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September 3, 2004

Mrs. Blanca S. Bayó  
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Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: Docket No. 980119-TP (Supra Complaint)**

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Post-Hearing Brief, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

  
James Meza III (BSB)

cc: All parties of record  
Marshall M. Criser III  
R. Douglas Lackey  
Nancy B. White

**CERTIFICATE OF SERVICE  
Docket No. 980119-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail this 3rd day of September, 2004 to the following:

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James Meza III (BSS)

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of Supra Telecommunications ) Docket No.: 980119-TP  
and Information Systems, Inc., Against )  
BellSouth Telecommunications, Inc. )  
\_\_\_\_\_ ) Filed: September 3, 2004

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**BELLSOUTH TELECOMMUNICATIONS, INC.  
POST-HEARING BRIEF**

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## STATEMENT OF BASIC POSITION

The simple question of this proceeding is whether BellSouth timely complied with the Florida Public Service Commission's ("Commission") Orders requiring it to provide "on-line<sup>1</sup> edit checking capability" to Supra through BellSouth's ALEC interfaces by December 31, 1998. As found by the Commission in Order No. PSC-03-1178-PAA-TP ("October 2003 Order") and as will be proven again here, the answer is an unequivocal yes. Further, the Commission should not be hoodwinked by Supra's inconsistent arguments and attempt to convert another meritless Supra litigation opportunity into an "issue of customer service."<sup>2</sup> The undisputed facts establish that BellSouth timely provided Supra with on-line edit checking capability and that Supra, for litigation or other reasons, chose not to implement those capabilities for 5 years until it contracted with a third-party vendor to implement the very capabilities it claims BellSouth failed to provide. Indeed, after review of all the evidence, it is clear that Supra's Complaint is moot, not supported by the facts or the law, and requires the Commission to interpret its previous orders in a vacuum without regard to Commission precedent, FCC precedent, developments in the industry, and Supra's own deliberate actions.

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<sup>1</sup> During the six years of this proceeding, the word "online" has included a hyphen in some instances. For the purposes of this brief, BellSouth will include a hyphen in its spelling of "on-line."

<sup>2</sup> In its opening statement, Supra stated that "[w]e're here today on an issue of customer service . . . ." Tr. 10.

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

**Position: \*\*\*The Commission ordered BellSouth to Provide on-line 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.\*\*\***

Over seven years ago, BellSouth and Supra executed three separate interconnection agreements. BellSouth and Supra operated under these agreements ("Initial Agreements" or "Agreement") until October 5, 1999 when Supra adopted the interconnection agreement of AT&T. See Order No. PSC-99-2304-FOF-TP (approving AT&T adoption). In addition, Supra and BellSouth have been operating under a third interconnection agreement ("Current Agreement") since July 15, 2002. See Order No. PSC-02-1140-FOF-TP (approving Current Agreement). On January 23, 1998, Supra filed a Complaint at the Commission ("1998 Complaint") against BellSouth for alleged violations of the Telecommunications Act of 1996 (the "Act") and for resolution of disputes regarding the Initial Agreements. It is this Complaint and the Commission's subsequent Orders rendered over six years ago that form the basis of the current proceeding. Accordingly, Supra's arguments today are based on agreements that have been twice superseded and on a telecommunications landscape that is antiquated and does not reflect the current status of the law or the industry – a fact generally not disputed by Supra. See Tr. 79; Exhibit 9 at 24; 25.

To understand the fallacy of Supra's arguments as well as the futility of this entire proceeding, a brief description of the history of this docket is required. In June

1998, the Commission addressed Supra's 1998 Complaint and ordered BellSouth to, among other things, "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." See Order No. PSC-98-1001-FOF-TP at 47 ("July 1998 Order"). In Order No. PSC-98-1467-FOF-TP, issued on October 28, 1998 ("October 1998 Order"), the Commission modified its holding regarding on-line edit checking capability and held that BellSouth was required to 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." See October 1998 Order at 21. Importantly, however, in response to BellSouth's cost and time concerns, the Commission limited the scope of its original ruling by stating that, in providing this on-line edit checking capability, BellSouth was not required to install equipment or duplicate its RNS and DOE interfaces at Supra's premises. See October 1998 Order at 15 ("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 it uses."); at 21 ("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."). The Commission further stated in the October 1998 Order that BellSouth was to provide this capability by December 31, 1998.

In Order No. PSC-00-0288-PCO-TP, issued on February 11, 2000 ("February 2000 Order"), the Commission found that BellSouth complied with all aspects of its June 1998 Order, except for on-line edit checking capability, which it characterized as a

“close call.” See February 2000 Order at 9. In reaching this decision, the Commission focused on the record of the case then before it and held that, although TAG could possibly comply with the Commission’s 1998 Orders, the Commission’s intent at that time was for BellSouth to provide on-line edit checking capability through either EDI or LENS. Foreshadowing future events, however, the Commission acknowledged that given the development of TAG and other technologies, further proceedings may be warranted to consider whether TAG met the intent of the Commission’s order. See February 2000 Order at 10-12; see also, October 2003 Order at 8. In this regard, the Commission stated:

We do, however, acknowledge that BellSouth has made significant developments in its OSS since the time that we rendered our final decision, including TAG, ROBO-TAG, and LENS '99. Thus, while it appears that BellSouth is not literally in compliance, technology has been developed that may provide on-line edit checking.

