

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint of Supra Telecommunications and Information Systems, Inc. against BellSouth Telecommunications, Inc. for violation of the Telecommunications Act of 1996; petition for resolution of disputes as to implementation and interpretation of interconnection, resale and collocation agreements; and petition for emergency relief.

DOCKET NO. 980119-TP
ORDER NO. PSC-04-0722-PHO-TP
ISSUED: July 26, 2004

PREHEARING ORDER

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on July 19, 2004, in Tallahassee, Florida, before Commissioner J. Terry Deason, as Prehearing Officer.

APPEARANCES:

STEVEN CHAIKEN, Esquire, 2620 S. W. 27th Avenue, Miami, Florida 33133
On behalf of Supra Telecommunications And Information Systems, Inc.

JAMES MEZA III, Esquire, 675 W. Peachtree Street, NE, Suite 4300, Atlanta, Georgia 30375
On behalf of Bellsouth Telecommunications, Inc.

PATRICIA A. CHRISTENSEN, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission.

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

On January 23, 1998, Supra Telecommunications and Information Systems, Inc. (Supra) filed a Complaint against BellSouth Telecommunications, Inc. (BellSouth or BST) for alleged

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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, a hearing was held on the complaint. By Order No. PSC-98-1001-FOF-TP, issued July 22, 1998, this Commission rendered its final decision. The Parties filed multiple post-hearing motions. By Order No. PSC-98-1467-FOF-TP, issued October 28, 1998, this 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 federal court granted BellSouth's Motion seeking an abatement to allow this Commission to determine its compliance with the orders issued in this docket. After meeting with the parties, the Commission issued Order No. PSC-00-0288-PCO-TP, on February 11, 2000, finding that ". . . BellSouth Telecommunications, Inc. has complied with Order No. PSC-98-1001-FOF-TP, issued July 22, 1998, as clarified by Order No. PSC-98-1467-FOF-TP, issued October 28, 1998, with the exception of providing on-line edit checking capability as set forth in the body of this Order." On May 8, 2000, the federal district court granted BellSouth's voluntary dismissal of its appeal to allow this 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 our decision and requested that the issue of whether or not BellSouth had complied with the edit checking capability requirements of Order No. PSC-98-1001-FOF-TP be resolved by the third-party testing of BellSouth's OSS, which was then being conducted pursuant to Order No. PSC-00-0104-PAA-TP, in Dockets Nos. 981834-TP and 960786-TL. On September 25, 2002, this Commission rendered its Consultative Opinion regarding the results of the testing of BellSouth's OSS, Opinion No. PSC-02-1305-FOF-TL, in Dockets Nos. 981834-TP and 960786-TL.

By Order No. PSC-03-1178-PAA-TP, issued October 21, 2003, this Commission found that BellSouth had timely complied with the on-line edit checking requirements set forth in Order No. PSC-98-1001-FOF-TP as clarified by the subsequent Orders in this docket. On November 10, 2003, Supra filed its protest to Order No. PSC-03-1178-PAA-TP. On December 5, 2003, BellSouth filed its response to Supra's protest.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the

information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183 Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential

information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.

- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of the Commission Clerk and Administrative Service's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
David E. Stahly	Supra	1 – 4
Ron Pate	BST	1 – 4
<u>Rebuttal</u>		
David E. Stahly	Supra	1 – 4
Ron Pate	BST	1 – 4

VII. BASIC POSITIONS

SUPRA: This Commission is vested with the power to promulgate rules and enforce its orders. Thus, Supra calls on the Commission to enforce its original order in this docket and require BellSouth to provide the same on-line edit checking capabilities to Supra that BellSouth provides to itself. Supra is not asking this Commission to do something new; rather, Supra is only asking that this Commission insist that BellSouth comply with this Commission's original order. By enforcing the order, the Commission can help CLECs provide a higher quality of service which will lead to higher customer satisfaction with the CLEC – and, in turn, with the competitive environment as a whole. This Commission ordered BellSouth to modify its CLEC ordering systems (i.e. LENS or EDI) to provide the same on-line edit checking capabilities to Supra that BellSouth provides to itself.

To date, BellSouth has still not modified LENS or EDI to provide Supra and other CLECs with the same on-line edit checking capability that BellSouth's RNS system provides to itself.

