Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	))))	CC Docket No. 01-338
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	))))	CC Docket No. 96-98
Deployment of Wireline Services Offering Advanced Telecommunications Capability	))	CC Docket No. 98-147

COMMENTS OF SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC. OPPOSING BELLSOUTH'S PETITION FOR WAIVER

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Supra Telecommunications and Information Systems, Inc. ("Supra Telecom") a competitive local exchange carrier ("CLEC") providing competitive local telecommunications services in Florida pursuant to Section 214 of the Communications Act of 1934 and state certificates of public convenience and necessity, hereby requests that the Commission deny BellSouth's petition for a waiver of the requirement to process orders for EELS under the revised commingling and service eligibility requirements ("EEL requirements") set forth in the Commission's *Triennial Review Order* ("TRO").

BellSouth asks that the waiver remain in effect until the relevant state commissions have completed their determination of the routes and customer locations where high capacity UNEs will continue to be available.[1] Supra requests that the Commission deny BellSouth's petition for a waiver as it is based on BellSouth's wishful speculation that state commissions will find a

[1] See Petition p. 6.

significant number of transport routes unimpaired. Granting BellSouth's petition will only further delay the development of meaningful competition which will prevent telecommunications users from enjoying the benefits that competitive choice brings of lower prices, more service options, higher quality service, and better customer service.

I. Introduction and Background

The Commission has a strong history of supporting local competition and taking the appropriate steps to force the incumbent LECs to open their monopoly networks to CLECs. Such a position is warranted because the ILEC network was built under decades of monopoly-provided service and financed with telecommunications users' dollars. These same telecommunications users should rightfully enjoy the benefit of the network they paid for by being able to access competitive LECs that are using that same network to provide competitive telecommunications services.

As part of the effort to allow telecommunications users the benefit of using the network they paid for, Congress and the FCC ordered the ILECs to unbundle the local network and provide UNE combinations to CLECs. In the UNE Remand Order, the FCC ordered ILECs to provide extended enhanced links ("EELs"). In the Supplemental Order, the FCC clarified the meaning of "significant amount of local usage" and provided three safe harbor rules for defining a significant amount of local usage.[2] In the Commission's TRO, the FCC has reaffirmed the UNE combination requirement.[3] The FCC also stated that their rules "require incumbent LECs to make UNE combinations, including loop-transport combinations, available in all areas where

[2] At that time, the FCC temporarily constrained commingling EELs with special access; however, in the TRO, the FCC eliminated the commingling restriction (see TRO, para. 579).
[3] See TRO, para. 573.

the underlying UNEs are available and in all instances where the requesting carrier meets the eligibility requirements.[4]

In the TRO, the FCC concluded that EELs "facilitate the growth of facilities-based competition in the local market" because EELs allow CLECs to reach customers in end offices other than the ones in which the CLEC is already collocated which reduces collocation costs; "promotes self-deployment of interoffice transport facilities by competitive LECs," and "promotes innovation."[5] BellSouth and other LECs have sought to impede CLECs' access to EELs by requiring CLECs to submit to pre-audits or to purchase special access facilities and then convert it to a UNE EEL. The FCC found that these ILEC requirements "constitute unreasonable, and discriminator terms and conditions for obtaining access to UNE Combinations and are prohibited by the Act and our rules.[6] Now, BellSouth has sought to impede CLECs' ability to use EELs by seeking a waiver from the requirement to provide EELs.

II. BellSouth's Allegations Are Unfounded and Unsubstantiated.

BellSouth alleges that granting the waiver is necessary to "avoid wasting substantial resources likely from converting special access circuits to EELs before the states conclude their loop and transport impairment cases."[7] However, BellSouth has not presented any substantive evidence to show that "substantial resources," let alone any resources, will be wasted if the special access circuits that were converted to EELs were to be converted back again. BellSouth is seeking a waiver of Commission rules based on their speculation that certain UNE transport routes will be found unimpaired so that BellSouth will not have to offer UNE EELs to CLECs on those routes. Policy decisions and waivers should not be based on speculative outcomes but on

[4] See TRO, para. 575.
[5] Id. para. 576.
[6] Id. para. 577.
[7] See Petition, p. 2

the actual policies in place at the time of the request. Currently, and for the foreseeable future, BellSouth is required to provide UNE transport on every single one of its routes meaning that CLECs should have access to UNE EELS on every single one of BellSouth's transport routes. To grant BellSouth's petition for waiver of implementing EELs is to further delay competition based on nothing more than BellSouth's wishful speculation that they may prevail in the on-going state UNE transport impairment proceedings.

BellSouth does not provide any estimate of the alleged amount of "wasted resources." BellSouth does not provide any estimate of the number of high-capacity circuits that BellSouth will demand carriers switch back to special access if the state commission finds non-impairment nor does BellSouth provide any dollar estimate. Rather, BellSouth merely states that not granting the petition will, "at least in some cases,"[8] result in provisioning of UNE circuits that may be converted back to special access. Additionally, BellSouth alleges that they will have significant stranded capital if the waiver is not granted. However, just like before, BellSouth does not provide any estimate of the alleged amount of stranded investment. What dire consequence has BellSouth alleged will occur if CLECs are required to convert EELs back to special access? "Wasted resources" and "endless possibilities for finger-pointing."[9] In fact and substance, BellSouth has provided the FCC with nothing more than a declaration that the sky is falling.

