

State of Florida



Public Service Commission  
CAPITAL CIRCLE OFFICE CENTER 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: AUGUST 7, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &  
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (B. KEATING) *HK*  
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (HARVEY,  
VINSON, SIMMONS) *SAS*

RE: DOCKET NO. 980119-TP - COMPLAINT OF SUPRA  
TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC. AGAINST  
BELLSOUTH TELECOMMUNICATIONS, INC. FOR VIOLATION OF THE  
TELECOMMUNICATIONS ACT OF 1996; PETITION FOR RESOLUTION OF  
DISPUTES AS TO IMPLEMENTATION AND INTERPRETATION OF  
INTERCONNECTION, RESALE AND COLLOCATION AGREEMENTS; AND  
PETITION FOR EMERGENCY RELIEF. *MM*

AGENDA: AUGUST 19, 2003 - REGULAR AGENDA - PROPOSED AGENCY ACTION  
- INTERESTED PERSONS MAY PARTICIPATE.

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\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 Petition. On April 30, 1998, the Commission held a hearing in which it received testimony concerning Supra's complaint. By Order

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CLERK

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 with the Commission's final Order.

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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 orders issued in this Docket. Supra opposed the motion. The Court issued an order on September 6, 1999, abating the federal case until December 1, 1999. On December 21, 1999, the Court granted that extension until February 1, 2000.

On November 22, 1999, the parties and 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 the information gained as a result of staff's November 22, 1999, meeting with the parties, the Commission issued Order No. PSC-00-0288-PCO-TP, on February 11, 2000. Therein, the Commission determined that BellSouth had 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 specific requirements that BellSouth should provide Supra with on-line edit checking capability by December 31, 1998. The Commission did, however, acknowledge that BellSouth had made significant developments in its OSS, which includes TAG, Robo-TAG, and LENS '99, since the time that the Commission rendered its final decision.

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

parties' requests for reconsideration pending the outcome of the federal proceedings.

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

On June 8, 2000, BellSouth filed a Motion for Reconsideration of the Commission's decision and requested that the issue of whether or not BellSouth had complied with the edit checking capability requirements of Order No. PSC-98-1001-FOF-TP be resolved by the third-party testing of BellSouth's OSS, which was then being conducted pursuant to Order No. PSC-00-0104-PAA-TP, in Dockets Nos. 981834-TP and 960786-TL. On July 5, 2000, Supra filed its response and opposition to BellSouth's Motion, as well as a request for oral argument. Thereafter, on July 10, 2000, BellSouth filed a reply to Supra's response. On July 12, 2000, Supra filed a Motion to Strike BellSouth's Reply to Supra's Response and a Motion to Strike BellSouth's Motion for Reconsideration. BellSouth did not respond to the Motions to Strike. By Order No. PSC-00-1777-PCO-TP, issued September 28, 2000, the Commission took the following action: (1) granted Supra's Motion to Strike BellSouth's Reply Brief; (2) denied Supra's Motion to Strike BellSouth's Motion for Reconsideration; (3) granted BellSouth's Motion for Reconsideration to the extent that it sought to reopen the record of this case to allow the Commission to address whether BellSouth's ALEC ordering system can provide on-line edit checking capability to Supra; and (4) postponed action in this Docket pending the outcome of the OSS testing being conducted in Docket No. 960786B-TL. Once the OSS testing was completed, the Commission emphasized that the findings in Docket No. 960786B-TL should be used to the fullest extent possible to determine whether BellSouth had met the on-line edit checking requirements of its previous orders in this Docket. The Commission stated that it would "consider whether the third-party testing of BellSouth's OSS has resolved the issue in dispute, or whether we should proceed to a hearing in this Docket to address any unresolved matters, including the issue of whether BellSouth timely complied with our post-hearing orders." Order No. PSC-00-1777-PCO-TP, p. 8. On September 25, 2002, the Commission rendered its Consultative Opinion regarding the results of the testing of BellSouth's OSS, Opinion No. PSC-02-1305-FOF-TL.

