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ORIGINAL

June 27, 2000

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Re: Supra v. BellSouth, Docket No. 980119-TP

Dear Ms. Bayo:

Please find enclosed for filing an original and fifteen (15) copies of the Petitioner Supra Telecommunication & Information Systems, Inc.'s Response And Opposition To BellSouth's Motion For Reconsideration together with the attached Supra Telecom's Request For Oral Argument On BellSouth's Motion For Reconsideration. Please also find enclosed an extra copy of each filing, for which we request that you stamp with the filing date and return in the enclosed postage pre-paid, self-addressed envelopes.

If you have any questions or comments, please feel free to contact me at (305) 531-5286.

Sincerely,

Mark E. Buechele

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- CAF _____
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Response + Opposition
DOCUMENT NUMBER-DATE

08130 JUL -58

FPSC-RECORDS/REPORTING

Request Oral Argument
DOCUMENT NUMBER-DATE

08131 JUL -58

FPSC-RECORDS/REPORTING

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In Re: Complaint of Supra Telecommunications)
& Information Systems 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; petition for)
emergency relief.)
_____)

Docket No.: 980119-TP

Dated: June 27, 2000

**SUPRA TELECOM'S RESPONSE AND
OPPOSITION TO BELLSOUTH'S
MOTION FOR RECONSIDERATION**

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC. ("Supra Telecom"), by and through its undersigned counsel and pursuant to Rule 25-22.060, Florida Administrative Code, hereby serves and files this its Response And Opposition To BellSouth's Motion For Reconsideration (dated June 8, 2000), and in support thereof states as follows:

I. PROCEDURAL BACKGROUND

1. On or about January 23, 1998, Supra Telecom filed a complaint against BellSouth seeking an interpretation of certain agreements between the parties and alleging that BellSouth had failed to comply with certain aspects of the parties' interconnection, collocation and resale agreements. On or about April 30, 1998, a hearing was held before this Commission regarding Supra Telecom's complaint. On July 22, 1998, this Commission issued a final order on Supra Telecom's complaint requiring BellSouth to perform several tasks including providing on-line edit checking capability in the ordering systems made available to Alternative Local Exchange Carriers ("ALECs"). On or about October 28, 1998 this Commission clarified its prior ruling

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to require BellSouth to modify the ALEC ordering systems by December 31, 1998.

2. On or about November 25, 1998, BellSouth filed a complaint with the United States District Court for the Northern District of Florida ("Federal Court") purporting to appeal the Commission's decision regarding on-line edit checking capability. BellSouth did not seek or otherwise obtain from this Commission (or any Court), a stay pending appeal of this Commission's final order of October 28, 1998.

3. Notwithstanding the lack of any stay pending appeal, BellSouth made no effort to comply with the on-line edit checking capability requirement. Indeed on February 1, 1999, BellSouth filed a Response To Notice Of Supra Telecommunications And Information Systems, Inc., in which on page 2 (at paragraph 5) BellSouth claims that: "With the exception of the on-line edit checking capability (which is on appeal), BellSouth has complied with the Orders." Thus in February 1999, BellSouth had acknowledged the fact that it had not complied with this Commission's prior rulings on on-line edit checking capability.

4. Despite the fact that nothing has changed since February 1, 1999 with respect to BellSouth providing on-line edit checking capability, in April 1999 BellSouth filed a Notice of Compliance in which it claimed that it had provided Supra Telecom the equivalent of on-line checking capability by making available a programming tool referred to as TAG-API (or Telecommunications Access Gateway - Applications Programmers Interface).

5. BellSouth's Notice of Compliance was not a motion or petition under the applicable rules of procedure. Nevertheless, the Notice of Compliance requested an evidentiary hearing

to resolve BellSouth's alleged compliance with the on-line edit checking capability. On or about May 3, 1999, Supra Telecom served and subsequently filed a response to BellSouth's Notice of Compliance.

6. On April 29, 1999, the Federal Court set a briefing schedule for resolution of BellSouth's appeal, which at the time, anticipated concluding the appeal by the Fall of 1999. Nevertheless, after filing its Notice of Compliance, BellSouth requested and obtained an extension of the Federal Court briefing schedule, eventually moving the anticipated resolution date of the appeal until Spring 2000.

7. In the interim, the Commission Staff conducted an informal session in order to understand the issues and, without a hearing, render an opinion on BellSouth's Notice of Compliance. On February 11, 2000, this Commission ruled that BellSouth had not complied with the on-line edit checking capability requirement; but nevertheless raised the issue as to whether or not circumstances had changed such that BellSouth's offering of TAG, Robo-TAG, LENS 99 constituted compliance with the Commission's order requiring on-line edit checking capability. This Commission noted that such a determination could not be made without an evidentiary hearing and that it would be inappropriate to conduct such a hearing while BellSouth's appeal was still pending.

