BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Supra Telecommunications & Information System, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996.	)	Docket No. 001305-TP Filed: April 17, 2002

BELLSOUTH'S OPPOSITION TO SUPRA'S MOTION FOR RECONSIDERATION AND CLARIFICATION

BellSouth Telecommunications, Inc. ("BellSouth") submits this opposition to the Motion for Reconsideration and Clarification filed by Supra Telecommunications and Information Systems, Inc. ("Supra"). Supra has offered no legitimate grounds for reconsideration or clarification of Order No. PSC-02-0413-FOF-TP (March 26, 2002) ("the Final Arbitration Order" or "FAO"). Therefore, the Commission should deny the motion in its entirety.

INTRODUCTION

Supra's motion asks the Commission to reverse itself on virtually every issue decided in this docket. The motion contains countless insults and accusations directed to BellSouth, the Commission Staff, and the Commission itself. Supra even goes so far as to deride the Commission's order as "evidencing a fundamental lack of comprehension for the technical details" of an issue. Motion at p. 133. The motion is replete with claims of bias and unfairness, cobbled together with suggestions of conspiracy and ill will, all apparently designed to intimidate the Commission and its Staff. Throughout the massive pleading (more than four times the length of its post hearing brief), Supra re-urges, re-hashes, and re-invents its specious claims and

arguments, twisting words and phrases along the way, to give the appearance that Supra has been trampled upon by BellSouth, by this Commission, and by the administrative process.

The foundational premise of Supra's motion is that, in general, the Commission has accepted BellSouth's position in lieu of Supra's simply to show favoritism to BellSouth and to discriminate against Supra. Supra fails to acknowledge that the majority of the issues Supra raised in this arbitration were copied verbatim from the prior AT&T and MCI WorldCom arbitrations, where the issues had previously been decided. Where the Commission had previously decided the issue, regardless of whether such decision was consistent with BellSouth's position, BellSouth adopted the Commission's prior decision in its negotiations with Supra and in its testimony in this docket. Further, the Commission's decisions in this case, while not all in BellSouth's favor, have been supported by the record and are consistent with previous Commission rulings, applicable FCC rulings, and the provisions of the 1996 Act. Supra's claims of bias are calculated to distract the Commission from the substantive issues. Indeed, it is obvious that Supra's real purpose is delay.

Supra has filed its motions for reconsideration solely as a tactic to slow down BellSouth's efforts to collect the significant amounts that Supra owes BellSouth; amounts that grow daily. The sworn testimony of Mr. Ramos at the hearing confirmed that Supra had not paid BellSouth for service in two years. In its motion, Supra states (at page 61) that it has paid BellSouth approximately $6 million. Supra does not claim to have made any other payments to BellSouth. Looking no further than (1) Supra's own public claim that it is serving 300,000 customers and (2) the rates for wholesale services established by this Commission, it is easy to discern that Supra's monthly obligation to BellSouth exceeds the total amount Supra claims to have paid for services during the last two years. As Supra's business grows, so does its obligation to pay

BellSouth. Commissioner Jaber correctly observed that Supra has no incentive to sign a new agreement that protects BellSouth from a CLEC's refusal to pay for services it orders and receives.

Supra's motion offers no legitimate grounds for reconsideration. It is based on a collection of arguments already made, arguments it neglected to make, evidence that the Commission has already found to be unpersuasive, and new evidence that Supra is trying to introduce into the record of this case through unsworn statements of counsel. The standards for reconsideration are appropriately high and Supra has not come close to meeting those standards. The Commission should deny the motion.

LAW AND ARGUMENT

A motion for reconsideration cannot be based on new evidence or on new arguments. The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering an order. See Diamond Cab Co. v. King, 146 So. 2d 889, 891 (Fla. 1962). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. See Sherwood v. State, 111 So. 2d 96, 97 (Fla. 3rd DCA 1959) (citing State ex. rel. Jayatex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Moreover, a motion for reconsideration is not intended to be "a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or the order." Diamond Cab Co., 394 So.2d at 891. Indeed, "a motion for reconsideration should not be granted based upon an arbitrary feeling that a mistake may have been made, but should be based on specific factual matter set forth in the record and susceptible to review." Steward Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315, 317 (Fla. 1974).

Further, it is well settled that it is inappropriate to raise new arguments in a motion for reconsideration or base a motion for reconsideration on information not in the record. In re: Establish Nondiscriminatory Rates, Terms, and Conditions, Docket No. 950984-TP, Order No. PSC 96-1024-FOF-TP, Aug. 7, 1996, 1996 WL 470534 at *3 ("It is not appropriate, on reconsideration, to raise new arguments not mentioned earlier."); In re: Southern States Utilities, Inc., Docket No. 950495-WS, Order No. PSC-96-0347-FOF-WS, Mar. 11, 1996, 1996 WL 116438 at *3 ("Reconsideration is not an opportunity to raise new arguments."); In re: St. George Island Util. Co., Ltd., Docket No. 940109-WU, Order No. PSC-95-0274-FOF-WU, Mar. 1, 1995, 1996 WL 116782 at *2 (striking new evidence attached as an exhibit to a motion for reconsideration because the Commission's "decision, even on reconsideration, must be based solely upon the record.").

Applying these principles to Supra's motion, it is obvious that Supra has not offered any legitimate grounds for reconsideration or clarification of any of the Commission's decisions in the Final Arbitration Order.

Issue A: Which agreement template shall be used as the base agreement into which the Commission's decision on the disputed issues will be incorporated?

Supra's motion identifies no factual or legal point that the Commission overlooked in deciding this issue. Moreover, Supra's arguments are essentially the same arguments (although set forth in greater detail) that were included in Supra's post hearing brief. Thus, the Commission should summarily reject Supra's request for reconsideration of this item. Even if the Commission considers Supra's request to reconsider this item, Supra has not offered any basis for reversal of the Commission's original decision.

