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October 26, 2001

Mrs. Blanca S. Bay6
Director, Division of the Commission
Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 001305TP (Supra-BellSouth Arbitration)

Dear Mrs. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Post Hearing Brief, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

T. Michael Twomey

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

CERTIFICATE OF SERVICE
Docket No. 001305-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Federal Express this 26th day of October, 2001 to the following:

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(+) Signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Supra Telecommunications & Information 1 .System, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996.	))))))	Docket No. 001305-TP Filed: October 26, 2001

POST-HEARING BRIEF OF BELLSOUTH TELECOMMUNICATIONS, INC.

BellSouth Telecommunications, Inc. ("BellSouth") submits this post-hearing brief in support of its positions on the issues submitted to the Commission for arbitration in accordance with the Section 252 of the Telecommunications Act of 1996, 47 U.S.C. § 252. Considering the evidence and applicable law, the Commission should adopt BellSouth's position on each of the issues which remain in dispute.

INTRODUCTION

This arbitration proceeding was initiated by BellSouth against Supra Telecommunications and Information Systems, Inc. ("Supra").[1] BellSouth has been attempting to negotiate the terms of a new interconnection agreement with Supra since March, 2000. Although BellSouth and Supra were able to reach agreement on a number of issues, many issues remain unresolved.

The remaining issues that this Commission must resolve reach nearly every corner of the parties' interconnection agreement; they concern matters as varied as how disputes between the

[1] BellSouth filed its petition for arbitration on September 1, 2000, raising fifteen disputed issues concerning the parties' proposed interconnection agreement. Supra raised an additional fifty-one issues in its response. Thirteen issues (2, 3, 6, 30, 36, 37, 39, 43, 50, 54, 56, 58 and 64) were either withdrawn at Issue Identification or were withdrawn or resolved during the Intercompany Review Board meeting in June, 2001. An additional twenty issues (A, 7, 9, 13, 14, 17, 25A, 25B, 26, 27, 3 1, 35, 41, 44, 45, 48, 5 1, 52, 53 and 55) were either withdrawn or resolved during the mediation, the hearing or in subsequent meetings thereafter. The Commission heard this matter on September 26 and 27, 2001.

parties should be resolved to whether Supra should access BellSouth's operations support systems ("OSS") in a manner different from all other alternative local exchange carriers ("ALECs"). But, there is a recurring theme that runs through this arbitration: Supra believes that it may demand any work process or arrangement from BellSouth, without regard to the requirements of the Telecommunications Act of 1996 ("the 1996 Act") or applicable rulings of the Federal Communications Commission ("FCC") or this Commission, without regard to whether BellSouth makes available such processes or arrangements for itself, and without regard to the costs imposed on BellSouth. BellSouth's positions on the remaining unresolved issues in this arbitration are fully consistent with the 1996 Act and applicable rulings of this Commission and the FCC; the same cannot be said about the positions espoused by Supra.

This case is unusual in that BellSouth is the only party interested in moving to a follow-one agreement. As the Commission is well-aware, Supra has not paid BellSouth for services under the parties' existing agreement in more than two years. Instead of paying its bills, Supra has disputed every charge and has raised numerous claims against BellSouth. Some of those claims have been adjudicated by a panel of three arbitrators with no telecommunications background. Supra will likely rely on the arbitrators' decisions to support its position on some of the issues in this case. But this Commission should not defer the formulation of telecommunications policy in the State of Florida to three lawyers who decided specific disputes between two parties regarding the interpretation of certain language in a four-year old interconnection agreement. The decisions of the arbitrators should not be relevant to this

Commission's task of deciding the appropriate terms and conditions that should be included in the parties' new agreement.[2]

II. STATUTORY OVERVIEW

The 1996 Act provides that parties negotiating an interconnection agreement have the duty to negotiate in good faith.[3] After negotiations have continued for a specified period, the 1996 Act allows either party to petition a state commission for arbitration of unresolved issues.[4] The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.[5] The petitioning party must submit along with its petition "all relevant documentation concerning: (1) the unresolved issues; (2) the position of each of the parties with respect to those issues; and (3) any other issues discussed and resolved by the parties."[6] A non-petitioning party to a negotiation under this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the state commission receives the petition.[7] The 1996 Act limits a state commission's consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and in the response.'

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[2] In view of the Commission's requirement that this brief not exceed forty pages, BellSouth has provided only a summary of its position without additional discussion for certain issues. For those issues, BellSouth's position is as set forth in the testimony of the witnesses and in the otherpleadings, including the Prehearing Statement, filed by BellSouth in this case.

[3] 47 U.S.C. § 25 l(c)(1).

[4] 47 U.S.C. § 252(b)(2).

[5] See generally, 47 U.S.C. §§ 252(b)(2)(A) and 252 (b)(4).

[6] 47 U.S.C. § 252(b)(2).

[7] 47 U.S.C. § 252(b)(3).

[8] 47 U.S.C. § 252(b)(4).

Through the arbitration process, the Commission must now resolve the remaining disputed issues in a manner that ensures the requirements of Sections 25 1 and 252 of the 1996 Act are met. The obligations contained in those sections of the 1996 Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, they then form the basis for arbitration. Once the Commission provides guidance on the unresolved issues, the parties will incorporate those resolutions into a final agreement that will then be submitted to the Commission for its final approval.'

Issue A: What is the Commission's jurisdiction in this matter?

SUMMARY OF BELLSOUTH'S POSITION

*** The Commission has jurisdiction in this matter pursuant to 47 U.S.C. § 252. ***

DISCUSSION

The Commission has jurisdiction in this matter pursuant to Section 252 of the Act, which requires the Commission to resolve "each issue set forth in the petition and the response, if any, by imposing conditions as required to implement" Section 251 of the Act, including the regulations prescribed by the FCC pursuant to Section 25 1. The United States District Court for the Northern District of Florida has determined that the Commission is required to arbitrate and resolve all issues brought to the Commission, not just those that are subject to arbitration under the Telecommunications Act of 1996 ("1996 Act"). *MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc., et al,* Case No. 4:97cv141-RH (N.D. Fla. June 6, 2000). BellSouth has appealed that case to the United States Court of Appeals for the Eleventh Circuit, where a panel has rejected the appeal on jurisdictional grounds, since the District Court remanded the matter to the Commission rather than issuing a final order. Reconsideration has

[9] *47* U.S.C. § 252(a).

been sought, but clearly the District Court opinion is binding on the Commission until that decision is reversed. Nevertheless, that decision does not require that the Commission resolve any issue in any particular manner, just that the Commission arbitrate and resolve each "open issue."

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

BellSouth initiated this proceeding on September 1, 2000, with the filing of a Petition for Arbitration. Included in that filing was a proposed interconnection agreement, containing rates, terms and conditions, as well as an identification of the issues that BellSouth believed were in dispute based on the parties discussions at that point. Hearing Tr. Vol. 1 at 70-71. To date, BellSouth is the only party to file a complete proposed agreement into the record of this proceeding. Id. In fact, Supra did not file any proposed language until it submitted a red-line draft of proposed General Terms and Conditions on June 18, 2001. Hearing Tr. Vol. 1 at 16. That filing, made nearly six months after the Commission staff directed the parties to submit proposed language on each unresolved issue, did not include any of the numerous attachments that comprise the bulk of interconnection agreements. Id. Therefore, the only complete proposed agreement that the Commission should consider for adoption in this case is the agreement filed by BellSouth with its Petition for Arbitration.