8. On April 12, 2000, BellSouth moved to voluntarily dismiss its appeal before the Federal Court, without prejudice to seeking to refile the appeal at a later date. The alleged purpose of BellSouth's motion to voluntarily dismiss without prejudice was that BellSouth

wanted to conduct an evidentiary hearing before this Commission on the issue of its compliance with the on-line edit checking capability requirement. On May 9, 2000, the Federal Court voluntarily dismissed without prejudice BellSouth's appeal based upon the representation that BellSouth was going to seek a full evidentiary hearing before the Commission on the issue of compliance.

II. ARGUMENT

9. BellSouth now seeks to postpone a resolution of its compliance until such time as the Master Test Plan on BellSouth's OSS has been finalized. To the undersigned's knowledge, there appears to be no deadline date for resolution of the OSS testing being done in Docket No. 96-0786-TL. Accordingly, BellSouth's current Motion for Reconsideration seeks to essentially postpone indefinitely the obligations of on-line edit checking parity imposed by this Commission almost two years ago in July 1998.

10. In February 1999, BellSouth had virtually conceded that it had not complied with the on-line edit checking requirement. Nothing has substantially changed since that date on this issue. Therefore, if the OSS Master Test Plan takes two more years to resolve, BellSouth will have in effect avoided OSS parity for almost four years without any substantial repercussion.

11. When this Commission ordered BellSouth to provide ALECs the same on-line edit checking capability provided to BellSouth's own retail operations, this Commission anticipated that ALECs would be able to submit orders to BellSouth electronically and that such orders would no longer be thrown into a BellSouth "ordering limbo." Sadly, Supra Telecom is still

experiencing horrible ordering problems with BellSouth. As many as fifty percent of Supra Telecom's orders to convert local residential service take more than two weeks, with some orders taking more than one month. Many customers seeking to switch from BellSouth simply give up because of the delay. Moreover, BellSouth often treats the conversion order as a disconnect with a reconnect, processing the disconnect and then throwing the reconnect order in a BellSouth "ordering limbo", thereby leaving the customer without telephone service until the customer "sees the ways of his error" and comes crawling back to BellSouth. Within the last few weeks Supra Telecom has lost hundreds of residential customers due to these problems, with most complaints to BellSouth (including letters to BellSouth's counsel) being completely ignored. BellSouth can hardly dispute the horrific problems mentioned herein since both BellSouth management and its counsel have been provided notice of these problems on numerous occasions. Nevertheless, if requested, Supra Telecom would be happy to present relevant statistics and other proof of these problems to the Commission upon request.

12. The primary reason for Supra Telecom's recent ordering problems stems from the basic premise that BellSouth has simply refused to comply with this Commission's prior order of July 1998 mandating parity in on-line edit checking capability. Currently, Supra Telecom is using LENS 99, which BellSouth has proclaimed to this Commission as being one of the products that purportedly provides on-line edit checking capability parity. Supra Telecom is not yet using TAG because according to BellSouth, testing of TAG will probably still take another year (effectively rendering TAG useless). As for Robo-TAG, BellSouth has refused to provide

Supra Telecom any information or access to this product. Nevertheless, given the information available to Supra Telecom, it is fair to say that the problems inherent with LENS 99 will still exist under both TAG and Robo-TAG.

13. The basic problem is that BellSouth is simply playing games with this Commission regarding the definition and meaning of on-line edit checking capability. To BellSouth, on-line edit checking capability is nothing more than the ability to validate customer record information and various ordering USOCs. BellSouth employees have informed various people at Supra Telecom that LENS 99 is really nothing more than an electronic "fax" system in which BellSouth retrieves orders placed on LENS 99 and then manually transfers those orders into BellSouth's DOE System (or Direct Order Entry System). Thus every order placed on LENS 99 is manually handled by a BellSouth employee who has no incentive to properly place or complete the order. These BellSouth employees are still reviewing each manually and making on the spot decisions regarding alleged errors in the order; regardless of whether or not the LENS 99 system accepts the order as being complete and correct. For example, BellSouth's LCSC (Local Carrier Service Center) has been rejecting hundreds of orders to convert local telephone service, merely because the customer also subscribes to BellSouth unregulated product such as internet service, or paging or wireless service. Thus BellSouth is refusing to convert customers who order services from their unregulated subsidiaries. Supra Telecom has also seen numerous other alleged problems with orders that are accepted by LENS 99, but which are subsequently rejected by BellSouth's LCSC center for one reason or another. Each of these

alleged ordering problems requires a telephone call to BellSouth's LCSC center for each order. However, it has not been uncommon for Supra Telecom personnel to have their telephone call to the LCSC center placed on hold for as much as forty-five minutes and longer just to resolve one customer order. Naturally, this obstructive procedure (deliberately designed this way by BellSouth) has the intended effect of severely limiting and discouraging conversion orders.

