

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of :
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Complaint of Supra Telecommuni-:
cations & Information Systems, :
Inc. against BellSouth :
Telecommunications, Inc. for :
violation of the Telecommuni- :
cations Act of 1966; Petition :
for resolution of disputes as :
to implementation and inter- :
pretation of interconnection, :
resale and collocation :
agreements; and petition for :
emergency relief. :

DOCKET NO. 980119-TP



PROCEEDINGS: ORAL ARGUMENT

BEFORE: COMMISSIONER E. LEON JACOBS, JR.
Prehearing Officer

DATE: Wednesday, March 11, 1998

TIME: Commenced at 3:40 p.m.
Concluded at 3:53 p.m.

PLACE: Betty Easley Conference Center
Room 152
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JOY KELLY, CSR, RPR
Chief, Bureau of Reporting
(904) 413-6732

1 **APPEARANCES:**

2 **SUZANNE FANNON SUMMERLIN**, 1311-b Paul
3 Russell Road, #201, Tallahassee, Florida 32301,
4 appearing on behalf of **Supra Telecommunications &**
5 **Information Systems, Inc.**

6 **NANCY B. WHITE**, c/o Nancy Sims, 150 South
7 Monroe Street, Suite 400, Tallahassee, Florida 32301,
8 appearing on behalf of **BellSouth Telecommunications,**
9 **Inc.**

10 **BETH KEATING**, Florida Public Service
11 Commission, Division of Legal Services, 2540 Shumard
12 Oak Boulevard, Tallahassee, Florida 32399-0870,
13 appearing on behalf of the **Commission Staff.**

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1 **P R O C E E D I N G S**

2 **(Hearing convened at 3:40 p.m.)**

3 **CHAIRMAN JOHNSON:** Counsel, read the notice.

4 **MS. KEATING:** This time and place has been
5 set for an emergency oral argument on Docket
6 No. 980119-TP. The purpose is as set forth in the
7 notice.

8 **COMMISSIONER JACOBS:** Okay. Take
9 appearances.

10 **MS. WHITE:** Nancy White for BellSouth
11 Telecommunications.

12 **MS. SUMMERLIN:** Suzanne Summerlin for Supra
13 Telecommunications and Information Systems.

14 **COMMISSIONER JACOBS:** Okay. We're going to
15 get started. I'm going to accept Staff's
16 recommendation to limit arguments to ten minutes per
17 side, and with that in mind, Ms. Summerlin.

18 **MS. SUMMERLIN:** Good afternoon,
19 Commissioner. I apologize to everybody for this cold,
20 so I -- (mike starts squealing) -- hopefully that
21 won't happen again. This is going to be very short
22 and sweet on my part today. You probably won't need
23 the whole ten minutes for this.

24 What we're here about, Commissioner Jacobs,
25 is four issues that we were not able to agree on in

1 the issue identification workshop. I don't know if
2 you've read the pleading that I filed --

3 **COMMISSIONER JACOBS:** Yeah, I read them all.

4 **MS. SUMMERLIN:** So I won't go through
5 reading the specific wording of the issues unless you
6 want me to.

7 **COMMISSIONER JACOBS:** No, that's fine.

8 **MS. SUMMERLIN:** First three issues are
9 generally couched in terms of whether or not BellSouth
10 has violated the Telecommunications Act by failing to
11 negotiate in good faith. That's the first issue.

12 The second issue talks about violations of
13 the Telecommunications Act because BellSouth has not
14 provided an interconnection on terms that are just,
15 reasonable and nondiscriminatory.

16 And the third issue goes to the issue of
17 whether BellSouth has violated the Act on the basis of
18 not giving Supra access to unbundled network elements
19 in a fashion that's equal in quality to that provided
20 by BellSouth or any other carrier.

21 The fourth issue that's being disputed here
22 is basically is BellSouth required to resell its
23 billing service to Supra.

24 **COMMISSIONER JACOBS:** Can I ask you, is it
25 an implicit assertion of a continuing authority by the

1 Commission here -- and I think the 8th Circuit has
2 enunciated one type of a continuing authority, that
3 being for the enforcement of the agreement.

