

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
ORDER NO. PSC-00-0288-PCO-TP
ISSUED: February 11, 2000

The following Commissioners participated in the disposition of
this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
E. LEON JACOBS, JR.

ORDER ON NOTICE OF COMPLIANCE

BY THE COMMISSION:

I. CASE BACKGROUND

On January 23, 1998, Supra Telecommunications and Information Systems, Inc. (Supra) filed a Complaint against BellSouth Telecommunications, Inc. (BellSouth) for alleged violations of the Telecommunications Act of 1996 (Act) and Petition for resolution of certain disputes between BellSouth and Supra regarding interpretation of the Interconnection, Resale, and Collocation Agreements between Supra and BellSouth (Petition). On February 16, 1998, BellSouth filed its Answer and Response to Supra's Petition. On April 30, 1998, we held a hearing in which we received testimony concerning Supra's complaint. By Order No. PSC-98-1001-FOF-TP, issued July 22, 1998, we rendered our final determination regarding the complaint.

On August 6, 1998, BellSouth filed a Motion for Reconsideration and Clarification of Order No. PSC-98-1001-FOF-TP. That same day, Supra filed a Motion for Reconsideration and

DOCUMENT NUMBER-DATE

01849 FEB 11 8

FPSC-RECORDS/REPORTING

ORDER NO. PSC-00-0288-PCO-TP
DOCKET NO. 980119-TP
PAGE 2

Clarification, as well as a Motion to Take Official Notice of the Record in Docket No. 960786-TL. On August 17, 1998, BellSouth filed its Response to Supra's Motion for Reconsideration and Clarification of Order No. PSC-98-1001-FOF-TP. BellSouth also filed its Opposition to Supra's Motion to Take Official Recognition of the Record in Docket No. 960786-TL. On August 18, 1998, Supra filed its Response to BellSouth's Motion for Reconsideration and Clarification, as well as a Request for Oral Argument. On August 21, 1998, BellSouth filed its Opposition to Supra's Request for Oral Argument.

On September 2, 1998, Supra filed a Motion to Dismiss BellSouth's Motion for Reconsideration and Clarification of Order No. PSC-98-1001-FOF-TP and Motion to Strike BellSouth's Answer in Docket No. 980800-TP for Misconduct. Supra also requested oral argument on its motion. On September 9, 1998, BellSouth filed its Opposition to Supra's Motion to Dismiss and Motion to Strike and its own Motion to Strike and Motion for Oral Argument. BellSouth also included a Motion for Sanctions in its filing. On September 21, 1998, Supra filed its Response to BellSouth's Motion to Strike Supra's Motion to Dismiss and Motion for Sanctions. Supra also included a request to accept its Response Out of Time. On September 23, 1998, BellSouth filed its Opposition to Supra's request to accept its Response to BellSouth's Motion to Strike. By Order No. PSC-98-1467-FOF-TP, issued October 28, 1998, we denied the motions for reconsideration and to supplement the record, and clarified our post-hearing Order.

Thereafter, on November 24, 1998, BellSouth filed a Complaint in the federal District Court for the Northern District of Florida appealing our decision, Case No. 4:98CV4041-WS. The Complaint asked that our Orders identified above be declared invalid and that enforcement of them be enjoined "to the extent that they require BellSouth to provide Supra with on-line editing capabilities." Complaint, p. 8.

On January 11, 1999, Supra filed with us a Notice that BellSouth had not complied with our final Order. On April 26, 1999, BellSouth filed a Notice of Compliance with our final Order, and asked that we approve BellSouth's compliance.

On June 16, 1999, BellSouth filed a Motion to Hold Proceedings in Abeyance Pending Action in Related Administrative Proceedings seeking to abate its federal appeal to enable us to determine if BellSouth had complied with our Orders issued in this Docket.

Supra opposed the motion. On September 3, 1999, the Northern District heard argument on the Motion. The Court issued an order on September 6, 1999, abating the federal case until December 1, 1999.

Though a discovery schedule was followed to meet the deadline, Supra provided certain discovery responses late, which made the December 1, 1999 deadline impossible to meet. We sought to extend the deadline until February 1, 2000. On December 21, 1999, the Court granted the request for extension.

On November 22, 1999, the parties and our staff met to discuss the discovery responses, and to clarify which, if any, matters in our Order had been complied with or otherwise resolved. Our staff also attempted to mediate a resolution between the parties. During those discussions, BellSouth was asked to provide further information. BellSouth provided the information on December 10, 1999.