See February 2000 Order at 12. Nevertheless, the Commission reasoned that it would be inappropriate to reopen the record to consider whether TAG satisfactorily met the on-line edit checking capability requirement because of the pendency of a federal court action filed by BellSouth wherein BellSouth was challenging the Commission’s 1998 Orders. Id. at 11.

After the dismissal of the federal court action, in Order No. PSC-00-1777-PCO-TP (“September 2000 Order”), the Commission reopened the record of this proceeding to consider whether all of BellSouth’s ALEC ordering interfaces, including TAG, provided on-line edit checking capability to Supra. See September 2000 Order at 6. Specifically, the Commission ruled:



Although we are generally hesitant to reopen the record of any proceeding, in view of the specific changed circumstances alleged by BellSouth, we believe it is appropriate to reopen the record of this case to consider whether BellSouth's ALEC ordering system can provide on-line edit checking capability to Supra. We have already acknowledged that we might find that an evidentiary proceeding is warranted based on changed circumstances, and noted that an argument could be made that the development of TAG, LENS, and Robo-TAG, amounts to changed circumstances . . .

Id.

Because the issue of "whether BellSouth's OSS provide[s] on-line edit checking capability" was duplicative of the Third Party Test proceeding, the Commission, nevertheless, postponed any administrative hearing until the Third Party Test completed. Id. The Commission further ruled that "[o]nce [the Third Party] testing is done, the information and determinations made in that proceeding will be employed in this Docket to the fullest extent possible." Id. On September 2002, the Commission issued its Consultative Opinion regarding the results of the Third Party Test in Opinion No. PSC-02-1305-FOF-TL.

Thereafter, without any prompting of the parties, the Commission sua sponte issued the October 2003 Order. In that Order, the Commission noted that both it and the FCC found that BellSouth provides nondiscriminatory access to its OSS. See October 2003 Order at 6. The Commission stated that, "[i]mplicit in this finding is that the CLEC ordering systems provide sufficient on-line editing capability." Id.

And, the Commission further held that the Third Party Test resolved the on-line edit checking capability issue and that BellSouth made available on-line edit checking capability through EDI since July 1998, through TAG since November 1998, and

through LENS since January 2000. Accordingly, the Commission concluded that "BellSouth has complied in a timely manner with the requirements of the post-hearing Final Order in this Docket, Order No. PSC-98-1001-FOF-TP, as clarified by the subsequent Orders in this Docket." Id. at 8.

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

**Position: \*\*\*Yes. BellSouth provided CLECs with on-line edit checking capability since July 1998 for EDI, since November 1998 for TAG, and since January 2000 for LENS.\*\*\***

**I. BellSouth Has Timely Complied with the Commission's Orders.**

As found by the Commission in the October 2003 Order, BellSouth timely complied with the Commission's Orders in this docket. Specifically, in July 1998, BellSouth complied with the Commission's requirement that it 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" by providing CLECs, including Supra, with the BellSouth Business Rules and with the Service Order Edit Routine ("SOER") edits.<sup>3</sup> See Tr. 23; October 1998 Order at 21. The Business Rules and SOER edits are the same tools that BellSouth uses to program its RNS system to provide it with the capability to interact with its FUEL and SOLAR systems to check orders. Id.

Using the Business Rules and SOER edits, Supra could have customized the machine-to-machine Electronic Data Interchange ("EDI") interface, which was an

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<sup>3</sup> BellSouth provided CLECs with the SOER edits in July 1998 via a website link. See Tr. 123 at n.2.

interface available to Supra under the Initial Agreements and which Supra has used and is using today, to “create customize and tailor any on-line editing capabilities they desire . . .”<sup>4</sup> Tr. 25; Exhibit 8 at Attachment 6, Section 2.3 (stating the EDI and LENS were interfaces available to Supra under the Initial Agreements); Tr. 86 (admission by Supra witness Stahly that Supra has used and is using EDI today). Accordingly, BellSouth complied with the Commission’s Orders regarding on-line edit checking capability with EDI as of July 1998. In light of this fact, even Supra admits that BellSouth has timely complied with the Commission’s Orders:

Q. So if BellSouth made the on-line edits available via EDI, BellSouth would be in compliance with the orders, wouldn’t it?

A. That is correct.

Tr. 86.

In addition to complying with the Commission’s Order via EDI, BellSouth also complied with its TAG interface. Through TAG, which is another machine-to-machine interface that BellSouth deployed in November 1998, CLECs could create and customize any desired on-line edits using the SOER edits.<sup>5</sup> Tr. 111. As testified by BellSouth witness Pate:

Q. With TAG being available in November 1998, would TAG have provided the same on-line edit checking capability

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<sup>4</sup> It is important to remember that, as testified by Mr. Pate, in a machine-to-machine interface, “the CLEC builds its presentation system. BellSouth has nothing to do with that. Every EDI and every TAG interface, and there’s many of them used by CLECs that do business with us, every one is specific and unique to their business needs.” Tr. 169. Mr. Pate further described the uniqueness of these interfaces: “If you went out today and went from AT&T to MCI, for example, that both use EDI, you’d see something that looks different because it’s customized to their needs, but it’s still EDI and it’s still using the specs and business rules that BellSouth provided, but it’s customized to what they need.” Tr. 170.

<sup>5</sup> BellSouth also provided Supra with on-line edit checking capability via LENS in January 2000. “LENS has used the TAG architecture and gateway and has had essentially the same pre-ordering and ordering functionality as TAG since January 2000.” Tr. at 111-12.

as BellSouth's RNS does with the FUEL and SOLAR databases?

