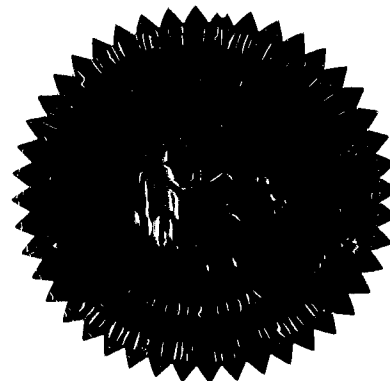


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 001305-TP

In the Matter of

PETITION BY BELLSOUTH  
TELECOMMUNICATIONS, INC. FOR  
ARBITRATION OF CERTAIN ISSUES IN  
INTERCONNECTION AGREEMENT WITH  
SUPRA TELECOMMUNICATIONS AND  
INFORMATION SYSTEMS, INC.



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THE OFFICIAL TRANSCRIPT OF THE HEARING,  
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VOLUME 2

Pages 165 through 350

PROCEEDINGS:

HEARING

BEFORE:

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

DATE:

Wednesday, September 26, 2001

TIME:

Commenced at 9:30 a.m.

PLACE:

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

REPORTED BY:

KORETTA E. FLEMING, RPR  
OFFICIAL COMMISSION REPORTER

APPEARANCES:

(As heretofore noted.)

FLORIDA PUBLIC SERVICE COMMISSION DOCUMENT NUMBER-DATE

12592 OCT-4-01

FPSC-COMMISSION CLERK

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## I N D E X

## WITNESSES

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## P R O C E E D I N G S

(Transcript follows in sequence from Volume 1.)

COMMISSIONER JABER: Okay. Mr. Twomey?

MR. TWOMEY: Yes, BellSouth calls Cynthia Cox as its next witness.

CYNTHIA K. COX

was called as a witness by BellSouth Telecommunications, Inc. and, having been duly sworn, testified as follows:

## D I R E C T E X A M I N A T I O N

BY MR. TWOMEY:

Q Ms. Cox, would you please state your full name and business address for the record?

A My name is Cindy Cox. My business address is 675 West Peachtree Street in Atlanta, Georgia.

Q By whom are you employed?

A By BellSouth.

Q Have you caused to be filed into the record of this proceeding direct testimony on July 27th, 2001, consisting of 43 pages?

A Yes.

Q Do you have any substantive additions, corrections, or changes to make to that testimony at this time?

A I have one change -- one addition, I should say. On Page 2 --

COMMISSIONER JABER: Hang on one second.

FLORIDA PUBLIC SERVICE COMMISSION

1 THE WITNESS: Okay.

2 COMMISSIONER JABER: Go ahead.

3 A It's Page 2, Line 21, it's where I list the other  
4 BellSouth witnesses. I should also have included Mr. Jerry  
5 Hendrix in that list.

6 BY MR. TWOMEY:

7 Q Okay. And just for the record to be clear, this  
8 testimony was originally filed by Mr. Ruscilli, and you adopted  
9 it, correct?

10 A That's correct.

11 Q Okay, the direct testimony only, correct?

12 A The direct testimony only, yes.

13 Q If I were to ask you the same questions that were  
14 posed in the direct testimony filed on July 27th, would your  
15 answers be the same?

16 A Yes, they would.

17 MR. TWOMEY: I'd like to have the testimony inserted  
18 into the record at this time as if read from the stand.

19 COMMISSIONER JABER: Okay. The prefiled direct  
20 testimony of John A. Ruscilli, as adopted by Cynthia Cox, shall  
21 be inserted into the record as though read.