Supra's claims to be "completely unfamiliar" with the proposed interconnection agreement that was attached to BellSouth's Petition for Arbitration. That statement is simply not credible in light of the undisputed record evidence that BellSouth provided Supra with a draft of that proposed interconnection agreement on July 20, 2000. Hearing Tr. Vol. 1 at 40. Indeed, Supra's attorneys met with BellSouth representatives on August 7-8, 2000 to discuss that proposed agreement. Id. at 41. Moreover, BellSouth's representatives and Supra's representatives participated in additional meetings to discuss the proposed agreement by conference call on August 18 and 25, 2000. Id. at 42. Reduced to its essentials, Supra's argument appears to be that, because it is a "small" company, it should be permitted to unilaterally dictate the terms and conditions of the Follow-On Agreement.

Contrary to Supra's vague assertions of prejudice, the fact is that BellSouth would be prejudiced if forced to use as the base agreement any agreement other than the one that both parties were using as a base agreement since July 20, 2000. In its response to BellSouth's Petition for Arbitration filed in this docket, Supra did not object to the base agreement filed with BellSouth's petition. It only objected months later, well past the time that BellSouth would have an opportunity to raise any additional arbitration issues that may well have been raised had Supra disclosed its objection, albeit unfounded, to the base agreement at the appropriate time.

The Commission's ruling on this issue was based on two key findings. First, the Commission found that "BellSouth is the only party that produced a complete agreement in this record." FAO at p. 28. Second, the Commission also found that "Supra has not produced a complete, alternative interconnection agreement in this proceeding for [the Commission's] consideration." Id. at p. 29. Although Supra submitted into evidence a copy of the parties' now-

expired agreement, that agreement was not updated or modified (FAO at p. 29) and is therefore not a meaningful alternative to the template proposed by BellSouth.

While Supra has no basis for disputing either of these findings, it nevertheless attempts to cloud the issue by wrongly asserting that the Commission simply ordered the parties to use "BellSouth's most current template agreement," i.e, one not in evidence in this case. Motion at p. 9. Supra's mischaracterization ignores the plain statement at the beginning of the paragraph from which it offered only a selective quote: "BellSouth's most current template agreement, filed with their petition for arbitration, is the only interconnection agreement produced in its entirety as part of this arbitration." FAO at p. 29 (emph. added). A plain reading of the whole paragraph clearly requires BellSouth and Supra to use as a base agreement the version of the interconnection agreement filed with BellSouth's petition.[1] Supra's strained interpretation of the order on this point is simply another example of its repeated attempts to manufacture disputes where none should exist.

Issue B: What are the appropriate fora for the submission of disputes under the new agreement?

Supra's motion identifies no factual or legal point that the Commission overlooked in deciding this issue. Moreover, Supra's arguments are essentially the same arguments (although set forth in greater detail) that were included in Supra's post hearing brief. Thus, the Commission should summarily reject Supra's request for reconsideration of this item. Even if the Commission considers Supra's request to reconsider this item, Supra has not offered any basis for reversal of the Commission's original decision.

[1] On March 12, 2002, BellSouth transmitted to Supra both a red-lined and clean copy of the follow-on agreement, which incorporates the Commission's decisions in this case into the base agreement that was attached to BellSouth's petition. To date, Supra has refused to execute or even discuss the terms of the follow-on agreement.

Supra's motion devotes twenty-five pages to this item, but essentially argues only two points. First, Supra claims that the Commission misinterpreted its authority under state law. Second, Supra argues that the Commission failed to acknowledge the "binding and controlling" effect of the recent Eleventh Circuit decision in MCImetro. Neither of these points provides a basis for reconsideration. Supra is merely rehashing the same points it previously raised with the Commission. Therefore, reconsideration is not warranted.

Without addressing Supra's flawed argument point by point, it is sufficient to note that the Commission correctly interpreted its authority under state law. Supra's motion on this item amounts to nothing more than a disagreement with the Commission's conclusion. A party's disagreement with the Commission is not a sufficient basis for reconsideration. Moreover, Supra's claim that the Commission ignored the MCIMetro decision is false. The Commission explained: "We do not agree with Supra's contention that the 11th Circuit's decision in MCImetro is controlling at this time as applied to this issue. However, even if it is, we believe there is sufficient authority in state law for us to act." FAO at p. 39.

As noted in BellSouth's supplemental brief on this item, the Eleventh Circuit's decision in MCImetro only stands for the proposition that, under that court's interpretation of federal law and Georgia law, the Georgia PSC has no authority to interpret or enforce the terms of the agreement between BellSouth and MCImetro. Neither the Eleventh Circuit nor any other court has considered the issue of whether this Commission has jurisdiction, under Florida law, to resolve disputes arising under an interconnection agreement. Most importantly, the Eleventh Circuit did not address, even indirectly, the issue of whether a state commission could compel parties to submit to binding arbitration.

The Eleventh Court expressly stated that the scope of a state commission's authority is not determined solely by reference to federal law, but instead requires an analysis of state law. 2002 WL 27099, slip op. at 9 ("Having determined that the GPSC has no power under federal law to interpret the interconnection agreements, we must now consider whether there is some other appropriate basis for the GPSC to interpret these agreements.").

Under Florida law, this Commission has express authority to interpret and enforce interconnection agreements between ILECs and ALECs. Florida Stat. § 364.162 specifically grants the FPSC "the authority to arbitrate any dispute regarding interpretation of interconnection or resale prices and terms and conditions." Fla. Stat. § 364.162(1) (emph. added).[2] Thus, this Commission has specific and express authority to decide "any dispute regarding interpretation" of the terms and conditions of interconnection or resale. This grant of authority obviously includes the authority to interpret such terms and conditions when they are included within an interconnection agreement.[3]

Although Supra claims that this Commission has only "quasi-legislative" authority (Motion at p. 14) this Commission plainly exercises quasi-judicial authority when such authority is delegated to it by the Florida legislature. Southern Bell Tel. and Tel. Co. v. Florida Pub. Serv. Comm'n, 453 So.2d 780, 781 (Fla. 1984)(statute authorizing Commission to adjudicate contract

[2] While that section preceded the adoption of the 1996 Act, it was not preempted by that legislation and remains in full force and effect. 47 U.S.C. § 251(d)(3) recognized that certain states, including Florida, had already taken steps to introduce local exchange competition and left state laws in effect, except in limited circumstances.

