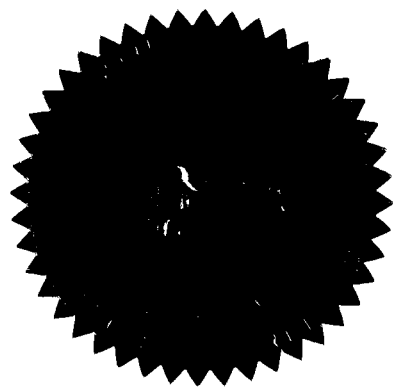


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 001097-TP

In the Matter of

REQUEST FOR ARBITRATION CONCERNING
CONCERNING COMPLAINT OF BELL SOUTH
TELECOMMUNICATIONS, INC. AGAINST
SUPRA TELECOMMUNICATIONS AND
INFORMATION SYSTEMS, INC. FOR
RESOLUTIONS OF BILLING DISPUTES.



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VOLUME 1

PAGES 1 THROUGH 204

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER LILA A. JABER
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER MICHAEL A. PALECKI

DATE: Thursday, May 3, 2001

TIME: Commenced at 9:35 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: KORETTA E. STANFORD, RPR
Official FPSC Reporter

1 APPEARANCES:

2 NANCY B. WHITE, BellSouth Telecommunications, Inc.,
3 c/o Nancy Sims, 150 South Monroe Street, Suite 400,
4 Tallahassee, Florida 32301, appearing on behalf of BellSouth
5 Telecommunications, Inc.

6 MARK BUECHELE, 2620 Southwest 27th Avenue, Miami,
7 Florida 33133, appearing on behalf of Supra Telecommunications
8 and Information Systems, Inc.

9 C. LEE FORDHAM, FPSC Legal Division, 2540 Shumard Oak
10 Boulevard, Tallahassee, Florida 32399-0850, appearing on behalf
11 of the Commission Staff.

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P R O C E E D I N G S

1
2 COMMISSIONER JABER: Counsel, let's call this hearing
3 to order and notice.

4 MR. FORDHAM: Pursuant to notice published on April
5 20, 2001, this time and place has been set for a hearing in
6 docket number 001097-TP for purposes set forth in the notice.

7 COMMISSIONER JABER: Thank you. Appearances.

8 MS. WHITE: Nancy White for BellSouth
9 Telecommunications.

10 MR. BUECHELE: Mark Buechele on behalf of Supra
11 Telecommunications.

12 MR. FORDHAM: And Lee Fordham representing the
13 Florida Public Service Commission.

14 MR. McLEAN: I'm Harold McLean, general counsel of
15 the Commission and representing the Commission.

16 COMMISSIONER JABER: Counsel for Supra, give me your
17 name one more time.

18 MR. BUECHELE: It's Mark Buechele. It should be on
19 your original one, I was the original lawyer.

20 COMMISSIONER JABER: Spell your last name for me.

21 MR. BUECHELE: B-u-e-c-h-e-l-e.

22 COMMISSIONER JABER: Thank you.

23 Mr. Fordham, are there any preliminary matters?

24 MR. FORDHAM: Commissioner, there is one, and it
25 might best be addressed by Mr. McLean.

1 MR. McLEAN: Good morning, Commissioners. In
2 conversation with Commissioner Baez, I learned that there was a
3 casual contact about three years ago between the Commissioner
4 and Supra regarding an issue of employment. I have distributed
5 -- as you know, a Commission employee is required to notify the
6 executive director when those negotiations take place.

7 I have distributed to the parties the paperwork which
8 arose from that contact. It was one when Commissioner Baez was
9 aide to Commissioner Garcia. In conversations with
10 Commissioners, it's my desire to -- if it should happen that
11 any party has any objection to Commissioner Baez's
12 participation in this hearing and subsequent order and so
13 forth, I would like to have that objection as early as possible
14 so that in interest of judicial economy we don't go down a road
15 that might turn out to be fruitless later.

16 Commissioner Baez, I don't mean to speak for, you
17 but --

18 COMMISSIONER BAEZ: I don't think I could have said
19 it any better. Thank you, Mr. McLean.

20 MR. McLEAN: Well, thank you, sir.

21 So, I think, if the parties could speak to that
22 issue, I intend to put this correspondence in the record with
23 the agreement of the parties and the Commission. If there are
24 objections, perhaps this would be a good time to voice them.

25 MS. WHITE: BellSouth has no objection. We respect

1 the Commissioner's integrity and ability to reach an impartial
2 and independent decision based on the evidence in this docket.
3 Thank you.

4 COMMISSIONER JABER: Thank you, Ms. White.

5 MR. BUECHELE: And Supra doesn't have any objection
6 either.

7 COMMISSIONER JABER: Thank you, Mr. Buechele.

8 MR. McLEAN: Madame Chairman, with that I'd like to
9 introduce the five-page document. I'm not sure that
10 Commissioner Palecki has one as yet; do you, sir?

11 COMMISSIONER JABER: I just handed him one.

12 MR. McLEAN: My apology. I'd like to introduce it in
13 the record as Commission exhibit and the number --

14 COMMISSIONER JABER: That would be Exhibit 1, and it
15 is a five-page memo regarding Commissioner Baez's contact with
16 Supra.

17 MR. McLEAN: Thank you very much, Madam,
18 Commissioners. And with that, may I be excused from the
19 hearing?

20 COMMISSIONER JABER: Yes, you can. And let the
21 record reflect Exhibit 1 has been moved into the record. Thank
22 you, Mr. McLean.

23 MR. McLEAN: Thank you, ma'am.

24 (Exhibit 1 marked for identification and admitted
25 into the record.)

1 COMMISSIONER JABER: Mr. Fordham, preliminary
2 matters?

3 MR. FORDHAM: Commissioner, Staff has no other
4 preliminary matters.

5 COMMISSIONER JABER: All right. The witnesses are in
6 the room?

7 MS. WHITE: Yes.

8 COMMISSIONER JABER: Let's go ahead and swear in the
9 witnesses, then. If you'll stand and raise your right hand,
10 please. In this matter before the Florida Public Service
11 Commission, do you swear or affirm that the testimony you are
12 about to give is the truth and nothing but the truth?

13 WITNESSES: I do.

14 COMMISSIONER JABER: Thank you. I see three
15 witnesses. There are four, aren't there?

16 MS. WHITE: No, just three.

17 COMMISSIONER JABER: Okay, thank you. In the
18 prehearing order, we reflected that counsel could have 10
19 minutes each for opening statements. Do you all want opening
20 statements?

21 MS. WHITE: I have one. Since I wrote it, I --

22 COMMISSIONER JABER: Mr. Buechele, were you prepared
23 to do opening statements?

24 MR. BUECHELE: If she has one, I'll let her go, and
25 I'll just be very brief.

1 COMMISSIONER JABER: Okay. Go ahead, Ms. White.

2 MS. WHITE: Thank you. I'm not used to doing opening
3 statements, so when you said that we were going to have them, I
4 had decided I'd better put something down.

5 COMMISSIONER JABER: And the 10 minutes was an
6 invitation, that didn't mean that you had to take the 10
7 minutes.

8 MS. WHITE: I understand. And, I think, my
9 five-minute summary has just been cut in half.

10 The issues in this case are very simple, really.
11 It's whether the 1997 Resale Agreement that was entered into
12 between BellSouth and Supra apply in this case or whether the
13 October 5th, 1999, Interconnection Agreement between BellSouth
14 and AT&T that was adopted by Supra on October 5th, '99, governs
15 the party's relationship in this case.

16 You will hear testimony that BellSouth and Supra
17 entered into a Resale Agreement in 1997 and Supra immediately
18 began ordering resale services from BellSouth. You will hear
19 that Supra adopted the BellSouth/AT&T Agreement effective
20 October 5th, 1999. All services ordered by Supra prior to
21 October 5th, '99, were ordered as resale under the
22 BellSouth/Supra 1997 Resale Agreement. Under the '97 Resale
23 Agreement between BellSouth and Supra, BellSouth bills Supra
24 certain charges that Supra claims it should not have paid and
25 that Supra is entitled to a refund with interest.

1 There are three categories of charges that we are
2 concerned with in this docket. First, Supra claims that it
3 should not have been billed end user common line charges
4 totaling \$224,287.79. You will hear testimony that there are
5 sections of the 1997 Resale Agreement that specifically state
6 that BellSouth will bill Supra end user common line charges.
7 The FCC rules are consistent with this provision. 47 Code of
8 Federal Regulations, Section 51.617, requires BellSouth to
9 assess the end user common line charge upon carriers that
10 purchase telephone exchange service for resale.

11 Second, Supra claims that it should not have been
12 billed charges for processing unauthorized local service
13 changes. When an end user calls BellSouth and advises
14 BellSouth that his or her local service has been switched
15 without authorization, BellSouth's policy is to immediately
16 switch the end user back to the carrier from which they were
17 switched.

18 Section 7 -- excuse me, 6-F of the '97 Resale
19 Agreement states that if an unauthorized change in local
20 services occurred, BellSouth will assess an unauthorized change
21 charge of \$19.41. These charges account for over \$48,000 of
22 the billing dispute. The Resale Agreement also states that the
23 reseller must be able to demonstrate that they had end user
24 authorization upon request. Despite a request from BellSouth
25 to Supra, Supra provided no information to show that these

1 charges were authorized by the end user.

2 The third category of charges is secondary service
3 order charges. These charges account for over \$33,000 of the
4 billing dispute. Secondary service order charges are charges
5 assessed for customer requests to change services or add new or
6 additional services.

7 The 1997 Resale Agreement states that the same terms
8 and conditions, as are specified for services under BellSouth's
9 tariff, apply when they are ordered under this Agreement. Now,
10 Supra will attempt to make several arguments in support of
11 their position that Supra was erroneously billed these charges.
12 First, they will argue that the '97 Resale Agreement does not
13 apply to the charges.

14 Again, the issue is when was the adoption of the
15 BellSouth/AT&T Agreement by Supra effective? Without question,
16 the 1997 Resale Agreement governed the party's business
17 relationship before October 5th, 1999. In the adoption of the
18 AT&T Agreement, signed on October 5th, '99, it states in the
19 clearest terms that it is effective as of October 5th, 1999.

20 This Commission approved Supra's adoption of the
21 Agreement on November 30th, 1999, in order number 99-2304.
22 This order states that the adoption is effective as of the date
23 of that order. So, the earliest it could be effective is
24 October 5th, 1999, and the latest it could be effective is
25 November 30th, 1999. There is no legitimate interpretation of

1 the October 5th, '99 Agreement which would support Supra's
2 claim that the Agreement was effective at an earlier time.

3 Second, Supra will point to sections of the '97
4 Resale Agreement that they allege entitle them to a corrective
5 payment and purport to prove that Supra adopted the
6 BellSouth/AT&T Agreement when AT&T signed it in June of '97.
7 Yet, once again, the adoption of the AT&T Agreement by Supra is
8 very clear that the effective date is October 5th, 1999, not
9 June 10th, 1997.

10 Moreover, Section 22.10 of the BellSouth/AT&T
11 Agreement specifically states that the Agreement, and the
12 amendments thereto, constitute the entire Agreement and
13 supersede any prior agreements, representations, statements,
14 negotiations, understandings, proposals, whether oral or
15 written.

16 Don't let Supra confuse or obfuscate the plain simple
17 facts of this case. Number one, Supra signed the Resale
18 Agreement with BellSouth in 1997. Second, they ordered and
19 BellSouth provided resold services from 1997 through the date
20 that the AT&T Agreement was adopted by Supra and on October
21 5th, 1999. These services were provided pursuant to the '97
22 Resale Agreement.

23 The charges under consideration here are appropriate,
24 both under the '97 Resale Agreement and under the AT&T
25 Agreement. They did not adopt the AT&T Agreement until October

1 5th, '99. BellSouth properly billed Supra for the charges at
2 issue, and we believe the evidence will prove it.

3 Thank you.

4 COMMISSIONER JABER: Thank you, Ms. White.

5 Mr. Buechele.

6 MR. BUECHELE: Yes, briefly. This proceeding was
7 originally brought by BellSouth to determine a number of
8 various billing disputes. Earlier in this proceeding, this
9 Commission stated that billing disputes arising after, I
10 believe, October 5th, 1999, needed to be arbitrated, so those
11 issues are being or have been to arbitration. What we have
12 left in this proceeding are issues, billing disputes that would
13 have arisen prior to that October 1999 date. As Ms. White
14 pointed out, they basically fall into three categories: End
15 user common line charges, charges for converting orders, and
16 charges for switching back customers.

17 It is our contention that BellSouth improperly billed
18 end user common line charges. It is Supra's contention also
19 that BellSouth billed for changing customers over from
20 BellSouth to the ALEC in violation of the agreements and the
21 Commission orders. And on top of that, that BellSouth charged
22 a switchback fee each and every time a customer ever returned
23 to BellSouth for whatever reason, and we believe that those
24 charges are improper under the various Agreements.

25 There are, essentially, three Agreements in the inner

1 play of which are to be decided by you. There's a 1997 Resale
2 Agreement, which was entered in May, there's an October 1997
3 Interconnection Agreement, and there is an October 1999
4 Interconnection Agreement, and it's the inner play of all these
5 that we believe will determine that Supra's entitled to a
6 credit for these charges.

7 Thank you.

8 COMMISSIONER JABER: Thank you.

9 Staff, you have two exhibits that look like they're
10 Official Recognition Lists. Can we combine the lists; one is
11 by Staff and one is by BellSouth, and just call it Exhibit
12 Number 2, Official Recognition List?

13 MR. FORDHAM: Yes, Commissioner. We were going to
14 request that those be considered composite exhibit. It would
15 be Exhibit Number 2 identified as Stip-1.

16 COMMISSIONER JABER: Are there any objections to
17 Stipulation 1, Official Recognition List, and the list provided
18 by BellSouth of orders?

19 MR. BUECHELE: We don't have an objection, but we
20 would like to add an order and that is order number PSC 98-0810
21 in docket number 971140-TP, and it was entered on June 12th,
22 1998.

23 COMMISSIONER JABER: BellSouth, Staff, any objections
24 to that? All right. Then, we will show as a composite Exhibit
25 Number 2, the Official Recognition List submitted by Staff and

1 a list of orders submitted by BellSouth, with the addition of
2 the Supra order.

3 (Exhibit 2 marked for identification.)

4 MS. WHITE: Commissioner Jaber, BellSouth would like
5 to enter into the record as a composite exhibit the exhibits
6 attached to its original complaint. That can be identified as
7 one composite exhibit, if you'd like, and we'd like to make
8 those part of the record.

9 COMMISSIONER JABER: Do you have copies of that,
10 Ms. White?

11 MS. WHITE: I have four copies that I'd be happy to
12 distribute to whoever.

13 COMMISSIONER JABER: Make sure the court reporter has
14 one. Mr. Buechele, you have one already?

15 MR. BUECHELE: I'd like a copy, please.

16 COMMISSIONER JABER: Okay. And why don't you just
17 give me a copy so that I can identify it. Commissioners, you
18 probably want copies before the end of the day? Mr. Buechele,
19 have you ever looked at this? Do you have any objections to
20 the identification and admittance of this?

21 MR. BUECHELE: If these were attached to --

22 MS. WHITE: To the complaint.

23 MR. BUECHELE: To ours?

24 MS. WHITE: No, to my complaint.

25 MR. BUECHELE: To your complaint?

1 MS. WHITE: Mm-hmm.

2 MR. BUECHELE: May I just have a minute?

3 COMMISSIONER JABER: Yes. Actually, what we'll do is
4 identify it as composite Exhibit 3. These are attachments to
5 BellSouth's complaints. We will not admit them into the record
6 yet, Mr. Buechele, until you've had an opportunity to look at
7 them, all right?

8 (Exhibit 3 marked for identification.)

9 COMMISSIONER JABER: And we'll go ahead and move
10 Exhibit 2 into the record.

11 (Exhibit 2 admitted into the record.)

12 COMMISSIONER JABER: Ms. White, call your first
13 witness.

14 MS. WHITE: Yes, ma'am. BellSouth calls Pat Finlen
15 to the stand.

16 MR. BUECHELE: We don't object.

17 COMMISSIONER JABER: Okay. Mr. Buechele, are you
18 indicating to me you don't have an objection to Exhibit 3?

19 MR. BUECHELE: Yes. What it is, is that we have a
20 slight amendment to our Direct Testimony which BellSouth has
21 agreed there is an attachment to it that should be part of that
22 exhibit, but it will be included in there. So, on the
23 condition that each -- we will be given the opportunity to
24 present that as part of our amended testimony, we don't have an
25 objection to that.

1 COMMISSIONER JABER: That's fine, then let's indicate
2 that Exhibit 3 has been moved into the record without
3 objection.

4 (Exhibit 3 admitted into the record.)

5 COMMISSIONER JABER: Ms. White.

6 PATRICK C. FINLEN

7 was called as a witness on behalf of BellSouth
8 Telecommunications, Inc. and, having been duly sworn, testified
9 as follows:

10 DIRECT EXAMINATION

11 BY MS. WHITE:

12 Q Mr. Finlen, could you please state your name and
13 address for the record?

14 A Yes. My name is Patrick C. Finlen, and I am a
15 Managing Director with BellSouth Telecommunications located at
16 675 West Peachtree Street, Atlanta, Georgia 30375.

17 Q Have you caused to be prepared and prefiled in this
18 case Direct Testimony consisting of 25 pages?

19 A Yes, I do.

20 Q Do you have any changes to that Direct Testimony at
21 this time?

22 A Yes, I have one slight change. On Page 14, Line
23 number 22 --

24 COMMISSIONER JABER: Mr. Finlen, I need to ask you to
25 speak right into the microphone for the court reporter and so

1 that we can hear you, too.

2 BY MS. WHITE:

3 Q Do you have any other changes?

4 A No, I do not.

5 Q And did you have attached to your Direct Testimony 16
6 exhibits?

7 A Yes.

8 Q Do you have any changes to those exhibits?

9 A No, I do not.

10 Q Did you cause to be prepared and prefiled in this
11 case Rebuttal Testimony consisting of five pages?

12 A Yes, I did.

13 Q Do you have any changes to that testimony?

14 A No, I do not.

15 Q If I were to ask you the same questions that are
16 contained in your Direct and Rebuttal Testimony today, would
17 your answers to those questions be the same?

18 A Yes, they would.

19 MS. WHITE: Madam Commissioner, I'd like to have the
20 Direct and Rebuttal Testimony of Mr. Finlen inserted into the
21 record as if read.

22 COMMISSIONER JABER: The Direct Testimony and
23 Rebuttal Testimony of Patrick C. Finlen will be inserted into
24 the record as though read.

25

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 DIRECT TESTIMONY OF PATRICK C. FINLEN
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 001097-TP
5 FEBRUARY 23, 2001
6
7

8 Q. PLEASE STATE YOUR NAME, ADDRESS, AND POSITION WITH
9 BELLSOUTH TELECOMMUNICATIONS, INC. (HEREINAFTER
10 REFERRED TO AS "BELLSOUTH").

11

12 A. My name is Patrick C. Finlen. I am employed by BellSouth as a
13 Managing Director in the Customer Markets, Wholesale Pricing
14 Operations Department. My business address is 675 West Peachtree
15 Street, Atlanta, Georgia 30375.

16

17 Q. PLEASE DESCRIBE YOUR CURRENT RESPONSIBILITIES.

18

19 A. I currently have the responsibilities of negotiating local interconnection
20 contracts with Competitive Local Exchange Companies ("CLECs") and
21 supervising other negotiators in this Department. Besides being the
22 BellSouth negotiator for the original 1997 Supra Telecommunications
23 and Information Systems, Inc. ("Supra") Agreement, I have overall
24 responsibility for numerous other negotiations including, but not limited

25

1 to, AT&T, MCI/WorldCom, ITC^DeltaCom, Adelphia, Level 3,
2 NewSouth, Intermedia, and Time Warner.

3

4 Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

5

6 A. I received a Master of Arts Degree in Public and Private Management
7 in 1994, and a Bachelor of Arts Degree in Accounting in 1985 from
8 Birmingham-Southern College in Birmingham, Alabama. I also have an
9 Associate of Science degree in Data Processing from Jefferson State
10 Junior College in Birmingham, Alabama. I began employment with
11 South Central Bell in 1977, and have held various positions in the
12 Network Operations, Consumer Forecasting, Marketing, and
13 Regulatory Departments before assuming my current responsibilities in
14 the Customer Markets Wholesale Pricing Department.

15

16 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

17

18 A. The purpose of my testimony is to address several issues that were
19 raised in the Complaint of BellSouth Telecommunications, Inc. against
20 Supra Telecommunications and Information Systems, Inc. for
21 Resolution of Billing Disputes. These issues include the following:

22

- Which Agreement between BellSouth and Supra applies to the billing dispute at issue in this Arbitration; and

23

24

- The provisions of the applicable Agreement that allow BellSouth to bill Supra for the End User Common Line

25

1 Charge, secondary service charges, and for changes in
2 service, unauthorized local service changes, and
3 reconnections.
4

5 **Issue 1. Should the rates and charges contained (or not contained) in the**
6 **1997 AT&T/BellSouth Agreement apply to the BellSouth bills at**
7 **issue in this Docket?**
8

9 Q. IS THE BELLSOUTH/AT&T INTERCONNECTION AGREEMENT
10 APPLICABLE TO THE BILLS IN DISPUTE IN THIS PROCEEDING?
11

12 A. Absolutely not. As I will explain in my testimony, this Agreement was
13 not effective until after the timeframe of the bills in dispute. The
14 applicable Agreement in this dispute is the 1997 BellSouth/Supra
15 Resale Agreement (Exhibit PCF-1). In my testimony, I will explain the
16 reasons that this Agreement is applicable by describing the history
17 behind each Agreement executed between BellSouth and Supra.
18

19 Q. WHEN DID SUPRA FIRST BECOME A BELLSOUTH WHOLESALE
20 CUSTOMER?
21

22 A. On May 28, 1997, BellSouth and Supra executed a Resale Agreement
23 for the resale of BellSouth's telecommunications services. On July 24,
24 1997, a Collocation Agreement was also executed between Supra and
25 BellSouth. An Interconnection Agreement between BellSouth and

1 Supra was successfully executed on October 31, 1997. All of these
2 Agreements were filed and approved by the various state Public
3 Service Commissions.

4

5 Q. WHAT TYPES OF SERVICES DID SUPRA ORDER DURING THE
6 TIMEFRAME OF THE BILLS IN DISPUTE?

7

8 A. To my knowledge, Supra only ordered resold services pursuant to the
9 1997 BellSouth/Supra Resale Agreement. Mr. Morton of BellSouth will
10 address Supra's specific ordering patterns in more detail. However,
11 due to claims made by Supra, we also need to discuss the
12 Interconnection Agreement.

13

14 Q. PLEASE EXPLAIN THE PROCESS AND TIMELINE FOR THE
15 NEGOTIATION OF THE INTERCONNECTION AGREEMENT WITH
16 SUPRA.

17

18 A. On Friday, October 17, 1997, Supra contacted Gregg Beck at
19 BellSouth requesting negotiation of an interconnection agreement with
20 BellSouth. Mr. Beck sent to Mr. Ramos a copy of a sample letter to
21 request negotiations for a Local Interconnection Agreement with
22 BellSouth and a copy of the rates listed in BellSouth's standard
23 Interconnection Agreement. On Monday, October 20, 1997, Mr. John
24 Reinke, Vice President - Engineering, at Supra followed up with a letter
25 to Mr. Beck asking the status of negotiations (Exhibit PCF-2). On

1 Monday, October 20, 1997, Bellsouth sent Mr. Ramos a letter (PCF-3)
2 along with the draft template of the Interconnection Agreement. Once
3 Mr. Ramos received the draft Interconnection Agreement template, he
4 promptly signed and faxed it to BellSouth, where it was received on
5 October 21, 1997.

6
7 On October 21, 1997, I called Mr. Ramos and asked if he truly wanted
8 to execute an agreement this soon. I asked if he had any questions
9 regarding the agreement or if he needed some time to review or have
10 his attorney review the agreement. He indicated he was satisfied with
11 the agreement and was ready to sign. I also advised Mr. Ramos that
12 he had signed the interconnection template and that we would need to
13 modify it to reflect Supra's name and contact information. I populated
14 the BellSouth Interconnection Agreement template and changed ALEC
15 and ALEC-1 to Supra Telecommunications and Information Systems. I
16 saved the file in a "Zip Format" and e-mailed it to Mr. Ramos for
17 execution. A copy of this e-mail is attached as Exhibit PCF-4.

18
19 On Thursday, October 23, 1997, Mr. Ramos called and advised that he
20 could not open the "Zip File" and would I send him a hard copy of the
21 Interconnection Agreement. I went back to the BellSouth
22 Interconnection Agreement template and changed ALEC and ALEC-1
23 to Supra Telecommunications and Information Systems. That
24 afternoon I sent via Federal Express to Mr. Ramos the hard copy of the

25

1 Interconnection Agreement for his signature accompanied by my
2 transmittal letter (Exhibit PCF-5).

3

4 On the morning of Saturday, October 25, 1997, Mr. Ramos paged me.
5 I promptly called Mr. Ramos from my residence and asked how I could
6 help him. He wanted to know where he could find the rate for DS3
7 service in his contract. I advised him that I didn't know at that time, but
8 I would be happy to advise him on Monday, October 27, 1997, when I
9 got back to my office. On October 27, 1997, I called Mr. Ramos and
10 advised that DS3 service was not contained in the agreement but that
11 he could purchase this service out of the Access Service tariff. He
12 seemed satisfied with this answer.

13

14 Mr. Ramos executed the agreement on Monday, October 27, 1997,
15 and promptly sent it via Federal Express to me for the BellSouth
16 representative's signature. This means that only ten days had passed
17 from Supra's request for an Interconnection Agreement, which was at
18 that time 295 pages long, with BellSouth, to its execution by Supra. On
19 Friday, October 31, 1997, Jerry Hendrix signed the agreement on
20 behalf of BellSouth.

21

22 Q. WAS THIS RAPID NEGOTIATION PROCESS TYPICAL FOR SUPRA
23 IN PREVIOUS NEGOTIATIONS WITH BELLSOUTH?

24

25

1 A. Yes. On Wednesday, July 16, 1997, Mr. Ramos requested "to begin
2 the negotiations process to reach a mutually acceptable Physical
3 Collocation Agreement with BellSouth." On July 16, 1997, Mr. Gregg
4 Beck sent a copy of the standard BellSouth Physical Collocation
5 contract that was to be used for negotiations. On Monday July 21,
6 1997, Mr. Ramos executed the Physical Collocation agreement and
7 forwarded it to BellSouth for execution.

8

9 Q. WAS THERE A DIFFERENCE IN THE INTERCONNECTION
10 AGREEMENT THAT WAS E-MAILED TO MR. RAMOS ON OCTOBER
11 21, 1997 AND THE ONE HE EXECUTED ON OCTOBER 27, 1997?

12

13 A. Yes. The documents were different. As I stated above, on October 21,
14 1997, I changed the BellSouth template to reflect Supra's name and the
15 notices section of the General Terms and Conditions. When Supra
16 could not open the "Zip" file, I went back to the BellSouth template and
17 reinserted Supra's name and notice information into the document.
18 However, unbeknownst to me, the template had been revised.

19

20 Q. WHEN WAS THE INCONSISTENCY BETWEEN THE OCTOBER 21,
21 1997 "ZIP" VERSION OF THE DOCUMENT AND THE DOCUMENT
22 THAT WAS SENT TO SUPRA ON OCTOBER 23, 1997
23 DISCOVERED?

24

25

1 A. On August 17, 1998, Supra's outside counsel Ms. Suzanne Summerlin,
2 sent a letter to Ms. Mary Jo Peed, Esq. And Ms. Nancy White, Esq., of
3 BellSouth requesting that BellSouth make available to Supra the
4 combinations contained in the October 21, 1997 BellSouth/Supra
5 Interconnection Agreement that was e-mailed by myself to Supra
6 (Exhibit PCF-6). Initially, I could not understand the difference in what
7 was being asserted by Supra in its letter of August 17, 1998 and what
8 was in my files as the executed agreement between the two
9 companies. I went back to the e-mail and re-opened the "Zip" file and
10 saw that there was indeed a difference in the two documents.