### **JURISDICTION**

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

### **DISCUSSION OF ISSUES**

**ISSUE 1:** Has BellSouth provided Supra with on-line edit checking capabilities as required in Order No. PSC-98-1001-FOF-TP, and was the capability provided in a timely manner?

**RECOMMENDATION:** Yes. The Commission should incorporate the results of the Third-Party OSS Test conducted in Docket No. 960786B-TL into this record, as contemplated by Order No. PSC-00-1777-PCO-TP. Based on this additional evidence, the Commission should find that BellSouth has provided on-line edit checking capability as required by Order No. PSC-98-1001-FOF-TP in a timely manner. (HARVEY, B. KEATING)

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

According to Supra, the order may be rejected by any of these systems and returned to Supra hours or days after the Supra representative has hung up with the customer. Occasionally the rejection necessitates additional customer contact, delaying the entire process. In contrast, the BellSouth retail ordering system

can do on-line edit checking while the customer is still on the phone. As a result, Retail Ordering System (ROS) or Regional Negotiating System (RNS) retail orders are submitted directly to SOCS. Supra does not believe the Florida Third-Party Test adequately compared the CLEC and BellSouth systems.

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

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

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

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

In approving BellSouth's 271 application, the FCC stated, "BellSouth provides nondiscriminatory access to its OSS and, thus, satisfies the requirement of checklist item 2." By definition, nondiscriminatory access means that BellSouth provides CLECs access to the pre-ordering and ordering functionalities in substantially the same time and manner as BellSouth retail systems. Implicit in this finding is that the CLEC ordering systems provide sufficient on-line editing capability.

The FCC rejected Supra's allegations as follows: (emphasis added)

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

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

97. We also reject Supra's claim that LENS is discriminatory because "orders submitted from LENS are not error checked with any efficiency or completeness." KPMG found LENS to be a nondiscriminatory interface under criteria

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

**CONCLUSION:** In Order No. PSC-00-0288-PCO-TP, issued February 11, 2000, the Commission clarified that evidence had only been received in the administrative hearing conducted in this case regarding the LENS and EDI interfaces. At the time of Order No. PSC-00-0288-PCO-TP, BellSouth appeared to only be asserting in its Notice of Compliance that it had met the on-line edit checking capability requirement through the TAG interface, which had not been considered in the hearing. Thus, the Commission indicated that it appeared that BellSouth had not met the specific on-line edit checking capability requirement in a timely manner, because it did not appear to have provided that capability through either EDI or LENS by the required date, December 31, 1998. The Commission noted, however, that further proceedings may be warranted to consider new evidence on TAG and whether it met the intent of the Commission's Order.

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



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

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

Staff notes that parties have not initiated action in this docket since the conclusion of the 271 proceedings. In light of the findings in the 271 proceedings, staff believes the third party test has satisfactorily resolved this issue and that further proceedings on this matter are not necessary.

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<sup>1</sup> Staff notes that it brings this recommendation as a Proposed Agency Action rather than as a Final Agency Action recommendation solely because the Commission did not determine the TPT would, in fact, be the final forum in which the on-line edit checking capability question would be addressed and resolved. Order No. PSC-00-1777-PCO-TP still left open the possibility that further proceedings might be necessary in this Docket if the TPT did not fully address the issue. Staff now believes that the TPT did fully address the issue.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes. If the Commission approves staff's recommendation in Issue 1, this Docket should be closed upon issuance of a Consummating Order if no person whose substantial interests are affected files a timely protest of the Commission's Proposed Agency Action Order resulting from this recommendation within 21 days of issuance of the Order. (B. KEATING)

**STAFF ANALYSIS:** If the Commission approves staff's recommendation in Issue 1, this Docket should be closed upon issuance of a Consummating Order if no person whose substantial interests are affected files a timely protest of the Commission's Proposed Agency Action Order resulting from this recommendation within 21 days of issuance of the Order.