

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration
concerning complaint of
BellSouth Telecommunications,
Inc. against Supra
Telecommunications and
Information Systems, Inc. for
resolution of billing disputes.

DOCKET NO. 001097-TP
ORDER NO. PSC-02-0431-PHO-TP
ISSUED: March 29, 2002

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on March 14, 2002, in Tallahassee, Florida, before Chairman Lila A. Jaber, as Prehearing Officer.

APPEARANCES:

NANCY WHITE, Esquire, 150 South Monroe Street, Suite 400,
Tallahassee, Florida 32301-1556.
On behalf of BellSouth Telecommunications, Inc.

KIRK DAHLKE, Esquires
2620 S.W. 27th Avenue
Miami, Florida 33133
On behalf of Supra Telecommunications & Information
Systems, Inc.

PATRICIA A. CHRISTENSEN, Esquire, Florida Public Service
Commission, 2540 Shumard Oak Boulevard, Tallahassee,
Florida 32399-0850
On behalf of the Commission Staff.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

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II. CASE BACKGROUND

On August 9, 2000, BellSouth Telecommunications, Inc. (BellSouth) filed a complaint against Supra Telecommunications and Information Systems, Inc. (Supra), alleging that Supra has violated Attachment 6, Section 13 of their present agreement by refusing to pay non-disputed sums. By Order No. PSC-00-2250-FOF-TP, issued November 28, 2000, Supra's Motion to Dismiss Complaint or, in the Alternative, Stay Proceedings and/or Compel Arbitration was granted in part and denied in part. In the Order, we retained jurisdiction over all disputes arising out of the original Agreement between the two parties, entered into on June 1, 1997. By Order No. PSC-02-0143-PCO-TP, issued January 31, 2002 (Order Setting Matter For Rehearing and Establishing Procedure), the prehearing conference, hearing, and other key activities dates were set forth for the hearing process in this case. This matter is scheduled for hearing on April 5, 2002.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to

present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.

- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of the Commission Clerk and Administrative Services's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Patrick C. Finlen	BellSouth	All
Claude P. Morton	BellSouth	1
Olukayode Ramos	Supra	1-4
David Nilson	Supra	1-4
<u>Rebuttal</u>		
Patrick C. Finlen	BellSouth	All
David Nilson	Supra	All

VII. BASIC POSITIONS

BELLSOUTH:

BellSouth has appropriately and properly billed Supra for End-User Common Line Charges, secondary service charges and for changes in service, unauthorized local service changes, and reconnections under the 1997 Resale Agreement between BellSouth and Supra.

SUPRA:

In this docket, the Commission will determine which terms and rates apply with respect to the parties' agreements (i.e. the June 1, 1997, Supra/BellSouth Resale Agreement ("Resale Agreement"), the October 23, 1997, Supra/BellSouth Interconnection Agreement

("Interconnection Agreement") or the June 10, 1997, AT&T/BellSouth Interconnection Agreement ("AT&T/BellSouth Agreement") adopted by Supra on October 5, 1999 ("Adopted Agreement"). It is Supra's position that it, pursuant to the Interconnection Agreement, had the right to order loop and port combinations of UNEs which recreated BellSouth's resale service. However, BellSouth refused to provide service through UNE Combinations thereby forcing Supra to transact business as a reseller of services in order to compete. As a result, BellSouth should be precluded from collecting those monies it has retained in connection with End User Common Line charges, unauthorized local service changes and reconnections as well as secondary service charges identified in Issue numbers 2 through 4 below. Notwithstanding the fact that the Interconnection Agreement controls BellSouth's ability to have billed said charges, the AT&T/BellSouth Agreement as adopted by Supra on October 5, 1999, prohibits BellSouth from collecting the monies it has retained for said charges. The parties have been unable to resolve any of the issues set forth below and submits that its proposed resolution of the issues is consistent with the parties' controlling agreement and intent. Supra therefore respectfully requests that each of the issues below be resolved in its favor.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

VIII. ISSUES AND POSITIONS

ISSUE 1: Should the rates and charges contained (or not contained) in the 1997 AT&T/BellSouth Agreement apply to the BellSouth bills at issue in this Docket?

POSITIONS

BELLSOUTH:

No. The 1997 AT&T/BellSouth agreement is not applicable to the BellSouth bills at issue in this docket. The 1997 BellSouth/Supra Resale Agreement governs the BellSouth bills at issue in this docket.

