

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BELLSOUTH TELECOMMUNICATIONS, INC.  
DIRECT TESTIMONY OF JOHN A. RUSCILLI  
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET NO. 001305-TP  
FEBRUARY 26, 2001

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is John A. Ruscilli. I am employed by BellSouth as Senior Director for State Regulatory for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I attended the University of Alabama in Birmingham where I earned a Bachelor of Science Degree in 1979 and a Master of Business Administration in 1982. After graduation I began employment with South Central Bell as an Account Executive in Marketing, transferring to AT&T in 1983. I joined BellSouth in late 1984 as an analyst in Market Research, and in late 1985 moved into the Pricing and Economics organization with various responsibilities for business case analysis, tariffing, demand analysis and price regulation. I served as a subject matter expert on ISDN tariffing in various

1 commission and public service commission ("PSC") staff meetings in  
2 Tennessee, Florida, North Carolina and Georgia. I later moved into the State  
3 Regulatory and External Affairs organization with responsibility for  
4 implementing both state price regulation requirements and the provisions of the  
5 Telecommunications Act of 1996 (the "Act"), through arbitration and 271  
6 hearing support. In July 1997, I became Director of Regulatory and  
7 Legislative Affairs for BellSouth Long Distance, Inc., with responsibilities that  
8 included obtaining the necessary certificates of public convenience and  
9 necessity, testifying, Federal Communications Commission ("FCC") and PSC  
10 support, federal and state compliance reporting and tariffing for all 50 states  
11 and the FCC. I assumed my current position in July 2000.

12  
13 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

14  
15 A. The purpose of my testimony is to present BellSouth's position on numerous  
16 unresolved issues contained in its Petition for Arbitration between BellSouth  
17 and Supra Telecommunications and Information Systems, Inc. ("Supra") filed  
18 with the Florida Public Service Commission ("Commission") on September 1,  
19 2000. I will also present BellSouth's position on many of the additional issues  
20 raised by Supra in its response to BellSouth's Petition for Arbitration filed on  
21 October 16, 2000. BellSouth witnesses Mr. Dave Coon, Mr. Nat Tolar, Mr.  
22 Ron Pate and Mr. David Scollard will also file direct testimony in this case. In  
23 my testimony, I respond to the following issues: 1-4, 6-9, 11-14, 16-19, 21-29,  
24 31-32, 44-45, 49, 51-52, 57, 59, 63, and 65-66. Regarding several of the issues  
25 raised by Supra in its Response, BellSouth has restated the issue in its

1 testimony to more accurately capture the dispute between the parties and to  
2 present the issue in a neutral manner.

3

4 ***Issue 1: Should the Parties be required to submit disputes under this Agreement to***  
5 ***an Alternative Dispute Resolution Process (Commercial Arbitration)? (General***  
6 ***Terms and Conditions (“GTC”) § 16)***

7

8 Q. WHAT IS BELLSOUTH’S POSITION ON THIS ISSUE?

9

10 A. BellSouth’s position is that the appropriate regulatory authority should resolve  
11 disputes and that BellSouth should not be precluded from petitioning the  
12 Commission for resolution of disputes under the Interconnection Agreement.  
13 BellSouth is unwilling to agree to terms and conditions that restrict or delay its  
14 ability to seek relief from the Commission when the parties are unable to  
15 resolve, among themselves, differences that may arise regarding the  
16 interconnection agreement. BellSouth simply should not be required to waive  
17 its right to have the Commission hear disputes.

18

19 Indeed, the Eighth Circuit Court has ruled that state commissions are charged  
20 with the authority to resolve disputes relating to interconnection agreements.  
21 In *Iowa Utilities Board v. FCC*, 120 F.3d 753, 804 (8<sup>th</sup> Cir. 1997), the Eighth  
22 Circuit determined “that state commissions retain the primary authority to  
23 enforce the substantive terms of the agreements made pursuant to Sections 251  
24 and 252.” Further, “the state commissions plenary authority to accept or reject

1           these agreements necessarily carries with it the authority to enforce the  
2           provisions of agreements that state commissions have approved.” *Id.*

3  
4           Even if this Commission had the legal ability to order the arbitration procedure  
5           requested by Supra and to empower the arbitrator with the ability to award the  
6           relief sought by Supra, to do so would be adverse to public policy. BellSouth  
7           believes that, as a matter of policy, it is critical that interconnection agreements  
8           be interpreted consistently. One of the primary guiding principles of the Act is  
9           that carriers should be treated in a nondiscriminatory fashion. This goal cannot  
10          be reached without a means to insure that similar disputes arising under  
11          different agreements are handled in a similar fashion. Indeed, use of  
12          commercial arbitrators could produce inconsistent results in matters dealing  
13          with interconnection issues that arise between BellSouth and Alternative Local  
14          Exchange Companies (“ALECs”) because different arbitrators could provide  
15          different decisions in the same related issues. On the other hand, having the  
16          Commission resolve disputes provides needed consistency in how Incumbent  
17          Local Exchange Carriers (“ILECs”) and ALECs interconnect and generally  
18          deal with each other. Commission control of dispute resolution ensures that  
19          disputes between two carriers that potentially affect the entire industry are dealt  
20          with consistently. The commercial arbitration Supra seeks would make this all  
21          but impossible.

22  
23        Q.       WHAT HAS BEEN BELLSOUTH’S EXPERIENCE WITH COMMERCIAL  
24        ARBITRATION?

25

1 A. BellSouth's experience with commercial arbitration has proven that the process  
2 is an impractical, time-consuming and costly way to resolve interconnection  
3 disputes. Our experience shows that it is difficult to find neutral commercial  
4 arbitrators that are sufficiently experienced in the telecommunications industry  
5 so that a decision can be made expeditiously and without having to train the  
6 arbitrator on the very basics of the industry. The Commission and its staff are  
7 clearly more capable to handle disputes between telecommunications carriers  
8 than are commercial arbitrators.

9  
10 Further, if the parties were forced to use commercial arbitration to resolve  
11 disputes, not only is there the strong prospect of substantively inconsistent  
12 rulings, there would likely be an equally troubling inconsistency in the  
13 remedies available to different carriers that are under the Commission's  
14 jurisdiction. If a dispute were to arise between BellSouth and an ALEC that  
15 did not have the commercial arbitration clause in its Agreement, the dispute  
16 would be resolved by the Commission (as these disputes have been in the past).  
17 Presumably, the Commission's decision would be informed by past decisions.  
18 The Commission's decision would also be appealable, and the Commission  
19 would resolve the matter only by ordering remedies within its power.

20 However, in commercial arbitration, the arbitrator is not bound to follow  
21 Commission precedent, his decisions cannot be appealed and the arbitrator has  
22 the ability to order remedies such as "damages" and "pre-judgment interest."  
23 Further, once this procedure is memorialized in an approved Agreement, other  
24 ALECs could opt into this commercial arbitration language. Thus, there is a  
25 great likelihood that the commercial arbitrators would interfere with the ability

1 of the Commission to make policy by ruling in a way that is inconsistent with  
2 the Commission's orders. There is also the certainty that at least disputes  
3 involving Supra (and perhaps disputes involving many other ALECs) would be  
4 handled in a radically different procedural manner than other disputes, which  
5 would continue to be brought before the Commission.

6

7 For all of these reasons, BellSouth contends that there should be no language in  
8 the Agreement that obligates either party to submit to commercial arbitration  
9 rather than bringing a dispute to the Commission.

10

11 ***Issue 2: What is the scope of the ability to use the other party's Confidential***  
12 ***Information that is obtained pursuant to this Interconnection Agreement? (GTC §***  
13 ***18.4)***

14

15 Q. WHAT IS BELLSOUTH'S POSTION ON THIS ISSUE?

16

17 A. Confidential Information provided under the Agreement should be utilized  
18 only in connection with the Agreement. BellSouth does not object to  
19 providing confidential information to Supra as needed. However, BellSouth  
20 expects to have such confidential information returned when the matter for  
21 which it was provided has concluded. If the same information is relevant in  
22 another circumstance, BellSouth will provide it again.

23

24 Apparently, Supra contends that it should be able to retain any confidential  
25 information it obtains from BellSouth throughout the entire term of the

1 Agreement. Supra further contends that it should be able to use that  
2 information for any purpose, not just for the purpose it was provided.

