



Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: JANUARY 20, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF LEGAL SERVICES (B. KEATING) *BK used*
DIVISION OF TELECOMMUNICATIONS (FAVORS) *GNF RNT*
DIVISION OF AUDITING & FINANCIAL ANALYSIS (VINSON) *GNF*
DIVISION OF POLICY ANALYSIS & INTERGOVERNMENTAL LIAISON *TPS*
(CLARK-WATTS) *GNF*

RE: DOCKET NO. 980119-TP - COMPLAINT OF SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC. AGAINST BELL SOUTH 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.

AGENDA: 02/01/00 - REGULAR AGENDA - PROCEDURAL, POST-HEARING DECISION - NOTICE OF COMPLIANCE - ORAL ARGUMENT NOT REQUESTED - PARTICIPATION LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\980119.RCM

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

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FPSC-RECORDS/REPORTING

DOCKET NO. 980119-TP
DATE: JANUARY 20, 2000

Petition. On April 30, 1998, the Commission held a hearing in which it received testimony concerning Supra's complaint. By Order No. PSC-98-1001-FOF-TP, issued July 22, 1998, the 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, the Commission denied the motions for reconsideration and to supplement the record, and clarified its 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 the Commission's final Order. On April 26, 1999, BellSouth filed a Notice of Compliance with the

Commission's final Order, and asked that the Commission 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 the Commission to determine if BellSouth had complied with the Commission's Orders issued in this Docket. Supra opposed the motion.

On September 3, 1999, the Northern District heard argument on the Motion. Judge Hinkle specifically asked whether three months would be sufficient for the status of BellSouth's compliance to be determined by the Commission. He was advised that three months was sufficient by the Commission attorneys participating.

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 that deadline, Supra provided certain discovery responses late, which made the December 1, 1999 deadline impossible to meet. The Commission sought to extend the deadline until February 1, 2000. On December 21, 1999, the Court granted that extension. It should, however, be noted that Supra vigorously opposed any abatement of the federal case on the grounds that is a delaying tactic on the part of BellSouth. Staff believes, therefore, that it is unlikely the Court will view any further abatement beyond February 1, 2000 as reasonable.¹

On November 22, 1999, the parties and 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. 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 information gained as a result of staff's November 22, 1999, with the parties, staff makes the following recommendation.

¹ Based on a December 2, 1999 Order, the Court extended the date for BellSouth to file its Initial Brief, but, again, only until February 1, 2000.

DISCUSSION OF ISSUES

ISSUE 1: Has BellSouth Telecommunications, Inc. complied in full with Order No. PSC-98-1001-FOF-TL, as clarified by Order No. PSC-98-1467-FOF-TP?

RECOMMENDATION: No. BellSouth has complied with all portions of the 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 Commission's specific requirements that BellSouth should provide Supra with on-line edit checking capability by December 31, 1998. Staff recommends, however, that the Commission acknowledge that BellSouth has made significant developments in its OSS since the time that the Commission rendered its 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 the Commission to revisit its decision in this case to consider these newly developed alternatives in response to BellSouth's Notice of Compliance.

STAFF ANALYSIS:

At the outset, staff notes that we are unaware of any other Notice of Compliance ever filed with or ruled upon by the Commission. There is nothing in Chapter 120 or Commission rules governing such a filing. Staff believes that it would be inappropriate to reopen the record of this docket to revisit the issues addressed by the Commission in this case, because we believe that to do so would be contrary to the doctrine of administrative finality. Staff does, however, believe that the Commission 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.

COMMISSION'S ORDERS IN DOCKET NO. 980119-TP

In its post-hearing decision in this case, Order No. PSC-98-1001-FOF-TP, the Commission determined that BellSouth should be required to implement the following:

1. BellSouth shall provide Supra with CABS formatted bills, rather than CLUB formatted bills.

2. BellSouth shall 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. BellSouth shall 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. BellSouth shall 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. BellSouth shall 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. BellSouth shall 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. BellSouth shall provide any outstanding documentation requested by Supra. This requirement included the provision of PLATS, which is the cable layout and engineering records of BellSouth.

