

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Supra
Telecommunications & 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-98-0416-PCO-TP
ISSUED: March 24, 1998

ORDER ON DISPUTED ISSUES

On January 23, 1998, Supra Telecommunications and Information Systems, Inc. (Supra) filed a Complaint against BellSouth Telecommunications, Inc. (BellSouth) for alleged violations of the Telecommunications Act of 1996 (Act) and Petition for resolution of certain disputes between BellSouth and Supra regarding interpretation of the Interconnection, Resale, and Collocation Agreements between Supra and BellSouth (Petition). Supra also requested relief on an emergency basis. On February 16, 1998, BellSouth filed its Answer and Response to Supra's Petition. This matter has been set for hearing on an expedited basis.

On February 26, 1998, Commission staff conducted an issues identification meeting. At that meeting, a dispute arose regarding the inclusion of certain issues suggested by Supra. On March 6, 1998, the parties submitted legal memoranda on the issues in dispute, and on March 11, 1998, the parties presented oral argument on the disputed issues.

The issues in dispute are Issues 1, 2, 3, and 6 in the preliminary list of issues. Issues 1 and 2 relate to whether BellSouth has violated the Act by failing to negotiate in good faith with Supra or by entering into an agreement with Supra and interpreting the terms of that agreement in a manner that is discriminatory. Issue 3 relates to whether BellSouth has violated the Act by failing to give Supra access to unbundled network elements in a manner that is equal to the manner that BellSouth provides such elements to itself or to other carriers. Issue 6 addresses whether BellSouth is required to resell its billing services to Supra. The preliminary list of issues is attached to

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this Order as Attachment A. The issues that were the subject of the dispute are indicated in bold. The approved list of issues is Attached and incorporated into this Order as Attachment B.

Supra

Essentially, Supra argues in its Memorandum in Support of its Issues that Issues 1, 2, and 3 should be included because the Telecommunications Act of 1996 gives the state commissions the authority to disapprove an interconnection agreement that was entered into after negotiation if the Commission finds that the implementation of that agreement is not consistent with the public interest. Supra argues that it is not in the public interest to uphold agreements entered into when one of the parties refused to negotiate in good faith. Supra also argues that it is not in the public interest to approve agreements that do not include all of the necessary terms and conditions that would allow an ALEC the opportunity to operate.

Ultimately, Supra argues, the Act provides that the Commission has the authority to take those measures necessary to effectuate the purpose of the Act, which is to promote competition in the local exchange market. Supra argues that it would be unfair to say that the only avenue that Supra has for resolving these issues is an arbitration because some carriers may be unable to wait the time period necessary to request an arbitration proceeding or to sustain the substantial expense to go through an arbitration proceeding.

With regard to Issue 6, Supra argues that resale of the billing function was essential in developing competition in the long distance market and will be similarly essential in developing competition in the local market. Supra states that BellSouth is incorrect that billing is not a function of providing telecommunications services. Supra argues that billing is part of providing service because BellSouth charges customers for customized billing and includes billing as part of its overhead charges to all customers. Supra further argues that it has never been given the chance to argue that billing is a part of the provision of telecommunications services, and therefore, must be resold. At oral argument, Supra also asserted that the billing function might also be considered an unbundled element. Thus, Supra argues that this issue should be included in this proceeding.

BellSouth

BellSouth argues that Issues 1, 2, and 3 should be rejected because each of these issues may be addressed within the context of the sub-issues of Issue 4. BellSouth also argues that these issues are inappropriate for consideration in this docket. BellSouth argues that Supra's Complaint goes to implementation of its agreement with BellSouth. BellSouth asserts, however, that Issues 1, 2, and 3 pertain to whether Supra should be allowed to void an existing agreement. BellSouth argues that these issues are actually more properly addressed in an arbitration proceeding. BellSouth notes that while Supra currently has a petition for such a proceeding on file with the Commission, BellSouth has moved to dismiss the petition for other reasons.

As for Issue 6, BellSouth argues that it is only required to resell its telecommunications services. BellSouth argues that billing services cannot possibly be construed as a part of telecommunications service. BellSouth notes that Section 4(46) of the Act defines "telecommunications service" as the offering of telecommunications for a fee directly to the public. Also, BellSouth notes that Section 4(43) of the Act defines "telecommunications" as the transmission, between points, of information. Thus, BellSouth asserts that it has the right to decline to bill for any ALEC; therefore, Issue 6 should be rejected.

Determination

I have considered the arguments presented by the parties. I have also reviewed the pertinent provisions of the Act, and I have considered the Eighth Circuit Court of Appeals' views regarding a state commissions role in complaint proceedings under the Act. See Iowa Utilities Board v. F.C.C., 120 F.3d 753, at 804 (8th Cir. 1997).

Issues 1 and 2

By Order No. PSC-98-0206-FOF-TP, issued February 3, 1998, in Docket No. 971555-TP, we approved the BellSouth/Supra agreement. The Eighth Circuit stated in Iowa Utilities Board v. F.C.C., that state commissions have the "primary authority to enforce the substantive terms of the agreements made pursuant to sections 251 and 252." It is evident from the plain language used by the Court

that the state commissions' authority with regard to approved agreements is limited to enforcement of said agreements. We cannot revisit the circumstances that led to the signing and subsequent Commission approval of the agreement. Issues 1 and 2, however, pertain to the relationship between the parties prior to the Commission's approval of the BellSouth/Supra agreement. Furthermore, it is not necessary to resolve these issues in order to grant the relief requested by Supra in its Complaint. Thus, Issues 1 and 2 are not properly within the scope of this proceeding.