22 MR. TWOMEY: Thank you.

23

24

25

1 BELL SOUTH TELECOMMUNICATIONS, INC.  
2 DIRECT TESTIMONY OF JOHN A. RUSCILLI  
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
4 DOCKET NO. 001305-TP  
5 JULY 27, 2001  
6

7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELL SOUTH  
8 TELECOMMUNICATIONS, INC. ("BELL SOUTH") AND YOUR  
9 BUSINESS ADDRESS.  
10

11 A. My name is John A. Ruscilli. I am employed by BellSouth as Senior Director  
12 for State Regulatory for the nine-state BellSouth region. My business address  
13 is 675 West Peachtree Street, Atlanta, Georgia 30375.  
14

15 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND  
16 AND EXPERIENCE.  
17

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

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

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

14  
15 A. The purpose of my testimony is to present BellSouth’s position on numerous  
16 unresolved issues contained in its Petition for Arbitration between BellSouth  
17 and Supra Telecommunications and Information Systems, Inc. (“Supra”) filed  
18 with the Florida Public Service Commission (“Commission”) on September 1,  
19 2000. I will also present BellSouth’s position on many of the additional issues  
20 raised by Supra in its response to BellSouth’s Petition for Arbitration filed on  
21 October 16, 2000. BellSouth witnesses Mr. Jerry Kephart, Mr. Ron Pate and  
22 Mr. Clyde Green will also file direct testimony in this case. In my testimony, I  
23 respond to the following issues: 1, 2, 4, 7-29, 31-32, 44-45, 49, 51-52, 59, 63,  
24 and 65-66. The wording of these issues in my testimony are the same as  
25 contained in the Commission’s July 13, 2001 Supplemental Order Establishing

1 Procedure (Order No. PSC-1475-PCO-TP. In addition, I have attached as  
2 Exhibit JAR-1 a matrix containing, where appropriate, the relevant contract  
3 language proposed by BellSouth concerning the issues in dispute in this  
4 arbitration. Because Supra has introduced issues that were not part of the  
5 original negotiations process, in several instances the contract language  
6 proposed in JAR-1 is language agreed upon between BellSouth and AT&T or  
7 MCI. Although the language references AT&T or MCI, this language is  
8 proposed to address the relevant issues in this arbitration.

9  
10 Q. HAVE THE PARTIES DISCUSSED EACH OF THESE ISSUES IN AN  
11 INTERCOMPANY REVIEW BOARD MEETING AS ORDERED BY THE  
12 COMMISSION?

13  
14 A. No. Although BellSouth attempted to engage Supra on all issues, Supra  
15 refused to negotiate the following issues that are addressed in my testimony  
16 during the Intercompany Review Board Meetings: 12, 14, 15, 18, 19, 20, 25-  
17 29, 31, 32, 44, 49, 51, and 59.

18  
19 *Issue 1: What are the appropriate fora for the submission of disputes under the new*  
20 *agreement?*

21  
22 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

23  
24 A. BellSouth's position is that the appropriate regulatory authority should resolve  
25 disputes and that BellSouth should not be precluded from petitioning the



1 Commission for resolution of disputes under the Interconnection Agreement.  
2 BellSouth is unwilling to agree to terms and conditions that restrict or delay its  
3 ability to seek relief from the Commission when the parties are unable to  
4 resolve, among themselves, differences that may arise regarding the  
5 interconnection agreement. BellSouth simply should not be required to waive  
6 its right to have the Commission hear disputes.

7  
8 In fact, this Commission recently determined in the BellSouth/AT&T  
9 Arbitration Order in Docket No. 000731-TP “that third party arbitration is  
10 neither speedy nor inexpensive. Moreover, nothing in the law gives us explicit  
11 authority to require third party arbitration. Consequently, we find that this  
12 Commission shall resolve disputes under the Interconnection Agreement.”  
13 (Order No. PSC-01-1402-FOF-TP at page 105). Indeed, the Eighth Circuit  
14 Court has ruled that state commissions are charged with the authority to  
15 resolve disputes relating to interconnection agreements. In *Iowa Utilities*  
16 *Board v. FCC*, 120 F.3d 753, 804 (8<sup>th</sup> Cir. 1997), the Eighth Circuit  
17 determined “that state commissions retain the primary authority to enforce the  
18 substantive terms of the agreements made pursuant to Sections 251 and 252.”  
19 Further, “the state commissions plenary authority to accept or reject these  
20 agreements necessarily carries with it the authority to enforce the provisions of  
21 agreements that state commissions have approved.” *Id.*