Based upon the Notice filed by BellSouth, Supra's response, the discovery provided by the parties, and information gained as a result of our staff's November 22, 1999, meeting with the parties, we make the determinations set forth herein.

II. NOTICE OF COMPLIANCE

A. Procedural Basis

At the outset, we emphasize that we are unaware of any other Notice of Compliance ever filed with or ruled upon by this Commission. There is nothing in Chapter 120, Florida Statutes, or our rules governing such a filing. Upon consideration, we believe that it would be inappropriate to reopen the record of this docket to revisit the issues addressed by us in this case, because we believe that to do so would be contrary to the doctrine of administrative finality. We do, however, believe that we can review the Notice and Response filed by the parties and rule upon BellSouth's Notice as a procedural matter. It is our understanding that the essential purpose of such a decision is to assist the federal District Court in making its determination in this case.

B. Commission's Orders in Docket No. 980119-TP

In our post-hearing decision in this case, Order No. PSC-98-1001-FOF-TP, we required BellSouth to implement the following:

1. Provide Supra with CABS formatted bills, rather than CLUB formatted bills.
2. Identify to Supra which USOC codes are discounted and which are not. Also, to the extent that BellSouth's electronic interfaces provide information or automatically populate fields with USOC codes, BellSouth shall provide this same capability to Supra through the ordering interfaces available to Supra.
3. Provide Supra with the ability to reserve the same number of telephone numbers through LENS as BellSouth can through RNS. BellSouth shall also modify LENS to automatically assign a telephone number to an end user when the customer's address is validated.
4. Either provide Supra with all of BellSouth's central office addresses so that Supra is able to reserve telephone numbers for Remote Call Forwarding service to its end users, or BellSouth shall work with Supra to find another mutually agreeable solution.
5. Modify the ALEC ordering systems so that the systems provide the same online edit checking capability to Supra that BellSouth's retail ordering systems provide.
6. Retrain its employees on the proper procedures for handling ALEC repairs and Inside Wire Maintenance problems.
7. If contacted by Supra customers regarding any complaints against Supra, BellSouth shall direct the customer to Supra.
8. Provide any outstanding documentation requested by Supra. This requirement included the provision of

ORDER NO. PSC-00-0288-PCO-TP
DOCKET NO. 980119-TP
PAGE 5

PLATS, which is the cable layout and engineering records of BellSouth.

Order at pgs. 47-48.

We further determined that Supra should pay its bills, and also not misrepresent itself as BellSouth to customers. Id.

Subsequently, by Order No. PSC-98-1467-FOF-TP, issued October 28, 1998, (Reconsideration Order), we clarified that BellSouth would only be required to provide PLATS to Supra on a per request basis, and could do so subject to a protective agreement between the parties, if necessary. Reconsideration Order PSC-98-1467-FOF-TP at pgs. 15-16. We further clarified that:

In accordance with Order No. PSC-98-1001-FOF-TP, BellSouth shall provide Supra with the same interaction and online edit checking capability through its interfaces that occurs when BellSouth's retail ordering interfaces interact with BellSouth's FUEL and Solar databases to check orders. Order No. PSC-98-1001-FOF-TP at pages 22 and 47. BellSouth shall be required to do so by December 31, 1998. If, however, BellSouth is able to sufficiently demonstrate that it is not possible to provide online edit checking by that date, BellSouth may file a Motion for Extension of Time for our consideration.

Reconsideration Order at p. 21.

In addition, we clarified that BellSouth did not need to provide the exact same interfaces that it uses at Supra's premises. Reconsideration Order at p. 15.

C. Arguments

1. BELLSOUTH

In its Notice of Compliance, BellSouth argues that on August 19, 1998, it forwarded 4000 pages of discounted USOCs and over 200 pages of non-discounted USOCs, as well as a list of BellSouth central office addresses to Supra. BellSouth attached a copy of the forwarding letter as an exhibit to its Notice.

BellSouth also included as an exhibit a letter indicating that it had provided Supra with the information and contacts necessary to obtain the outstanding documentation BellSouth was required to provide to Supra.

BellSouth also asserts that it has provided access to PLATS, its cable engineering and layout records, in accordance with the Commission's Orders and has retrained its employees on the procedures for handling ALEC repairs and inside wire maintenance problems.