3  
4 Confidential information is, by definition, either information that is valuable  
5 because it is not widely known or information that, if known, would cause  
6 damage to the business of the owner of the information. For this reason, it is  
7 standard business practice, as well as this Commission's practices, to protect  
8 this information. Supra's proposal to obtain confidential information for one  
9 purpose, but reserve the right to use it for others, is not only unjustified, it  
10 appears to reflect an intention by Supra to misuse this information. BellSouth  
11 urges the Commission to find that BellSouth's proposed language be  
12 incorporated into the Agreement so that confidential information is  
13 appropriately protected.

14  
15 ***Issue 3: What is the appropriate amount of general liability insurance coverage for***  
16 ***the Parties to maintain under their Interconnection Agreement? (GTC § 21.1)***

17  
18 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

19  
20 A. Given the value of BellSouth's and other ALECs' network equipment and  
21 facilities, both inside and outside the central offices, BellSouth believes that  
22 \$10,000,000 is an appropriate level of coverage for each ALEC. ALECs enjoy  
23 unescorted access into BellSouth's central offices. In the event that an ALEC  
24 should damage equipment or other property of BellSouth's or other ALECs,  
25 the loss could be substantial.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Supra contends that \$1,000,000 of liability coverage is sufficient. BellSouth disagrees. Hundreds of millions of dollars worth of equipment resides in BellSouth's central offices. Supra further states that it is unnecessary for ALECs to incur this insurance expense since BellSouth already has insurance. Surely Supra understands that liability insurance covers the liable party. BellSouth's liability insurance is not intended to cover damage that results from other parties' actions.

***Issue 4: Should this Interconnection Agreement be filed with the Florida Public Service Commission for approval prior to the ALEC's receiving ALEC certification from the Florida Public Service Commission? (GTC § 24.15.1)***

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. Given that any ALEC, whether or not certified, may adopt this Agreement, BellSouth believes that language requiring certification prior to filing of the Agreement with the Commission is appropriate. The Commission has agreed with BellSouth that "BellSouth's caution in deciding to hold filings for non-certificated entities until they obtain certification is appropriate." (Letter dated April 25, 2000, from Walter D'Haeseleer, Director, Division of Telecommunications, to Nancy Sims of BellSouth). It is unclear why Supra holds this position, considering that Supra is certificated as an ALEC in Florida.



1 *Issue 6: Should BellSouth be required to provide to Supra a download of*  
2 *BellSouth's Regional Street Address Guide ("RSAG") Database? (Att. 1, Section*  
3 *3.15)*

4 *Issue 57: Should BellSouth be required to provide downloads of the RSAG, PLATS,*  
5 *PSIMS and PIC databases without license agreements and without charge?*

6

7 Q. WHAT IS BELLSOUTH'S POSITION ON THESE ISSUES?

8

9 A. BellSouth believes that its proposed language, as contained in its January 31,  
10 2001 filing with the Commission, should resolve this issue. BellSouth's  
11 proposed language follows:

12 *Regional Street Address Guide (RSAG). BellSouth shall provide Supra*  
13 *with BellSouth's RSAG data through a mutually agreeable electronic*  
14 *means. A condition precedent to obtaining the RSAG data is that Supra*  
15 *and its affiliated local exchange carriers shall execute a single*  
16 *mutually acceptable license agreement containing the rates, terms and*  
17 *conditions pursuant to which Supra and its affiliated local exchange*  
18 *carriers may use the data.*

19

20 *Product and Service Information Management System ("PSIMS").*  
21 *BellSouth shall provide Supra, on a monthly basis, a flat file extraction*  
22 *of PSIMS, which includes PIC availability as well as a list of the*  
23 *features and functions available on an end office-by-end office basis,*  
24 *via CONNECT:Direct Service. There is no charge for obtaining the*  
25 *PSIMS file in this manner.*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

BellSouth witness Mr. Ron Pate discusses in more detail in his testimony  
BellSouth's position on these issues.

***Issue 7: Should Supra be required to pay the end user line charge associated with implementation of local number portability as authorized by the Federal Communications Commission? (Att. 1, § 3.21 and Att. 5, § 2.5)***

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. The FCC has authorized end user line charges be assessed to recover the cost of local number portability implementation. 47 C.F.R § 52.33(a) states:

Incumbent local exchange carriers may recover their carrier-specific costs directly related to providing long-term number portability by establishing in tariffs filed with Federal Communications Commission a monthly number-portability charge, as specified in paragraph (a)(1)....

47 C.F.R. § 52.33(a)(1) specifies that the monthly number portability charge may take effect no earlier than February 1, 1999, on a date the ILEC selects, and may end no later than five years after that date. Further, 47 C.F.R. § 52.33(a)(1)(ii) states:

1 An incumbent local exchange carrier may assess on carriers that  
2 purchase the incumbent local exchange carrier's switching ports as  
3 unbundled network elements under section 251 of the Communications  
4 Act, and resellers of the incumbent local exchange carrier's local  
5 service, the same charges as described in paragraph (a)(1)(A) of this  
6 section, as if the incumbent local exchange carrier were serving those  
7 carriers' end users.

8  
9 Clearly, BellSouth is allowed to charge Supra the end user line charge  
10 associated with implementation of local number portability when Supra  
11 purchases unbundled switching from BellSouth or resells BellSouth's service.

12  
13 ***Issue 8: Should Supra, as a reseller of BellSouth's services, be required to pay to***  
14 ***BellSouth, pursuant to 47 C.F.R. § 51.617, end user common line charges identical***  
15 ***to those BellSouth assesses its retail end users? (Att. 1, § 3.25)***

16  
17 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

18  
19 A: Supra should be required to pay end user common line charges. FCC Rule  
20 51.617(a) clearly states that ILECs shall assess the end user common line  
21 charge upon resellers:

22  
23 Notwithstanding the provision in § 69.104(a) of this chapter that the  
24 end user common line charge be assessed upon end users, an incumbent  
25 LEC shall assess this charge, and the charge for changing the

1 designated primary interexchange carrier, upon requesting carriers that  
2 purchase telephone exchange service for resale.

3

4 ***Issue 9: What should be the definition of "ALEC"? (Att. 1, § 2.1)***

5

6 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

7

8 A. Florida Statute 364.02 defines "Alternative local exchange telecommunications  
9 company" to mean any company certificated by the commission to provide  
10 local exchange telecommunications services in this state on or after July 1,  
11 1995. Apparently, Supra seeks to obligate BellSouth to abide by an Agreement  
12 regardless of whether the carrier is certificated (or will ever be certificated) by  
13 the Commission. As previously addressed under Issue 4, agreement language  
14 requiring certification prior to filing of the Agreement is appropriate given that  
15 any ALEC, whether or not certificated, may adopt another ALEC's Agreement.

16

17 ***Issue 11: Should the Interconnection Agreement state that the parties may withhold***  
18 ***payment of undisputed charges to the extent that these charges are equal to or less***  
19 ***than disputed charges?***

20 ***Issue 63: Should BellSouth be permitted to disconnect service to Supra Telecom (or***  
21 ***a Supra Telecom customer) for nonpayment? (Att. 6, Section 1.17.2)***

22

23 Q. WHAT IS BELLSOUTH'S POSITION ON THESE ISSUES?

24

25 A. Attachment 6 of BellSouth's proposed Interconnection Agreement contains

1 provisions to handle billing disputes between the parties. Regarding Issue 11,  
2 BellSouth contends that the parties should pay undisputed charges on a timely  
3 basis, regardless of the amount of any disputed charges. Allowing one party to  
4 withhold payment of appropriately billed charges when other charges, whether  
5 appropriately or inappropriately billed, are in dispute, would enable that party  
6 to “game” the billing system to avoid paying bills.

7  
8 Regarding Issue 63, BellSouth should be permitted to disconnect service to  
9 Supra or any other ALEC that fails to pay undisputed charges within the  
10 applicable time period. BellSouth must be able to deny service in order to  
11 obtain payment for services rendered and/or prevent additional past due  
12 charges from accruing. It would not be a reasonable business practice for  
13 BellSouth to operate “on faith” that an ALEC will pay its bills. Indeed, a  
14 business could not remain viable if it were obligated to continue to provide  
15 service to customers who refuse to pay lawful charges.

