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September 6, 2001

Mrs. Blanca S. Bayo
Director, Division of the Commission
Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: Docket No. 001305-TP

Dear Mrs. Bayo:

Enclosed is an original and ten copies of Supra Telecommunications & Information Systems, Inc.'s Motion to Compel More Responsive Answers to Supra's First Set of Interrogatories.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Brian Chaiken

c: All Parties of Record

DOCUMENT NUMBER-DATE

11121 SEP-6 01

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Supra Telecommunications and Information Systems, Inc., pursuant to Section 252(b) of the Telecommunications Act of 1996	Docket No. 001305-TP
Complaint of Supra Telecommunications and Information Systems Regarding BellSouth's Bad Faith Negotiation Tactics	Filed: September 6, 2001

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.'S
MOTION TO COMPEL MORE RESPONSIVE ANSWERS TO SUPRA'S FIRST SET OF
INTERROGATORIES

Pursuant to Order Establishing Procedure (Order No. PSC-01-1401-PCO-TP, issued June 28, 2001) and Supplemental Order Establishing Procedure (Order No. PSC-01-1475-PCO-TP issued July 13, 2001), Rule 28-106.204(1) and 28-106.206, Florida Administrative Code, and Rule 1.380(a), Florida Rules of Civil Procedure, Supra Telecommunications & Information Systems, Inc. ("Supra") by and through its undersigned counsel, hereby moves for the entry of an order compelling BellSouth Telecommunications, Inc. ("BellSouth") to respond to Supra's First Set of Interrogatories for purposes of preparation for its upcoming depositions of BellSouth witnesses. In support of this Motion, Supra states as follows:

Brief Introduction

On August 10, 2001, Supra served its First Set of Interrogatories upon BellSouth. On August 20, 2001, BellSouth served its General and Specific Objections to Supra's First Set of Interrogatories.

1. BellSouth made numerous general objections, many of which were repetitive and not applicable to the individual interrogatories. More importantly, with regard to the individual interrogatories, BellSouth either made baseless objections or provided incomplete or non-

responsive answers. Supra seeks an order overruling BellSouth's objections and compelling answers to interrogatories as set forth hereinbelow.

2. Supra's discovery requests are relevant to the issues in this cause and are generally reasonably calculated to lead to the discovery of admissible evidence concerning the issues in this proceeding. See Rule 1.280(b)(1), Florida Rules of Civil Procedure. This Commission and the parties have established a list of specific issues to be arbitrated, including Issue A. As explained below, Supra's discovery requests are well within the scope of and are reasonably calculated to lead to the discovery of admissible evidence as the information sought thereby pertains to the specific issues listed in the Commission's Order Establishing Procedure, the bad faith negotiation tactics espoused by BellSouth, and/or the lack of parity between Supra and BellSouth.

3. On August 23, 2001, Supra filed *Supra Telecommunications & Information Systems, Inc.'s Motion To Compel And Overrule Objections To Supra's First Set Of Interrogatories* before this Commission to seek a Commission order to compel BellSouth to answer the interrogatories.

4. On August 30, BellSouth filed an incomplete Response to Supra's First Set of Interrogatories. Not only were a large number of questions left unanswered with no BellSouth personnel identified as having knowledge of the question, additional questions were marked as being "worked on", and no answer of any kind was supplied

5. Below, Supra has set forth each interrogatory, BellSouth's objection to same, and the reason why the objection should be overruled and an answer should be compelled.

INTERROGATORIES

INTERROGATORY No 1. Please provide the name, address, telephone number, place of employment and job title of any person who has, claims to have or whom you believe may have knowledge or information pertaining to any facts alleged in the Petition for Arbitration, BellSouth's Response to Supra's Complaint and Motion to Dismiss, BellSouth's Opposition to Supra's Motion to Stay, or as to any fact underlying the subject matter of this action.

AND

INTERROGATORY No 2. Please identify each document that evidences or supports any and all claims and defenses raised by BellSouth in its Petition for Arbitration, or in Supra's Status and Complaint Regarding BellSouth's Negotiation Tactics, whether favorable to BellSouth's or Supra's position, with sufficient particularity so they may be described in a request for production, and provide the name and address of the custodian of any such records.

BELLSOUTH'S ANSWER: BellSouth objects to Interrogatories 1 and 2 because they are overly broad and unduly burdensome. Subject to that objection, BellSouth will identify certain employees with knowledge about, and certain documents relating to, the issues that are in dispute in this proceeding.

SUPRA'S POSITION to Interrogatories No. 1 and 2: BellSouth has provided the names, only, of nine individuals, 5 of which have previously filed testimony in this case. BellSouth has failed to produce any documentation responsive to Interrogatory No. 2 that has not been previously filed. These interrogatories go to the heart of the Petition for Arbitration filed by BellSouth on September 1, 2000, and BellSouth's position to date in this proceeding. Supra needs BellSouth to identify the persons with knowledge or information so that Supra may, if and where necessary, depose those persons. Additionally, Supra needs to review each document that evidences or supports any and all of BellSouth's claims and defenses, in order to be adequately prepared to defend itself and support its position. These interrogatories are relevant to all the issues raised in this proceeding by this Commission and the parties. Supra requests an order compelling

BellSouth to provide answers to these interrogatories and/or, in the alternative, for BellSouth to answer that no persons exist and no documents exist.

AND

INTERROGATORY No 3. Please state the specific nature and substance of the knowledge that you believe the person(s) identified in your response to Interrogatory No. 1 may have.

BELLSOUTH'S ANSWER: Witnesses have filed testimony setting forth the specific nature and substance of their knowledge that you believe the person(s) identified in your response to Interrogatory No. 1 may have.

SUPRA'S POSITION to Interrogatory No. 3: BellSouth has failed to produce any documentation responsive to Interrogatory No. 3. Despite the fact that BellSouth has in its answer to Interrogatory No. 1 identified the names of persons who did not file testimony, BellSouth attempts to offer only filed testimony as an answer.

BellSouth should be compelled to identify the specific nature and substance of the knowledge of each person listed in Interrogatory No. 1. Should no one have any additional knowledge other than what is filed in the testimony, BellSouth should be compelled to say so, or to comply with this interrogatory in full.

INTERROGATORY No 4. What is the Product Commercialization Unit ("PCU")? Please provide names of all BellSouth's employees that have worked and currently work at the PCU for the years 1999, 2000 and up to and including June, 2001.

INTERROGATORY No 6. State with particularity the basis for BellSouth's contention on page 4, paragraph 7 of BellSouth's Response in Opposition to Supra's Motion to Dismiss filed on February 6, 2001 that "the negotiations were attended by the same representatives of each company that would negotiate in the context of an Inter-Company Review Board Meeting." In responding to this interrogatory, identify each representative from both companies who attended said "negotiations", each representative of both companies' Inter-

Company Review Board, and every document or other evidence upon which BellSouth intends to rely to prove this contention.

