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

DATE: October 21, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (Broussard, Vinson, Fisher, Harvey) *EBB CAN LF*
Office of the General Counsel (Banks) *C.F.F. PWB*

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.

AGENDA: 11/02/04 – Regular Agenda – Posthearing Decision – Participation is Limited to Commissioners and Staff

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

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

Case Background

On June 8, 2000, BellSouth filed a Motion for Reconsideration of Order No. PSC-98-1001-FOF-TP, issued July 22, 1998, 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.

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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 online 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 order stated that the findings in Docket No. 960786B-TL should be used to the fullest extent possible to determine whether BellSouth had met the online edit checking requirements of the Commission's 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 it 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 Operating Support Systems (OSS), Opinion No. PSC-02-1305-FOF-TL.

By Order No. PSC-03-1178-PAA-TP, issued October 21, 2003, this Commission found that BellSouth had timely complied with the online 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. An administrative hearing was held on August 4, 2004.

This recommendation addresses the issues of BellSouth's compliance with the Commission's order for BellSouth to provide "the same online edit checking capability to Supra that its retail ordering systems provide." At issue are both the meaning and the intent of these words. BellSouth believes the Commission required it make the equivalent capability *available*, while Supra believes the Commission required making the capability *operable*. A key issue is whether Supra's interpretation would have required BellSouth to do what the Commission specifically prohibited (providing equipment on Supra's premises or programming and customizing Supra's preordering and ordering systems to mimic BellSouth's systems' functions) or whether Supra's interpretation goes beyond the requirements of Section 271 of the Telecommunications Act of 1996. Finally, staff notes that although the Commission at one point looked to the third-party OSS test to possibly resolve this issue, the matter can be decided without considering the test's results.

Discussion of Issues

Issue 1: What did the Florida Public Service Commission order regarding online edit checking capability in this docket?

Recommendation: Staff recommends that Commission Orders No. PSC-98-1001-FOF-TP and PSC-98-1467-FOF-TP required BellSouth, by December 31, 1998, to provide Supra with the same interactions and online edit checking *capability* through BellSouth's interfaces that occurs when its retail ordering interfaces interact with BellSouth's Field Identifier, USOC, and Edit Library (FUEL) and Service Order Layout Assembly Routine (SOLAR) databases. Staff believes the Commission did not order BellSouth to *implement* online order edit checking for Supra. **(BROUSSARD, VINSON)**

Positions of the Parties

BellSouth: The Commission ordered BellSouth to provide online edit checking *capability* through its ALEC interfaces by December 31, 1998. The Commission also held that, BellSouth, in providing this capability, did not have to install equipment on Supra's premises or duplicate its retail systems for Supra.

Supra: The Commission ordered BellSouth to modify either [Electronic Data Interchange] EDI or [Local Exchange Navigation System] LENS so that Supra's customer service representatives can immediately identify an error, prior to submitting an order, while obtaining information from a customer that is still on the phone.

Staff Analysis: This issue is to interpret the various Commission orders regarding BellSouth providing online edit checking capability to Supra.

Supra Arguments

According to Supra, online edit checking is the ability of an automated computer system to check the correctness of information in order entry forms in real-time, while sales representatives are on the phone with the customer. According to Supra, a good system immediately alerts the sales representative (while still on the phone with the customer) that a field entry is incorrect and must be corrected before the order can be submitted for processing. (TR 29)

Supra takes the position that Commission Order No. PSC-98-1001-FOF-TP requires BellSouth to modify either LENS or EDI to provide the same online edit checking capabilities to Supra that BellSouth provides to itself. Witness Stahly cites page 54 of the order which states:

BellSouth shall modify the ALEC ordering systems so that the systems provide the same on-line edit checking capability to Supra that BellSouth's retail ordering systems provide. (EXH 9, pp.64-65)

According to witness Stahly, the Commission required BellSouth to provide Supra with the "exact same on-line edit checking capabilities" as its systems. In Order No. PSC-98-1467-FOF-TP issued October 28, 1998, he notes the Commission stated:

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 capability through the ordering interfaces provided to it, as identified in the parties' agreement. (TR 35)

At a number of points throughout his testimony, Supra's witness Stahly makes the claim that it was/is the Commission's intent that BellSouth should bear the burden of building a graphical user interface for Supra that implements the online edit checking capability order by the Commission. Witness Stahly states there are two important points to note in the Commission order that prove this:

1. The Commission expressly stated BellSouth must provide Supra with the same on-line edit checking capabilities that it has in its system.
2. It is BellSouth's responsibility to provide the system. (TR 35)

BellSouth Arguments

BellSouth witness Pate acknowledges that BellSouth is required to provide online edit checking capability and quotes the July 22, 1998 Commission Order No. PSC-98-1001-FOF-TP in his direct testimony stating BellSouth was ordered to "provide the same on-line edit checking capability to Supra that BellSouth's retail ordering systems provide." (TR 108) Witness Pate also points out that on reconsideration in Order No. PSC-98-1467-FOF-TP (Reconsideration Order), the Commission clarified that it was not requiring BellSouth to duplicate its RNS and DOE interfaces, or install equipment at Supra's premises for online edit checking capability. (TR 108)

Witness Pate states that online edit checking capability was made available to Supra when BellSouth provided its business rules and SOER edits. According to witness Pate, the business rules and SOER edits, when used in combination with EDI, provide CLECs with the same process and functionality that occurs when BellSouth's retail ordering systems interact with the FUEL and SOLAR databases.

BellSouth's witness Pate rejects Supra's claim, arguing that, while the Commission ordered BellSouth to provide the same ordering interaction capabilities of RNS with FUEL and SOLAR, it did not order BellSouth to implement such a system. (TR 121) Witness Pate states that his claim is further supported by the October 1998 Reconsideration Order, stating that BellSouth did not need to provide Supra with the exact same interfaces BellSouth uses. (TR 121)

Analysis

As noted, Commission Order No. PSC-98-1001-FOF-TP issued July 22, 1998, required that "...the same interaction and edit checking capabilities must take place when [a CLEC] is working an order as when Bellsouth's retail ordering system interact with its FUEL and SOLAR

databases to check the accuracy of BellSouth's orders." This stops short of specifying how and by whom this capability would be implemented.

After the initial order, BellSouth petitioned the Commission for reconsideration arguing, with regard to the online edit issue, that in order to provide the capability initially ordered BellSouth would have to duplicate its RNS and DOE systems at Supra's premises and that it would also have to install hardware and software to be in compliance. Thus, BellSouth argued the Commission's decision went beyond the Telecommunications Act of 1996, and the FCC's interconnection order. On October 28, 1998, on reconsideration, the Commission released Order No. PSC-98-1467-FOF-TP ruling that based upon BellSouth's arguments, it "...shall not require BellSouth to duplicate its RNS and DOE interfaces at Supra's premises."

The Commission also indicated on page 17 of the Reconsideration Order that the interfaces being addressed are not limited to LENS or EDI, but included those interfaces available to Supra "...as identified in the parties' agreement." Staff believes is consistent with item five of page 52 of Order Number PSC-98-1001-FOF-TP, which refers collectively to "the ALEC ordering systems." The Commission set a due date for BellSouth to provide this online edit checking capability of December 31, 1998. (Reconsideration Order at 23)

In its Notice of Compliance Order, No. PSC-00-0288-PCO-TP, February 11, 2000, the Commission ruled against BellSouth's claim that it had complied with the due date provision of the Reconsideration Order. The Commission stated that "...with regard to the provision of on-line edit checking capability by December 31, 1998, we emphasize that we believe this is a close call." The Commission further stated "...we do not believe BellSouth has met the specific requirements of Order No. PSC-98-1001-FOF-TP." However, The Commission came to this conclusion because only LENS and EDI were addressed in the record of this case and the Commission's decision was based on the evidence and capabilities of only these two interfaces. The Commission stated that because its decision was based on the evidence in the record at the time, the Commission intended at the time that the capability be provided via LENS or EDI, and therefore, BellSouth had not complied with the specific requirements of the orders in the docket.