16  
17 BellSouth must also consider that the terms and conditions of any agreement it  
18 reaches with one ALEC are subject to being adopted by another ALEC. The  
19 FCC’s Rule 51.809 requires that, subject to certain restrictions, BellSouth  
20 must, “make available without unreasonable delay to any requesting  
21 telecommunications carrier any individual interconnection, service, or network  
22 element arrangement contained in any agreement to which it is a party that is  
23 approved by a state commission pursuant to section 252 of the 1996 Act, upon  
24 the same rates, terms, and conditions as those provided in the agreement.”  
25 This “pick and choose” requirement makes it imperative that each executed

1 interconnection agreement includes language that addresses disconnection of  
2 service for non-payment.

3  
4 The simple way to resolve this issue is for Supra to pay undisputed amounts  
5 within the applicable time frames, and this portion of the agreement will never  
6 become an issue. BellSouth encourages the Commission to adopt BellSouth's  
7 proposed language that permits BellSouth to disconnect an ALEC's service if  
8 the ALEC fails to pay billed charges that are not disputed.

9  
10 ***Issue 12: Should BellSouth be required to provide transport to Supra across LATA***  
11 ***boundaries?***

12  
13 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

14  
15 A. This issue is basically a legal matter and, while I am not an attorney, a plain  
16 reading of Section 271 of the Act reveals that BellSouth is prohibited from  
17 providing interLATA facilities or services to Supra or any other carrier.  
18 Neither BellSouth nor its affiliates are allowed to provide services that cross  
19 LATA boundaries prior to receiving authorization from the Federal  
20 Communications Commission ("FCC") to do so, pursuant to the requirements  
21 of Section 271 of the Act. Specifically, Section 271(a) states:

22  
23 GENERAL LIMITATION. – Neither a Bell operating company, nor  
24 any affiliate of a Bell operating company, may provide interLATA  
25 services except as provided within this section.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Supra contends that BellSouth should provide Supra with DS1 interoffice transport facilities between BellSouth central offices located in different LATAs. Although the DS1 facilities that Supra is requesting are Unbundled Network Elements (“UNEs”), BellSouth is prohibited by law from providing those elements across LATA boundaries. Section 271(a) of the Act provides no qualification of the nature of the service, whether retail or wholesale, in the phrase “interLATA services”.

*Issue 13: What should be the appropriate definition of “local traffic” for purposes of the parties’ reciprocal compensation obligations under Section 251(b)(5) of the 1996 Act? (Att. 3, § 5.3.1.1)*

*Issue 19: Should calls to Internet service providers be treated as local traffic for the purposes of reciprocal compensation?*

Q. WHAT IS BELLSOUTH’S POSITION ON THESE ISSUES?

A. “Local traffic” should be defined to only include traffic that originates and terminates within a local calling area. This definition should expressly exclude traffic to Internet Service Providers (“ISPs”), which is interstate traffic. The 1996 Act and the FCC’s Local Competition Order make clear that reciprocal compensation obligations under Section 251(b)(5) apply only to local traffic. ISP-bound traffic constitutes access service, which is subject to interstate jurisdiction and is not local traffic.

1 While the Commission has addressed these same issues in previous  
2 arbitrations, the Commission currently has established a generic docket to  
3 address all reciprocal compensation issues. Therefore, BellSouth recommends  
4 that these two issues be deferred to Docket No. 000075-TP. However, if the  
5 Commission chooses to address these issues in this arbitration, BellSouth  
6 suggests that the Commission's decision in the Global Naps arbitration be  
7 implemented on an interim basis until the generic docket is completed (*See*  
8 *FPSC Order No. PSC-00-1680-FOF-TP, in Docket No. 991220-TP, issued*  
9 *September 19, 2000*).

10  
11 ***Issue 14: Should BellSouth pay reciprocal compensation to Supra where Supra is***  
12 ***utilizing BellSouth's unbundled switching for the termination of local traffic to***  
13 ***Supra's end users? (Att. 3, § 5.3.1.2 - § 5.3.1.5)***

14  
15 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

16  
17 A. As with the two issues above, BellSouth proposes that this issue be deferred to  
18 Docket No. 000075-TP. BellSouth's position is that the purpose of reciprocal  
19 compensation is to recover the costs incurred by the terminating carrier for  
20 utilizing its network. Since BellSouth does not charge Supra the end office  
21 switching rates when a BellSouth customer places a local call to a Supra end  
22 user, and Supra does not have its own network, Supra incurs no cost in  
23 terminating that call. Thus, reciprocal compensation is not appropriate.

24  
25 ***Issue 16: What is the appropriate process for amending an existing Interconnection***



1 *Agreement in order to incorporate a change in terms, conditions or rates?*

2

3 Q. WHAT IS BELLSOUTH'S UNDERSTANDING OF THIS ISSUE?

4

5 A. First, let me say that BellSouth is not clear on what it is that Supra seeks to  
6 accomplish with this issue. It appears that Supra is addressing a situation  
7 wherein the parties have completed their Agreement, and then at some time in  
8 the future a new service, item or element is made available - possibly via an  
9 offer by BellSouth or as the result of a Commission order, for example. In its  
10 Response, Supra appears to contend that if this new service, item or element is  
11 not currently in the parties' Agreement, that BellSouth must provide that  
12 service, item or element to Supra without requiring an amendment to the  
13 Agreement and without receiving any compensation from Supra.

14

15 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

16

17 A. In order to incorporate new or different terms, conditions or rates into the  
18 parties Agreement, BellSouth requires that an Amendment be executed. When  
19 an ALEC notifies BellSouth that it wishes to add something to or modify  
20 something in its Agreement, BellSouth negotiates an Amendment with that  
21 ALEC. As will be discussed in more detail in Issues 44 and 45, BellSouth's  
22 position is that the Amendment becomes effective when it is signed by both  
23 parties. The executed Amendment acts as BellSouth's authority to effect any  
24 required billing changes. It is ludicrous for Supra to contend that BellSouth  
25 must provide Supra with services, items or elements without compensation

1           when those services, items or elements are not in Supra's Agreement.

2

3       ***Issue 17: Should Supra Telecom be allowed to engage in comparative advertising***  
4       ***using BellSouth's name and trademarks? (GTC § 11.1)***

5

6       Q.     WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

7

8       A.     BellSouth's proposed language allows use of the other party's name in  
9           comparative advertising so long as the reference is "truthful and factual, does  
10          not infringe any intellectual property rights of the other Party and otherwise  
11          complies with all applicable laws." In fact, in Supra's Response, Supra's  
12          representation of BellSouth's position on this issue says that Supra may refer  
13          to BellSouth in comparative advertising that is truthful. However, Supra  
14          continues by saying that "BellSouth has not expressed an opinion regarding the  
15          use of BellSouth marks (i.e. trademarks, trade names, service marks and  
16          service names)." This statement by Supra is ridiculous in light of the fact that  
17          a federal court judge recently found that Supra was using BellSouth's  
18          trademarks in billboard and other advertising in violation of applicable law. It  
19          should be very clear to Supra what BellSouth's opinion is regarding  
20          inappropriate use of BellSouth marks.

21

22       Q.     WHAT DO YOU UNDERSTAND SUPRA'S POSITION TO BE ON THIS  
23           ISSUE.

24

1 It appears that Supra is seeking the Commission's approval to violate  
2 trademark law. If this is the case, Supra's request should obviously be denied.  
3 However, as long as Supra engages in lawful comparative advertising, there  
4 should be no issue.