INTERROGATORY No 7. State with particularity the basis for BellSouth's contention on page 2, paragraph 4 of BellSouth's Response to Supra's Complaint and Motion to Dismiss that "BellSouth does not believe that Supra requested these documents prior to the first week of April, 2001." In responding to this interrogatory, identify each document or other evidence upon which BellSouth intends to rely to prove this contention.

INTERROGATORY No 8. Since the enactment of the Telecommunications Act of 1996, has BellSouth ever been accused by an ALEC, any regulatory body, or any other person or entity, of negotiating any type of agreement, including but not limited to an Interconnection Agreement, in bad faith? If yes, identify each document that evidences or supports any and all accusations and any and all defenses raised by BellSouth.

INTERROGATORY No 9. Please identify each document that evidences or supports any and all claims and defenses raised by BellSouth during the informal investigation by the Federal Communications Commission ("FCC") into potential violations by BellSouth of Section 251(c)(1) of the Communications Act of 1934, as amended, and Section 51.301 of the FCC's Rules, in connection with BellSouth's alleged failure to negotiate in good faith the terms and conditions of an amendment to an interconnection agreement with Covad Communications Company ("Covad") relating to BellSouth's provision of unbundled copper loops in nine states, whether favorable to BellSouth's or Supra's position, with sufficient particularity so they may be described in a request for production, and provide the name and address of the custodian of any such records.

INTERROGATORY No 11. Please state with specificity the number of resale access lines, UNE access lines and BellSouth's access lines in the State of Florida for the years 1998, 1999, 2000 and up to and including June 2001. The information provided must be broken into: (i) residential; (ii) business (iii) PBX trunks; (iv) interexchange; and (v) CPE coin. In responding to this interrogatory, identify each document or other evidence upon which BellSouth is relying upon in its answer.

INTERROGATORY No 12. Please state with specificity the number of resale and UNE access lines for the years 1998, 1999, 2000 and up to and including June 2001 that BellSouth has won back from ALECs and Supra through its “winback” program, or any other similar program. The information provided must be broken into: (i) residential; (ii) business (iii) PBX trunks; (iv) interexchange; and (v) CPE coin. In responding to this interrogatory, identify each document or other evidence upon which BellSouth is relying upon in its answer.

AND

INTERROGATORY No 13. Describe the procedure, from start to finish, including the flow of any information through any computer system/program, for a Supra customer to switch to BellSouth local telephone service. (The starting point being the time the customer calls BellSouth to make the switch; the finish point being the time the customer is actually switched to BellSouth.)

BELLSOUTH’S ANSWER: BellSouth objects to Interrogatories 4, 6, 7, 8, 9, 11, 12, and 13 because the information sought in those interrogatories is not relevant to any of the issues that are in dispute in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.

SUPRA’S POSITION: Interrogatory No. 4 is relevant to Issues 26, 28, 29, 31, 32A, 33, 34, 40, 46, 47, 48, 49, 51, 52, 53, 55, 61, 62 and 63. Although the interrogatory incorporates relevant information regarding the issues identified herein, Supra will address a few issues to establish its right to obtain the information requested. The Product Commercialization Unit (“PCU”) is the department within BellSouth that ensures that ALECs are able to order services and UNEs that they are lawfully entitled to as well as coordinate departments within BellSouth with the necessary expertise regarding BellSouth’s network, facilities, billing, rates and contract interpretation. Also see page 4, line 17 to page 6, line 7 of the Direct Testimony of Ms. Becky Wellman, filed on Behalf of IDS in Docket No. 010740-TP, dated July 23, 2001. Supra needs to

have all relevant information about the PCU as it is the intention of Supra to include language regarding this department in the Follow-On Agreement. Supra also needs to know the names of BellSouth's employees working in the PCU so as to depose such employees for information regarding BellSouth's product commercialization processes and procedures. BellSouth has also claimed that one of the reasons why Supra could not order the UNEs in its contract is that "BellSouth did not "productionize" the UNE combinations in the amended AT&T agreement and the amended Supra agreement." If BellSouth is unwilling to admit the existence of the PCU, it should be compelled to state that the PCU does not exist, or else be compelled to answer the Interrogatory.

Interrogatory No. 6 is relevant to Issues A, 5, 10, 12, 14, 15, 18, 19, 20, 25, 26, 27, 28, 29, 31, 32, 33, 34, 38, 40, 44, 46, 47, 48, 49, 51, 53, 55, 57, 59, 60, 61, 62 65, and 66. Although the interrogatory incorporates relevant information regarding the issues identified herein, Supra will address a few issues to establish its right to obtain the information requested. On page 4, paragraph 7 of BellSouth's Response in Opposition to Supra's Motion to Dismiss filed on February 6, 2001, BellSouth states that "the negotiations were attended by the same representatives of each company that would negotiate in the context of an Inter-Company Review Board Meeting." The information requested by this interrogatory goes to the heart of Issue A as it concerns BellSouth's failure to negotiate, in good faith, the parties' Follow-On Agreement. More specifically, the requested information is relevant to the instant proceedings as it pertains to BellSouth's willful and intentional refusal to comply with the procedural requirements of the parties' current FPSC-approved Interconnection Agreement. Evidence of BellSouth's non-compliant behavior supports Supra's need for the liability and specific

performance clauses addressed in issues 65 and 66 which lends credence to Supra's argument that BellSouth requires strong incentives in order to achieve compliance. As the interrogatory encompasses relevant, discoverable information concerning BellSouth's non-compliant behavior and attitude, which behavior was put into issue by BellSouth via their wrongful filing of the Petition for Arbitration, the objection espoused by BellSouth is without merit and should be summarily overruled.

Interrogatory No. 7 is relevant to Issues A, 5, 10, 12, 14, 15, 18, 19, 20, 25, 26, 27, 28, 29, 31, 32, 33, 34, 38, 40, 44, 46, 47, 48, 49, 51, 53, 55, 57, 59, 60, 61, 62, 65, and 66. Although the interrogatory incorporates relevant information regarding the issues identified herein, Supra will address a few issues to establish its right to obtain the requested information. On page 2, paragraph 4 of BellSouth's Response to Supra's Complaint and Motion to Dismiss, BellSouth states that it "does not believe that Supra requested these documents prior to the first week of April, 2001." The information requested by this interrogatory is directly related to Issue A as it concerns BellSouth's failure to negotiate, in good faith, the parties' Follow-On Agreement. More specifically, the requested information is relevant to the instant proceedings, and is further discoverable, as it pertains to BellSouth's willful and intentional refusal to provide Supra with information regarding its network which Supra reasonably requires in order to negotiate a Follow-On Agreement. Evidence of BellSouth's non-compliant behavior supports Supra's need for the liability and specific performance clauses addressed in issues 65 and 66 which lends credence to Supra's argument that BellSouth requires strong incentives in order to achieve compliance. As the non-compliant attitude and conduct of BellSouth is directly at issue in the instant matter, the information sought by this interrogatory is not only relevant it is necessary for

Supra to support the claims it has asserted in connection with the issues identified herein.