[3] The Commission also has more general authority in Fla. Stat. § 364.01(4)(g) to "[e]nsure that all providers of telecommunications services are treated fairly . . .." Similarly, Fla. Stat. § 364.337 authorizes the Commission to exercise "continuing regulatory oversight over the provision of basic local exchange telecommunications service provided by a certificated alternative local exchange telecommunications company . . . for purposes of . . . ensuring the fair treatment of all telecommunications providers in the telecommunications marketplace." Either of these general grants of authority could be considered broad enough to include the adjudication of disputes arising under an interconnection agreement.

disputes concerning toll revenue was a "proper assignment of quasi-judicial authority" pursuant to Fla. Const. art. V, § 1). The express authority under Fla. Stat. § 364.162 to resolve "any dispute regarding interpretation" of the terms and conditions of interconnection or resale is also "a proper assignment of quasi-judicial authority" under the Florida Constitution. Therefore, the Commission would not be acting in a quasi-legislative capacity when resolving disputes between ALECs and ILECs arising out of interconnection disputes.

Setting aside its tortured and result-oriented efforts to construe the Florida statutes, Supra has absolutely no legal support for its position that BellSouth could be compelled to submit to binding commercial arbitration. "Arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." AT & T Technologies v. Communications Workers of America, 475 U.S. 643, 648, 106 S. Ct. 1415, 89 L.Ed.2d 648 (1986) (emph. added); accord Atkinson v. Sinclair Refining Co., 370 U.S. 238, 241, 82 S. Ct. 1318, 1320 (1962) (a court cannot require a party to submit to arbitration any dispute which he did not agree to submit). The Commission recently ruled on this very issue in the AT&T-BellSouth arbitration, (FPSC Docket No. 000731-TP) where it concluded that "nothing in the law gives [the Commission] explicit authority to require third party arbitration." Order No. PSC-01-1402-FOF-TP (June 28, 2001) at p. 111. Nowhere in its twenty-five page discussion of this item does Supra even attempt to address this fundamental issue. The motion for reconsideration should be denied.

Issue C: Should the Interconnection Agreement contain language to the effect that it will not be filed with the Florida Public Service Commission for approval prior to an ALEC obtaining ALEC certification from the Florida Public Service Commission?

In its discussion of this item, Supra simply argues that the Commission misinterpreted Florida law. Once again, disagreement with the Commission is not grounds for reconsideration.

Supra's motion identifies no factual or legal point that the Commission overlooked in deciding this issue. The motion for reconsideration on this point should be denied.

Issue D: Should BellSouth be required to provide to Supra a download of all of BellSouth's Customer Service Records ("CSRs")?

The Commission correctly concluded that a download of customer service records ("CSRs") "would be contrary to the Telecommunications Act's prohibitions against unauthorized access or disclosure of Customer Proprietary Network Information (CPNI)." FAO at p. 48. Supra has offered no grounds for reconsideration of that decision. Supra's motion states: "[T]here is no evidence in the record that supports a finding that CSRs even contain CPNI." Motion at p. 42. This statement ignores Mr. Pate's testimony as well as Mr. Ramos's testimony.

Mr. Pate testified that an end-user's customer service record ("CSR") information contains confidential and proprietary information that must be protected. Hearing Tr. Vol. 8 at p. 1098. In addition, Mr. Ramos testified: "Supra agrees with Mr. Pate that Supra is entitled to view those customer service records where the end-user has given Supra permission to do so." Hearing Tr. Vol. 5 at p. 632. Mr. Ramos's agreement that end-user permission would be needed for Supra to view the CSRs is an admission that the records contain CPNI. Otherwise, Supra would not need end-user permission to view them. Supra's willingness to distort the record evidence in this case and ignore the testimony of its own witness demonstrates that there are no limits to what Supra will do to obtain reconsideration.

The so-called "mountain of evidence" that Supra claims supports its position is really a small pile of half-truths and mischaracterizations of the federal CPNI rules. The Commission should deny reconsideration of this item.

Issue E: **Should the rate for a loop be reduced when the loop utilizes Digitally Added Main Line (DAML) equipment?**

This issue originally concerned only whether the rate for a loop provisioned using DAML equipment should be different than the rate for a loop that does not use that equipment. Supra expanded the issue to include the issue of whether BellSouth should notify Supra when it is using DAML equipment on a line serving a Supra end-user. The motion for reconsideration does not provide any grounds for the Commission to revisit its original ruling. Indeed, the motion offers nothing more than inaccurate and contradictory statements, bound together with mischaracterizations of the record evidence.

For example, Supra asserts, "DAML is a line-sharing technology." Motion at p. 43. Supra is incorrect. DAML is a loop technology in the same manner that Digital Loop Carrier ("DLC") is a loop technology. Supra attempts to confuse the real issue here, rates for unbundled loops, with other issues such as line sharing.

To support its claim for a lower rate on DAML loops, Supra asserts, "In fact, the evidence shows that DAML is cost effective." Id. Supra's statement contradicts the sentence immediately prior that "BellSouth has failed to present any evidence that DAML lines are more expensive than copper lines." Id. If Supra's first sentence is to be believed (which it should not be), then the next question ought to be "What cost information has Supra put into the record to show the relative costs of copper loops and DAML provided loops?" The simple answer is that Supra has not made any comparative showing of the cost of all cooper loops versus the cost for DAML provided loops. In fact, Supra could have raised this issue in the generic cost docket (Docket 990649-TP) but apparently chose not to do so.

Supra also asserts "The record is clear – DAML technology is less reliable than bare copper." Motion at p. 52. Yet, Supra points to no reliability studies or mean time between

failure statistics to support such a baseless proposition. Supra incorrectly asserts that BellSouth's witness Kephart stated, "BellSouth does not currently have a process for "informing CLECs of the type of plant that we [that is, BellSouth] use to serve their [that is, CLECs'] customers. ""
Motion at p. 44. One need only refer to the first question and answer Supra lists on page 44 of its motion to understand that that is simply not what Mr. Kephart said. Instead of saying, as Supra incorrectly asserts, that BellSouth has no process for informing CLECs of loop makeup information, Mr. Kephart states that since DAML is "simply a piece of carrier equipment it would be part of the loop makeup information, and by doing a loop makeup, you [that is, Supra] could find that information out." Id.