A. Yes, it would. But it's the same approach as EDI. They're both machine-to-machine interfaces. So the CLEC, in this case Supra, would have to use the business rules as well as the SOER edits we applied. But they have the capability to develop the same interaction as FUEL and SOLAR.

Tr. 167. Accordingly, there can be no question that BellSouth complied with the Commission's Orders in this proceeding because BellSouth provided Supra with on-line edit checking capability via TAG and EDI prior to December 31, 1998.

The Commission reached a similar finding regarding TAG in the DeltaCom/BellSouth arbitration (Docket No. 990750-TP). In that proceeding, DeltaCom argued that BellSouth's OSS did not allow it to perform upfront edits on submitted orders in the same manner that BellSouth's retail systems performed "validation checks" before submitting an order. See Order No. PSC-00-0537-FOF-TP at 9 (March 15, 2000). DeltaCom essentially argued that BellSouth was not providing nondiscriminatory access to its OSS because DeltaCom did not have access to BellSouth's FUEL and SOLAR databases. Id. In rejecting this argument and finding that BellSouth was providing nondiscriminatory access, the Commission held the following:

We agree with BellSouth that the ability to perform up-front edits before submitting any orders improves the overall accuracy and completeness of the orders, and note that TAG allows the ALECs to perform address validation and other up-front edits on their side of the interface. . . . Although ITC^DeltaCom has no first-hand experience with TAG, there is record evidence that shows that TAG has pre-ordering, ordering and provisioning capabilities. The record also indicates that TAG is integratable with EDI and is able

to perform up-front edits. Upon consideration, we find it appropriate to require BellSouth to provide ITC^DeltaCom access to its OSS functionalities that is of the same quality, accuracy, and timeliness to that which it provides to its retail operations for pre-ordering, ordering, provisioning, repair and maintenance, and billing for UNEs and resale services. We note that it appears BellSouth is capable of providing these functionalities through TAG.

Id. at 11. Thus, the Commission has already determined in an arbitration proceeding that TAG provides CLECs with the upfront edits associated with on-line edit checking. The Commission should reach the same conclusion here and reaffirm its finding in the October 2003 Order that BellSouth timely complied with the Commission's Orders regarding on-line edit checking capability.

The Commission should readily dismiss Supra's witness in this proceeding as he lacked basic knowledge about BellSouth's OSS and its relationship to the issues germane to this proceeding. For instance, Mr. Stahly admitted that (1) he has no first-hand knowledge of what the Commission discussed in reaching its decisions in 1998 or 2000 (Tr. 65); (2) he does not have any responsibility for developing or training Supra's employees as to how to use Supra's OSS (Tr. 66); (3) he has never had any position that required him to analyze or review BellSouth's OSS (Id.); (4) he never attended a class on BellSouth's OSS (Id.); (5) prior to filing testimony, he never read any manuals about BellSouth's OSS (Id.); (6) he lacks knowledge of the order flow resulting from a BellSouth retail order (Tr. 67); (7) he admitted that he based his testimony that RNS allows BellSouth to submit error-free orders on conversations with other Supra employees and not on any first-hand knowledge (Tr. 70-71); (8) he could not identify a single BellSouth database that is not available today but would be available with the

implementation of on-line edit checking capability (Id.); (10) he does not know what specific information a Supra customer service representative sees when submitting an LSR (Id.); and (11) he does not know if Supra has created an edit checking system for services that it does not purchase from BellSouth (Tr. 78). Based on these admissions, BellSouth's testimony and position on this issue cannot be refuted.

## **II. Supra's Arguments Should Be Rejected.**

Supra will assert several erroneous arguments to attempt to persuade this Commission to deviate from its sound rationale and findings in the October 2003 Order. Each of these arguments, however, is meritless and the Commission should summarily reject them for the following reasons.

### **A. Supra's Interpretation of the Commission's Order Conflicts with the Commission's October 1998 Order.**

First, Supra will argue that the Commission's 1998 Orders required BellSouth to actually implement on-line edit checking capability for Supra. As testified by Mr. Stahly, Supra believes that "BellSouth was specifically ordered to 'modify the ALEC ordering systems' to provide Supra with the same on-line edit checking capability. Instead, BellSouth has simply handed Supra the TAG software and told Supra to program its own CLEC ordering system to provide on-line edit checking." Tr. at 48. Accordingly, Supra takes the position that the Commission's 1998 Orders requiring BellSouth to provide Supra with on-line edit checking *capability* meant that BellSouth was required to actually implement and put these edits into effect for Supra. Stated another way, Supra construes "capability" to mean actual implementation. As Mr. Pate described in this testimony, the two concepts are not synonymous:

And the order did not say for us to provide it. It said for us to give the capability. You, know, that's kind of like – I've got a 17 year old, so I could use him as analogy. That's kind of like with his schoolwork, you know. I cannot do his homework for him and take his test, but I can help him with the capability by giving the books and giving the guidance and assistance. He still has to do it.

Tr. 160.

Further, this argument must be rejected because it directly contradicts the October 1998 Order, wherein the Commission found that BellSouth was not required to install equipment on Supra's premises or duplicate its RNS retail systems in order to provide on-line edit checking capability. See October 1998 Order at 15, 21. As testified by witness Pate, actually implementing upfront edits for Supra (instead of giving Supra the capability to perform on-line edits, which the Commission ordered) would have required BellSouth to duplicate its retail systems and install hardware at Supra's premises:

Q. Is it BellSouth's contention that the only way it could have complied with the reconsideration order is to install hardware at Supra's premises to replicate the edit checking interaction of RNS with FUEL and SOLAR edits if it was required to implement that?