SUPRA: It is Supra's position that the Interconnection Agreement is the controlling agreement to resolve all of the issues in dispute in this docket. Notwithstanding this fact, Supra believes that the rates and charges contained in the AT&T/BellSouth Agreement apply to the BellSouth bills at issue in this Docket. Pursuant to Section XVI, paragraphs B and F of the Resale Agreement, the terms of any successive agreement that contains more favorable provisions apply as of the period from the successive agreement's effective date until the date that the parties executed same.

STAFF: Staff has no position at this time.

ISSUE 2: Did BellSouth bill Supra appropriately for End-User Common Line Charges pursuant to the BellSouth/Supra interconnection and resale agreements?

POSITIONS

BELLSOUTH:

Yes. BellSouth billed Supra appropriately for End-User Common Line Charges pursuant to Section VII (L) of the 1997 BellSouth/Supra Resale Agreement, FCC Tariffs, and FCC rules.

SUPRA: No. As the AT&T/BellSouth Agreement that Supra opted into on October 5, 1999, had an effective date of June 10, 1997, the above-referenced section of the Resale Agreement requires that the terms and rates of the AT&T/BellSouth Agreement apply to this dispute for the period from June 10, 1997 through October 5, 1999. Furthermore, pursuant to 47 CFR §51.617(b), when

BellSouth provided telephone exchange service to Supra at wholesale rates for resale, BellSouth was barred from assessing End-User Common Line Charges ("EUCLs"). Finally, there is no language in the AT&T/BellSouth Agreement, or in the Interconnection Agreement that authorizes BellSouth to charge Supra for EUCLs; however, the Resale Agreement does speak to the disputed charges.

STAFF: Staff has no position at this time.

ISSUE 3: Did BellSouth bill Supra appropriately for changes in services, unauthorized local service changes, and reconnections pursuant to the BellSouth/Supra interconnection and resale agreements?

POSITIONS

BELLSOUTH:

Yes. BellSouth billed Supra appropriately pursuant to Section VI (F) of the 1997 BellSouth/Supra Resale Agreement.

SUPRA: No. There is no language in the AT&T/BellSouth Agreement, or in the Interconnection Agreement that authorizes BellSouth to charge Supra for changes in services, unauthorized local service changes, and reconnections; although the Resale Agreement does speak to the disputed charges, the Resale Agreement does not require written letters of authorization and thus BellSouth was imposing more restrictive conditions on providing customer authorization. Since BellSouth undisputedly refused to credit these charges unless proof was presented beyond that required by the Resale Agreement, BellSouth acted improperly and thus should have provided a credit for these charges.

STAFF: Staff has no position at this time.

ISSUE 4: Did BellSouth bill Supra appropriately for secondary service charges pursuant to the BellSouth/Supra interconnection and resale agreements?

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POSITIONS

BELLSOUTH:

Yes. BellSouth billed Supra appropriately pursuant to BellSouth's tariffs and Section IV (3) of the 1997 BellSouth/Supra Resale Agreement.

SUPRA: No. There is no language in the AT&T/BellSouth Agreement, or in the Interconnection Agreement that authorizes BellSouth to charge Supra for secondary service charges; however, the Resale Agreement does speak to the disputed charges.

STAFF: Staff has no position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Patrick C. Finlen	BellSouth	PCF-1	BellSouth/Supra Resale Agreement-6/1/97
		PCF-2	Letter from Reinke to Beck - 10/20/97
		PCF-3	Letter from Fields to Ramos - 10/20/97
		PCF-4	E-mail from Finlen to Ramos
		PCF-5	Letter from Finlen to Ramos - 10/23/97
		PCF-6	Attachment 2 - 10/15/97
		PCF-7	Order No. PSC-99-1092-FOF-TP
		PCF-8	Tariff FCC No. 1 Sections 4.5 - 4.6

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Patrick C. Finlen	BellSouth	PCF-9	47 CFR 51-617
		PCF-10	Letter from Bentley to Fleming - 3/11/00
		PCF-11	Letter from Smith to Bentley - 3/30/00
		PCF-12	Letter from Bentley to Finlen - 4/10/00
		PCF-13	Letter from Finlen to Bentley - 4/28/00
		PCF-14	Order No. PSC-98-0279- PCO-TX
		PCF-15	Section A4, GSST
		PCF-16	Order No. PSC-98-1001- FOF-TP
Claude P. Morton	BellSouth	CPM-1	BellSouth Master Account Application
		CPM-2	Billing Portion of Supra Order
David Nilson	Supra	DN-1	(Composite) Attachment A: Agreement to adopt June 10, 1997 AT&T/BellSouth Interconnection Agreement. Attachment B: June 10, 1997 AT&T/BellSouth Interconnection Agreement-The Agreement to adopt June 10, 1997 AT&T/BellSouth Interconnection Agreement has been filed although it was not labeled "Attachment A";