BellSouth emphasizes that the only issue that it believes that it had not resolved on its own prior to the end of August 1998, was the issue of providing on-line edit checking capability through an ALEC ordering system available to Supra. BellSouth maintains, however, that it has now complied with this requirement as well. BellSouth asserts that it has created a new ALEC ordering interface known as the Telecommunications Applications Gateway or "TAG." BellSouth explains that TAG allows an ALEC to submit orders online using "the same edits and same capabilities that are applied to BellSouth retail orders by FUEL and SOLAR." Notice at p. 5. BellSouth maintains that it deployed this new interface on November 1, 1998. BellSouth added that Supra is, in fact, in the process of implementing the TAG interface.

Based on the foregoing, BellSouth asks that we determine that BellSouth is in compliance with the Commission's final decisions in this case.

2. SUPRA

In its response, Supra argues that we actually required BellSouth to modify LENS to provide online edit checking capability by December 31, 1998. Supra maintains that BellSouth has not complied with this requirement, with provision of the Daily Usage

File, or the USOC codes, with documentation of RNS and the RNS Application Programmer's Interface (API), or with the provision of PLATS.

Supra maintains that TAG does not meet the requirements of our final decision in this case for providing online edit checking capability. Primarily, Supra argues that we specifically required BellSouth to provide this capability through the LENS interface, not through another interface. Supra also argues that even if BellSouth was allowed to provide the capability through another interface, TAG is not sufficient, because it is not an ALEC ordering interface. Instead, Supra maintains that TAG is a computer programming language that is supposed to allow ALECs to access different BellSouth databases. In order to use TAG, though, Supra explains an ALEC must 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 systems using TAG commands. Thus, Supra argues that the TAG system leaves it up to the ALECs to develop a system that has the capabilities required, rather than BellSouth. Supra adds that it could take as long as a year and upwards of \$250,000 to complete the computer modifications and programming necessary to use TAG. As such, Supra does not believe that TAG meets the requirements of our Orders in this case.

Supra also argues that BellSouth has not provided the Daily Usage File. In order to obtain this, Supra asserts that BellSouth will require Supra to purchase \$17,000 in computer software. Supra also contends that BellSouth has not provided the USOC codes in an electronic format, unless Supra pays BellSouth \$14 per code, which could total \$280,000 to obtain the needed codes. Supra adds that it believes the codes provided thus far are outdated.

In addition, Supra argues that BellSouth has not provided sufficient addressing information for BellSouth's central offices to allow Supra to provide "remote call forwarding service." Supra asserts that the information provided regarding the central offices did not include information relating to the new 786 area code. Supra also contends that BellSouth has not provided the documentation about RNS and the RNS API, and has not provided the PLATS information on CD-ROM. Supra adds that it has seen no proof that BellSouth has retrained its employees in accordance with our directive.

D. Analysis and Decision

Upon consideration of the foregoing, we believe that BellSouth has complied with all portions of our final decision in this case, Order No. PSC-98-1001-FOF-TP, issued July 22, 1998, as clarified by Order No. PSC-98-1467-FOF-TP, issued October 28, 1998, except for our specific requirement that BellSouth should provide Supra with on-line edit checking capability by December 31, 1998.

Specifically, with regard to CABS formatted bills, it appears that BellSouth has fulfilled this requirement and this is no longer an issue between the parties.

As for providing USOC codes, and identifying which are discounted or non-discounted, BellSouth has done this, as set forth in its Notice. In addition, BellSouth has shown that LENS allows the population of fields with the USOC codes. Thus, we believe BellSouth has fulfilled this requirement, as demonstrated in its Notice. Although Supra contends that the codes must be provided in an electronic file, nothing in our Orders supports this assertion.

As it pertains to the ability to reserve numbers, it also appears that BellSouth has complied with this requirement. LENS allows Supra to reserve the same amount of numbers as BellSouth does through RNS.

BellSouth has also provided Supra with all of its central office addresses, as we required, and demonstrated in BellSouth's Notice. We did not require BellSouth to provide the NXX codes BellSouth has assigned to its central office switches. BellSouth notes that these codes may be obtained from the Local Exchange Routing Guide (LERG), which is maintained by Telecordia. BellSouth has provided a contact number for obtaining this information.

As for retraining its employees, it appears that BellSouth has also met this requirement. Supra has provided nothing to contradict BellSouth's assertions and has simply indicated that BellSouth has not proven to Supra that such training was done. Supra does not, however, indicate that it continues to have a problem in this area. Thus, we shall consider BellSouth to have complied with this requirement.