11

12 Q. WHAT WAS BELLSOUTH'S REACTION TO FINDING THAT THERE
13 WAS AN INCONSISTENCY BETWEEN THE TWO DOCUMENTS?

14

15 A. On August 21, 1998, Mary Jo Peed of BellSouth sent Ms. Summerlin a
16 letter admitting that there was an inconsistency between the document
17 that was e-mailed to Mr. Ramos on October 21, 1997 and what was
18 executed between Supra and BellSouth, on October 27, 1997 and
19 October 31, 1997 respectively. Included in this correspondence was an
20 amendment to the filed BellSouth/Supra Interconnection Agreement so
21 that the language that was in dispute could be incorporated into the
22 Interconnection Agreement. Thus, at the time BellSouth became
23 aware of the discrepancy, BellSouth offered to amend the Agreement,
24 retroactively to the date of execution to conform the Agreement to the
25 document originally sent to Mr. Ramos.

1

2 Q. DID SUPRA EXECUTE THE AMENDMENT THAT WAS FORWARDED
3 TO IT SO THAT THE LANGUAGE IN QUESTION COULD BE
4 INCORPORATED INTO THE BELLSOUTH/SUPRA
5 INTERCONNECTION AGREEMENT?

6

7 A. No. Supra chose instead to file a Petition with the various Public
8 Service Commissions to set aside the Interconnection Agreement that
9 had been filed with and approved by those Public Service
10 Commissions. The Florida Public Service Commission refused to hear
11 Supra's petition regarding BellSouth's alleged contract fraud and, on
12 June 1, 1999, issued Order No. PSC-99-1092-FOF-TP, directing "the
13 parties to submit a corrected agreement at their earliest convenience"
14 (Exhibit PCF-7). The Georgia Public Service Commission on March 16,
15 1999 in Docket Nos. 8338-U and 10331-U stated "The Commission
16 also finds that there is not sufficient reason to believe that BellSouth
17 acted intentionally in filing the incorrect version of the agreement."

18

19 Q. DID THIS REVISION "MATERIALLY" ALTER THE
20 BELLSOUTH/SUPRA INTERCONNECTION AGREEMENT THAT WAS
21 SENT TO SUPRA ON OCTOBER 21, 1997?

22

23 A. Absolutely not. The change was one of clarification. The original
24 Interconnection Agreement had the following language, whereas the
25 October 23, 1997 version did not:

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2. Unbundled Service Combinations (USC)

2.1.1 Where BellSouth offers to Supra Telecommunications and Information Systems, Inc., either through a **negotiated arrangement** or as a result of an **effective Commission order**, a combination of network elements priced as individual unbundled network elements, the following product combination will be made available. All other requests for unbundled element combinations will be evaluated via the Bona Fide Request Process, as set forth in Attachment 9. [Emphasis added]

2.1.2 2-Wire Analog Loop with 2-Wire Analog Port – Residence

2.1.3 2-Wire Analog Loop with 2-Wire Analog Port – Business

2.1.4 2-Wire Analog Loop with 2-Wire Analog Port – PBX

2.1.5 2-Wire Analog Loop with 2-Wire DID or 4-Wire DID

2.1.6 BellSouth will conform to the technical references contained in this Attachment 2 to the extent these requirements are implemented by equipment vendors and

1 consistent with the software generic releases purchased
2 and installed by BellSouth.

3

4 As can be seen above, this language does not obligate BellSouth to
5 provide Supra with combined Unbundled Network Elements. At the
6 time the agreement was being negotiated, there was no Commission or
7 FCC Order requiring BellSouth to provide combinations of Unbundled
8 Network Elements nor had BellSouth entered into a negotiated
9 arrangement to provide such combinations with Supra or any other
10 CLEC.

11

12 Q. DID THIS CLARIFICATION AFFECT THE RESALE AGREEMENT?

13

14 A. Absolutely not. The language that is referenced above is included in
15 the Interconnection portion of the Agreement and does not involve
16 Resale at all.

17

18 Q. WAS THE CORRECTED VERSION OF THE BELLSOUTH/SUPRA
19 INTERCONNECTION AGREEMENT FILED WITH THE FLORIDA
20 PUBLIC SERVICE COMMISSION?

21

22 A. Yes. The corrected version of the Interconnection Agreement was filed
23 with the Florida Public Service Commission on September 23, 1999.
24 This agreement was retroactive to October 1997.

25

1 Q. IS THE BELLSOUTH/SUPRA INTERCONNECTION AGREEMENT
2 APPLICABLE TO THE BILLS IN DISPUTE IN THIS PROCEEDING?

3

4 A. No. The BellSouth/Supra Interconnection Agreement is not applicable
5 to this dispute. As I stated above, the applicable Agreement is the
6 1997 BellSouth/Supra Resale Agreement. Once again, it should be
7 noted that there was no change or revision to the BellSouth/Supra 1997
8 Resale Agreement.

9

10 Q. HAS SUPRA ADOPTED A DIFFERENT INTERCONNECTION
11 AGREEMENT AND RESALE AGREEMENT SINCE THE EXECUTION
12 OF THE AFOREMENTIONED AGREEMENTS?

13

14 A. Yes. Supra adopted the BellSouth/ AT&T Interconnection Agreement.
15 This agreement includes provisions for resale and interconnection.

16

17 Q. ON WHAT DATE DID THE ADOPTION OF THIS AGREEMENT
18 BECOME EFFECTIVE?

19

20 A Supra's adoption of the BellSouth/AT&T Interconnection Agreement
21 became effective on October 5, 1999. The Commission on November
22 30, 1999 approved this Agreement.

23

24

25

1 Q. DOES THE BELLSOUTH/AT&T INTERCONNECTION AGREEMENT
2 CONTAIN ANY PROVISIONS REGARDING RETROACTIVITY THAT
3 WOULD APPLY IN THIS ARBITRATION?

4

5 A. Absolutely not. As I stated above, Supra's adoption of this Agreement
6 became effective on October 5, 1999 and is, therefore, not applicable
7 to this dispute.

8

9 Q. DOES THE COMMISSION HAVE JURISDICTION IN THIS MATTER
10 ACCORDING TO THE 1997 BELLSOUTH/SUPRA RESALE
11 AGREEMENT?

12

13 A. Although I am not an attorney, I believe the Commission does have
14 jurisdiction in this matter. Section XI of the 1997 BellSouth/Supra
15 Resale Agreement states that, "the parties agree that if any dispute
16 arises as to the interpretation of any provision of this Agreement or as
17 to the proper implementation of this Agreement, **the parties will**
18 **petition the applicable state Public Service Commission** for a
19 resolution of the dispute." [Emphasis added]

20

21 Q. WHAT AGREEMENT GOVERNED SUPRA'S RESELLING OF
22 SERVICES DURING THE TIMEFRAME OF THE BILLS IN DISPUTE?

23

24

25

1 A. The May 1997 BellSouth/Supra Resale Agreement governed Supra's
2 reselling of services from May 1997 until October 5, 1999 when Supra
3 adopted the BellSouth/AT&T Interconnection Agreement.

4

5 Q. WHAT TYPES OF SERVICES DID SUPRA ORDER DURING THE
6 TIMEFRAME OF THE BILLS IN DISPUTE?

7

8 A. To my knowledge, Supra only ordered resold services pursuant to the
9 1997 BellSouth/Supra Resale Agreement. Mr. Morton of BellSouth will
10 address Supra's specific ordering patterns in more detail.

11

12 **Issue 2. Did BellSouth bill Supra appropriately for End-User Common**
13 **Line Charges pursuant to the BellSouth/Supra interconnection**
14 **and resale agreement?**

15

16 Q. PLEASE DESCRIBE THE ISSUE REGARDING END USER COMMON
17 LINE CHARGE ("EUCL").

18

19 A. Supra claims that it should never have been billed this end user line
20 charge. This claim is unfounded under the provisions of the 1997
21 BellSouth/Supra Resale Agreement and the FCC rule 47 C.F.R. §

22 ~~57.617.~~
23 51.617

23

24 Q. WHAT DOES THE 1997 BELL SOUTH/SUPRA RESALE AGREEMENT
25 STATE REGARDING END USER COMMON LINE CHARGES?

1

2 A. The 1997 BellSouth/Supra Resale Agreement states, in Section VII (L):

3

4 Pursuant to 47 CFR Section 51.617, the Company
5 will bill the charges shown below which are identical
6 to the EUCL rates billed by BST to its end users.

7

8 Furthermore, Section IV (B) of the 1997 BellSouth/Supra Resale
9 Agreement states, in part, that, "Resold services are subject to the
10 same terms and conditions as are specified for such services when
11 furnished to an individual end user of the Company in the appropriate
12 section of the Company's Tariffs." The EUCL charge is included in
13 BellSouth's FCC Tariff No. 1, Section 4.6 (A) (Exhibit PCF-8), which
14 states:

15

16 End User Access Service and Federal Universal
17 Service charges, as set forth in 4.7, following, will be
18 billed to the end user subscriber of the associated
19 local exchange service, **including, where**
20 **applicable, a reseller of the associated local**
21 **exchange service**, in which case the reseller shall be
22 deemed an end user for the purposes of application
23 of such charges. Presubscribed Interexchange
24 Carrier Charges (PICCs) may also apply as described
25 in Section 3. [Emphasis added]

1

2 Q. WHAT HAS THE FCC RULED REGARDING END USER COMMON
3 LINE ("EUCL") CHARGES?

4

5 A. In 47 C.F.R § 51.617 (a) (1999), (Exhibit PCF-9), the FCC states,
6 "Notwithstanding the provision in § 69.104(a) of this chapter that the
7 end user common line charge be assessed upon end users, **an**
8 **incumbent LEC shall assess this charge**, and the charge for
9 changing the designated primary interexchange carrier, **upon**
10 **requesting carriers that purchase telephone exchange service for**
11 **resale**. The specific end user common line charge to be assessed will
12 depend upon the identity of the end user served by the requesting
13 carrier." [Emphasis added]

14

15 Q. HAVE THESE FACTS REGARDING EUCL CHARGES BEEN
16 EXPLAINED TO SUPRA?

17

18 A. Yes. On March 11, 2000, Ms. Carol Bentley of Supra sent a letter to
19 Ms. Shirley Flemming of BellSouth regarding the billing dispute
20 between our companies (Exhibit PCF-10). Ms. Bentley quoted 47
21 C.F.R. § 51.617 (b), which states, "When an incumbent LEC provides
22 telephone exchange service to a requesting carrier...for resale, the
23 incumbent LEC shall continue to assess the interstate access
24 charges...other than the end user common line charges, upon
25 **interexchange carriers...**" [Emphasis added] (Exhibit PCF-9). On

1 March 20, 2000, Lynn Smith of BellSouth responded to this and several
2 other letters sent by Supra (Exhibit PCF-11). In her response, Ms.
3 Smith stated that, "we agree that Supra Telecom is registered as an
4 interexchange carrier; however, in this instance **Supra Telecom is**
5 **acting as a local service provider** in the resale of local service, and
6 **therefore, the EUCL charges are appropriately billed.**" [Emphasis
7 added]

8
9 Furthermore, on April 10, 2000, Ms. Bentley sent a letter to me in which
10 she claimed that Ms. Smith, in her March 30, 2000 letter, "summarily
11 dismisses our claim on the basis of a contract that does not apply."
12 (Exhibit PCF-12) This is completely untrue, as can be seen in Ms.
13 Smith's letter (Exhibit PCF-11) which I discussed above. On April 28,
14 2000, I responded to Ms. Bentley's April 10, 2000 letter (Exhibit PCF-
15 13). I explained, as Ms. Smith had in her March 30, 2000 letter, that,
16 "[e]ven though Supra may be acting as an interexchange carrier, Supra
17 is providing local exchange service as an...(ALEC) by reselling
18 retail...services. **As a local reseller, Supra is responsible for the**
19 **payment of the EUCL charge to BellSouth.**" [Emphasis added]
20 Furthermore, I quoted from the BellSouth FCC Tariff No. 1, Section 4.6,
21 which states, in part, "End User Access Service charges...will be billed
22 to the end user subscriber of the associated local exchange service."
23 (Exhibit PCF-8) As a reseller of local exchange service, Supra is
24 considered the "end user subscriber" and should, therefore, be
25 responsible for the EUCL charge.

1

2 **Issue 3. Did BellSouth bill Supra appropriately for changes in services,**
3 **unauthorized local service changes, and reconnections**
4 **pursuant to the BellSouth/Supra interconnection and resale**
5 **agreements?**

6

7 Q. PLEASE DESCRIBE THE ISSUE REGARDING CHARGES FOR
8 CHANGES IN SERVICES, UNAUTHORIZED LOCAL SERVICE
9 CHANGES, AND RECONNECTIONS.

10

11 A. Supra claims that it should not be charged for unauthorized changes in
12 a customer's service. I will refer to these unauthorized changes as
13 "slamming". BellSouth contends that the Agreement and the BellSouth
14 General Subscriber Service Tariff contain provisions for the billing of
15 these "slamming" charges.

16

17 Q. WHAT IS "SLAMMING"?

18

19 A. "Slamming" is the changing of an end-user's local and/or long distance
20 service without their authorization.

21

22 Q. WHAT DOES THE RESALE AGREEMENT STATE REGARDING
23 "SLAMMING"?

24

25 A. The Agreement addresses "slamming" in Section VI (F), which states:

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If the Company determines that an unauthorized change in local service to Reseller has occurred, the Company will reestablish service with the appropriate local service provider and **will assess Reseller as the OLEC initiating the unauthorized change, an unauthorized change charge** similar to that described in F.C.C. Tariff No. 1, Section 13.3.3. Appropriate nonrecurring charges, as set forth in Section A4. of the General Subscriber Service Tariff, will also be assessed to Reseller. [Emphasis added]

BellSouth has billed these "slamming" charges appropriately according to the provisions mentioned above.

Q. HAS BELLSOUTH EXPLAINED THESE PROVISIONS REGARDING "SLAMMING" CHARGES TO SUPRA?

A. Yes. In my letter of April 28, 2000 (Exhibit PCF-13), I explained that the Other Charges and Credits ("OC&C"), which include "slamming", "are for unauthorized change charges where end users have stated they were switched to Supra without their permission." I further explained that, "BellSouth properly billed Supra this charge in order to recover its cost of switching the end user back to their appropriate local service provider."

1

2 Q. HAVE END USERS RAISED COMPLAINTS AGAINST SUPRA FOR
3 "SLAMMING"? IF SO, IN WHAT TIMEFRAME WERE THESE
4 COMPLAINTS RAISED?

5

6 A. Yes, in 1997 many end users raised complaints with the Florida Public
7 Service Commission against Supra for "slamming". In Docket No.
8 971527-TX (Exhibit PCF-14), The Florida Public Service Commission
9 stated that, "As of January 8, 1998, the Commission reported 201
10 complaints relating to unauthorized switching by Supra."

11

12 Q. WHAT WERE THE FINDINGS OF THE FLORIDA PUBLIC SERVICE
13 COMMISSION REGARDING COMPLAINTS AGAINST SUPRA FOR
14 "SLAMMING"?

15

16 A. The Florida Public Service Commission in Docket No. 971527-TX
17 (Exhibit PCF-14) issued an Order to Show Cause on February 12, 1998
18 regarding complaints of "unauthorized switching of local telephone
19 service and misleading solicitation practices" by Supra. In this Order
20 the Commission said:

21

22 We find that Supra's apparent conduct in unauthorized switching
23 of local telecommunications services and failing to timely
24 respond to the staff inquires has been willful in the sense
25 intended by Section 364.285, ORDER NO. PSC-98-0279-PCO-

1 TX DOCKET NO.971527-TX PAGE 3 Florida Statutes, and thus,
2 that conduct rises to a level warranting that a show cause order
3 be issued. Therefore, we order Supra to show cause in writing
4 within 20 days of the issuance of this Order why it should not be
5 fined in the amount of \$55,500 for apparent violation of Rule 25-
6 4.043, *Florida Administrative Code*. And \$402,000 for apparent
7 violation of Rule 25-24.820(1)(a), *Florida Administrative Code*....

8

9 **Issue 4. Did BellSouth bill Supra appropriately for secondary service**
10 **charges pursuant to the BellSouth/Supra interconnection and**
11 **resale agreements?**

12

13 Q. PLEASE DESCRIBE THE ISSUE REGARDING SECONDARY
14 SERVICE CHARGES.

15

16 A. Supra claims that it should not be charged for authorized changes in a
17 customer's service. I will refer to these authorized changes as
18 "secondary service charges". BellSouth contends that the Agreement
19 and the BellSouth General Subscriber Service Tariff contain provisions
20 for the billing of these secondary service charges.

21

22 Q. WHAT ARE "SECONDARY SERVICE CHARGES"?

23

24 A. According to Section A4.1 of the General Subscriber Service Tariff
25 (Exhibit PCF-15), "Secondary service charge applies **per customer**

1 **request** for the receiving, recording, and processing of customer
2 requests to change services or add new or additional services”
3 [Emphasis added] The General Subscriber Service Tariff also states,
4 in Sections A4.2.4 (A) to A4.2.4 (C) (Exhibit PCF-15),

5

6 A. The Secondary Service Charge will not apply if a
7 Line Connection charge or Line Change Charge
8 is applicable.

9 B. The Secondary Service Charge applies for
10 adding or rearranging:
11 1. Custom Calling Service
12 2. Prestige® Communications service
13 3. Grouping Service
14 4. RingMaster® service
15 5. TouchStar® service
16 6. Customized Code Restriction
17 7. Customer requested directory listing changes
18 8. Remote Call Forwarding
19 9. Other features or services for which the Line Connection
20 Charge and Line Change Charge are not applicable.

21 C. The Secondary Service Charge applies for:
22 1. **Transfers of Responsibility**
23 2. Changing from residence to business service and vice
24 versa. The business charge applies when changing to
25 business and the residence charge applies when changing to

1 residence. If the telephone number changes the Line
2 Change charge applies in lieu of the Secondary Service
3 Charge.

4 3. Rearrangement of drop wire, protector, and/or network
5 interface. Additionally, Premises Work Charges will apply.

6 4. Installing a Network Interface jack, at the customer's
7 request, on existing service. Additionally, Premises Work
8 Charges will apply. [Emphasis Added]

9

10 Q. WHAT DOES THE 1997 BELLSOUTH/SUPRA RESALE AGREEMENT
11 STATE REGARDING "SECONDARY SERVICE CHARGES"?

12

13 A. The 1997 BellSouth/Supra Resale Agreement states in Section IV (B),
14 that "Resold services are subject to the same terms and conditions as
15 are specified for such services when furnished to an individual end user
16 of the Company in the appropriate section of the Company's Tariffs."
17 BellSouth has billed these "other charges and credits" appropriately
18 according to the provisions mentioned above.

19

20 Q. HAS BELLSOUTH EXPLAINED THESE PROVISIONS REGARDING
21 "SECONDARY SERVICE CHARGES" TO SUPRA?

22

23 A. Yes. In my letter of April 28, 2000 (Exhibit PCF-13), I stated that the
24 Other Charges and Credits ("OC&C"), which include secondary service

25

1 charges, "are for changes in service [from BellSouth to Supra] that
2 Supra...authorized."

3

4 Q. HAS SUPRA EVER ALLEGED THAT BELL SOUTH BILLED SUPRA
5 INAPPROPRIATELY PRIOR TO THIS PROCEEDING?

6

7 A. Yes. On page 39 of Order No. PSC 98-1001-FOF-TP, Docket No.
8 980119 (Exhibit PCF-16), Supra claimed that BellSouth had
9 inappropriately billed approximately \$686,500 in charges, including
10 secondary service charges and unauthorized change charges.
11 However, the Commission ruled that Supra was not entitled to a refund.
12 The Commission specifically stated on page 37 of this Order (Exhibit
13 PCF-16):

14 We note that the resale agreement between Supra
15 and BellSouth specifically states that Supra may
16 resell the tariffed local exchange services contained
17 in Bellsouth's tariff subject to the terms and conditions
18 agreed upon in the resale agreement.

19

20 Q. PLEASE SUMMARIZE YOUR TESTIMONY.

21

22 A. Supra claims that BellSouth owes Supra total of \$305,560.04, plus
23 interest. This claim is based on issues involving resale that were raised
24 by Supra prior to its adoption of the BellSouth/AT&T Interconnection
25 Agreement. Therefore, these issues were governed by the 1997

1 Resale Agreement, which was in effect at that time. As discussed
2 herein, BellSouth has applied these charges appropriately and no
3 refund or credit should be issued to Supra.

4

5 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

6

7 A. Yes.

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1 BELL SOUTH TELECOMMUNICATIONS, INC.
2 REBUTTAL TESTIMONY OF PATRICK C. FINLEN
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 001097-TP
5 MARCH 16, 2001
6
7

8 Q. PLEASE STATE YOUR NAME, ADDRESS, AND POSITION WITH
9 BELL SOUTH TELECOMMUNICATIONS, INC. (HEREINAFTER
10 REFERRED TO AS "BELL SOUTH").

11

12 A. My name is Patrick C. Finlen. I am employed by BellSouth as a
13 Managing Director in the Customer Markets, Wholesale Pricing
14 Operations Department. My business address is 675 West Peachtree
15 Street, Atlanta, Georgia 30375.

16

17 Q. ARE YOU THE SAME PATRICK C. FINLEN WHO FILED DIRECT
18 TESTIMONY IN THIS PROCEEDING?

19

20 A. Yes.

21

22 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

23

24 A. The purpose of my testimony is to address the issue raised in the
25 Direct Testimony of Ms. Carol Bentley of Supra. This issue is which

1 Agreement between BellSouth and Supra applies to the billing dispute
2 at issue in this Arbitration.

3

4 Q. IS SUPRA'S ADOPTION OF THE BELLSOUTH/AT&T
5 INTERCONNECTION AGREEMENT ("BELLSOUTH/AT&T
6 AGREEMENT") APPLICABLE TO THE BILLS IN DISPUTE IN THIS
7 PROCEEDING AS CLAIMED BY MS. CAROL BENTLEY IN HER
8 DIRECT TESTIMONY, PAGE 3, LINES 2 THROUGH 6?

9

10 A. Absolutely not. As I explained in my direct testimony, this Agreement
11 was not effective until after the timeframe of the bills in dispute. The
12 applicable Agreement in this dispute is the 1997 BellSouth/Supra
13 Resale Agreement (Exhibit PCF-1 to my direct testimony).

14

15 Q. IN HER DIRECT TESTIMONY, MS. BENTLEY REFERS TO SECTION
16 16, SUBSECTION B OF THE 1997 BELLSOUTH/SUPRA RESALE
17 AGREEMENT (PAGE 2, LINES 13 THROUGH 25). WOULD YOU
18 CARE TO COMMENT ON HER INTERPRETATION OF THIS
19 SECTION?

20

21 A. Certainly. Pursuant to 47 C.F.R § 51.303 and Section 252(i) of the
22 Telecommunications Act of 1996, this Section 16, Subsection B
23 allowed Supra to adopt sections of Commission-approved Resale
24 Agreements executed between BellSouth and any third-party for the
25 purpose of ensuring that BellSouth treated all CLECs with parity. Ms.

1 Bentley claims that Supra's adoption of any such third-party Agreement
2 would be applicable to Supra's bills retroactive to the effective date of
3 that third-party Agreement. If this were correct, the BellSouth/AT&T
4 Agreement, which was effective as of June 1997, would apply to Supra
5 as of its original effective date and would, therefore, apply retroactively
6 to the bills in this dispute.

7

8 Ms. Bentley's interpretation of this language is selective and entirely
9 false. Section 16, Subsection B states, in part,

10

11 In the event that Reseller [Supra] accepts such offer, such Other
12 Terms shall be effective between BellSouth and Reseller **as of**
13 **the date on which the Reseller accepts such offer**"
14 [Emphasis added].

15

16 Ms. Bentley ignored this sentence in her interpretation of the
17 language, even though she did include it in her direct testimony (page
18 2, lines 23 through 25). According to this language, Supra's
19 adoption of the BellSouth/AT&T Agreement became effective on
20 October 5, 1999 on a going-forward basis. Therefore, the
21 BellSouth/AT&T Agreement **could not** be applied retroactively to
22 Supra's bills in dispute in this proceeding. Instead, since the bills in
23 dispute are for the time period of May 1997 until October 5, 1999, the
24 applicable Agreement is the 1997 BellSouth/Supra Resale
25 Agreement.

1

2 Q. MS. BENTLEY CITES SECTION XVI, SUBSECTION F OF THE 1997
3 BELLSOUTH/SUPRA RESALE AGREEMENT TO SUPPORT HER
4 CLAIM THAT BELLSOUTH MUST MAKE CORRECTIVE PAYMENTS
5 TO SUPRA. HOW DO YOU RESPOND TO THIS CLAIM?

6

7 A. Ms. Bentley claims in her direct testimony, on page 3, lines 13 through
8 16, that,

9

10 since...the effective date of the new agreement's
11 [BellSouth/AT&T Agreement] more favorable terms is June 10,
12 1997, BellSouth must make a corrective payment...for charges
13 billed [under the 1997 BellSouth/Supra Resale Agreement] that
14 no longer apply [under the terms of the BellSouth/AT&T
15 Agreement].

16

17 As I explained above, this is simply not true. The BellSouth/AT&T
18 Agreement did not become effective until October 5, 1999. The bills in
19 dispute are for the time period of May 1997 until October 5, 1999.
20 Therefore, the applicable agreement in this dispute is the 1997
21 BellSouth/Supra Resale Agreement.

22

23 Q. PLEASE SUMMARIZE YOUR TESTIMONY.

24

25

1 A. As I have shown repeatedly in this testimony, as well as my direct
2 testimony, the applicable agreement in this dispute is the 1997
3 BellSouth/Supra Resale Agreement. The time period of the bills in
4 dispute is May 1997 to October 5, 1999. The BellSouth/AT&T
5 Agreement cannot apply because it did not become effective until
6 October 5, 1999 and only governs those charges made after October 5,
7 1999. BellSouth has applied all the charges in dispute appropriately
8 and no refund or credit should be issued to Supra.

9

10 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

11

12 A. Yes.

13

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1 MS. WHITE: And I'd like to have the exhibits, the 16
2 exhibits attached to Mr. Finlen's Direct Testimony, marked for
3 identification as an exhibit.

4 COMMISSIONER JABER: That would be PCF-1 through 16
5 or are they not numbered that way, are they?

6 MS. WHITE: No, they are numbered that way.

7 COMMISSIONER JABER: Great. As a composite Exhibit 4
8 PCF-1 through 16 shall be identified for the record.

9 (Exhibit 4 marked for identification.)

10 BY MS. WHITE:

11 Q Mr. Finlen, do you have a summary of your testimony?

12 A Yes, I do.

13 Q Would you please give it?

14 A Yes. Good morning, Commissioners. I'm here to offer
15 testimony for BellSouth in this docket. In my Direct
16 Testimony, I showed that the 1997 Resale Agreement between
17 BellSouth and Supra is the only Agreement applicable to the
18 billing dispute at issue in this arbitration.

19 I also showed that BellSouth has applied all of the
20 disputed charges appropriately and that no refund or credit
21 should be issued to Supra. Supra claims the 1997
22 BellSouth/AT&T Interconnection Agreement applies to bills at
23 issue in this docket. This allegation is completely incorrect.

24 Supra's adoption of the 1997 BellSouth/AT&T Agreement
25 was not effective until October 5th, 1999, after the time frame

1 of the bills at issue in this arbitration. Prior to the
2 execution of this adoption, Supra executed a Resale Agreement
3 on May 28th, 1997, which governed Supra's reselling of services
4 from the time it was executed until October 5th, 1999. Supra
5 also executed an Interconnection Agreement with BellSouth on
6 October 31st, 1997. This Agreement did not contain provisions
7 for resale.

8 As I explained in my testimony, there was an
9 inconsistency between the Interconnection Agreement that I
10 e-mailed to Supra and the Interconnection Agreement I sent to
11 Supra via Federal Express for execution. This inconsistency
12 was not intentional and did not, as Supra claims, materially
13 alter the 1997 interconnection agreement. However, the 1997
14 Interconnection Agreement has no bearing on the issues in this
15 arbitration, as it has no way affected the applicable Agreement
16 in this proceeding, which is the May 28th, 1997,
17 BellSouth/Supra Resale Agreement.

18 Additionally, the 1997 Resale Agreement also applies
19 due to the fact that to the best of my knowledge, Supra has
20 only ordered resold services pursuant to this Agreement. Supra
21 claims that it should not be charged end user common line
22 charges, unauthorized local service change and reconnection
23 charges, or secondary service charges.

24 The Resale Agreement is very clear in regards to each
25 of these charges which I addressed separately. First, I

1 addressed the end user common line charge. The 1997 Resale
2 Agreement clearly states in Section 7, Paragraph L, that
3 BellSouth will bill Supra end user common line charges, just as
4 BellSouth bills these charges to its end users.