Moreover, Supra has not submitted proposed language for the unresolved issues. This is a critical omission that BellSouth believes is designed to delay the adoption of a new agreement. BellSouth respectfully requests that, when deciding the issues in this case, the Commission should provide the parties with specific language for incorporation into an agreement template. If the Commission adopts BellSouth's position, specific language or a statement that the issue

should be resolved by the omission of language -- may be found in JAR-l (Hearing Exhibit 7). If the Commission does not agree with BellSouth's position, the Commission should specify the language to be included in the parties' agreement. BellSouth makes this specific request because, as the Commission is well-aware, Supra has not paid BellSouth for services since October, 1999. Any delay in the post-hearing process in this case will likely mean additional delay before BellSouth is paid.

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

SUMMARY OF BELLSOUTH'S POSITION

*** The Commission should resolve disputes BellSouth and Supra arising under the parties' interconnection agreement. The Commission should reject Supra's request for a commercial arbitration clause. ***

DISCUSSION

A threshold issue that the Commission must address that should dispose of this matter involves the Commission's authority to require BellSouth to go to a third party to resolve a dispute that falls squarely within the providence of the Commission. As the Commission itself observed in Order No. PSC-Ol-1402-FOF-TP, "nothing in the law gives [the Commission] explicit authority to require third party arbitration." Id. at p. 111. When parties agree to commercial arbitration, they give up certain rights. For example, by agreeing to arbitrate, parties typically give up their rights to a trial by jury. Moreover, an arbitration award may be reviewed by a court only under very limited circumstances. A forfeiture of substantive rights may be appropriate if a party consents to the forfeiture, but the Commission should not compel BellSouth, or any other party, to forfeit its fundamental rights.

Even if this Commission had the legal ability to order the arbitration procedure requested by Supra and to empower the arbitrator with the ability to award the relief sought by Supra, to do so would be adverse to public policy. The United States Court of Appeals, Eighth Circuit has ruled that state commissions are charged with the authority to resolve disputes relating to interconnection agreements. In *Iowa Utilities Board v. FCC,* 120 F.3d 753, 804 (8th Cir. 1997), the Eighth Circuit determined "that state commissions retain the primary authority to enforce the substantive terms of the agreements made pursuant to Sections 251 and 252." Further, "the state commissions' plenary authority to accept or reject these agreements necessarily carries with it the authority to enforce the provisions of agreements that state commissions have approved." *Id.*

Moreover, BellSouth believes that, as a matter of policy, it is critical that interconnection agreements be interpreted consistently. One of the primary guiding principles of the Act is that carriers should be treated in a nondiscriminatory fashion. This goal cannot be reached without a means to insure that similar disputes arising under different agreements are handled in a similar fashion. Indeed, use of commercial arbitrators could produce inconsistent results in matters dealing with interconnection issues that arise between BellSouth and ALECs because different arbitrators could provide different decisions in the same related issues. On the other hand, having the Commission resolve disputes provides needed consistency in how ILECs and ALECs interconnect and generally deal with each other. Commission control of dispute resolution ensures that disputes between two carriers that potentially affect the entire industry are dealt with consistently. The commercial arbitration Supra seeks would make this all but impossible.

Further, if the parties were forced to use commercial arbitration to resolve disputes, not only is there the strong prospect of substantively inconsistent rulings, there would likely be an equally troubling inconsistency in the remedies available to different carriers that are under the

Commission's jurisdiction. If a dispute were to arise between BellSouth and an ALEC, where no commercial arbitration clause existed in the Agreement, the dispute would be resolved by the Commission (as these disputes have been in the past). Presumably, the Commission's decision would be informed by past decisions. The Commission's decision would also be appealable, and the Commission would resolve the matter only by ordering remedies within its power. However, in commercial arbitration, the arbitrator is not bound to follow Commission precedent and his decisions can only be appealed on very narrow grounds. Further, once this procedure is memorialized in an approved Agreement, other ALECs could opt into this commercial arbitration language. Thus, there is a great likelihood that the commercial arbitrators would interfere with the ability of the Commission to make policy by ruling in a way that is inconsistent with the Commission's orders. There is also the certainty that at least disputes involving Supra (and perhaps disputes involving many other ALECs) would be handled in a radically different procedural manner than other disputes, which would continue to be brought before the Commission.

BellSouth has had actual experience with third party arbitrations in its region and they have been neither quick nor inexpensive. Mr. Ramos admitted that, as of the time of the hearing (September 26-27), the parties had not received a final order from the arbitration panel in a matter initiated in October, 2000. Hearing Tr. Vol. 5 at 772. Third party arbitrations are simply not an appropriate way to resolve disputes over interconnection agreements. The Commission should adopt BellSouth's position and not require third party arbitrations should the parties' interconnection agreement require interpretation in the future.

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

SUMMARY OF BELLSOUTH'S POSITION

*** The parties' agreement should include language stating that it will not be filed with the Commission for approval prior to an ALEC obtaining ALEC certification from the Commission. * * *

DISCUSSION

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

SUMMARY OF BELLSOUTH'S POSITION

*** Supra is entitled to view customer service records only for those records where the end-user customer has given specific permission to do so. Providing Supra with a download of all CSRs, without authorization, of each and every BellSouth customer would constitute a breach of confidentiality and privacy. ***

DISCUSSION

BellSouth provides both electronic and manual access to BellSouth's Customer Service Records as a pre-ordering functionality and thus, a download of the CSRs is not necessary. The electronic pre-ordering functionality, available via the Local Exchange Navigation System ("LENS"), Telecommunications Access Gateway ("TAG"), and RoboTAG™ is real-time access to BellSouth's Customer Service Records. Hearing Tr., Vol. 8 at 1097. An end-user's customer service record information contains confidential and proprietary information that must be protected. Id. at 1098. To address these customer privacy issues, BellSouth has developed a process through which an ALEC executes a blanket Letter of Authorization ("LOA"), the terms

of which permit access to specific CSRs only when the ALEC has obtained prior permission from the customer, and the ALEC follows specific procedures for viewing CSRs. Id. at 1098-1100. Once CSRs were downloaded to Supra, there would be no process controls in place to insure or verify compliance with the LOA process. The Commission should reject this request.

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

SUMMARY OF BELLSOUTH'S POSITION

*** The unbundled loop rates the Commission recently approved in the UNE cost docket (Docket No. 990649-TP) are appropriate and do not require any adjustment to recognize the use of DAML equipment. ***

DISCUSSION

DAML equipment is designed for use over a copper facility. It uses Integrated Services Digital Network (ISDN) technology to electronically derive additional loops over copper facilities in a manner similar to that provided by digital loop carrier (DLC). DAML provides a two-to-one, four-to-one, or six-to-one pair gain for Plain Old Telephone Service (POTS) between the central office (CO) unit and a line powered remote unit (RU). Hearing Tr. Vol. 2 at 181. Instead of deriving a single loop over a single copper pair from the customer's premises to the central office, the use of DAML equipment allows up to six loop equivalents to be served over a single copper pair. Id. BellSouth deploys DAML equipment on a very limited basis to expand a single loop to derive additional digital channels, each of which may be used to provide voice grade service. The deployment is limited to those situations where loop facilities are not currently available for the additional voice grade loop(s). Id.