A. Yes. To make implementation that would be customer service friendly, that would be the solution. That's correct.

Q. And would it be also fair to say that short of providing that equipment at Supra's premises, the only other way for BellSouth to provide the same on-line edit checking capability was to provide Supra with BellSouth's ordering business rules and SOER, FUEL and SOLAR edits and have Supra build the edits in the interface?

A. That's right. Let me clarify the way you asked that question. You said, "SOER, FUEL and SOLAR edits." Providing them the SOER edits is the basis for how FUEL and SOLAR interact. What FUEL and SOLAR does, they

take those SOER edits and they put business logic in the programs. So the SOER edits is the foundation for that.

Tr. 174.

Indeed, to actually implement upfront edits for Supra in a machine-to-machine interface would require BellSouth to (1) go to Supra's premises; (2) access Supra's code; (3) determine from Supra what specific edits they want to have in place that is going to give Supra the same interaction with RNS; (4) develop the code specifically for Supra; and (5) install hardware at Supra's premises necessary to store any databases or any other part of the application.<sup>6</sup> Tr. 182. The Commission expressly refused to order BellSouth to perform these tasks in the October 1998 Order. Thus, to do what Supra is now suggesting the Commission ordered BellSouth to do would directly conflict with the Commission's October 1998 Order and therefore cannot be accepted by the Commission. Importantly, Supra presented no evidence to the contrary on this issue.

**B. Supra's Interpretation of the Commission's Orders Would Require BellSouth to Provide Supra with Something Greater than Nondiscriminatory Access.**

Second, Supra's interpretation of the Commission's Order would require this Commission to find that it ordered BellSouth to provide Supra with something greater than nondiscriminatory access. Contrary to such an interpretation, this Commission has repeatedly found that BellSouth is only required to provide Supra with nondiscriminatory access to its OSS. For instance, in the Supra/BellSouth arbitration proceeding (Docket No. 001305-TP), the Commission ruled that BellSouth is required to provide Supra with nondiscriminatory access and not direct access to its OSS:



We disagree with Supra witness Ramos' strict interpretation of FCC Rule 51.313(c) as obligating BellSouth to provide Supra with direct access to its OSS. Rather, FCC Rule 51.313(c) obligates BellSouth to provide to ALECs and Supra nondiscriminatory access to the functionalities of pre-ordering, ordering, provisioning, maintenance and repair, and billing of the incumbent LEC's OSS, but not the direct access that Supra is seeking.

Order No. PSC-02-0413-FOF-TP at 120. Regarding access to BellSouth's databases, the Commission again confirmed that BellSouth is not required to provide direct access to Supra: "Thus, BellSouth is only required to provide nondiscriminatory access to the databases that its retail departments use, and not direct access." Id. at 142.

Significantly, in reaching this conclusion, the Commission cited to the October 1998 Order and held that "we specifically concluded in Order No. 98-1001-FOF-TP of Docket No. 980119-TP, in response to Supra's request for access to the very same interfaces that BellSouth uses for its retail service (including RSAG), that 'BellSouth is not required to provide Supra with the exact same interfaces that it uses for its retail operations.'" Id. at 142-43. This subsequent interpretation by the Commission of its October 1998 Order makes it clear that the Commission was requiring BellSouth to provide nondiscriminatory access to on-line edit check capabilities and nothing more in its October 1998 Order. Otherwise, the Commission could have not rendered the ruling it made over four years later in Docket No. 001305-TP.

In addition, the Commission found that BellSouth provides nondiscriminatory access to its OSS in BellSouth's 271 proceeding. See In the Matter of Application by BellSouth Corporation for Authorization to Provide In-Region InterLATA services in

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<sup>6</sup> In addition, implementing the upfront edits for LENS would be as problematic and time consuming because it is a human-to-machine interface. Thus, huge bandwidth would be required and there would be

Florida and Tennessee, FCC 02-331 (Dec. 18, 02) (“Florida 271 Order”) at ¶ 64 (“The Florida Commission also found that BellSouth provides competitive LECs nondiscriminatory access to its OSS.”); Opinion No. PSC-02-1305-FOF-TL at 35 (Sept. 25, 2002) (“Based on the results of the completed KPMG Consulting testing, we find that BellSouth is providing nondiscriminatory access to its OSS.”). Likewise, the FCC found that BellSouth provides nondiscriminatory access to its OSS: “We find, as did the state commissions, that BellSouth provides nondiscriminatory access to its OSS and thus, satisfies the requirements of checklist item 2.” Florida 271 Order at ¶ 67.

Significantly, in describing nondiscriminatory access, the FCC held that “a BOC must demonstrate that it has developed sufficient electronic (for functions that the BOC accesses electronically) and manual interfaces to allow competing carriers equivalent access to all of the necessary OSS functions.” Id. at ¶ 68. As an example of how a BOC would comply with this requirement, the FCC stated: “[a] BOC must provide competing carriers the specifications necessary to design their system interfaces, and business rules necessary to format orders, as well as demonstrate that systems are scalable to handle current and projected demand.” Id. at n. 196. This is exactly what BellSouth did in providing Supra with its Business Rules and SOER edits in 1998, which allowed Supra to customize its interfaces by implementing on-line edits to meet its specific business needs.