14. To BellSouth, on-line edit checking capability means that the ordering interface will provide validation of customer record information, while still allowing BellSouth the opportunity to reject the orders at will for many of reasons (such as subscribing to services from BellSouth's unregulated subsidiaries). Clearly, BellSouth customers do not have to wait as much as a month or longer to be converted back to BellSouth from another ALEC. Thus Supra Telecom's orders are still being rejected by BellSouth at alarming rates, for problems never experienced by BellSouth's own retail ordering operations. One can hardly say that BellSouth has provided true on-line edit checking capability as envisioned by this Commission.

15. BellSouth's current Motion for Reconsideration merely seeks to perpetuate the status quo for several more years while forcing ALECs such as Supra Telecom to suffer miserably with BellSouth's intolerable ordering interfaces. This Commission should not encourage BellSouth to continue playing anticompetitive games. Therefore, if BellSouth wants to have a hearing to determine substantial compliance with the on-line edit checking capability requirement, then such a hearing should be requested immediately. Conversely, if BellSouth simply wants to avoid the issue of its compliance and delay the same, then BellSouth should do

nothing and allow Supra Telecom to take whatever measures are necessary to enforce the Commission's prior orders. However, under no circumstances should BellSouth be allowed to continually delay resolution of the on-line edit checking capability issue. Allowing BellSouth to delay this matter further will send BellSouth the wrong signal that BellSouth can violate Commission orders with impunity.

16. For the reasons stated above, this Commission should deny BellSouth's Motion for Reconsideration.

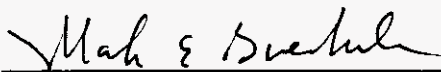
17. This Commission should also deny BellSouth's Motion for Reconsideration on the grounds that BellSouth is not asking this Commission to reconsider anything; rather BellSouth is simply asking this Commission to post-pone any hearing on compliance (which has not yet even been requested) until resolution of the Master Test Plan on BellSouth's OSS. The proper standard of review on a motion for reconsideration is whether or not the Commission overlooked or failed to consider a point of fact or law in rendering its order. In re: Complaint of Supra Telecom, 98 FPSC 10, 497, at 510 (October 28, 1998) (Docket No. 980119-TP, Order No. PSC-98-1467-FOF-TP). This standard necessarily includes any mistakes of either fact or law made by the Commission in its order. In re: Investigation of possible overearnings by Sanlando Utilities Corporation in Seminole County, 98 FPSC 9, 214, at 216 (September 1998) (Docket No. 980670-WS, Order No. PSC-98-1238-FOF-WS) ("It is well established in the law that the purpose of reconsideration is to bring to our attention some point that we overlooked or failed to consider or a mistake of fact or law"); see e.g. In re: Fuel and purchase power cost recovery

clause and generating performance incentive factor, 98 FPSC 8, 146 at 147 (August 1998) (Docket No. 980001-EI, Order No. PSC-98-1080-FOF-EI) ("FPSC has met the standard for reconsideration by demonstrating that we may have made a mistake of fact or law when we rejected its request for jurisdiction separation of transmission revenues"). Because BellSouth has identified no mistake of fact or law, BellSouth's Motion for Reconsideration should be denied.

WHEREFORE, SUPRA TELECOMMUNICATION & INFORMATION SYSTEMS, INC., respectfully requests that this Commission deny BELLSOUTH TELECOMMUNICATIONS, INC.'s Motion for Reconsideration.

Respectfully Submitted this 27th day of June, 2000.

MARK E. BUECHELE, ESQ.
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Information Systems, Inc.
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By: 
MARK E. BUECHELE
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CERTIFICATE OF SERVICE

I HEREBY Certify that a true and correct copy of the foregoing has been furnished by U.S. Mail upon NANCY WHITE, ESQ. (Attorney For BellSouth), 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301; BETH KEATING, ESQ. (FPSC Staff), 2540 Shumard Oak Boulevard, Tallahassee, Florida; and AMANDA GRANT, BellSouth Telecommunications, Inc., Regulatory & External Affairs, 675 West Peachtree Street, N.E., Room 38L64, Atlanta, Georgia 30375; this 27th day of June, 2000.

By: 
MARK E. BUECHELE
Fla. Bar No. 906700