Contrary to Supra's claim, the cost to BellSouth is not lower when DAML equipment is used. The use of DAML equipment is a means to meet a request for service in a timely manner.

It is not generally a more economic means of meeting demand on a broad basis than using individual loop pairs. Id. Moreover, the costs for unbundled loops have been calculated in compliance with Federal Communications Commission rules on a forward-looking basis without regard to the manner in which the customer is served (e.g., copper or digital loop carrier). Id. at 181-l 82. Therefore, the unbundled loop rates the Commission recently approved in the UNE cost docket (Docket No. 990649-TP) do not require any adjustment to recognize the use of DAML equipment. To the extent Supra believed that the use of DAML equipment should have been taken into consideration in the generic cost docket, Supra should have participated in that docket and raised the issue.

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

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

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

SUMMARY OF BELLSOUTH'S POSITION

*** BellSouth should be permitted to disconnect service to Supra or any other ALEC that fails to pay undisputed charges within the applicable time period. ***

DISCUSSION

BellSouth should be permitted to disconnect service to any customer, including Supra, that fails to pay billed charges that are not disputed and has proposed language to that effect. No business, including BellSouth, could remain financially viable if it were obligated to continue providing service to customers who refuse to pay lawful charges. BellSouth must be able to deny service in order to obtain payment for services rendered and to prevent additional past due

charges from accruing. If BellSouth cannot disconnect service for nonpayment, Supra has little incentive to pay its bills. Indeed, Supra has refused to pay its bills to BellSouth for two years. Hearing Tr. Vol. 5 at 712.[10] Supra has refused to pay by taking advantage of the terms in the parties' current agreement that do not permit BellSouth to disconnect Supra until, at the earliest, two months after the conclusion of a lengthy commercial arbitration process.

BellSouth's position is consistent with the Commission's recent decision in the BellSouth/WorldCom Arbitration proceeding in Docket No. 000649-TP. In its Order, the Commission found that "BellSouth is within its rights to deny service to customers that fail to pay undisputed amounts within reasonable time frames. Therefore, absent a good faith billing dispute, if payment of account is not received in the applicable time frame, BellSouth shall be permitted to disconnect service to WorldCom for nonpayment." (Order No. PSC-01-0824-FOF-TP at pages 155-156).

The Commission must consider this issue beyond the context of Supra. If BellSouth were to exempt Supra from BellSouth's right to discontinue service for the nonpayment of undisputed sums, BellSouth could hardly disconnect service for nonpayment by any ALEC in Florida. Indeed, if the language proposed by Supra is included in the interconnection agreement, any ALEC could adopt the same agreement and thereby avoid the possibility of having its service disconnected for nonpayment. See 47 C.F.R. § 5 1.80. Supra can avoid this issue entirely by simply paying undisputed amounts owed to BellSouth within the applicable timeframes. However, if Supra fails to do so, BellSouth should be entitled to disconnect service to Supra and, thus, the Commission should adopt the language proposed by BellSouth.

[10] Interestingly, despite refusing to pay BellSouth in 2000 or 2001, Supra has filed certifications with the Commission stating that it has, in fact, paid BellSouth certain sums. Hearing Tr. Vo. 5 at 716719, Hearing Exh. 5.

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

SUMMARY OF BELLSOUTH'S POSITION

*** A plain reading of Section 271 of the Act reveals that BellSouth is prohibited from providing interLATA facilities or services to Supra or any other carrier. ***

DISCUSSION

With certain limited exceptions, neither BellSouth nor any of its affiliates is allowed to provide services that cross LATA boundaries prior to receiving authorization from the Federal Communications Commission ("FCC") to do so, pursuant to the requirements of Section 271 of the Act. Specifically, Section 271 (a) states:

> GENERAL LIMITATION. – Neither a Bell operating company, nor any affiliate of a Bell operating company, may provide interLATA services except as provided within this section.

The only interLATA services that BellSouth can provide without FCC approval are out-of-region services, and incidental services. The transport services Supra is requesting do not fit either of these exceptions. Supra erroneously contends that BellSouth should provide Supra with DS1 interoffice transport facilities between BellSouth central offices located in different LATAs because interoffice transport is an unbundled network element ("UNE"). Although the DS1 facilities that Supra is requesting are UNEs, BellSouth is still prohibited by law from providing those elements across LATA boundaries. Section 27 1 (a) of the Act provides no qualification of the nature of the service, whether retail or wholesale, in the phrase "interLATA services".

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

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

SUMMARY OF BELLSOUTH'S POSITION

*** This issue will be decided in Docket No. 000 121 -TP. The Commission convened that proceeding to consider the very issues Supra seeks to arbitrate in this docket. The generic docket is the appropriate vehicle for all interested parties to collaborate on the set of performance measures appropriate in Florida. ***

DISCUSSION

The Commission opened a separate docket to consider performance measures issues: Docket No. 000121-TP. The purpose of that generic docket is to allow interested ALECs to evaluate BellSouth's proposed measures, to advocate their own measures, and to participate in the Commission's decision-making process. The specific issues raised by Supra are included within the issues to be decided in Docket No. 000 12 1 -TP. Hearing Tr. Vol. 2 at 188-l 89. Supra offers no justification for the Commission to address performance measures issues separately in this proceeding.

Issue 16: Under what conditions, if any, may BellSouth refuse to provide service under the terms of the Interconnection Agreement

SUMMARY OF BELLSOUTH'S POSITION

*** In order to incorporate new or different terms, conditions or rates into the parties Agreement, it is imperative that an Amendment be executed. The 1996 Act requires that BellSouth and ALECs operate pursuant to filed and approved interconnection agreements. ***

DISCUSSION

This issue concerns Supra's demand that it be permitted to order services that are not included within the parties' agreement. In order to incorporate new or different terms, conditions or rates into the parties Agreement, it is imperative that an Amendment be executed. When an

ALEC notifies BellSouth that it wishes to add something to or modify something in its Agreement, BellSouth negotiates an amendment with that ALEC if the agreement has not expired. Not only is this BellSouth's practice, but the Act requires that BellSouth and ALECs operate pursuant to tiled and approved interconnection agreements. Furthermore, this Commission's recent Order in the generic UNE cost proceeding appears to confirm BellSouth's position regarding the requirement for amendments to agreements (Order No. 01-l 1 81-FOF-TP issued May 25, 2001). At page 473, the Commission stated "Therefore, upon consideration, we find that it is appropriate for the rates to become effective when the interconnection agreements are amended to reflect the approved UNE rates and the amended agreement is approved by us." Given this fact, there will never be a case where BellSouth provides a service to Supra that is not part of its Interconnection Agreement. To do otherwise as Supra requests, and not include all of the services that BellSouth provides to Supra in its Interconnection Agreement would circumvent the "pick and choose" opportunity of other ALECs. Additionally, if BellSouth did provide services to Supra not covered by the agreement, there would be no language to turn to in cases of a dispute over what was provided or how it was provided.