Moreover, the FCC specifically rejected all of Supra’s arguments regarding BellSouth’s OSS:

While its arguments are not clear, Supra raises a number of concerns regarding BellSouth’s OSS, none of which we find

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tremendous delays in response time due to the amount of data that would be required. Tr. 169, 182-83.

persuasive. First Supra asserts that BellSouth's ordering systems are inadequate in that BellSouth's OSS cannot handle the volumes its retail systems can handle. As noted above, the Commission has consistently found that BellSouth's OSS have the ability to handle competitive LEC orders in a nondiscriminatory manner, even as order volumes increase. Supra provides no record evidence that would cause us to reach a different conclusion in this proceeding. Supra next claims that LENS is deficient and does not provide competitive LECs with OSS functions in the same manner that BellSouth provides the same functions to itself. Supra relies upon BellSouth's acknowledgement that LENS is a human-to-machine interface. As BellSouth points out, however, BellSouth provides competitive LECs with two pre-ordering interfaces, LENS and TAG, and three ordering interfaces, LENS, TAG, and EDI. The fact that Supra has made the business decision to use the human-to-machine interface, LENS, rather than the machine-to-machine alternatives (TAG and EDI) does not establish that BellSouth's OSS are discriminatory. The record evidence shows that BellSouth offers competitive LECs nondiscriminatory interfaces that can be integrated by the competitive LECs.

Florida 271 Order at ¶ 96.

The FCC also rejected Supra's claims that BellSouth's OSS fails to perform on-line edit checking:

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."

Florida 271 Order at ¶ 97.

Thus, there can be no question that BellSouth satisfied its nondiscriminatory obligations as required by the Commission in its 1998 Orders. And, to accept Supra's arguments would require this Commission to find that it ordered BellSouth to provide Supra with something greater than nondiscriminatory access, which is not supported by the previous Orders in this proceeding or other Orders of this Commission or the FCC.

**C. The Initial Agreement Required BellSouth to Provide Nondiscriminatory Access and Nothing More.**

Third, in a new argument, Supra argues that, in the Agreement, BellSouth agreed that it would provide Supra with something greater than nondiscriminatory access – parity. As an initial matter, the Commission should severely discount this argument because Supra's witness presented incredible testimony on this issue. Specifically, Mr. Stahly stated at his deposition that this proceeding was not about the parties' contract but rather what the Commission ordered in 1998. At the hearing, Mr. Stahly attempted to change his original testimony by stating that he misunderstood BellSouth's questions at the deposition. As established by the following, Mr. Stahly's "misunderstanding" is simply not believable:

Q: I'm asking you, the contract at issue -- the contract that supported the Commission's Orders is not at issue in this proceeding, is it?

A: No.

Q: We're debating what the Commission meant in its orders, aren't we?

A: Correct, yes.

Q: And since you haven't read the contract, I imagine you're not going to opine about what the contract said?

A: Correct.

Q: So your knowledge and your testimony is limited to the Commission's order, is that right?

A: Various Commission orders, KPMG report, conversations with Supra folks.

Q: But it's not based upon the contract, is it?

A: Correct.

Exhibit 9, 37, lines 1-17. In any event, it is undisputed that Mr. Stahly never read the Agreement prior to filing his testimony in this proceeding or giving his deposition. Tr. 82. Thus, even if he truly "misunderstood" the simple, straightforward questions quoted above, the Commission should give little weight to this argument as he testified about matters he simply was not familiar with.

Moreover, Supra's parity argument is misplaced for the additional reason that there is nothing in the Agreement that obligates BellSouth to provide Supra with something greater than nondiscriminatory access. This "parity" obligations results from Supra's interpretation of the heading in Section 4 of the General Terms and Conditions of the agreement, which is labeled "Parity." See Exhibit 8 at 2. However, Section 22 provides that the "headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement." Id. at 16. Accordingly, Supra's reliance on the "Parity" heading to attempt to manufacture obligations that exceed nondiscriminatory access is of no force and effect.

Additionally, a close review of the substantive language contained in Section 4 of the agreement reveals that it is almost identical to the FCC's definition of nondiscriminatory access from the First Report and Order, which was issued just prior to the creation of the Agreement. Namely, Section 4 of the Agreement provides:

The services and service provisioning that BellSouth provides Supra Telecommunications and Information Systems, Inc. for resale will be at least equal in quality to that provided to BellSouth, or any BellSouth subsidiary, affiliate, or end user. In connection with resale, BellSouth will provide Supra Telecommunications and Information Systems, Inc. with pre-ordering, ordering, maintenance and trouble reporting, and daily usage data functionality that will enable Supra Telecommunications and Information Systems, Inc. to provide equivalent levels of customer service to their local exchange customers as BellSouth provides to its own end users. BellSouth shall also provide Supra Telecommunications and Information Systems, Inc. with unbundled network elements, and access to those elements, that is at least equal in quality to that which BellSouth provides BellSouth, or any BellSouth subsidiary, affiliate or other ALEC. . . .

Exhibit 8 at 2. Not surprisingly, the FCC defined nondiscriminatory access in the First Report in Order, FCC 96-325, as:

. . . the phrase "nondiscriminatory access " in section 251(c)(3) means at least two things: first, the quality of an unbundled network element that an incumbent LEC provides, as well as the access provided to that element, must be equal between all carriers requesting access to that element; second, where technically feasible, the access and unbundled network element provided by an incumbent LEC must be at least equal-in-quality to that which the incumbent LEC provides to itself.