Interrogatory No. 8 is relevant to Issues A, 65, and 66. This interrogatory is highly relevant to Issue A and the good faith efforts, or lack thereof, elicited by BellSouth in connection with the re-negotiation of the parties' Follow-On Agreement. The fact that BellSouth can claim that the requested information is irrelevant is disingenuous as Issue A evolved out of Supra's Status and Complaint Regarding BellSouth's Bad Faith Negotiation Tactics filed on June 18, 2001. The information sought herein goes to establish a pattern of discriminatory behavior that BellSouth practices toward other ALECs competing against BellSouth including, but not necessarily limited to, Covad Communications Company ("Covad") and Supra. The \$750,000 fine imposed by the FCC concerning BellSouth's bad faith negotiation tactics with Covad and its significance were addressed on page 6 of Supra's Motion to Dismiss and Exhibit C attached thereto dated January 29, 2001, and in ¶14 of its Response in Opposition to Supra's Motion to Dismiss filed on February 6, 2001. Based upon its objection, BellSouth is apparently of the opinion that Supra should simply forget that BellSouth threatened to put Supra out of business, and simply allow for terms in the Follow-On Agreement which would allow BellSouth to conduct business in an even more egregious manner and without fear of any consequences. Similarly, it also appears that BellSouth is of the opinion that Supra should dismiss the non-compliant tactics asserted by BellSouth towards other ALECs which made it nearly impossible for those ALECs to successfully compete with BellSouth as many have either filed bankruptcy or withdrawn from the market. See announcements of Covad, Bluestar, Telscape, Teligent, Winstar, Rhythms, ICG, etc. See report titled Annus horribilis? However you say it, CLECs have had a bad year Published by CLEC.com., attached as **Supra Exhibit OAR 43**. Evidence of BellSouth's bad

faith and otherwise non-compliant behavior towards other ALECs supports Supra's need for the liability and specific performance clauses it has proposed to the Commission and further supports Supra's argument that without strong incentives, BellSouth will continue to employ bad faith practices upon Supra and other ALECs attempting to compete against BellSouth. As the non-compliant attitude and conduct of BellSouth is directly at issue in the instant matter, the information sought by this interrogatory is not only relevant it is necessary for Supra to support the claims it has asserted in connection with the issues identified herein.

Interrogatory No. 9 is relevant to Issues A, 65 and 66. As set forth in Supra's response to BellSouth's objection to Interrogatory No. 8 above, which response is adopted and incorporated herein by reference, this interrogatory is highly relevant to Issue A and the good faith efforts, or lack thereof, elicited by BellSouth in connection with the renegotiation of the parties' Follow-On Agreement. More specifically, the information sought herein goes to establish a pattern of discriminatory behavior that BellSouth employs toward other ALECs competing against BellSouth including, but not necessarily limited to, Covad Communications Company ("Covad") and Supra. Significantly, and as noted above, the FCC has found BellSouth in violation of 251(c) of the Act for bad faith negotiations with Covad. On or about November 2, 2000, BellSouth was fined \$750,000 by the FCC for the very act it has committed against Supra. See In the Matter of BellSouth Corporation, File No. EB-900-IH-0134 Acct. No. X32080035 (Adopted October 27, 2000). Copy attached as **Supra Exhibit OAR 26**. According to the FCC:

In this Order, we terminate an informal investigation into potential violations by BellSouth Corporation (BellSouth) of section 251(c)(1) of the Communications Act of 1934, as amended, and section 51.301 of the Commission's rules, in connection with BellSouth's alleged failure to negotiate in good faith the terms and conditions of an amendment to an interconnection agreement with Covad Communications Company (Covad) relating to BellSouth's provision of unbundled copper loops in nine states. ¶1

In the Matter of BellSouth Corporation, File No. EB-900-IH-0134 Acct. No. X32080035 Order (Adopted October 27, 2000).

The significance of BellSouth's bad faith negotiations with Covad was also addressed on page 6 of Supra's Motion to Dismiss and Exhibit C attached thereto dated January 29, 2001, and in ¶14 of BellSouth's Response in Opposition to Supra's Motion to Dismiss filed on February 6, 2001. Evidence of BellSouth's bad faith and otherwise non-compliant behavior towards other ALECs supports Supra's need for the liability and specific performance clauses proposed to the Commission and further supports Supra's argument that without strong incentives, BellSouth will continue to employ bad faith practices upon Supra and other ALECs attempting to compete against BellSouth. As the non-compliant attitude and conduct of BellSouth is directly at issue in the instant matter, the information sought by this interrogatory is not only relevant it is necessary for Supra to support the claims it has asserted in connection with the issues identified herein.

Interrogatory No. 11 is relevant to Issues 26, 28, 29, 31, 32A, 33, 34, 40, 46, 47, 48, 49, 51, 52, 53, 55, 61, 62, 63, 64, 65, and 66. Although the interrogatory incorporates relevant information regarding the issues identified herein, Supra will address a few issues to establish its right to obtain the requested information. This interrogatory is directly related to BellSouth's compliance with the Telecommunications Act of 1996, or lack thereof, and with its obligations pursuant to the interconnection agreements it has entered into with ALECs. BellSouth's response to this interrogatory evidences its defiance of the parity requirements of the Act and the FCC and FPSC rules and orders, as well as its overall attitude toward the ALECs. The total number of resale versus UNE access lines, while compared to BellSouth's own access lines, depicts the inability of the ALEC community to operate as facility-based providers. Furthermore, as Issues

65 and 66 pertain to the liability and specific performance provisions proposed by Supra, BellSouth's non-compliance is directly related to Supra's arguments regarding same, including, but not limited to, Supra's request that strong enough incentives be put in place in efforts to obtain compliance from BellSouth. As BellSouth's PCU is the department that ensures that ALECs receive the proper services and UNEs, Supra adopts by reference its response to BellSouth's objection to Interrogatory 4 herein.

Interrogatory No. 12 is relevant to Issues 29, 34, 38, 46, 47, 60, 61 and 62. As set forth in its Response to BellSouth's objection to Interrogatory No. 11 above, which response is incorporated herein by reference, this interrogatory is directly related to BellSouth's compliance with the Act, or lack thereof, and with its obligations pursuant to the interconnection agreements it has entered into with ALECs. BellSouth's response to this interrogatory evidences its defiance of the parity requirements of the Act and the FCC and FPSC rules and orders, as well as its overall attitude toward the ALECs. As BellSouth's Winback and Full Circle campaigns prosper and are a direct result of the lack in parity and non-discriminatory access in OSS, as non-parity results in slower and inferior service, the requested information is necessary.

Interrogatory No. 13 is relevant to Issues 38, 46, 47, 51, 60, 61 and 62. This interrogatory is highly relevant as it goes to the heart of this arbitration proceeding. The information sought herein addresses BellSouth's flow through, information which can only serve to establish Supra's position espoused in the above referenced issues that BellSouth is not providing parity and is further failing to provide non-discriminatory access to its OSS. BellSouth cannot be allowed to hide behind this baseless objection as the information obtained from this interrogatory

can only be used to show a substantial disparity, as to both time and manner, in switching a customer from Supra to BellSouth and visa versa.