Supra also confuses access to LFACS with access to loop makeup information. Loop makeup information is stored in LFACs and as witness Kephart pointed out, that information is available to CLECs including Supra when appropriate terms and conditions are present in the interconnection agreement.[4] In response to Supra's question, "Do you think it's important that CLECs have access to that information [that is, loop makeup information]?, Mr. Kephart answered "Yes or we wouldn't be providing it." Motion at p. 45. Apparently satisfied with Kephart's answer, Supra's attorney replied "Fair enough." Id.

Supra claims to have impeached witness Kephart's testimony, claiming that during cross examination Kephart agreed that there are certain situations in which DAML might be more cost effective than some other loop technology choices. In fact, Mr. Kephart's testimony was completely consistent that DAML is useful in limited circumstances. Supra, however, misses the real point. The question before the Commission is not whether DAML equipment is useful in certain limited circumstances, the real question is what rate Supra, and other CLECs should pay

for loops provisioned and priced according to TELRIC methodology. The clear answer is that DAML equipment is not more cost effective than the loop provisioning technique modeled in BellSouth's cost studies. Indeed, if DAML equipment were used, instead of the technique modeled, the resultant rate would be higher rather than lower. One need merely read the part of Kephart's testimony quoted on page 49 of Supra's motion to put this issue into perspective: "Yes. It's [that is, the use of DAML equipment] cost effective in certain circumstances or we wouldn't be using it. But from a pure engineering standpoint, when you first design the plant [that is, the loop infrastructure] which is what our TELRIC costs are based on, DAML is not considered. However, after you've designed it and everything is there, if you run into a facility problem, DAML may be an alternative to resolve that problem, and it could be a more cost-effective alternative than, say, placing a whole new piece of cable." Thus, Supra's claim is entirely without merit. DAML is not more cost effective than the loop infrastructure BellSouth modeled. Unless CLECs wish higher rather than lower rates for unbundled loops, which is certainly not likely, BellSouth correctly excluded the use of DAML from its cost studies.

In short, Supra has not given the Commission any reason to change its ruling on this issue. The motion for reconsideration should be denied on this point.

[4] The proposed follow-on agreement BellSouth transmitted to Supra on March 12, 2002 includes language concerning access to loop makeup information.

Issue F: **Under what conditions, if any, should the Interconnection Agreement state that the parties may withhold payment of disputed charges?**

Under what conditions, if any, should the Interconnection Agreement state that the parties may withhold payment of undisputed charges?

Under what circumstances, if any, would BellSouth be permitted to disconnect service to Supra for nonpayment?

While this issue should be straight-forward, Supra has used every artifice to cloud the issue because it does not want to pay any amounts to BellSouth. In arguing for reconsideration, Supra mischaracterizes the Commission's order, attempts to introduce new evidence that it is not in the record, and accuses the Commission Staff of misconduct. The Commission should see these efforts to confuse the record for what they are: a desperate attempt to avoid paying legitimate charges.

First, Supra claims that the Commission ignored Supra's evidence. Yet, the FAO (at pp. 55-57) is replete with references to Mr. Ramos's testimony.

Second, Supra claims that BellSouth is withholding money belonging to Supra. That false claim is not part of the record in this case. Therefore, the Commission cannot consider it in deciding the motion for reconsideration. See, e.g., In re: St. George Island Util. Co., Ltd., Docket No. 940109-WU, Order No. PSC-95-0274-FOF-WU, Mar. 1, 1995, 1996 WL 116782 at *2 (striking new evidence attached as an exhibit to a motion for reconsideration because the Commission's "decision, even on reconsideration, must be based solely upon the record."). Moreover, that false claim is the subject of a confidential arbitration proceeding. Therefore, BellSouth will not comment on the allegation any further.

Third, Supra claims that the Commission Staff provided inaccurate information to the Commissioners that may have influenced the outcome of this issue. This claim also cannot be the basis for reconsideration because it is based entirely on new evidence that was not part of the

record in this case. It is worth noting that, despite Supra's representations to Commissioner Palecki that a public records request for information had been filed with the Commission prior to the March 5, 2002 Agenda ("It was very recent, in the last few days" Agenda Tr. at p. 44), the truth is that Supra made no such request until March 6, 2002, the day after the agenda conference. Supra's lack of candor to the Commission is another example of the "win at all costs" mentality that appears to govern Supra's behavior in this docket.

Even if the new information were considered, the claim is unfounded. Supra offers no evidence that BellSouth disclosed any information to the Commission Staff. Supra itself may be the source of at least some of the information that appears to have been communicated to Staff. Moreover, it is interesting to note that, in the discussion of this same issue, Supra has improperly disclosed facts about the confidential commercial arbitration proceeding, while simultaneously feigning alarm that BellSouth might have disclosed the same type of information. Despite Supra's incomplete recitation of some of the issues pending before the arbitration panel, BellSouth will not compound the problem by commenting on those confidential matters.

In any event, whether or not Supra owes BellSouth tens of millions of dollars for services ordered and provided is not the real issue here. The issues are whether BellSouth should be permitted to disconnect service to Supra for its failure to pay undisputed amounts and whether Supra should be able to avoid payment of lawful charges simply by filing a meritless claim against BellSouth that might take months or even years to resolve. The Commission properly resolved these issues based on the record evidence and considering the arguments made by both parties. There is no reason to reconsider that ruling.

Issue G: **Should BellSouth be required to provide transport to Supra Telecom if that transport crosses LATA boundaries?**

The Commission resolved this issue by interpreting 47 U.S.C. § 271(a), which the Commission found "specifically precludes BellSouth from providing interLATA services to any carrier . . . ." FAO at p. 62. While Supra claims the Commission ignored a "mountain of evidence," the truth is that the Commission merely rejected Supra's nonsensical interpretation of Section 271. Supra apparently is confused about the distinction between factual issues and legal issues. Supra's flawed legal analysis does not become a "fact in evidence" merely because that flawed analysis is inserted into Mr. Nilson's testimony. There is no basis for a reconsideration of this item.

