

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-03-1178-PAA-TP
ISSUED: October 21, 2003

The following Commissioners participated in the disposition of
this matter:

J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION
ORDER FINDING COMPLIANCE WITH ON-LINE EDIT CHECKING REQUIREMENT

BY THE COMMISSION:

CASE BACKGROUND

NOTICE is hereby given by the Florida Public Service
Commission that the action discussed herein is preliminary in
nature and will become final unless a person whose interests are
substantially affected files a petition for a formal proceeding,
pursuant to Rule 25-22.029, Florida Administrative Code.

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

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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, this Commission rendered its 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 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-TL. 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 the Commission's decision, Case No. 4:98CV4041-WS. The Complaint asked that the above Commission Orders 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 1, 1999, Supra filed with this Commission a Notice that BellSouth had not complied with the Commission's final Order. On April 26, 1999, BellSouth filed a Notice of Compliance with the Commission's 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 the orders issued in this Docket. Supra opposed the motion. The Court issued an order on September 6, 1999, abating the federal case until December 1, 1999. On December 21, 1999, the Court granted that extension until February 1, 2000.

On November 22, 1999, the parties and our staff met to discuss the discovery responses and to clarify which, if any, matters in the Commission's 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 Notice filed by BellSouth, Supra's response, the discovery provided by the parties, and the information gained as a result of our staff's November 22, 1999, meeting with the parties, we issued Order No. PSC-00-0288-PCO-TP, on February 11, 2000. Therein, we determined that BellSouth had complied with all portions of this Commission's 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 did, however, acknowledge that BellSouth had made significant developments in its OSS, which includes TAG, Robo-TAG, and LENS '99, since the time that we rendered our final decision.

On February 25, 2000, Supra filed a Motion for Reconsideration of our decision, as well as a Request for Oral Argument. On March 8, 2000, BellSouth filed its Response, which included a request that we reconsider our decision not to proceed to hearing on the limited issue of on-line edit checking capability. Supra did not file a response to this apparent request/cross-motion for reconsideration. By Order No. PSC-00-0798-FOF-TP, issued April 24, 2000, we denied both parties' requests for reconsideration pending the outcome of the federal proceedings.

On May 8, 2000, the federal district court granted BellSouth's voluntary dismissal of its appeal to allow us to address the issue of whether BellSouth is in compliance with the on-line edit checking requirements.

On June 8, 2000, BellSouth filed a Motion for Reconsideration of our decision and requested that the issue of whether or not BellSouth had complied with the edit checking capability requirements of Order No. PSC-98-1001-FOF-TP be resolved by the third-party testing of BellSouth's OSS, which was then being conducted pursuant to Order No. PSC-00-0104-PAA-TP, in Dockets Nos. 981834-TP and 960786-TL. On July 5, 2000, Supra filed its response and opposition to BellSouth's Motion, as well as a request for oral argument. Thereafter, on July 10, 2000, BellSouth filed a reply to Supra's response. On July 12, 2000, Supra filed a Motion to Strike BellSouth's Reply to Supra's Response and a Motion to Strike BellSouth's Motion for Reconsideration. BellSouth did not respond to the Motions to Strike. By Order No. PSC-00-1777-PCO-TP, issued September 28, 2000, we took the following action: (1) granted Supra's Motion to Strike BellSouth's Reply Brief; (2) denied Supra's Motion to Strike BellSouth's Motion for Reconsideration; (3) granted BellSouth's Motion for Reconsideration to the extent that it sought to reopen the record of this case to allow the Commission to address whether BellSouth's ALEC ordering system can provide on-line edit checking capability to Supra; and (4) postponed action in this Docket pending the outcome of the OSS testing being conducted in Docket No. 960786B-TL. Once the OSS testing was completed, we emphasized that the findings in Docket No. 960786B-TL should be used to the fullest extent possible to determine whether BellSouth had met the on-line edit checking requirements of our previous orders in this Docket. We stated that we would "consider whether the third-party testing of BellSouth's

OSS has resolved the issue in dispute, or whether we should proceed to a hearing in this 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, p. 8. On September 25, 2002, we rendered our Consultative Opinion regarding the results of the testing of BellSouth's OSS, Opinion No. PSC-02-1305-FOF-TL.

