanation of the doctrine of administrative finality [See pg. 12 of Order No. PSC-00-0288-PCO-TP] – was reopened to allow BellSouth to utilize the 271 KPMG hearing process to demonstrate that BellSouth is in compliance with the Commission's previous orders on this specific issue. Specifically, the Commission would allow evidence developed in Docket No. 960786B-TL to be used to demonstrate compliance. Part B of this docket was a closed docket. In other words, no CLEC was allowed to introduce evidence into this docket. KPMG simply issued a report after conducting its own evaluations of BellSouth's overall Operational Support System ("OSS"). KPMG did not evaluate nor determine whether BellSouth had met its burden of providing the same on-line edit checking capability – that it uses in RNS - through its LENS and EDI interfaces. As noted, TAG is not an interface available to CLECs. And even if LENS '99 were updated to include functionalities allowing CLECs to gain access to the LEO

and LESOG databases, the question still remains regarding this on-line edit checking is the same as that utilized by RNS.

There is no evidence in the KPMG report or the Commission's final Consultative Opinion demonstrating that BellSouth has met its burden of compliance. Interestingly, the Staff's recommendation and Commission's PAA order includes a reference to language from the FCC's 271 Approval Order. The FCC states that: "KPMG found LENS to be a nondiscriminatory interface . . . since January 2000, LENS has used the TAG architecture and gateway and has essentially the same pre-ordering and ordering functionality . . . as TAG." First it must be noted that the FCC took no evidence from CLECs in its 271 process. It is well settled that comments are not evidence. Second, KPMG also did not take evidence from Supra or any CLEC regarding whether BellSouth had met its burden of providing the "same" on-line edit checking capability through the "available" CLEC interfaces. The FCC's conclusion that the interface is nondiscriminatory is simply not relevant to this Commission's specific Order that BellSouth provide the same on-line edit checking through the available CLEC interfaces of EDI or LENS.

BellSouth's basic position has not changed since November 1998. As of November 1998, TAG was available to CLEC if they wanted to make substantial modifications in hardware and software and the cost of the "extensive C++ programming required to implement TAG." Order No. PSC-00-0288-PCO-TP, pg. 13. This was BellSouth's position in February 2000 - when the Commission acknowledged that the TAG system required "extensive" C++ programming in order to implement TAG. The Commission's original order placed the burden on BellSouth to develop and implement the same on-line edit checking capability to the available interfaces of EDI and LENS. TAG is not an interface, and this computer programming language requires the

CLEC to develop and implement the capability – which is contrary to the explicit order of the Commission. Interestingly, BellSouth’s position has remained the same through today: the mere existence of the TAG computer programming language, BellSouth claims demonstrates that it is in compliance.

An evidentiary, in this docket, is necessary to evaluate whether LENS ’99, as implemented after April 1, 2000, offers the “same” on-line edit checking capability as RNS. This Commission has already concluded that BellSouth failed to meet its burden of compliance with EDI or LENS, despite the existence of TAG – for use with EDI as of July 1998 and for use with LENS as of November 1998 - without any further development and implementation on the part of BellSouth. The issue regarding LENS ’99 was not addressed by KPMG.

Finally, even if it could be demonstrated with specificity that KPMG did find the LENS ’99 offered the same on-line edit checking capabilities as used by RNS, the issue of timely compliance would still remain. This Commission ordered BellSouth to comply by December 31, 1998. See PSC-98-1467-FOF-TP, pgs. 15-16. BellSouth did not. This failure to comply was determined with administrative finality by this Commission on February 11, 2000. See PSC-00-0288-PCO-TP. According to this Commission’s order, BellSouth would not make LENS ’99 available to Supra until April 1, 2000. See Order No. PSC-00-0288-PCO-TP issued February 11, 2000, pg. 13, 2nd ¶. Noteworthy, too, is that as of the date of this February 11, 2000 Order, BellSouth had not yet made available LENS ’99. The question still remains whether the on-line edit checking capabilities available through LENS ’99 are the same as that used in BellSouth’s RNS. At best, BellSouth could only be in compliance with this Commission’s orders as of April 1, 2000 and no sooner.