Issue I: **Under what conditions, if any, may BellSouth refuse to provide service under the terms of the Interconnection Agreement**

Retreating to the familiar claim that the Commission is biased, Supra leads off the discussion of this item with an analysis of the Commission's description of the witness testimony in the FAO. Aside from that pointless discussion, Supra offers no basis for reconsideration other than a verbatim reproduction of certain provisions in the parties' expired agreement. The motion for reconsideration should be denied on this item.

Issue K: **Should calls to Internet Service Providers be treated as local traffic for the purposes of reciprocal compensation?**

The Commission correctly concluded that it does not have jurisdiction to address this issue in light of the FCC's Order on Remand and Report and Order, FCC 01-131, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (released April 27, 2001) and *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68 (released April 27, 2001) ("Order on Remand"). Supra's motion offers nothing to justify a reversal of that decision.

Issue L: **Should the Interconnection Agreement include validation and audit requirements which will enable Supra Telecom to assure the accuracy and reliability of the performance data BellSouth provides to Supra Telecom?**

The Commission correctly concluded that the validation and audit requirements set forth in Order No. PSC-01-1819-FOF-TP are appropriate. Supra's motion for reconsideration does not identify any fact or point of law that the Commission failed to consider. The motion should be denied on this point.

Issue M: **What does "currently combines" means as that phrase is used in 47 C.F.R.§ 51.315(b)?**

Under what conditions, if any, may BellSouth charge Supra Telecom a "non-recurring charge" for combining network elements on behalf of Supra Telecom?

Should BellSouth be directed to perform, upon request, the functions necessary to combine unbundled network elements that are ordinarily combined in its network? If so, what charges, if any, should apply?

Should BellSouth be required to combine network elements that are not ordinarily combined in its network? If so, what charges, if any, should apply?

The FCC, in its *UNE Remand Order*, confirmed that BellSouth presently has no obligation to combine network elements for ALECs, when those elements are not currently combined in BellSouth's network. The FCC also confirmed that "except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines." 47 C.F.R. § 51.315(b). The FCC also made clear in its UNE Remand Order that Rule 315(b) applies to elements that are "in fact" combined. In that Order, the FCC found that "to the extent an unbundled loop is in fact connected to unbundled dedicated transport, the statute and our rule 315(b) require the incumbent to provide such elements to requesting carriers in combined form." (¶ 480, emphasis added). Indeed, the FCC specifically declined to adopt a

definition of "currently combined" that would include all elements "ordinarily combined" in the incumbent's network. Id.

The Commission decided this precise question in three separate arbitrations in 2001. Order No. PSC-01-1402-FOF-TP (June 28, 2001); Order No. PSC-01-0824-FOF-TP (March 30, 2001); and Order No. PSC-01-1095-FOF-TP (May 8, 2001). In each case, the Commission correctly interpreted applicable federal law on this issue. Supra's motion merely argues that the Commission should have agreed with Mr. Nilson's legal interpretations. There is no legitimate basis for a reconsideration of this legal issue.

Issue N: **What terms and conditions and what separate rates, if any, should apply for Supra Telecom to gain access to and use BellSouth's facilities to serve multi-tenant environments?**

Supra asserts that this Commission has violated "Federal rules" without mentioning which particular rules Supra believes the Commission has violated. Supra implies that BellSouth's concerns for network reliability and control have been "ignored by the FCC." Supra is wrong. In its First Report and Order (CC Docket No. 96-98, released August 8, 1996) at paragraph 198, the FCC included the following statement:

> Specific, significant, and demonstrable network reliability concerns associated with providing interconnection or access at particular point, however, will be regarded as relevant evidence that interconnection or access at that point is technically infeasible.

The FCC elaborated further on this point at paragraph 203 of that same order, by stating:

> We also conclude, however, that legitimate threats to network reliability and security must be considered in evaluating the technical feasibility of interconnection or access to incumbent LEC networks. Negative network reliability effects are necessarily contrary to a finding of technical feasibility. *Each carrier must be able to retain responsibility for the management, control, and performance of its own network."* (emphasis added).

In fact, one important aspect of the FCC's definition of "technical feasibility" is the recognition that methods of interconnection or access that adversely affect network reliability are "relevant evidence that interconnection or access at that particular point is technically infeasible." First Report and Order, ¶¶ 198, 203.

Supra alleges that "Moreover, it [that is, the Commission's decision] has increased the cost and lead-time for installing such panels [that is, the access terminals through which CLECs gain access to sub-loop elements], put the full (not shared as the FCC envisioned) cost burden on each ALEC one at a time, and increased the time to provision new installations without properly defining all of the time intervals involved." Motion at p. 89. Supra's comments appear to concern three points: (1) that there is a cost and provisioning time associated with the provisioning of the access terminal; (2) that the FCC intended that those costs be shared and; (3) that the Commission did not delineate the timeline for each and every work activity associated with provisioning of access terminals.

First, the Commission rightly determined that access terminals are a technically feasible means of providing ALECs the access to sub-loop elements they desire while still preserving network reliability and security. Supra has proposed no access method or cost estimates to support its view that access terminals are an inappropriate or costly means of access. Second, the FCC's rules do not call for the sharing of access terminals as Supra incorrectly suggests. Indeed, this Commission explored the question of whether a given ALEC should have its own access terminal and rightly concluded that once a given ALEC had made its own investment in access terminals for sub-loop elements that other ALECs should not be able to use that ALEC's investment without permission. Order No. PSC-99-2009-FOF-TP at p. 4. Third, Supra has

failed to identify which provisioning intervals it believes the Commission should have articulated so one is left to guess at what Supra wants.