5 The Agreement also states in Section 4, Paragraph B,
6 that resold services are subject to the terms and conditions of
7 the tariffs. The BellSouth FCC tariff number one contains
8 provisions for end user common line charges. Clearly,
9 BellSouth was well within its rights, in accordance with the
10 1997 Resale Agreement, to bill the end user common line charge.

11 The second charge disputed by Supra is an
12 unauthorized local service change in reconnection charges, also
13 known as slamming. As I explain in my testimony, the 1997
14 Resale Agreement is clear in regards to this issue. Section 6,
15 Paragraph F, explains that in the instance that Supra slams a
16 customer, BellSouth will assess Supra an unauthorized change
17 charge. Again, BellSouth has applied this charge appropriately
18 in accordance with the Agreement.

19 The last item in dispute in this proceeding is a
20 secondary service charge. As I mentioned earlier, the 1997
21 Resale Agreement states in Section 4-B, that resold services
22 are subject to the terms and conditions of the tariffs.
23 Section A-4.1 of the general subscriber services tariff
24 describes a secondary service charge and the situations in
25 which it is applicable. BellSouth has applied this and all

1 aforementioned charges appropriately and in accordance with the
2 1997 Resale Agreement.

3 In my Rebuttal Testimony, I address the issues raised
4 by Ms. Bentley in her Direct Testimony. Ms. Bentley claims
5 that Section 16-B of the 1997 Resale Agreement allows Supra to
6 adopt any Agreement subsequent to the expiration date of the
7 1997 Resale Agreement. Imply that adoption retroactively to
8 the effective date of that adopted Agreement.

9 This is completely incorrect. First, there is no
10 language that states that any such Agreement would be applied
11 retroactively. Second, the section Ms. Bentley cites states
12 that any such adoption would be effective as of the date on
13 which the reseller accepted such offer. Therefore, the 1997
14 BellSouth/AT&T Interconnection Agreement, which was adopted by
15 Supra on October 5th, 1999, would be effective starting October
16 5th, 1999, on a going-forward basis.

17 The applicable Agreement in this dispute, again, is a
18 1997 BellSouth-Supra Resale Agreement. I have shown through
19 this testimony, as well as my direct, that the applicable
20 Agreement in this dispute is the 1997 Resale Agreement and that
21 BellSouth has applied all charges appropriately. The 1997
22 Resale Agreement was in effect, and Supra bought only resold
23 services to the best of my knowledge during the time frames of
24 the bills in dispute.

25 The 1997 Resale Agreement contains clear and distinct

1 provisions for end user common line charges, unauthorized local
2 service change and reconnection charges, and secondary service
3 charges. Therefore, BellSouth acted in accordance with the
4 applicable agreement. BellSouth has applied all the charges in
5 dispute appropriately, and no refund or credit should be issued
6 to Supra.

7 Thank you.

8 MS. WHITE: Mr. Finlen is available for cross
9 examination.

10 COMMISSIONER JABER: Thank you, Ms. White.
11 Mr. Buechele.

12 CROSS EXAMINATION

13 BY MR. BUECHELE:

14 Q Yes, Mr. Finlen, let's break this down into three
15 years. I'll give you a minute.

16 A Thank you. Yes, sir.

17 Q Okay. Would you agree that one of the disputes is a
18 dispute over whether or not BellSouth should have charged Supra
19 for end user common line charges?

20 A Yes.

21 Q And what time period do you understand that dispute
22 to range from?

23 A For this docket today it is from the time the first
24 order was passed until October 5th, 1999.

25 Q And -- okay. Now, your contention that BellSouth

1 properly charged the end user common line charges is this
2 because this appears in the Resale Agreement that existed at
3 that time; is that correct?

4 A That is correct.

5 Q Okay. Now, you stated in your testimony that there
6 was an Interconnection Agreement and a Collocation Agreement
7 also executed in 1997, correct?

8 A That is correct.

9 Q Okay. And the Interconnection Agreement you gave a
10 little description as to how there are some differences in that
11 Agreement, but you contend they weren't material to this
12 billing dispute?

13 A That is correct, yes, sir.

14 Q Okay. Now, are you familiar with those Agreements,
15 the Interconnection Agreement?

16 A Are you talking about the 1997 Interconnection
17 Agreement?

18 Q Yes.

19 A Yes, sir.

20 Q Okay. And -- well, let's do it this way. You said
21 that there was an issue about the Interconnection Agreements?

22 A Yes, sir.

23 Q At some point in time there was an Interconnection
24 Agreement that was originally filed back in 1997 with the
25 Florida Public Service Commission, correct?

1 A Yes, I think, it was in 1997.

2 Q And then, later the parties executed another
3 agreement to reflect what the parties had actually tried to
4 enter into back in 1997; is that correct?

5 A I didn't hear you.

6 Q Okay.

7 A Can you restate it, please?

8 Q There -- well, let's do it this way.

9 COMMISSIONER JABER: Ms. White, push the microphone
10 for the court reporter.

11 MS. WHITE: I'm sorry. Commissioner Jaber,
12 Mr. Buechele has handed me an order that purports to have a
13 resale interconnection and unbundling Agreement attached to it.
14 I think, I need to have -- I need to look at it and I need to
15 have my witness look at it. I would like to have a five-minute
16 break, if possible.

17 COMMISSIONER JABER: That's fine.

18 COMMISSIONER PALECKI: Could the Commissioners also
19 have a copy of that order to review?

20 COMMISSIONER JABER: Well, they may not even use it,
21 but --

22 MR. BUECHELE: I don't intend to admit the whole
23 order. I have pieces that are relevant to the dispute, which
24 -- because I didn't make copies of all these. I did make
25 copies of the portions.

1 COMMISSIONER PALECKI: All right.

2 (Brief pause in proceedings.)

3 COMMISSIONER JABER: Ms. White, is your witness ready
4 to be back on the record?

5 MS. WHITE: Yes, ma'am, he is.

6 COMMISSIONER JABER: Mr. Buechele.

7 BY MR. BUECHELE:

8 Q Okay. Mr. Finlen, I've handed you three complete
9 documents. What we intend to admit are portions of them, and
10 I'll show you in detail but, in general, do you recognize, in
11 general, those three documents?

12 A I recognize these two.

13 Q Okay. And which two are you referring to?

14 A This is the one that has the order on the front of
15 it.

16 Q And that's the Interconnection Agreement that was
17 filed with the Public Service Commission in 1997?

18 A That's correct. I recognize this.

19 Q Is that the one initialed at the bottom?

20 A Yes.

21 Q And that's the document that was executed by all the
22 parties?

23 A Yes.

24 Q In 1999, retroactive to 1997?

25 A This looks like a template that was -- had been sent.

1 I assume, to Supra.

2 Q Okay. You talk about --

3 A When that was sent, I don't know what this is.

4 Q You talk about a template in your testimony, don't
5 you?

6 A Yes, and this is a template.

7 Q It looks like a template of an Interconnection
8 Agreement at about the time of 1997?

9 A This one says the very beginning of it, it says
10 September '97.

11 Q Okay. Let's talk a little bit about how Supra came
12 to enter into that Interconnection Agreement. You state in
13 your testimony that in early October or mid October, you sent
14 Mr. Ramos a copy of a template to look at, a BellSouth template
15 Interconnection Agreement, correct?

16 A No, I didn't send the template. The template had
17 been sent to him earlier by another colleague.

18 Q Okay. And Mr. Ramos executed the template and sent
19 it back to you, you testified?

20 A Yes. And I'd have to look at all of my notes, but I
21 think it was the middle of October --

22 Q Okay. And at the time you spoke to Mr. Ramos, he --

23 A Can I finish?

24 Q Sure, go ahead.

25 A I'm sorry. I'd just like to kind of give you a

1 chronology of what took place.

2 Q Sure, go ahead, give us your chronology.

3 A Approximately, I think, it's October 17th, Mr. Ramos
4 contacted BellSouth. A template was sent to him, which it may
5 have been that one, it may not have, I don't know. He executed
6 the general terms of that and sent the general terms back.
7 We'd still have an ALEC one and still inserted -- in other
8 words, it had not been customized for Supra. I think, he sent
9 it back, like, October 21st, 22nd, I may have the dates wrong.
10 I told him that, you know, first of all, we need to customize
11 it to put your name in it, and I went to where we have our
12 templates and took out ALEC one and substituted Supra or Supra
13 Telecom, I'm not exactly sure what I put in, but it was one of
14 those names and zipped the file up.

15 There was also a correction made, because Mr. Ramos
16 indicated to me he already had a resale and a collocation
17 Agreement, that we pull those sections out of the full
18 Interconnection Agreement. The Interconnection Agreement
19 normally has provisions for resale and collocation, but because
20 it had already been negotiated separately, we removed those
21 sections, so it was kind of customized with those sections
22 removed.

23 Around October 21st, 22nd, again, don't have the
24 exact date in front of me, but I zipped the file; in other
25 words, compressed it, and sent it to Mr. Ramos for execution.

1 And Mr. Ramos, a short time later, indicated that he couldn't
2 unzip the file. And if you don't have the proper software on
3 your side, it's very difficult to expand the files back into
4 their original content.

5 Short, when he indicated that, I went ahead and went
6 back to where we keep the templates, reinserted his name into
7 another template and then Federal Expressed it to him. And
8 then, shortly thereafter, within a day or two, he executed it,
9 sent it back to BellSouth, BellSouth executed it, and it was
10 filed with the Florida Public Service Commission which, I
11 think, is this Agreement here.

12 Q Okay. Now, did BellSouth file it?

13 A I believe, we did, yes.

14 Q Okay. So, just so that we understand, basically, a
15 template was sent to Mr. Ramos, he executed the template, you
16 then told him you would change the template to insert the name
17 to Supra and some other things that needed to be done to the
18 template. You then zipped it to him, meaning that you
19 compressed the file, sent it to him by e-mail over the
20 internet, correct?

21 A Yes, sir.

22 Q And then, Mr. Ramos contacted you, said he could not
23 unzip it, so then you went back and took another template?

24 A It's where we keep the -- it's on a shared drive. In
25 other words, it's where the templates are -- the template is

1 kept. It's updated every so often.

2 Q Okay.

3 A Unbeknownst to me, the template had changed from the
4 one I had sent to him in a zipped file and the next two or
5 three days later, sent to him via Federal Express.

6 Q Okay.

7 A I'll admit I made a mistake.

8 Q Okay. So --

9 A I mean -- go ahead, I didn't mean to interrupt you.

10 Q So, you sent him a zip file approximately October
11 21st, and that was the day you populated the template?

12 A With Supra's name, yes.

13 Q And then, two days later on the 23rd, Mr. Ramos said
14 he couldn't unzip it, so you populated a new template on the
15 23rd and sent it to him via Federal Express?

16 A Federal Express, I believe, is the way we sent it.

17 Q Okay. And so, you believe that sometime between the
18 21st and the 23rd your template was changed?

19 A Yes, sir. It's the only explanation that I have.

20 Q Okay.

21 A I mean, I agree, I made a mistake. If I could have
22 gone back and maybe unzipped the file and then printed it and
23 sent it to Mr. Ramos, then none of this would have occurred. I
24 mean, I made a mistake.

25 Q Okay. So, anyway, an Agreement got filed by

1 BellSouth and the one that Mr. Ramos executed and BellSouth
2 filed it with the Florida Public Service Commission, correct?
3 And you believe that's the Agreement? And what I'll do is I'm
4 going to hand you some excerpts from that.

5 MR. BUECHELE: I'd like to have this document marked
6 as our first exhibit.

7 COMMISSIONER JABER: Mr. Buechele, do you have copies
8 for the court reporter and the Commissioners? Okay. We'll
9 share.

10 MR. BUECHELE: And what's the mark on that?

11 COMMISSIONER JABER: Mr. Buechele, let's wait until
12 you get to the microphone.

13 MR. BUECHELE: I'm sorry. I'd like to have this
14 marked as our first exhibit.

15 COMMISSIONER JABER: Okay. This would be order
16 PSC 980206, and it'll be marked as Exhibit Number 5. And
17 Mr. Buechele, just for the future, I realize this is your first
18 time, I think, practicing here before the PSC, you need to make
19 sure that the Commissioners each have a copy, because we might
20 make markings on it, we might like to make markings on it and
21 notes, and we like to have our individual copy. This will be
22 marked as Exhibit Number 5.

23 (Exhibit 5 marked for identification.)

24 MR. FORDHAM: Commissioner, following up on that,
25 Staff also needs a copy, but we can get one of those later. Go

1 ahead.

2 COMMISSIONER JABER: I didn't mean to leave you out,
3 Mr. Fordham, you're absolutely right.

4 Go ahead.

5 BY MR. BUECHELE:

6 Q Okay. Mr. Finlen, Exhibit 5, do you recognize that
7 as being portions of the Interconnection Agreement that was
8 filed by BellSouth in October 1997 -- or November 1997,
9 actually, as a result of the Interconnection Agreement that you
10 just described the process?

11 A Can I look through it?

12 Q Sure, go ahead.

13 A It appears to be.

14 MR. BUECHELE: Okay. I move to have it admitted.

15 COMMISSIONER JABER: We'll move all the exhibits in
16 at the end of his testimony.

17 MR. BUECHELE: Okay.

18 BY MR. BUECHELE:

19 Q Now, Mr. Finlen, when you referred to, just a minute
20 ago, the template that you couldn't recognize, you mentioned
21 that it had a revision date on it. How did you know that?

22 A This date.

23 Q Are those the dates at the bottom of the pages?

24 A Well, I don't -- I mean, I don't know if I would call
25 it a revision date, but it's a date that we try to keep track

1 of what's going on.

2 Q Okay. And do you sometimes notice that there are
3 sometimes different dates on different pages?

4 A Yes.

5 Q And is that because that's the date that the page is
6 revised?

7 A I don't know, because I didn't -- like, this one says
8 September 10th, the very first page --

9 Q Right.

10 A -- it says September 2nd, '97.

11 Q Yes.

12 A I didn't actually start working in this group, doing
13 this until the first of October.

14 Q Okay. So, you started working in the first of
15 October. As of the first of October '97, did you put revision
16 dates at the bottom of the documents?

17 A I was not in charge of the documents. I know there
18 was dates there. I don't know if the dates meant that was the
19 day a change was made or was that a date used to track the
20 document, I don't know. I didn't put the documents -- I was not
21 in charge of the template at that time.

22 Q Okay. And sitting here today, you're in charge of
23 Interconnection Agreements?

24 A I negotiate Interconnection Agreements. I'm not --
25 even today I'm not in charge of the template. I mean, it is a

1 template that we use to assist customers, because the
2 Interconnection Agreement's quite large.

3 Q Do you make changes to the Interconnection Agreement,
4 the standard Interconnection Agreement?

5 A Are you asking do I make changes to the standard
6 Interconnection Agreement, like, during negotiation sessions?

7 Q No, to the standard you present to parties before a
8 negotiated session, do you give input as to what should be in
9 your standard Agreement?

10 A Sometimes, we have reviews of that Agreement. A lot
11 of times, customers will say -- because I'm interfacing a lot
12 with a lot of different customers, we get a lot of feedback
13 from those customers and there may be some language that they
14 don't understand that's in the template, and we bring that to
15 normally the subject matter expert who has that section of the
16 Agreement to see if we can make changes to kind of maybe
17 clarify some of the language. I mean, it is a large document.
18 And yes, I give input based on feedback from customers.

19 Q And you keep track of the changes that you make to
20 your standard Agreement?

21 A Do we keep track?

22 Q Yes.

23 A I don't know. Like I said, I'm not in charge of the
24 template.

25 Q Okay. Okay, Mr. Finlen. Now, there was a second

1 Agreement there that you recognize as well. And I'd like to
2 hand you excerpts from that second Agreement.

3 A Between these two?

4 Q Yes.

5 MR. BUECHELE: And I'd like to have this marked, I
6 guess, as Exhibit 6.

7 COMMISSIONER JABER: You know, Commissioners, I
8 should probably pause here and ask you if this is acceptable
9 that you don't have copies. I suppose we could take a short
10 break and ask Mr. Buechele to make copies. I know,
11 Commissioner Palecki, you made some reference to that earlier.

12 COMMISSIONER PALECKI: I can share your copy, but I'm
13 concerned about Commissioner Baez being able to follow along.

14 MR. BUECHELE: I could run down to Kinko's and make
15 copies.

16 COMMISSIONER JABER: Why don't we do this, why don't
17 we take a 10-minute break. Mr. Fordham, walk Mr. Buechele over
18 to Records & Reporting. Let's make sure the Commissioners each
19 have copies. We'll recess for 10 minutes.

20 (Recess taken.)

21 COMMISSIONER JABER: Let's get back on the record.
22 Mr. Buechele, can you continue with your cross examination
23 while we're waiting for additional copies?

24 MR. BUECHELE: Yes, yes.

25 BY MR. BUECHELE:

1 Q Mr. Finlen, let's talk a little bit about the
2 conversations you had with Mr. Ramos when you sought to enter
3 into an Interconnection Agreement. Now, do you recall that
4 Mr. Ramos was interested in getting the AT&T rates?

5 A Did you say the AT&T rates?

6 Q Yes, the rates that were -- or the AT&T Agreement?

7 A No, he didn't indicate that he was interested in
8 rates or Agreement.

9 Q Did you discuss anything with him about AT&T, the
10 AT&T Agreement?

11 A No, not that I recall.

12 Q Not that you recall. Do you recall being deposed in
13 a proceeding in 980119 on April 22nd, 1998?

14 A Yes, sir.

15 Q And we're not going to admit this, but I'd like to
16 hand you a copy of your depo so that you can look at it.

17 MS. WHITE: May I please see this copy?

18 BY MR. BUECHELE:

19 Q Now, I've handed you a copy of that deposition of
20 yours that was taken on April 22nd of 1998; do you recognize
21 that?

22 A I've never seen the document. I remember the
23 deposition, if that's what you're asking.

24 Q Okay. Can you turn to -- can you turn to Page 8,
25 Line 24. Do you recall being asked, "Question: In reference

1 to Mr. Ramos, did he mention anything about the rates in the
2 Agreement?" And do you recall giving the Answer: He asked
3 where the rates came from, and I explained that the rates were
4 from the AT&T/MCI arbitration hearings, and those rates have
5 been set by the Public Service Commission."

6 A Okay.

7 Q Do you recall giving that answer?

8 A I don't recall giving that answer, but--

9 Q Do you recall having discussions with Mr. Ramos back
10 in 1997 that the rates in his Agreement came from the AT&T and
11 MCI arbitrations?

12 A I don't recall. I mean, I think, that's a true
13 statement, though. I think, that's where the rates came from
14 is the AT&T and the MCI proceedings back in 1997 or whenever
15 those took place.

16 Q Can you turn to Page 14 and Line 13 and you were
17 asked the question: "And you don't remember ever having
18 discussions about the rates, other than that they were set in
19 the arbitration?" And do you recall answering, "Essentially,
20 during this October time frame now in January he called and he
21 got upset about the rates and explained that the rates, again,
22 were part of the AT&T and MCI Agreement and had been
23 established by the Florida Public Service Commission in
24 arbitration and that was the rates and, in fact, I wrote him a
25 letter." Do you recall giving that answer?

1 A I recall writing a letter. You realize this has been
2 quite a while ago. I recall writing a letter, because he
3 wanted some rates for, I believe, it was DS3 charges. And I
4 wrote him a letter and, I think, I provided those rates to him,
5 but I can't -- I mean, this has been four years ago.

6 Q Okay. Could you turn to Page 15. Do you recall
7 being asked the question: "After the Interconnection Agreement
8 was signed and executed in October, what has been your ongoing
9 interaction with Supra? And your answer was --

10 A Can you -- where are you at?

11 Q Page 15, starting at Line 5.

12 A Oh, I'm sorry, go ahead.

13 Q "Question: After the Interconnection Agreement was
14 signed and executed in October, what has been your ongoing
15 interaction with Supra?" And do you recall answering, "He
16 called several weeks after the Agreement was signed, probably
17 before Thanksgiving, I would think, somewhere in that time
18 frame, and asked about the rates. I explained that the rates
19 were based on the MCI/AT&T arbitration, and he said fine. That
20 was the conversation." Do you recall that conversation?

21 A I don't recall the conversation. I must have
22 recalled it then, because it was a short time later.

23 Q You don't dispute that you gave those answers back on
24 April 22nd, 1998, to those questions, do you?

25 A No, I don't dispute it.

1 Q Okay. So, back in 1998, your recollection would have
2 been a little bit better about the events in 1997?

3 A Yes, sir, because it was --

4 Q Okay. So, then is it a fair statement that, in fact,
5 you did have discussions with Mr. Ramos at the time of entering
6 into the Interconnection Agreement that the rates contained in
7 the Agreement came from the AT&T and MCI arbitration?

8 A I guess, I did. I mean, today I don't recall those
9 conversations. I mean, it's been four years or more.

10 Q Okay. But you don't dispute that you gave those
11 answers in 1998?

12 A No, I don't dispute that.

13 Q Okay. And, in fact, if there's a discrepancy in the
14 rates between the AT&T Agreement, and that's the AT&T Agreement
15 that Mr. Ramos subsequently signed on behalf of Supra; is that
16 correct?

17 MS. WHITE: I'm going to object now. I'd like to
18 know what rates are you talking about? I mean, there are rates
19 for a lot of different things. If Mr. Buechele could please
20 specify rates for what, I would appreciate it and, I believe,
21 the witness would as well.

22 MR. BUECHELE: I'll rephrase the question.

23 BY MR. BUECHELE:

24 Q Mr. Finlen, in October 1999 Supra Telecom adopted the
25 AT&T Agreement of June 1997, correct?

1 A Yes, sir, on October 5th.

2 Q And that's the same AT&T Agreement that was referred
3 to in your testimony back in 1998, the AT&T arbitration that
4 established that Agreement, correct?

5 A Well, there -- I disagree, because there's actually
6 -- there was, if I recall correctly, on July the 24th, 1998,
7 the rates in the AT&T Agreement were revised based on a
8 Commission order. So, there would have been a different -- so,
9 the October 5th, 1999, rates that are in the adoption would be
10 different from what was originally done and heard in 1998.

11 Q No, isn't it a fact that Supra adopted the original
12 1997 Agreement and then add on the amendments that were made by
13 the Commission for AT&T?

14 A No. When Supra adopted the Agreement on October 5th,
15 1999, it adopted all the Agreement, including all amendments to
16 that Agreement, up to that date.

17 Q Okay. And was there any change? You said -- you
18 talked about some amendments. Were there any amendments to the
19 end user common line charges?

20 A In the AT&T Agreement?

21 Q Yes.

22 A No, there was not.

23 Q Okay. Were there any amendments to the amount
24 charged for alleged unauthorized switching in the AT&T
25 Agreement?

1 A No. It doesn't have a provision or rate. It does
2 not have the language.

3 Q And did the Public Service Commission make any
4 amendments to the secondary service charges that relate to
5 converting customers over from BellSouth, the ALEC, in the AT&T
6 Agreement?

7 A No.

8 Q Okay. So, is it fair to state that with respect to
9 the three items in dispute in this proceeding, there were no
10 changes in the AT&T Agreement that affected those rates?

11 A Can you repeat the question? I'm not following you.

12 Q Is it a fair statement that the rates set forth in
13 the AT&T Agreement that was subsequently adopted by Supra
14 Telecom, that on the three issues in this proceeding, the end
15 user common line charges, the secondary service charges, and
16 the alleged conversion back or slamming charges, as you might
17 call them, there were no changes in the AT&T Agreement with
18 respect to those charges?

19 A There was no changes, no.

20 Q Okay. So, if you had told Mr. Ramos that the rates
21 in his -- in the Agreement that he executed, the
22 Interconnection Agreement, that you've identified, if you had
23 told him that those came from the AT&T Agreement, that would
24 have been incorrect; is that correct?

25 A No, because the AT&T Agreement does not address the

1 end user common line charge as specifically or as clearly as
2 the resale -- the 1997 Resale Agreement does. The AT&T
3 Agreement sets forth a -- and I'm doing this from memory -- a
4 section in there that the appropriate federal rules and
5 regulations are applicable to this -- to the prices. The
6 prices in the AT&T Agreement, if I recall the tables correctly,
7 are for unbundled network elements. They don't set forth
8 really rates for resale as clearly as in the 1997
9 BellSouth/Supra Resale Agreement.

10 Q Do you think Mr. Ramos had a right to rely upon your
11 statement that the rates set forth in his Interconnection
12 Agreement came from the AT&T Agreement?

13 A I mean, I think, there's still -- they're still the
14 same. I think, the statement is still correct. And the reason
15 I'm saying that, for resale if you look at the AT&T Agreement,
16 the 1997 AT&T Agreement, and the Resale Agreement that
17 Mr. Ramos entered into for the discount percentage is the same.

18 Q But there were differences in charges, like the
19 secondary charges and the end user common line charge; is that
20 correct?

21 A There are no differences, because in the AT&T
22 Agreement it doesn't spell out those charges. It just says
23 that you will abide by the rules and regulations of the FCC,
24 the Florida Public Service Commission, so if the FCC has a rule
25 about end user common line charge, then it will be applicable

1 to whoever adopts it into AT&T also.

2 Q Now, when Mr. Ramos --

3 COMMISSIONER PALECKI: Excuse me, could I jump in
4 here? I'm not sure that I'm clear on this, and I want to make
5 sure that I am.

6 Mr. Finlen, in your deposition of 1998 -- and just
7 let me know if I'm receiving this clearly -- in your
8 conversation with Supra you told them that the rates contained
9 in their Interconnection Agreement that was executed by
10 Mr. Ramos came from the AT&T and MCI arbitrations. And you're
11 saying that that is accurate, that those rates did come from
12 the AT&T and MCI arbitrations?

13 THE WITNESS: Yes, sir. And what I'm referring --
14 what, I think, I was referring to then, of course, it's been
15 quite a while ago, is the breaks for unbundled network
16 elements, because Supra already had a Resale Agreement. So,
17 resale was anytime that Mr. Ramos was asking me about rates,
18 because he already had a Resale Agreement and we had already
19 agreed to delete all the resale provisions in the
20 Interconnection Agreement when he spoke of rates, and I'm
21 speculating because, I mean, it's been four years ago, I would
22 assume he was referring to the rates in the Interconnection
23 Agreement for unbundled network elements.

24 COMMISSIONER PALECKI: So you -- and to the best of
25 your recollection -- I understand this was some time ago, you

1 were not telling Mr. Ramos that the rates contained in his
2 Interconnection Agreement contained every rate that was
3 contained in the AT&T and MCI arbitrations?

4 THE WITNESS: No, I don't think it contained every
5 rate. In fact, I'd have to go do a side-by-side comparison.
6 It may even have more rates for different products, because the
7 AT&T Agreement was done in June of 1997. And since then, we
8 have been adding products. In fact, the rates now are
9 enormous, because of the new products that BellSouth continues
10 to offer to CLECs.

11 I mean, different rules have come out in the last
12 year, year and a half, for a lot of new product combinations
13 which, I think, this Commission has set forth or is in the
14 process of setting forth rates for. So those will be included,
15 so the rate sheets continue to expand.

16 COMMISSIONER PALECKI: So, to the best of your
17 recollection, in 1998 when you were being deposed, you were
18 referring to the rates for unbundled network elements. You
19 weren't referring to the rates for resale, because you already
20 had a contract for resale with Supra at that time.

21 THE WITNESS: That is correct, sir.

22 COMMISSIONER PALECKI: I just wanted to make sure
23 that I'm clear on that.

24 THE WITNESS: Thank you.

25 COMMISSIONER PALECKI: Now, do you recall that today

1 or is this something you really don't remember today?

2 THE WITNESS: I really don't remember. It's been a
3 long time and my long-term memory seems to go away with age. I
4 just can't remember it.

5 COMMISSIONER PALECKI: Thank you.

6 BY MR. BUECHELE:

7 Q In any event, on Page 14, you don't dispute that you
8 stated that the rates, again, were part of the AT&T and MCI
9 Agreement on Line 18 and 19?

10 A No, I don't dispute that.

11 Q And Mr. Ramos was concerned in his discussions with
12 you, wasn't he, that he was getting the best rates, correct?

13 A It was the rates that we offered to everybody at the
14 time, including MCI and AT&T.

15 Q Okay. And so, Mr. Ramos wanted to make sure that he
16 was getting the rate that AT&T was getting, correct?

17 MS. WHITE: I guess, I'm going to have to object.
18 It's just a little strange, I think, it seems like Mr. Buechele
19 is testifying in his question as to what Mr. Ramos thought and
20 said and did. Mr. Ramos is not a witness in this case, so I
21 think I have a problem with that.