4 I hear you advocating a slightly
5 different -- and maybe you can expound on this,
6 whether you can see it differently or not -- a
7 slightly different continuing authority; that being to
8 continually to monitor the terms under which the
9 agreement was entered into. Okay.

10 **MS. SUMMERLIN:** Yeah. If I can respond to
11 that. I think that -- first of all there are a couple
12 of things.

13 One is these four issues -- the first thing
14 that you have to look at when you're talking about
15 issues to be identified in a proceeding are whether or
16 not those issues are relevant to the basic gist of
17 that proceeding. The complaint that was filed here
18 makes these allegations regarding the violations of
19 the Telecommunications Act. And, therefore, the first
20 most basic requirement is that these issues are
21 relevant to the allegations in the complaint that was
22 filed by Supra. Then you have to go to whether or not
23 there is some problem, legally, with the Commission
24 looking at these issues in the context of this docket.
25 And, of course, BellSouth says that under the

1 Telecommunications Act that these issues should be
2 addressed -- I think even in their pleading they have
3 said certainly it's okay to address these issues in
4 the context of the other docket that Supra has filed.
5 The docket requesting individual arbitration or --
6 well, a generic proceeding and/or individual
7 arbitration. So they are not arguing that these
8 issues aren't appropriate in one or the other dockets.
9 And actually and, quite frankly, Supra has no problem
10 allowing those issues to be addressed in the other
11 docket if and when a proceeding is set out to be held
12 in that docket.

13 At this point in time, though, today and
14 with these issues in this docket, you have to really
15 look at this as if there were no other docket being
16 filed by Supra. That's how Supra has to look at it.

17 The concern regarding the Commission's
18 authority, the Act provides that the Commission can
19 resolve disputes under the terms of any
20 interconnection agreement or resale or collocation
21 agreement. I mention the other two because those were
22 other agreements that were entered into between
23 BellSouth and Supra prior to the interconnection
24 agreement. That certainly the Commission has
25 authority to look at the existing agreements and

1 resolve disputes. I did not title this pleading for
2 this docket as a petition to resolve disputes. I
3 entitled this initial pleading as a complaint, which,
4 in my view, is a much broader based thing. And I
5 believe that the Commission has the authority to look
6 at anything that an incumbent local exchange carrier
7 has done that constitutes a violation of the
8 Telecommunications Act within the context of this kind
9 of complaint proceeding.

10 Most of the allegations in this complaint go
11 to interpretation of the agreements that have been
12 entered into. But the issues, first three issues that
13 we're talking about go to how did these agreements get
14 entered into initially? Were there representations
15 made by BellSouth people that encouraged Supra to
16 enter into these agreements in a way that was not
17 appropriate and that we believe constitutes a
18 violation of the Act?

19 The concern that I have is that we not say
20 that this type of evidence cannot be received by the
21 Commission in this docket. I think that the fact that
22 we happen to have filed a petition in another docket
23 for arbitration, and for a generic proceeding, really
24 isn't relevant to the fact that in this case the
25 Company has every right to file a complaint regarding

1 violations of the Telecommunications Act by BellSouth.

2 **COMMISSIONER JACOBS:** So is your concern, is
3 your issue that there are terms in your agreement with
4 BellSouth with which it is not abiding, or is your
5 issue that the terms that are in the agreement were
6 arrived at in some unreasonable fashion?

7 **MS. SUMMERLIN:** Actually it's both. There
8 are provisions in the agreements that are not being
9 met in a satisfactory fashion. But more
10 significantly, the position that the company has taken
11 is that a lot of provisions that might should have
12 been agreed to are not necessarily present in these
13 agreements.

14 **COMMISSIONER JACOBS:** Wasn't anticipation of
15 the Act, though, that that be taken care of through
16 the arbitration process?