Supra states "Further, in recognition of Kephart's "Garden apartment" and "high-rise scenarios, this Commission must establish clear and unequivocal measurements that define how one will determine which is appropriate at a given location, or reconsider that entire two prong conclusion in favor of a single, properly specified standard that will prevent future argument and litigation." Motion at pp. 90-91. Apparently what Supra seeks is a list of each and every building in BellSouth's serving area, the type of structure of each, the configuration and type of BellSouth's facilities serving each and a recommendation to Supra as to what it might request on an unbundled basis. One can only imagine the difficulty of compiling such a list. Even if such a list might be developed, it would immediately be out of date as new construction, demolition, and renovation occur. The Commission rightly decided that that form of access to which an ALEC is entitled is a function of the type and configuration of BellSouth's facilities at given locations. Thus, Supra's suggestion that the Commission "start over" should be rejected.

Issue O: **Is BellSouth obligated to provide local circuit switching at UNE rates to Supra to serve the first three lines to a customer located in Density Zone 1? Is BellSouth obligated to provide local circuit switching at UNE rates to Supra to serve four or more lines provided to a customer located in Density Zone 1?**

These issues involve the application of FCC rules regarding the exemption for unbundling local circuit switching. The Commission properly interpreted those rules. Supra's motion should be denied on this item.

Supra's request for reconsideration of this issue is somewhat surprising, in light of the fact that BellSouth's interpretation of the FCC rule was rejected by the Commission. BellSouth's argued that, where a CLEC serves a customer with four or more lines, BellSouth is

not obligated to provide local circuit switching at UNE rates for any of those lines, including the first three. The Commission found that BellSouth is obligated to provide local circuit switching at UNE rates for the first three lines, but not for the fourth and subsequent lines. While BellSouth disagrees with the Commission's interpretation of the FCC's *UNE Remand Order*, it is willing to accept the Commission's decision. But, Supra's motion goes far beyond the FCC's rules on this issue and should be denied on this item

In support of its motion, Supra disputes BellSouth's claim that "collocation in Remote terminals could happen in '60 days'... " motion at p. 94. Yet, Supra offered no evidence at the hearing to support its claim that remote terminal collocation would take less than the time identified by BellSouth. Thus, Supra has no basis for disputing BellSouth's estimate and the Commission was within its discretion to adopt BellSouth's number. More importantly, however, whatever the interval is would have no bearing on unbundled switching costs, which are the real issue here.

Supra states "Make no mistake; **there is no evidence in the record that would support a conclusion that alternative providers of local circuit switching exist in Miami, Fort Lauderdale or Orlando**." Motion at p. 95. (emph. in original). Supra conveniently ignores the obvious fact that other parties besides BellSouth have self-provisioned switching functionality. Other ALECs have acquired and operate their own local switches. Supra itself could self provision local switching and apparently intends to do so according to its comments beginning on page 98 of its Motion.

Issue P: **Under what criteria may Supra Telecom charge the tandem switching rate?**

Based on Supra Telcom's network configuration as of January 31, 2001, has Supra Telecom met these criteria?

At a minimum, a carrier cannot receive the tandem switching rate unless it proves that its tandem switches serve geographic areas comparable to the ILEC's tandem switches. In this case, Supra cannot make the required showing regarding geographic comparability because it has no switch. Supra claims that the Commission should simply declare Supra's entitlement to the tandem switching rate, with no evidence. The Commission rightly declined to do so.

Issue Q: **What are the appropriate means for BellSouth to provide unbundled local loops for provision of DSL service when such loops are provisioned on digital loop carrier facilities?**

This issue concerns Supra's demand that BellSouth provide unbundled packet switching. In its *UNE Remand Order* (at ¶ 311), the FCC expressly declined "to unbundle specific packet switching technologies incumbent LECs may have deployed in their networks." The Commission properly reached the same conclusion.

Supra states "Accordingly, Supra asks that this Commission to order [sic] BellSouth to provide Supra, at Supra's option, the ability to order collocated DSLAM and unbundled access to packet switching as a UNE at TELRIC cost, whenever BellSouth deploys local switching over DLC [that is, Digital Loop Carrier] facilities, **at Supra's request**." Motion at p. 102 (emph. in original). Supra is not entitled by law to unbundled packet switching unless four circumstances exist simultaneously as set out in the FCC's rules. Those circumstances do not at present exist anywhere in Florida. Nonetheless, Supra would seek to impose a burden on BellSouth far beyond the FCC's requirements.

Without any basis whatsoever, Supra makes the claim that "BellSouth, to date, has refused Supra the network information necessary to properly file a collocation application in a

single RT [that is, remote terminal] anywhere in the nine state region." Motion at p. 103, Supra is wrong. BellSouth allows ALECs including Supra to collocate equipment in BellSouth's remote terminals as long as its interconnection agreement incorporates appropriate language. The proposed follow-on agreement that BellSouth sent to Supra on March 12, 2002 includes language that would allow Supra to collocate at BellSouth's remote terminal locations. Supra's real motive becomes entirely apparent in its statement that "...as a UNE-P based provider, [Supra] should not be required to collocate in order to provide DSL service." Id. Supra could not have made its motive any clearer. Supra doesn't intend to collocate DSLAM equipment in BellSouth's remote terminals. Instead, Supra hopes to use the DSLAMs that BellSouth provides for itself, thereby obtaining a "free ride" on BellSouth's network investment.

In any event, Supra has offered no basis for reconsideration of this issue. The Commission should affirm its original decision.

Issue S: **Is BellSouth required to provide Supra Telecom with nondiscriminatory access to the same databases BellSouth uses to provision its customers?**

The Commission correctly ruled that Supra is not entitled to access BellSouth's OSS in a manner different from the access provided to every other ALEC in Florida. BellSouth offers ALECs access to its pre-ordering and ordering OSS through LENS, EDI, TAG and RoboTAG™ and provides repair and maintenance services via TAFI and ECTA. Hearing Tr., Vol. 8 at 1103-1104. ALECs may also utilize BellSouth's region-wide Web-based electronic interface known as CLEC Service Order Tracking System ("CSOTS") to view service orders on-line, track service orders, and determine the status of service orders. Hearing Tr. Vol. 8 at 1115. The variety of electronic interfaces available to ALECs provide them with non-discriminatory access to BellSouth's OSS as required by the 1996 Act. The recurring theme of Supra's motion for reconsideration (which merely echoes the testimony at the hearing) is that every function, every

system, and every process used by Supra must be identical to every function, every system, and every process used by BellSouth. The fundamental problem with that theme is that it does not conform to the legal standard established by the 1996 Act and the FCC.