22 COMMISSIONER JABER: Mr. Buechele, why don't you
23 restate the question.

24 MR. BUECHELE: I'll restate the question.

25 BY MR. BUECHELE:

1 Q Mr. Finlen, when you were having your discussions
2 with Mr. Ramos in 1997, isn't it a fact that Mr. Ramos was
3 concerned that he wanted to get the best rates, correct?

4 A I would assume that he may have asked a question
5 about rates, are these the best rates you have, I don't know
6 exactly what he would have asked but, I mean, we didn't have a
7 lot of conversations during the negotiation sessions or during
8 the negotiation process.

9 Q And Mr. Ramos wanted to make sure that he was getting
10 the same rates that AT&T and MCI were getting, correct?

11 COMMISSIONER JABER: Mr. Buechele, perhaps we need to
12 ask the witness what his recollection of the conversation was.

13 MR. BUECHELE: Okay.

14 BY MR. BUECHELE:

15 Q Do you now recall that Mr. Ramos advised you that he
16 wished to have the same rates that AT&T and MCI had?

17 A I just don't recall.

18 Q Okay. Now, let me ask you this: At the time that
19 Mr. Ramos was entering into this Interconnection Agreement, was
20 it your impression that Mr. Ramos wanted to start selling
21 unbundled network elements immediately?

22 A No, because Mr. Ramos didn't discuss what he wanted
23 to do. I mean, he already had a Resale Agreement and he had a
24 collocation Agreement. A lot of people were entering into -- a
25 lot of ALECs were coming -- starting up businesses and they

1 were requesting agreements. Now, whether they wanted to start
2 their business using unbundled network elements or resale or
3 they had their own facilities -- I mean, I don't -- really
4 don't like to discuss business plans with a client, when you
5 say their business.

6 Q Would you turn to Page 6 of your deposition?

7 A What's that?

8 Q Page 6 of your deposition.

9 A 86?

10 Q No, 6.

11 A Oh, 6.

12 Q In Line 6 and 7 you were asked the question several
13 conversations, what was the gist of these conversations. And
14 do you recall giving the answer on Lines 20 through 25. He
15 said, "Yes, I needed an Interconnection Agreement, and I kind
16 of got the impression that he needed it, because he was going
17 to be selling unbundled network elements. I really don't know
18 what he was doing, why he needed it that quickly." Do you
19 recall giving that answer?

20 A I don't recall the answer itself, but I can recall
21 that yes, he wanted to do an Interconnection Agreement very
22 quickly. I mean, it was very -- I was very surprised, and I
23 was brand new at doing interconnection -- doing any kind of
24 negotiations that anybody would sign a 300-page document
25 without at least reviewing it and having an attorney review it.

1 Q Now, does that refresh your recollection that you had
2 gotten the impression from him that he wanted to start selling
3 unbundled network elements?

4 A I mean, I guess, I had an impression that that's what
5 he wanted to do.

6 Q Okay. And you got that impression from the
7 discussions you had with Mr. Ramos prior to entering into the
8 Interconnection Agreement, correct?

9 A Yeah, we had several conversations. I mean,
10 remember, this was done in February, March, 1998.

11 Q Okay. Now, is it your position that if Supra Telecom
12 wanted to obtain unbundled network elements but was not given
13 that opportunity -- strike that.

14 Let's do it this way. In your testimony you refer to
15 a section of the CFRs. I believe, it's 51.617.

16 A That's where I made the correction.

17 Q I'm sorry, what?

18 A That's where I made the correction earlier this
19 morning.

20 Q Sure.

21 A Yes, sir.

22 Q Now, under that section, if a CLEC is providing
23 service through unbundled network elements, do they pay the end
24 user common line charge to BellSouth?

25 A No, they do not. They collect that themselves.

1 Q Okay. So, if the CLEC then is providing service
2 through unbundled network elements, they collect the end user
3 common line charge and BellSouth does not get the charge to the
4 CLEC?

5 A That is correct.

6 Q Now, if the case was that Supra was providing service
7 through unbundled network elements for the time periods covered
8 by this dispute, then it's your testimony that Supra would not
9 have been charged the end user common line charge?

10 A For those services that they were providing -- it
11 could be both. For services that were being provided to their
12 end users using unbundled network elements, then Supra would --
13 we would not have charged Supra for those. But if Supra was,
14 like, doing both, like, doing resale and using unbundled
15 network elements, then for the accounts or the lines that were
16 under resale, they would be charged the end user common line
17 charge. For the access lines that they were purchasing, as UNEs
18 they would not be charged the end user common line charge.

19 Q All right. So then, just so that we're clear, if
20 Supra had been providing the equivalent of resale service using
21 unbundled network elements, BellSouth would not have been
22 entitled to charge the end user common line charge?

23 A What do you mean by the equivalent using unbundled
24 network elements resale --

25 Q I'll rephrase it. I'll rephrase it.

1 Are you familiar with the terminology UNE platform?

2 A Yes.

3 Q Okay. Now, that refers to providing the equivalent
4 resale service using unbundled network elements, correct?

5 A I don't know if I would agree it provides -- it
6 depends on what resold services you're even referring to. The
7 UNE platform or UNE-P, to me, is a loop and a port combination.
8 And you can provide some services doing that, yes, but there's
9 also other services that are available for resale that would
10 not be a loop and a port combination.

11 Q Okay. So, if Supra had been providing service to its
12 end users using these unbundled network combinations, even if
13 it approximated an equivalent, even if it approximated resale
14 service, they would not have had to pay the end user common
15 line charge, correct?

16 A Let me make sure -- I'm going to rephrase what I
17 think you're asking, and then I will give you an answer, if
18 that's fine.

19 Q Sure.

20 A I think, what you're asking is if they had purchased
21 a loop and then used that to provide -- or a port or a loop
22 port combination -- to provide a service to one of their end
23 users, would we have charged the end user common line charge?

24 Q And the answer is no.

25 A And the answer is no.

1 Q And if Supra had wanted -- was able to provide all
2 its customers using that combination, provide service to all
3 its customers using that combination, they would not have had
4 to pay the end user common line charge; is that correct?

5 A If they had been providing those services using
6 those. Now, to further expand, BellSouth was willing to sell
7 unbundled network elements to Supra in 1997.

8 Q They were?

9 A Yes.

10 Q Isn't it a fact --

11 A Or right after the Interconnection Agreement was
12 executed.

13 Q You're not familiar, then, with correspondence
14 between BellSouth and Supra in which BellSouth stated that it
15 had no obligation to provide service through unbundled network
16 elements?

17 A Say that again.

18 Q Let's do it this way. In your testimony, you mention
19 that a dispute arose between the parties sometime in 1998 about
20 Supra wanting to provide service to its customers using
21 unbundled network element combinations.

22 A I did not say combinations.

23 MS. WHITE: Excuse me, can you point to the page
24 you're referring to?

25 MR. BUECHELE: I'll find it.

1 BY MR. BUECHELE:

2 Q On Page 7 you mentioned that there was an
3 inconsistency between the two --

4 A Is that Direct or Rebuttal?

5 COMMISSIONER JABER: Page 7 of the deposition
6 transcript, Mr. Buechele?

7 BY MR. BUECHELE:

8 Q No, Page 7 of your Direct Testimony.

9 A What line are you on?

10 Q Starting on the section where you're talking about,
11 "Was there a difference in the Interconnection Agreement that
12 was e-mailed to Mr. Ramos and the one he executed on October
13 27th?"

14 A Yes.

15 Q You go on there to say that there was a difference
16 and then you say what happened, your next question was, when
17 the inconsistency was discovered, and you state that it was
18 discovered on August 17th, 1998, when Ms. Suzanne Summerlin
19 sent a letter to Ms. Mary Jo Pete and Ms. Nancy White of
20 BellSouth requesting that BellSouth make available to Supra the
21 combinations contained in the October 21st, 1997
22 Interconnection Agreement. Do you see that?

23 A Yeah, I'm following you.

24 Q And wasn't that a dispute over the fact that Supra
25 wanted to provide service to using loop and port combinations

1 to its customers?

2 A There was language in the -- I don't know exactly
3 which one it was up here.

4 Q My question is was there a dispute at the time where
5 Supra wanted to provide service to its customers using
6 unbundled network elements, and BellSouth was contending that
7 Supra had no right to do that?

8 A That is correct.

9 Q Okay. Now, is it your position that if Supra was
10 denied the ability to provide service to its customers using
11 unbundled network combinations, and they were forced into
12 providing service through resale, is it your position that the
13 resale rates should apply or at least -- strike that -- not the
14 resale rates, that the end user common line charge should still
15 be assessed against Supra?

16 A That was a long question.

17 Q Would you like me to repeat it?

18 A If you don't mind.

19 Q Okay. Is it your position that if BellSouth was
20 asked to provide service to Supra's customers using unbundled
21 network element combinations but refused to do so and Supra was
22 forced into using the resale service to service its customers,
23 is it your position that Supra should still be required to pay
24 the end user common line charge?

25 A Well, the reason I have a problem with your question

1 is you're saying that Supra was forced to use resold services,
2 and Supra was not forced to use resold services.

3 Q Right, they could have not provided service at all.

4 A No, that's not what I'm saying, sir.

5 Q Okay.

6 A Supra had several different ways in 1998, '97 time
7 frame, latter part of 1997, to provide services using either
8 resale or they could have purchased unbundled network elements
9 and combined them themselves. Those were available after
10 October of 1997 and are still available to this day, that they
11 could have purchased unbundled network elements, put them
12 together themselves, provided the service to their end users,
13 and there would have been no end user common line charge
14 assessed.

15 Q Okay. In that circumstance, you're talking about
16 Supra would have put a switch into a BellSouth central office,
17 then purchased the unbundled loop and that way they would have
18 been able to service their customer through unbundled network
19 elements?

20 A I mean, they could have done it that way. Most ALECs
21 do not flip switches in central offices. Most ALECs put a
22 switch in, like, an area -- in Atlanta, there's several pop
23 hotels or switch hotels where there's companies that go in,
24 real estate companies that actually reinforce the floor and
25 then they sell, lease space to -- for CLECs to put their

1 switches in, and the CLECs buy transmission equipment from that
2 hotel to the switch and then there's a collocation space, and
3 then they pick up the various end users via the loop. That is
4 a very common practice. So, putting the switch into a central
5 office is kind of a -- would be highly unusual.

6 Q Okay. Is it a fair statement, then, that when you
7 say Supra could have provided service through UNEs, you're
8 saying as a condition there had to be some kind of collocation,
9 either virtual or physical?

10 A Yes, they had to -- I mean, what else do I take the
11 loop to, unless it's a collocation space.

12 Q So, you're not saying that Supra, back in 1997, had
13 the right to provide the equivalent of resale service where
14 BellSouth takes the loop and port combination together and
15 presents it as a UNE without any, either physical or virtual
16 collocation?

17 A First of all, there's a difference between the UNE
18 loop port combination and resale. Those are two different
19 services. If you're asking would we have provided a loop and a
20 port combination in 1998 --

21 Q Or 1997.

22 A Or the latter part of 1997, because it would be
23 November-December of '97. No, we would not have provided a
24 loop and port combination.

25 Q Okay. And, in fact, Supra had been requesting that

1 since '97 through '98 to be able to provide service using a
2 loop and port combination to its customers, correct?

3 A I'm not aware of in 1997 that taking place. Based on
4 the testimony that I have here, it looks like it was sometime
5 in the summer of 1998 that they were talking about the
6 combinations.

7 MR. BUECHELE: Okay. We have some more exhibits that
8 we're making copies of. I don't know if you want me to try to
9 show him some exhibits here, if we don't have enough copies
10 or --

11 COMMISSIONER JABER: Is this a good time to go back
12 to what we were going to identify as Exhibit Number 6?

13 MR. BUECHELE: Okay, are they --

14 COMMISSIONER JABER: I think, those are copies right
15 there on the table.

16 MR. BUECHELE: I'm sorry.

17 COMMISSIONER JABER: That's fine. Why don't you give
18 me a short title for that, and we'll identify it as the next
19 Exhibit Number 6. Mr. Buechele, is what you're handing out,
20 Interconnection Agreement between BellSouth and Supra?

21 MR. BUECHELE: Yes, plus the other one.

22 COMMISSIONER JABER: You'd previously given a copy of
23 this to the court reporter, but what is the other one you're
24 referring to?

25 MR. BUECHELE: The other one is also an

1 Interconnection Agreement, but it was executed retroactively.
2 It was executed in 1999.

3 COMMISSIONER JABER: Okay. Why don't we identify
4 them separately, and let's identify them by the date. So,
5 Exhibit 6 is the Agreement between BellSouth and Supra. It
6 looks like executed on -- why don't you tell me, Mr. Buechele.

7 MR. BUECHELE: It was executed 7-29-99 by BellSouth
8 and 8-10-99 by Supra, and it had an effective date of October
9 23rd, 1997.

10 COMMISSIONER JABER: Okay, that's Exhibit 6 and
11 Exhibit 7.

12 MR. BUECHELE: It was Exhibit 5 was the previous one,
13 and that is the --

14 COMMISSIONER JABER: No, Mr. Buechele, Exhibit 5 was
15 the order.

16 MR. BUECHELE: Well, the order attaches to it
17 portions of the filed Interconnection Agreement that has a
18 signed execution date in October 1997.

19 COMMISSIONER JABER: I see. All right. Let me
20 clarify for the record that the Interconnection Agreement
21 between BellSouth and Supra executed 7-29-99 by BellSouth and
22 8-10-99 by Supra is Exhibit 5. That was attached to order
23 number 98-0206 --

24 MR. BUECHELE: No, that's Exhibit 6.

25 COMMISSIONER JABER: No, sir, it's not. I'm looking

1 at identical copies. All right. Mr. Buechele, you correct me
2 if I'm wrong. Exhibit 5, order number 98-0206 has attached to
3 it an Interconnection Agreement that's been executed by
4 BellSouth on October 31st, '97 by Supra October 27th, '97.

5 MR. BUECHELE: Yes.

6 COMMISSIONER JABER: That's Exhibit 5.

7 MR. BUECHELE: Yes.

8 COMMISSIONER JABER: Exhibit 6 will be the
9 Interconnection Agreement between BellSouth and Supra executed
10 July 29th, '99 by BellSouth and August 10th, '99 by Supra.

11 MR. BUECHELE: Yes.

12 (Exhibit 6 marked for identification.)

13 COMMISSIONER JABER: We are going to get these
14 parties trained on reading the orders on procedure in the
15 prehearing orders for the proper way to identify exhibits. We
16 don't -- you know, we really don't issue those orders for our
17 health. We do it for the benefit of a clear record and for the
18 benefit of the parties. Go ahead.

19 BY MR. BUECHELE:

20 Q All right, Mr. Finlen. Can you identify Exhibit 6 or
21 do you want me to --

22 A If you want to mark them.

23 Q This is Exhibit 5 and this is Exhibit 6.

24 A Thank you.

25 MR. FORDHAM: Excuse me, Commissioner, I'm still a

1 little confused. We did nail down, as you did, Exhibit Number
2 5 as being that order with the attached Agreements.

3 COMMISSIONER JABER: All right. Here's what's
4 confusing, Mr. Fordham. They both have the same cover page.

5 MR. FORDHAM: Okay.

6 COMMISSIONER JABER: If you turn the page, you will
7 see that there is a difference in the execution dates, and
8 that's the difference between Exhibit 5 and Exhibit 6 on their
9 faces.

10 MR. FORDHAM: Thank you. We're with it now, thank
11 you.

12 BY MR. BUECHELE:

13 Q Can you identify Exhibit 6, Mr. Finlen?

14 A Well, it's parts of an Agreement that was executed
15 between BellSouth and Supra.

16 Q Yes, I know it's parts of it. Do you recognize the
17 initials at the bottom?

18 A No, I don't. I don't know who RE is.

19 Q Is it someone at BellSouth, obviously?

20 MS. WHITE: I think, Mr. Buechele is assuming facts
21 not in evidence.

22 A I don't know if it was somebody at Supra or somebody
23 at BellSouth is RE. I just can't think of somebody's initials
24 RE, that is RE.

25 BY MR. BUECHELE:

1 Q Okay, now --

2 COMMISSIONER JABER: Mr. Finlen, it's your testimony
3 you don't know who RE is?

4 THE WITNESS: I don't recall who RE is. I mean,
5 that's not to say that -- I'm trying to think of people's
6 names. I don't recall anybody.

7 COMMISSIONER JABER: I just wanted a clear answer to
8 the question, that's all.

9 THE WITNESS: Thank you, I'm sorry.

10 BY MR. BUECHELE:

11 Q Now, Mr. Finlen, --

12 A Yes, sir.

13 Q -- Exhibit 5 is pieces of what was filed by BellSouth
14 back in 1997 as the Interconnection Agreement, correct?

15 A Yes.

16 Q And the parties, subsequent to that in 1998,
17 discovered that there was a discrepancy in the Agreement that
18 you had sent Mr. Ramos by e-mail for execution, correct?

19 A Yes.

20 Q And the Agreement that was filed?

21 A Yes.

22 Q Okay. And as a result of that, the parties executed,
23 again, the exhibit that was e-mailed to Mr. Ramos, and portions
24 of that are reflected in Exhibit 6; is that correct?

25 A Yes, that's what it appears to be.

1 Q Okay. And, in fact, Exhibit 6 is portions of the
2 original e-mail that you sent Mr. Ramos that you say he could
3 not unzip on October 23rd, 1997?

4 A Yes.

5 Q Okay. Now, there was some differences in these two
6 documents?

7 A Yes, sir.

8 Q Okay. Now, if you could turn to the signature pages,
9 which is Page 16 of the general terms and conditions on each
10 document.

11 A Yes, sir.

12 Q Now, ignoring the signatures at the bottom, is it a
13 fair statement that as laid out, with the exception for the PSC
14 stamp at the left-hand corner, these two pages are the same as
15 laid out?

16 A No.

17 Q How are they different?

18 A Well, I'm just kind of glancing, if you don't mind.

19 Q Sure, go ahead.

20 A If you look at the paragraph, "Entire Agreement."

21 Q Mm-hmm.

22 A If you look at the first words on each page -- I
23 mean, at the beginning of each line, I mean, you get down to
24 the very bottom, Line --

25 Q It spills over?

1 A Line 10, Exhibit 6, says, "be bound thereby." And in
2 Exhibit 5, it says, "party to be bound thereby." So, there's
3 some differences between the two documents.

4 Q Let's be clear. The page that we're referring to on
5 Exhibit 6 came out of a BellSouth printer in 1999, correct?

6 A Which exhibit?

7 Q Exhibit 6 was printed out by BellSouth?

8 A I don't know if we printed it out or if Supra printed
9 it. I don't remember.

10 Q Do you recall whether or not Supra provided you the
11 e-mail, you then verified the e-mail, printed it out, had
12 Mr. Hendrix sign it, as it's signed here 7-29-99, then sent it
13 to Supra where they signed it and returned it back to you? Do
14 you recall that being the procedure?

15 A No. I mean, I don't have any -- there's nothing in
16 my testimony, and I just don't recall all the events that took
17 place. I know -- I don't recall who even printed either
18 document.

19 Q Okay. The first document here, Exhibit 5 --

20 A Yes, sir.

21 Q -- if you turn to the prior page, you notice that on
22 Page 15, there is a heading, Paragraph 22, "Headings of No
23 Force or Effect," and then it goes -- Paragraph 23 it just has
24 the label. And then, when you turn it over to signature page
25 it repeats Paragraph 22.

1 A Yes, sir.

2 Q And that's the document as filed with the Florida
3 Public Service Commission by BellSouth?

4 A Yes, sir.

5 Q And isn't it a fact that BellSouth printed out a new
6 Agreement and then just replaced Mr. Ramos' signature page on
7 page --

8 A No, no, it's not a fact.

9 Q Can you explain, then, how there is a discrepancy in
10 the Agreement's paragraph numbering?

11 A The only explanation that I can think of right now is
12 -- and I don't know if this is what happened or what, I mean, I
13 don't have a total ex-- empirical reason why this happened is
14 the document could have been printed from one printer and that
15 printer ran out of paper and it switched to another printer. I
16 know when you change printers, there are different brands, the
17 pagination (sic) can change as the documents are being
18 printed.

19 I know there's a difference in my home printer which,
20 I think, is a Hewlett Packard and the print, when I print a
21 document at work versus the one I printed the same document at
22 home, the documents change with no changes.

23 Q Okay, yes. So, in fact, it's a fair statement to say
24 that on Exhibit 5, the document that was filed with the Florida
25 Public Service Commission, the signature page was printed on a

1 different printer than the body of the Agreement?

2 A I'm not saying that's what happened. I mean, that's
3 just one explanation that I can think of why there would be a
4 difference between the two pages. I mean, it could be two
5 different printers, yes.

6 Q Okay. Now, in any event, the parties, you say,
7 discovered this problem and then executed in 1999 the correct
8 version that was supposed to have been executed in '97,
9 correct?

10 A Are you saying the parties discovered there was a
11 problem with these two pages in 1998?

12 Q They discovered that there was a difference in the
13 Agreement, correct?

14 A There was a difference in the attachment to the
15 Agreement.

16 Q Okay. Now, let's turn to Attachment 2. What were
17 the differences?

18 A There was some differences on the -- well, actually,
19 I think, it starts even before that. On Page 1 --

20 Q You're talking about the table of contents?

21 A Yeah, the table of contents.

22 Q There was a whole section eliminated, unbundled
23 service combinations?

24 A Yes, sir, in Exhibit 5.

25 Q Okay. So, you're saying that the Agreement that you

1 had sent Mr. Ramos for execution had a section entitled,
2 "Unbundled Service Combinations," and the document that was
3 filed with the Florida Public Service Commission did not?

4 A The document that was sent via e-mail had a section
5 called "Unbundled Service Combinations."

6 Q And the document that was filed with the Public
7 Service Commission did not?

8 A And the document that was Federal Expressed to
9 Mr. Ramos and subsequently executed by Mr. Ramos did not have
10 that provision, and that is what was filed with the Florida
11 Public Service Commission.

12 Q Okay. You weren't sitting with Mr. Ramos when he
13 signed the document, were you?

14 A No, sir.

15 Q Okay. You don't know what he signed. You know that
16 he signed a page that was incorporated in Exhibit 5, correct?

17 A I know he signed the -- a page, yes.

18 Q So, what you do know is that the Agreement that was
19 e-mailed to Mr. Ramos for his signature contained a section on
20 "Unbundled Service Combinations," correct and the document that
21 was filed with the Florida Public Service Commission did not.

22 A That is correct.

23 Q Okay. Now, the section on "Unbundled Service
24 Combinations" allowed Supra to purchase various loop and port
25 combinations, correct?

1 A Can I go to that section, please?

2 Q Sure.

3 A And I'm going to be in Exhibit 6, Page 3, Paragraph
4 2.1.1; is that where you're referring to?

5 Q Yes, of Attachment 2.

6 A And just to make sure I understand, you're asking me
7 does this language in Paragraph 2.1.1 through 2.1.6 provide for
8 the unbundled network that BellSouth will be obligated to
9 provide combinations; is that what you're asking?

10 Q Yes.

11 A And the answer to that is no, it does not.

12 Q Okay. Now, you had testified earlier that you
13 considered a UNE-P to be a loop and port combination, correct?

14 A Yes, sir.

15 Q Okay.

16 A I mean, that's -- a UNE-P is kind of a term of art,
17 which I call a loop port combination.

18 Q Okay. So, isn't 2.1.2 a UNE-P for a 2-wire analog
19 loop, 2.1.3 a UNE-P for a -- same thing for business, 2.1.4 is
20 a 2-wire analog -- digital analog loop for PBX, and 2.1.5 is a
21 2-wire analog loop with --

22 A Those are UNE-Ps, but you need to also read Paragraph
23 2.1.1, because there it says -- it has some clarifications on
24 what was going to be offered.

25 Q Okay. So, it's your contention, then, you stated in

1 your Direct Testimony that the omission of this provision
2 didn't matter, because even with this section, Supra still
3 couldn't provide the equivalent of resale service using UNE
4 combinations; is that correct?

5 A No, that's not what I stated in my testimony. I said
6 that this did not materially affect. You said materially
7 affect.

8 Q Okay. Now, at the time -- and you've testified at
9 least in mid 1998, you were aware of Supra wanting to provide
10 service to its customers using unbundled network element
11 combinations to recreate resale service.

12 A In 1998?

13 Q Yes.

14 A About the summer, sometime in the summer, they had
15 asked for combinations of unbundled network elements.

16 Q And you said that BellSouth said no, because
17 BellSouth doesn't provide those?

18 A That is correct.

19 Q Okay. And that at that time the difference in the
20 Agreements was discovered, because Supra raised the point that
21 under its Agreement it had the right to provide service using
22 UNE combinations to its customers, correct?

23 A That's when they raised the issue, yes.

24 Q And that's when it was discovered that the Agreements
25 had been changed?

1 A That's when it was discovered that there was an error
2 made and that there was a difference between what was sent to
3 Mr. Ramos via the e-mail and what was, in my mind, what was
4 subsequently signed, in fact.

5 Q Well, you don't know. All you know is the difference
6 between what was sent to Mr. Ramos for execution and what was
7 filed with the Florida Public Service Commission, correct?

8 A Yes.

9 Q Okay. Now, -- and so, it's a fair statement that
10 even though Supra requested the ability to provide service to
11 its customers using loop and port combinations that BellSouth
12 said you could in 1998?

13 A In 1998, BellSouth was -- based on this language
14 right here, was not obligated to provide a loop and a port
15 combination.

16 Q Now, if Supra had been providing service -- if
17 BellSouth would have allowed Supra to provide service to its
18 customers using the loop and port combination, they would not
19 have been billed the end user common line charge; is that
20 correct?

21 A As I stated -- I think, I've answered that question
22 before. If you were providing service using a loop and a port
23 combination, then the unbundled -- or the end user common line
24 charge would not be applicable.

25 Q Now -- and you also stated that CLECs providing

1 service under the FCC rule using UNE combos, do not pay end
2 user common line charge, correct?

3 A Well, it's not just UNE combos. You can't limit it
4 to just that. If they are providing services using unbundled
5 network elements or their own facilities or a combination of
6 their own facilities and UNEs, including UNE combinations, then
7 the end user common line charge is not applicable to them.

8 Q Okay. Now, could you turn to the previous page on
9 Exhibit 6. You see Paragraph 1.1.3. The Agreement, this
10 Agreement in 1997 and 1998, allowed Supra, is it correct, to
11 purchase unbundled network elements for the purpose of
12 combining network elements in a manner that is technically
13 feasible, including recreating existing BellSouth services,
14 correct?

15 A Yes, sir.

16 Q Okay. So, Supra had the right in 1997 and 1998 and
17 1999 to provide service that recreated resale service to its
18 end user customers using combinations of network elements,
19 correct?

20 A Yes. I mean, it says, "CLEC may purchase unbundled
21 network elements."

22 MS. WHITE: Excuse me, I'd like the witness to be
23 able to finish their answer.

24 MR. BUECHELE: Okay.

25 A I just want to read the language itself.

1 BY MR. BUECHELE:

2 Q Okay.

3 A It says, "CLEC may purchase unbundled network
4 elements for the purpose of combining network elements in any
5 manner that is technically feasible, including recreating
6 existing BellSouth services." What that meant and means today
7 and then is Supra could purchase unbundled network elements and
8 combine those network elements that -- if it was technically
9 feasible, and recreate an existing BellSouth service.

10 Q And they could have done that to provide the
11 equivalent of resale service, correct?

12 A When you say equivalent resale service, I would
13 assume you're talking about just anything that's available for
14 resale, which are existing BellSouth services?

15 Q Retail service.

16 A Oh, I'm sorry, I thought you said resale.

17 Q Put it this way. The telecommunications service that
18 Supra provides its customers, telephone service, dial tone
19 where the customer picks up the phone --

20 A Yes, sir.

21 Q -- and what you say was being billed as resale, they
22 could have provided that same service using unbundled network
23 combinations, correct?

24 A They could have provided that same service using
25 network elements and combine them themselves, as long as it was

1 technically feasible, to provide telephone service to their end
2 users.

3 Q Okay. And notwithstanding that, BellSouth refused to
4 provide the equivalent resale service to Supra using unbundled
5 network elements?

6 A I really don't understand your question. I don't
7 think -- no, we have not refused to provide unbundled network
8 elements to Supra to provide retail services to their -- to
9 Supra's end users.

10 Q You said in 1998 BellSouth would not provide Supra
11 service -- the equivalent of resale service to Supra's
12 customers using unbundled network elements.

13 A No. We said that we would provide services,
14 unbundled network elements, that Supra could combine
15 themselves. What we said in 1998 is we would not combine -- we
16 would not provide unbundled network elements combined; in other
17 words, where BellSouth combined the two network elements.