22  
23 Even if this Commission had the legal ability to order the arbitration procedure  
24 requested by Supra and to empower the arbitrator with the ability to award the  
25 relief sought by Supra, to do so would be adverse to public policy. BellSouth

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

16  
17 Q. WHAT HAS BEEN BELLSOUTH’S EXPERIENCE WITH COMMERCIAL  
18 ARBITRATION?

19 -  
20 A. BellSouth’s experience with commercial arbitration has proven that the process  
21 is an impractical, time-consuming and costly way to resolve interconnection  
22 disputes. Our experience shows that it is difficult to find neutral commercial  
23 arbitrators that are sufficiently experienced in the telecommunications industry  
24 so that a decision can be made expeditiously and without having to train the  
25 arbitrator on the very basics of the industry. The Commission and its staff are

1 clearly more capable to handle disputes between telecommunications carriers  
2 than are commercial arbitrators.

3

4 Further, if the parties were forced to use commercial arbitration to resolve  
5 disputes, not only is there the strong prospect of substantively inconsistent  
6 rulings, there would likely be an equally troubling inconsistency in the  
7 remedies available to different carriers that are under the Commission's  
8 jurisdiction. If a dispute were to arise between BellSouth and an ALEC, where  
9 no commercial arbitration clause existed in the Agreement, the dispute would  
10 be resolved by the Commission (as these disputes have been in the past).

11 Presumably, the Commission's decision would be informed by past decisions.

12 The Commission's decision would also be appealable, and the Commission  
13 would resolve the matter only by ordering remedies within its power.

14 However, in commercial arbitration, the arbitrator is not bound to follow  
15 Commission precedent and his decisions can only be appealed on very narrow  
16 grounds. Further, once this procedure is memorialized in an approved

17 Agreement, other ALECs could opt into this commercial arbitration language.

18 Thus, there is a great likelihood that the commercial arbitrators would interfere

19 with the ability of the Commission to make policy by ruling in a way that is

20 inconsistent with the Commission's orders. There is also the certainty that at

21 least disputes involving Supra (and perhaps disputes involving many other

22 ALECs) would be handled in a radically different procedural manner than other

23 disputes, which would continue to be brought before the Commission.

24

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

4

5 ***Issue 2: What is the scope of the ability to use the other party's Confidential***  
6 ***Information that is obtained pursuant to this Interconnection Agreement?***

7

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

9

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

16

17 Apparently, Supra contends that it should be able to retain any confidential  
18 information it obtains from BellSouth throughout the entire term of the  
19 Agreement. Supra further contends that it should be able to use that  
20 information for any purpose, not just for the purpose it was provided.

21

22 Confidential information is, by definition, either information that is valuable  
23 because it is not widely known or information that, if known, would cause  
24 damage to the business of the owner of the information. For this reason, it is  
25 standard business practice, as well as this Commission's practices, to protect

1           this information. Supra's proposal to obtain confidential information for one  
2           purpose, but reserve the right to use it for others, is not only unjustified, it  
3           appears to reflect an intention by Supra to misuse this information. BellSouth  
4           urges the Commission to find that BellSouth's proposed language be  
5           incorporated into the Agreement so that confidential information is  
6           appropriately protected.

7

8           ***Issue 4: Should the Interconnection Agreement contain language to the effect that***  
9           ***it will not be filed with the Florida Public Service Commission for approval prior to***  
10           ***an ALEC obtaining ALEC certification from the Florida Public Service***  
11           ***Commission?***

12

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

14

15           A.     Given that any ALEC, whether or not certified, may adopt this Agreement,  
16           BellSouth believes that language requiring certification prior to filing of the  
17           Agreement with the Commission is appropriate. The Commission has agreed  
18           with BellSouth stating "BellSouth's caution in deciding to hold filings for non-  
19           certificated entities until they obtain certification is appropriate." (Letter dated  
20           April 25, 2000, from Walter D'Haeseleer, Director, Division of  
21           Telecommunications, to Nancy Sims of BellSouth). This letter is attached to  
22           my testimony as Exhibit JAR-2. It is unclear why Supra holds this position,  
23           considering that Supra is certificated as an ALEC in Florida.