The main point of the debate in this issue is what the Commission meant when it stated "BellSouth shall provide Supra with this same capability (online edit checking) through the ordering interfaces provided to it." Order No. PSC-98-1467-FOF-TP at p.16. At the time of the original, post-hearing decision, the Commission did not specify how it intended BellSouth to provide online edit checking beyond the following statements on the issue:

We do, however, note that Supra contended that BellSouth's ALEC ordering systems do not provide the same on-line edit checking capability that BellSouth's retail ordering systems provide. We believe the same interaction and edit checking capability must take place when an ALEC is working an order as when BellSouth's retail ordering systems interact with BellSouth's FUEL and Solar databases to check the accuracy of BellSouth's orders. Based upon the evidence, it does not appear that this interaction currently takes place in a manner that gives Supra adequate on-line edit checking ability.

....

BellSouth shall modify the ALEC ordering systems so that the systems provide the same on-line edit checking capability to Supra that BellSouth's retail ordering systems provide.

Order No. PSC-98-1001-FOF-TP at pgs. 24 and 52. However, in its Reconsideration Order, Order No. PSC-98-1467-FOF-TP, the Commission clarified its ruling regarding provision of the online edit checking capability as follows:

In view of BellSouth's assertions that it would be necessary to place equipment at Supra's premises, we shall, however, clarify that BellSouth does not need to provide the exact same interfaces that it uses. 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 capability through the ordering interfaces provided to it, as identified in the parties' agreement.

Id. at p. 17. The Commission further stated that:

. . . BellSouth indicated that it expects to have the modifications to LENS that were required by us to be completed by February, 1999. This appears reasonable, but we encourage BellSouth to complete the modifications by the end of 1998. As for the on-line edit checking capability, we again emphasize, as explained above, that we shall not require BellSouth to duplicate its RNS and DOE interfaces at Supra's premises. In accordance with Order No. PSC-98-1001-FOF-TL, BellSouth shall provide Supra with the same interaction and on-line edit checking capability through its interfaces that occurs when BellSouth's retail ordering interfaces interact with BellSouth's FUEL and Solar databases to check orders. Order No. PSC-98-1001-FOF-TL at pages 22 and 47. BellSouth shall be required to do so by December 31, 1998. If, however, BellSouth is able to sufficiently demonstrate that it is not possible to provide on-line edit checking by that date, BellSouth may file a Motion for Extension of Time for our consideration.

Id. at p. 24. In particular, staff believes that the latter citation above clearly indicates that the Commission considered the online edit checking issue to be a matter separate and apart from the issue of the online edit checking capability. Furthermore, the clarifications made in the Reconsideration Order clearly demonstrate that the Commission did not intend for BellSouth to replicate the RNS and DOE interfaces on Supra's premises; instead, the Commission clearly stated that BellSouth must provide the same "interaction and online edit checking capability through its interfaces." Id. (Emphasis added.) Staff believes that this is a reasonable interpretation of the Commission's prior decisions in this case. Furthermore, in accordance with this interpretation, the evidence in this case demonstrates that this capability has been provided

to Supra in a timely manner, but that Supra has not taken the additional steps to avail itself of this capability.

Staff notes that providing a *capability* is separate and distinct from *implementing* that capability. Staff believes that the word *capability*, in common usage, implies a *potential* that may or may not be acted on or employed or, in other words, *implemented*. *Implementation*, on the other hand, staff believes, indicates some capability has been acted upon making the potential a reality. Secondly, although Supra makes this point appear to come directly from some Commission pronouncement, nowhere in any Commission order regarding this case does the Commission require or imply that it is BellSouth's responsibility to provide an ordering system to Supra with the implemented capability to perform online edits. Staff agrees with witness Pate that all BellSouth was ordered to do was to provide the same ordering capabilities that RNS has with FUEL and SOLAR, but not the actual implementation of such system. (TR 121) Staff believes that when BellSouth provided the business rules and SOER edits, it provided Supra with the capability of building a system that had online edit checking capability.