BST: The simple question of this proceeding is whether BellSouth timely complied with the Commission's Orders regarding on-line edit checking capability. As found by the Commission in Order No. PSC-03-1178-PAA-TP, the answer is an unequivocal yes. BellSouth has provided Supra with on-line edit capability since July 1998 for EDI, since November 1998 with TAG, and since January 2000 with LENS. Further, the KPMG Third Party Test successfully tested the CLECs' ability to develop and implement a machine to machine interface using BellSouth's business rules, thus proving that

BellSouth provides nondiscriminatory access to its OSS. Implicit with a machine to machine interface is the capability to program up-front on-line edits tailored to meet a CLEC's unique needs.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

ISSUE 1: What did the Florida Public Service Commission order regarding on-line edit checking capability in this docket?

POSITIONS:

SUPRA: In Order No. PSC-98-1001-FOF-TP, issued July 22, 1998 ("July 22nd Order"), the Commission ordered BellSouth to modify LENS to provide the same on-line edit checking capabilities to Supra that BellSouth provides to itself.

"BellSouth shall modify the ALEC ordering systems so that the systems provide the same online edit checking capability to Supra that BellSouth's retail ordering systems provide."¹

In Order No. PSC-98-1467-FOF-TP, issued October 28, 1998 ("October 28th Order"), the Commission denied BellSouth's Motion for Reconsideration and confirmed its earlier finding in the July 22nd Order that BellSouth must provide the same on-line edit checking capability to Supra that it provides to itself and that BellSouth bore the burden of providing that capability. The Commission specifically stated that while BellSouth does not have to provide Supra with the exact same duplicate interfaces that it uses, BellSouth must provide Supra with the exact same capabilities as its systems.

"As set forth in our order, BellSouth's FUEL and Solar databases have simultaneous interaction with BellSouth's ordering interfaces, so that errors in an order being worked by a service representative are immediately identified. If an error is identified, the BellSouth service representative can make corrections before the order is completed. BellSouth shall provide Supra with this same

¹ See Order No. PSC-98-1001-FOF-TP at 44.

capability through the ordering interfaces provided to it, as identified in the parties' agreement."²

In Order No. PSC-00-0288-PCO-TP, issued February 11, 2000 ("February 11th Order"), the Commission made clear that the ordering interfaces which BellSouth was ordered to modify were LENS and EDI.

"... in rendering our decision based on the evidence in the record of the available interfaces, we intended, at that time, that BellSouth provide the online edit checking capability though either LENS or EDI. Therefore, BellSouth has not complied with the specific requirements in our Orders in this Docket."³

The on-line edit checking capability the Commission was referring to was the ability to complete on-line edits while the customer was still on the phone and prior to the submission of an order.

"... BellSouth's FUEL and Solar databases have simultaneous interaction with BellSouth's ordering interfaces, so that errors in an order being worked by a service representative are immediately identified. If an error is identified, the BellSouth service representative can make corrections before the order is completed. BellSouth shall provide Supra with this same capability through the ordering interfaces provided to it, as identified in the parties' agreement." (Emphasis added.)⁴

BST: The Commission ordered BellSouth to provide the same on-line edit checking **capability** to Supra that occurred when BellSouth's retail ordering interfaces interacted with BellSouth's FUEL and SOLAR databases by December 31, 1998. The Commission further held that BellSouth was not required to duplicate its RNS and DOE interfaces for Supra or install hardware at Supra's premises.

STAFF: Staff has no position at this time.

² See Order No. PSC-98-1467-FOF-TP at 18.

³ See Order No. PSC-00-0288-PCO-TP at 11.

⁴ See Order No. PSC-98-1467-FOF-TP at 18.

ISSUE 2: Has on-line edit capability been made available in the manner required by the Commission's prior orders in this docket?

POSITIONS:

SUPRA: No. BellSouth, the party with the obligation to perform the modification, has not modified either LENS or EDI to provide Supra with the same on-line edit checking capabilities that BellSouth provides to itself as was ordered by this Commission. The Commission ruled in Order No. PSC-03-1178-PAA-TP, issued October 21, 2003, ("October 21st Order") that BellSouth was providing "sufficient on-line editing capability"⁵ and that BellSouth had complied on a timely basis with the on-line edit checking requirements set forth in Order No. PSC-98-1001-FOF-TP.