5

6 ***Issue 18: What should be the rates for each service, item or element set forth in the***  
7 ***proposed Interconnection Agreement?***

8 ***Issue 26: Under what rates, terms, and conditions may Supra Telecom purchase***  
9 ***network elements or combinations to replace services currently purchased from***  
10 ***BellSouth tariffs?***

11 ***Issue 28: What terms and conditions, and what separate rates if any, should apply***  
12 ***for Supra Telecom to gain access to and use BellSouth facilities to serve multi- unit***  
13 ***installations? (UNEs, Attachment 2, Section 5.3.2)***

14

15 Q. WHAT IS BELLSOUTH'S POSITION ON THESE ISSUES?

16

17 A. BellSouth's position on these issues is that the rates the Commission sets in  
18 Docket 990649-TP are the rates that should be incorporated into the  
19 Agreement. Of course, while that docket will establish cost-based rates for the  
20 vast majority of elements, including conversion of tariffed services to UNEs or  
21 UNE combinations, there are a few elements that are not being addressed in  
22 that docket. For example, the Commission determined that collocation rates  
23 would not be established in Docket 990649-TP. Instead, the Commission  
24 intends to address collocation rates in a generic collocation pricing proceeding.  
25 In the interim, BellSouth proposes that BellSouth's tariffed rates, which are

1 cost-based, be incorporated into the Agreement. Another topic that is not  
2 being addressed in Docket 990649-TP is line sharing rates. This Commission  
3 has recently considered line sharing rates in the MCI and AT&T arbitrations.  
4 BellSouth proposes that the line sharing rates the Commission establishes in  
5 the MCI and AT&T arbitrations be incorporated into Supra's Agreement.

6

7 ***Issue 21: What does "currently combines" mean as that phrase is used in 47 C.F.R.***  
8 ***§ 51.315(b)? (UNEs Attachment 2, Section 2.7.1)***

9 ***Issue 22: Should BellSouth be permitted to charge Supra a "glue charge" when***  
10 ***BellSouth combines network elements? (Attachment 2, Exhibit A)***

11 ***Issue 23: Should BellSouth be directed to perform, upon request, the functions***  
12 ***necessary to combine unbundled network elements that are ordinarily combined in***  
13 ***its network?***

14 ***Issue 24: Should BellSouth be required to combine network elements that are not***  
15 ***ordinarily combined in its network?***

16

17 Q. WHAT IS THE MOST RECENT COURT DECISION REGARDING THESE  
18 ISSUES?

19

20 A. On July 18, 2000, the Eighth Circuit Court of Appeals ("Eighth Circuit") held  
21 that an ILEC is not obligated to combine UNEs, and it reaffirmed that the  
22 FCC's Rules 51.315(c)-(f) remain vacated. Specifically, referring to Section  
23 251(c)(3) of the Act that requires ILECs to provide UNEs in a manner that  
24 allows requesting carriers to combine such elements in order to provide  
25 telecommunications services, the Eighth Circuit stated: "[h]ere Congress has

1 directly spoken on the issue of who shall combine previously uncombined  
2 network elements. It is the requesting carriers who shall 'combine such  
3 elements.' It is not the duty of the ILECs to 'perform the functions necessary  
4 to combine unbundled network elements in any manner' as required by the  
5 FCC's rule."

6

7 Q. WHAT IS BELLSOUTH'S POSITION ON THESE ISSUES?

8

9 A. BellSouth's position is that it will provide combinations to Supra at cost-based  
10 rates if the elements are, in fact, already combined in BellSouth's network.  
11 That is, BellSouth will make combinations of UNEs available to Supra  
12 consistent with BellSouth's obligations under the 1996 Act and applicable  
13 FCC rules.

14

15 Q. WHAT IS SUPRA'S POSITION ON THESE ISSUES?

16

17 A. Apparently, Supra contends that if BellSouth combines the requested UNEs  
18 anywhere in its network, BellSouth has to provide the same combination of  
19 UNEs to Supra anywhere in BellSouth's network, even when the UNEs are not  
20 physically combined.

21

22 Q. WHAT IS THE BASIS FOR BELLSOUTH'S POSITION?

23

24 A. In the FCC's Third Report and Order and Fourth Further Notice of Proposed  
25 Rulemaking, FCC 99-238, released November 5, 1999 ("UNE Remand

1 Order”), the FCC confirmed that ILECs presently have no obligation to  
2 combine network elements for ALECs when those elements are not currently  
3 combined in BellSouth’s network. The FCC rules, Section 51.315(c)-(f), that  
4 purported to require incumbent LECs to combine unbundled network elements  
5 were vacated by the Eighth Circuit, and those rules were neither appealed to  
6 nor reinstated by the Supreme Court. On July 18, 2000, the Eighth Circuit  
7 reaffirmed its ruling that FCC Rules 51.315(c)-(f) are vacated.

8

9 Q. HOW DID THE FCC ADDRESS AN ILEC’S OBLIGATION TO COMBINE  
10 UNES IN ITS UNE REMAND ORDER?

11

12 A. The FCC concluded that ILECs have no obligation to combine UNEs. As the  
13 FCC made clear, Rule 51.315(b) applies to elements that are “in fact”  
14 combined, stating that “[t]o the extent an unbundled loop is in fact connected  
15 to unbundled dedicated transport, the statute and our rule 51.315(b) require the  
16 incumbent to provide such elements to requesting carriers in combined form.”  
17 (§ 480, emphasis added) The FCC declined to adopt a definition of “currently  
18 combines,” as Supra proposes in this case, that would include all elements  
19 “ordinarily combined” in the incumbent’s network. *Id.* (declining to “interpret  
20 rule 51.315(b) as requiring incumbents to combine unbundled network  
21 elements that are ‘ordinarily combined’ ...”) It is nonsensical to suggest that  
22 the FCC meant for its Rule 51.315(b) to cover anything other than specific pre-  
23 existing combinations of elements for a customer when the FCC’s orders  
24 specifically state that ILECs are not required to combine elements. As

1           previously discussed, the Eighth Circuit has reaffirmed that BellSouth has no  
2           such obligation.

3

4    Q.    IN BELLSOUTH'S NETWORK, COULD THERE EXIST A SCENARIO  
5           WHEREIN THE LOOP AND THE PORT ARE COMBINED, AND THERE  
6           IS DIAL TONE ON THE LINE, BUT THERE IS NO SERVICE BEING  
7           PROVIDED TO A PARTICULAR CUSTOMER AT THAT PARTICULAR  
8           LOCATION?

9

10   A.   Yes. This arrangement is typically referred to as "QuickService." Consider a  
11           customer that has been receiving local exchange service from BellSouth, and  
12           the customer sells his house and moves. He calls BellSouth to have his service  
13           disconnected. Generally, it is BellSouth's policy to leave those facilities  
14           connected through from the customer's network interface device ("NID") to  
15           the main distributing frame ("MDF") in the central office. The connection on  
16           the MDF between the loop and the switch port is also left in place.<sup>1</sup> Thus,  
17           there will be dial tone on the line, but there is no service being provided for  
18           which a customer is paying BellSouth. If one were to plug a phone into a jack  
19           in that house, one would be able to call 911 or to call BellSouth's business  
20           office, but calls could not be placed to any other number, and calls could not be  
21           received over the line. Where such facilities are combined in BellSouth's  
22           network (that is, where QuickService has been applied to a disconnected line),  
23           BellSouth will provide the combination to a requesting CLEC at cost-based

---

<sup>1</sup> The assumption is that the existing facilities will be re-used to provide service to a new customer at that same location. However, in the event that the port or a portion of the loop is needed to fill a service order at another location where no other facilities are available, the QuickService facility will be taken apart so that service can be provided at the alternate location. In that case, the loop and the port will no longer be combined to the original location.

1 rates.

2

3 Q. IS SUPRA'S ABILITY TO COMPETE VIGOROUSLY FOR LOCAL  
4 SERVICE DIMINISHED WITHOUT HAVING BELL SOUTH COMBINE  
5 UNES AT COST-BASED PRICES?

6

7 A. Certainly not. There are over 6 million lines in service provided by BellSouth  
8 in Florida today. Each of those lines consists of existing combined facilities  
9 that Supra can, in fact, purchase from BellSouth at cost-based rates. In  
10 addition, Supra has several means to serve both new and existing customers,  
11 other than by having BellSouth combine UNEs. Any contention that Supra  
12 cannot compete because BellSouth won't put UNEs together just doesn't make  
13 sense.