JURISDICTION

We have jurisdiction to resolve this dispute pursuant to Sections 251 and 252 of the Telecommunications Act of 1996. See also Iowa Utilities Bd. v. FCC, 120 F. 3d 753, 804 (8th Cir. 1997) (state commissions' authority under the Act to approve agreements carries with it the authority to enforce the agreements). The Commission is also authorized to act in this matter pursuant to Section 364.162(1), Florida Statutes.

COMPLIANCE WITH ON-LINE EDIT CHECKING REQUIREMENT

Supra states that an order submitted by Supra via LENS must be edit checked by running the order past a gauntlet of programs designed to reject the order back with "clarifications" found after the fact rather than on-line at data entry. A Local Exchange Navigation System (LENS) order must go through Telecommunications Access Gateway (TAG), Local Exchange Ordering (LEO) and Local Exchange Service Order Generator (LESOG) edit checks before going into the Service Order Communications System (SOCS) for service order generation.

According to Supra, the order may be rejected by any of these systems and returned to Supra hours or days after the Supra representative has hung up with the customer. Occasionally the rejection necessitates additional customer contact, delaying the entire process. In contrast, the BellSouth retail ordering system can do on-line edit checking while the customer is still on the phone. As a result, Retail Ordering System (ROS) or Regional Negotiating System (RNS) retail orders are submitted directly to SOCS. Supra does not believe the Florida Third-Party Test adequately compared the CLEC and BellSouth systems.

BellSouth states that CLECs have been provided access to the same Service Order Edit Routine (SOER) that BellSouth has used to process its own retail orders since July 1998. CLECs, using TAG and EDI, have the capability to create and tailor any on-line editing capability that is desired according to BellSouth. CLECs can customize their on-line editing routine to meet their specific needs. If a CLEC so desires, it can customize its up-front editing routine to be the same as BellSouth's editing routine.

BellSouth asserts that LENS, the OSS used by Supra, has used the TAG architecture and gateway and has had essentially the same pre-ordering and ordering functionality as TAG since January 2000. When a CLEC submits a request through LENS, which sits atop the TAG system, it has the same on-line editing capabilities as a request submitted through TAG.

As noted in the Case Background, in Order No. PSC-00-1777-PCO-TP, we stated that due to the technical complexity of the issue, an administrative hearing on whether BellSouth OSS provided on-line edit checking capability would be postponed until the OSS third-party testing was complete. Once completed, we would determine if the test resolved the issue in dispute.

Thereafter, on page 24 of our Consultative Opinion Regarding BellSouth's Operational Support Systems, PSC-02-1305-FOF-TP, we found that BellSouth is providing nondiscriminatory access to its OSS for the pre-ordering and ordering domains. Additionally, the test demonstrated that the systems for pre-ordering and ordering are operationally ready and provide an appropriate level of performance.

Likewise, in approving BellSouth's 271 application, the FCC agreed that BellSouth provides nondiscriminatory access to its OSS and, thus, satisfies the requirement of checklist item 2. Memorandum Opinion and Order, FCC 02-331 in WC Docket 02-307, 2002 FCC LEXIS 6811. By definition, nondiscriminatory access means that BellSouth provides CLECs access to the pre-ordering and ordering functionalities in substantially the same time and manner as BellSouth retail systems. Implicit in this finding is that the CLEC ordering systems provide sufficient on-line editing capability.

The FCC also specifically rejected Supra's allegations as follows:

76. We also reject Supra's claim that the Florida KPMG test was inadequate because KPMG was not granted access to BellSouth's OSS identical to that offered to BellSouth's retail operations. Contrary to Supra's assertions, **we have never held that a competitive LEC must access the BOC's OSS in the identical manner as does the BOC.** Instead, the Commission has found that where a retail analogue exists, a BOC must provide access that is substantially the same as the level of access that the BOC provides itself, its customers, or its affiliates, in terms of quality, accuracy, and timeliness. For those functions that have no retail analogue, the BOC must demonstrate that the access it provides to competing carriers would offer an efficient carrier a "meaningful opportunity to compete." The Commission has recognized in prior orders that there may be situations in which a BOC contends that, although equivalent access has not been achieved for an analogous function, the access that it provides is nonetheless nondiscriminatory within the meaning of the statute. The Florida KPMG test evaluated the methods BellSouth employs to provide competitive LECs access to BellSouth's OSS, methods that we have found previously to constitute **nondiscriminatory access to BellSouth's OSS.** [emphasis added]

FCC 02-331 in WC Docket 02-307, 2002 FCC LEXIS 6811.