The Commission's conclusion in Order No. PSC-03-1178-PAA-TP, issued October 21, 2003, is not only in direct conflict with the Commission's final, non-appealable order of February 11, 2000, but it is based upon an irrelevant third party test which did not test whether BellSouth was providing the same on-line edit checking capability to CLECs.

BST: Yes. BellSouth timely complied with the Commission's orders regarding on-line edit checking capability by providing CLECs with access to the same SOER edits BellSouth uses to process its retail orders since July 1998. Accordingly, CLECs had the same on-line edit checking capability that BellSouth's retail interfaces have since July 1998 for EDI, since November 1998 for TAG, and since January 2000 for LENS.

STAFF: Staff has no position at this time.

ISSUE 3: Did the third party test performed by KPMG in Dockets Nos. 980786-TX and 981834-TP resolve any issues in this proceeding?

POSITIONS:

SUPRA: Absolutely not. While the instant proceeding focuses on whether BellSouth is providing Supra Telecom with on-line edit checking capabilities that BellSouth itself has, the KPMG third party testing did not conduct any study to determine whether BellSouth was providing the same on-line edit checking capability to CLECs through LENS or EDI as it provides to itself. Specifically, the KPMG study only looked at CLEC's overall access to BellSouth's OSS post-submission of orders and did nothing whatsoever to address the issue in this docket regarding whether BellSouth was provisioning on-line edit checking, pre-submission of orders, to CLECs. In fact, KPMG made no specific

⁵ See Order No. PSC-03-1178-PAA-TP at 6.

findings whatsoever related to on-line edit checking. Therefore, the Commission cannot rely on the KPMG proceeding as a substitute for its own judgment (after a hearing and considering evidence) three years earlier to make a determination as to whether BellSouth provided Supra with on-line edit checking as ordered in the Commission's July 22nd and October 28th Orders.

Furthermore, the issue of whether the KPMG Third Party Test can be used as a substitute for the Commission's own judgment and as a basis to reverse the Commission's final, non-appealable order issued February 11, 2000 must be addressed. The Commission should not reverse its own independent judgment with that of a Third Party Test concluded nearly three years later. The Commission should not relieve BellSouth of its obligations, absent a finding based on actual evidence comparing the on-line edit checking capabilities which BellSouth has provided to itself and to CLECs via EDI and LENS.

BST: Yes. The KPMG Third Party Test proved that BellSouth provides nondiscriminatory access to its OSS, which means that BellSouth wholesale OSS functions in the same time and manner as Bellsouth's retail systems. Further, the Third Party Test proved that CLECs could develop and implement a machine to machine interface using BellSouth's business rules, which would allow a CLEC to program up-front on-line edits.

STAFF: Staff has no position at this time.

ISSUE 4: Has BellSouth timely complied with the Commission's previous orders in this docket?

POSITIONS:

SUPRA: No. BellSouth has yet to comply with the Commission's previous orders, much less timely complied. In Order No. PSC-00-0288-PCO-TP, issued February 11, 2000, this Commission unequivocally determined that BellSouth had still failed to comply with the requirement to provide Supra with the same on-line edit checking capability that BellSouth provided to itself. The order stated:

“Based on the foregoing, we find that BellSouth has complied with all portions of our final decision in this case, Order No. PSC-98-1001-FOF-TP, issued July 22, 1998, as clarified by Order No. PSC-98-1467-FOF-TP, issued October 28, 1998, except for the

specific requirements that BellSouth should provide Supra with on-line edit checking capability by December 31, 1998.”⁶

The Commission should again order BellSouth to modify LENS and EDI to give Supra the same ordering capability that BellSouth’s RNS system provides itself. In the alternative, this Commission should impose a penalty on BellSouth, for violating Commission orders, under §364.285, Florida Statutes and find that BellSouth failed to comply with Commission orders until at the earliest February 11, 2000.

BST: Yes. BellSouth has timely complied with the Commissions Orders in this proceeding since July 1998 for EDI, November 1998 for TAG, and January 2000 for LENS.