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

(B) Network Elements
(C) Interconnection
(E) LPN/INP
(F) Billing Records
(G) Other

SUMMARY OF BELLSOUTH'S POSITION

*** The rates the Commission established in Docket No. 990649-TP should be incorporated into the Agreement. For collocation rates and other rates not addressed in that docket, BellSouth's tariffed rates should be incorporated into the Agreement. For line sharing,

the rates the Commission established in Docket No. 00-0649 should be incorporated into Supra's Agreement. * * *

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

SUMMARY OF BELLSOUTH'S POSITION

*** This issue cannot be arbitrated in this proceeding. ***

DISCUSSION

On April 27, 2001, the FCC issued its Order on Remand and Report and Order, FCC 01-131, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act* of *1996, CC* Docket No. 96-98 (released April 27, 2001) and *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68 (released April 27, 2001) ("Order on Remand"). In its Order on Remand, the FCC unequivocally declared that ISP-bound traffic was intended by Congress to be excluded from the reciprocal compensation requirements of the 1996 Act. (Order on Remand, at paragraph 34). The FCC further declared that "[b]ecause we now exercise our authority under section 201 to determine the appropriate intercarrier compensation for ISP bound traffic, however, state commissions will no longer have authority to address the issue." (Order on Remand, at paragraph 82). Thus, the FCC has now declared that this traffic is not subject to reciprocal compensation payments and has pre-empted the Commission. Therefore, BellSouth respectfully concludes that the Commission does not have jurisdiction to require the payment of reciprocal compensation for ISP-bound traffic and this issue cannot be further addressed in this proceeding.

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

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

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

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

SUMMARY OF BELLSOUTH'S POSITION

*** BellSouth will provide combinations to Supra at cost-based rates if the elements are, in fact, already combined in BellSouth's network. That is, BellSouth will make combinations of UNEs available to Supra consistent with BellSouth's obligations under the 1996 Act and applicable FCC rules. ***

DISCUSSION

These four issues raised by Supra present the identical question: Is BellSouth required to provide Supra with combinations of UNEs at cost-based rates when those UNEs are not, in fact, already connected in BellSouth's network? The answer to the question is "No." BellSouth will provide combinations to Supra at cost-based prices if the elements are already combined and providing service to a particular customer at a particular location.

The FCC, in its *UNE Remand Order,* confirmed that BellSouth presently has no obligation to combine network elements for ALECs, when those elements are not currently combined in BellSouth's network. The FCC also confirmed that "except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently

combines." 47 C.F.R. § 51.315(b). The FCC also made clear in its UNE Remand Order that Rule 3 15(b) applies to elements that are "in fact" combined. In that Order, the FCC found that "to the extent an unbundled loop is in fact connected to unbundled dedicated transport, the statute and our rule 3 15(b) require the incumbent to provide such elements to requesting carriers in combined form." (¶ 480, emphasis added). Indeed, the FCC specifically declined to adopt a definition of "currently combined" that would include all elements "ordinarily combined" in the incumbent's network. Id.

This Commission has decided this precise question in three separate arbitrations this year. In its Final Order on Arbitration in the BellSouth/AT&T arbitration (Order No. PSC-01-1402-FOF-TP in Docket No. 00073 l-TP) issued June 28, 2001, the Commission concluded that:

> Based on the foregoing, we find that it is not the duty of BellSouth to "perform the functions necessary to combine unbundled network elements in any manner." Rule 5 1.315(b) only requires BellSouth to make available at TELRIC rates those combinations requested by an ALEC that are, in fact, already combined and physically connected in its network at the time a requesting carrier places an order. Accordingly, we conclude that the phrase "currently combines" pursuant to FCC Rule 5 1.3 15(b) is limited to combinations of unbundled network elements that are, in fact, already combined and physically connected in BellSouth's network to serve a specific customer or location at the time a requesting carrier places an order. In other words, there is no physical work that BellSouth must complete in order to effect the combination that the requesting telecommunications carrier requests.

Order at 23.

Similarly, in Order No. PSC-Ol-0824-FOF-TP, dated March 30, 2001, in the BellSouth/WorldCom arbitration, the Commission found that "BellSouth is not required to combine unbundled network elements that are ordinarily combined in its network for ALECs at TELRIC rates." Order at 35. In support of its decisions, the Florida Commission cited the Eighth Circuit Court's July 18, 2000 ruling, wherein the Court reaffirmed its decision to vacate FCC Rules 5 1.315(c)-(f), stating that "[i]t is not the duty of the ILECs to 'perform the functions

necessary to combine unbundled network elements in any manner'. . . ." Id. Finally, in Order No. PSC-Ol-1095-FOF-TP, dated May 8, 2001, in the BellSouth/Sprint arbitration, the Commission found that "BellSouth shall not be required to provide combinations of unbundled network elements that it ordinarily or typically combines in its network for Sprint at TELRIC rates." Order at page 23.

BellSouth requests that the Commission find, consistent with its recent rulings in the AT&T, MCI, and Sprint arbitration proceedings with BellSouth, that BellSouth is only obligated to provide combinations to Supra at cost-based rates those combinations that are, in fact, already combined and physically connected in its network at the time a requesting carrier places an order.

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

SUMMARY OF BELLSOUTH'S POSITION

*** BellSouth will provide access to INC and/or NTW wire pairs as requested by Supra by terminating such pairs on separate connecting blocks serving as an access terminal for Supra. The rates for this access should be rates adopted by the Commission in Docket 990649-TP. ***

DISCUSSION

BellSouth will provide access to INC and/or NTW wire pairs as requested by Supra by terminating such pairs on separate connecting blocks serving as an access terminal for the ALEC. BellSouth currently has its own terminal in each garden apartment arrangement or high rise building. BellSouth will create a separate access terminal for any building for which such service is requested. With regard to garden apartments, BellSouth will prewire the necessary pairs to serve each apartment on the access terminal BellSouth builds. For garden apartments,

this means that each cable pair available to serve customers in that garden apartment building will appear on BellSouth's terminal and on the access terminal. To serve a customer in the garden apartment situation, Supra would build its terminal at that location and then wire its cable pair to the appropriate prewired location on the access terminal. Hearing Tr. Vol. 3 at 359-360.

The treatment for high rise buildings will be different. BellSouth will still build an access terminal to complement BellSouth's own terminal located in the high rise building. Supra will have to build its own terminal for its cable pairs. However, rather than prewiring the access terminal, BellSouth proposes that it will then receive orders from Supra and will wire the access terminal it has created as facilities are needed by Supra. Id.