INTERROGATORY No 5. State with particularity the basis for BellSouth's contention on page 5 of BellSouth's Response to Supra's Complaint and Motion to Dismiss filed by BellSouth on July 9, 2001, that:

Since the old agreement was negotiated with AT&T five years ago, BellSouth's practices have changed, the controlling law has changed, and the interconnection offerings, terms and conditions that are available have changed. Accordingly, what BellSouth offers in the current standard interconnection agreement as a starting point for negotiation is different than what BellSouth offered as a starting point when the old AT&T agreement was drafted.

In responding to this interrogatory, identify each and every BellSouth practice that has changed, the controlling law that has changed, and the interconnection offerings, terms and conditions that BellSouth provides that have changed or other evidence upon which BellSouth intends to rely to prove this contention.

BELLSOUTH'S ANSWER: BellSouth objects to Interrogatory 5 to the extent it requests information about changes in the law. Such information is equally available to Supra. BellSouth also objects to Interrogatory 5 to the extent it seeks identification of changes to BellSouth's "interconnection offerings, terms and conditions." Such information is contained in the numerous interconnection agreements between BellSouth ALECs. Those agreements are on file with the Commission and therefore equally available to Supra. BellSouth objects to Interrogatory 5 to the extent it seeks information regarding "each and every BellSouth practice that has changed" in the last five years. That request is overly broad and unduly burdensome to the extent it seeks information about practices that are unrelated to any of the issues in this proceeding. Subject to the latter objection, BellSouth will identify changes to its practices since 1996 that are relevant to the issues in this proceeding.

SUPRA'S POSITION: Interrogatory No. 5 is relevant to Issues A, 5, 10, 12, 14, 15, 18, 19, 20,

25, 26, 27, 28, 29, 31, 32, 33, 34, 38, 40, 44, 46, 47, 48, 49, 51, 53, 55, 57, 59, 60, 61, 62 65, and 66. Although the interrogatory incorporates relevant information regarding the issues identified herein, Supra will address a few issues to establish its right to obtain the requested information. On page 5 of BellSouth's Response in Opposition to Supra's Complaint and Motion to Dismiss, BellSouth states:

Since the old agreement was negotiated with AT&T five years ago, BellSouth's practices have changed, the controlling law has changed, and the interconnection offerings, terms and conditions that are available have changed. Accordingly, what BellSouth offers in the current standard interconnection agreement as a starting point for negotiation is different than what BellSouth offered as a starting point when the old AT&T agreement was drafted.

BellSouth's objection regarding changes in law being equally available to Supra is disingenuous. What is really in contention is BellSouth's own, internal, interpretation of the relevant law. Such interpretations having previously found to be flawed, one-sided, and anti-competitive. The information requested by this interrogatory goes to the heart of Issue A as it concerns BellSouth's failure to negotiate, in good faith, the parties' Follow-On Agreement. More specifically, the requested information is relevant to the instant proceedings as it pertains to BellSouth's willful and intentional refusal to negotiate from the parties' Current Interconnection Agreement due to unexplained complexities of law. BellSouth's refusal to identify the "controlling law" that has changed as well as the "interconnection offerings, terms and conditions" (collectively referred to as "offerings") on the lone basis that this is public information which is equally available to Supra as it is to BellSouth, cannot stand muster. Since on or about June 7, 2000, Supra requested for the execution of an agreement, which would retain the exact same terms and conditions as the Current Agreement. Since that time, BellSouth has refused to renegotiate from said agreement due, in part, to changes in the controlling law or

offerings without enumerating those specific changes. The burden for ascertaining the information requested in this interrogatory is not the same for Supra as it is for BellSouth since BellSouth knows, specifically, which changes it is referring to and how those specific changes have been incorporated into Interconnection Agreements BellSouth has entered into with other ALECs. BellSouth's game of "guess what and where the changes are located" should not prevent Supra from obtaining that information which it is entitled to. Moreover, as the Current Agreement has been amended by the parties on numerous occasions to reflect changes in the law, BellSouth's continued refusal to provide such information makes no sense and raises a red flag as to the real reason behind their failure to divulge the requested material. As to obtaining information relating to changes in BellSouth's "practices," Supra is only amenable to having BellSouth, in accordance with the interrogatory, identify changes to those practices it was referring to in its Response and is entitled to such information so that said changes may, if necessary, be incorporated into the parties' Follow-On Agreement. Evidence of BellSouth's non-compliant behavior supports Supra's need for the liability and specific performance clauses addressed in issues 65 and 66 which lends credence to Supra's argument that BellSouth requires strong incentives in order to achieve compliance. As the non-compliant attitude and conduct of BellSouth is directly at issue in the instant matter, the information sought by this interrogatory is not only relevant it is necessary for Supra to support the claims it has asserted in connection with the issues identified in this response.

INTERROGATORY No 16. What Electronic provisioning interface(s) has been made available to ALECs for provisioning of the functions/services/products set forth in the previous two interrogatories?

BELLSOUTH'S ANSWER: BellSouth's provisioning OSS is available to ALECs. Provisioning is defined as the process that starts after a complete and accurate (error free) order is accepted by the Service Order Communication System (SOCS) and until the service is installed and working properly. SOCS is the common point of entry into the BellSouth OSS for provisioning of service requests for both the BellSouth retail units and the ALECs.

SUPRA'S POSITION: BellSouth's answer is patently disingenuous in this regard. It is a well known fact that SOCS has not been provided to a single ALEC. BellSouth's own answers to Interrogatory 22 point this out, not once, but at least three separate times within the answer to #22. Furthermore, Mr. Pate is well aware that there are three BellSouth OSS Systems between the ALEC and SOCS, currently EDI or TAG (LENS is now built upon TAG), LEO and LESOG. Mr. Pate's answer to the question of " What Electronic provisioning interface(s) has been made available to ALECs for provisioning..." begins four systems PAST where ALEC access has been provided. An ALEC has little or no control of what happens through the LEO / LESOG process, and Mr. Pate is well aware of the issue based on the commercial arbitration between the parties in April of 2001. BellSouth must be compelled to provide a complete and truthful answer to this interrogatory.

INTERROGATORY No 19. Is BellSouth currently providing or testing the provisioning of interexchange access services across interLATA boundaries? If yes state each and every party for whom BellSouth is providing or testing such services, and which BellSouth tandem offices are being used to provide or test such services.

BELLSOUTH'S ANSWER: BellSouth Telecommunications , Inc is not currently providing or testing the provisioning of interexchange access services a cross interLATA boundaries.

SUPRA'S POSITION: Whether by accident or design, BellSouth's answer is patently

disingenuous in this regard. Supra is uncertain whether the person chosen to provide the Response, Mr. W. Keith Milner has direct knowledge to which he can testify, but the truth of this answer is found in public documents.