Conclusion

Staff recommends that the Commission ordered BellSouth, by December 31, 1998, to provide Supra with the same interactions and online edit checking *capability* through BellSouth's interfaces that occurs when its retail ordering interfaces interact with BellSouth's Field Identifier, USOC, and Edit Library (FUEL) and Service Order Layout Assembly Routine (SOLAR) databases, but that it did not order BellSouth to *implement* online order edit checking for Supra.

Issue 2: Has online edit capability been made available in the manner required by the Commission's prior orders in this docket?

Recommendation: Yes. Staff recommends that the Commission found that BellSouth provided Supra with online edit checking capability in accordance with Commission orders by providing Supra with BellSouth business rules, and Service Order Edit Routine edits which gave Supra the capability to implement online edit checking. **(BROUSSARD, VINSON)**

Positions of the Parties

BellSouth: Yes. BellSouth provided CLECs with online edit checking capability in accordance with Commission orders via BellSouth business rules, and SOER edits.

Supra: No. BellSouth's own witness, Mr. Ronald Pate, admitted that BellSouth did not modify either EDI or LENS to provide Supra with the same online edit checking capabilities that BellSouth provides to itself as was ordered by this Commission.

Staff Analysis: This issue is to determine if online edit capability been made available to Supra by BellSouth in the manner required by the Commission's prior orders in this docket.

Supra Arguments

As noted in Issue One, Supra has taken the position that Order No. PSC-98-1001-FOF-TP required BellSouth to modify either LENS or EDI to provide online edit checking capabilities. (Order p. 52) Supra therefore contends that BellSouth is not in compliance with previous Commission orders regarding online edit checking capability because BellSouth has not modified either LENS or EDI. Supra contends that BellSouth should have modified the interfaces that existed at the time and contemplated by the parties' interconnection agreement—in this case LENS and EDI.

Witness Stahly also disagrees that BellSouth's Telecommunications Access Gateway (TAG) interface provides the ordered online edit capability. The witness argues TAG is only a programming language that allows access to BellSouth databases. Witness Stahly concludes that "Thus, TAG requires the CLEC (instead of BellSouth) to develop a system that has the required on-line edit checking capabilities." The witness claims that Supra doing the work itself would cost it time and money, and reiterates the Commission places the burden on BellSouth. (TR 39)

Tied to the issue of compliance is Supra's claim that the original order requires BellSouth to implement the capability to perform online, real-time edit checks—in other words, BellSouth has the responsibility to design and build an ordering system graphical user interface (GUI) that incorporates online edit checking capability for Supra. (TR 35) Supra claims that because BellSouth chose not to do this work for Supra, BellSouth is not in compliance with the Commission's previous orders.

Witness Stahly argues that "it is not enough for BellSouth to simply provide a software programming language that can be used at great time and expense to the CLEC to develop an interface that provides online edit checking; but rather, that BellSouth must develop an interface

that provides Supra with the 'ordering interface' that gives Supra on-line [editing] capability." (TR 35)

Witness Stahly reiterates this belief in his opening remarks at hearing, where he characterizes his concept of the Commission's position stating "the Commission didn't say, BellSouth, give Supra a toolbox and let them go build something. It said, BellSouth, provide Supra the same capability at their ordering interfaces as intended by the agreement." (TR 63) Witness Stahly states that "Nowhere in any order did the Commission relieve BellSouth of its obligation to modify LENS or that it could offer up EDI so that a CLEC could itself 'create, customize and tailor any on-line editing capability [Supra desires] using the SOER edits.'" (TR 52)

Supra's witness adds that BellSouth's non-compliance is not because of any technical difficulties. As witness Stahly points out, BellSouth's witness Pate states that BellSouth has the technical capability to implement the desired system for Supra, but simply will not do it. (EXH 6, pp.20-21, 33; TR 168-169)