24

1 *Issue 7: Which end user line charges, if any, should Supra be required to pay*  
2 *BellSouth?*

3  
4 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

5  
6 A. The FCC has authorized end user line charges be assessed to recover the cost  
7 of local number portability implementation. 47 C.F.R § 52.33(a) states:

8  
9 Incumbent local exchange carriers may recover their carrier-specific  
10 costs directly related to providing long-term number portability by  
11 establishing in tariffs filed with Federal Communications Commission  
12 a monthly number-portability charge, as specified in paragraph  
13 (a)(1)....

14  
15 47 C.F.R. § 52.33(a)(1) specifies that the monthly number portability charge  
16 may take effect no earlier than February 1, 1999, on a date the ILEC selects,  
17 and may end no later than five years after that date. Further, 47 C.F.R. §  
18 52.33(a)(1)(ii) states:

19  
20 An incumbent local exchange carrier may assess on carriers that  
21 purchase the incumbent local exchange carrier's switching ports as  
22 unbundled network elements under section 251 of the Communications  
23 Act, and resellers of the incumbent local exchange carrier's local  
24 service, the same charges as described in paragraph (a)(1)(A) of this

1 section, as if the incumbent local exchange carrier were serving those  
2 carriers' end users.

3

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

7

8 Furthermore, Supra should be required to pay end user common line charges.  
9 FCC Rule 51.617(a) clearly states that ILECs shall assess the end user common  
10 line charge upon resellers:

11

12 Notwithstanding the provision in § 69.104(a) of this chapter that the  
13 end user common line charge be assessed upon end users, an incumbent  
14 LEC shall assess this charge, and the charge for changing the  
15 designated primary interexchange carrier, upon requesting carriers that  
16 purchase telephone exchange service for resale.

17

18 Q. HAS THE COMMISSION RECENTLY ADDRESSED THIS ISSUE IN  
19 ANOTHER PROCEEDING?

20

21 A. Yes. In fact, the Commission addressed this same issue in the arbitration  
22 complaint proceeding between BellSouth and Supra in Docket No. 001097-TP.  
23 At the July 10, 2001 Commission Agenda Session, the Commission approved  
24 the Staff's Recommendation on Issue 2, stating "BellSouth acted appropriately  
25 in billing Supra for EUCLs". As reflected in Exhibit JAR-1, the contract

1 language that BellSouth proposes for the new agreement with Supra is  
2 consistent with the contract language at issue in Docket No. 001097-TP. As  
3 such, the Commission should reach the same conclusion in this proceeding that  
4 Supra be required to pay end user line charges.

5

6 ***Issue 9: What should be the definition of "ALEC"?***

7

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

9

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

18

19 ***Issue 10: Should the rate for a loop be reduced when the loop utilizes Digitally  
20 Added Main Line (DAML) equipment?***

21

22 Q. BRIEFLY DESCRIBE DAML EQUIPMENT AND WHEN BELLSOUTH  
23 UTILIZES IT.

24



1 DAML equipment is designed for use over a copper facility. It uses Integrated  
2 Services Digital Network (ISDN) technology to electronically derive additional  
3 loops over copper facilities in a manner similar to that provided by digital loop  
4 carrier (DLC). DAML provides a two-to-one, four-to-one, or six-to-one pair  
5 gain for Plain Old Telephone Service (POTS) between the central office (CO)  
6 unit and a line powered remote unit (RU). Stated another way, instead of  
7 deriving a single loop over a single copper pair from the customer's premises  
8 to the central office, the use of DAML equipment allows up to six loop  
9 equivalents to be served over a single copper pair.