FCC 96-325 at ¶ 325. When compared, these two provisions make it clear that (1) the parties incorporated the FCC's definition of nondiscriminatory access from the First Report and Order into the Agreement; and (2) BellSouth did not agree to provide Supra

with something greater than nondiscriminatory access. Consequently, Supra's recent post-hoc contract argument must fail.

This conclusion is further supported by the fact that nowhere in the Commission Orders addressing on-line edit checking capability does the Commission base its finding on the "Parity" provision of the parties' Agreement. Commissioner Deason recognized this important point in the hearing:

COMMISSIONER DEASON. . . Now apparently our order indicated that when we made this finding concerning the necessity to modify LENS to give Supra the same ordering capability, that we did so in order to comply with the parity provision in the parties' agreement. Now is this the same parity standard in 271 or is it a different standard?

THE WITNESS: Two, two issues with this. The better – the quote actually was in an earlier section of that order relating to a different phase of the ordering capabilities. Again, the better, more accurate quote would have been really the finding number five at the end of the order, on Page 47 of that order. Regarding, parity, if you go back to the contract -  
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COMMISSIONER DEASON: I'm sorry. This is – which order is this?

THE WITNESS: July '98.

COMMISSIONER DEASON: Okay. Give me just a moment to find that.

THE WITNESS: Sure. And if you go to Page 47 with the finding clauses.

MR. MEZA: It'll be Tab 1.

COMMISSIONER DEASON: Tab 1, Page 47 under Section 7, relief, paragraph five?

THE WITNESS: Correct.

COMMISSIONER DEASON: Okay.

THE WITNESS: That talks about BellSouth modifying the ALEC ordering systems to provide on-line edit checking. That really should have been the quote I used in that spot.

COMMISSIONER DEASON: And this particular paragraph doesn't reference the parity standard; is that correct?

THE WITNESS: No, it doesn't . . . .

Tr. 99-100. Therefore, to adopt Supra's contract argument would essentially require this Commission to rewrite its 1998 Orders, which is not the purpose of this proceeding.

**D. The Commission's February 2000 Order Is Not Determinative of this Issue.**

Fourth, Supra will probably argue that the February 2000 Order conclusively proves that BellSouth did not timely comply with the Commission's Orders regarding on-line edit checking capability. This argument is erroneous and represents a concerted effort by Supra to prevent this Commission from considering and giving full force and effect to all of its Orders.

As stated above, in this February 2000 Order, the Commission found that BellSouth complied with all aspects of its June 1998 Order, except for on-line edit checking capability, which it characterized as a "close call." See February 2000 Order at 9. In reaching this decision, the Commission focused on the record of the case then before it and held that, although TAG could possibly comply with the Commission's 1998 Orders, the Commission's intent at that time was for BellSouth to provide on-line edit checking capability through either EDI or LENS. Foreshadowing future events, however, the Commission acknowledged that given the development of TAG and other technologies, further proceedings may be warranted to consider whether TAG met the



intent of the Commission's order. See February 2000 Order at 10-12; see also, October 2003 Order at 8. Nevertheless, the Commission reasoned that it would be inappropriate to reopen the record to consider whether TAG satisfactorily met the on-line edit checking capability requirement because of the pendency of a federal court action filed by BellSouth wherein BellSouth was challenging the Commission's 1998 Orders. Id. at 11.

Subsequent to this decision, however, the Commission reopened the record in this case with its September 2000 Order for the purpose of considering whether all of BellSouth's ALEC ordering interfaces, including TAG, provided on-line edit checking capability to Supra. See September 2000 Order at 6. Thus, the Commission's February 2000 Order was not a final determination on this issue and was subject to further modification based on additional evidence that the Commission received and considered on this issue. Based on this additional evidence, including TAG, the Third Party Test, the Commission's and FCC's finding that BellSouth provides nondiscriminatory access to its OSS, and the fact that Supra had on-line edit capability all along with EDI, the Commission correctly found in the October 2003 Order that BellSouth timely complied with the Commission's Orders. Any attempt by Supra to argue that this Commission cannot consider this additional evidence, including TAG, is simply disingenuous in light of the September 2000 Order.

**E. Modifications to LENS or EDI Were Unnecessary.**

Fourth, Supra may argue that BellSouth violated the Commission's Orders because it did not modify EDI or LENS to provide for on-line edit checking capability. In support, Supra will focus on the Commission's July 1998 Order wherein it held that

“BellSouth shall modify the ALEC ordering systems so that the systems provide the same online edit checking capability to Supra that BellSouth’s retail ordering systems do.” See July 1998 Order at 47. What Supra fails to realize is that it was not necessary for BellSouth to modify the ALEC interfaces in any manner because BellSouth provided Supra with the Business Rules and SOER edits in July 1998, thereby giving Supra on-line edit checking capability as of that date. Mr. Pate confirmed this fact at the hearing:

Q. And you also testified that BellSouth didn’t make any modifications to EDI specific to the July 1998 order; is that also correct?

A. That’s correct. And let’s make sure why. None were needed. We gave you the SOER edits, and you developed your presentation system for EDI. You had the capability. We didn’t need to change anything or modify it.

Tr. 161. Further, as stated above, BellSouth created another interface, TAG, in November 1998 that also provided Supra with on-line edit checking capability. Thus, it was not necessary for BellSouth to modify any ALEC interface because BellSouth timely complied with the Commission’s Orders via EDI and TAG.