BellSouth Arguments

BellSouth witness Pate rejects Supra's argument that the Commission required BellSouth to build an online edit checking system for Supra. Witness Pate states that Order No. PSC-98-1467-FOF-TP required Bellsouth "to provide Supra with the same ordering interaction *capabilities* of RNS with FUEL and SOLAR, but not the actual *implementation* of such a system." (TR 121)

Witness Pate further rejects Supra's argument pointing to the February 2000 Order No. PSC-00-0288-PCO-TP at page 10 which states:

...[N]owhere in either Order [July 1998 order or Order No. PSC-98-1467-FOF-TP (October 1998 Order)] did we specifically state that the on-line edit-checking capability had to be provided specifically through the LENS interface. In each reference to this particular requirement we indicated that it must be provided generally through the ALEC ordering interfaces available to Supra. (TR 120)

In responding to Supra's claim that developing an interface would be prohibitively costly, BellSouth points to Supra's contract with a company called Nightfire (now NeuStar). According to NeuStar's Web site, its clearing house model is specifically designed to electronically process and track both pre-orders and LSRs according to industry-approved local service ordering requirements. BellSouth implies that Supra's contract with Nightfire (NeuStar) proves two points. First, Supra has funds available to develop its own custom interface, that could incorporate online, real-time edit checking. Second, Nightfire's ability to use BellSouth's business rules and SOER edits to develop such a system with EDI proves that those rules and edits do provide the edit checking capability sought by Supra. (TR 86-90, 182, 18)

BellSouth witness Pate states that EDI was in compliance as of July 1998 when BellSouth provided Supra with SOER edits and business rules. These, in combination with the

EDI interface, provided Supra with the tools needed to implement online, real-time edit checking. (EXH 6, p.21)

Analysis

Supra's two main arguments on this issue are that the Commission ordered BellSouth to modify LENS or EDI to provide online, real-time edit capability, and that BellSouth bears the burden of implementing that capability by building, for Supra, and integrated ordering system—complete with input screens (graphical user interface, or GUI) that incorporates online, real-time edits.

Staff disagrees with Supra on both points. First, staff notes that the Commission clarified that BellSouth could comply with its requirements through any of the preordering and ordering interfaces available to Supra. (Reconsideration Order, p.17) At hearing, Supra's witness Stahly even admitted that BellSouth would be in compliance if it had made online edits available through EDI, which BellSouth claims is what happened when they provided the business rules and SOER edits to Supra in 1998. (TR 86)

Second, staff disagrees that the Commission placed the full burden on BellSouth to customize Supra's interfaces and to implement online edit checking for Supra. This would have required replicating BellSouth's systems and placing equipment on Supra's premises, both of which were explicitly excluded by the Commission as obligations of BellSouth in Order No. PSC-98-1467-FOF-TP.

Staff concurs with BellSouth that, when it provided Supra with SOER edits, it enabled Supra to design and customize its own custom presentation system. Staff believes that providing Supra with the business rules and SOER edits gave Supra the capability to design its own graphical user interface or GUI (the actual computer screen the customer representative is working with) and to incorporate edits customized to its own business needs. While these assets would not help in modifying the human-to-machine interface LENS, staff believes the point is moot as the Commission, on Reconsideration, clarified that BellSouth was to provide Supra with the same interaction and edit checking capability through the available interfaces as BellSouth retail interfaces have via FUEL and SOLAR. But most importantly, the Commission clarified that in providing this capability to Supra, BellSouth is not required to provide its RNS and DOE retail ordering interfaces to Supra, or to place its own equipment at Supra's location. (Reconsideration Order, p. 23) Thus, staff believes that either of the interfaces available to Supra under its interconnection agreement—in this case EDI—would suffice to provide Supra the capability to design and build the system it sought.