Order at pgs. 47-48.

The Commission 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), the Commission 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. The Commission further clarified that

In accordance with Order No. PSC-98-1001-FOF-TL, 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-TL 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.

The Commission also clarified that BellSouth did not need to provide the exact same interfaces that it uses at Supra's premises. Reconsideration Order at p. 15.

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 the Commission determine that BellSouth is in compliance with the Commission's final decisions in this case.

SUPRA

In its response, Supra argues that the Commission 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 the Commission's final decision in this case for providing online edit checking capability. Primarily, Supra argues that the Commission 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 the Commission's 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 of 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 the Commission's directive.

STAFF'S ANALYSIS

Staff believes that BellSouth has complied with all portions of the 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 Commission's specific requirements that BellSouth should provide Supra with on-line edit checking capability by December 31, 1998.

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

2. With regard to 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, staff believes BellSouth has fulfilled this requirement, as demonstrated in its Notice. Although Supra contends that the codes must be provided in an electronic file, staff finds nothing in the Commission's Orders to support this assertion.

3. 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.

4. BellSouth has also provided Supra with all of its central office addresses, as required by the Commission, and demonstrated in BellSouth's Notice. The Commission 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.

5. Item 5, online edit checking capability is addressed below.

6. 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. Staff, therefore, recommends that BellSouth be considered to have complied with this requirement.

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

8. 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, the Commission clearly stated that BellSouth may require Supra to enter into a protective agreement with BellSouth before BellSouth provides the PLATS. The Commission did not, and should not now, specify what form that agreement should take. Furthermore, there is no indication in the 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, staff emphasizes that the Commission did not require BellSouth to provide documentation of RNS to Supra.

Regarding the Daily Usage File (DUF), staff finds nothing in the Commission's Orders that 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 indicates, however, that it is working with Supra to provide the DUF.

ONLINE EDIT CHECKING CAPABILITY - Item 5

Finally, with regard to the provision of online edit checking capability by December 31, 1998, staff emphasizes that we believe this is a close call. Based on the record upon which the Commission based its decision, however, staff does 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 the Commission's proceeding, only the LENS and EDI interfaces were actually addressed in the record. The Commission's decision was based upon the evidence of the capabilities of only these ALEC interfaces.

In rendering its decision that BellSouth must provide online edit checking to Supra, the Commission 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 the LENS and EDI interfaces were considered. In the Reconsideration Order, the requirement is again emphasized at page 18 of that Order. It is further emphasized at page 24 of that Order, where the Commission 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 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.

Staff notes that it appears that Supra believes the Commission 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 the Commission specifically state that the online edit checking capability had to be provided specifically through the LENS

interface. In each reference to this particular requirement, the Commission indicated that it must be provided generally through the ALEC ordering interfaces available to Supra. Staff believes that Supra's confusion may arise from statements in both of these Orders which 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 the Commission 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, staff acknowledges that the only ALEC ordering interfaces addressed by the Commission in its 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 the Commission. Staff believes that in rendering its decision based on the evidence in the record of the available interfaces, the Commission intended, at that time, that BellSouth provide the online edit checking capability through either LENS or EDI. Therefore, staff believes that BellSouth has not complied with the specific requirements in the Commission's Orders in this Docket.

Staff emphasizes, however, that if TAG had been considered in the Commission's 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 staff does 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). Staff does 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, staff emphasizes that it is still not clear that this capability was provided by the date required by the Commission. Based on the information available, however, staff offers the following analysis of these interfaces for informational purposes only.

NEW INTERFACES

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

DOCKET NO. 980119-TP
DATE: JANUARY 20, 2000

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.

ISSUE 2: Should this Docket be closed?

RECOMMENDATION: No. Whether or not the Commission approves staff's recommendation in Issue 1, no further determinations will remain to be made by the Commission. However, this Docket should remain open pending the outcome of the federal proceeding.

STAFF ANALYSIS: No. Whether or not the Commission approves staff's recommendation in Issue 1, no further determinations will remain to be made by the Commission. However, this Docket should remain open pending the outcome of the federal proceeding.