It also appears to us that BellSouth has also complied with our requirement that it should direct customer complaints regarding Supra to Supra.

ORDER NO. PSC-00-0288-PCO-TP
DOCKET NO. 980119-TP
PAGE 9

As for the PLATS, Supra maintains that it must have the PLATS in CD-ROM format, and that BellSouth should not require Supra to sign an agreement in order to obtain the PLATS. In Order No. PSC-98-1467-FOF-TP, however, we clearly stated that BellSouth may require Supra to enter into a protective agreement with BellSouth before BellSouth provides the PLATS. We did not then, and shall not now, specify what form that agreement should take. Furthermore, there is no indication in our Order that BellSouth would have to provide the PLATS in CD-ROM format. BellSouth has indicated that the PLATS are not available on CD-ROM.

As it relates to documentation of RNS, we emphasize that we did not require BellSouth to provide documentation of RNS to Supra.

Regarding the Daily Usage File (DUF), nothing in our Orders requires BellSouth to provide the DUF. In fact, the only reference to the DUF, at page 13 of Order No. PSC-98-1001-FOF-TP, indicates that Supra had not requested the DUF. BellSouth maintains, however, that it is working with Supra to provide the DUF.

Finally, with regard to the provision of online edit checking capability by December 31, 1998, we emphasize that we believe this is a close call. 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 the 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.

In rendering our decision that BellSouth must provide online edit checking to Supra, we clearly stated at page 27 of Order No. PSC-98-1001-FOF-TP that the capability could be provided to Supra through the ALEC ordering systems available to Supra. That requirement is reiterated at page 56 of that Order. It is clear, however, from the surrounding passages that only we only considered the LENS and EDI interfaces. In our Reconsideration Order, we again emphasized this requirement at page 18 of that Order. It is further emphasized at page 24 of that Order, where we stated that:

In accordance with Order No. PSC-98-1001-FOF-T[P], BellSouth shall provide Supra with the same interaction and online edit checking capability through its interfaces that occurs when BellSouth's retail ordering interfaces

ORDER NO. PSC-00-0288-PCO-TP
DOCKET NO. 980119-TP
PAGE 10

interact with BellSouth's FUEL and Solar databases to check orders. Order No. PSC-98-1001-FOF-T[P] at pages 22 and 47. BellSouth shall be required to do so by December 31, 1998.

Order at p. 24.

We note that it appears that Supra believes we specifically determined that BellSouth must provide online edit checking through LENS. While LENS was one of only two ordering interfaces addressed in the proceeding, nowhere in either Order did we specifically state that the online edit checking capability had to be provided specifically through the LENS interface. In each reference to this particular requirement, we indicated that it must be provided generally through the ALEC ordering interfaces available to Supra. Supra's confusion may arise from statements in both of these Orders whereby we require BellSouth to make modifications specifically to the LENS interface to give Supra the same ordering capability that BellSouth's RNS system provides. See Order No. PSC-98-1001-FOF-TP at p. 22, and Order No. PSC-98-1467-FOF-TP at p. 24. The parity of the ordering capability was, however, an issue separate and apart from the online edit checking capability issue. This is clearly evidenced at page 24 of Order No. PSC-98-1467-FOF-TP, where we allowed BellSouth to complete the modifications to LENS by February 1999, but required the online edit checking capability be provided by December 31, 1998.

Nevertheless, we acknowledge that the only ALEC ordering interfaces that we addressed in our proceeding were the LENS and EDI interfaces. It appears, however, that BellSouth is relying solely on the TAG interface to establish its compliance with the online edit checking capability requirement set by us. However, in rendering our decision based on the evidence in the record of the available interfaces, we intended, at that time, that BellSouth provide the online edit checking capability through either LENS or EDI. Therefore, BellSouth has not complied with the specific requirements in our Orders in this Docket.