STAFF: Staff has no position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
			<u>Rebuttal</u>
Pate	BST	(RMP – 1)	Diagram of Process Flow for Ordering
Pate	BST	(RMP – 2)	Table indicating reject timeline results for the first quarter of 2004 for the state of Florida as well as for Supra (public and confidential version filed)

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

⁶ See Order No. PSC-00-0288-PCO-TP, at 12.

X. PROPOSED STIPULATIONS

The parties have agreed to stipulate the listed exhibits:

1. Depositions:

- *Deposition of Ronald Pate taken July 7, 2004 in this proceeding.
- Deposition of David Stahly taken July 7, 2004, in this proceeding.

2. Discovery Responses:

- *All of BellSouth's discovery responses in this docket (to both Staff's third set of discovery and Supra's discovery).
- *All of Supra's discovery responses in this docket (to both Staff's third set of discovery and BellSouth's discovery).

3. Agreements and Reports:

- *Resale Interconnection and Unbundling Agreement between Supra and BellSouth.
(Filed November 24, 1997 in Docket No. 971555-TP)

KMPG report from the third party test performed by KPMG in Dockets Nos. 980786-TX and 981834-TP

- * **Supra has identified the above as Known Exhibits in its Prehearing Statement.**

XI. PENDING MOTIONS

There are no pending motions.

XII. PENDING CONFIDENTIALITY MATTERS

Claim of Confidentiality for DN 07483-04, Exhibit A, attached to Supra's Responses to Staff's 3rd Set of Interrogatories filed July 9, 2004, by Supra.

XIII. DECISIONS THAT MAY IMPACT COMMISSION'S RESOLUTION OF ISSUES

Parties have stated in their prehearing statements that the following decisions have a potential impact on our decision in this proceeding:

Supra listed the following Commission Orders:

Order No. PSC-98-1001-FOF-TP issued July 22, 1998

Order No. PSC-98-1467-FOF-TP issued October 28, 1998

Order No. PSC-00-0288-PCO-TP issued February 11, 2000

Order No. PSC-00-0798-FOF-TP issued April 24, 2000

Order No. PSC-00-1777-PCO-TP issued September 28, 2000

Order No. PSC-03-1178-PAA-TP issued October 21, 2003

XIV. RULINGS

1. Opening statements, if any, shall not exceed ten minutes per party.
2. Supra Telecommunications and Information Systems, Inc.'s Motion for Leave to Amend its Prehearing Statement filed July 15, 2004, is hereby granted.
3. Supra Telecommunications and Information Systems, Inc. filed discovery for which it filed a Motion to Shorten Time to Provide Discovery Responses, and in the Alternative Motion for Continuance. Both parties have known the procedural schedule for this case for some time and that this case is going to hearing as scheduled. The parties should have acted accordingly when they made their plans for discovery in this case. Therefore, Supra Telecommunications and Information Systems, Inc.'s Motion to Shorten Time to Provide Discovery Responses, and in the Alternative Motion for Continuance filed July 14, 2004, is hereby denied.
4. Supra Telecommunications and Information Systems, Inc. filed its Notice of Substitution of Witness and Adoption of Testimony on July 12, 2004. BellSouth Telecommunications, Inc. filed its Opposition to Notice of Adoption of Testimony on July 16, 2004.


Concerning substitution of a witness, there has been no consistent practice regarding whether parties have sought substitution of a witness through a motion or a notice. Historically, if substitution of a witness has been done by notice, there has been agreement among the parties that the substitution is appropriate which is not the case in this proceeding. The Order Establishing Procedure requires that the witnesses will be identified and that prefiled testimony will be filed by those witnesses. Since the identification of witnesses and prefiled testimony is incorporated into an order, and the parties have committed to a particular witness and it becomes part of an order, the parties must seek relief from that order by a motion. Thus, I have treated Supra's Notice as a request for relief that should have otherwise been styled as a motion.

In this case, there has been no cause shown for the need for substitution, and it would be prejudicial against BellSouth's case to make such a substitution without good cause so late in the proceeding. Further, witness Stahly has already been deposed. Therefore, Supra Telecommunications and Information Systems, Inc's Notice of Substitution of Witness and Adoption of Testimony is hereby denied.

It is therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 26th day of July, 2004.


J. TERRY DEASON
Commissioner and Prehearing Officer

(SEAL)

PAC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.