14

15 Q. SPECIFICALLY REGARDING ISSUE 22, WHEN DOES BELL SOUTH  
16 SAY THAT A "GLUE CHARGE" IS APPLICABLE?

17

18 A. First, I need to explain what a "glue charge" is. Where BellSouth agrees to  
19 physically combine UNEs for an ALEC, the prices for such combinations will  
20 be market-based, not cost-based. The difference between market-based and  
21 cost-based prices is referred to as a "glue charge" in this issue. The "glue  
22 charge" is not necessarily a separate charge; it is simply the difference in prices  
23 described above. As I have explained, BellSouth is not obligated to combine  
24 UNEs for ALECs; therefore, the prices for this function are not subject to the  
25 cost-based pricing requirements of the Act. Consequently, it is appropriate for



1 BellSouth to charge a market-based rate if it combines UNEs for ALECs.

2

3 There is one exception to BellSouth's general position of requiring market-  
4 based prices to combine UNEs. BellSouth has elected to be exempted from  
5 providing access to unbundled local switching to serve customers with four or  
6 more lines in Density Zone 1 of the Miami, Orlando and Ft. Lauderdale MSAs.  
7 To avail itself of this exemption, the FCC requires BellSouth to combine loop  
8 and transport UNEs (also known as the "Enhanced Extended Link" or "EEL")  
9 in the geographic area where the exemption applies. The FCC also requires  
10 that such combinations be provided at cost-based rates. BellSouth will  
11 physically combine loop and transport UNEs at FCC mandated cost-based  
12 prices as required in the FCC's UNE Remand Order in order to have the  
13 exemption from providing local circuit switching.

14

15 Beyond this limited exception dictated by the FCC, BellSouth is under no  
16 obligation to physically combine network elements, where such elements are  
17 not in fact combined. Nevertheless, BellSouth is willing to negotiate rates for  
18 combining UNEs; however, such negotiations are outside of a Section 251  
19 arbitration, and the rates for this service are not subject to the pricing standards  
20 in Section 252 of the Act.

21

22 Q. HAS BELLSOUTH REACHED AGREEMENT WITH ANY ALECS  
23 CONCERNING THE CONDITIONS UNDER WHICH BELLSOUTH WILL  
24 COMBINE UNES?

25

1 A. Yes. Certain ALECs have requested that BellSouth provide the service of  
2 combining elements on the ALECs' behalf. These ALECs have entered into  
3 amendments to their interconnection agreements with BellSouth. The rates  
4 these ALECs pay for new combinations are market-based and appropriately  
5 compensate BellSouth for the service it is providing.

6

7 ***Issue 25: Should BellSouth charge Supra Telecom only for UNEs that it orders and***  
8 ***uses, and should UNEs ordered and used by Supra Telecom be considered part of its***  
9 ***network for reciprocal compensation and switched access charges?***

10

11 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

12

13 A. Supra should pay for whatever UNEs it orders from BellSouth, regardless of  
14 what use, if any, Supra makes of those UNEs. With respect to reciprocal  
15 compensation, BellSouth compensates Supra for the facilities and elements  
16 Supra actually uses to terminate BellSouth's traffic on Supra's network.  
17 Likewise, Supra should compensate BellSouth for the facilities and elements  
18 that BellSouth actually uses for terminating Supra's traffic on BellSouth's  
19 network. With respect to reciprocal compensation when Supra purchases  
20 BellSouth's unbundled switching, Supra is not entitled to reciprocal  
21 compensation in circumstances where BellSouth does not bill Supra for  
22 terminating usage on that unbundled switching. In such circumstances, the  
23 price of the reciprocal compensation and the unbundled switching are offset.

24

1 *Issue 27: How should Supra Telecom and BellSouth interconnect their networks in*  
2 *order to originate and complete calls to end-users? (Local Interconnection,*  
3 *Attachment 3)*

4  
5 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

6  
7 A. BellSouth's position is that Supra, not BellSouth, should bear the costs caused  
8 by Supra's network design. For example, assume that Supra chooses to  
9 establish one Point of Interconnection in a LATA. BellSouth contends that  
10 Supra should be required to bear the cost of facilities that BellSouth may be  
11 required to install, on Supra's behalf, in order to carry BellSouth's traffic that  
12 originates in a BellSouth local calling area and is destined for Supra's customer  
13 located in that same local calling area to Supra's Point of Interconnection  
14 located outside of that local calling area. Supra should not be allowed to  
15 impose upon BellSouth the financial burden of delivering BellSouth's  
16 originating local traffic to a single point in the LATA when that point is  
17 outside the local calling area in which the traffic originates and terminates.

18  
19 Q: DOES BELLSOUTH'S POSITION MEAN THAT SUPRA WOULD HAVE  
20 TO BUILD A NETWORK TO EACH BELLSOUTH LOCAL CALLING  
21 AREA, OR OTHERWISE HAVE A POINT OF INTERCONNECTION  
22 WITH BELLSOUTH'S LOCAL NETWORK IN EVERY LOCAL CALLING  
23 AREA?

24

1 A. No. Supra can build out its network that way if it chooses, but it is not  
2 required to do so. Supra can lease facilities from BellSouth or any other  
3 provider to bridge the gap between its network (that is, where it designates its  
4 Point of Interconnection) and each BellSouth local calling area. BellSouth will  
5 be financially responsible for transporting its originating traffic to a single  
6 point in each local calling area. However, BellSouth is not obligated to haul its  
7 local traffic to a distant point dictated by Supra without appropriate  
8 compensation from Supra.

9

10 Q. HOW HAS THE FCC ADDRESSED THE ADDITIONAL COSTS CAUSED  
11 BY THE FORM OF INTERCONNECTION AN ALEC CHOOSES?

12

13 A. In its First Report and Order in Docket No. 96-325, the FCC states that the  
14 ALEC must bear the additional costs caused by an ALEC's chosen form of  
15 interconnection. Paragraph 199 of the Order states that "a requesting carrier  
16 that wishes a 'technically feasible' but expensive interconnection would,  
17 pursuant to section 252(d)(1), be required to bear the cost of the that  
18 interconnection, including a reasonable profit." (Emphasis added) Further, at  
19 paragraph 209, the FCC states that "Section 251(c)(2) lowers barriers to  
20 competitive entry for carriers that have not deployed ubiquitous networks by  
21 permitting them to select the points in an incumbent LEC's network at which  
22 they wish to deliver traffic. Moreover, because competing carriers must  
23 usually compensate incumbent LECs for the additional costs incurred by  
24 providing interconnection, competitors have an incentive to make  
25 economically efficient decisions about where to interconnect." (Emphasis

1 added)

2

3 Clearly, the FCC expects an ALEC such as Supra to pay the additional costs  
4 that it causes BellSouth to incur. If Supra is permitted to shift its costs to  
5 BellSouth, Supra has no incentive to make economically efficient decisions  
6 about where to interconnect.

7

8 ***Issue 29: Should BellSouth provide local circuit switching at UNE rates to allow***  
9 ***Supra Telecom to serve the first three lines provided to a customer located in***  
10 ***Density Zone 1 as determined by NECA Tariff No. 4 in effect on January 1, 1999***  
11 ***(“Density Zone 1”)? (Att 2, Section 6.3.1.2)***

12 ***Issue 31: Should BellSouth be allowed to aggregate lines provided to multiple***  
13 ***locations of a single customer to restrict Supra Telecom’s ability to purchase local***  
14 ***circuit switching at UNE rates to serve any of the lines of that customer?***

15

16 Q. WHAT IS BELLSOUTH’S POSITION ON THESE ISSUES?

17

18 A. These issues involve the application of FCC rules regarding the exemption for  
19 unbundling local circuit switching. When a particular customer has four or  
20 more lines within a specific geographic area, even if those lines are spread over  
21 multiple locations, BellSouth is not required to provide unbundled local circuit  
22 switching to ALECs, so long as the other criteria for FCC Rule 51.319(c)(2)  
23 are met. This rule states:

24

1 (2) Notwithstanding the incumbent LEC's general duty to unbundle local  
2 circuit switching, an incumbent LEC shall not be required to unbundle  
3 local circuit switching for requesting telecommunications carriers when  
4 the requesting telecommunications carrier serves end-users with four or  
5 more voice grade (DS0) equivalents or lines, provided that the  
6 incumbent LEC provides non-discriminatory access to combinations of  
7 unbundled loops and transport (also known as the "Enhanced Extended  
8 Link") throughout Density Zone 1, and the incumbent LEC's local  
9 circuit switches are located in:

- 10 (i) The top 50 Metropolitan Statistical Areas as set forth in  
11 Appendix B of the Third Report and Order and Fourth  
12 Further Notice of Proposed Rulemaking in CC Docket No.  
13 96-98, and  
14 (ii) In Density Zone 1, as defined in § 69.123 of this chapter on  
15 January 1, 1999.