10

11 BellSouth deploys DAML equipment on a very limited basis to expand a single  
12 loop to derive additional digital channels, each of which may be used to  
13 provide voice grade service. The deployment is limited to those situations  
14 where loop facilities are not currently available for the additional voice grade  
15 loop(s).

16

17 Q. SHOULD THE RATE FOR THE UNBUNDLED LOOP BE REDUCED  
18 WHEN DAML EQUIPMENT IS USED?

19

20 A. No. The use of DAML equipment is a means to meet a request for service in a  
21 timely manner. It is not generally a more economic means of meeting demand  
22 on a broad basis than using individual loop pairs. Supra apparently believes  
23 that loops utilizing DAML equipment should be offered at a lower cost than  
24 other loops. However, costs for unbundled loops have been calculated in  
25 compliance with Federal Communications Commission rules on a forward-

1 looking basis without regard to the manner in which the customer is served  
2 (e.g., copper or digital loop carrier). Thus, the unbundled loop rates the  
3 Commission recently approved in the UNE cost docket (Docket No. 990649-  
4 TP) are appropriate and do not require any adjustment to recognize the use of  
5 DAML equipment.

6

7 Q. WHAT SOLUTION TO THIS ISSUE DOES BELLSOUTH PROPOSE?

8

9 A. This Commission should affirm that the rates for unbundled loops that this  
10 Commission has recently approved are appropriate for those instances where  
11 DAML equipment is used.

12

13 *Issue 11A: Under what conditions, if any, should the Interconnection Agreement*  
14 *state that the parties may withhold payment of disputed charges?*

15 *Issue 11B: Under what conditions, if any, should the Interconnection Agreement*  
16 *state that the parties may withhold payment of undisputed charges?*

17 *Issue 63: Under what circumstances, if any, would BellSouth be permitted to*  
18 *disconnect service to Supra for nonpayment?*

19

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

21

22 A. Attachment 6 of BellSouth's proposed Interconnection Agreement contains  
23 provisions to handle billing disputes between the parties. Regarding Issue 11,  
24 BellSouth contends that the parties should pay undisputed charges on a timely  
25 basis, regardless of the amount of any disputed charges. Allowing one party to

1 withhold payment of appropriately billed charges when other charges, whether  
2 appropriately or inappropriately billed, are in dispute, would enable that party  
3 to “game” the billing system to avoid paying bills.

4  
5 Regarding Issue 63, BellSouth should be permitted to disconnect service to  
6 Supra or any other ALEC that fails to pay undisputed charges within the  
7 applicable time period. BellSouth’s position is consistent with the  
8 Commission’s recent decision in the BellSouth/WorldCom Arbitration  
9 proceeding in Docket No. 000649-TP. In its Order, the Commission found that  
10 “BellSouth is within its rights to deny service to customers that fail to pay  
11 undisputed amounts within reasonable time frames. Therefore, absent a good  
12 faith billing dispute, if payment of account is not received in the applicable  
13 time frame, BellSouth shall be permitted to disconnect service to WorldCom  
14 for nonpayment.” (Order No. PSC-01-0824-FOF-TP at pp. 155-156).  
15 BellSouth must be able to deny service in order to obtain payment for services  
16 rendered and/or prevent additional past due charges from accruing. It would  
17 not be a reasonable business practice for BellSouth to operate “on faith” that an  
18 ALEC will pay its bills. Indeed, a business could not remain viable if it were  
19 obligated to continue to provide service to customers who refuse to pay lawful  
20 charges.

21  
22 BellSouth must also consider that the terms and conditions of any agreement it  
23 reaches with one ALEC are subject to being adopted by another ALEC. The  
24 FCC’s Rule 51.809 requires that, subject to certain restrictions, BellSouth  
25 must, “make available without unreasonable delay to any requesting

1 telecommunications carrier any individual interconnection, service, or network  
2 element arrangement contained in any agreement to which it is a party that is  
3 approved by a state commission pursuant to section 252 of the 1996 Act, upon  
4 the same rates, terms, and conditions as those provided in the agreement.”