On or about August 9, 2001, BellSouth Telecommunications filed an *Expedited Petition for Waiver* with the FCC's Accounting Safeguards division (ASD01-38) attached as Supra Exhibit # 1 and Supra Exhibit # 2. In its plea, BellSouth requests permission from the FCC Accounting Safeguards Division to use non-standard terms in its Cost Allocation Manual describing "certain services received from non-regulated affiliates" later identified as BellSouth Long Distance Inc. A copy of the BellSouth Long Distance agreement with BellSouth is attached hereto as Supra Exhibit # 3. BellSouth seeks "permission to use the terms "less than Fully distributed Costs" and "No Charge"" in describing services received from BellSouth Long Distance. The pleading goes on to state "BST has continued to conduct transactions with affiliates that fall within the non-standard terms - "No Charge", "Less Than Fully Distributed Costs" and "More than Fully Distributed Costs"" Yet in their answer to this interrogatory, BellSouth would have Supra and this Commission believe that no such transactions are taking place. BellSouth must be compelled to provide a truthful and complete answer to this interrogatory.

INTERROGATORY No 22. What is the Work Management Center ("WMC"); Engineering for Facilities; Installation and Maintenance; Installation Control; Construction; Network Infrastructure Support Center ("NISC"); Interconnector Network Access Coordinator ("INAC"); Outside Plant Engineering ("OSPE"); Circuit Capacity Management ("CCM"); Common Systems Capacity Management ("CSCM"); Central Office Operations; Craft Access Terminal; Remote Terminal; Service Advocacy Center ("SAC"); Address and Facility Inventory ("AFIG"); Circuit Provisioning Group ("CPG"); Network Plug-In Administration ("PICS"); Unbundled

Network Element Center (“UNEC”); RCMAG; Hold File; and Property Management (“PS&M”)?

a. Please state with specificity the functions and departments that are included in each of the units identified above and the functions of these departments.

b. Please state with specificity the electronic interfaces used by these departments to perform their functions.

c. Does BellSouth, its retail operations, its affiliates, its subsidiaries and its partners have access to these units? If yes, state how. If not, state why not.

d. Does Supra have access to these units? If yes, state how. If no, state why not.

In responding to this interrogatory, identify each document or other evidence upon which BellSouth is relying upon in its answer.

BELLSOUTH’S ANSWER: BellSouth's answer to this is extensive and is not reproduced here.

SUPRA’S POSITION: BellSouth's position in response to this interrogatory is contrary to its position previously filed in other dockets before the Florida Public Service Commission. As an example, BellSouth has previously testified in dockets 980800-TP, 981011-TP, 981012-TP, 981250-TP et. al. regarding the capabilities and processes of the Common System Capacity management, Circuit Capacity Management, and INAC. One example of missing data from BellSouth's response is that there is no mention of forecasting tools, circuit capacity analysis, switch capacity analysis tools as previously testified to. BellSouth must be compelled to provide complete and truthful answers to this interrogatory for ALL departments.

WHEREFORE, Supra respectfully requests that the Commission enter an Order overruling BellSouth’s objections to Supra’s Interrogatories as set forth herein, and compelling BellSouth, forthwith, to respond fully to the Interrogatories identified herein, and for such other

relief as is deemed equitable and just.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Federal

Express this 6th day of September 2001 to the following:

Nancy B. White, Esq.
C/O Nancy Sims
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SUPRA TELECOMMUNICATIONS
& INFORMATION SYSTEMS, INC.
2620 S.W. 27th Avenue
Miami, Florida 33133
Telephone: (305) 476-4248
Facsimile: (305) 443-9516

By: Brian Chaiken / AFD
BRIAN CHAIKEN

Supra Exhibit # 1 FCC Public Notice on ASD 01-38 BellSouth's Expedited Petition for Waiver of 4 C.F.R. § 32.27(c)

Supra Exhibit # 2 BellSouth's Expedited Petition for Waiver to use non standard language in its Cost Allocation Manual describing its affiliate transactions with BellSouth Long Distance Inc. relating to BellSouth Telecommunications receipt of services from BellSouth Long Distance Inc at "Less than Fully Distributed Costs" and at "No Charge".

Supra Exhibit # 3 BellSouth Telecommunications and BellSouth Long Distance end-to-end interLATA test agreement dated June 13, 2000.



PUBLIC NOTICE

Federal Communications Commission
445 12th St, S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
 Fax-On-Demand 202 / 418-2830
 TTY 202 / 418-2555
 Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

DA 01-1956

Released: August 16, 2001

COMMENTS SOUGHT ON BELL SOUTH COMMUNICATIONS, INC.
EXPEDITED PETITION FOR WAIVER OF 47 C.F.R. §32.27(c)

On August 9, 2001, BellSouth Communications, Inc. (BST) filed an expedited petition for waiver of the Commission's affiliate transactions rules. In its petition, BST requests that the Commission waive §32.27(c) of its rules to allow BST to receive services from certain affiliates at "Less Than Fully Distributed Cost" or at "No Charge".

Interested parties may file comments on BST's petition no later than **September 17, 2001**. Replies should be filed by **October 2, 2001**. Comments should reference **ASD 01-38**. A copy of each pleading should be sent to Debbie Weber, FCC Common Carrier Bureau, 445 12th Street, SW, Room 6-C124, Washington, D.C. 20554 and the International Transcription Service (ITS), 1231 20th Street, NW, Washington, D.C. 20036. Copies are available for public inspection and copying in FCC's Public Reference Center, 445 12th Street, SW, Room CY-A257, Washington, D.C. Copies are also available from ITS, (202) 857-3800.

For further information, contact Debbie Weber at (202) 418-0812 (voice or TTY (202) 418-0484.

Action by the Chief, Accounting Safeguards Division, Common Carrier Bureau, FCC.

EXHIBIT 1

RECEIVED

AUG 9 2001

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Local Exchange Carriers')
Permanent Cost Allocation Manuals) ASD No. _____
For the Separation of Regulated and)
Nonregulated Costs)

EXPEDITED PETITION FOR WAIVER

BellSouth Telecommunications, Inc. ("BST") hereby requests a waiver to permit BST to use certain non-standard language in its Cost Allocation Manual ("CAM") pursuant to the Commission's *CAM Order* released May 7, 1993.¹

The *CAM Order* held that the Commission's affiliate transaction rules do not govern contractual relationships between carriers and their affiliates but rather govern "how the carriers must record the transactions on their regulated books of account."² The *CAM Order* recognized that certain affiliate transactions may confer benefits to the regulated entity in addition to those required under the affiliate transaction rules and that non-standard language may be required in the CAM to accurately reflect the substance of such transactions. The *CAM Order* also established that should a carrier use non-standard language to describe an affiliate transaction, the carrier must seek a waiver from the Commission. Such a waiver is to be granted and use of

¹ *In the Matter of Local Exchange Carriers' Permanent Cost Allocation Manuals for the Separation of Regulated and Nonregulated Costs*, AAD Nos. 92-22 through 92-35, Order, 8 FCC Rcd 3105 (1993) ("*CAM Order*").

² *CAM Order* ¶ 14, note 35. Thus, the *CAM Order* does not direct how a BOC must price a transaction between itself and its affiliate, but rather how the BOC must record that transaction in its regulated accounts.