The Commission addressed this issue in Docket No. 990649-TP (the Generic UNE docket) and in Docket No. 00073 1 -TP (AT&T/BellSouth Arbitration). In fact, the commission in these two proceedings adopted BellSouth's position on how Supra Telecom can gain access and use BellSouth facilities in multi-unit installations. For example, the Commission concluded in Docket No. 990649-TP that: "Upon consideration of the record regarding access, we find that access to subloop elements shall be provided via an access terminal, as suggested by BellSouth. The evidence in the record for this proceeding does not support allowing ALECs direct access to BellSouth's unbundled subloop elements." Order No. PSC-0 1 - 118 1 -FOF-TP at 95-96. Further, the Commission stated that "we shall require the parties to evenly split the costs associated with provisioning access terminals." Id. at 96.

The Commission should affirm its decisions in dockets 00073 1-TP and 990149-TP that the appropriate method is to require BellSouth to construct an access terminal for access to NTW or INC pairs as may be requested by an ALEC. Supra (or another ALEC) would interconnect its network to these constructed access terminals. Such a methodology would permit Supra

appropriate access to end users while providing both companies the ability to maintain appropriate records on an on-going basis.

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

SUMMARY OF BELLSOUTH'S POSITION

*** ALECs are not entitled to unbundled local circuit switching in Density Zone 1 in the top 50 MSAs for any of an end user's lines when the end user has four or more lines in the relevant geographic area, as long as BellSouth will provide the ALEC with EELs at UNE rates. ***

DISCUSSION

These issues involve the application of FCC rules regarding the exemption for unbundling local circuit switching. When a particular customer has four or more lines within a specific geographic area, even if those lines are spread over multiple locations, BellSouth is not required to provide unbundled local circuit switching to ALECs, so long as the other criteria for FCC Rule 5 1.3 19(c)(2) are met. This rule states:

> (2) Notwithstanding the incumbent LEC's general duty to unbundle local circuit switching, an incumbent LEC shall not be required to unbundle local circuit switching for requesting telecommunications carriers when the requesting telecommunications carrier serves end-users with four or more voice grade (DSO) equivalents or lines, provided that the incumbent LEC provides non-discriminatory access to combinations of unbundled loops and transport [also known as the "Enhanced Extended Link"] throughout Density Zone 1, and the incumbent LEC's local circuit switches are located in:
>
> (i) The top 50 Metropolitan Statistical Areas as set forth in Appendix B of the Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, and
>
> (ii) In Density Zone 1, as defined in § 69.123 of this chapter on January 1, 1999.

In its Final Order on Arbitration in the BellSouth/AT&T arbitration (Order No. PSC-01-1402-FOF-TP in Docket No. 000731-TP) issued June 28, 2001, the Commission found "that BellSouth will be allowed to aggregate lines provided to multiple locations of a single customer, within the same MSA to restrict AT&T's ability to purchase local circuit switching at UNE rates to serve any of the lines of that customer." Order at page 61. The Commission should reject Supra's attempt to violate the FCC's rules. The Commission should reach a conclusion consistent with its previous ruling. ALECs are not impaired without access to unbundled local circuit switching when serving customers with four or more lines in Density Zone 1 in the top 50 MSAs. Consequently, ALECs are not entitled to unbundled local circuit switching in these areas for any of an end user's lines when the end user has four or more lines in the relevant geographic area, as long as BellSouth will provide the ALEC with EELs at UNE rates.

Issue 32A: **Under what criteria may Supra Telecom charge the tandem switching rate?**

Issue 32B: **Based on Supra Telcom's network configuration as of January 31, 2001, has Supra Telecom met these criteria?**

SUMMARY OF BELLSOUTH'S POSITION

*** The Commission is currently considering the issue in Phase 2 of Docket No. 00007%TP. As such, the Commission should defer any decision in this immediate proceeding to its decision in Docket No. 000075-TP. In any event, Supra cannot meet any test because it does not have a switch operational in Florida. ***

DISCUSSION

The Commission should defer any decision in this immediate proceeding to its decision in Docket No. 000075TP. In any event, Supra should only be compensated for the functions

that it provides. Under Section 251(b)(5) of the 1996 Act, all local exchange carriers are required to establish reciprocal compensation arrangements for the transport and termination of telecommunications. 47 U.S.C. § 25 l(b)(5). The terms and conditions for reciprocal compensation must be "just and reasonable," which requires the recovery of a reasonable approximation of the "additional cost" of terminating local calls that originate on the network of another carrier. 47 U.S.C. § 252(d)(2)(A). According to the FCC, the "additional cost" of transporting terminating traffic varies depending on whether or not a tandem switch is involved. *See First Report and Order*, ¶ 1090. As a result, the FCC determined that state commissions can establish transport and termination rates that vary depending on whether the traffic is routed through a tandem switch or directly to a carrier's end-office switch.

The dispute between BellSouth and ALECs in other proceedings before this Commission has concerned whether the ALEC must (1) prove only that its tandem switches serve geographic areas comparable to BellSouth's tandem switches or (2) make that showing and also prove that its switches perform the functions of tandem switches. In this case, there is literally nothing for the parties to argue about because Supra does not have a switch in Florida. Hearing Tr. Vol. 5 at 737. Moreover, according to Mr. Ramos, Supra did not have an operational switch in Florida on January 31, 2001. Hearing Tr. Vol. 5 at 737. Therefore, Supra cannot make the required showing regarding geographic comparability. Under these circumstances, the Commission should have little hesitation in concluding that Supra is not, at this time, entitled to collect the tandem interconnection rate in Florida.

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

SUMMARY OF BELLSOUTH'S POSITION

*** BellSouth offers two solutions that will allow Supra to provide its xDSL services in such a situation. The first solution is to move the end user to a loop that is suitable for xDSL service. The second solution is for Supra to collocate its DSLAM in the remote terminal housing the DLC and to obtain access to the UNE known as loop distribution. ***

DISCUSSION

This issue concerns Supra's demand that BellSouth provide unbundled packet switching. In its *UNE Remand Order* (at ¶ 3 1 1), the FCC expressly declined "to unbundle specific packet switching technologies incumbent LECs may have deployed in their networks." Consistent with FCC Rule 5 1.319(c)(5) regarding packet switching, BellSouth is only required to provide unbundled packet switching when all of the following conditions have been satisfied:

1) The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (e.g. end office to remote terminal, pedestal or environmentally controlled vault);

2) There are no spare copper loops capable of supporting the x DSL services **the requesting carrier seeks to offer**;

3) The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access Multiplexer at the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined under Section 5 1.3 19(b); and,

4) The incumbent LEC has deployed packet switching capability for its own use.

Hearing Tr. Vol. 2 at 233. Because all of the above conditions have not been satisfied, BellSouth is not obligated to unbundled packet switching.

Moreover, ALECs are not precluded from offering DSL service where Digital Loop Carrier ("DLC") is deployed. When BellSouth provides ADSL service where DLC is deployed, BellSouth must locate Digital Subscriber Line Access Multiplexer ("DSLAM") equipment at the DLC remote terminal ("RT"). Hearing Tr. Vol. 2 at 232. Through the collocation process, currently offered by BellSouth, an ALEC that wants to provide xDSL where DLC is deployed also can collocate DSLAM equipment at BellSouth DLC RT sites. This allows the ALEC to provide the high speed data access in the same manner as BellSouth. Id. BellSouth will attempt in good faith to accommodate any ALEC requesting such collocation access at a BellSouth DLC RT site that contains a BellSouth DSLAM. Id. In the very unlikely event that BellSouth cannot accommodate collocation at a particular RT, where a BellSouth DSLAM is located, BellSouth will unbundle the BellSouth packet switching functionality at that RT in accordance with FCC requirements.