5 This “pick and choose” requirement makes it imperative that each executed  
6 interconnection agreement includes language that addresses disconnection of  
7 service for non-payment.

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

14

15 ***Issue 12: Should BellSouth be required to provide transport to Supra Telecom if***  
16 ***that transport crosses LATA boundaries?***

17

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

19

20 A. This issue is basically a legal matter and, while I am not an attorney, a plain  
21 reading of Section 271 of the Act reveals that BellSouth is prohibited from  
22 providing interLATA facilities or services to Supra or any other carrier.

23 Neither BellSouth nor its affiliates are allowed to provide services that cross  
24 LATA boundaries prior to receiving authorization from the Federal

1           Communications Commission (“FCC”) to do so, pursuant to the requirements  
2           of Section 271 of the Act. Specifically, Section 271(a) states:

3

4                       GENERAL LIMITATION. – Neither a Bell operating company, nor  
5                       any affiliate of a Bell operating company, may provide interLATA  
6                       services except as provided within this section.

7

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

15

16          ***Issue 13: What should be the appropriate definition of “local traffic” for purposes***  
17          ***of the parties’ reciprocal compensation obligations under Section 251(b)(5) of the***  
18          ***1996 Act?***

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

21

22          Q.       DO YOU HAVE ANY GENERAL COMMENTS YOU CAN MAKE  
23               REGARDING THESE ISSUES?

24

1 A. Yes. For all practical purposes, the FCC has recently resolved this issue. As  
2 has been anticipated for quite some time, on April 27, 2001, the FCC issued its  
3 Order on Remand and Report and Order, FCC 01-131, In the Matter of  
4 Implementation of the Local Competition Provisions in the  
5 Telecommunications Act of 1996, CC Docket No. 96-98 April 27, 2001) and  
6 Inter-carrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68  
7 (“Order on Remand”). In this Order, the FCC affirmed its earlier conclusion  
8 that ISP-bound traffic is predominantly interstate access traffic that is not  
9 subject to the reciprocal compensation obligations of section 251(b)(5) but is  
10 within the jurisdiction of the FCC under section 201 of the Act. (Order at ¶1).  
11 The FCC made it clear that because it has now exercised its authority under  
12 section 201 to determine the appropriate intercarrier compensation for ISP-  
13 bound traffic, state commissions no longer have the authority to address this  
14 issue. (Order at ¶82). Therefore, this is no longer a matter that can be  
15 arbitrated in this proceeding.

16  
17 ***Issue 14: Should BellSouth pay reciprocal compensation to Supra Telecom where***  
18 ***Supra Telecom is utilizing UNEs to provide local service for the termination of***  
19 ***local traffic to Supra’s end users? If so, which end user line charges should Supra***  
20 ***be required to pay BellSouth?***

21 ***Issue 25A: Should BellSouth charge Supra Telecom only for UNEs that it orders***  
22 ***and uses?***

23 ***Issue 25B: Should UNEs ordered and used by Supra Telecom be considered part of***  
24 ***its network for reciprocal compensation, switched access charges and inter/intra***  
25 ***LATA services?***

1

2 Q. IS THE WORDING OF ISSUE 14 CONSISTENT WITH YOUR  
3 UNDERSTANDING OF HOW THE ISSUE WORDING WAS  
4 ESTABLISHED AT THE COMMISSION'S ISSUE ID?

5

6 A. No. It is my understanding that the appropriate wording of the last sentence in  
7 the Issue as stated above should be: "If so, for which UNEs should reciprocal  
8 compensation be paid?" Therefore, I will respond to the issue as it was  
9 discussed and agreed upon at the Issue ID.