17 **MS. SUMMERLIN:** I think that the ideal
18 fashion to deal with this would have been through an
19 arbitration proceeding. However, I think that when an
20 alternative local exchange carrier makes an
21 allegation, as Supra has in this case, that the
22 company, the incumbent LEC, made representations to
23 that ALEC that there would be no negotiation on
24 certain issues beyond agreements that were already in
25 existence. And that there would be no ability for

1 negotiation of rates because there had been rates set
2 in prior arbitration proceedings with the Florida
3 Public Service Commission in prior cases in which this
4 particular ALEC was not involved.

5 I think that those types of allegations need
6 to be looked at by the Commission, and I think the
7 Commission has authority to look at those allegations.
8 So it's broader than just talking about the
9 interpretation of, or the resolutions of disputes
10 under the terms of the existing agreements.

11 The fourth issue that has been disputed is
12 the issue of resale of the billing service. The
13 response that BellSouth has made in this little
14 dispute about these issues being in this docket
15 basically goes to the fact that it's BellSouth's
16 position that that shouldn't happen. And I understand
17 that. And I think that's perfectly fine, that's their
18 position. But I don't think that's a reason why this
19 should not be at issue in this case.

20 I think part of the problems and part of the
21 allegations that have been made by Supra are that the
22 provision of billing information by BellSouth to Supra
23 over the time that Supra has been trying to operate
24 has been of such a poor quality and so inadequate that
25 the only way to resolve this situation may be to ask

1 the Commission to require BellSouth, or to make a
2 finding that BellSouth is required, under the Act, to
3 resell its billing service.

4 And I think that there's never been any
5 proceeding of any kind that Supra has been allowed to
6 participate in where Supra could put on its case that
7 the billing service needs to be provided for resale by
8 BellSouth. I think that this docket is perfectly
9 appropriate for Supra to pursue all four of these
10 issues. At the same time, if it turns out there's a
11 proceeding going forth in the other docket where
12 there's a petition for arbitration, that's perfectly
13 fine with Supra.

14 The concern I have is I don't know right
15 now. Supra doesn't know what the disposition will be
16 of the other docket. And I think that what is
17 important is for the Commission to recognize that the
18 Commission has broader authority than just simply
19 looking at the terms of agreements that have been
20 entered into.

21 If you take the position that the only
22 authority the Commission has is to interpret or
23 resolve disputes under existing agreements, you
24 totally destroy any ability of the Commission to look
25 at how did these agreements get reached initially.

1 And I think that although it is true that the Act sets
2 out certain provisions in terms of time lines; you
3 know, that the individual should file a petition for
4 arbitration on the 135th day, and not be any time
5 later than 160th day, Supra will certainly concede
6 that the Act sets out those kinds of provisions. And
7 in another scenario that would have been the
8 appropriate thing to do. However, Supra's argument is
9 that that is not necessarily the end-all and be-all
10 for the Commission's authority in terms of looking at
11 how did a particular ALEC get convinced or persuaded
12 that their best business option was to enter into an
13 agreement that they really had, were given no
14 meaningful opportunity to negotiate on any significant
15 issue because of the representations that were made by
16 BellSouth.

17 Now, we're not here today, obviously, to put
18 on the evidence on all the substance of these issues.
19 What I'm here to argue is that these issues are issues
20 that Supra has a right to have an opportunity to put
21 on its case about; whether it's in this proceeding or
22 in the other proceeding, Supra has a right to do that.
23 My concern is that I think it is entirely
24 inappropriate for these issues to be in this docket
25 until and unless there is another proceeding that's

1 more appropriate. But that's the bottom line.

2 **COMMISSIONER JACOBS:** Thank you.

3 **MS. WHITE:** Nancy White for BellSouth. And
4 I will not repeat what's in my filing, but I will
5 address some of the things that Ms. Summerlin talked
6 about.

7 First of all, Supra was absolutely free to
8 arbitrate with BellSouth before this Commission. The
9 Act sets forth the appropriate time frames for doing
10 that. They chose not to do so. They chose to sign an
11 agreement voluntarily. BellSouth did not hold a gun
12 to their head. The parties signed the agreement.
13 They filed the agreement with this Commission. On
14 February 3rd '98, this Commission approved the
15 agreement stating that it complied with the
16 Telecommunications Act. Supra did not come in during
17 that process and say, "Oh, you know, we didn't want to
18 sign it. We were forced to sign it. We don't like
19 it. We have problems with it." There was silence.
20 The Commission approved this agreement as in
21 compliance with the Act.