We emphasize, however, that if TAG had been considered in our proceeding in this case, it is entirely possible that this interface would have met the online edit checking requirement. BellSouth has also developed other interfaces that may also meet this requirement, including LENS '99 and Robo-TAG. Based on the information available at this time it is not possible to

definitively state that either of these interfaces would, in fact, satisfactorily meet the online edit checking requirement. To make such a determination would require a full hearing, which we do not believe is appropriate or necessary in view of the pending federal proceeding and the implications of the doctrine of administrative finality, which stands for the proposition that:

. . . orders of administrative agencies must eventually pass out of the agency's control and become final and no longer subject to modification. This rule assures that there will be a terminal point in every proceeding at which the parties and the public may rely on a decision of such an agency as being final and dispositive of the rights and issues involved therein. This is, of course, the same rule that governs the finality of decisions of courts. It is as essential with respect to orders of administrative bodies as with those of courts.

Peoples Gas Sys. V. Mason, 187 So. 2d 335, 338-339 (Fla. 1966). An argument could be made that the development of TAG, LENS, and Robo-TAG amounts to changed circumstances, thereby, providing a basis for rehearing by the Commission in this case. See McCaw Communications of Florida, Inc., Appellant, vs. Susan F. Clark, 679 So. 2d 1177 (Fla. 1996). We do not, however, believe that this is appropriate in this instance, in view of the matter pending before the federal District Court. Furthermore, whether or not circumstances have changed such that BellSouth now can provide Supra with on-line edit checking capability, we emphasize that it is still not clear that this capability was provided by the date required by our Order. Based on the information available, however, we offer the following analysis of these interfaces for informational purposes only.

E. New Interfaces - Informational Analysis Only

At the time Order No. PSC-98-1001-FOF-TP was issued, BellSouth offered LENS and EDI as ordering system options for ALEC use. At that time, LENS was by far the most used ordering option. Many ALECs were temporarily using LENS while awaiting the development of an industry standard ordering interface or protocol. Such a standard did not exist at the time LENS was developed. In late 1998, the Ordering and Billing Forum of the Alliance for

Telecommunications Industry Solutions adopted Common Object Request Broker Architecture (CORBA) as the industry standard ordering protocol. BellSouth developed Telecommunications Access Gateway (TAG) as its CORBA-based, standard-compliant, option to provide non-discriminatory ordering capability to ALECs. As we understand it, the ordering capability of TAG was rolled out in late 1998. According to BellSouth, TAG allows ALECs to access all of the online edit capabilities available through the Local Exchange Ordering (LEO) and Local Exchange Service Order Generator (LESOG) databases.

BellSouth has also developed the TAG-based options of LENS '99 and Robo-TAG, which also provide full access to LEO and LESOG edit capabilities. LENS '99 allows ALECs to continue to use the LENS Graphical User Interface to access TAG. According to BellSouth, all current LENS users, including Supra, will be converted to LENS '99 by April 1, 2000. Robo-TAG is another option for those ALECs that want to avoid the extensive C++ programming required to implement TAG, which is one point of concern raised by Supra. This is accomplished through an on-site server provided through BellSouth.

III.

CONCLUSION

Based on the foregoing, we find that BellSouth has complied with all portions of our final decision in this case, Order No. PSC-98-1001-FOF-TP, issued July 22, 1998, as clarified by Order No. PSC-98-1467-FOF-TP, issued October 28, 1998, except for the specific requirements that BellSouth should provide Supra with on-line edit checking capability by December 31, 1998. We do, however, acknowledge that BellSouth has made significant developments in its OSS since the time that we rendered our final decision, including TAG, Robo-TAG, and LENS '99. Thus, while it appears that BellSouth is not literally in compliance, technology has been developed that may provide on-line edit checking. Nevertheless, it would not be appropriate for us to revisit our decision in this case to consider these newly developed alternatives in response to BellSouth's Notice of Compliance.

It is therefore

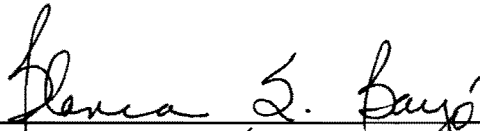
ORDERED by the Florida Public Service Commission that we find that BellSouth Telecommunications, Inc. has complied with Order No. PSC-98-1001-FOF-TP, issued July 22, 1998, as clarified by Order No. PSC-98-1467-FOF-TP, issued October 28, 1998, with the exception of

ORDER NO. PSC-00-0288-PCO-TP
DOCKET NO. 980119-TP
PAGE 13

providing on-line edit checking capability as set forth in the body of this Order. It is further

ORDERED that this Docket shall remain open pending the outcome of the ongoing federal proceeding regarding this case.

By ORDER of the Florida Public Service Commission this 11th day of February, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

BK

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 procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6). A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code.