### **III. The Undisputed Facts Reveal that Supra’s Litigation Zeal Motivated the Filing of this Protest.**

Fundamentally, there are several undisputed facts that belie Supra’s claim that this case is about customer service or that Supra has been harmed by the alleged lack of on-line edit checking capability. Indeed, after taking into consideration the following facts, it is a mystery as to why Supra has forced the Commission and the parties to litigate this case.

Of primary importance is the fact that Supra retained the services of a third-party vendor, NightFire, in March 2003 to provide the same on-line edit checking capability that Supra claims that the Commission required BellSouth to provide. Tr. 90, 185. Because of Supra's bankruptcy status, Supra had to seek permission from the Bankruptcy Court before entering into this agreement. In describing the services of NightFire and the benefit Supra would receive, Supra informed the Bankruptcy Court that (1) through specialized software, Supra could submit, in real-time, orders to NightFire in one format, which NightFire then processes and relays to the ILECs "in the proper industry recognized format via the Electronic Data Interface (Tr. 88; Exhibit 11); (2) with NightFire, Supra will be able to submit "instantaneous, essentially error-free orders (Id.); and (3) that NightFire's services are "crucial to assure [Supra's] customers receive the services that they are entitled to in a much shorter time period, and will minimize the debtor's internal development and maintenance costs to conform with each ILECs' order submission standards." (Id.) At no time did Supra advise the Bankruptcy Court that it believed that BellSouth had an obligation to provide the on-line edit checking capability that Supra was purchasing from NightFire. Tr. 89.

Supra's relationship with NightFire proves that Supra could, through its own efforts or with a third-party vendor, use BellSouth's business rules and SOER edits to customize its own machine-to-machine interface to provide for upfront on-line edits. Tr. 185. For litigation or other reasons, however, Supra waited until 2003 to take advantage of this capability. Supra's business decisions do not equate into BellSouth violating Commission's Orders. In addition, Supra's NightFire relationship and its statements to the Bankruptcy Court prove that Supra's arguments herein are the result

of Supra's litigation vigor as Supra did not even advise the Bankruptcy Court of the instant proceeding or its claims therein. This fact, combined with the following additional facts, renders Supra's credibility and motivation for continuing to litigate this issue entirely suspect:

- Supra's customer base has increased since 1998. Tr. 82
- Supra claimed that, for 2002, it had over 300,000 customers and that it was the fastest growing network customer for BellSouth. Id.
- As of 2002, Supra borrowed at least \$5 million from Supra's CEO, Mr. Ramos, to establish off shore call center operations in Ghana, Cost Rica, and the Dominican Republic. Tr. 76; Exhibit 10.
- Supra uses these foreign service representatives to take orders from customers and submit them to BellSouth. Mr. Stahly conceded that these foreign representatives have to be trained on BellSouth's OSS but that he did not know what training these representatives receive, how long the training process is, or what documents are involved. Id. Nevertheless, Mr. Stahly did concede that, if a customer service representative submits correct information on the LSR, then the order would not be clarified back to Supra. Tr. 72.
- Despite making bold claims that Supra has experienced notification delays from a couple of hours to a couple of days, Mr. Stahly could not identify the lines that experienced the delays, was not sure how Supra records the receipt of notification delays, and admitted that he based this testimony only on conversations he had with Supra employees. Tr. at 67-68.
- Despite claiming that some customers cancel their orders because of the notification delays, Mr. Stahly agreed that some customers could leave because of problems caused by Supra but could not identify what percentage of customers left Supra because of notification delays and not a Supra error. Tr. 69-70. He further testified that he has no knowledge of who the individual customers are, that he made the claims solely based on conversations he had with other Supra employees, and that he did not do an independent verification of these statements. Tr. 68-69.
- Supra operates in New York but Mr. Stahly testified that he was unaware of any complaint proceeding Supra filed against Verizon for the lack of on-line edits, even though his primary job duty is to support federal and state regulatory proceedings. Tr. 83-84.

- Supra asked for no affirmative relief in this proceeding from 2000 until after the Commission issued the October 2003 Order, even though the Commission issued its Consultative Opinion regarding the Third Party Test in September 2002. Tr. 83.<sup>7</sup>
- None of the CLECs, including Supra, ever raised on-line edits as an issue in BellSouth's 271 proceeding with this Commission or as a specific measure to be tested with the Third Party Test even though CLECs had such an opportunity.

Given these undisputed facts, it is quite apparent that this case is not about customer service or about what the Commission ordered in 1998. Rather, it is another manifestation of Supra's litigation fervor and attempt to prosecute meritless claims against BellSouth.

**Issue 3: Did the third party test performed by KPMG in Docket Nos. 960786 and 981834 resolve any issues in this proceeding?**

**Position: \*\*\*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 on-line edits.\*\*\***

As set forth above, the Commission's September 2000 Order reopened the record in this case to take into consideration additional evidence, including the results of the Third Party Test, to address whether BellSouth provided CLECs with on-line edit checking capability. The Commission ordered the Third Party Test to test BellSouth's CLEC interfaces and to determine whether BellSouth was providing non-discriminatory access to its OSS. See Tr. 112; Order No. PSC-02-0253-PCO-TP (Feb. 27, 2002) ("Phase I of the third-party testing required a third party, in this case KPMG Consulting, Inc., to develop a Master Test Plan (MTP) that would identify the specific testing

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<sup>7</sup> Supra may attempt to argue that there was not complete silence between 2000 and 2003 because of a meeting between Staff and the parties to discuss this proceeding. BellSouth would note that this meeting

activities necessary to demonstrate nondiscriminatory access and parity of BellSouth's systems and processes.”).