18 Q Okay.

19 A Supra have always combined the network elements
20 themselves and provided telecommunications services to their
21 end users since October of 1997.

22 COMMISSIONER JABER: Mr. Finlen, why would BellSouth
23 not provide the services combined already? Explain that.

24 THE WITNESS: There was a lot of changes in
25 telecommunications law that was taking place in 1997 and 1998

1 and even today, I guess, you could say. There was a court
2 case, I think, it's AT&T vs. Iowa Utilities Board, Eighth
3 Circuit Court, or something like that, where there was a lot of
4 question whether the ILECs, including BellSouth, were obligated
5 to provide combinations of network elements.

6 I don't know all of the history. I do know that it
7 went to the Supreme Court and, I think, the Supreme Court ruled
8 that the FCC had to go back and revisit its Section 319 rules,
9 which the FCC has done, I believe, about a year and a -- maybe
10 a year and a half ago.

11 COMMISSIONER JABER: So at that time, BellSouth's
12 position was that it didn't have to combine the elements and
13 provide them to Supra?

14 THE WITNESS: Yes. And at that time frame, it would
15 have been BellSouth's position that it was not obligated to
16 provide UNEs in combinations.

17 COMMISSIONER JABER: All right. The AT&T/BellSouth
18 Agreement was executed after the BellSouth/Supra Resale
19 Agreement.

20 THE WITNESS: The AT&T/BellSouth Agreement was
21 executed prior to the Supra/BellSouth Interconnection
22 Agreement.

23 COMMISSIONER JABER: But I'm asking about the Resale
24 Agreement. The BellSouth/Supra Resale Agreement was executed
25 first.

1 THE WITNESS: Right.

2 COMMISSIONER JABER: And then, the AT&T/BellSouth
3 Interconnection Agreement?

4 THE WITNESS: Yes.

5 COMMISSIONER JABER: Yes?

6 THE WITNESS: I'm sorry.

7 COMMISSIONER JABER: Is it correct that there is a
8 provision in the AT&T/BellSouth Interconnection Agreement that
9 would allow the AT&T Agreement to supersede any prior Resale
10 Agreement; would you agree with that?

11 THE WITNESS: I mean, there's what Ms. White referred
12 to this morning, if that's what you're talking about. I think,
13 she said it was 22, that the AT&T Agreement would supersede
14 anything prior to the -- I think, the effective date of the
15 AT&T Agreement.

16 COMMISSIONER JABER: Do you have a copy of the
17 prehearing order in this case?

18 THE WITNESS: No, ma'am.

19 COMMISSIONER JABER: Ms. White, can you -- I'm
20 looking at Issue 1, Mr. Finlen. And I'm asking you these
21 questions similar to Commissioner Palecki. I'm trying to get
22 correct in my mind the different dates and the applicability of
23 the Agreement. Read Issue 1, please, to yourself; read
24 BellSouth's position and read Supra's position, and let me know
25 when you're ready.

1 THE WITNESS: Yes, ma'am.

2 COMMISSIONER JABER: Is it your opinion, Mr. Finlen,
3 that the AT&T/BellSouth Agreement, the provisions of that
4 Agreement that might relate to resale, would that have
5 superseded the prior BellSouth/Supra Agreement? And I'm
6 talking resale.

7 THE WITNESS: Yes. It would -- you know, if -- and I
8 don't -- I'm just going to kind of keep this in layterms.

9 COMMISSIONER JABER: I'd appreciate that.

10 THE WITNESS: If Supra said -- and, I guess, Supra
11 entered into the -- adopted the 1997 AT&T Interconnection
12 Agreement or Agreement which has some resale provisions in it,
13 on October 5th, 1999. On October 5th, 1999, going forward, the
14 AT&T/BellSouth Agreement is what we operate under from that
15 time period. Up until October 5th, 1999, we were under the
16 1997 Resale Agreement up to that date. I hope I've answered
17 your question.

18 COMMISSIONER JABER: Yeah, I think, you are, but let
19 me try to rephrase your answer, and you correct me if I'm
20 wrong. What you're saying is the terms are superseded but the
21 dates, the effective dates, are the AT&T/BellSouth Agreement
22 kicks in after the Supra/BellSouth Resale Agreement expires.

23 THE WITNESS: Yes.

24 COMMISSIONER JABER: Okay, thank you.

25 COMMISSIONER PALECKI: Put another way, you would say

1 that the AT&T/BellSouth Agreement does not apply to Supra until
2 Supra adopts that Agreement?

3 THE WITNESS: Yes, sir. I mean, there's no way that
4 I would know --

5 COMMISSIONER PALECKI: And you're claiming that Supra
6 did not adopt that Agreement until October 5, 1999?

7 THE WITNESS: That is correct, sir.

8 COMMISSIONER PALECKI: Now, I'd like to explore that,
9 what occurred in October of 1999 when Supra adopted the
10 BellSouth/AT&T Agreement. At that time, did they have any
11 discussions with you saying that they felt that they had
12 adopted that Agreement two years earlier?

13 THE WITNESS: No, no. In fact --

14 COMMISSIONER PALECKI: When did this first -- I'm
15 trying to figure out how this dispute came to a head. When did
16 it first come to your attention that Supra was claiming that
17 they were under the AT&T Agreement from 1997 on?

18 THE WITNESS: This docket. I mean, this is --

19 COMMISSIONER PALECKI: When they refused to pay these
20 charges and BellSouth filed this docket?

21 THE WITNESS: Yes.

22 COMMISSIONER PALECKI: So, you were unaware when
23 Supra signed or when they adopted the BellSouth/AT&T Agreement
24 in 1999 that they were actually claiming that they had adopted
25 or accepted that Agreement two years earlier in '97.

1 THE WITNESS: Yeah, but to kind of give you how we
2 got there, I can tell you.

3 COMMISSIONER PALECKI: Yes, I'd like to --

4 THE WITNESS: How did we get to October 5th?

5 COMMISSIONER PALECKI: Mm-hmm.

6 THE WITNESS: The 1997 Agreement was a two-year
7 Agreement, so it was going to expire in October 1999. There
8 was actually -- there was some provisions in the 1997
9 Interconnection Agreement. It stated, and I may have this -- I
10 don't have it -- it stated that, I believe, it was 180 days
11 prior or 160 days prior to the expiration of the Agreement we
12 would enter into renegotiations for a new Agreement. BellSouth
13 sent a letter, and I want to think it was probably in the
14 March/April time frame of 1999, requesting negotiations.

15 There was some correspondence between the two parties
16 during the summer of 1999. And in August of 1999, I received a
17 letter from Supra requesting to adopt the AT&T Agreement, that
18 was in the middle of August, maybe towards the end of August.

19 COMMISSIONER PALECKI: Is that letter in the record?

20 THE WITNESS: No, I'm doing this from memory. No,
21 sir, I mean, I didn't realize --

22 COMMISSIONER PALECKI: Did that letter state anything
23 that we had attempted or effectively adopted that
24 AT&T/BellSouth Agreement earlier in 1997?

25 THE WITNESS: No, sir, it did not.

1 COMMISSIONER PALECKI: So, just to summarize your
2 testimony, it is that Supra could have adopted and accepted the
3 BellSouth/AT&T Agreement as of the date that it was entered
4 into by BellSouth and AT&T, but they did not choose to do so
5 until over two years later on October 5th, 1999.

6 THE WITNESS: That is correct, sir.

7 COMMISSIONER PALECKI: Thank you.

8 COMMISSIONER JABER: Mr. Buechele, we interrupted
9 you. Go ahead.

10 BY MR. BUECHELE:

11 Q Mr. Finlen, under the current Agreement in 1997,
12 Supra was entitled to provide service to its end users using
13 UNE combinations, correct? That is the Agreement --

14 MS. WHITE: I didn't understand. You said the
15 current 1997 Agreement?

16 MR. BUECHELE: I'll rephrase the Agreement.

17 BY MR. BUECHELE:

18 Q Under the Agreement of which portions are identified
19 as Exhibit 6?

20 A Let me get back to it. Okay. Can you point me to
21 where you want to go?

22 Q Attachment 2.

23 A Okay.

24 COMMISSIONER JABER: Which page, Mr. Buechele?

25 MR. BUECHELE: In general.

1 COMMISSIONER JABER: Oh, okay.

2 THE WITNESS: What page?

3 MR. BUECHELE: In general.

4 COMMISSIONER JABER: He's asking you a general
5 question. Let him ask the question and if you need, you know,
6 better direction, you can tell him.

7 BY MR. BUECHELE:

8 Q Under that Agreement Supra was entitled to provide
9 service to its customers that recreated resale service?

10 A Yes.

11 Q And BellSouth would not provide that service to
12 Supra?

13 MS. WHITE: I'm going to object. I think, this
14 question's been asked and answered on several occasions. I
15 also believe that to some extent he's going outside the issues
16 in this docket and the testimony of all the witnesses in this
17 docket. So, I would object, first, on the basis that it's been
18 asked and answered on several occasions.

19 COMMISSIONER JABER: Mr. Buechele, your response?

20 MR. BUECHELE: The issues in this docket are whether
21 or not these offsets are correct, whether or not they have a
22 right to claim them under the relative Agreements is one of the
23 issues.

24 COMMISSIONER JABER: I think, it's within the scope
25 of testimony but, Mr. Buechele, I do remember this question

1 several times.

2 MR. BUECHELE: Okay.

3 COMMISSIONER JABER: If you'd like to restate to get
4 to your point, that would be fine.

5 BY MR. BUECHELE:

6 Q The fact of the matter is if BellSouth would have
7 provided the UNEs the service that Supra was requesting back in
8 19 -- you say in '98 when you first became aware of these
9 requests then, in fact, Supra would not owe the end user common
10 line charges portion?

11 A If Supra had made a decision to purchase unbundled
12 network elements, combine them themselves, then the end user
13 common line charge would not have been applicable. I mean,
14 it's -- when you use UNEs, you don't -- you have the right to
15 the end user common line charge and you're not billed that by
16 BellSouth. Supra chose to purchase resale services.

17 COMMISSIONER PALECKI: If they had decided to or if
18 they had actually purchased, would it require the actual
19 purchase or the decision on the part of Supra to do so would --

20 THE WITNESS: Well, they would have to tell us that
21 they wanted to buy a loop.

22 COMMISSIONER PALECKI: So, as soon as they inform you
23 of that fact, the first of the three charges we're talking
24 about, the end user common line charge would not be applicable.

25 THE WITNESS: For services they purchased. In other

1 words, if they sent in an order to BellSouth, they have to send
2 in an order and say I want to buy a loop, and they would tell
3 us what loop they want and where they want us to terminate that
4 loop.

5 COMMISSIONER PALECKI: And you're saying that they
6 did not send in such an order?

7 THE WITNESS: No, they purchased resold services.
8 They sent in orders all of 1997, '98, I believe, most of 1999
9 as resale. I mean, that's what they asked for, and that's what
10 we sold them, and in those charges, the end user common line
11 charge, is appropriate when you purchase resale services.

12 BY MR. BUECHELE:

13 Q Mr. Finlen, if BellSouth refused to provide the
14 services at the request of Supra, are you telling me that
15 because if Supra wanted those UNEs but BellSouth said you can't
16 have them, that the fact that no order was placed because
17 BellSouth refused to allow the order to be placed requires that
18 Supra provides service through resale only?

19 MS. WHITE: I'm going to object to that question as
20 argumentative, and it's assuming a lot of facts not in
21 evidence.

22 COMMISSIONER JABER: Mr. Buechele, your response?
23 Why don't you break your question apart, have the
24 foundation laid, and ask it again.

25 MR. BUECHELE: Sure.

1 BY MR. BUECHELE:

2 Q Mr. Finlen, you testified that they would have had to
3 submit an order for UNEs in order to not have the end user
4 common line charge not apply?

5 A When you send in an order, and I'm not an ordering
6 person, I'm not a subject matter expert, I can just give you
7 what I know, my basic knowledge.

8 Q Okay.

9 A You send in an order, and on that order you put down
10 what it is you want us to provide you, and --

11 Q All right. So, you're not an ordering person, so you
12 have no idea if there was an order process in place; is that
13 correct?

14 MS. WHITE: For what, Mr. Buechele?

15 BY MR. BUECHELE:

16 Q For purchasing UNE combos in 1998?

17 A In 1998, we were not providing UNE combinations, so I
18 don't know if there was an ordering process in place at all.
19 So, we weren't obligated to provide UNE combinations in 1998,
20 so whether or not -- I just don't know there was an order in
21 process for UNE combinations at that time. I would doubt it,
22 because we weren't obligated to provide it. Why put a process
23 in place when there's no obligation to provide that. We're not
24 offering that product.

25 Q In 1999, in early 1999, the United States Supreme

1 Court issued a ruling. Are you familiar with the AT&T --

2 A The Iowa Board?

3 Q Yes.

4 A I don't know the dates. I know they issued a ruling,
5 I just don't know what the dates were.

6 Q And under that ruling the United States Supreme Court
7 said you could recreate resale service --

8 A I'm not a lawyer.

9 Q -- using unbundled network elements; are you familiar
10 with that?

11 MS. WHITE: If Mr. Buechele wants to ask questions of
12 this witness about the Supreme Court order, I would ask that he
13 give the witness a copy of the Supreme Court order so he can
14 review it and be able to answer the questions. In addition,
15 this witness is not a lawyer. I would not object to him asking
16 such questions, if he has a copy of the Supreme Court ruling,
17 which Mr. Finlen can review.

18 COMMISSIONER JABER: Let me do this. Mr. Finlen, are
19 you familiar with the AT&T vs. Iowa Board opinion?

20 THE WITNESS: I am vaguely familiar from a
21 layperson's perspective. That's about as far as I want to go.

22 COMMISSIONER JABER: Mr. Buechele, what is your
23 question?

24 BY MR. BUECHELE:

25 Q And from a layperson's perspective, was it your

1 understanding that where elements were already combined, you
2 could not uncombine them?

3 A I believe, there was -- if elements were currently
4 combined or, I guess, your term, already combined, that we
5 could not uncombine them to provide services to an ALEC.

6 Q Okay.

7 A I think, that's correct.

8 Q Okay. So, if a loop and a port were already combined
9 to an existing customer who is receiving telecommunications
10 service, you could not then say, "CLEC, if you want to convert
11 these people to UNEs combinations, they are now disassociated
12 and combine them yourself"?

13 A As long as they were currently combined.

14 Q Right. So, that means that every customer, every
15 resale customer on Supra's account, as you listed them as
16 resale customers, could have at that point and time, been
17 converted over to UNE pricing without Supra having to combine
18 any elements themselves; is that correct?

19 A That is correct. However, for Supra to have done
20 that, they would have had to tell us that that's what they
21 wanted to do. They would have had to tell us that they wanted
22 to send in a Local Service Request under -- I want to convert
23 Pat Finlen's account, who I've been purchasing as a reseller to
24 unbundled network elements, and BellSouth would convert those,
25 but you have to tell us that that's what you want. At that

1 time --

2 COMMISSIONER PALECKI: Let me see if I can get to the
3 bottom of this. If Supra had informed BellSouth that they
4 wished to purchase unbundled network elements consisting of
5 loop and port applications, then the end user common line
6 charge would not apply. Now, BellSouth says that Supra did not
7 do this. Supra says that they requested UNE combinations in
8 1998 and that this consisted of such a request, making the end
9 user common line charges inapplicable. What is defective, as
10 far as Supra's contention there?

11 THE WITNESS: I mean --

12 COMMISSIONER PALECKI: Because they didn't make the
13 request for a specific customer, is that what you're saying?

14 THE WITNESS: Well, that would be part of it. In
15 1998, they were kind of asking will you provide us with
16 unbundled network combinations. It was more like a policy or
17 are you going to offer this to us on a going-forward basis.
18 And the answer at that time was no, we're not obligated to,
19 there's nothing in the contract that says I have to.

20 Whenever the Supreme Court came out with its ruling,
21 and I'll assume that Mr. Buechele is correct, sometime in 1999,
22 it said if the elements were already combined, then BellSouth
23 would not -- or the ILECs could not uncombine those services,
24 which means, okay, so now we are obligated to, and BellSouth
25 recognized this fact, that if it was already combined -- let's

1 say, it's my service and I'm being served here in Tallahassee,
2 and I already have dial tone, then Supra could say, well, I
3 want to convert Mr. Finlen's service to an unbundled loop port
4 combination, and we would do that. But Supra would have to
5 send in a request saying I want to convert that.

6 It's not a blanket, oh, I asked for it in 1998, will
7 you do this as a policy, and then the answer was no. And, oh,
8 by the way, the rules changed in 1999, that we just
9 automatically started converting everything that was under
10 resale, because we still do a lot of resale. A lot of people,
11 to this day, use resale for their product line. There's
12 certain advantages to it over UNEs.

13 COMMISSIONER JABER: In the BellSouth/Supra Resale
14 Agreement, was there a change of law provision; do you recall?

15 THE WITNESS: I don't recall. I'd have to go back to
16 the Agreement. It's about 30 or so pages.

17 COMMISSIONER JABER: Mr. Buechele, go ahead.

18 MR. BUECHELE: I'm looking. Yes, there is. I don't
19 know if you were asking me, but there is a change in law
20 provision. I believe, it's Paragraph 16-C.

21 COMMISSIONER JABER: Well, do you want to show that
22 document to the witness so we can have it into the record since
23 you and I can't testify.

24 MR. BUECHELE: It's an exhibit.

25 COMMISSIONER JABER: Which exhibit is that?

1 BY MR. BUECHELE:

2 Q Mr. Finlen, do you have a copy of the Resale
3 Agreement in front of you?

4 A Yes.

5 Q Could you look at 16-C. Is that a change in law
6 provision?

7 A I'm really not sure exactly what you mean by the term
8 change in law, but there's a provision there, yes.

9 Q Well, does it say, in essence, that if there's
10 rulings that come out from courts or the FCC or the Commission
11 that they will be incorporated in this Agreement or changed in
12 this Agreement?

13 A Can I read it?

14 Q Sure.

15 A Okay. And your question?

16 Q The question is, is that a provision which states
17 that if there's a change in law, the parties will try to
18 incorporate them into the Agreement?

19 A It just says if there's change in law, then BellSouth
20 will offer those changes to the --

21 Q Okay.

22 A -- parties. And then the party will -- I'd have to
23 really study it a little bit more, but it seems, yes, if the
24 law changes, we would be obligated to offer whatever that
25 change in law is, but you would have to notify me that you wish

1 to take it, and then you would -- and it would be effective as
2 of the date you accept the offer.

3 Q Mr. Finlen, eventually, in 2000 BellSouth provided
4 Supra three UNE test combinations -- three test UNE
5 combinations that recreate resale service?

6 A In 2000?

7 Q Yes.

8 A Yes, there was some UNE combinations that had been
9 provided to Supra, they ordered the UNE combinations, and they
10 were provided to Supra. I don't know, you said test. I don't
11 know what you mean by test.

12 Q Request was made to the account rep after -- a
13 request was made and the account rep agreed in March 2000 or
14 April 2000 to finally provide, on a limited basis, three UNE
15 combinations.

16 A Pursuant to the Agreement, the October 5th Agreement,
17 1999, which BellSouth and Supra amended, I believe, in February
18 of 2000, Supra placed some orders for some UNE combinations in
19 the March/April time frame, I'm not sure exactly when, and
20 BellSouth provisioned those UNE combinations.

21 Q Now, prior to that, Supra had, on numerous occasions,
22 written letters to you, to Marcus Cathey, to various people at
23 BellSouth, asking for UNE combos, correct?

24 A There was some correspondence in 1998.

25 Q And there was some correspondence in 1999.

1 A If you could refresh my memory, I mean --

2 Q Without admitting this, but do you remember some
3 correspondence between the lawyers about the UNE combos used?

4 MS. WHITE: Okay, I'm a little confused.

5 A I'm very confused, because this letter is under
6 Ms. White's letterhead, but it's signed by Mr. Cathey, and it
7 looks -- I don't know what this is.

8 MR. BUECHELE: Okay. Well, let's admit it.

9 COMMISSIONER JABER: Mr. Buechele, I need you to be
10 sitting by a microphone. And here's what we'll do. You need
11 to ask him if he's familiar with the document. You're trying
12 to get an authentication. It sounds like he's not familiar
13 with it, so --

14 MS. WHITE: I'm going to object to the document,
15 because the first page is on my letterhead and the second page
16 is not signed by me and nobody uses my letterhead without my
17 name on it, so...

18 COMMISSIONER JABER: Let's have Mr. Buechele
19 introduce the document, and we'll go from there.

20 BY MR. BUECHELE:

21 Q Okay. Now, Mr. Finlen, I've handed you a February
22 19th, 1999, letter which appears to be signed by Marcus Cathey
23 and, as Ms. White pointed out, happens to be on her letterhead.
24 Now, do you see where you're listed as a recipient of this
25 letter?

1 A Yes.

2 Q Is it possible that Ms. White drafted this letter and
3 mistakenly printed it on her letterhead, had Mr. Cathey sign
4 it?

5 MS. WHITE: Okay, I'm objecting.

6 COMMISSIONER JABER: Mr. Finlen, wait, until we
7 handle the objection. Ms. White, what is your objection?

8 MS. WHITE: My objection is I'm not quite sure what
9 my objection is. This is crazy. First of all, it doesn't --
10 the two pages of the letter don't even flow. If you look at
11 the last line of the first page and the first line of the
12 second page, they don't even go together. These are,
13 obviously, two different letters that have been cobbled
14 together and are being purported to be one letter by Supra and
15 Mr. Buechele.

16 MR. BUECHELE: I withdraw it. I believe, it's a
17 mistake.

18 COMMISSIONER JABER: Thank you, Mr. Buechele.

19 BY MR. BUECHELE:

20 Q Mr. Finlen, your testimony goes on and says that --
21 now, your testimony says that at first when a discrepancy with
22 the two Agreements was discovered, BellSouth offered to amend
23 the Agreement?

24 A Yes, sir.

25 Q Okay. And until that amendment wasn't in place, you

1 weren't going to respect the ability to acquire the loop and
2 port combinations set forth in the attachment?

3 A As I've stated earlier, and as I've stated in my
4 Direct Testimony, it was nothing materially different between
5 the two documents. There was nothing to request or respect or
6 whatever it is that you said. So, there was no -- in my mind,
7 Mr. Buechele, there was nothing materially different between
8 the two documents, so the services under one and the services
9 under the other is the same.

10 Q Now, we're not here to decide whether or not
11 BellSouth intentionally changed this Agreement; is that
12 correct?

13 A I don't think that's one of the issues in this
14 docket.

15 Q All right. We're just here to decide whether or not
16 it has any bearing on the end user common line charge, correct?

17 A Are you asking which Agreement should apply on the
18 end user common line charge? I don't follow your question.

19 Q If the 1997 Agreement applies and if Supra had the
20 right to, at some point and time, obtain unbundled network
21 element combinations, then that's the sole scope of this
22 proceeding.

23 MS. WHITE: I'm --

24 MR. BUECHELE: I'll rephrase that.

25 MS. WHITE: Thank you.

1 BY MR. BUECHELE:

2 Q In your testimony you raised another proceeding where
3 Supra had presented the two Agreements to the Commission, and
4 the Commission entered an order stating that issues of contract
5 fraud and gross negligence belong in the courts; do you recall
6 that testimony in your Direct Testimony?

7 A I recall it, but I would like to look at the
8 testimony. Is it in the Direct? I can't remember.

9 Q Yes, please find it.

10 A Yes, sir, on Page 9.

11 Q Okay.

12 A Okay.

13 Q So then, is it a fair statement to the extent that
14 there are issues beyond the end user common line charge
15 associated with the switching of these Agreements, we're not
16 here to address them today?

17 A Are you asking me a question?

18 Q Yes.

19 A Are we here to address the difference in the two
20 Agreements; is that what you're asking?

21 Q We're here to address anything relating to these two
22 Agreements, other than perhaps the applicability of the end
23 user common line charge?

24 A I'm just -- I am totally confused.

25 COMMISSIONER JABER: Mr. Finlen, you would

1 acknowledge there might be some misuse beyond the scope of this
2 proceeding that should be handled in court?

3 THE WITNESS: Yeah, I mean, that's what -- this
4 Commission, I think, stated that. And then, I also in my
5 Direct, I refer to the Georgia Public Service Commission, and
6 they didn't feel that way. I mean, it's different commissions
7 have different opinions.

8 COMMISSIONER JABER: So, you would acknowledge that
9 the Commission made a finding that there might be some issues
10 that are better handled by the court?

11 THE WITNESS: Yes.

12 COMMISSIONER JABER: Mr. Buechele.

13 BY MR. BUECHELE:

14 Q I just want to get from you that to the extent these
15 two changed Agreements apply, the reason you referenced them in
16 your Direct Testimony was that perhaps they may have an issue
17 in the end user common line charge?

18 A No, I did not raise these issues, because they may
19 have an issue regarding the end user common line charge. These
20 issues were raised, because Supra raised them in their answer
21 back to the Commission regarding our complaint. I mean, they
22 are the ones that brought this up. I would have never brought
23 this up, if it had not been in Supra's response.

24 Q If the Commission were to find here today that Supra
25 was entitled to obtain -- convert its customers over to UNE

1 combos under the prior Agreement at any point in time, then you
2 would agree with me that the changing of the Agreements might
3 have some relevance to the issue of the end user common line
4 charge?

5 A If you're asking me if the Commission ruled that
6 beginning January 1, 1998, that BellSouth should not have
7 charged the end user common line charge because they should
8 have been giving you unbundled network elements, then we would
9 have to live -- it would not be -- it would be whatever the
10 Commission ruled on that issue.

11 Q I'm not going to -- all right.

12 Let me show you another letter. Do you recognize
13 that letter?

14 A Can I read it?

15 Q Sure.

16 A It's been a while.

17 COMMISSIONER JABER: Mr. Buechele, what is it you
18 handed the witness?

19 MR. BUECHELE: It's a letter dated April 29th, 1998,
20 from David Nilson to Pat Finlen.

21 A I don't specifically recall the letter, and it's
22 unsigned.

23 BY MR. BUECHELE:

24 Q Do you recall having conversations with Mr. Nilson in
25 April and May or the beginning of April in 1998 about Supra

1 wanting to obtain service through unbundled network element
2 combinations?

3 A I don't recall.

4 Q You said --

5 A I said I don't recall.

6 Q Okay. You said earlier that you remember the dispute
7 about the Agreement arising in the summer of '98. Do you
8 remember there being correspondence relating to requests for
9 UNEs prior to December of 1998 that precipitated the discovery
10 of the difference in the Agreements in the summer of '98?

11 A I just don't recall.

12 Q You don't recall if there are any letters prior to
13 people discovering the difference in the two Agreements?

14 A I know that Mr. -- I don't know if it was a letter
15 sent to me, but I know that Mr. Ramos asked and, I believe, I
16 responded in, like, January or February 1998 for prices for
17 DS3s. I don't even know if it was for Florida. It could have
18 been for another state, I don't recall. There was a hearing
19 that went on in 199 -- the one you gave me the deposition on.
20 I just don't recall.

21 COMMISSIONER JABER: Mr. Buechele, let me ask you,
22 how long do you think you need with this witness? How much
23 longer?

24 MR. BUECHELE: I'm trying to wrap it up, but if you'd
25 like to take a lunch break, it would probably help me to

1 organize and conclude him. Actually, I realize I need to deal
2 with him on the other two issues, too, but it may not take
3 anywhere near as long as this.

4 COMMISSIONER JABER: Can you take a good guess? What
5 I'm trying to do is not take a lunch break, but rather give the
6 court reporter a five to ten-minute break.

7 MR. BUECHELE: Perhaps a half hour, 45 minutes.

8 COMMISSIONER JABER: Longer? Okay. We're going to
9 take a ten-minute break to allow the court reporter to rest a
10 bit, and we'll be back here at 12:30.

11 (Recess taken.)

12 COMMISSIONER JABER: Let's go back on the record.

13 MS. WHITE: I'm sorry. Before we get started, I just
14 wanted to advise I have provided Commissioners Baez and
15 Palecki, as well as Staff, with a copy of Exhibit 3, which are
16 the exhibits to our complaint.

17 COMMISSIONER JABER: Thank you. Mr. Buechele,
18 continue your cross examination.

19 BY MR. BUECHELE:

20 Q Yes, Mr. Finlen, would you start looking at Exhibit 5
21 and Exhibit 6. Do you have an explanation for why the dates at
22 the bottom of the pages from Attachment 2 -- would you look at
23 2?

24 A What page again, please?

25 Q Turn to Attachment 2 in both Agreements, and if you

1 could review the pages that had the deleted section, the
2 unbundled service combinations.