16  
17 Q. WHAT WAS THE FCC'S RATIONALE FOR THE "FOUR OR MORE  
18 LINES" CRITERIA IN RULE 51.319(c)(2)?

19  
20 A. The FCC used the four-line cutoff to distinguish between the mass market and  
21 the medium to large business market. As long as the other criteria of Rule  
22 51.319(c)(2) were met, the FCC determined that competitors were not impaired  
23 in their ability to serve medium to large business customers. The following  
24 portions of the UNE Remand Order demonstrate the FCC's rationale:

25

1           294. We recognize that a rule that removes unbundling obligations  
2           based on line count will be marginally overinclusive or underinclusive  
3           given individual factual circumstances. We find, however, that in our  
4           expert judgment, a rule that distinguishes customers with four lines or  
5           more from those with three lines or less reasonably captures the  
6           division between the mass market – where competition is nascent – and  
7           the medium and large business market – where competition is  
8           beginning to broaden.

9  
10           297. In contrast, marketplace developments suggest that competitors  
11           are not impaired in their ability to serve certain high-volume customers  
12           in the densest areas.

13  
14           The FCC’s logic here is that the biggest part of the consumer market involves  
15           customers who have three or fewer lines. By the time a customer has four or  
16           more lines, the customer is either a mid-sized or a large customer, and ALECs  
17           are not impaired if they don’t have access to unbundled local circuit switching  
18           to address the telecommunications needs of these classes of customers.

19           Nowhere in the rule, nor in the rationale supporting it, does the FCC suggest  
20           that the incumbent LEC still has an obligation to unbundle local circuit  
21           switching for a portion of a medium to large business customer’s lines.

22  
23    Q.    HOW DOES THE ALEC’S ABILITY TO OBTAIN ENHANCED  
24           EXTENDED LINKS (“EELS”) IMPACT THIS ISSUE?  
25

1 A. If the ILEC provides EELs at UNE rates, the ALEC can haul the call anywhere  
2 in the area to the ALEC's switch. The FCC obviously concluded that, at least  
3 in the top 50 MSAs, switching is available from a number of sources. As long  
4 as the incumbent LEC allows the ALEC to have an EEL so that the end user  
5 could be connected to an ALEC's switch, it is not necessary for the incumbent  
6 LEC to unbundle local circuit switching.

7  
8 Specifically regarding Issue 31, the Commission must address the question of  
9 whether the four lines identified in the applicable FCC rule have to all be  
10 located at the same premises, or whether it is sufficient that the customer has  
11 four or more lines located anywhere in the MSA. It appears that Supra's  
12 position is that the lines all have to be located at the same premises.  
13 BellSouth's position is that the availability of EELs renders the actual  
14 geographic location of the customer's lines, as long as the lines are all within  
15 the same MSA, irrelevant.

16  
17 Q. WHAT DOES BELLSOUTH REQUEST OF THE COMMISSION?

18  
19 A: BellSouth requests this Commission to reject Supra's attempt to violate the  
20 FCC's rules. ALECs are not impaired without access to unbundled local  
21 circuit switching when serving customers with four or more lines in Density  
22 Zone 1 in the top 50 MSAs. Consequently, ALECs are not entitled to  
23 unbundled local circuit switching in these areas for any of an end user's lines  
24 when the end user has four or more lines in the relevant geographic area, as  
25 long as BellSouth will provide the ALEC with EELs at UNE rates.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

*Issue 32: Should Supra Telecom be permitted to charge tandem rate elements when its switch serves a geographic area comparable to that served by BellSouth's tandem switch?*

Q. PLEASE BRIEFLY EXPLAIN THIS ISSUE.

A. The FCC's rules established that, when two carriers are involved in delivery of local traffic, the originating carrier would compensate the terminating carrier for certain additional costs incurred to transport and terminate local calls from the originating carrier's customers. (FCC Rule 51.701) The FCC required such compensation to be symmetrical unless the ALEC could demonstrate that it was using an efficient configuration to transport and terminate the calls and that such configuration justified asymmetrical rates. Under symmetrical reciprocal compensation, the ALEC applies the ILEC's rate for transport and termination. The FCC determined that there should be two rates for transport and termination. One rate applies where tandem switching is involved (tandem rate) and the other rate applies where tandem switching is not involved (end office rate). The tandem rate simply consists of both the end office switching rate and the tandem switching rate. As a surrogate for these two rates, many commissions have used the UNE rates of the involved network components as the basis for reciprocal compensation. This is a reasonable surrogate when both parties' switches are in the same local calling area.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A. In order for an ALEC to appropriately charge for tandem switching, the ALECa must demonstrate to the Commission that: 1) its switches serve a comparable geographic area to that served by BellSouth's tandem switches and that 2) its switches actually perform local tandem functions. An ALEC should only be compensated for the functions that it actually provides.

BellSouth proposes to bill an ALEC for use of a tandem only when BellSouth incurs the cost of tandem switching on a particular local call. Further, BellSouth proposes to pay an ALEC the tandem switching rate only when the ALEC incurs the cost of tandem switching on a particular local call. To incur this cost, the ALEC must provide the functionality of a tandem switch, as opposed to an end office switch, and the ALEC must be serving a geographic area comparable to a BellSouth tandem.

Q. HAS THE FCC DEFINED WHICH FUNCTIONS A TANDEM SWITCH MUST PROVIDE?

A: Indeed it has. In its Order No. FCC 99-238, the FCC's rules at 51.319(c)(3) state:

*Local Tandem Switching Capability.* The tandem switching capability network element is defined as:

- (i) Trunk-connect facilities, which include, but are not limited to, the connection between trunk termination at a cross connect panel and switch trunk card;

- 1 (ii) The basic switch trunk function of connecting trunks to trunks; and  
2 (iii) The functions that are centralized in tandem switches (as  
3 distinguished from separate end office switches), including but not  
4 limited, to call recording, the routing of calls to operator services,  
5 and signaling conversion features.

6  
7 Of course, this definition of tandem switching capability has long been  
8 accepted and applied within the telecommunications industry. The  
9 introduction of local competition has no effect on the definition of tandem  
10 switching capability.

11  
12 Q. WHAT DOES BELLSOUTH REQUEST OF THE COMMISSION?

13  
14 A. While the Commission has addressed this same issue in previous arbitrations,  
15 the Commission currently has established a generic docket to address all  
16 reciprocal compensation issues. Therefore, BellSouth recommends that this  
17 issue be deferred to Docket No. 000075-TP.

18  
19 ***Issue 44: What terms are adoptable from other filed interconnection agreements?***

20 ***(GTC, Section 5)***

21 ***Issue 45: Should BellSouth be required to permit Supra Telecom to substitute more***  
22 ***favorable terms and conditions obtained by a third party through negotiation or***  
23 ***otherwise, effective as of the date of Supra Telecom's request. Should BellSouth be***  
24 ***required to post on its web-site all BellSouth interconnection agreements with third***  
25 ***parties within fifteen days of the filing of such agreements with the FPSC?***

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q. WHAT IS BELLSOUTH'S POSITION ON THESE ISSUES?

A. Under Part A, Section 5.1 of BellSouth's proposed Interconnection Agreement, BellSouth agrees to make available, pursuant to Section 252(i) of the 1996 Act and 47 C.F.R. § 51.809, any interconnection, service, or network element provided under any Commission-approved agreement to which BellSouth is a party at the same rates, terms and conditions as provided in that agreement. This is commonly known as the "most favored nation" or "pick and choose" option. BellSouth can require Supra to accept all terms that are legitimately related to the terms that Supra desires to adopt for itself. (See *AT&T Corp. Iowa Utilities Board*, 525 U.S. 366, 396, 119 S. Ct. 721, 738 (1999)).

When Supra selects such terms, it should be required to amend its interconnection agreement to effectuate its adoption of these additional terms. The parties' relationship is governed by the contract, and changes to the relationship should properly be affected only by amending the contract. Any existing interconnection agreement can be adopted so long as that agreement has more than six months remaining on it. If Supra adopts a third party's existing interconnection agreement, Supra's agreement will expire on the same date as that third party's agreement.