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
			Attachment B (the June 10, 1997 AT&T/BellSouth Interconnection Agreement) was inadvertently omitted from being filed as Exhibit DN-1 Attachment B and will be filed contemporaneously with this Pre-hearing Statement
David Nilson	Supra	DN-2	12/20/99 Billing Adjustment Investigation Request
		DN-3	March 30, 2000 letter from L. Smith to C. Bentley
		DN-4	June 26, 1997 letter from A. Lombard0 to B. Bayo
		DN-5	June 12, 1998 letter from D. Nilson to M. Cathey
		DN-6	August 3, 1998 letter from D. Nilson to M. Cathey
		DN-7	September 9, 1997 letter from O. A. Ramos to W. Carnes
		DN-8	June 25, 1998 letter from M. Cathey to O.A. Ramos
		DN-9	July 2, 1998 letter from M. Cathey to O.A. Ramos

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
David Nilson	Supra	DN-10	February 19, 1999 letter from M. Cathey to D. Dimlich
		DN-11	(Composite) Portions of May 3, 2001 Hearing Transcript in this docket
		DN-12	June 22, 1998 letter from O.A. Ramos to M. Cathey
		DN-13	June 25, 1998 letter from M. Cathey to O.A. Ramos
		DN-14	July 2, 1998 letter from M. Cathey to O.A. Ramos
		DN-15	July 10, 1998 letter from S. Summerlin to N. White
		DN-16	August 17, 1998 letter from S. Summerlin to N. White
		DN-17	August 3, 1998 letter from D. Nilson to M. Cathey
		DN-18	Portions of Attachment 2 of October 23, 1997 Interconnection Agreement between BellSouth and Supra ("True Agreement") - Access to Unbundled Network Elements
		DN-19	(Composite) June 12, 1998 letter form D. Nilson to M. Cathey and June 25, 1998 letter from M. Cathey to O. Ramos
		DN-20	(Composite) August 31, 1998 letter from O.A.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
			Ramos to M. Cathey; Marcus Cathey letter dated 11/24/98 addressed to Supra's Ramos; Bentley letter to BellSouth's Cathey dated 2/15/99; BellSouth letter to Mr. David Dimlich dated 2/19/99; BellSouth letter to Ms. Carol Bentley dated 3/15/99; Ann H. Shelfer letter dated 9/28/99 to FPSC Ms. Sally Simmons; Ann H. Shelfer letter dated 11/8/99 to FPSC; FPSC letter dated 11/24/99 to Ms. Ann H. Shelfer.
David Nilson	Supra	DN-21	See Exhibit DN-15
		DN-22	August 21, 1998 letter from MJ Peed to S. Summerlin
		DN-23	October 14, 1998 letter from M. Cathey to O.A. Ramos
		DN-24	October 23, 1997 Interconnection Agreement between BellSouth and Supra (filed November 1997)
		DN-25	Fourth Amended Complaint and Demand for Jury Trial Case No. 99-1706

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<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
David Nilson	Supra	DN-26	(Composite) October 10, 1999 letter from P. Finlen to O.A. Ramos; Supra's letter dated 1/13/00 to BellSouth; BellSouth's letter dated 1/31/00 to Supra; Supra's letter to Mr. Pat Finlen dated 2/8/00; Supra's letter dated 2/9/00 to BellSouth; Supra's letter dated 2/9/00 to BellSouth; Supra's letter dated 2/24/00 to BellSouth; Supra's letter to Mr. Marcus Cathey dated 3/30/00; BellSouth's letter dated 4/14/00 to Supra; BellSouth's letter dated 4/17/00 to Supra; Supra's letter dated 5/19/00 to BellSouth; Supra's letter dated 5/22/00; Supra's letter dated 6/13/00 to BellSouth; BellSouth's