This Commission concluded that the Commission would “proceed to a hearing in this Docket [980119-TP] to address any unresolved matters, including the issue of whether BellSouth timely complied with our post-hearing orders.” Order No. PSC-00-1777-PCO-TP, pg. 8. This matter should proceed to hearing at a minimum on this issue of timely compliance. In Order No. PSC-00-0288-PCO-TP, pg. 10, this Commission stated that: “In our proceeding, only LENS and EDI interfaces were actually addressed in the record. Our decision was based upon the evidence of the capabilities of only these ALEC interfaces.” (Emphasis added). BellSouth is precluded under the doctrines of claim preclusion (i.e. res judicata) and/or issue preclusion from introducing evidence that it claims existed prior to the Commission’s final decision that the capabilities of EDI or LENS provided the same on-line edit checking capabilities as those of RNS.

Claim preclusion bars litigation of matters that could have been litigated in an earlier suit, but were not. Issue preclusion bars identical parties from re-litigating matters that were actually litigated and decided in a prior suit. In this case, the on-line edit check capabilities of EDI and LENS were evaluated and determined not to provide the same level of capabilities as those used by BellSouth retail customer service representatives.

If BellSouth is claiming that the evidence is “new,” then the evidence must have come to light only after February 11, 2000. In this case, the establishment of the fact that there is “new” evidence would also prove that BellSouth had not complied with the Commission’s final order prior to February 11, 2000. Accordingly, a hearing is certainly warranted for determining what if any penalty should be imposed for this failure to timely comply.

Failure to comply with a Commission Order is a serious issue. Therefore a hearing in this matter must be granted.

Finally, this proceeding will determine whether BellSouth has complied with a specific Order issued by this Commission. Enforcement of an existing order is a matter within the jurisdiction of this Commission. A formal proceeding pursuant to Section 120.57(1), Florida Statutes, involving the issue of compliance and enforcement is of the type and nature that this Commission is responsible for protecting.

2. Supra received notice of Order No. PSC-03-1178-PAA-TP via facsimile on October 21, 2003.

3. There are several issues of material fact.

A. Did the Commission Order BellSouth to provide the same on-line edit checking capability - that it uses in RNS - through the available CLEC interfaces?

B. Is TAG an interface?

C. Does TAG require a CLEC to install equipment and software to make a digital connection to BellSouth, then hire a C++ programmer to create a program like LENS that will interact with BellSouth's system's using TAG commands in order to establish a form of on-line edit checking?

D. Is the form of on-line edit checking that can be developed using the computer programming language of TAG the "same" as the on-line edit checking BellSouth uses in RNS?

E. In order to comply with the Commission's Order did BellSouth carry the burden to develop and implement the same on-line edit checking capability - that it uses in RNS - through the available CLEC interfaces of EDI and LENS?

F. Specifically what on-line edit checking capabilities are available to a BellSouth retail customer service representative using RNS?

G. Specifically what databases does RNS interact with for on-line edit checking purposes?

H. When was LENS '99 made available to Supra?

I. Specifically what on-line edit checking capabilities are available to a CLEC retail customer service representative using LENS '99?

J. Did LENS '99, as implemented by BellSouth, establish on-line edit check capabilities that the same as that used in BellSouth's RNS?

K. Did the Commission find that BellSouth had failed to comply with the Commission's previous orders on this issue on February 11, 2000, in Order No. PSC-00-0288-PCO-TP?

Question of Law: Does claim preclusion and/or issue preclusion prevent BellSouth from litigating matters that (1) that were actually litigated in an earlier legal proceeding, or (2) could have been litigated in an earlier legal proceeding.

4. The PAA decision warrants reversal because the Commission already ordered an evidentiary hearing if the third party testing did not address the issue. The Commission likewise already concluded that this Commission would consider whether "BellSouth timely complied with our post-hearing orders." If BellSouth's alleged evidence is new, then BellSouth failed to comply timely. If BellSouth's evidence is not new, then BellSouth is legally precluded from re-litigating the issue. In either case, an evidentiary hearing is most certainly warranted.

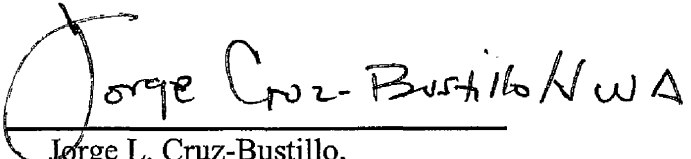
5. There are no specific rules or statutes that require reversal or modification.

6. The relief sought by Supra is a reversal of this Commission decision in Order No. PSC-03-1178-PAA-TP.

WHEREFORE, Supra respectfully requests that this Commission grant Supra's request for a formal proceeding pursuant to Section 120.57(1), Florida Statutes, and that the Petition be processed in an expedited manner consistent with the principles of the Act.

Respectfully Submitted this 10th day of November 2003.

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