3 A Pages 2 and 3?

4 Q Yes. Do you have any explanation for why the date at
5 the bottom of each page remains October 15th, 1997?

6 A No, I do not.

7 Q Okay. So, you know of no reason why they should have
8 the same date?

9 A Do I know of a reason why they should have the same
10 date?

11 Q And have different content?

12 A No, I do not.

13 Q Okay. And once again, it's your contention that the
14 change must have been made within the three days that you
15 repopulated the Agreement, the two Agreements?

16 A Yes. I guess, it's the three days. I thought it
17 was --

18 Q Let me also ask you, could you -- all right.

19 Mr. Finlen, I'd like you to turn to your Resale
20 Agreement attached to your testimony, and I'd like to just
21 correct something. Is it accurate that --

22 A I haven't got there yet.

23 Q Okay.

24 A Okay, I have the Resale Agreement.

25 Q Yes, is it accurate that paragraph -- the entire

1 Paragraph 16 contains provisions in it for changes in law, not
2 just 16-C?

3 A Are you asking is all of Section 16 just dealing with
4 changes in law?

5 Q If that entire section, and not just 16-C, deals with
6 any changes in law?

7 A I mean, everything in 16.

8 Q Yes.

9 A A through F? I don't believe it is. I'm not an
10 attorney, and I'm not really understanding exactly what the
11 term changes in law are. I think, most of it seems to be
12 dealing with changes --

13 Q Yeah.

14 A But there's other parts of it that don't.

15 Q I'm just trying to correct, before we thought it was
16 just 16-C. The entire Paragraph 16 has provisions in it that
17 deal with changes in law.

18 A No, not the entire.

19 Q Okay, which --

20 A I don't think -- and like I said, I'm not an
21 attorney, but I don't think Paragraph B is dealing with changes
22 in law. Like I said, I'm not an attorney.

23 Q Okay. Mr. Finlen, at the bottom of this document
24 there's a version date, April 24th, 1997; do you see that?

25 A Yes, sir.

1 Q Do you know what that means?

2 A No, in fact, I would have to speculate, and I'm not
3 going to do that, because I was not even dealing -- like I
4 said, I didn't even start this job until October of 1997. So,
5 what that means --

6 Q Where did you get this document? It's unsigned. Did
7 you notice that?

8 A No, I did not notice that.

9 Q Was this printed out of BellSouth's computer system?

10 A I would assume so.

11 Q Okay. Does BellSouth maintain records of the
12 versions of its Agreements on computer?

13 A Do we maintain versions of documents?

14 Q Of the contracts.

15 A Yes, we try to, yes.

16 Q Okay. So then, the Agreement that you sent Mr. Ramos
17 didn't necessarily have to be the standard -- strike that.

18 Mr. Finlen, and I'm just talking in general here, in
19 general, was it your understanding that prior to the Eighth
20 Circuit's ruling, the FCC had allowed or had ruled that CLECs
21 were entitled to take already combined elements and use them to
22 recreate or resell service?

23 A I don't know. Like I said, I started in October of
24 '97, and I think that ruling had already come out or was --

25 Q It's your belief that it was the Eighth Circuit's

1 opinion that you rely upon that says that if they're already
2 apart, you don't have to put it together?

3 A I don't know if that's the Eighth Circuit's or the
4 FCC's rule. I just don't know.

5 Q Okay. You had testified earlier that BellSouth was
6 not providing Supra these UNEs because they didn't have an
7 obligation to let the recombined elements alone or the combined
8 existing elements, the existing combinations?

9 A I think, what you're asking at the time -- what time
10 frame are you talking about? I mean, you say at the time. I
11 mean, the rules have changed since 1997.

12 Q Right. I wanted to know if it was your understanding
13 it was the Eighth Circuit's opinion that changed the status quo
14 in terms of using preexisting combined UNEs?

15 A I think, that was an issue in that proceeding. I
16 don't know what the FCC's position was prior to the Eighth
17 Circuit's ruling. They may have been just asking for
18 clarification, I don't know. I haven't read the document.

19 Q But you do know, eventually, that the United States
20 Supreme Court said that they were wrong and that you,
21 BellSouth, could not refuse to provide the already combined
22 UNE?

23 A Yeah, they --

24 Q Okay. And so, you're not a lawyer.

25 A No, sir.

1 Q But is it your understanding that appeals can change,
2 during the appeal process positions can change or rulings can
3 change?

4 A In other words, can, like, a lower court be
5 overturned by a higher court under the appeal process?

6 Q Right.

7 A Yes.

8 Q And that people, when they act a certain way, take
9 the risk that they're later going to be determined to be wrong
10 in a position taken?

11 MS. WHITE: I'm going to object.

12 COURT REPORTER: Microphone.

13 MS. WHITE: I'm sorry. I object. I believe, that's
14 outside of the scope of the witness's testimony.

15 COMMISSIONER JABER: Mr. Buechele.

16 MR. BUECHELE: I believe, it's in the scope. He's
17 testifying to the reasons why they were refusing to provide
18 UNEs under the 1997 Agreement, and I'm exploring the
19 ramifications of that.

20 COMMISSIONER JABER: You're asking him what his
21 understanding of the appellate process is. Perhaps you should
22 rephrase your question so that you're not asking him legal
23 questions.

24 MR. BUECHELE: Yes, I understand.

25 BY MR. BUECHELE:

1 Q In general, you understand that there's a certain
2 amount of jeopardy that you take during the legal process,
3 because some court eventually might say you're wrong?

4 A Yeah, I guess.

5 Q Okay.

6 A I mean, like I said, I'm not a lawyer. So, I mean, I
7 would assume whatever the state is today is what it is, and if
8 it gets overturned on a going-forward basis, it would be from
9 then on.

10 Q And in this case, when BellSouth told Supra they
11 couldn't get the UNE combos, the Supreme Court eventually said,
12 BellSouth, this position that you're taking is wrong?

13 A I don't know if the Supreme Court came out and said
14 that the position was wrong, because I don't know all the whole
15 proceeding. I mean, I'm --

16 Q Right, but you do know that the Supreme Court --
17 because you just testified earlier that the Supreme Court said
18 that you could not separate unbundled network elements that are
19 already combined?

20 A I agree with that, but I don't know if that was wrong
21 or right. I mean, were they asking for clarification? Were
22 they saying, well, wherever all this started --

23 Q But in refusing to provide Supra the UNE
24 combinations, it was BellSouth's position, wasn't it, that in
25 converting a resale customer over to UNEs BellSouth was

1 splitting the UNEs and had no obligation to combine them.

2 A At the time the request was made, which is like the
3 summer of 1998, BellSouth's position was that it was not
4 obligated to combine unbundled network elements and, as you
5 stated earlier, the Supreme Court didn't rule until 1999 that
6 it couldn't uncombine elements that currently exist. So, I
7 would assume prior to that the rule was you didn't have to
8 combine them. And after that, you couldn't uncombine them.
9 Maybe I'm being dense, but I would have -- I mean, this is the
10 rules today, the rules change, and then you go forward with the
11 new rules.

12 Q Isn't it a fact that the Supreme Court said that the
13 reasons you're refusing to provide UNEs to Supra in 1998 were
14 wrong?

15 MS. WHITE: I'm going to object. If he wants to get
16 into details about what exactly the Supreme Court said, I
17 suggest he provide a witness with a copy of the Supreme Court
18 order.

19 MR. BUECHELE: He's already been testifying.

20 MS. WHITE: I mean, the Supreme Court order says
21 what the Supreme Court order says.

22 COMMISSIONER JABER: Mr. Buechele, I think, now you
23 are going beyond what he's able to testify to, so either you
24 rephrase your question to get to the point or you move on.

25 COMMISSIONER PALECKI: Madam Chairman, I think, we've

1 plowed over this ground several times. I think, we understand
2 Supra's position and, I think, this is a matter that is very
3 applicable for briefing by counsel, because these are legal
4 issues, but it seems that we've been taking up a lot of the
5 Commission's time, and I don't see that the witness is going to
6 agree with Supra's position. I think, we all understand what
7 that position is and, I think, it's time to move on.

8 MR. BUECHELE: I apologize. I'll move on.

9 BY MR. BUECHELE:

10 Q Mr. Finlen, do you recognize that letter? And I'm
11 handing you a February 24th, 2000, letter which you're Ccd from
12 David Nilson and Marcus Cathey?

13 MS. WHITE: Excuse me --

14 COMMISSIONER JABER: Now say that in the microphone,
15 Mr. Buechele, and make sure counsel has a copy.

16 BY MR. BUECHELE:

17 Q I'm handing you a letter dated February 24th, 2000,
18 to Marcus Cathey from David Nilson, and you're Ccd. Do you
19 recall that letter?

20 MS. WHITE: Well -- never mind.

21 A I vaguely recall something -- this may be the letter
22 I'm thinking about, but I'm --

23 BY MR. BUECHELE:

24 Q Okay.

25 A I just--

1 Q Do you recall in February 2000 the people at Supra
2 were very angry, that they wanted to get UNEs started, and they
3 were demanding to have some test UNEs?

4 MS. WHITE: I'm sorry. I'm sorry to keep
5 interrupting, but I have to object. I mean, he's testifying in
6 his question.

7 MR. BUECHELE: I'll rephrase it.

8 MS. WHITE: And I don't think that's appropriate or
9 proper.

10 MR. BUECHELE: I disagree, but I'll rephrase it.

11 BY MR. BUECHELE:

12 Q Mr. Finlen, do you recall that in February 2000,
13 individuals at Supra or Supra as a whole, was trying to get
14 testing started on UNE combos?

15 A I don't remember about the testing. What I do
16 remember about is in February of 2000 we amended the October
17 5th BellSouth/Supra adoption of the AT&T Agreement to include
18 certain combinations in it at that time. And I believe, there
19 was -- the reason this kind of rings a bell is because I
20 thought that you had even earlier said that in March of 2000
21 that some test orders went through. I think, you said March of
22 2000.

23 Q Yes. And in February, they were demanding them in
24 that letter.

25 A Well, this is February 24th, and I don't know when

1 the -- apparently within -- I don't know when the test orders
2 went through, but within less -- within a month they went
3 through.

4 Q In any event, you don't deny that you received a copy
5 of that letter, do you?

6 MS. WHITE: Pardon me, but I believe he's already
7 testified that he doesn't recall whether he did or not, that it
8 looks vaguely familiar, but that is all he's testified to.

9 COMMISSIONER JABER: Mr. Buechele, I think, if you're
10 trying to lay the foundation, he's answered with respect to
11 what he recalls about the letter. And to the degree he
12 answered your questions, that will be in the transcript.

13 BY MR. BUECHELE:

14 Q All right. Now, let's move on to the issue of the
15 secondary charges. What is your understanding of the nature of
16 that billing dispute?

17 A I just need to glance at my testimony to review it.

18 Q Sure.

19 A That is for -- my understanding of the nature of the
20 dispute is that Supra does not believe it should have been
21 charged, that we have inappropriately charged secondary service
22 order charge pursuant to their Agreement, to their Resale
23 Agreement.

24 Q What is it for?

25 A What are secondary services for?

1 Q No. What is the charge that they're disputing for?
2 Do you know?

3 A Secondary service order charge is applied when
4 changes are made in services, transfers of responsibility,
5 adding or rearranging services.

6 Q Okay. Is it correct that when a customer switches
7 from BellSouth to Supra that you impose a charge on that
8 conversion?

9 A That is correct.

10 Q And how much is the charge that you're imposing?

11 A I didn't put the charge in the exhibit, but the
12 charge would be the Commission-approved tariff charge, less the
13 resale discount which is, approximately, I think, 20% for
14 residential. So, if it was \$10, then it would be \$8.00.

15 Q Now, that charge is not set forth in any of these
16 Agreements, is it?

17 A No, it's not. As I stated in my Direct Testimony, in
18 the Agreement itself it states, the Resale Agreement, Section
19 4, it's 4-B of the Resale Agreement.

20 Q It doesn't specifically say that BellSouth shall
21 charge X dollars for converting that customer from BellSouth to
22 ALEC, does it?

23 A No, but it says, and if I may read the paragraph, it
24 says, "Resold services can only be used in the same manner as
25 specified in the company's tariffs. Resold services are

1 subject to the same terms and conditions as specified for such
2 services when furnished to an individual end user of the
3 company in the appropriate section of the company's tariffs.
4 Specific tariff features, such as a usage allowance per month,
5 shall not be aggregated across multiple resold services.
6 Resold services cannot be used to aggregate traffic for more
7 than one end user customer, except as specified in Section A-23
8 of the company's tariff referring to shared tenant service."

9 In other words, you're buying services out of the
10 tariff, so whatever the rates are for that service, including
11 the secondary service order charge, would apply. It doesn't --
12 an example would be if you are reselling a residential service,
13 and I'm not familiar with the rates in Florida, but let's say
14 it's \$10, then we would sell the charge -- we would charge
15 Supra \$8. That would be \$10, less the 20% discount. So, all
16 the rates for all resold services are not contained in this
17 Agreement. It just refers to the tariff.

18 Q Okay. Now, the rate is higher for business
19 customers, correct?

20 A I believe, it is. I'm not sure. I don't have the
21 rates in front of me.

22 Q So, at a minimum, these charges are \$8 and more to
23 convert from BellSouth to the ALEC?

24 A I just made the \$10 up --

25 COMMISSIONER JABER: You cannot put your hand up and

1 expect the witness to stop talking. He's going to answer your
2 question, and if he wants to elaborate, he's going to
3 elaborate. And by the way, I am allowing a lot of leeway in
4 this proceeding, because I recognize that you're new to this
5 process, just in case anyone is wondering.

6 Go ahead, Mr. Finlen.

7 A The \$10 that I -- I just took \$10, because I know how
8 to get 20% of \$10 very quickly in my head.

9 BY MR. BUECHELE:

10 Q Okay. Can you find in BellSouth's tariff where
11 you're entitled to charge any specific dollar amount to convert
12 the customer over from BellSouth to an ALEC?

13 A The secondary service, the application -- this is
14 hard to read, but it's A4.2.4, which is Exhibit 15 of my
15 testimony, Section C that says, "The secondary service charge
16 applies for transfers of responsibility."

17 Q Okay. So, you're saying that when a customer
18 switches from BellSouth to an ALEC, that that's a transfer of
19 responsibility and, therefore, entitles you to charge the ALEC
20 a charge, which you don't know what it is right now?

21 A That is correct.

22 Q Okay. Do you know whether or not this Commission has
23 identified what is a reasonable rate for conversions?

24 A Conversions --

25 Q Yeah, the charge for converting the customer from

1 BellSouth to the ALEC?

2 A For resale?

3 COMMISSIONER JABER: Do you mean the cost associated
4 with switching the customer back?

5 MR. BUECHELE: Yes. Oh, no, the cost associated from
6 BellSouth to the CLEC.

7 COMMISSIONER JABER: For switching the customer back?
8 Try your question again. He didn't understand your question.

9 BY MR. BUECHELE:

10 Q This charge that you're imposing is not a charge for
11 switching back to BellSouth, is it?

12 A If a customer moves from Supra back to BellSouth,
13 then we would charge that end user customer the same charge.

14 Q Okay. And you'd also charge that charge if the
15 customer is moving from BellSouth to the CLEC?

16 A That is correct.

17 Q Okay. Do you know if the Commission has set a rate
18 for the charge of converting a BellSouth customer to a CLEC?

19 A Not that I'm aware of.

20 Q Okay. Do you know if the Commission, back in 1998,
21 had gave an opinion as to what that charge should be?

22 A No.

23 Q Are you familiar with this 98-0810 that's on the
24 Official Recognition List? I've handed you a copy of PSC
25 98-0810, which is on the Official Recognition List, and are you

1 familiar with that order?

2 A Yes, I am.

3 MR. BUECHELE: Would you like copies?

4 COMMISSIONER JABER: No, we have it.

5 MR. BUECHELE: Okay.

6 COMMISSIONER JABER: Do we? Staff, did you include
7 copies of the orders in the Official Recognition List? No. Do
8 you have extra copies, Mr. Buechele?

9 MR. BUECHELE: Sure, I do.

10 COMMISSIONER JABER: Thank you.

11 BY MR. BUECHELE:

12 Q Now, when you convert a customer over from BellSouth
13 to the ALEC, is that generally electronic conversion, simple
14 conversion process?

15 A When you say convert from BellSouth to an ALEC, are
16 you speaking of converting a BellSouth end user to the ALEC
17 using the unbundled network elements or converting the
18 BellSouth end user using as to resale?

19 Q Well, let's do it both ways, because we already
20 understand that Supra contends you should have been providing
21 UNEs. Let's do the resale. Is that a simple conversion?

22 A In the ordering process?

23 Q Yes.

24 A I mean, I think, it is. I'm not sure.

25 Q Yeah. I mean, generally it's -- you have a LENS

1 system that you have set up and they place the orders, and it
2 should be painless, right?

3 A I hope so.

4 Q Okay. Are you aware that in this proceeding the
5 Public Service Commission actually did set a rate for
6 converting over UNE loop and combination ports?

7 A I believe, there was a lot of things that were in
8 this proceeding. This was specifically directed at the AT&T
9 and the existing AT&T and MCI contracts. The Commission, I
10 don't know where it is, set a rate, a nonrecurring charge --

11 Q For transferring loop and port combinations from
12 BellSouth to ALECs?

13 A Yeah, there was four changes for a loop port
14 combination for converting customers using a loop port
15 combination and -- yes, sir.

16 Q And for a regular 2-wire analog loop and port, it was
17 \$1.46, approximately?

18 A I think, you're correct. Could you point me to what
19 you're looking at?

20 Q Well, on this page, it's Page 47, but I think it
21 reformatted from the web site, but at the top it says Page 47,
22 49.

23 A Oh, okay.

24 Q I believe, it's actually Page 60 in the original
25 order.

1 A Okay.

2 Q All right. Now, if you can turn the prior page to
3 second to last paragraph, the PSC says, "We also find that in
4 cases not involving design services where fallout does not
5 occur and when electronic recent change translation is
6 available the time to migrate an existing BellSouth customer to
7 an ALEC, that is to say changing the presubscribed local
8 carrier code is equal to the time it takes BellSouth to migrate
9 a customer to an IXC by changing the code." Is that a fair
10 statement? Do you concur with that?

11 A Could you point me to where you were reading?

12 Q On Page 46 --

13 A Right.

14 Q -- second to last paragraph.

15 A Oh, okay. Okay, and can you restate the question?

16 Q It was, basically, the PSC found that the time and
17 effort that it takes to convert a customer over is the same
18 that it would take to switch the long-distance code?

19 A That's what it says, yes.

20 Q Okay. And at the time, BellSouth was charging \$1.49
21 to do the switchover for the long-distance code?

22 A I don't know.

23 Q If you would turn to Page 42?

24 A 42?

25 Q Yeah, Paragraph 4 it says that, Footnote 4.

1 A Okay, \$1.49 is what it says.

2 Q Okay. So now, your tariff doesn't specifically say
3 that your secondary charge is an actual charge for converting
4 the customer from BellSouth to Supra or BellSouth to an ALEC;
5 it doesn't specifically say that, does it?

6 A No.

7 Q It's -- the transfer responsibility -- first of all,
8 the tariff would apply if you're purchasing resold services,
9 because you're buying services out of the tariff, you're
10 choosing to do that. So, you buy the services less the
11 discount. If you wish to purchase the services using unbundled
12 network elements, then the charge is different. I mean, it's
13 your choice.

14 Q And if Supra was entitled to the unbundled network
15 elements, then the charge should have been \$1.46 for 2-wire
16 loop and port?

17 A Are you asking a hypothetical question?

18 Q Yeah. Let's say the Commission decides that you
19 should have been providing Supra UNEs.

20 A Then, we would abide by what the Commission rules.
21 And if it was UNEs, then I will assume the Commission would
22 also state not only should you have been charging UNEs, you
23 should have been charging \$1.46 or whatever it is.

24 Q Right. You would agree, then that they would
25 necessarily then have to find that conversion charge should

1 have been \$1.46.

2 A I'm not going to tell the Commission what, I think,
3 they ought to rule on. I think, they can make that decision
4 themselves.

5 Q Well, what I'm asking you is that charge would apply,
6 that \$1.46 charge would apply. The charges set forth at the
7 end of this order would apply to the conversion.

8 A I think, the Commission would be the ones to decide
9 what charge should apply.

10 Q Okay. The last issue is your charge for converting
11 back. Now, I guess, there's two parts to it. The first part
12 you've already said you charge the same service charge for
13 converting back from the customer -- when the customer converts
14 back from the ALEC to BellSouth?

15 A If the customer chooses to convert from an ALEC back
16 to BellSouth or from an ALEC to another ALEC, for that matter,
17 and they're doing it through resale, then the transfer of
18 responsibility would apply, because you are changing the
19 responsible party from the ALEC, and it's coming back to
20 BellSouth, to the end user.

21 Q Now, let's go back to the first conversion from
22 BellSouth to the ALEC. We know you charge the ALEC. Do you
23 also charge the customer that charge?

24 A Are you asking me do we charge the customer to leave?

25 Q Yes, do you send them a bill for leaving?

1 A No.

2 Q Okay. Now, when a customer converts back from Supra
3 to BellSouth do you charge that customer the conversion charge?

4 A To come back to BellSouth?

5 Q Yes.

6 A Yes, I believe, we do.

7 Q Then, why would you charge -- you're telling me then,
8 you charge both the customer and Supra or the ALEC?

9 A If the customer leaves BellSouth, the responsible
10 party is no longer the end user, but it is now Supra. We
11 charge Supra a transfer of responsibility. If Supra or the
12 ALEC, for that matter, if that end user decides well, I no
13 longer want to get service from this ALEC, I want to come back
14 to BellSouth, then we charge the end user for transferring the
15 serv-- for moving back, so it's parity.

16 Q You're telling me, then, that you don't charge Supra
17 whenever a customer switches back to BellSouth?

18 A We wouldn't charge Supra, if that customer was
19 voluntarily switched to Supra, if they chose to go to Supra and
20 then they chose to come back, then no, Supra would not be
21 charged to put that customer back.

22 However, if I think what you're trying to get at is
23 would I charge Supra if an end user was switched in error;
24 i.e., slammed from BellSouth to Supra, then we are going to
25 charge Supra first, because we don't know the customer's been

1 slammed until after they complain. We would charge to transfer
2 the service to Supra, because we're assuming that the customer
3 has requested to go to Supra.

4 If the customer subsequently calls back and complains
5 why am I all of a sudden getting service from not just Supra
6 but somebody else, then we would charge to convert that
7 customer back, and it would be charged to Supra, because the
8 customer didn't have any choices in the matter. They are the
9 ones that kind of got stuck between a rock and a hard place.

10 Q So, if -- let me ask you this: Do you know -- strike
11 that.

12 If Supra was charged that conversion charge every
13 time a customer went back from Supra to BellSouth, is it your
14 opinion that unless every single person was slammed, some of
15 those charges could be wrong?

16 MS. WHITE: What conversion charge, are you talking
17 about, the secondary service order charge or the unauthorized
18 change charge?

19 MR. BUECHELE: The secondary service charge.

20 A Do I know if every secondary service order charge was
21 related to a slamming charge? Is that what you're asking me?

22 BY MR. BUECHELE:

23 Q Yeah, let's do that. Do you know?

24 A No, I don't.

25 Q Okay. So, sitting here today you don't know whether

1 or not Supra was billed for that secondary service charge just
2 because a customer decided that it was too difficult obtaining
3 service through a CLEC and decided to go back to BellSouth?

4 MS. WHITE: I've got to object to that. I mean,
5 that's really assuming facts not in evidence.

6 COMMISSIONER JABER: Yeah, Mr. Buechele, when you try
7 to restate the question, you changed the question, so...

8 BY MR. BUECHELE:

9 Q Sitting here today, you don't know whether or not
10 BellSouth has charged Supra for customers who just decided that
11 they wanted to go to another CLEC or go back to Supra -- I
12 mean, go back to BellSouth?

13 A I believe, Mr. Morton can address that.

14 Q Okay.

15 A But the policy is and the billing systems are that if
16 the customer leaves Supra voluntarily and comes back to
17 BellSouth and we charge that end user, we do not charge Supra
18 because the customer left them. The only time we would charge
19 Supra is if you slammed and the customer didn't have a choice
20 and it's like we're trying to correct it.

21 Q Okay. My question is sitting here today, there is a
22 certain dollar amount that's in dispute that Supra contends is
23 improperly billed. You don't know if that amount includes
24 charges.

25 A I don't believe it does.

1 Q You don't know.

2 A I said I don't believe it does.

3 Q Do you have any personal knowledge either way?

4 MS. WHITE: Personal knowledge of what? What exactly
5 are you asking?

6 BY MR. BUECHELE:

7 Q Of whether or not those charges include charges of
8 people who just switched back?

9 MS. WHITE: What charges include --

10 MR. BUECHELE: The secondary charge.

11 COMMISSIONER JABER: Excuse me. Mr. Finlen, let me
12 try it this way.

13 It's your testimony that Supra incurs a charge, if
14 it's shown that they've slammed a customer. Do you know if the
15 charges that are outstanding in this proceeding and are
16 actually in dispute in this proceeding, as it relates to the
17 slamming charges, are only charges BellSouth assessed to Supra
18 because of the slamming?

19 THE WITNESS: No, because there'd be other charges
20 that could be there. Say, a Supra end user has decided they
21 want to add to their existing services, such as like they want
22 call waiting deluxe now, and Supra would notify BellSouth, I
23 want to add call waiting deluxe to this line for one of my
24 customers. We would do that, and there would be a secondary
25 service order charge, less the resale discount, just like we

1 would do any other end user.

2 COMMISSIONER JABER: Okay. Mr. Buechele, you need to
3 move on.

4 MR. BUECHELE: Okay.

5 BY MR. BUECHELE:

6 Q Lastly, just so the Commission understands the
7 distinction, there's a charge for converting over, regardless
8 of whether or not there's an allegation of slamming, correct?

9 A That's correct, because we wouldn't know -- once
10 Supra notifies us, like, I think, today's the 3rd, that they
11 wanted to convert us, then we would go ahead and convert that.
12 Normally, the end user's not going to know until they get a
13 bill. I mean, they're not going to know. I mean, they're
14 getting dial tone, they're assuming they're getting it from
15 BellSouth or another CLEC, so it's probably going to be 30 days
16 until they get a bill from the ALEC and look at it and say
17 where did this come from, why am I getting -- I mean, that's
18 what happened to me when I got slammed.

19 Q The question was there's two charges. There's a
20 charge for converting over, and there's a charge for
21 unauthorized switching, correct?

22 A Yes.

23 Q Okay. And the charge for converting over could have
24 been high if the Commission decides that it should have been
25 UNEs, you should have been providing UNEs, or if the Commission

1 -- or if there's another order that sets that rate below what
2 you're charging, correct?

3 A Yes.

4 Q Okay. Now, and there is a possibility, too, that if
5 the customer just switched back that Supra got billed for some
6 of that conversion charge?

7 A They should have not have been.

8 Q Okay, but it's possible?

9 A I guess, anything's possible, but if you're asking
10 were they, to the best of my knowledge, no.

11 Q Now, the other -- well, you're not in billing,
12 correct?

13 A No, I'm not in billing.

14 Q Now, the last charge is a charge for unauthorized
15 conversion. Does BellSouth keep written documentation of
16 people who complain that they've been converted without their
17 authorization?

18 A I believe, they're -- I've seen some documentation
19 where customers have called in. It's been a while since I've
20 seen that.

21 Q And do you have any of that documentation with you
22 here today or in a any exhibit that's to be presented to the
23 Commission?

24 A No, I didn't bring any.

25 Q Okay. Do you know if BellSouth is going to present

1 any written documentary evidence of customers who contend they
2 were converted without their authorization?

3 A I don't know. I don't think so.

4 Q Okay. And is it correct that BellSouth cannot impose
5 that charge, unless they determine that the switch was
6 unauthorized?

7 A That is correct, but there's also a provision in the
8 contract itself, if I may expand that, that if Supra believes
9 that if those charges have been imposed incorrectly, then
10 Supra, all they have to do is produce the letter of
11 authorization from the end user that, hey, I chose Supra.

12 An example that comes to mind is every once in a
13 while I'll get a check from one of the interchange carriers.
14 And if you read the fine print, when you cash the check and
15 you've authorized them to change your long-distance carrier.
16 If Supra can show those letters, then we would absolutely
17 adjust the bills.

18 Q Do you have any evidence with you here today that
19 demonstrates any determinations made by BellSouth that Supra
20 made any unauthorized conversions?

21 A Did I bring the documentation, is that what you're
22 asking, of the unauthorized change or the complaints?

23 Q Did you bring anything to support BellSouth's
24 position that every charge assessed to Supra for an
25 unauthorized conversion was an unauthorized conversion?