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
David Nilson	Supra	DN-26	letter dated 7/11/00 to Supra; Supra's e-mail dated July 24, 2000; BellSouth's letter dated 8/3/00 to Supra; Supra's letter dated 8/17/00 to BellSouth; Supra's letter dated 10/17/2000 to BellSouth; BellSouth's letter to Mr. Victor Miriki dated 12/4/00; Supra's letter to Mr. Pat Finlen dated 12/15/00; DN-U Withdrawn (BellSouth's letter to Victor Miriki dated 1/9/01)
		DN-27	February 9, 2000 letter from O.A. Ramos to M. Cathey
		DN-28	February 24, 2000 letter from D. Nilson to M. Cathey
		DN-29	Withdrawn
		DN-30	Joint Stipulation Regarding Interim Deaveraging (Docket No. 990649-TP) before the FPSC
		DN-31	Order in re: Motion to Compel BellSouth to Comply with Order No. PSC-96-1579-FOF-TP (Docket No. 9471140)

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
David Nilson	Supra	DN-32	Loop and Port Combination Price Comparison Chart
		DN-33	June 2, 2000 e-mail from C. Donlin to D. Nilson
		DN-34	July 7, 1999 CLEC USOC Manual
		DN-35	March 6, 2001 CLEC USOC Manual
		DN-36	April 9, 2001 letter from C. Donlin to D. Nilson
		DN-37	Supplemental - New Installation LSR Summary
		DN-38	January 13, 2000 letter from O.A. Ramos to M. Cathey
		DN-39	April 17, 2000 letter from C. Donlin to O.A. Ramos
		DN-40	See Exhibit No. 31
		DN-41	June 5, 2001 Award (CONFIDENTIAL)
		DN-42	June 5, 2001 Award (CONFIDENTIAL)
		DN-43	Unauthorized Charges from BellSouth
		Olukayode A. Ramos	Supra
KR-2	Withdrawn		
KR-3	October 23, 1997 Interconnection Agreement between BellSouth and Supra (filed September 1999)		

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>		
Olukayode A. Ramos	Supra	KR-4	(Composite) Portions of May 3, 2001 Hearing Transcript in this docket		
		KR-5	Attachment 2 of October 23, 1997 Interconnection Agreement between BellSouth and Supra ("True Agreement") - Access to Unbundled Network Elements		
		KR-6	August 20, 1999 letter from W. Stavanja to P. Finlen		
		KR-7	August 25, 1999 letter from P. Finlen to W. Stavanja		
		KR-8	August 31, 1999 letter from W. Stavanja to P. Finlen		
		KR-9	September 7, 1999 letter from P. Finlen to O.A. Ramos		
		<u>Rebuttal</u>	BellSouth	PCF-17	Matrix of agreements between BST and Supra for the State of Florida
				PCF-18	Agreement between BST and Supra effective Oct. 5, 1999
				PCF-19	Letter from Supra to BST dated 8/17/98
Patrick C. Finlen	BellSouth	PCF-20	Order No. PSC-99-1092- FOF-TP issued 6/1/99		

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Patrick C. Finlen	BellSouth	PCF-21	Letter from Ramos to Finlen dated 3/29/99
		PCF-22	Letter from Supra to Finlen dated 5/31/99
		PCF-23	Letter from BST to Dimlich dated 5/28/99
		PCF-24	Letter from Supra to Finlen dated 8/20/99
		PCF-25	Email with attachment from Finlen to Stavanja dated 8/20/99
		PCF-26	Letter with attachment from Finlen to Stavanja dated 8/25/99
		PCF-27	Letter from Stavanja to Finlen dated 8/31/99
		PCF-28	Letter from Finlen to Ramos dated 9/7/99
		PCF-29	Letter with attachment from Ramos to Finlen dated 9/15/99
David Nilson	Supra	DN-R1	2/10/2000 billing credit from BellSouth D. Harris to C. Bentley
		DN-R2	3/11/2000 letter C. Bentley to K. Bates disputing BellSouth's calculation of \$928 interest owed

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
David Nilson	Supra	DN-R3	4/10/2000 letter C. Bentley to P. Finlen documenting the three billing disputes as credits rather than withheld payments
		DN-R4	4/28/2000 letter P. Finlen to C. Bentley in response to billing dispute and letter Supra Exhibit #DN-R3
		DN-R5	5/1/2000 letter C. Bentley to P. Finlen rebutting the 4/28/2000 letter Supra Exhibit #DN-R4
		DN-R6	12/16/1999 letter C. Bentley to M. Alagar including Exhibit "F" showing payment in full of all bills thru November 1999, except a \$61,866.05 dispute over incorrectly billed taxes.

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

Supra's Second Motion to Compel BellSouth to Provide Complete Answers to Interrogatories filed March 22, 2002.

XIII. PENDING CONFIDENTIALITY MATTERS

Supra's claim of confidentiality for portions of Mr. Dave Nilson's Direct Testimony and with respect to Exhibits DN-41 and DN-42 in their entirety, filed February 11, 2002, and BellSouth's Request for Specified Confidential Classification filed March 4, 2002, will be addressed by separate Order should the need for a specific ruling arise.