EXHIBIT 2

BellSouth
Petition for Waiver
August 9, 2001

the non-standard term permissible. upon the carrier showing that the term "is more favorable for ratepayers than the terms provided in the affiliate transaction rules."³

BST has filed three Petitions for Waiver ("*Petitions*") seeking permission to use three non-standard terms in its CAM to describe certain affiliate transactions. For certain services received from non-regulated affiliates, BST sought permission to use the terms "Less Than Fully Distributed Costs" and "No Charge." For certain services provided by BST to non-regulated affiliates, BST sought permission to use the non-standard term "More Than Fully Distributed Costs." In these *Petitions*, BST demonstrated how the use of these non-standard terms – "No Charge", "Less Than Fully Distributed Costs", and "More Than Fully Distributed Costs" – benefited the ratepayer more than the standard terms identified in the affiliate transaction rules.

The Commission granted BST's *First Petition*⁴ on January 24, 2000, stating:

We agree with BellSouth that, in this instance, recording at "greater than fully distributed cost" the revenues received for a limited set of services provided to its directory publishing affiliate appears to benefit ratepayers by recognizing increased revenues on its books of account. We further agree with BellSouth that recording certain services received from affiliates at "no charge" and "less than fully distributed cost" appears to benefit ratepayers by enabling the incumbent LEC to obtain services in a cost-effective manner.⁵

Additionally, the Commission agreed with BST's original assertion that these non-standard terms used for booking these affiliate transactions "benefits ratepayer interests," and "is fully consistent with the public interest and the underlying policy goals." The Commission, however,

³ CAM Order ¶ 31.

⁴ *Petition for Waiver*, filed by BellSouth Telecommunications, Inc. on June 29, 1993 ("*First Petition*").

⁵ *In the Matter of BellSouth Telecommunications, Inc.'s Permanent Cost Allocation Manual Waiver of Section 32.27 of the Commission's Rules*, AAD File No. 93-80, Order, 15 FCC Rcd 15550, at ¶ 3 (2000) ("*First Waiver Order*").

limited its approval to "those services specified in BellSouth's waiver petition and supplement."⁶ Thus, the Division's *First Waiver Order* granting the *First Petition* limits the waiver to the transactions itemized in the *First Petition* and *1995 Letter*.

BST has continued to conduct transactions with affiliates that fall within the non-standard terms – "No Charge," "Less Than Fully Distributed Costs," and "More Than Fully Distributed Costs" – that the Commission determined to be acceptable in the *First Waiver Order*. As these transactions were identified, BST filed subsequent Petitions for Waiver seeking to classify these transactions under the non-standard terms that the *First Waiver Order* found acceptable. BST filed its *Second Petition* on February 10, 2000⁷ and its *Third Petition* on March 29, 2000.⁸ Both Petitions were granted by an Order released October 27, 2000.⁹ Consistent with the *First Waiver Order*, in the *Second Waiver Order* the Commission found that "allowing BST to record these services received from affiliates at no charge and less than fully distributed cost benefits ratepayers by enabling BST to obtain services in a cost-effective manner. Moreover, such accounting treatment is consistent with previous waivers granted for similar affiliate transactions. Because BellSouth's proposed accounting treatment benefits ratepayer interests, we find that it is fully consistent with the public interest and the underlying policy goals."¹⁰

⁶ The supplement the Commission references in the *First Waiver Order* is a August 9, 1995 Letter ("*1995 Letter*") BellSouth filed to supplement the transaction list filed in the *First Petition*.

⁷ Expedited Petition for Waiver, filed by BellSouth Telecommunications, Inc. on February 10, 2000 ("*Second Waiver*").

⁸ Expedited Petition for Waiver, filed by BellSouth Telecommunications, Inc. on March 29, 2000 ("*Third Waiver*").

⁹ *In the Matter of BellSouth Telecommunications, Inc.'s Permanent Cost Allocation Manual Waiver of Section 32.27 of the Commission's Rules*, ASD File No. 00-42, Order, 15 FCC Rcd 255 33 (2000) ("*Second Waiver Order*").

¹⁰ *Second Waiver Order* ¶ 4.

BST files this petition ("*Fourth Petition*") requesting that the Commission approve new transactions that were not listed in the *First Petition*, *1995 Letter*, *Second Petition* and *Third Petition*. Just as with the transactions listed in each of those documents, the transactions of this *Fourth Petition*, which BST proposes to use the non-standard terms "Less Than Fully Distributed Cost" and "No Charge" to describe, inure to the benefit of the regulated entity by reducing BST's cost of service and the use of the standard terms "Fully Distributed Costs" would incorrectly describe the transaction. BST, therefore, files this *Fourth Petition* seeking a waiver for these BST affiliate transactions that correspond to the same non-standard language approved by the Commission in the *First Waiver Order* and *Second Waiver Order*. The transactions are described in the attached Exhibit 1. The Commission has already determined that the use of the non-standard terms "Less Than Fully Distributed Costs" and "No Charge" and the types of transactions that correspond to those terms benefit the ratepayers. Accordingly, a waiver for use of these non-standard terms for the transactions listed in Exhibit 1 should be granted.

One of the transactions listed on Exhibit 1 represents the provision of corporate communication services from BellSouth Long Distance, Inc. ("BSLD") to BST. This transaction merits further discussion for clarification purposes. Pursuant to Section 272 of the Telecommunications Act of 1996 ("1996 Act"), BellSouth has created BSLD as the entity that will provide interLATA services once the Commission grants BST permission to provide interLATA services within its region. Thus, while BSLD is not a Section 272 affiliate until such permission is granted, BellSouth treats BSLD as a Section 272 affiliate to demonstrate to the Commission its ability to comply with Section 272 requirements.

Section 272(b)(5) requires all transactions between the Bell Operating Company ("BOC"), BST, and the Section 272 Affiliate, BSLD, to be on an arms length basis.

Additionally, BST has an obligation to procure services from its Section 272 Affiliate, BSLD, on a non-discriminatory basis. Thus, for pricing purposes, all such services must be priced at the market rate. The Commission, however, determined that its affiliate transaction rules should apply to transaction between the BOC and its Section 272 Affiliate that provides interLATA telecommunications services.¹¹ Accordingly, any transaction between the BOC and the Section 272 Affiliate must be recorded in the BOCs regulatory accounts pursuant to 47 C.F.R § 32.27.

The provision of corporate communications service to BST by BSLD is not pursuant to tariff, public contract, or prevailing prices, therefore, such services must be recorded in BST's regulatory accounts at the lower of estimated fair market value or fully distributed costs.¹² Because BSLD's price must be at an arm's length market rate and since a system to determine fully distributed costs is costly to implement, BST will use BSLD's incremental cost, which is less than fully distributed costs, for the comparison to estimated fair market value required by the Commission's rules.¹³ Accordingly, in compliance with the Commission's rules, BST will record this transaction at the lower cost. Recording these services in its regulatory accounts at BSLD's incremental cost benefits ratepayers by enabling BST to obtain services in a cost-effective manner. Accordingly, the Commission should grant BST a waiver to include the

¹¹ *In the Matter of Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Red 17539, 17620 at ¶ 176 (1996). The affiliate transaction rules apply to transactions between the BOC and its non-regulated affiliates. Even though interLATA telecommunication services offered by Section 272 Affiliate are Title II services, the Commission ruled that the affiliate transaction rules should still apply to transactions between a BOC and a Section 272 Affiliate that provides interLATA telecommunications services to help satisfy the arms length requirement of Section 272(b)(5).