10

11 Q. WHAT IS BELL SOUTH'S POSITION ON THESE ISSUES?

12

13 A. BellSouth's position is that the purpose of reciprocal compensation is to  
14 recover the costs incurred by the terminating carrier for utilizing its network.  
15 Since BellSouth does not charge Supra the end office switching rates when a  
16 BellSouth customer places a local call to a Supra end user, and Supra does not  
17 have its own network, Supra incurs no cost in terminating that call. Thus,  
18 reciprocal compensation is not appropriate.

19

20 Specifically regarding Issue 25, BellSouth and WorldCom were able to agree  
21 upon contract language and resolved this issue outside of the arbitration. In an  
22 effort to settle this issue with Supra, BellSouth is willing to offer this same  
23 language to Supra for inclusion in their interconnection agreement. Exhibit  
24 JAR-1 attached to my testimony contains BellSouth's proposed language that  
25 will resolve this issue.

1

2 *Issue 15: What Performance Measurements should be included in the*  
3 *Interconnection Agreement?*

4 *Issue 20: Should the Interconnection Agreement include validation and audit*  
5 *requirements which will enable Supra Telecom to assure the accuracy and*  
6 *reliability of the performance data BellSouth provides to Supra Telecom?*

7

8 Q. SHOULD EITHER OF THESE ISSUES BE ADDRESSED IN THIS  
9 PROCEEDING?

10

11 A. No. Both of these issues are among the issues included in the Florida Public  
12 Service Commission's generic Performance Measurement Docket No. 000121-  
13 TP. The Commission convened this proceeding to consider the very issues  
14 Supra seeks to arbitrate in this docket. However, the outcome of the generic  
15 proceeding will address these issues for the entire ALEC industry in Florida.

16

17 Q. HOW DOES THE GENERIC PERFORMANCE MEASUREMENT DOCKET  
18 ADDRESS ISSUES 15 AND 20 AS RAISED IN THIS ARBITRATION?

19

20 A. Both of these issues are being directly addressed in the generic performance  
21 measurements docket. To clarify, the following is an excerpt of the list of  
22 issues from the generic performance measurements docket that relate to  
23 Supra's concerns in this docket:

24

Issues from Docket No. 000121-TP that pertain to measurements:



1 ***Issue 1.a: What are the appropriate service quality measures to be***  
 2 ***reported by BellSouth?***

3 ***Issue 1.b: What are the appropriate business rules, exclusions,***  
 4 ***calculations, and levels of disaggregation and***  
 5 ***performance standards for each measurement?***

6  
 7 Issues from Docket No. 000121-TP that pertain to audits:

8 ***Issue 24.a: Should periodic third-party audits of performance***  
 9 ***assessment plan data and reports be required?***

10

11 ***Issue 25: If periodic third-party audits are required, who should be***  
 12 ***required to pay the cost of the audits?***

13

14 ***Issue 27.a: Should an ALEC have the right to audit or request a***  
 15 ***review by BellSouth for one or more selected measures***  
 16 ***when it has reason to believe the data collected for a***  
 17 ***measure is flawed or the report criteria for the measure is***  
 18 ***not being adhered to?***

19

20 ***Issue 27.b: If so, should the audit be performed by an independent***  
 21 ***third party?***

22

23 This generic docket is the appropriate vehicle for collaborating on the set of  
 24 performance measures appropriate to the ALEC industry in Florida.

25 Performance measures should not be decided in individual ALEC arbitration

1 proceedings. Since all ALECs in Florida, including Supra, had the opportunity  
2 to participate in this docket, this Commission should require Supra to abide by  
3 the Commission's decision in the generic performance measurement docket.

4

5 Q. IS THE FLORIDA PUBLIC SERVICE COMMISSION EXPECTED TO  
6 ISSUE A DECISION IN THE GENERIC PERFORMANCE  
7 MEASUREMENTS DOCKET SOON?