The Commission properly rejected Supra's "strict interpretation of FCC Rule 51.313(c) as obligating BellSouth to provide Supra with direct access to its OSS." FAO at p. 120. Supra's motion offers nothing more than contrary legal arguments based on its erroneous interpretations of the applicable statutory provisions and FCC rules implementing those provisions. All of these arguments either were or could have been raised in Supra's testimony and briefs. And, the Commission committed no error when it refused to adopt the findings of the commercial arbitration panel -- three lawyers with no telecommunications background. In short, none of Supra's arguments provides a basis for reconsideration.

BellSouth's Post Hearing Brief filed in this matter, in conjunction with the pre-filed and live testimony of Mr. Pate, proves that BellSouth is providing ALECs, including Supra, with nondiscriminatory access to its OSS as required by the 1996 Act and the FCC. BellSouth's arguments and Mr. Pate's testimony need not be repeated here. It bears repeating, however, that the FCC requires an ILEC such as BellSouth to provide access to OSS that allows ALECs to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for resale services in substantially the same time and manner as BellSouth does for itself; and, in the case of unbundled network elements, provide a reasonable competitor with a meaningful opportunity to compete. First Report and Order, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98 and 95-185 (rel. August 8, 1996) at ¶¶ 312, 518.

Moreover, in paragraph 87 of its Order on BellSouth's second 271 application for Louisiana, the FCC reiterated its requirement stated in the Ameritech Michigan Order and in the Local Competition First Report and Order "that a BOC must offer access to competing carriers that is analogous to OSS functions that a BOC provides to itself. Access to OSS functions must be offered in 'substantially the same time and manner' as the BOC. For those OSS functions that have no retail analogue . . . a BOC must offer access sufficient to allow an efficient competitor a meaningful opportunity to compete." *Application of BellSouth Corporation, et al. for Provision of In-Region, InterLATA Services in Louisiana*, 13 FCC Rcd. 20599 (1998) ("*Louisiana II Order*") at ¶ 87.

No FCC order has ever required an ILEC to provide direct access to its OSS. Instead, the FCC follows a two-step approach to determine if the BOC has met the non-discrimination standard for each OSS function. First the FCC will determine, "whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them." Next, the FCC will determine "whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter." This includes an examination of "performance measurements and other evidence of commercial readiness." See *Louisiana II Order* at ¶ 85. As Mr. Pate explained: "BellSouth's interfaces have been used commercially for years. . . . [T]he levels of commercial usage alone clearly demonstrate the operational readiness of these interfaces. However, these interfaces have also been subjected to extensive third party testing and carrier-to-carrier testing . . . ." Hearing Tr., Vol. 8 at 1105.

Moreover, the "direct access" to BellSouth's OSS that Supra seeks, in addition to being entirely unwarranted, would be improper. BellSouth's RNS and ROS are not designed to handle orders for resale and UNEs. Hearing Tr. Vol. 8 at 1167. Therefore, if Supra obtains access to the retail ordering systems used by BellSouth employees, Supra will merely be submitting orders for BellSouth retail services, not for the wholesale services purchased by ALECs. Mr. Nilson admitted that modifications would have to be made to those systems to permit ALECs to use them, at least with regard to billing. Hearing Tr. Vol. 7 at 1021. Supra simply is not entitled to demand an overhaul of BellSouth's retail ordering systems when it has made no showing that the electronic ordering interfaces available to it are insufficient. The motion for reconsideration should be denied.

Issue T: **Should Standard Message Desk Interface-Enhanced ("SMDI-E"), Inter-Switch Voice Messaging Service ("IVMS") and any other corresponding signaling associated with voice mail messaging be included within the cost of the UNE switching port? If not, what are the appropriate charges, if any?**

Supra's motion offers no basis for reconsideration of this item. Citing from witness Nilson's testimony, Supra states "ALECs' access to the ISVM signaling 'network' should be defined as a fundamental component of Local Switching line and trunk ports..." Motion at p. 137. Supra attempts to combine various network elements in its discussion of unbundled local switching. Supra appears to define unbundled SMDI as part of the signaling network rather than as part of unbundled local switching, the issue at hand. Indeed, in setting an ILEC's Section 271 obligations, the Telecommunications Act of 1996 recognizes the difference between access to unbundled local switching (covered by checklist item VI) and access to unbundled signaling and call related databases (covered by checklist item X).

Supra states "Furthermore, in the above-referenced citation, Nilson cites to the same Lucent documentation, Figures 13-11 and 13-13, which clearly show that there are no elements in Kephart's definition of SMDI-E that are not required to place a voice call between two switches except the data link **(4)** in his definition of SMDI or SMDI-E." Motion at p. 138. (emphasis in original). Exactly what point Supra is trying to make is not clear. BellSouth does not deny that various network elements are exercised during the process of customers' making and receiving calls. By inference, however, one might be lead to the erroneous conclusion that everything is part of unbundled local switching if it is used during a call. This would include, for example, loops, databases, operator services, directory listings, and interoffice transport. Surely Supra does not claim that every single element, device or database used during call processing is part of unbundled local switching and that therefore, no incremental charges should accrue to Supra for their use. Extrapolation of Supra's position, nonetheless, would lead one to that illogical conclusion. The Commission rightly decided the treatment of charges associated with SMDI and should accordingly ignore Supra's ill conceived attempt here to blur the clear lines that the Telecommunications Act of 1996 has drawn such that Supra would receive SMDI functionality for free.

Issue V: Is BellSouth required to provide Supra Telecom the capability to submit orders electronically for all wholesale services and elements?