Although the Third Party Test did not specifically test for on-line edit checking capability, the Test proved, unequivocally, that BellSouth's interfaces provide nondiscriminatory access to BellSouth's OSS. See Tr. 112; Opinion No. PSC-02-1305-FOF-TP at 35 (“Based on the results of the completed KPMG Consulting testing, we find that BellSouth is providing nondiscriminatory access to its OSS”). Florida 271 Order at ¶ 67. As found by the Commission in the October 2003 Order, “[b]y definition, nondiscriminatory access means that BellSouth provides CLECs access to the pre-ordering and ordering functionalities in substantially the same time and manner as BellSouth retail systems.” See October 2003 Order at 6. Thus, the Third Party Test proved that BellSouth provides on-line edit checking capability.

This conclusion is further buttressed by the fact that, KPMG, acting as pseudo-CLEC, developed and implemented a machine-to-machine interface using BellSouth's business rules and specifications and proved that the interfaces worked as planned. Tr. 126-27; 155. As testified by Mr. Pate regarding KPMG's application of on-line edits, “by the fact that [KPMG] built a machine-to-machine interface, that capability exists and that same capability existed in 1998 for Supra and it exists today.” Tr. 157. Accordingly, the Third Party Test proved not only that BellSouth provides nondiscriminatory access but also that Supra had on-line edit checking capability via the SOER edits and BellSouth's Business Rules.

Supra may attempt to challenge the veracity of the Third Party Test on the grounds that CLECs were not allowed to participate in the Test. This argument is patently false. CLECs were extensively involved in every aspect of the test, including the calls and meetings as described in the Master Test Plan. Tr. 113-14. “CLECs participated in transaction testing via KPMG interviews and information sharing regarding the CLEC OSS experience. In short, CLECs had input every step along the Florida OSS Test journey for over two and one-half years.” Tr. 114. Indeed, KPMG, held approximately 130 weekly CLEC status calls, 130 CLEC Exception calls, 130 CLEC Observation calls and 15 face-to-face workshops and meetings to address CLEC concerns. Id. Moreover, CLECs raised over 50 OSS issues in a CLEC Experience Workshop held on February 18, 2002. Id. The Commission analyzed each of the 50 CLEC issues and found that “the most significant of these issues have been addressed either through the tests or through action taken by us on our own motion. In other instances, we believe either that the CLEC issues are not supported by the information available, or do not reflect a systemic problem that inhibits the CLECs’ ability to compete with BellSouth.” See Opinion No. PSC-02-1305-FOF-TL at 10.

Supra raised almost identical criticisms regarding the Third Party Test with the FCC in BellSouth’s 271 case and the FCC rejected all of them. For instance, the FCC held that “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.” See Florida 271 Order at ¶ 72 (emphasis added). The FCC further stated that “[w]e note that the Florida KPMG test was actively monitored by other state commissions in BellSouth’s territory and that it has been widely recognized

for its independence, **openness to competitive LEC participation**, breadth of coverage, and level of detail.” Id. at ¶ 75 (emphasis added).

Specifically regarding Supra’s claims, the FCC rejected Supra’s argument that (1) the KPMG test was flawed because it purportedly only focused on POTS service; (2) the KPMG test was inadequate because KPMG was not granted access to BellSouth’s OSS identical to that offered to BellSouth’s retail operations; (3) the KPMG test’s analysis of the operation experience of a pseudo-competitive LEC was inappropriate; and (4) the Commission should not have delegated competitive LEC’s concerns to the third-party tester. Id. at ¶¶ 75-78. As to this last argument, the FCC stated:

We give this assertion little weight given the amount of input that competitive LECs had in the Florida KPMG test, the Florida Commission’s careful consideration of the competitive LEC’s concerns raised to KPMG, and the Florida Commission’s consideration of the issues raised during its recently held Competitive LEC Experience Workshop.

Id. at ¶ 78.

The frivolity of Supra’s claims regarding the Third Party Test is evidenced by Mr. Stahly’s contention that “Supra specifically requested that on-line edit checking be made part of that test, and that wasn’t put into the test.” Tr. 92. However, on cross-examination, Mr. Stahly admitted that he was not aware of when or how this request was made and BellSouth challenges Supra to find support for Mr. Stahly’s statement.

Simply put, CLECs participated in the Third Party Test, CLECs raised issues and concerns regarding the Third Party Test, the Commission addressed each CLEC issue and concern, and the FCC confirmed that CLECs had input in the Third Party Test and that the Commission addressed these concerns. The fact that Supra chose not to participate in the Third Party Test or claims that the Third Party Test was inadequate



does not undermine the Third Party Test but rather only Supra's motivations and hollow argument that the Third Party Test is flawed.

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

**Position: \*\*\*Yes. BellSouth has timely complied with the Commissions Orders in this proceeding.\*\*\***

As established above, BellSouth provided Supra with on-line edit checking capability as of July 1998 for EDI, as of November 1998 for TAG, and as of January 2000 for LENS. Accordingly, for reasons previously discussed, BellSouth timely complied with the Commission's Orders in this proceeding.

#### **CONCLUSION**

For the foregoing reasons, the Commission should confirm its October 2003 Order and finding that BellSouth timely provided Supra with on-line edit checking capability pursuant to the Commission's Orders in this proceeding.

Respectfully submitted this 3rd day of September, 2004.

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