Witness Stahly's claim of "evidence" supporting his assertion that BellSouth is not providing Supra with the ordered online edit checking capability is simply that when using the ordering systems provided to CLECs by BellSouth, the order may still be rejected by BellSouth due to errors. (TR 38) Staff notes first that witness Pate testified that some RNS and DOE orders are subsequently rejected after having been successfully submitted and views this only as evidence that Supra has made the business decision not to implement the capability to develop either an EDI system that takes advantage of BellSouth's business rules and SOER edits, nor to develop a system using the TAG architecture, nor to use LENS '99.

Staff believes that if BellSouth were required to build an online editing system for Supra, it would be providing more than required by both the Commission's orders and the Telecommunications Act of 1996. Based on the statements by witness Pate, staff concludes that implementation of online edits would require BellSouth to install equipment at Supra's premises, and implement its own retail systems at Supra—something the Commission expressly stated in the October 1998 that they were not required to do, and has previously found that BellSouth does not have to give Supra direct access to its retail systems. (TR 19-20)

Staff believes Supra's own actions indicate that it understood what was needed to implement online edit checking by way of its business arrangement with Nightfire. BellSouth argues that Nightfire used BellSouth's business rules and SOER edits to develop the system it uses to submit Supra's orders to BellSouth.

Conclusion

Staff recommends that the Commission find that BellSouth provided Supra with online edit checking capability in accordance with Commission orders by providing Supra with BellSouth business rules, and Service Order Edit Routine edits which gave Supra the capability to implement online edit checking.

Docket No. 980119-TP
Date: October 21, 2004

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

Recommendation: Yes. The KPMG third-party test demonstrated that BellSouth's Operational Support Systems are nondiscriminatory, accessible to CLECs, and that CLECs are able to develop and implement customized ordering interfaces which may include features such as incorporation of online, real-time edit checking. **(BROUSSARD, VINSON)**

Positions of the Parties

BellSouth: Yes. The KPMG third-party test proved that BellSouth provides nondiscriminatory access to its OSS and 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 online edits.

Supra: No. The KPMG test only looked at CLECs' 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.

Staff Analysis: This issue is to determine whether the Operating Support Systems third-party test performed by KPMG resolved any issues in this proceeding. Staff notes that if the Commission adopts recommended positions on Issues 1 and 2, this issue may be moot.

Supra Arguments

In deposition, Supra witness Stahly stated that he "didn't believe [CLECs] were allowed to participate [in the third-party test]." Witness Stahly testified that it was his understanding that CLECs were not allowed to participate because the matter was between BellSouth, KPMG and the Commission. (EXH 9, pp.15-16) Later in his deposition, witness Stahly modified his claim stating CLECs including Supra were not allowed to participate "in the way we wanted to." (EXH 9, p.19) The witness further complains that part B of the related Docket No. 960786B-TL was a closed proceeding, and CLECs were not allowed to submit any evidence. (TR 40)

Witness Stahly states the KPMG OSS review did not specifically review whether BellSouth was providing online edit checking capability to Supra. Supra complains that the third-party test only looked at overall access to BellSouth's OSS and not specifically at whether BellSouth was providing online edit checking. (TR 14, 43)

Witness Stahly further states that the FCC's finding in this matter cannot be relied on because it took no evidence from CLECs and relied only on the KPMG report. Witness Stahly also states that nowhere in its investigation did the FCC specifically look at the issue of whether BellSouth had provided Supra with online edit checking capability. (TR 44)

BellSouth Arguments

Witness Pate rebuts these arguments by Supra stating that the test thoroughly examined BellSouth's OSS and was conducted under the close scrutiny of the FPSC, with substantial input by CLECs. Witness Pate elaborates on the participation of both the CLECs and the Florida

Commission in his direct and rebuttal testimony, and quotes the FCC order stating “KPMG also sought input from both the Florida Commission and competitive LECs to understand the types of activities that had previously presented problems or otherwise were of concern.” (TR 129) BellSouth further quotes the FCC addressing this argument which states “[we] note that the Florida KPMG test was actively monitored by other state commissions in BellSouth’s territory and that [the test] has been widely recognized for its independence, openness to competitive LEC participation, breath of coverage, and level of detail.” (TR 129)