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

SUMMARY OF BELLSOUTH'S POSITION

*** BellSouth uses a very detailed process for conversion of live local service. No changes in the process are necessary at this time. BellSouth's processes provide for a smooth transition for an end user electing to change local service providers from BellSouth to Supra with minimal end user service interruption. ***

DISCUSSION

BellSouth uses a very detailed process for conversion of live local service. See Hearing Tr. Vol. 3 at 372-374. No changes in the process are necessary at this time. These same

procedures are used with a high level of success across the region for all ALECs. BellSouth has proposed language that supports these detailed process flows and provides additional support of BellSouth's commitment to provide coordinated conversions to Supra which afford a meaningful opportunity for Supra to compete for local service. BellSouth's processes provide for a conversion that should ensure a smooth transition for an end user electing to change local service providers from BellSouth to Supra with minimal end user service interruption. This Commission should affirm that BellSouth's loop conversion procedures are appropriate and allow for timely conversions without undue customer service disruption.

Issue 38: I s BellSouth required to provide Supra Telecom with nondiscriminatory access to the same databases BellSouth uses to provision its customers?

SUMMARY OF BELLSOUTH'S POSITION

*** Direct access to BellSouth's databases is unnecessary and more importantly is not required by the Telecommunications Act of 1996. BellSouth provides Supra and other ALECs with the nondiscriminatory access required by the 1996 Act and the FCC. ***

DISCUSSION

Supra raised this precise issue more than three years ago, in Docket No. 980119-TP. That, case, filed under the parties' earlier agreement concerned Supra's request for direct access to BellSouth's OSS: "Witness Ramos further emphasized that Supra requires access to the very same interfaces that BellSouth uses for its retail service ordering, including such interfaces as RNS, DOE, RSAG, and CRIS." See Order No. PSC-98-1001-FOF-TP at p. 22. The Commission rejected Supra's request, concluding that "BellSouth is not required to provide Supra with the exact same interfaces that it uses for its retail operations." Id. at 23. The Commission's earlier decision was correct. Supra is not entitled to access BelllSouth's OSS in a

mnner different from the access provided to every other ALEC in Florida. Moreover, Supra offers no justification for "direct access" beyond its apparent dissatisfaction with LENS. But, setting aside the issue of whether Supra simply does not train its employees adequately to use LENS properly, LENS is only one of several electronic interfaces available to ALECs.

As Mr. Pate explained in his pre-filed testimony and at the hearing, BellSouth offers ALECs access to its OSS through LENS, EDT, TAG and RoboTAG provide ALECs with the ability to submit perform pre-ordering functions, submit orders, and obtain repair and maintenance services. Hearing Tr., Vol. 8 at 1103-l 104. And, ALECs may utilize BellSouth's region-wide Web-based electronic interface known as CLEC Service Order Tracking System ("CSOTS") to view service orders on-line, track service orders, and determine the status of service orders. Hearing Tr. Vol. 8 at 1115. The variety of electronic interfaces available to ALECs provide them with non-discriminatory access to BellSouth's OSS as required by the 1996 Act.

According to the FCC, an ILEC such as BellSouth must provide access to OSS that allows ALECs to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for resale services in substantially the same time and manner as BellSouth does for itself; and, in the case of unbundled network elements, provide a reasonable competitor with a meaningful opportunity to compete. First Report and Order, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC* Docket No. 96-98 and 95-185 (rel. August 8, 1996) at ¶¶ 3 12, 518. Moreover, in paragraph 87 of its Order on BellSouth's second 271 application for Louisiana, the FCC reiterated its requirement stated in the Ameritech Michigan Order and in the Local Competition First Report and Order "that a BOC must offer access to competing carriers that is analogous to OSS

functions that a BOC provides to itself. Access to OSS functions must be offered in 'substantially the same time and manner' as the BOC. For those OSS functions that have no retail analogue . . . a BOC must offer access sufficient to allow an efficient competitor a meaningful opportunity to compete." *Application of BellSouth Corporation, et al. for Provision of' In-Region, InterLATA Services in Louisiana, 13* FCC Rcd. *20599* (1998) *("Louisiana II Order")* at ¶ 87.

Mr. Pate explained that BellSouth provides ALECs with nondiscriminatory access to OSS:

> BellSouth provides non-discriminatory access to its OSS for ALECs via electronic and manual interfaces. BellSouth provides access to its OSS via the following electronic interfaces: Electronic Data Interchange ("EDI") for ordering and provisioning; Local Exchange Navigation System ("LENS"), Telecommunications Access Gateway ("TAG"), and RoboTAG™ for pre-ordering, ordering and provisioning; Trouble Analysis and Facilities Interface ("TAFI") for maintenance and repair; Electronic Communications Trouble Administration ("ECTA") for maintenance and repair; and for the function of billing, Access Daily Usage File ("ADUF"), Enhanced Optional Daily Usage File ("EODUF") and Optional Daily Usage File ("ODUF"). In conformance with the FCC's requirements, these interfaces allow the ALECs to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for services in substantially the same time and manner as BellSouth does for itself; and, in the case of unbundled network elements, provide a reasonable competitor with a meaningful opportunity to compete which is also in conformance with the FCC's requirements. BellSouth is not obligated to provide ALECs with any additional access to its OSS functions.

Hearing Tr., Vol. 8 at 1109. The statistics demonstrate that BellSouth is providing ALECs with non-discriminatory access to OSS. For example, in May 2001, BellSouth received and processed 417,695 local service requests and processed 89.9 percent electronically. Hearing Tr. Vol. 8 at 1159.

The FCC follows a two-step approach to determine if the BOC has met the non-discrimination standard for each OSS function. First the FCC will determine, "whether the BOC

has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them." Next, the FCC will determine "whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter." This includes an examination of "performance measurements and other evidence of commercial readiness." See ***Louisiana II Order*** at ¶ 85. As Mr. Pate explained: "BellSouth's interfaces have been used commercially for years. . . . [T]he levels of commercial usage alone clearly demonstrate the operational readiness of these interfaces. However, these interfaces have also been subjected to extensive third party testing and carrier-to-carrier testing . . . ." Hearing Tr., Vol. 8 at 1105.

BellSouth and six ALECs participated in a carrier-to-carrier Beta test of LENS Rel. 6.0 in September, 1999. Id. at 1106. That successful test was followed by implementation of LENS Rel. 6.0 in October, 1999, nearly two months earlier than its scheduled roll-out. Id. With regard to EDI, BellSouth and AT&T successfully conducted a non-LNP Beta test of OSS99 ED1 between October and December, 1999. Id. Moreover, in accordance with the FCC's requirements, BellSouth provides ALECs with all the specifications necessary for integrating the BellSouth interfaces. An ALEC may integrate ordering and pre-ordering functions by integrating the TAG pre-ordering interface with the EDI ordering interface, or by integrating TAG pre-ordering with TAG ordering. Hearing Tr., Vol. 8 at 11 10- 1111. At least six (6) ALECs have integrated the TAG pre-ordering interface with the EDI interface and at least forty-three (43) ALECs have integrated TAG pre-ordering with TAG ordering. Id. In addition to EDI and TAG, ALECs may also choose to use RoboTAG or LENS. Mr. Pate described the relative

advantages of each of those interfaces in this pre-filed testimony. Hearing Tr., Vol. 8 at 111 1-1115.