¹² See 47 C.F.R. § 32.27(c).

¹³ BST obtained an estimated fair market value ("EFMV") for such services and determined that the incremental cost to BSLD, the amount BST books to its regulatory accounts for the services, was less than the EFMV.

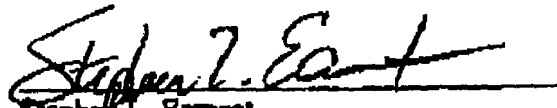
provision of corporate communications from BSLD to BST in the CAM as "Less Than Fully Distributed Cost."

BellSouth respectfully seeks expedited treatment for this *Fourth Petition* as these transactions impact the day-to-day operations of the incumbent LEC and its nonregulated affiliates.

Respectfully submitted,

BELLSOUTH CORPORATION

By its Attorneys



Stephen L. Earnest
Richard M. Sbaratta

Suite 4300
675 West Peachtree Street, N. E.
Atlanta, Georgia 30375
(404) 335-0711

Date: August 9, 2001

RECEIVED
Petition for Waiver
August 9, 2001

CERTIFICATE OF SERVICE

I do hereby certify that I have this 9th day of August 2001 served the parties of record to this action with a copy of the foregoing **EXPEDITED PETITION FOR WAIVER** by hand delivery addressed to the parties listed as follows:

+Magalie Roman Sales
Office of The Secretary
Federal Communications
Commission
Suite TW-A325
445 12th Street, SW
Washington, D.C. 20554

+Kenneth P. Moran
Chief, Accounting Safeguards Division
Federal Communications Commission
Portals II
445 Twelfth Street, SW
Washington, DC 20554

+International Transcript Service, Inc.
1231 20th Street, N.W.
Washington, DC 20036


Lynn Barclay

+ Hand Delivery

LESS THAN FULLY DISTRIBUTED COST

FROM BASC

Personnel Services and Human Resources

FROM BAPCO

Personnel Services and Human Resources

FROM BEI

Incidental Network Installation, Maintenance and Testing

FROM BCS

Installation and Maintenance of CPE

FROM BSLD

Long Distance carriage for internal BellSouth communications

FROM CALL

Insurance programs via internal funding

NO CHARGE

FROM BEI

Joint Marketing

EXHIBIT 1 page 1 of 1

405762

**INTERLATA
END TO END TEST AGREEMENT**

This Agreement made and entered into this 13 day of June, 2000,
by and among BellSouth Telecommunications, Inc., a Georgia corporation (hereinafter
"BST"), and BellSouth Long Distance, Inc., a Delaware corporation (hereinafter
"BSLD").

WHEREAS, BST provides interexchange access service pursuant to its various,
tariffs;
and

WHEREAS, BSLD intends to obtain from BST such access service to
trial InterLata transport service which it provides or will provide for sale to end users.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and
obligations set forth below, the parties hereby agree as follows:

I. PURPOSE OF THIS TEST

The purpose of this test is to enable the parties to this Agreement to test various
electronic and manual interfaces and systems which are necessary to the parties'
provision of the services which they offer to each other and/or to
telecommunications end users.

II. TEST PERIOD

The Test shall begin on or about June 1, 2000, and shall end on or
about December 31, 2000(the "Test Period"). The Test Period may be
extended if mutually agreed to by the parties in writing.

BSLD/BST CONFIDENTIAL/PROPRIETARY INFORMATION

EXHIBIT 3

RECEIVED FROM:

III. TEST LOCATIONS

Test locations shall be BST tandems in Norcross, Georgia (NRCRGAMA01T), and Atlanta, Georgia - Buckhead (ATLNGABU01T). Georgia end offices to be used in the test will be DNWDGAMA67A, GRFNGAMA22C, ATLNGACS33A, and JCSNGAMARS1.

Additional tandem and end office selections will be determined at a later date upon mutual agreement of the parties.

IV. FINANCIAL RESPONSIBILITIES

BST's normal access tariff charges shall apply for the Test. Such charges shall be billed to BSLD. BSLD shall pay BST, as appropriate, residence, business, and operator services rates as established in BST's Federal and State Access Tariffs, except as specifically provided in this article IV, each party shall bear its own expense in order to participate in this trial.

V. BST'S DUTIES

A. BST shall establish internal procedures to ensure that the only lines that will be presubscribed to CIC 377 during the Test Period are lines associated with the numbers on the Approved ANI List to be provided by BSLD and that calls originating from any number not on the Approved ANI List will not be completed during the Test Period.

B. BST will activate CIC 377 as a valid code in the Equal Access Service Center ("EASC") at the offices set forth in the Section III of this Agreement.

C. BST will process PIC change orders to CIC 377 not to exceed 200 lines.

BSLD/BST CONFIDENTIAL/PROPRIETARY INFORMATION

VI. BSLD'S DUTIES

A. BSLD shall provide to BST an Approved ANI List consisting of no more than 200 ANIs. This number may be increased upon mutual agreement of the parties.

B. BSLD shall submit PIC change orders to BST.

C. BSLD shall be responsible for establishing any necessary special test lines, and shall be responsible for placing any test calls from such lines established pursuant to this Agreement.

VII. SHARED DUTIES

The parties shall participate in joint planning prior to beginning of the actual test. Each party shall bear its own administrative costs of participating in such planning.

VIII. CONFIDENTIAL/PROPRIETARY INFORMATION**A. Confidential Information**

(1) Information furnished or disclosed by one party or its agent or representative (the "Originating Party") to the other party or its agent or representative (the "Receiving Party") in connection with or in contemplation of this Agreement (including but not limited to proposals, contracts, tariff and contract drafts, specifications, drawings, network designs and design proposals, pricing information, strategic plans, computer programs, software and documentation, and other technical or business information related to current and anticipated BST or BSLD products and services), shall be "Confidential Information."

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BSLD/BST CONFIDENTIAL/PROPRIETARY INFORMATION

(2) If such information is in written or other tangible form (including, without limitation, information incorporated in computer software or held in electronic storage media) when disclosed to the Receiving Party, it shall be Confidential Information only if it is identified by clear and conspicuous markings to be confidential and/or proprietary information of the Originating Party; provided, however, that all written or oral proposals exchanged between the parties regarding pricing of the Services shall be Confidential Information, whether or not expressly indicated by markings or statements to be confidential or proprietary.

(3) If such information is not in writing or other tangible form when to the Receiving Party, it shall be Confidential Information only if (1) the original disclosure of the information is accompanied by a statement that the information is confidential and/or proprietary, and (2) the Originating Party provides a written description of the information so disclosed, in detail reasonably sufficient to identify such information, to the Receiving Party within thirty (30) days after such original disclosure.