XIII. DECISIONS THAT MAY IMPACT COMMISSION'S RESOLUTION OF ISSUES

Parties have stated in their prehearing statements that the following decisions have a potential impact on our decision in this proceeding:

1. BellSouth Telecommunications, Inc. v. MCImetro Access Transmission Services, Inc., Case Nos. 00-12809, 00-12810, 2002 WL 27099 (11th Cir. Jan. 10, 2002).
2. Supra Telecommunications & Information Systems, Inc. v. BellSouth Telecommunications, Inc., Case No. 99-1706-CIV-DAVIS/BROWN, Order dated November 12, 1999 and Order dated January 20, 2000.
3. NOW Communications, Inc. v. BellSouth Telecommunications, Inc., Case No. 99-12032 (11th Cir. December 28, 1999).

XIV. RULINGS

1. Opening statements, if any, shall not exceed ten minutes per party.
2. Supra Telecommunications and Information Systems, Inc.'s ore tenus Motion to Allow Revisions to Rebuttal Testimony Filed on March 13, 2002, is hereby granted.
3. Direct and Rebuttal testimony shall be addressed at the same time.
4. Motion to Compel and Overrule Objections to Supra's First Set of Admissions, Second Set of Interrogatories, and Second Set of Request for Production is granted in part and denied in part as set forth below:

Currently, Supra's Motion to Compel and Overrule Objections to Supra's First Set of Admissions, Second Set of Interrogatories, and Second Set of Request for Production is pending. BellSouth has objected to Admissions Numbers 1 through 47, BellSouth responded to Admissions 48 and 49. BellSouth objected to Interrogatories 7 through 10, and responded to Interrogatories 4 through 6. BellSouth also responded to the PODs.

I would note that Rule 1.370 (a), Florida Rules of Civil Procedure, which addresses Requests for Admissions, states, in part, that:

A party may serve upon any other party a written request for the admission of the truth of any matters within the scope of rule 1.280(b) set forth in the request that relate to statements or opinions of fact or the application of law to fact, including the genuineness of any documents described in the request.

Upon my review, it appears that certain Admissions requested by Supra do ask for conclusions of law rather than the application of law to fact, therefore BellSouth shall not be compelled to respond to these Admissions. The Admissions are as follows: 3, 4, 5, 6, 7, 8, 13, 20, 21, 22, 23, 31, 32, 33, 34, 35. However, Requests 29 and 30 are appropriate requests seeking application of law to fact. As such, BellSouth shall answer 29 and 30.

BellSouth's objects to Admissions 1, 2, 9, 10, 11, 12, 15, 16, 17, 18, 19, 24, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47 because they are a matter of public record and admitting or denying any of the Admissions will not in any manner expedite the resolution of this proceeding. I do not believe that this is a relevant objection. These Admissions appear to be appropriate requests pursuant to the Rule and therefore, BellSouth is compelled to provide response to these requests for Admissions.

Finally, BellSouth objects to Admission requests 14, 25, 26, 27, and 28 because they are an improper attempt to expand the issues in this proceeding and to relitigate issues in this proceeding. I would note that Rule 1.280(b) states that:

It is not ground for objection that the information sought will be inadmissible at the trial if the

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information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The issues as drafted in this proceeding not only refer to the AT&T/BellSouth Agreement, but the BellSouth/Supra interconnection and resale agreements. Therefore, I am not persuaded by BellSouth's arguments. I think that they are within the scope of this proceeding. Therefore, BellSouth is compelled to respond to these request for Admissions.


Finally, BellSouth objects to Interrogatories 7, 8, 9, and 10, on the grounds that the information is beyond the scope of these proceedings, that the question is subsumed by the issues in this proceeding, that the information is a matter of public record, and that they believe the request is overly burdensome. Based on Rule 1.280(b), I do not believe that these interrogatories are beyond the scope of this proceeding. Further, I am not persuaded that requiring BellSouth to respond to these interrogatories is overly burdensome. Therefore, BellSouth shall respond to Interrogatories 7 through 10.

BellSouth shall provide answers to these discovery requests by March 21, 2002.

It is therefore,

ORDERED by Chairman Lila A. Jaber, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Chairman Lila A. Jaber, as Prehearing Officer, this 29th day of March, 2002



LILA A. JABER
Chairman and Prehearing Officer

(S E A L)

PAC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.