1 A No.

2 Q Okay.

3 A However, if I could refer to a document that's
4 Ms. Bentley's Exhibit C.

5 Q Are you referring to the order to show cause in 1997?

6 A No, this is the order approving the settlement
7 provision proposal, this Exhibit C of Ms. Bentley's -- I think,
8 her Rebuttal Testimony.

9 Q Okay. Now, is it your position that because there
10 was some complaint --

11 COMMISSIONER JABER: Wait a minute. Mr. Finlen, did
12 you want to refer to an exhibit and elaborate on your answer?

13 THE WITNESS: Yes.

14 COMMISSIONER JABER: I'm going to allow you to do
15 that.

16 THE WITNESS: If I may.

17 COMMISSIONER JABER: You may do that. Mr. Buechele,
18 then you can --

19 MR. BUECHELE: I apologize.

20 COMMISSIONER JABER: It's all right.

21 A You're asking me if I have any proof here, and the
22 answer is no. However, this Commission and the Staff, it says
23 on "September the 3rd, 1997, our Staff received two complaints
24 alleging unauthorized switching of local telephone service.
25 October 21st, 1997, there were 63 similar complaints. The

1 complaints primarily involved unauthorized switching of local
2 telephone services and misleading solicitation practices. As
3 of January 8th, 1998, our Staff reported 201 complaints
4 relating to the unauthorized switching by Supra." It seems to
5 me that there was some unauthorized switching going on, based
6 on what I'm reading here.

7 BY MR. BUECHELE:

8 Q Okay. Is it your position that because there are
9 some complaints in September of 1997, August or September of
10 1997, that everyone who switches back thereafter has been
11 switched without authorization?

12 A If that's what they're complaining, I would assume
13 it's been -- well, let me rephrase that. If --

14 Q Well --

15 COMMISSIONER JABER: Let him finish.

16 A If you're saying were all of these unauthorized, I
17 would assume if they had been authorized Supra would have
18 presented the letter of authorization from the end user switch
19 in the service. I mean, it just kind of makes common sense.

20 BY MR. BUECHELE:

21 Q Okay. Are you aware that in -- that throughout 1998
22 and in 1999 BellSouth billed Supra for alleged unauthorized
23 conversion?

24 A Yes.

25 Q Is there any correlation between a complaint in 1997

1 and customers converting back throughout 1998 and 1999 that
2 justifies BellSouth continuing to charge unauthorized
3 conversion charges?

4 A I don't -- because somebody complained in 1997, does
5 it mean we continued to charge in 1998 and 1999? Is that what
6 you're asking?

7 Q I'm saying is that what you identified, does that
8 have any relevance at all to people who converted back to
9 BellSouth in 1998 and 1999?

10 A No, but I think it kind of shows that there is some
11 proof that there was some, because it even refers to January of
12 1998 in this order here.

13 Q Are you aware of the volume of unauthorized
14 conversion charges that BellSouth has imposed?

15 A It's -- I think, it's -- the amount in dispute here
16 is about 45, 48,000.

17 Q And what does that roughly translate in numbers?

18 A I'd say around 22 to 2,300.

19 Q Okay. And so, you've identified 200 complaints in
20 1997. Do you know if there's been any complaints to the Public
21 Service Commission since that?

22 A I don't know.

23 Q Okay. So, is it a fair statement, then, that the
24 bulk of the unauthorized conversions you have nothing to
25 substantiate your contention that they were switched without

1 authorization?

2 A I don't have anything that I brought with me, but as
3 I've stated before, if the charges are unauthorized -- were
4 authorized, then all Supra needs to do is show us the letter.

5 Q Isn't it just as easy for you to show the complaint?

6 A I mean, I don't know the processes, what takes place
7 in the business office when a customer calls and complains why
8 are they getting a bill from this ALEC.

9 COMMISSIONER JABER: Mr. Buechele, based on your
10 previous estimate, you're probably wrapping up, right?

11 MR. BUECHELE: I'm wrapping up right now.

12 BY MR. BUECHELE:

13 Q Mr. Finlen, --

14 A Yes, sir.

15 Q -- is it your understanding that the -- strike that.

16 The three or four UNEs that were provided to Supra in
17 March, that time period, 2000, is it your understanding that
18 those were provided through letters, like some of the letters
19 you've seen here today requesting UNEs?

20 A No.

21 MS. WHITE: I'm going to object.

22 COURT REPORTER: I can't hear.

23 MS. WHITE: I'm sorry. I object. I believe, we've
24 gone over this subject a few times. I believe, these questions
25 have been asked and answered. He's now referring to letters

1 that haven't been identified as exhibits or moved into the
2 record, and I object.

3 COMMISSIONER JABER: Mr. Buechele, your response.

4 MR. BUECHELE: I just asked him a question, if it was
5 his understanding. If he doesn't have an understanding, he
6 doesn't have an understanding.

7 COMMISSIONER JABER: What's the letter you referred
8 to?

9 MR. BUECHELE: No, I just said if he understood that
10 the UNEs were provided at a request made through a letter?

11 COMMISSIONER JABER: Do you know the answer to that,
12 Mr. Finlen?

13 THE WITNESS: I don't know.

14 MR. BUECHELE: Okay.

15 COMMISSIONER JABER: Next question.

16 MR. BUECHELE: I don't have any further questions.

17 COMMISSIONER JABER: Okay. Commissioners, do you
18 have additional questions?

19 COMMISSIONER PALECKI: I have none.

20 COMMISSIONER JABER: Staff?

21 MR. FORDHAM: Yes, Commissioner, please.

22 CROSS EXAMINATION

23 BY MR. FORDHAM:

24 Q First of all, Mr. Finlen, earlier in your testimony
25 you referred to a letter of August, roughly August of '99, from

1 Supra inquiring about adopting the AT&T Agreement. When you
2 get back to your office, sir, would you be able to find a copy
3 of that letter?

4 A Absolutely.

5 MR. FORDHAM: Commissioner, could Staff please
6 request that that be provided as a late-filed exhibit?

7 COMMISSIONER JABER: Mr. Fordham, that would be
8 Exhibit 7, and can you give me a short title.

9 MR. FORDHAM: "AT&T Inquiry," I suppose, is adequate.
10 Excuse me, yes, I'm sorry, "Supra Inquiry."

11 COMMISSIONER JABER: "Supra Inquiry related to
12 Interconnection Agreement"?

13 MR. FORDHAM: To AT&T Agreement.

14 COMMISSIONER JABER: Exhibit 7.

15 MR. FORDHAM: Thank you for that, Commissioner.
16 (Exhibit 7 identified for the record.)

17 BY MR. FORDHAM:

18 Q Mr. Finlen, --

19 A Let me write it down.

20 Q I'm sorry?

21 A You asked me to get to the office, I have to write
22 things down.

23 Q Correct. And maybe we should set a time frame on
24 that, within 10 days, perhaps?

25 COMMISSIONER JABER: We'll do that at the end.

1 BY MR. FORDHAM:

2 Q Okay. Mr. Finlen, let's try and focus more on the
3 actual issues of this hearing for a few minutes.

4 Do you agree, sir, that the three categories of
5 charges that we are referring to here today all go back to the
6 '97 Resale Agreement with Supra; is that correct, sir?

7 A That is correct, sir.

8 Q Now, at the time these charges were current back in
9 '97, '98 and earlier '99, did Supra withhold payment of any of
10 these charges at that time?

11 A I believe, there are some charges that have been
12 withheld. I think, they're still outstanding, around 30 to
13 \$50,000 that's still owed for services provided to Supra prior
14 to October 5th, 1999.

15 Q Now, you continued to provide service to Supra during
16 this period of time. And is there a provision for you to
17 discontinue service in the event of withholding these fees?

18 A Yes, sir, there is. There actually is in the '97
19 Resale Agreement, there is.

20 Q Is there a reason why BellSouth did not proceed on
21 that provision back when these were current?

22 A The reason being is there's a billing dispute here,
23 and there's other charges that are also in dispute for the
24 October 5th going forward. And, essentially, we didn't invoke
25 this, the provisions here, within the Agreement is because

1 there is a billing dispute and we want to make sure everybody
2 -- it's settled finally. And secondly, there's end users that
3 would be interrupted, and we don't want to interrupt somebody's
4 end users when there's -- it's just not good practice to
5 interrupt end users.

6 Q Is this a common philosophy of BellSouth to not
7 immediately invoke that provision for discontinuing service?

8 A Not if there's a --

9 MR. BUECHELE: I would object. There's no foundation
10 that this witness has any basis for being in enforcement.

11 COMMISSIONER JABER: Mr. Buechele, this is not your
12 witness.

13 A Could you rephrase the question again, please?

14 BY MR. FORDHAM:

15 Q I just wondered if it was a common philosophy of
16 BellSouth not to invoke a provision, a disconnect provision, in
17 the event of nonpayment?

18 A No. We normally go ahead and invoke it, unless
19 there's, like, a legitimate billing dispute.

20 Q In your original complaint in this docket, it was
21 alleging, of course, the nonpayment in the new Agreement, the
22 AT&T Agreement, but you had asked for the Commission's
23 concurrence in disconnecting because of Supra's nonpayment. Do
24 you believe that the Commission's concurrence is necessary in
25 light of having the Agreement or the provision in the

1 Agreement?

2 A No, I don't think the Commission's concurrence -- of
3 course, the Commission could order us not to, but the Agreement
4 itself is pretty clear that we have the authority to
5 discontinue the services.

6 Q So, to your knowledge, there would be no prohibition
7 against you invoking that provision?

8 A No, there is not.

9 Q All right. Let's look for the moment, sir, at the
10 actual charges that are in dispute here today. Now, these are
11 -- there are three categories wherein a dispute is being
12 alleged, and they're all within the umbrella of the OCC, other
13 charges and credits; is that correct, sir?

14 A With the exception of the end user common line. I
15 don't think it's classified on the bill as other charges and
16 credits.

17 Q Mm-hmm. Are unauthorized local service changes,
18 they're within that category of OCC?

19 A I believe, they fall under the -- I'm trying to think
20 of a -- I haven't seen a bill that goes out to a CLEC, but I'm
21 thinking of my own bill at home, and it may be separated out as
22 a different line item, I just don't know.

23 Q And those unauthorized charges that is what we refer
24 to as slamming; is that correct?

25 A That's what I would charge, yes, sir.

1 Q You gave some figures earlier in your testimony
2 regarding the number of those complaints, just estimates and
3 the dollar amount. Are those figures you gave earlier about as
4 close as you can come as you sit here today?

5 A Well, what I did is, in my mind, was take the -- I
6 think, it's \$48,000 that's in dispute.

7 MS. WHITE: And I'm not objecting, but I would
8 suggest that Mr. Morton might be better able to answer that.

9 MR. FORDHAM: That's fine. We'll withdraw that
10 question.

11 BY MR. FORDHAM:

12 Q And do you know the cost per change or should that
13 also be asked of the next witness?

14 A The cost?

15 Q What charge you assess for a reconnect, converting
16 them back?

17 A It would be the -- what we would assess to Supra
18 would be -- or anybody, for that matter, would be whatever the
19 charges in the tariff, and I don't know the exact --

20 Q Is that about \$19.41?

21 A Well, it would be \$19.41 for the unauthorized change.

22 Q Right.

23 A And then there would be a secondary service order
24 charge in addition to that.

25 Q How does BellSouth determine that an unauthorized

1 service change has occurred usually?

2 A The end user calls the BellSouth business office and
3 says, "Why has my service been changed?" I mean, it's
4 initiated by the end user, because they've gotten a bill from
5 the other party and they're the ones that call us and then we,
6 of course, immediately try to get them back over as fast as
7 possible, because that's where they wanted their service from.

8 Q And again, the three categories of charges that we're
9 talking about here today, you indicated they had withheld
10 payment -- Supra had withheld payment on some of them. Are
11 there protests -- were there protests lodged contemporaneous
12 with the due dates of those payments back in '97, '98, and
13 early '99? Did they protest at that point? And if so, were
14 there protests for similar basis as your hearing here today?

15 A There was a hearing in March 1998 that billing
16 disputes was part of that, and some of those were slamming
17 charges, secondary service order charge. I don't believe the
18 end user common line charge was a part of that docket. I don't
19 remember.

20 MR. FORDHAM: I have no further questions,
21 Commissioner.

22 COMMISSIONER JABER: Thank you, Mr. Fordham.
23 Redirect?

24 MS. WHITE: Yes, I have just a couple.
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REDIRECT EXAMINATION

BY MS. WHITE:

Q In a discussion with Mr. Buechele earlier, Mr. Finlen, he asked you about buying a loop and a port as unbundled network elements from BellSouth; do you recall that?

A Several times.

Q Let me ask you this: If an ALEC buys a loop and a port from BellSouth as unbundled network elements, do they need a switch?

A No, I mean, the port is the switch. I mean, all they have to do is buy the loop and the port, and they can put it together themselves.

Q Now, the secondary service order charge and the unauthorized change charge, are those contained in BellSouth's General Subscriber Services Tariff?

A The secondary service order charge is contained in the BellSouth's GSST. And the other charge, what?

Q Unauthorized change charge?

A No, that's actually -- there's a -- it's based -- there's a charge in the -- there's a provision in the GSST for it. I don't know if the charge is there or not. It may refer to the FCC tariff. I'd have to go back and read the tariff.

Q And the rates and conditions for the secondary service order charge is contained in the tariff as well,

1 correct?

2 A That is correct.

3 Q And the tariff's on file with the Commission?

4 A The tariff's on file with this Commission.

5 MS. WHITE: Thank you. I have nothing further. May
6 Mr. Finlen be excused?

7 COMMISSIONER JABER: Yes. And, Ms. White, are you
8 going to move Exhibit 4?

9 MS. WHITE: Exhibits 3 and 4; 3, because I don't
10 think it got moved, because we were waiting for the extra
11 copies.

12 COMMISSIONER JABER: Thank you.

13 MS. WHITE: So, I would move Exhibits 3 and 4.

14 COMMISSIONER JABER: Exhibits 3 and 4 shall be
15 admitted into the record without objection.

16 (Exhibit 4 admitted into the record.)

17 MR. BUECHELE: And we'll move 5 and 6.

18 COMMISSIONER JABER: Without objection --

19 MS. WHITE: No objection.

20 COMMISSIONER JABER: -- Exhibits 5 and 6 are moved
21 into the record.

22 (Exhibits 5 and 6 admitted into the record.)

23 COMMISSIONER JABER: Now, Mr. Finlen, Staff asked you
24 for a late-filed exhibit. Is that something you can provide
25 within 10 days?

1 THE WITNESS: I think so. I don't foresee a problem.

2 COMMISSIONER JABER: All right. We will have
3 late-filed Exhibit 7 be provided to Staff and the parties
4 within 10 days. Ms. White, if there is any problem with that,
5 let me know at the conclusion of the hearing.

6 MS. WHITE: Yes, ma'am.

7 COMMISSIONER JABER: Thank you, Mr. Finlen.

8 THE WITNESS: Thank you.

9 (Witness excused.)

10 COMMISSIONER JABER: Call your next witness,
11 Ms. White.

12 MS. WHITE: BellSouth calls Claude Morton to the
13 stand.

14 COMMISSIONER JABER: Commissioners, I'm inclined to
15 keep going. Do you need a break?

16 COMMISSIONER PALECKI: No, I would like to keep
17 going, as long as the court reporter is able to keep going.

18 COMMISSIONER JABER: She told me she'd give me a
19 dirty look the next time she needed a break, so I haven't seen
20 any yet.

21 MS. WHITE: While Mr. Morton is getting set up,
22 Mr. Buechele pointed out that the 1997 Resale Agreement
23 attached to Mr. Finlen's Direct Testimony was not signed, and
24 you're absolutely correct, and that was an oversight, but there
25 is a signed copy attached to Exhibit 3, part of Exhibit 3,

1 which are the exhibits to the complaint.

2 CLAUDE P. MORTON

3 appeared as a witness on behalf of BellSouth
4 Telecommunications, Inc. and, having been duly sworn, testified
5 as follows:

6 DIRECT EXAMINATION

7 BY MS. WHITE:

8 Q Mr. Morton, could you please state your name and
9 address for the record?

10 A My name is Claude P. Morton. I work at 3535
11 Colonnade Parkway, Birmingham, Alabama.

12 Q By whom are you employed?

13 A BellSouth.

14 Q And in what capacity?

15 A I am a Senior Staff Manager in the Interconnection
16 Operations handling billing and collections.

17 Q Have you ever testified before, Mr. Morton, at the
18 Commission?

19 A Not at this Commission but at others, yes, ma'am.

20 Q Did you cause to be prepared prefile Direct Testimony
21 consisting of five pages?

22 A Yes, ma'am.

23 Q Do you have any changes or additions to that
24 testimony at this time?

25 A No.

1 Q If I ask you the same questions that are in your
2 prefiled Direct Testimony today, would your answers be the
3 same?

4 A Yes, ma'am.

5 MS. WHITE: Madam -- Commissioner, I'd like to have
6 the testimony inserted into the record as if read.

7 COMMISSIONER JABER: Yes, Mr. Morton's Direct
8 Testimony shall be inserted into the record as though read.

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1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 DIRECT TESTIMONY OF CLAUDE P. MORTON
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 001097-TP
5 FEBRUARY 23, 2001

6
7
8 Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND
9 POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC.
10 (HEREINAFTER REFERRED TO AS "BELLSOUTH" OR "THE
11 COMPANY").

12
13 A. My name is Claude P. Morton. I am employed by BellSouth as a
14 Senior Staff Manager in the Interconnection Billing and Collections
15 Department. My business address is 3535 Colonnade Parkway,
16 Birmingham, Alabama 35243.

17
18 Q. PLEASE DESCRIBE YOUR CURRENT RESPONSIBILITIES.

19
20 A. I currently have responsibilities of supervising the line and staff groups
21 ("line" employees interact with customers; "staff" employees support
22 "line" employees) which handle accounts receivable management,
23 including collections and billing disputes, for all of the Company's
24 interconnection business.

25

1 Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND
2 CAREER EXPERIENCE.

3

4 A. I received a Bachelor of Arts degree in English from Brescia University
5 in Owensboro, Kentucky in 1969. I received a Master of Arts degree in
6 English from Western Illinois University in 1970. I received a Master of
7 Business Administration degree from the Amos B. Tuck School at
8 Dartmouth College in Hanover, New Hampshire in 1987. I began
9 employment at BellSouth in June, 1973, and have held various
10 positions in Consumer Operations, Marketing, and International
11 Operations before assuming my current responsibilities in
12 Interconnection Billing and Collections.

13

14 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

15

16 A. The purpose of my testimony is to address BellSouth's position on the
17 billing disputes Supra has raised under the 1997 BellSouth/Supra
18 interconnection and resale agreements. Specifically, I will address the
19 following issues:

20

- 21 • The Supra account make-up,
- 22
- 23 • How accounts are established,

24

25

- 1 • How BellSouth knows under which account to provide
- 2 service, and
- 3
- 4 • Types of services Supra ordered under these accounts.

5

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

9

10 Q. HOW MANY ACCOUNTS COMPRISE THE SUPRA ACCOUNT?

11

12 A. Supra currently has six accounts with BellSouth. Three of these are
13 resale accounts that were established in July, 1997. The three other
14 accounts are UNE accounts that were not established until February,
15 2000.

16

17 Q. HOW ARE ACCOUNTS ESTABLISHED?

18

19 A. Requests for account establishment come to BellSouth from the
20 customer, usually through the salesperson. In order to establish an
21 account, a customer must provide certain information to BellSouth.
22 The required documentation includes proof of PSC certification, a
23 blanket letter of authorization, operating company number (OCN),
24 CLEC contact number form, contract, Carrier Identification Code, credit
25 rating and an account application. BellSouth does not establish an

1 account unless there is prior approval from the Credit Group – a
2 function of the Interconnection Finance organization. There is a
3 standard process for handling requests for new accounts.

4

5 The account application is completed by the customer, and the
6 customer identifies the states in which he wishes to do business. A
7 separate account must be established for each state and for each type
8 of operation – reseller or facilities based carrier (UNEs). Copies of the
9 two applications BellSouth received from Supra are attached as Exhibit
10 CPM-1. Each account is identified by a Billing Telephone Number
11 (BTN) assigned by BellSouth.

12

13 Q. HOW DOES BELLSOUTH KNOW UNDER WHICH ACCOUNT TO
14 PROVIDE SERVICE?

15

16 A. The customer provides BellSouth the appropriate account or BTN
17 (either a resale or UNE account) to which to bill the service being
18 added. In most instances, the CLEC has an option to place their own
19 orders into BellSouth's systems through an electronic interface or to
20 submit their request on paper. A copy of the billing portion of an order
21 submitted electronically by Supra is attached as Exhibit CPM-2. As can
22 be seen in this Exhibit, Supra provided the Billing Telephone Number
23 (BTN) to which the service is to be added. The specific BTN in this
24 exhibit is associated with a resale account.

25

1 Q. WHAT TYPE OF SERVICES DID SUPRA ORDER UNDER THESE
2 ACCOUNTS?

3

4 A. Under the resale accounts established in July, 1997, Supra solely
5 ordered resale services. These resale services included services such
6 as residential and business lines, Call Waiting, Caller ID, 3-Way
7 Calling, Memory Call® service, Call Block, and Call Forwarding.

8

9 Under the three accounts established in February, 2000, Supra began
10 ordering Unbundled Network Elements (UNEs) in March, 2000. Supra
11 ordered UNES such as Unbundled Exchange Ports, Unbundled Loop
12 Voice Grade, Memory Call® service, Call Forwarding, Hunting Rollover
13 Service, 3-way calling, Call Waiting, Call Return, Caller ID.

14

15 Supra did not order UNEs until March, 2000. Supra has ordered and
16 continues to order resale services under their resale account that was
17 established in July, 1997.

18

19 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

20

21

A. Yes.

22

23

24

25

1 BY MS. WHITE:

2 Q And there were two exhibits attached to your Direct
3 Testimony; is that correct?

4 A Yes, ma'am.

5 Q And do you have any changes to those exhibits?

6 A No.

7 MS. WHITE: I'd like to have the exhibits attached to
8 Mr. Morton's Direct Testimony marked for identification.

9 COMMISSIONER JABER: CP-1 and CP-2 shall be
10 identified as Exhibit 8.

11 (Exhibit 8 marked for identification.)

12 MS. WHITE: Okay.

13 BY MS. WHITE:

14 Q Mr. Morton, would you please give your summary?

15 A Yes, ma'am.

16 COMMISSIONER JABER: Mr. Morton, there are five pages
17 to your testimony. A five-minute summary is probably not in
18 order, right?

19 THE WITNESS: Yes, ma'am. It will be extremely
20 brief.

21 A I would like to just give this brief summary of my
22 written testimony. I am the Senior Staff Manager responsible
23 for Accounts Receivable Management in BellSouth's
24 interconnection market. I am responsible for the staff who
25 handle billing disputes and collection activities, and I am

1 also responsible for the Staff's support of these functions.

2 My knowledge of and involvement in the handling of
3 the Supra account date back to the early days of the
4 Supra/BellSouth relationship, late 1997 and 1998. At that
5 time, I watched over the billing and collection activities in
6 general and reviewed specific accounts when there was some
7 complaint or some serious delinquency.

8 Supra's accounts were initially established in 1997.
9 The requisite paperwork, certification approvals, et cetera,
10 were all received to establish Q accounts for resale services.
11 My group established the accounts that were requested. When
12 Supra ordered services, they ordered resale services. They
13 were provided for resale services, they were billed correctly
14 for resale services.

15 Supra did not establish UNE accounts until February
16 2000. I see from the account activity some very light activity
17 beginning in approximately March 2000 on UNE accounts, but the
18 bulk of the order activity is still coming in as resale.

19 That's the conclusion of my summary.

20 MS. WHITE: Thank you. Mr. Morton's available for
21 cross examination.

22 COMMISSIONER JABER: Mr. Buechele, go ahead.

23 CROSS EXAMINATION

24 BY MR. BUECHELE:

25 Q Mr. Morton, did you testify in an arbitration

1 proceeding recently?

2 MS. WHITE: I'm going to object to that.

3 MR. BUECHELE: What's the objection?

4 MS. WHITE: The basis of the objection is under the
5 -- pardon me -- under the CPR rules for arbitration, Commercial
6 Arbitration Rule Number 17, the proceedings, any related
7 discovery, and the decisions of the tribunal are to be held as
8 confidential, unless the parties agree, otherwise, with some
9 very limited exceptions. So, I would think -- I believe, any
10 questions about the conduct or about those proceedings would be
11 in violation of the commercial arbitration rules.

12 COMMISSIONER JABER: Would it be your opinion that
13 with respect to who participated in the proceeding would also
14 fit?

15 MS. WHITE: Well, I'm not really sure. This -- I
16 have not done many, many commercial arbitrations. I can give
17 you a copy of the rule. It states, "Unless the parties agree
18 otherwise, the parties, the arbitrators, and CPR shall treat
19 the proceedings, any related discovery, any of the decisions of
20 the tribunal as confidential, except in connection with certain
21 judicial proceedings. As is to the extent possible, any
22 specific issues of confidentiality should be raised with and
23 resolved by the tribunal."

24 COMMISSIONER JABER: Mr. Buechele, what's your
25 response?

1 MR. BUECHELE: Well, my response is, first of all, I
2 don't even know what she's referring to, because I wasn't a
3 party to it, but --

4 COMMISSIONER JABER: She's referring to a Code of
5 Federal Regulations.

6 MR. BUECHELE: No, she's not. She's referring to, I
7 believe, something in a private arbitration system, CPRs.

8 COMMISSIONER JABER: What was the rule?

9 MS. WHITE: It's the CPR Institute for Dispute
10 Resolution Rules for Non-administered Arbitration. I believe,
11 the question -- and maybe I just misunderstood Mr. Buechele's
12 question. I thought he asked Mr. Morton if he testified in an
13 arbitration this week.

14 MR. BUECHELE: I will try to stay away from, you
15 know, I don't know anything on what she's talking about. I
16 will do my best to try to avoid any kind of problem there,
17 okay?

18 COMMISSIONER JABER: Thank you.

19 BY MR. BUECHELE:

20 Q Mr. Morton, you attach two exhibits to your
21 testimony. The first exhibit looks like it was prepared on
22 July 7th, 1997; is that correct?

23 A Yes, that's correct.

24 Q And do you know if that was before Supra entered into
25 any Interconnection Agreement with BellSouth?

1 A I don't have the date of the signed Agreement with
2 BellSouth. The date that's on this document is a date that
3 Supra, in conjunction with the account representative from
4 BellSouth, if they used an account representative to help them
5 fill this out, would have filled out themselves. This is not a
6 document that BellSouth would have filled out. It's an attempt
7 to establish an account with BellSouth.

8 Q Okay. So, let's just see if I understand this
9 process correctly. A CLEC goes to BellSouth requesting some
10 kind of service and talks to the account representative?

11 A No, sir. A CLEC, before it can even come to
12 BellSouth to get this far, has to apply for an operating
13 company number. That operating company number is the
14 application is made through NECA and, I apologize, I don't know
15 the -- what that stands for, but it is not a BellSouth, it's a
16 group of ILECs support that managing operating company numbers.

17 When, as I understand it, a CLEC has an operating
18 company number, they can then make application for
19 certification to the Commission. When they have that
20 certification and an operating company number, they can then
21 make application to BellSouth to set up a Q account.

22 Q Okay. And are you familiar with these OCN numbers?

23 A Yes, I am.

24 Q Can you distinguish between an OCN number for resale
25 as opposed to an OCN number for facilities base?

1 A Yes, I can.

2 Q How do you distinguish?

3 A It's distinguished in the letter that is received
4 from NECA to the CLEC to establish the OCNs. The OCN will
5 provide, in their letter responding to the CLEC's application,
6 an OCN that says this is for resale or an OCN that says this is
7 for a facilities-based service or both.

8 Q And is there a numbering scheme?

9 A I'm not familiar with the numbering scheme.

10 Q We've had some exhibits previously introduced, an
11 Interconnection Agreement. You were here when Mr. Finlen
12 testified that the Interconnection Agreement discussions, at
13 least with him, began in October of 1997. Is it then fair to
14 say that this, the first page of this Exhibit Number 1, which
15 was prepared in July 7th, 1997, would have been prepared prior
16 to discussions regarding the Interconnection Agreement which
17 Mr. Finlen testified he had personally in October of '97?

18 MS. WHITE: I'm going to object. I mean, the
19 document that he's referring to has a date on it. That's the
20 date that the witness has testified to. And if this was a
21 question he wanted to ask Mr. Finlen, he should have asked
22 Mr. Finlen.