The "direct access" to BellSouth's OSS that Supra seeks, in addition to being entirely unwarranted, would be improper. BellSouth's RNS and ROS are not designed to handle orders for resale and UNEs. Hearing Tr. Vol. 8 at 1167. Therefore, if Supra obtains access to the retail ordering systems used by BellSouth employees, Supra will merely be submitting orders for BellSouth retail services, not for the wholesale services purchased by ALECs. Mr. Nilson admitted that modifications would have to be made to those systems to permit ALECs to use them, at least with regard to billing. Hearing Tr. Vol. 7 at 102 1. Supra simply is not entitled to demand an overhaul of BellSouth's retail ordering systems when it has made no showing that the electronic ordering interfaces available to it are insufficient.

The issue here is not whether ALEC and BellSouth access to OSS are identical. Plainly, they are not. The issue is whether BellSouth's electronic interfaces provide ALECs with the non-discriminatory access to which they are entitled under the 1996 Act. Plainly they do. That conclusion is based on the evidence in this proceeding and others before the Commission.

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

SUMMARY OF BELLSOUTH'S POSITION

*** SMDI-E and IVMS have data transmission capabilities that exceed the functionality of an unbundled switch port. BellSouth offers these capabilities to Supra at the same tariffed rates that it provides SMDI-E and IVMS to other unaffiliated voice messaging providers. As an

alternative, Supra may provide its own data transmission links or purchase such links from BellSouth at UNE prices. ***

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

SUMMARY OF BELLSOUTH'S POSITION

*** In general, twelve months is sufficient time to bill for services. However, there are instances where BellSouth relies on billing information from either third parties or from Supra itself to bill accurately. In these cases, BellSouth should be permitted to bill charges to the full extent allowed by law rather than artificial time limits proposed by Supra. ***

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

SUMMARY OF BELLSOUTH'S POSITION

*** Non-discriminatory access does not require that all LSRs be submitted electronically and involve no manual processes. BellSouth's own retail operations often involve manual processes. Therefore, there is no requirement that every LSR be submitted electronically in order to provide non-discriminatory access. ***

DISCUSSION

BellSouth's position is that non-discriminatory access does not require that all LSRs be submitted electronically and involve no manual processes. BellSouth's own retail operations often involve manual processes, as I will describe below, and therefore there is no requirement that every LSR be submitted electronically in order to provide non-discriminatory access. Hearing Tr. Vol. 8 at 1117. Many of BellSouth's retail services, primarily complex services, involve substantial manual handling by BellSouth account teams for BellSouth's own retail customers. Non-discriminatory access to certain functions for ALECs legitimately may involve

manual processes for these same functions. Therefore, these processes are in compliance with the Act and the FCC's rules. Id. at 1118.

Some UNEs and complex resold services require manual handling. The manual processes used by BellSouth are accomplished in substantially the same time and manner as the processes used for BellSouth's complex retail services. The specialized and complicated nature of complex services, together with the relatively low volume of orders for them relative to basic exchange services, renders them less suitable for mechanization, whether for resale or retail applications. Id. at 1121. Complex, variable processes are difficult to mechanize, and BellSouth has concluded that mechanizing many low volume complex retail services for its own retail operations would be an imprudent business decision, in that the benefits of mechanization would not justify the cost. Id.

In its decision in the AT&T Arbitration Docket 00073 1-TP issued June 28, 2001, the Commission ruled, "We agree with AT&T that BellSouth currently does have the technical ability to input its own complex residential and business orders when AT&T does not. Furthermore, we agree with BellSouth when witness Pate suggests that a mechanism is in place to address this issue which is the [Change Control Process ("CCP")]. It appears no such change control request has been submitted to the CCP. This issue should first be addressed through the CCP." Order at 126. Although a registered member, Supra has never attended a CCP meeting. Hearing Tr. Vol. 8 at 1124-25. In this case, the Commission should require Supra to raise this issue first with the CCP.

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

SUMMARY OF BELLSOUTH'S POSITION

*** Non-discriminatory access does not require that all LSRs be submitted electronically and involves no manual processes. BellSouth's own retail processes often involve manual processes. Therefore, there is no requirement that every LSR be submitted electronically in order to provide non-discriminatory access. Moreover, Supra is responsible for submitting complete and accurate LSRs. ***

DISCUSSION

Non-discriminatory access does not require that all LSRs be submitted electronically and involves no manual processes. BellSouth's own retail processes often involve manual processes and therefore there is no requirement that every LSR has to be submitted electronically in order to provide non-discriminatory access. Hearing Tr. Vol. 8 at 1126.

Many of BellSouth's retail services, primarily complex services, involve substantial manual handling by BellSouth account teams for BellSouth's own retail customers. The orders at issue here are those that the ALEC may submit electronically, but fall out by design. In most cases, these orders are complex orders. Hearing Tr. Vol. 8 at 1128. For certain orders, BellSouth has, for the ease of the ALEC, allowed them to be submitted electronically even though such orders are then manually processed by BellSouth. The specialized and complicated nature of complex services, together with their relatively low volume of orders as compared to basic exchange services, renders them less suitable for mechanization, whether for retail or resale applications. Complex, variable processes are difficult to mechanize, and BellSouth has concluded that mechanizing many lower-volume complex retail services would be imprudent for its own retail operations, in that the benefits of mechanization would not justify the cost. Id.

Because the same manual processes are in place for both ALEC and BellSouth retail orders, the processes are competitively neutral, which is exactly what both the Act and the FCC require.

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

SUMMARY OF BELLSOUTH'S POSITION

*** The Commission should find, consistent with the FCC and its previous rulings, that BellSouth is obligated to provide line sharing to ALECs only where BellSouth is providing the voice service. Moreover, BellSouth is not required to offer its tariffed ADSL service to Supra customers served in a UNE-P arrangement. ***

DISCUSSION

Consistent with FCC rules and orders described more fully below, BellSouth's tariff for its ADSL wholesale service provides that the service can only be provided on those lines where BellSouth provides the telephone voice service to the end user. When Supra purchases UNE-P from BellSouth, it becomes the owner of all the features, function and capabilities that the switch and loop is capable of providing. This includes calling features and capabilities, carrier pre-subscription, the ability to bill switched access charges associated with this service, and access to both the high and low frequency spectrums of the loop. Hearing Tr. Vol. 2 at 235-236. Supra thus has the exclusive right to the high frequency spectrum on that loop. BellSouth's tariffed ADSL service uses the high frequency spectrum of a loop. If BellSouth were to provide ADSL on an unbundled loop it would be providing a federally tariffed service (a service to which it is held accountable to the FCC) on a loop that is not under BellSouth's exclusive control. Moreover, BellSouth would be forced to negotiate with the ALEC for the use of that spectrum.