22 So if they have problems with the
23 implementation, that's fine. That's what the
24 complaint is about, that's what the issues are about
25 other than the contested issues, I don't have a

1 problem with having a hearing about any implementation
2 problems they may have.

3 As far as Issue 6 goes, nowhere in this
4 country has the FCC or any Commission said that a
5 local exchange company, incumbent local exchange
6 company is required to resell their billing service.

7 What BellSouth is required to do is give
8 certain billing information to Supra so that Supra may
9 bill their customers. It's Supra's responsibility to
10 bill their customers, not BellSouth's responsibility
11 to bill Supra's customers for them. If they don't
12 like the quality of the bill information that
13 BellSouth is getting them, that's a perfectly
14 acceptable issue for this case, and, in fact, is in
15 4A, Issue 4A.

16 But the question of whether BellSouth should
17 be required to resell billing service to Supra is not
18 appropriate for the reasons I've already mentioned in
19 my pleading. And that's all I have to say. Thank you
20 very much.

21 **COMMISSIONER JACOBS:** Do you know -- I'm
22 really just asking for information, is it required to
23 be an unbundled element?

24 **MS. WHITE:** No. Absolutely not. And we can
25 get into that -- I can get into that argument if you'd

1 like. But my answer is no, it's not appropriate for
2 resell, and it's not an appropriate unbundled network
3 element.

4 **MS. SUMMERLIN:** Commissioner, may I respond
5 to that? That's BellSouth's position and it's not
6 Supra's position.

7 **COMMISSIONER JACOBS:** Okay. You argue then,
8 Ms. White, that -- let me ask you this way: Would the
9 Commission have had the authority to reconsider its
10 original decision in approving of this agreement?

11 **MS. WHITE:** Sure. When the Commission --
12 when the parties file an agreement for Commission
13 approval, Section 252(e), I believe it is, of the
14 Telecommunications Act specifically states that a
15 state commission to which an agreement is submitted
16 shall approve or reject the agreement with written
17 findings as to any deficiencies. Then it goes
18 through -- Section 252(e)(2) goes through the grounds
19 for rejection, one of which is that the agreement
20 discriminates against a telecommunications carrier not
21 a party to the agreement. The other one is that the
22 implementation of the agreement is not consistent with
23 the public interest. Another part of that is that the
24 agreement does not meet the requirements of Section
25 251. So, yes, the State Commission definitely has

1 STATE OF FLORIDA)
2 COUNTY OF LEON)

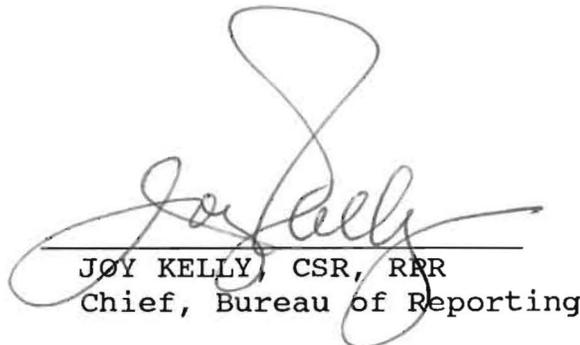
CERTIFICATE OF REPORTER

3 I, JOY KELLY, CSR, RPR, Chief, Bureau of
4 Reporting, Official Commission Reporter,

5 DO HEREBY CERTIFY that the Oral Argument in
6 Docket No. 980119-TP was heard by the Prehearing
7 Officer at the time and place herein stated; it is
8 further

9 CERTIFIED that I stenographically reported
10 the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript, consisting of 16 pages, constitutes a true
13 transcription of my notes of said proceedings.

14 DATED this 16th day of March, 1998.

15 
16 JOY KELLY, CSR, RPR
17 Chief, Bureau of Reporting

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