23 MR. BUECHELE: I'll try to rephrase it just to move
24 this along quickly.

25 BY MR. BUECHELE:

1 Q Given your sitting, listening to Mr. Finlen's
2 testimony, is it fair to say that this document, the first
3 page, was prepared before there was an Interconnection
4 Agreement between Supra and BellSouth?

5 A It's fair to say that the date that was placed on
6 this application by, presumably, Mr. Ramos, is July the 7th. I
7 can't go any further than that.

8 Q Okay. So, you don't have any personal knowledge as
9 to whether or not the date is correct?

10 A No, sir.

11 Q Okay. The -- now, this letter, the first page was
12 provided to Mr. Ramos or somebody at Supra after they got their
13 OCN number, and after they made a request on BellSouth to begin
14 providing service, correct?

15 A No, I don't think that's what I testified to. I
16 can't -- cases are handled differently with different CLECs and
17 different account teams, so I can't attest to exactly the dates
18 that these things transpired. What I said is that in order to
19 fill this form out and have it acted upon by BellSouth, it has
20 to be preceded by an application to NECA for an OCN.

21 Q Okay. Is it fair to say that this document came from
22 BellSouth and was given to the CLEC or, in this case, Supra to
23 fill out?

24 A Yes, it is a BellSouth master account application.

25 Q Okay. And Supra had to have received it from the

1 account team?

2 A Or someone in BellSouth. I don't have knowledge of
3 who provided it to Supra.

4 Q Okay. And if the account -- if somebody on the
5 account team delayed providing the application, for any reason,
6 you wouldn't have any knowledge of that, would you?

7 A No, sir.

8 Q Okay. So, on the second one where it's dated
9 February 24th, 2000, you wouldn't have any knowledge as to
10 whether or not the account manager for BellSouth had prior to
11 that been refusing to provide facilities-based service and only
12 then provided Supra a copy of this application to fill out?

13 A That is correct, I would have no knowledge of that.

14 Q So, then, you don't know how long Supra has been
15 asking BellSouth for UNE combinations, do you?

16 A No, sir.

17 Q You just know that sometime in February, at the end
18 of February 2000, Supra was finally or Supra submitted an
19 application to you for facilities-based provisioning of
20 service?

21 A The application doesn't come from Supra to me. It
22 goes from Supra, apparently, through the account team or
23 perhaps directly bypassing the account team to our finance
24 group, and the finance group determines if there is a credit
25 issue, and the application comes to us internally from the

1 finance group. So, I don't get it directly from the CLEC.

2 Q Okay. So, the CLEC gets it from the account team
3 manager and then gives it back to the account team manager or
4 the account team?

5 A Or the finance group, depending upon how that's
6 arranged.

7 Q And if Supra had been asking for unbundled network
8 combinations prior to this date, and BellSouth had been
9 refusing to provide unbundled network combinations the account
10 team would not have provided Supra this account application to
11 fill out, would they?

12 MS. WHITE: I'm sorry, I'm going to object.

13 COURT REPORTER: Microphone.

14 COMMISSIONER JABER: Ms. White, you have to use the
15 microphone.

16 MS. WHITE: I'm sorry, I keep forgetting that.

17 I would object. I assume this is a hypothetical,
18 because none of what he's basing the question on is in
19 evidence. So, if he wants to set it up as a hypothetical,
20 that's one thing, but I'm tired of questions that are assuming
21 facts not in evidence.

22 COMMISSIONER JABER: Mr. Buechele, your response.

23 MR. BUECHELE: I would say Mr. Finlen testified
24 numerous times that Supra made requests for UNE combos and that
25 they said no, you don't get them.

1 COMMISSIONER JABER: So, why are you asking this
2 witness?

3 MR. BUECHELE: I'm just asking him if BellSouth was
4 refusing to provide UNEs, does it stand to reason that the
5 account manager would not have provided Supra an account
6 application to fill out until they were --

7 COMMISSIONER JABER: Restated like that, Ms. White,
8 I'm going to allow it.

9 MS. WHITE: Okay.

10 COMMISSIONER JABER: Mr. Morton, do you know the
11 answer to that question?

12 THE WITNESS: I would ask him if he would restate it,
13 please.

14 MR. BUECHELE: I'm trying.

15 COMMISSIONER JABER: Does it stand to reason that
16 BellSouth's account management team would not have provided
17 the --

18 MR. BUECHELE: The application.

19 COMMISSIONER JABER: -- the application, since
20 BellSouth was refusing to provide the combined elements?

21 THE WITNESS: That doesn't stand to my reason. The
22 document, the blank document that you're looking at, is simply
23 a master account application. There are hundreds and hundreds
24 of them that the -- apparently, you can get from any account
25 team or, I don't know who else may have them, but they're not

1 -- it's not a coded or a controlled document and, therefore,
2 the blank is not. And therefore, I'm not sure who Supra could
3 have asked or who may or may not have been asked to provide it.
4 I just don't have any knowledge of that.

5 BY MR. BUECHELE:

6 Q Anyway, the procedure that you know is that the
7 account team provides it to the CLEC and then gets it back and
8 only the account team from your knowledge?

9 A Yes. And further to that procedure is that I don't
10 get involved until after the process has come through the
11 account team and to the finance -- and through the finance
12 group.

13 Q The CLEC cannot begin ordering UNEs until this
14 application has been accepted by your group and processed?

15 A That's correct.

16 Q And so, if there is an electronic interface available
17 that generically allows some people to order UNEs, until that
18 particular CLEC has been processed with this application, it
19 would not work for them, would it, an attempt to order UNEs?

20 A That is correct, and let me just explain how that
21 works. This document, when it finally comes to my group, after
22 it is vetted through finance, causes a Q account to be set up
23 or a number of Q accounts, if it is a document asking for
24 accounts in multiple states. But if it's a single state,
25 simple example, it causes my group to set up a Q account. And

1 until that Q account is set up, no orders can be driven to it
2 or bills or charges driven to it.

3 Q Okay. On Page 4 of your testimony you say that "In
4 most instances a CLEC has an --" Line 18, "In most instances, a
5 CLEC has an option to place their own orders into BellSouth's
6 systems through an electronic interface or to submit their
7 request on paper."

8 Once again, if Supra had tried to submit orders for
9 unbundled network elements prior to you having processed this
10 February 24th, 2000, BellSouth master account application,
11 those orders would have not gone through, correct?

12 A That's correct.

13 Q And if Supra had submitted an LSR or something;
14 you're familiar with an LSR, correct?

15 A Yes, sir.

16 Q If Supra had submitted an LSR for unbundled network
17 elements prior to February 24th, 2000, it would not have gone
18 through?

19 A That's correct. An LSR is a Local Service Request
20 that's submitted from the CLEC to BellSouth, that is the origin
21 of a service order in the BellSouth system.

22 Q Okay. So, if Pat Finlen -- you were here when Pat
23 Finlen testified and said that Supra never submitted any LSRs.
24 If they had, would it have been a waste of time for an
25 unbundled network element combinations?

1 A If Supra had submitted a Local Service Request
2 requesting UNEs before an account had been established for
3 UNEs, they would not have gone anyplace. We would have
4 rejected them back and notified the account team that we had
5 received orders for unbundled network elements that there was
6 no account established for.

7 Q So, is it fair to say the proper procedure would have
8 been for the CLEC to write a letter to their account team
9 requesting unbundled network elements and then, of course, the
10 account team would come back and provide them the application
11 to fill out?

12 A You're asking me a question that -- it's a
13 departmental question with Sales and Marketing, and what their
14 practices and procedures are, I can't speak to.

15 Q Okay. And the part of it that you can't speak to is
16 whether or not the account team would have accepted a letter or
17 something more formal?

18 A Precisely. I simply don't know how that is organized
19 with the account team. The reason I don't -- the reason for my
20 ignorance is that I don't get involved until it is presented to
21 me to set up an account.

22 Q Right, but certainly an LSR would not have been the
23 proper vehicle?

24 A I've stated that, yes.

25 Q On your Exhibit 2, these are documents generated by

1 BellSouth internally?

2 A Yes. These documents would have been driven by a
3 Local Service Request coming from Supra to BellSouth to
4 generate a service order.

5 Q Okay. So then, one of these two, apparently,
6 reflects a UNE combo?

7 A I'm not sure. I would have to check the BTN -- I'm
8 sorry, Billing Telephone Number, to see if that Billing
9 Telephone Number was the one that was set up to handle UNE or
10 resale.

11 Q Okay. On Page 4, at Line 20 of your testimony you
12 say, "A copy of the billing portion of an order submitted
13 electronically by Supra is attached as CPM-2." Just so that
14 we're clear, that's really not a copy of an order submitted by
15 Supra. That's a screen in BellSouth's computer system,
16 correct?

17 A No. This would have been a document that was
18 submitted by Supra, but it is not a document that Supra would
19 recognize. Supra -- when any CLEC sends an order to us
20 electronically, they send it through, generally, what we call
21 LENS, a navigation system. And basically, LENS is a graphical
22 user interface that accepts information, input data requests
23 from the CLEC, transfers that input data request to something
24 that is readable by BellSouth's systems and into the BellSouth
25 ordering system.

1 And it's this -- while I'm not -- I've already told
2 you probably as much as I know, this would have been a
3 document, a printout of what the system had after Supra would
4 have input it, but prior to that becoming an actual provision
5 service by BellSouth. There is that stage after Supra presses
6 the send/receive button and the process by which that goes
7 through, system communicating to system to convert the order
8 into an order or the request into an order that I'm not
9 familiar. I'm not a systems person, and I'm not familiar with
10 the guts of the machine.

11 So, where this document comes from in that process,
12 I'm not quite sure, but it would have been driven by Local
13 Service Request input through a graphical user interface by
14 Supra or by someone. I mean, if the issue is did Supra input
15 this or did someone else, I can't answer that.

16 Q Right. It could have been an account team member at
17 BellSouth.

18 A It could have been, yes, sir.

19 Q And so, the three UNEs that Supra got in February
20 2000 or March 2000 could have just been entered in by
21 BellSouth's account team?

22 A That's true. I have been told after the fact that
23 those are -- and, in fact, I read it in the Rebuttal of
24 Ms. Bentley, that those are actual test orders. But you must
25 understand, I don't see the orders coming through the system.

1 My evidence that there was a UNE order processed through the
2 system is when it hits a bill, that's the first I see of it.
3 So, I have no knowledge of it processing through the system or
4 who started the process, whether it be an account team member,
5 a Supra person, or both.

6 Q If BellSouth -- if the account team at BellSouth was
7 not allowing Supra to order UNE combos, do you think that the
8 rates from the Resale Agreement should apply or the rates
9 relating to UNEs should apply?

10 MS. WHITE: I'm going to object to this, because this
11 is way outside the scope of his prefiled testimony.

12 COMMISSIONER JABER: Mr. Buechele.

13 MR. BUECHELE: His Issue 1 talks about what rates
14 should apply to the BellSouth bills.

15 COMMISSIONER JABER: Where in his testimony does he
16 address that issue?

17 MR. BUECHELE: Should the rates and charges contained
18 or not contained in a 1997 AT&T/Bell Agreement apply to the
19 BellSouth bills at issue in this docket?

20 COMMISSIONER JABER: That's Issue 1 in this case, but
21 where in his testimony does he address that issue? And perhaps
22 you could point him to his testimony.

23 MR. BUECHELE: Page 3, Paragraph 6, it's his Issue 1.

24 COMMISSIONER JABER: All right. Refer him to this
25 page and exactly where you want him to read in the testimony

1 and ask your question again.

2 MR. BUECHELE: Okay.

3 BY MR. BUECHELE:

4 Q Do you have your testimony in front of you?

5 A Yes, sir.

6 Q Tell me, I'm just trying to basically summarize your
7 testimony in this section and, I believe, your summary is that
8 Supra was charged for resale, because that's what the account
9 says.

10 A That would be my testimony. Supra was charged for
11 resale, because the orders were submitted to us as resale
12 orders and they were billed resale.

13 Q Okay. Now, if Supra had been prevented or denied the
14 ability to order UNE combos, do you think it would be fair to
15 bill Supra at the resale rates or the UNE combo rates or under
16 the UNE combo billing?

17 A You're asking me a question I can't answer. I
18 respond to data that comes to me. I can't say -- if you're
19 asking about fair, you're going to have to speak to Mr. Finlen
20 again. I simply respond when the order comes in and puts a
21 charge on my bill, and I attempt to try to collect it.

22 COMMISSIONER JABER: Mr. Buechele, how much longer
23 for this witness?

24 MR. BUECHELE: Very briefly. I apologize, I lost my
25 question. Just give me a sec.

1 COMMISSIONER JABER: This would be a good time to
2 take a ten-minute break. I've been getting some looks from the
3 court reporter, so we'll come back at 2:30.

4 (Recess taken.)

5 COMMISSIONER JABER: Let's go back on the record.
6 Mr. Buechele, were you asking cross examination
7 questions?

8 MR. BUECHELE: Yes. Thank you.

9 BY MR. BUECHELE:

10 Q Mr. Morton, do you know when Supra stopped paying
11 BellSouth?

12 A Yes, sir.

13 Q When was that?

14 A End of October, first of November 1999.

15 Q And do you know if that was after Supra and BellSouth
16 executed the October 5th, 1999, adoption of the AT&T Agreement
17 with BellSouth?

18 A Yes, it was.

19 Q Okay. And are you aware that that AT&T Agreement has
20 a billing dispute clause which allows Supra to withhold payment
21 without having their service?

22 A I am aware of the dispute escalation clause in the
23 adopted contract, yes.

24 Q And do you know whether or not there is the same kind
25 of escalation clause for disputing bills in the prior

1 Interconnection Agreement that Supra had with BellSouth?

2 A I don't know, but I don't think there is.

3 Q Okay. So, prior to adopting that AT&T Agreement,
4 then, BellSouth could have shut off Supra's service for
5 withholding payments on billing disputes?

6 A Yes. Now, BellSouth doesn't -- it's important to
7 understand what we're talking about in this context what is
8 defined as a dispute. Oftentimes, a CLEC will send a dispute
9 to BellSouth that's investigated and BellSouth determines, no,
10 this customer is not -- this CLEC is not entitled to credit and
11 returns that answer to the CLEC. The CLEC doesn't like the
12 answer, but in BellSouth's eye, that dispute is resolved,
13 denied. In the CLEC's eye, that dispute is not resolved.

14 Q Okay. So, under the prior scheme that Supra was
15 under before the AT&T Agreement, Supra had to pay, regardless
16 of whether or not it felt a dispute would have been resolved?

17 A Under the prior Agreement, my understanding is that
18 -- well, let me back up and say, our methods and procedures in
19 my operations state that we will never interrupt ordering
20 service, if there is a legitimate dispute and if the legitimate
21 dispute, if granted in full, would take the customer below the
22 threshold level for treatment.

23 If the CLEC owes a million dollars and that's all
24 past due and has a dispute for 50,000, my group would still
25 interrupt the ordering service for \$950,000 worth of

1 delinquency. On the other hand, if the customer, the CLEC, had
2 a dispute of a million dollars and only owed \$950,000, we would
3 not interrupt the ordering service in the case of that dispute.

4 Q In the case of Supra, their LENS was discontinued at
5 some point and time prior to the AT&T Agreement?

6 A I haven't -- I didn't -- I don't have direct
7 knowledge of that. It may have been. I know that there were
8 delinquency problems early on, but I don't know how far they
9 got.

10 Q Okay. And, like you said, normally, the CLEC has to
11 pay and BellSouth decides whether or not to give them the
12 credit, correct?

13 A I don't think I said that. If I did, I misspoke.
14 Let me repeat. Any bill that is undisputed and past due must
15 be paid. Any bill that is disputed, any amount on a bill that
16 is disputed, even though it is delinquent is not forced to be
17 paid in order to keep the service up and working.

18 Q Is BellSouth claiming any monies due in this
19 proceeding?

20 A Yes, sir.

21 Q In this proceeding?

22 A Yes, sir.

23 Q Has anyone filed any testimony for a dollar amount
24 that BellSouth claims is due under the 1997 Interconnection
25 Agreement?

1 A Not that I know of.

2 Q Okay. Do you know if it's an issue anywhere as to
3 how much BellSouth claims is due under the 1997 Interconnection
4 Agreement?

5 A I'm sorry, you said do I know if there's an issue
6 about it or do I know how much it is?

7 Q Well, let's do it this way. You said Supra stopped
8 paying after they entered into the AT&T Agreement?

9 A Yes, sir.

10 Q Okay.

11 A I want to explain, though, that what that means is
12 not that they paid bills that were up to and including the
13 October 5th charges. They may have paid a payment. The last
14 payment I got from Supra was for \$5,900 something and change.

15 Q In fact, Supra paid --

16 MS. WHITE: I'm sorry, I don't believe the witness
17 was finished with his answer.

18 MR. BUECHELE: Go ahead.

19 COMMISSIONER JABER: Mr. Morton, were you --

20 A That payment, however, I received it last of October,
21 first of November. It was posted in November to our accounts.
22 That payment did not pay our current accounts. It paid past
23 due account. My understanding is it paid a portion of the
24 September-generated bills, but only a portion. The balance of
25 the September-generated bills were still past due as of the

1 time of the signing of the Agreement.

2 BY MR. BUECHELE:

3 Q The exhibit, your Exhibit Number 1, is it -- and I'm
4 sorry, I apologize. Did you testify that -- previously that
5 this document has to first go to the Credit Department before
6 the orders can be placed?

7 A Yes. What I testified is that the sequence is that
8 this document must go through Finance and be approved before I
9 establish a Q account, and I have to establish a Q account
10 before orders can be placed.

11 Q And so, is it fair to say that the Finance Department
12 or the Credit Department signed off on this master account
13 application for the facilities base that was dated February
14 24th, 2000?

15 A That's a fair assumption.

16 Q And that's after what you say is a couple months of
17 past due?

18 A Yes. Understand, though, that I don't know whether
19 the Finance secured this account or let it go through
20 unsecured. I don't presume to get into their business and
21 their decisionmaking process.

22 MR. BUECHELE: Okay. I don't have anything further
23 for him.

24 COMMISSIONER JABER: Commissioners? Staff?

25 MR. FORDHAM: Thank you, Commissioner.

CROSS EXAMINATION

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BY MR. FORDHAM:

Q Mr. Morton, you mentioned several times setting up Q accounts. Can you tell us what a Q account is, please?

A A "Q" account, and it is the letter "Q," a Q account is an account, it is a series of accounts that we use to identify CLEC business in one of our two billing systems so that when an accounts receivable person sees -- the way a Q account would read is 305 Q82 6070, very much like a telephone number.

We have to have an account established for a CLEC in order to bill services that the CLEC orders from us. So, when a CLEC sets up a Q account, after they have set up a Q account, then they start ordering provisioning for end users. We can bill those end user services back to that Q account.

Q Okay, thank you.

Let's get a little specific now with the three categories of monies owed. You had testified toward the end of your testimony that you had received some payments, but left us with the impression that there still are monies owed from that old account, the old Agreement, the '97 Agreement. Do you have a figure, a total figure, that you believe is still owed from the entire 1997 Agreement period?

A Yes, I do, but I want to state that I have not gone back and done the precise work that would be required to give

1 you an absolute value number, and I'd like to explain what that
2 means.

3 We didn't change any accounts for Supra at the time
4 they established the new Agreement with Mr. Finlen and our
5 contract group; that is, we didn't stop one set of accounts
6 receivable and start a new one on the new date. We simply
7 continued forward. And so, when you give the date October 4th
8 or October 5th, midnight between those days, as you know, when
9 we bill, we bill some charges in advance, monthly charges in
10 advance, usage charges in arrears, and Supra has a couple of
11 different bill periods during the month.

12 So, I haven't gone back and looked at the bills that
13 would have occurred on or during September, October and
14 November, which I would have had to have done to parse out the
15 portion that would have been due prior to October 5th, that
16 portion that would have been due post or would have been
17 attributed to business post-October the 5th.

18 Having said all that, I will say that it is a fairly
19 close approximation to say that somewhere between 35 and
20 \$40,000 is still due that is attributable to business that
21 BellSouth considers under the 1997 Agreement.

22 Q And do I understand correctly now you testified that
23 the last monies received by BellSouth that you felt were
24 payable on the 1997 Agreement was October, late October of '99?

25 A Yes, sir.

1 Q Approximately, 18 months ago?

2 A Yes, sir, that's the last payment we have received of
3 any sort from Supra. We have not received any cash from Supra
4 since that payment in roughly 18 months.

5 Q Okay. And is it your interpretation of Supra's
6 allegations that Supra believes that it's due a refund from
7 BellSouth for under the 1997 Agreement?

8 A According to the dispute that is before this body
9 today, that \$306,000, I think, they are -- they would say that
10 they are due a refund from 1997 contract business.

11 Q So, BellSouth believes that that \$306,559 is the,
12 quote, amount in dispute at this point?

13 A My understanding is that we are responding to their
14 dispute document. They sent us a document that said this is
15 how much we are disputing. We responded to that. We didn't go
16 back and generate a dispute on our own. We are responding to
17 their dispute and their money.

18 Now, we would have gone back and checked the dollars,
19 roughly, to see if they were outlandish or wildly off from what
20 they said and, obviously, we didn't find that they were. That
21 doesn't mean that the dollar should be credited or not
22 credited. It simply means we would have gone back and just
23 looked for reasonability to see if they're appropriate to what
24 they say they are.

25 Q Okay. So, they provided us, in any event, with this

1 figure which even has 94 cents, so it's a fairly specific
2 figure. Do you suppose you would be able to provide us with
3 the specific figure that you had just earlier estimated,
4 ballpark, could you provide us with a specific figure that
5 BellSouth feels is still owed on the 1997 Agreement?

6 COMMISSIONER JABER: Mr. Fordham, what issue does
7 that go to?

8 MR. FORDHAM: It was -- well, all three, really.
9 There are monies still owed. The Issues 2, 3, and 4 regarded
10 the categories of monies billed and payable.

11 COMMISSIONER JABER: Mr. Morton, no one testified as
12 to that amount in this proceeding?

13 THE WITNESS: No, ma'am.

14 COMMISSIONER JABER: Why not?

15 THE WITNESS: I'm not quite sure, really. The
16 arguments in this proceeding had to do with the \$301,000. The
17 total amount that BellSouth shows owed by Supra is quite a
18 substantial amount, and that 35 to \$40,000 was simply rolled
19 into that substantial amount.

20 What my understanding -- the issue before this group
21 is the dispute, the validity legitimacy of the dispute, that
22 Supra provided to BellSouth for the \$306,000. The issue of
23 whether there was still money owed that would have been driven
24 back to the 1997 Agreement, as far as I know, has never come
25 up.

1 COMMISSIONER JABER: Staff, you were in the process
2 of identifying a late-filed exhibit?

3 MR. FORDHAM: Yes, Commissioner. I think, it's
4 significant to Issues 2, 3, and 4, and Staff would like to know
5 that exact amount.

6 COMMISSIONER JABER: Okay. Give me a short title for
7 late-filed Exhibit Number 9.

8 MR. FORDHAM: "Monies owed BellSouth under 1997
9 Agreement."

10 (Exhibit 9 identified for the record.)

11 MR. BUECHELE: If I just may be heard, briefly.

12 COMMISSIONER JABER: Yes.

13 MR. BUECHELE: Obviously, if someone would have
14 presented some testimony, we would have presented something --
15 we may have presented something to counter it. So, I mean,
16 it's somewhat unfair.

17 COMMISSIONER JABER: You know, Staff, that was
18 precisely my first thought, but here's what I'm going to allow,
19 because asking for a late-filed exhibit on information that is
20 nowhere in the original direct case gives me pause. But
21 Mr. Buechele, a late-filed exhibit you're entitled to respond
22 to once you receive it. And if you find it objectionable, you
23 may seek whatever recourse you deem appropriate, but it's not
24 -- it is a late-filed exhibit that is subject to your
25 objection.

1 MR. BUECHELE: Okay.

2 COMMISSIONER JABER: Mr. Morton, can you provide that
3 information to Staff and the parties within 10 days?

4 THE WITNESS: No, ma'am. It's a manual process, line
5 by line, every bill.

6 MR. FORDHAM: Commissioner, if BellSouth feels that
7 it would not be -- that the amount would not justify the
8 effort, then Staff would withdraw the request. I don't have
9 any real strong feelings about it.

10 COMMISSIONER JABER: Well, you're asking for the
11 information. What is it you want them to do, and do you want
12 it?

13 BY MR. FORDHAM:

14 Q Well, I suppose, first, let me ask, if I may,
15 Mr. Morton, does BellSouth -- is BellSouth attempting to pursue
16 collection of that amount through this proceeding or through
17 the Commission in any way?

18 A Clearly, BellSouth would like to have the amount
19 paid, but from an accountable perspective, there are many, many
20 larger issues than this 35 to \$40,000. I don't say that I
21 won't go back and do the work that you asked. All I was saying
22 is that it's an extremely manual process, because I have to go
23 through those bills line by line and determine of each charge
24 on each bill how much is pre-October 5th and how much is
25 post-October 5th.

1 COMMISSIONER JABER: You had not contemplated that
2 that issue would be addressed in this proceeding?

3 THE WITNESS: No, ma'am.

4 MR. FORDHAM: In that case, Commissioner, let me
5 withdraw the request.

6 COMMISSIONER JABER: Thank you, Mr. Fordham.

7 MR. FORDHAM: And let's see where that leaves us
8 here.

9 BY MR. FORDHAM:

10 Q Are you taking any other steps, at this point? Is
11 BellSouth taking any other steps to collect that amount to your
12 knowledge?

13 A The amount is included in the total amount that Supra
14 owes to BellSouth and that amount is, as far as I know,
15 involved in the arbitration that was mentioned earlier.

16 Q The disputes here today, of course, concern only the
17 1997 Agreement and not the successor Agreement. So, confining
18 your answer to that Agreement are there procedures established
19 in that Agreement for the collection of monies owed?

20 A Yes, sir.

21 Q And I assume that that information is provided to the
22 companies or agreed to by the companies before that Agreement
23 is signed; is that correct?

24 A It is a part of the Agreement that says if, and on
25 the occasion of a bill not being paid by a certain number of

1 days that the access to the ordering system will be
2 interrupted. If the bill continues to not be paid, then the
3 end user's service can subsequently be interrupted as well.

4 Q Does BellSouth assess late penalties or fees of some
5 sort for untimely payments?

6 A Yes, sir, late payment charges in those states where
7 we're allowed.

8 Q Yeah. And just very briefly, how are those payments
9 assessed?

10 A It is a percentage of the amount that is unpaid on
11 the pay-by date; that is, it is a percentage driven against the
12 delinquent amount. We do not charge late-payment charges on
13 disputed dollars.

14 MR. FORDHAM: I have no further questions.

15 COMMISSIONER JABER: Ms. White.

16 MS. WHITE: I just have a couple of redirect.

17 REDIRECT EXAMINATION

18 BY MS. WHITE:

19 Q Mr. Morton, do you have any personal information as
20 to whether Supra ever asked for or ordered unbundled network
21 elements prior to February 2000?

22 A No, ma'am.

23 Q Do you recognize the billing telephone numbers that
24 are contained in your Exhibit CPM-2?

25 A Yes, ma'am.

1 Q Are those resale numbers, billing numbers, or
2 unbundled network element billing numbers?

3 A They are resale.

4 MS. WHITE: Thank you. I have nothing further.

5 COMMISSIONER JABER: Thank you, Mr. Morton.

6 (Witness excused.)

7 COMMISSIONER JABER: And Ms. White, you want to move
8 Exhibit 8?

9 MS. WHITE: Yes, ma'am, Exhibit 8, BellSouth moves
10 Exhibit 8.

11 COMMISSIONER JABER: Show Exhibit 8 moved into the
12 record without objection.

13 (Exhibit 8 admitted into the record.)
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1 STATE OF FLORIDA)
2 ; CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

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5 I, KORETTA E. STANFORD, RPR, Official Commission
6 Reporter, do hereby certify that the foregoing proceeding was
heard at the time and place herein stated.

7 IT IS FURTHER CERTIFIED that I stenographically
8 reported the said proceedings; that the same has been
transcribed under my direct supervision; and that this
9 transcript, constitutes a true transcription of my notes of
said proceedings..

10 I FURTHER CERTIFY that I am not a relative, employee,
11 attorney or counsel of any of the parties, nor am I a relative
or employee of any of the parties' attorneys or counsel
12 connected with the action, nor am I financially interested in
the action.

13 DATED THIS 11TH DAY OF MAY, 2001.

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Koretta E. Stanford
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FPSC Official Commissioner Reporter
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