BellSouth is curious in that they aren't complaining that they won't recover their costs or suffer any financial loss; only that "resources will be wasted." BellSouth's concern for wasted resources and that wasted resources are not in the public interest is far too late relative to the vast amount of capital and resources CLECs have expended over the past eight years trying to break

[8] See Petition, p. 4
[9] See Petition, p. 7

the ILEC monopoly stranglehold on the local telecommunications market. After CLECs have invested literally billions of dollars in installing switches, laying fiber, and building local networks, BellSouth, under the guise of a concerned telecommunications industry citizen, comes forth and suggests that the industry cannot afford to waste the resources involved with switching a few EELs circuits back to switched access circuits. Is BellSouth equally concerned with the public interest when it wants to deny CLECs access to unbundled local switching or unbundled transport?

III. BellSouth's Petition Will Delay and Harm Competition

In the TRO proceeding, BellSouth and the other ILECs asked the Commission to expedite the changes caused by the TRO. The ILECs asked the FCC to "override the section 252 process and unilaterally change all interconnection agreements to **avoid any delay associated with the renegotiation of contract provisions**"[10] in order to expedite implementation of the new requirements in the TRO. Now that BellSouth is faced with a provision it doesn't like, i.e., the EELs requirement, BellSouth is seeking to delay implementation of the TRO's requirement.

BellSouth is doing nothing more than stalling and further delaying the implementation of the FCC's order. BellSouth's petition delays competition and denies consumers the benefits of such competition. In the paragraph 703 of the TRO, the FCC found that delaying implementation of the new rules in the TRO would reduce investment and would harm competition. The FCC stated that:

> We find that delay in the implementation of the new rules we adopt in this Order will have an adverse impact on investment and sustainable competition in the telecommunications industry.[11]

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[10] See TRO, para. 701. See also Letter from Michael K. Kellogg, Counsel for SBC, Qwest and BellSouth, to Marlene H. Dortch, Secretary, FCC, CC Docket 01-338 at 3-5 (filed Jan 21, 2003)(SBC/Qwest/BellSouth Jan. 21, 2003 *Ex Parte* Letter)

[11] See TRO, para. 703.

The Commission must deny BellSouth's petition for waiver so that competition is not delayed and the industry does not suffer an adverse impact on investment and sustainable competition in the telecommunications industry.

BellSouth's temporary waiver may never expire. BellSouth has asked that the Commission for permission to delay provisioning EELs until the state commissions have completed their UNE transport impairment proceedings. However, it is inevitable that if the state commissions do not find all of the routes unimpaired that BellSouth has requested, that, BellSouth will appeal the decision and further delay a final decision. Then, BellSouth will likely file another petition seeking to extend the EELs waiver even longer, further delaying competition. If BellSouth has its way, it will undoubtedly seek to waive the requirement to provision EELs indefinitely using the excuse that a final non-appealable decision has yet to be reached.

IV. BellSouth's Waiver Is Overly Broad And Restrictive.

BellSouth seeks a waiver of the requirement to implement all EELs, including DS0, yet BellSouth only cites to concerns with high capacity transport and loops (DS1 and above). Granting BellSouth's petition would damage CLECs serving the mass market that are mainly seeking access to DS0 EELs especially if unbundled switching becomes unavailable. If granted, BellSouth's overly broad petition would prevent these competitive LECs from accessing DS0 EELs and would harm competition in the mass market.

V. BellSouth's Petition is Double Talk.

BellSouth is talking out of both sides if its mouth with it petition at the FCC and its UNE switching impairment proceeding at the Florida Public Service Commission ("FPSC"). In the Florida PSC UNE-P Impairment proceeding (Docket No. 030851-TP), BellSouth is telling the

FPSC that CLECs can use DS0 EELs if unbundled switching (UNE-P) is eliminated. However, at the same time, BellSouth is asking the FCC for permission to not provide the very same EELs that will offer a modicum of relief if the FPSC removes BellSouth's requirement to provide unbundled switching. If BellSouth prevails in both proceedings, they will have eliminated unbundled switching and prevented CLECs from using EELs to circumvent the unavailability of unbundled switching, thus, completely shutting out CLECs from the local market. It is ironic, but not surprising that BellSouth relied on the existence of UNE-P competition to allege that its local markets were open in order to gain entry into in-region long distance and now BellSouth seeks to eliminate UNE-P competition by eliminating unbundled switching and the requirement to provide EELs.

V. Conclusion

The Commission should deny BellSouth's petition for a waiver as it is based on BellSouth's wishful speculation that state commissions will find a significant number of transport routes unimpaired. BellSouth provides no substantive evidence of any harm from denying its petition and only alleges that the telecommunications industry should be spared "wasted resources" and "endless possibilities for finger-pointing" for those few cases where BellSouth will demand the CLECs to convert EELs back to special access. As stated above, granting BellSouth's petition will only further delay the development of meaningful competition which will prevent telecommunications users from enjoying the benefits that competitive choice brings of lower prices, more service options, higher quality service, and better customer service. It is in the public interest that BellSouth's petition be quickly denied so as to prevent the telecommunications industry from "wasting resources" fighting such a ridiculous petition.

Respectfully submitted this 19th day of March 2004.

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