Further, BellSouth's position is that the adoption or substitution of a specific provision contained in a previously approved agreement is effective on the date the amendment memorializing the adoption is signed by BellSouth and the

1 adopting ALEC. In other words, the effective date will not be retroactive to  
2 the date when the provision became effective between BellSouth and the third  
3 party. BellSouth's authority to charge for service is governed by the execution  
4 of an agreement or amendment. Until both parties sign the agreement or  
5 amendment, there is no authority by which the rates, terms and conditions can  
6 be implemented.

7

8 With respect to posting filed agreements on BellSouth's website, the 1996 Act  
9 obligates the state commissions to make the agreements publicly available.

10 Section 252(h) of the 1996 Act states:

11 A State commission shall make a copy of each agreement [negotiated  
12 or arbitrated] approved under subsection (e) and each statement  
13 [Statement of Generally Available Terms and Conditions] approved  
14 under subsection (f) available for public inspection and copying within  
15 10 days after the agreement or statement is approved.

16

17 Because approved interconnection agreements are available from the  
18 Commission, BellSouth should not be required to post these agreements on the  
19 web, as Supra has requested. Supra can obtain copies of the agreements from  
20 the Commission just like any other ALEC. Beyond the fact that BellSouth has  
21 no obligation to post interconnection agreements on its website, BellSouth  
22 certainly has no obligation to post filed agreements that have not even been  
23 approved by the Commission.

24

1 *Issue 49: Should Supra Telecom be allowed to share the spectrum on a local loop*  
2 *for voice and data when Supra Telecom purchases a loop/port combination and if*  
3 *so, under what rates, terms and conditions?*

4  
5 Q. PLEASE EXPLAIN WHAT IT MEANS TO “SHARE THE SPECTRUM” ON  
6 A LOCAL LOOP.

7  
8 A. The local loop from the central office to the customer’s premises can be used  
9 to provide both voice and packet data service. There are a number of carriers  
10 who want to use that loop to provide packet data service while the ILEC would  
11 continue to provide voice service. Inserting specific equipment on the line  
12 enables the spectrum to be “shared” by the voice provider and the data  
13 provider, a functionality also known as “line sharing.” In its Line Sharing  
14 Order, the FCC specifically states “[t]he provision of xDSL-based service by a  
15 competitive LEC and voiceband service by an incumbent LEC on the same  
16 loop is frequently called ‘line sharing.’” (Line Sharing Order at ¶ 4)

17  
18 Q. WHAT IS BELLSOUTH’S POSITION ON THIS ISSUE?

19  
20 A. BellSouth is only required to provide line sharing to a single requesting carrier  
21 at the same customer address as the traditional POTS analog voice service  
22 provided by the incumbent. Line sharing as ordered by the FCC is available  
23 under the following conditions:

- 24 • Two carriers – one voice provider (ILEC) and one data provider  
25 (ALEC) – serve one customer per loop (Id. ¶ 74);

- 1           • The ILEC provides traditional POTS analog voiceband service to  
2           the customer on the line to be shared (Id. ¶ 19);
- 3           • The ALEC provides xDSL-based service to the customer (Id. ¶ 13);
- 4           • The ALEC’s xDSL technologies do not use the frequencies  
5           immediately above the voiceband, thereby preserving them as a  
6           “buffer” zone to ensure the integrity of the voiceband traffic (Id. fn  
7           136);
- 8           • The ALEC’s xDSL technology does not interfere with analog  
9           voiceband transmission (Id. ¶ 70-71); and
- 10          • If the ILEC’s retail customer disconnects his/her POTs service, the  
11          data provider must purchase the entire stand-alone loop if it wishes  
12          to continue providing xDSL service to the customer. Similarly,  
13          ILECs are not required to provide line sharing to a requesting  
14          carrier when the CLP purchases a combination of network elements  
15          known as the UNE platform. (Id. ¶¶ 72-73)

16

17          The UNE platform is the loop/port combination. When an ALEC purchases the  
18          loop/port combination, the ALEC becomes the voice provider. Clearly,  
19          BellSouth is obligated to provide line sharing to ALECs only where BellSouth  
20          is providing the voice service. In its Line Sharing Order, the FCC determined  
21          that ALECs are not impaired without access to line sharing when the ILEC is  
22          not providing the voice service. Further, in the SBC Texas 271 order, the FCC  
23          referred to the situation where and ALEC provides voice service over UNE-P  
24          and data is provided by the ALEC (or another ALEC, with a pre-existing  
25          agreement) as “line splitting”. Additionally, in its recent decision released

1           January 19, 2001<sup>2</sup>, the FCC reaffirmed its previous ruling, stating: “[w]e deny,  
2           however, AT&T’s request that the Commission clarify that incumbent LECs  
3           must continue to provide xDSL services in the event customers choose to  
4           obtain voice service from a competing carrier on the same line because we find  
5           that the *Line Sharing Order* contained no such requirement.” (January 19,  
6           2001 Order at ¶16).

7  
8           Q.     WHAT DOES BELLSOUTH REQUEST OF THE COMMISSION?

9  
10          A.     BellSouth requests the Commission to find, consistent with the FCC, that  
11               BellSouth is obligated to provide line sharing to ALECs only where BellSouth  
12               is providing the voice service. The language that BellSouth has proposed for  
13               inclusion in the Agreement is consistent with the FCC’s rules.

14  
15          ***Issue 51: Should BellSouth be allowed to impose a manual ordering charge when it***  
16          ***fails to provide an electronic interface?***

17  
18          Q.     WHAT IS BELLSOUTH’S POSITION ON THIS ISSUE?

19  
20          A.     Manual ordering charges should apply when Supra places an order manually,  
21               either for its own business reasons or because BellSouth does not have an  
22               electronic interface that will allow Supra to place orders electronically. As Mr.  
23               Pate explains, BellSouth is not required to provide electronic ordering for all

---

<sup>2</sup> *In the Matter of Deployment of Wireline Services Offering Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98.



1           UNEs, but Supra proposes to be charged a price for electronic ordering  
2           regardless of whether BellSouth provides that capability.

3  
4           BellSouth has proposed cost-based rates to recover the manual labor costs  
5           associated with both manual and electronic ordering in Docket No. 990649-TP.  
6           Recovery of costs associated with the development and ongoing maintenance  
7           of BellSouth's electronic interfaces is being addressed in a generic OSS  
8           interface cost docket. BellSouth proposes that the rates the Commission  
9           establishes in these dockets be incorporated into the Agreement.

10

11       ***Issue 52: Should the resale discount apply to all telecommunications services***  
12       ***BellSouth offers to end users, regardless of the tariff in which the service is***  
13       ***contained?***

14

15       Q.     WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

16

17       A.     BellSouth is only obligated by Section 251(c)(4) of the 1996 Act and the  
18           FCC's Rule 51.605(a) to offer a resale discount on telecommunications service  
19           that BellSouth provides at retail to subscribers who are not telecommunications  
20           carriers. Exchange access services are generally not offered at retail to  
21           subscribers who are not telecommunications carriers. Consequently, the resale  
22           discount does not apply to services in the access tariffs, particularly since, as  
23           the FCC has concluded, BellSouth does not avoid any "retail" costs in selling  
24           access services at "wholesale".

25

1 Q. ON WHAT BASIS DOES BELLSOUTH CONTEND THAT IT IS NOT  
2 OBLIGATED TO OFFER ITS EXCHANGE ACCESS SERVICES FOR  
3 RESALE AT A DISCOUNT?  
4

5 A. The FCC has specifically exempted exchange access services from the resale  
6 requirements of the 1996 Act. Paragraphs 873 and 874 of the FCC's First  
7 Report and Order in CC Docket No. 96-98 ("Local Competition Order") reads  
8 as follows:

9 Exchange access services are not subject to the resale requirements of  
10 section 251(c)(4). The vast majority of purchasers of interstate access  
11 services are telecommunications carriers, not end users. It is true that  
12 incumbent LEC interstate access tariffs do not contain any limitation  
13 that prevents end users from buying these services, and that end users  
14 do occasionally purchase some access services, including special  
15 access, Feature Group A, and certain Feature Group D elements for  
16 large private networks.