Issue 3

To the extent that it relates to matters outside of the parties agreement, Issue 3 is also beyond the scope of this proceeding. As it relates to problems that Supra may have had receiving access to unbundled network elements under the terms of the BellSouth/Supra agreement, those problems may be addressed more specifically within the context of Issue 4.

Issue 6

Regarding Issue 6, I find that this issue also does not relate to enforcement of a provision that is in the approved BellSouth/Supra agreement. It is, therefore, not properly addressed in this complaint proceeding.

Issue 8

In addition, in reviewing the issues, I have determined that Issue 8 shall also be excluded for the same reason that Issue 6 is excluded. The provision of dark fiber by BellSouth is not a provision in the approved BellSouth/Supra agreement. While this issue was not disputed by the parties, I believe that it would be inconsistent to retain this issue for resolution in a complaint proceeding that is based upon an interconnection agreement approved under the Act. It shall, therefore, be excluded.

In excluding Issues 1, 2, 3, 6, and 8, I make no determination as to the validity of these issues. I only find that they are not proper for resolution in this complaint docket. These issues are more appropriately addressed in an arbitration proceeding, and my exclusion of these issues should not be construed to preclude Supra from including these matters in a properly filed petition for arbitration.

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Based upon the foregoing, it is

ORDERED by Commissioner E. Leon Jacobs, Jr., as Prehearing Officer, that the issues identified in Attachment B to this Order are the issues approved for consideration in this Docket. This shall not preclude either party from identifying any new issues not addressed in this Order, in accordance with Rule 25-22.038, Florida Administrative Code.

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By ORDER of Commissioner E. Leon Jacobs, Jr., as Prehearing Officer, this 24th Day of March, 1998.



E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

(S E A L)

BK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 Records and Reporting, 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.

Attachment A

PRELIMINARY ISSUES

1. Has BellSouth Telecommunications, Inc., violated the provisions of the Telecommunications Act of 1996 by failing to negotiate in good faith the terms, conditions, and rates of the resale, Collocation and Interconnection Agreements it has entered into with Supra Telecommunications & Information Systems, Inc.?
2. Has BellSouth violated the Telecommunications Act by entering into agreements with Supra and/or interpreting the Agreements it has entered into with Supra such that Supra has not been provided interconnection on terms that are just, reasonable and nondiscriminatory?
3. Has BellSouth violated the Telecommunications Act by failing to give Supra access to all unbundled network elements that is at least equal in quality to that provided to BellSouth, any BellSouth subsidiary or affiliate, or any other carrier?
4. Has BST failed to properly implemented the following provisions of its Interconnection, Collocation and Resale agreements with Supra such that Supra is able to provide local exchange service on parity with that which BellSouth provides:
 - a. Billing requirements;
 - b. telephone number access;
 - c. provision of dial tone;
 - d. Electronic access to Operations Support Systems (OSS) and OSS interfaces (Ordering and provisioning, Installation, maintenance and repair);
 - e. Notification requirements;
 - f. timeliness of installation, repair, and maintenance.
5. Has BellSouth provided adequate written rules, regulations, codes, instructions, descriptions of procedures, other written materials, technical guidance, and actual support service, or made any modifications of procedures, if necessary, in timely fashion, to permit Supra to understand and utilize effectively BellSouth's procedures for billing, ordering, provisioning, installation, repair, etc., that are essential to Supra's

ability to provide local exchange service on parity with BellSouth?

6. **Is BellSouth required to resell its billing service to Supra?**
7. Has BellSouth acted appropriately in its billing of Supra and has Supra timely paid its bills to BellSouth?
8. Is BellSouth required to provide dark fiber to Supra?
9. Has BellSouth appropriately applied Sections A2.3.8A and A2.3.8B of its General Subscriber Services Tariff to Supra?
10. Has BellSouth responded appropriately to consumer queries regarding Supra?
11. What relief, if any, should the Commission order for Supra or BellSouth?

Attachment B

APPROVED ISSUES

1. Has BST failed to properly implemented the following provisions of its Interconnection, Collocation and Resale agreements with Supra such that Supra is able to provide local exchange service on parity with that which BellSouth provides:
 - a. Billing requirements;
 - b. telephone number access;
 - c. provision of dial tone;
 - d. Electronic access to Operations Support Systems (OSS) and OSS interfaces (Ordering and provisioning, Installation, maintenance and repair);
 - e. Notification requirements;
 - f. timeliness of installation, repair, and maintenance.
2. Has BellSouth provided adequate written rules, regulations, codes, instructions, descriptions of procedures, other written materials, technical guidance, and actual support service, or made any modifications of procedures, if necessary, in timely fashion, to permit Supra to understand and utilize effectively BellSouth's procedures for billing, ordering, provisioning, installation, repair, etc., that are essential to Supra's ability to provide local exchange service on parity with BellSouth?
3. Has BellSouth acted appropriately in its billing of Supra and has Supra timely paid its bills to BellSouth?
4. Has BellSouth appropriately applied Sections A2.3.8A and A2.3.8B of its General Subscriber Services Tariff to Supra?
5. Has BellSouth responded appropriately to consumer queries regarding Supra?
6. What relief, if any, should the Commission order for Supra or BellSouth?