Paragraph 97 of the FCC order specifically addresses Supra's issue of on-line edit capability:

97. We also reject Supra's claim that LENS is discriminatory because "orders submitted from LENS are not error checked with any efficiency

or completeness." KPMG found LENS to be a nondiscriminatory interface under criteria that included testing of both error-free transactions and transactions that included errors. Moreover, since January 2000, LENS has used the TAG architecture and gateway and has essentially the same pre-ordering and ordering functionality for resale services and UNEs as TAG. Thus, when a competitive LEC submits a request through LENS, which sits atop the TAG system, it has the same on-line editing capabilities as a request submitted through TAG. As a consequence, we disagree with Supra that "BellSouth has not implemented on-line edit checking in LENS." [footnotes omitted]

Id.

As set forth in Order No. PSC-00-0288-PCO-TP, issued February 11, 2000, in our initial administrative hearing, we had only received evidence regarding the LENS and EDI interfaces. At the time of Order No. PSC-00-0288-PCO-TP, BellSouth appeared to only be asserting that it had met the on-line edit checking capability requirement through the TAG interface, which had not even been considered in the hearing. Thus, we indicated that it appeared that BellSouth had not met the specific on-line edit checking capability requirement in a timely manner, because BellSouth did not appear to have provided that capability through either EDI or LENS by the required date, December 31, 1998. We noted, however, that further proceedings may be warranted to consider new evidence on TAG and whether it met the intent of our Order.

Thereafter, by Order No. PSC-00-1777-PCO-TP, issued September 28, 2000, among other things, we granted BellSouth's request that it reopen the record in this case on the issue of on-line edit checking capability and postponed action in the Docket to see if the Third-Party OSS Test (TPT) of BellSouth's systems would resolve the issue without necessitating further action in this Docket. As previously noted, we emphasized in our decision that the results of the TPT would be used in this record to the fullest extent possible in an effort to resolve the issue. The TPT has now concluded. Incorporating the findings of the test in this Docket, we find that the TPT did, in fact, resolve this issue, thus negating the need for further proceedings. The TPT demonstrates that BellSouth has

made available the on-line edit checking capability as follows: (1) through EDI since July 1998; (2) through TAG since November 1998; and (3) through LENS since January 2000. Thus, BellSouth has complied in a timely manner with the requirements of the post-hearing Final Order in this Docket, Order No. PSC-98-1001-FOF-TP, as clarified by the subsequent Orders in this Docket.

Both this Commission and the FCC found that LENS, TAG and EDI are nondiscriminatory and provide an appropriate level of service to CLECs. The KPMG Final Report, dated July 2002, stated that the EDI, TAG and LENS interfaces provided expected functionality. Our Order No. PSC-02-1305-FOF-TL set forth our findings that BellSouth is providing nondiscriminatory access to its OSS for the Pre-Ordering and Ordering domains. Additionally, we found that BellSouth is providing the documentation and support necessary for CLECs to access and use the Pre-Ordering and Ordering systems. BellSouth provided the CLECs with access to the same Service Order Edit Routine (SOER) that BellSouth has used to process its own retail orders since July 1998. CLECs, using TAG or EDI, can create their specific on-line edit capability using this edit routine. Finally, the FCC, in its December 19, 2002, Memorandum Opinion and Order in WC Docket No. 02-307, also rejected Supra's claim that LENS was a discriminatory interface. The FCC specifically stated "[a]s a consequence, we disagree with Supra that 'BellSouth has not implemented on-line edit checking in LENS'."

In conclusion, we find it noteworthy that the parties have not initiated action in this Docket since the conclusion of the 271 proceedings. In light of the findings in the 271 proceedings, we find our third party test of BellSouth's OSS has satisfactorily resolved this issue and that further proceedings on this matter are not necessary.

Based on the foregoing, it is

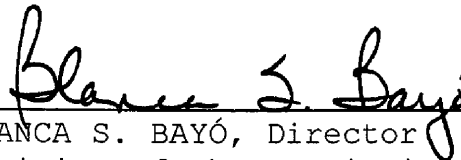
ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc. has timely complied with the on-line edit checking requirements set forth in Order No. PSC-98-1001-FOF-TP, as clarified by the subsequent Orders in this Docket. It is further

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ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 21st Day of October, 2003.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

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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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

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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.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 11, 2003.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.