BellSouth witness Pate states that under the 1996 Telecommunications Act’s standard for nondiscriminatory access to OSS (including pre-ordering and ordering), BellSouth complies with that standard as found by both the Florida Commission and the FCC. As a result, Pate argues it would be inherently inconsistent to now find BellSouth is discriminatory in these areas. (TR 126)

Witness Pate points out that as part of the third-party test, KPMG played the part of a CLEC and tested the ability to create a machine-to-machine interface using BellSouth’s business rules and SOER edits. KPMG was able to implement EDI and TAG and to obtain expected results from their operation. The witness reasons that the successful completion of this part of the test implies that using the business rules and SOER edits, CLECs such as Supra could have built a similar system tailored to meet their unique requirements. (TR 125) Using the machine-to-machine interface developed by KPMG for the third-party test, witness Pate points out that the test transactions were of two types: error free transactions, and transactions intentionally designed with errors. The witness explains these two types of transactions were submitted to test whether BellSouth’s systems would accept or reject the transactions properly. (TR 128)

Witness Pate argues that the third-party test was the appropriate tool to resolve the issue of providing online edit checking capability. (TR 126) BellSouth’s witness claims that the KPMG third-party test thoroughly examined BellSouth’s OSS under close scrutiny of the Florida Commission and CLECs. Witness Pate also notes that the CLECs were extensively involved in the test as confirmed by the FCC which stated in their order “KPMG also sought input from both the Florida Commission and Competitive LECs to understand the types of activities that had previously presented problems or otherwise were of concern.” (TR 129) Witness Pate points out that Supra had the same opportunity as other CLECs to participate in the third-party test and raise their issues and concerns but chose not to. (TR 130)

On questioning by BellSouth as to how CLECs, including Supra, were allowed to participate in the test, Witness Stahly stated, “I’m not sure. I just know that it was very limited and that we weren’t allowed to provide evidence to our experience with BellSouth’s OSS system.” (EXH 9, p.20)

Analysis

Staff believes BellSouth provides Supra nondiscriminatory access to its OSS, and that the KPMG third-party test demonstrated that BellSouth’s OSS is accessible to CLECs, including Supra, and that CLECs are able to develop and implement customized ordering interfaces which include incorporation of online edit capability. KPMG tested LENS, TAG and EDI.

Staff agrees with Supra that the KPMG third-party test was not specifically designed to test whether or not BellSouth's CLEC interfaces were providing online, real-time edits to its competitive LEC customers. Instead it went much farther in assessing BellSouth's systems. The test also provided a greater understanding for staff of the operation of BellSouth's support systems, including EDI, TAG and LENS. Staff believes that inherent and implicit in the test results is an indication that BellSouth had provided the capability for CLECs to customize their system applications as required by the Commission in this docket. The Commission, in its September 2002 *Consultative Opinion Regarding BellSouth's Operations Support Systems*, reported to the FCC that:

Based on the results of the completed KPMG Consulting testing, we find that BellSouth is providing nondiscriminatory access to its OSS. Additionally, we find that BellSouth is providing the necessary documentation and support functions and has demonstrated that its systems are operationally ready and provide an appropriate level of performance. (Opinion No. PSC-02-1305-FOF-TL, p. 35.)

The FCC also found in its order that BellSouth had made online edit checking a reality. In the order, the FCC stated:

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." (FCC 02-331, Paragraph 97)

As such, staff agrees with BellSouth's statement that the third-party test demonstrated that CLECs have the ability to develop any custom machine to machine interface that they desire to suit their business needs using BellSouth's business rules and SOER edits. (TR 21) Staff believes that that fact is further born-out by Supra's own third party vendor, Nightfire, who, using these business rules and SOER edits, developed an interface that staff has no reason to doubt works with BellSouth's systems in submitting and completing the orders of Supra's customers.