17  
18 We find several compelling reasons to conclude that exchange access  
19 services should not be subject to resale requirements. First, these  
20 services are predominantly offered to, and taken by, IXCs, not end  
21 users. Part 69 of our rules defines these charges as "carrier's carrier  
22 charges," and the specific part 69 rules that describe each interstate  
23 switched access element refer to charges assessed on "interexchange  
24 carriers" rather than end users. The mere fact that fundamentally non-  
25 retail services are offered pursuant to tariffs that do not restrict their

1 availability, and that a small number of end users do purchase some of  
2 these services, does not alter the essential nature of the services.  
3 Moreover, because access services are designed for, and sold to, IXC  
4 as an input component to the IXC's own retail services, LECs would  
5 not avoid any "retail" costs when offering these services at "wholesale"  
6 to those same IXCs. Congress clearly intended section 251(c)(4) to  
7 apply to services targeted to end user subscribers, because only those  
8 services would involve an appreciable level of avoided costs that could  
9 be used to generate a wholesale rate. Furthermore, as explained in the  
10 following paragraph, section 251(c)(4) does not entitle subscribers to  
11 obtain services at wholesale rates for their own use. Permitting IXCs to  
12 purchase access services at wholesale rates for their own use would be  
13 inconsistent with this requirement. [Footnotes deleted]

14  
15 More recently, the FCC reiterated its position in its Order approving Bell  
16 Atlantic New York's application for interLATA authority, CC Docket No. 99-  
17 295. In paragraph 393 of that Order addressing Bell Atlantic's ADSL Access  
18 Tariff offering, the FCC stated, "we agree with Bell Atlantic that it is not  
19 required to provide an avoided-cost discount on its wholesale ADSL offering  
20 because it is not a retail service subject to the discount obligations of section  
21 251(c)(4)." Bell Atlantic's wholesale ADSL offering is only offered in its  
22 access tariff.

23  
24 Based on the foregoing, there can be no doubt that both Congress and the FCC  
25 fully intended that exchange access services be excluded from the resale

1 requirements of the 1996 Act. Thus, the Commission should adopt BellSouth's  
2 position in this arbitration that exchange access services are not subject to a  
3 resale discount and reject Supra's attempt to circumvent the 1996 Act and the  
4 FCC's rules.

5

6 Q. WHAT SERVICES DOES BELLSOUTH BELIEVE SUPRA IS ENTITLED  
7 TO PURCHASE AT A RESALE DISCOUNT?

8

9 A. BellSouth's position is that Supra and all ALECs are entitled to purchase  
10 BellSouth's retail services at a resale discount. BellSouth's retail services are  
11 contained in BellSouth's General Subscriber Services Tariff ("GSST") and  
12 BellSouth's intrastate Private Line Tariff.

13

14 ***Issue 59: Should Supra Telecom be required to pay for expedited service when***  
15 ***BellSouth provides services after the offered expedited date, but prior to BellSouth's***  
16 ***standard interval?***

17

18 Q. WHAT IS BELLSOUTH'S UNDERSTANDING OF THIS ISSUE?

19

20 A. First, I must say that it is not clear to BellSouth why Supra has raised this  
21 issue. Supra has never purchased stand-alone UNE loops, the elements to  
22 which expedited charges apply. Further, Supra did not raise this issue during  
23 negotiations, nor has it raised the issue with its account team. I understand that  
24 during issue identification, Supra claimed that it intends this issue to be the

1 same as Issue 87 in the MCI arbitration. BellSouth and MCI settled this issue  
2 with the same language that BellSouth has proposed to Supra.

3

4 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

5

6 A. BellSouth is under no obligation to expedite service for Supra or any other  
7 ALEC. If BellSouth does so, however, Supra should be required to pay  
8 expedite charges when BellSouth expedites a service request and completes the  
9 order before the standard interval expires. As I mentioned above, in an effort  
10 to settle this issue, BellSouth offered Supra the following language in  
11 BellSouth's January 31, 2001 filing with the Commission:

12 *Supra may request an expedited service interval on the local service*  
13 *request (LSR). BellSouth will advise Supra whether the requested*  
14 *expedited date can be met based on work load and resources available.*  
15 *For expedited requests for loop provisioning, Supra will pay the*  
16 *expedited charge set forth in this Agreement on a per loop basis for any*  
17 *loops provisioned in 4 days or less. Supra will not be charged an*  
18 *expedite charge for loops provisioned in five or more days, regardless*  
19 *of whether the loops were provisioned in less than the standard interval*  
20 *applicable for such loops.*

21

22 ***Issue 65: Should the parties be liable in damages, without a liability cap, to one***  
23 ***another for their failure to honor in one or more material respects any one or more***  
24 ***of the material provisions of the Agreement? (GTC, Section 10)***

25

1 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

2

3 A. BellSouth's position is that each party's liability arising from any breach of  
4 contract should be limited to a credit for the actual cost of the services or  
5 functions not performed or performed improperly. It is common for parties to  
6 an interconnection agreement to agree to limited liability for breach of  
7 contract. Additionally, limitations of liability for breach of contract have been  
8 standard in the telecommunications industry for decades. The tariffs of  
9 BellSouth and other telecommunications service providers, for instance,  
10 commonly limit the service provider's liability. It is my understanding that  
11 limited liability is a standard clause in most carrier-to-carrier contracts in the  
12 long distance industry, as well.

13

14 Q. YOU STATED ABOVE THAT "LIMITATIONS OF LIABILITY FOR  
15 BREACH OF CONTRACT HAVE BEEN STANDARD. . .FOR DECADES."  
16 PLEASE GIVE SOME SPECIFIC EXAMPLES.

17

18 A. Both BellSouth's Florida Access Services Tariff and General Subscriber  
19 Service Tariff ("GSST") include limitations of liability. With regard to access  
20 customers, Section E2.1.3 of the Access Tariff states in part:

21 *The Company's liability shall not exceed an amount equal to the*  
22 *proportionate charge for the service for the period during which the*  
23 *service was affected.*

24 Also, with regard to business and residential customers, Section A2.5.1 of the  
25 GSST sets forth the following:

1            *The liability of the Company for damages arising out of impairment of*  
2            *service provided to its subscribers such as defects or failure in facilities*  
3            *furnished by the Company or mistakes, omissions, interruptions,*  
4            *preemptions, delays, errors or defects the provision of its services set*  
5            *forth herein or any portion of its services, occurring in the course of*  
6            *furnishing service or other facilities and not caused by the negligence*  
7            *of the subscriber, or of the Company in failing to maintain proper*  
8            *standards of maintenance and operation and to exercise reasonable*  
9            *supervision shall in no event exceed an amount equivalent to the*  
10           *proportionate charge to the subscriber for the period of service during*  
11           *which such mistake, omission, interruption, preemption, delay, error or*  
12           *defect in transmission, or defect or failure in facilities occurs.*

13           More recently, this Commission approved an additional limitation in reference  
14           to BellSouth's Y2K liability. Section A2.5.12C of the GSST states:

15           *The Company's liability for errors or damage resulting from the*  
16           *inability of the Company's systems to process unusual date*  
17           *requirements, shall be limited to an amount equal to the proportionate*  
18           *amount of the Company's billing for the period of service during which*  
19           *the errors or damages occur.*

20

21           There is no reason for the Commission to allow Supra to seek more damages as  
22           a result of a mistake by BellSouth than BellSouth's retail and wholesale access  
23           customers would be allowed to seek as a result of the same mistake by  
24           BellSouth. Supra's position should be denied because it is inconsistent with  
25           standard practices.

1

2 *Issue 66: Should Supra Telecom be able to obtain specific performance as a remedy*  
3 *for BellSouth's breach of contract?*

4

5 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

6

7 A. Specific performance is a remedy, not a requirement of Section 251 of the  
8 1996 Act nor is it an appropriate subject for arbitration under Section 252.  
9 Further, specific performance is either available (or not) as a matter of law. To  
10 the extent Supra can show that it is entitled to obtain specific performance  
11 under Florida law, Supra can make this showing without agreement from  
12 BellSouth. To the extent Supra, is attempting to obtain specific performance  
13 under circumstances when it is not available under Florida law, this is not  
14 justification for this demand.

15

16 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

17

18 A. Yes.

19 #247762