The Commission properly ruled that non-discriminatory access does not require that all LSRs be submitted electronically and involve no manual processes. BellSouth's own retail operations often involve manual processes. Therefore, there is no requirement that every LSR submitted by an ALEC be submitted electronically in order to provide non-discriminatory access. The Commission correctly found that certain of BellSouth's retail services, primarily complex services, involve manual handling by BellSouth account teams for BellSouth's own

retail customers. FAO at p. 134. Supra's motion for reconsideration points to no fact or legal principle that the Commission failed to consider. Instead, Supra merely disagrees with the Commission's decision. Reconsideration is not appropriate under these circumstances.

Issue W: When, if at all, should there be manual intervention on electronically submitted orders?

Once again, Supra offers nothing but its contrary arguments to justify a request for reconsideration. Supra does not point to any evidence the Commission failed to consider or legal principle that the Commission failed to apply. Disagreement with the Commission is not a sufficient basis for a party to obtain reconsideration.

Non-discriminatory access does not require that all LSRs be submitted electronically and involve no manual processes. BellSouth's own retail processes often involve manual processes and therefore there is no requirement that every LSR has to be submitted electronically in order to provide non-discriminatory access. The Commission's original ruling on this issue is correct. Because the same manual processes are in place for both ALEC and BellSouth retail orders, the processes are competitively neutral, which is exactly what both the Act and the FCC require.

Issue X: Should Supra Telecom be allowed to share with a third party, the spectrum on a local loop for voice and data when Supra Telecom purchases a loop/port combination and if so, under what rates, terms and conditions?

Supra's motion with respect to this issue is based on (1) a rehash of its prior arguments to the Commission and (2) the attempted introduction of new evidence in this case. Neither approach is appropriate. The Commission should not reconsider its decision.

When Supra purchases UNE-P from BellSouth, it becomes the owner of all the features, function and capabilities that the switch and loop is capable of providing. Supra thus has the exclusive right to the high frequency spectrum on that loop. If Supra wants its end users served

in a UNE-P arrangement to have DSL service, then Supra must offer the ADSL service itself or in conjunction with another provider. BellSouth cooperates with ALECs who engage in "line splitting," which would allow Supra to partner with a data services provider to utilize the high frequency spectrum of its UNE voice loop to provide DSL services to the end user.

The FCC has definitively and plainly stated that incumbent LECs have no obligation to provide their own xDSL services over loops when the incumbent LEC is no longer the voice provider. The FCC, in denying AT&T's request for reconsideration of its order *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98, *Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98*, 14 FCC Rcd 20912, 20946, 20947 (1999) (the "*Line Sharing Order*") specifically reaffirmed this point:

> Although the Line Sharing Order obligates incumbent LECs to make the high frequency portion of the loop separately available to competing carriers on loops where incumbent LECs provide voice service, it does not require that they provide xDSL service when they are not longer the voice provider.

In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 98-147 and 98-96, *Third Report and Order on Reconsideration in CC Docket No. 98-147, and Fourth Report and Order on Reconsideration in CC Docket No. 96-98,* 16 FCC Rcd 2101 (2001)("*Line Splitting Order*") at ¶ 26.

Supra's new allegations about BellSouth's implementation of its policy are not properly before the Commission in this docket. If Supra believes it has grounds to complain about a specific action BellSouth has taken, the appropriate recourse is for Supra to file a complaint with this Commission. It is not appropriate, however, to attempt to use unproven allegations as a

basis to seek reconsideration in this case. The Commission's decision in this case must be limited to the record evidence.

Issue Y: Should BellSouth be required to provide downloads of RSAG, LFACS, PSIMS and PIC databases without license agreements and without charge?

Peppered with a vague and conclusory charge of "discrimination," the motion for reconsideration on this item is, once again, merely a rehash of arguments Supra made in its prior submissions to the Commission. The standard for reconsideration demands far more.

Issue AA: When BellSouth rejects or clarifies a Supra Telecom order, should BellSouth be required to identify all errors in the order that caused it to be rejected or clarified?

This issue, along with others, concerns Supra's incessant demand for direct access to BellSouth's OSS. The Commission reached the unremarkable conclusion that "Supra can avoid the issue of repeated submissions by rendering a complete and accurate LSR to BellSouth." FAO at p. 149. Supra offers no legitimate grounds for reconsideration of the Commission's decision because it is merely a rehash of its earlier arguments.

Issue BB: Should BellSouth be allowed to drop or "purge" orders? If so, under what circumstances may BellSouth be allowed to drop or "purge" orders, and what notice should be given, if any?

Supra's primary basis for reconsideration of this issue is its baseless assertion that BellSouth bore some burden of proving that it would be technically infeasible to prevent Supra's orders from being purged. BellSouth has no such burden of proof. The point of this issue, as the Commission observed, is that "[t]he responsibility for a complete and accurate LSR rests with the ALEC, Supra." FAO at p. 151. Supra has the responsibility for ensuring that its representatives submit a complete and accurate LSR. The request for reconsideration is devoid of merit.

Issue CC: **Should BellSouth be required to provide completion notices for manual orders for the purposes of the interconnection agreement?**

As with the immediately preceding issue, Supra has manufactured a burden of proof out of thin air. BellSouth need not prove that it is technically infeasible to satisfy every whim and caprice of Supra's management team. BellSouth's CSOTS system is designed to provide the ALEC community the capability to view service orders on-line, determine order status, including completion status on manual orders, and track service orders. CSOTS provides ALEC's access to the same service order information available to BellSouth's own retail units. Hearing Tr. Vol. 8 at 1148. Supra is entitled to nothing more. Its request for reconsideration has no merit.

Issue DD: **Should the parties be liable in damages, without a liability cap, to one another for their failure to honor in one or more material respects any one or more of the material provisions of the Agreement for purposes of this interconnection agreement?**

Issue EE: **Should Supra Telecom be able to obtain specific performance as a remedy for BellSouth's breach of contract for purposes of this interconnection agreement?**

Supra abandons all pretense that it has any legitimate grounds for reconsideration of these two issues. Instead, Supra accuses the Commission of favoritism toward BellSouth. That accusation is as false as it is irrelevant. In any event, Supra has not justified a reconsideration of these issues.

CONCLUSION

The Commission should deny Supra's motion and affirm its original ruling.

Respectfully submitted, this 17th day of April, 2002.

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