In providing ADSL service, BellSouth is constrained by the terms and conditions set forth in its tariff. The tariff expressly requires an "in-service, Telephone Company-provided," compatible end-user premises exchange line facility." BellSouth thus makes its ADSL service available only on those lines where it is providing voice service on an exchange line facility. This includes lines purchased by an end user out of the state tariff and lines purchased by CLECs out of the same tariffs for purposes of resale. A UNE-P line is not a BellSouth provided exchange line facility. Consequently, BellSouth has no tariff authority to make its ADSL service available on UNE-P lines. If Supra elects to serve an end user through the UNE-P arrangement, BellSouth has no obligation to offer its ADSL service to ISPs over the high frequency spectrum on that line. Indeed, to do so would be inconsistent with the tariff.

This issue is not specific to Supra. This issue was the subject of two separate FCC orders. The FCC has definitively and plainly stated that incumbent LECs have no obligation to provide their xDSL services over loops when the incumbent LEC is no longer the voice provider. The FCC, in denying AT&T's request for reconsideration of its order ***In the Matters*** *f Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC* Docket Nos. 98-147 and *96-98, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98,* 14 FCC Rcd 20912, 20946, 20947 (1999) (the *"Line Sharing Order")* specifically reaffirmed this point:

> Although the Line Sharing Order obligates incumbent LECs to make the high frequency portion of the loop separately available to competing carriers on loops where incumbent LECs provide voice service, it does not require that they provide xDSL service when they are not longer the voice provider.

[11] The term "Telephone Company" is defined in the tariff as BellSouth Telecommunications, Inc.

In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket *Nos.* 98-147 and *98-96, Third Report and Order on Reconsideration in CC Docket No. 98-147, and Fourth Report and Order on Reconsideration in CC Docket No. 96-98,* 16 FCC Rcd 2101 (2001)("*Line Splitting Order")* at ¶ 26.

In Order No. PSC-Ol-0824-FOF-TP, dated March 20, 2001, the Commission ruled that "[w]e believe the FCC requires BellSouth to provide line sharing only over loops where BellSouth is the voice provider. If WorldCom purchases the UNE-P, WorldCom becomes the voice provider over that loop/port combination. Therefore, BellSouth is no longer required to provide line sharing over that loop/port combination." Order at 5 1. The Commission addressed a similar issue in the recent AT&T-BellSouth arbitration, Docket No. 00073 1 -TP. In that case, AT&T asked the Commission to require BellSouth to provide a splitter in situations where AT&T was the voice provider to the end user over a UNE-P loop and another company was providing xDSL service. The Commission rejected AT&T's position and concluded that "BellSouth will not be required to provide the splitter in a line splitting arrangement." Order PSC-Ol-1402-FOF-TP at 158.

The Commission's decisions in both the AT&T and MCI arbitrations were grounded on the fact that, once an ALEC purchases an unbundled loop, the ALEC exercises control over the loop, both the data spectrum and the voice spectrum. What Supra seeks is an order from this Commission requiring BellSouth to (1) lease the data spectrum on an unbundled loop from Supra and (2) offer its tariffed services to either Supra or one of its customers over that leased spectrum. The FCC has specifically ruled that BellSouth has no obligation to do so. This

Commission's prior decisions are consistent with the FCC's decision. The Commission should reject Supra's position on this issue.

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

SUMMARY OF BELLSOUTH'S POSITION

*** BellSouth should not be required to provide a download of RSAG because Supra already has real-time access to RSAG through BellSouth's robust electronic interfaces. ***

DISCUSSION

BellSouth will, upon request, provide a flat file extraction of the P/SIMS, which also includes PIC information, for all nine states on a monthly basis. Hearing Tr. Vol. 8 at 1139-1140. Supra should submit the request for these downloads via their BellSouth account team. These downloads will provide Supra with the information it needs.

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

SUMMARY OF BELLSOUTH'S POSITION

*** BellSouth is under no obligation to expedite service for Supra or any other ALEC. If BellSouth does so, however, Supra should be required to pay expedite charges when BellSouth expedites a service request and completes the order before the standard interval expires. ***

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

SUMMARY OF BELLSOUTH'S POSITION

*** It is the responsibility of Supra to submit complete and accurate LSRs such that rejections and/or clarifications are not necessary. ***

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

SUMMARY OF BELLSOUTH'S POSITION

*** Supra expects BellSouth to (1) maintain orders in clarification status for more than 10 days and (2) notify Supra when 10 days has passed and that the order has been dropped. This expectation is totally unreasonable. * * *

DISCUSSION

BellSouth does not manage other ALEC'S inefficiency and should not be expected to manage Supra's. Supra should be required to manage its ordering process and manage it in such a way that Supra has responsibility for ensuring that its representatives submit a complete and accurate LSR. Supra can accomplish this by using the tools BellSouth makes available to Supra and other ALECS. These tools include utilizing the BellSouth Business Rules ("BBR") for local ordering. Hearing Tr. Vol. 8 at 1144. The BBR is a mammoth document developed by BellSouth for the express purpose of providing local service ordering instructions for ALECs that offer local telecommunications services utilizing BellSouth® Resale Services or Unbundled Network Elements ("UNEs"). The BBR provides a common point of reference to simplify the manual and electronic ordering processes for ALECs that conduct business with BellSouth®. Id.

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

SUMMARY OF BELLSOUTH'S POSITION

*** While BellSouth cannot provide the same kind of completion notification to Supra as when the order is submitted electronically, BellSouth does provide information regarding the status of an order, including completion of the order, through its CLEC Service Order Tracking System ("CSOTS"). ***

DISCUSSION

BellSouth provides Supra with the operational tools needed in order that Supra can determine the current status of its orders on a daily basis, including if manual orders are completed. This tool is the CSOTS system and it became available to ALECs in December 1999. Hearing Tr. Vol. 8 at 1148. The CSOTS system is designed to provide the ALEC community the capability to view service orders on-line, determine order status, including completion status on manual orders, and track service orders. CSOTS interfaces with BellSouth's Service Order Communications System ("SOCS") and provides service order information on a real-time basis for manually submitted and electronically submitted LSRs. CSOTS is available on BellSouth's Web Site. CSOTS is a secured site and requires a password for access that ALECs can obtain by contacting their BellSouth Account Team. The CSOTS User Guide is also available on BellSouth's Web Site. CSOTS provides ALEC's access to the same service order information available to BellSouth's own retail units. Hearing Tr. Vol. 8 at 1148.

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

SUMMARY OF BELLSOUTH'S POSITION

***Each party's liability arising from any breach of contract should be limited to a credit for the actual cost of the services or functions not performed or performed improperly. ***

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

SUMMARY OF BELLSOUTH'S POSITION

*** Specific performance is a remedy, not a requirement of Section 251 of the 1996 Act nor is it an appropriate subject for arbitration under Section 252. Further, specific performance is either available (or not) as a matter of law. ***

CONCLUSION

BellSouth's position on each unresolved issue is reasonable and should be adopted by the Commission for incorporation into the parties' new agreement.

Respectfully submitted, this 26th day of October, 2001.

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