Staff also agrees with BellSouth's witness Pate that the KPMG third-party test thoroughly examined BellSouth's OSS under close scrutiny of both the Florida Commission and CLECs. Witness Pate also notes that the CLECs were extensively involved in the test as confirmed by the FCC which stated in their order "KPMG also sought input from both the Florida Commission and competitive LECs to understand the types of activities that had previously presented problems or otherwise were of concern." (TR 129) Supra made the conscious business decision

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not to actively participate. Supra's witness Stahly is incorrect in his understanding that CLECs were not allowed to participate in the process. (TR 129)

Conclusion

Staff recommends that the KPMG third-party test demonstrated that BellSouth provides nondiscriminatory access to its OSS and 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, online edits.

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

Recommendation: Staff recommends that as evidenced in Issues 1, 2, and 3 BellSouth has timely complied with the Commission's orders in this proceeding. **(BROUSSARD, VINSON)**

Positions of the Parties

BellSouth: Yes. BellSouth has timely complied with the Commission's orders in this proceeding.

Supra: No. The record is void of any evidence whatsoever indicating BellSouth has complied with its obligations, much less timely complied.

Staff Analysis: This issue is to determine if BellSouth timely complied with the Commission's previous orders in this docket.

Supra Arguments

Supra contends that BellSouth has not complied with the Commission's previous orders in this docket, and that the issue of timeliness is moot. Because BellSouth admits that it never modified LENS or EDI pursuant to Order PSC-98-1001-FOF-TP (July 1998 Order) Supra believes there is no evidence of compliance, timely or otherwise. Supra complains that BellSouth admitted it was able to build an interface for Supra capable of online, real-time edit checking but chose not to do it. Supra states that the only evidence the Commission considered in rendering its decision in Order PSC-03-1178-PAA-TP (October 2003 Order) was the KPMG third-party test which was not designed to test online editing capability. As a result, Supra contends that there is no evidence in the record that supports that BellSouth complied with Commission order in this docket.

BellSouth Arguments

BellSouth simply refers to the record in this case as a whole and surmises that it provided Supra with online edit checking capability as follows:

- Through EDI as of July 1998
- Through TAG as of November 1998
- Through LENS as of January 2000

BellSouth concludes it complied with the Commission orders in this docket in a timely manner.

Analysis

Staff notes that on February 11, 2000, in Order No. PSC-00-0288-PCO-TP, the Commission found that BellSouth had not complied with the specific requirement to provide Supra with online edit checking capability by December 31, 1998. Though the Commission had

previously acknowledged that such capability was not limited to being provided by just LENS, but through any interface available in the companies interconnection agreement. The Commission found that because the evidence taken previously only addressed the LENS and EDI interfaces, its finding could only take into consideration that evidence. Based on staff's review it appears BellSouth did not at this time make the argument that it had complied through EDI, focusing instead on TAG as its means of complying. The Commission did state that newly developed interfaces (like TAG) may have placed BellSouth in compliance, but making such a determination would require reopening the record.

However, in Order No. PSC-00-1777-PCO-TP, (the September order reopening the record) the Commission recognized three things. First, changing circumstances existed with BellSouth's development of TAG. Second, more information, was needed to fully explore the issue. Third, the then recently-launched OSS third-party test could provide such information. It chose to reopen this docket's record to consider the test's results. Ultimately, the test did provide information that BellSouth had provided the ordered online edit checking capability, through the EDI system in July of 1998 and through the TAG system in November 1998. (TR 110) Staff believes both of these outcomes constitute timely compliance. Staff further notes that though BellSouth did not provide this capability through LENS 99 until January 2000, it is a moot point because of compliance through the previously mentioned interfaces.

Conclusion

Staff recommends that as evidenced in Issues 1, 2, and 3, BellSouth has timely complied with the Commission's orders' in these proceedings by providing online edit checking capability in interfaces available to Supra through its interconnection agreement before the end of December 1998.

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Issue 5: Should this docket be closed?

Recommendation: Yes, no further action is required and the docket should be closed after the time for filing an appeal has run. **(BANKS)**

Staff Analysis: No further action is required and the docket should be closed after the time for filing an appeal has run.