(4) The terms and conditions of this Agreement shall be deemed Confidential Information as to which each party shall be both an Originating Party and a Receiving Party.

(5) Confidential Information shall be deemed the property of the Originating Party.

(6) The following categories of information shall not be Confidential Information:

(a) known to the Receiving Party without restriction when

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BSLD/BST CONFIDENTIAL/PROPRIETARY INFORMATION

received, or thereafter developed independently by the Receiving Party; or

(b) obtained from a source other than the Originating Party through no breach of confidence by the Receiving Party; or

(c) in the public domain when received, or thereafter enters the public domain through no fault of the Receiving Party; or

(d) disclosed by the Originating Party to a third party without restriction;

(e) lawfully in the possession of the Receiving Party at the time of receipt from the Originating Party.

(7) Rights and obligations provided by this Section shall take precedence over specific legends or statements associated with information when received .

B. Protection of Confidentiality

A Receiving Party shall hold all Confidential Information in confidence during the Term and for a period of three (3) years following the end of the Term or such other period as the parties may agree. During that period, the Receiving Party:

(1) shall use such Confidential Information solely in furtherance of the matters contemplated by this Agreement and related to either party's performance of this Agreement;

(2) shall reproduce such Confidential Information only to the extent necessary for such purposes;

(3) shall restrict disclosure of such Confidential Information to such of

BellSouth Interconnection Services

its employees or its affiliate's employees as have a need to know such information for such purposes only.

(4) shall advise any employees to whom such Confidential Information is disclosed of the obligations assumed in this Agreement;

(5) shall not disclose any Confidential Information to any third party (not including disclosure to a BellSouth subsidiary) without prior written approval of the Originating Party except as expressly provided in this Agreement; and

(6) shall take such other reasonable measures as are necessary to prevent the disclosure, unauthorized use or publication of Confidential Information as a prudent business person would take to protect its own similar confidential information, including, at a minimum, the same measures it uses to prevent the disclosure, unauthorized use or publication of its own similar proprietary or confidential information.

C. Disclosure to or by Affiliates or Subcontractors

In the absence of a contrary instruction by a party, such party's affiliates and its subcontractors performing work in connection with this Agreement shall be deemed agents of such party for purposes of receipt or disclosure of Confidential Information. Accordingly, any receipt or disclosure of Confidential Information by a party's affiliate, or its subcontractor performing work in connection with this Agreement, shall be deemed a receipt or disclosure by the party.

D. Return or Destruction of Confidential Information

(1) Upon termination of this Agreement, or at an earlier time if the information is no longer needed for the purposes described in this Section VIII each party shall cease use of Confidential Information received from the other party and shall

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BSLD/BST CONFIDENTIAL/PROPRIETARY INFORMATION

use its best efforts to destroy all such Confidential Information, including copies thereof, then in its possession or control. Alternatively, or at the request of the originating party, the Receiving Party shall use its best efforts to return all such Confidential Information and copies to the Originating Party.

(2) Any Confidential Information that is contained in data bases and/or mechanized systems in such a manner that is reasonably cannot be isolated for destruction or return, shall continue to be held in confidence subject to the provisions of the Agreement.

(3) The rights and obligations of the parties under this Agreement with respect to any Confidential Information returned to the Originating Party shall survive the return of the Confidential Information.

E. Disclosure to Consultants

A Receiving Party may disclose Confidential Information to a person or entity (other than a direct competitor of the Originating Party) retained by the Receiving Party to provide advice, consultation, analysis, legal counsel or any other similar services ("Consulting Services") in connection with this Agreement or the Services (such person or entity hereinafter referred to as "Consultant") only with the Originating Party's prior permission (which shall not be unreasonably withheld) and only after the Disclosing Party provides to the Originating Party a copy of a written agreement by such Consultant (in a form reasonably satisfactory to the Originating Party):

(a) to use such Confidential Information only for the purpose of providing Consulting Services to the Receiving Party; and

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BSLD/BST CONFIDENTIAL/PROPRIETARY INFORMATION

(b) to be bound by the obligations of a Receiving Party under this Agreement with respect to such Confidential Information.

F. Required Disclosure

(a) A Receiving Party may disclose Confidential Information if such disclosure is in response to an order or request from a court, the FCC, or other regulatory body; provided, however, that before making such disclosure, the Receiving Party shall first give the Originating Party reasonable notice and opportunity to object to the order or request, and/or to obtain a protective order covering the Confidential Information to be disclosed.

(b) If the Federal Communications Commission ("Commission") or a state regulatory entity with applicable jurisdiction orders either party to file this Agreement with the Commission or such state regulatory entity pursuant to authority granted by law or regulation, the party charged with such filing shall provide notice to the other party as provided in Section IX and file the Agreement to the extent required. Each party shall request confidential treatment in connection with such filing.

G. Injunctive Remedy

In the event of a breach or threatened breach by a Receiving Party or its agent or representative of the terms of this Section VIII, the Originating Party shall be entitled to an injunction prohibiting such breach in addition to such other legal and equitable remedies as may be available to it in connection with such breach. Each party acknowledges that the Confidential Information of the other party is valuable and unique and that the use or disclosure of such Confidential Information in breach of this

Agreement will result in irreparable injury to the other party.

NOTICES

Notices given pursuant to this Agreement shall be sent by U.S. Mail, first class, postage prepaid, or by facsimile, to the following address:

A. **BST**

Joe Romano

Suite 200

3355 Northeast Expressway

Chamblee, Georgia 30341

Facsimile Number 770-936-3789

B. **BSLD**

Renee Imbesi

32 Perimeter Center East

Atlanta, Georgia 30346

Facsimile Number 770-351-6061

IX. PUBLICITY AND PROMOTION

Each party agrees that there will not be any publicity or promotions relating to this Test.

X. LIABILITY

Neither the parties (nor their respective affiliates) will be liable to each other for any direct, incidental, special or consequential damages, including lost profits, sustained or incurred

in connection with the performance or non-performance of this Test, whether in tort, contract, strict liability, or otherwise, and whether or not such damages were foreseen or unforeseen, except for the obligation to pay charges for services provided.

XI. TERMINATION

Either party, in its sole discretion, may terminate this Agreement upon ten (10) days written notice to the other parties.

XII. MODIFICATION

This Agreement can be changed or modified only by written amendment signed by each of the parties.

XIII. COMPLETE AGREEMENT

This Agreement constitutes the entire agreement between the parties and supersedes any prior understandings.

This Agreement is effective this 13 day of June, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

By: _____
(signature)

By: Joe Romano
(printed name)

Title: Sales Director

Date: June 13, 2000

BELLSOUTH LONG DISTANCE, INC.

By: _____
(signature)

By: Joseph M. Gilman
(printed name)

Title: Authorized Agent

Date: 6/9/00

BSLD/BST CONFIDENTIAL/PROPRIETARY INFORMATION