8

9 A. Yes. The most recent schedule for the Generic Performance Docket No.  
10 000121-TP anticipates a recommendation by the Commission Staff on August  
11 2, 2001 and a Commission Order September 4, 2001. Thus, the Commission  
12 Order will be issued well before the September 26, 2001 hearing in this Supra  
13 Arbitration Docket.

14

15 Q. WILL THE COMMISSION'S ORDER IN THE GENERIC DOCKET  
16 DETERMINE THE PERFORMANCE MEASUREMENTS TO BE USED  
17 FOR ALL ALECS IN FLORIDA?

18

19 A. Yes.

20

21 ***Issue 16: Under what conditions, if any, may BellSouth refuse to provide service***  
22 ***under the terms of the interconnection agreement?***

23

24 Q. WHAT IS BELL SOUTH'S UNDERSTANDING OF THIS ISSUE?

25

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

10

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

12

13 A. In order to incorporate new or different terms, conditions or rates into the  
14 parties Agreement, it is imperative that an Amendment be executed. When an  
15 ALEC notifies BellSouth that it wishes to add something to or modify  
16 something in its Agreement, BellSouth negotiates an Amendment with that  
17 ALEC. Not only is this BellSouth's practice, the Act requires that BellSouth  
18 and ALECs operate pursuant to filed and approved interconnection agreements.  
19 This Commission's recent Order in Docket No. 990649-TP (UNE Pricing),  
20 appears to confirm BellSouth's position regarding the requirement for  
21 amendments to agreements. At page 473, the Commission states "Therefore,  
22 upon consideration, we find that it is appropriate for the rates to become  
23 effective when the interconnection agreements are amended to reflect the  
24 approved UNE rates and the amended agreement is approved by us."

25

1 As will be discussed in more detail in Issues 44 and 45, and except in specific  
2 instances where the Commission orders otherwise, (i.e. the Commission's  
3 Order in Docket No. 990649-TP) BellSouth's position is that the Amendment  
4 becomes effective when it is signed by both parties. The executed Amendment  
5 acts as BellSouth's authority to affect any required billing changes. It is  
6 ludicrous for Supra to contend that BellSouth must provide Supra with  
7 services, items or elements without compensation when those services, items  
8 or elements are not in Supra's Agreement.

9

10 ***Issue 17: Should Supra Telecom be allowed to engage in "truthful" comparative***  
11 ***advertising using BellSouth's name and marks? If so, what should be the limits of***  
12 ***that advertising, if any?***

13

14 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

15

16 A. BellSouth's proposed language allows use of the other party's name in  
17 comparative advertising so long as the reference is "truthful and factual, does  
18 not infringe any intellectual property rights of the other Party and otherwise  
19 complies with all applicable laws." In fact, in Supra's Response, Supra's  
20 representation of BellSouth's position on this issue says that Supra may refer to  
21 BellSouth in comparative advertising that is truthful. However, Supra  
22 continues by saying that "BellSouth has not expressed an opinion regarding the  
23 use of BellSouth marks (i.e. trademarks, trade names, service marks and  
24 service names)." This statement by Supra is ridiculous in light of the fact that  
25 a federal court judge recently issued a preliminary injunction against Supra

1 with regards to Supra's use of BellSouth's name and trademark on billboards  
2 in violation of applicable law. It should be very clear to Supra what  
3 BellSouth's opinion is regarding inappropriate use of BellSouth marks.

4  
5 Q. WHAT DO YOU UNDERSTAND SUPRA'S POSITION TO BE ON THIS  
6 ISSUE.

7  
8 It appears that Supra is seeking the Commission's approval to violate  
9 trademark law. If this is the case, Supra's request should obviously be denied.  
10 However, as long as Supra engages in lawful comparative advertising, as  
11 BellSouth's language permits, there should be no issue. However, regardless  
12 of contract language, Supra's use of BellSouth's name and trademarks should  
13 be subject to any applicable court orders relevant to this issue.

14  
15 *Issue 18: What are the appropriate rates for the following services, items or*  
16 *elements set for in the proposed Interconnection Agreement?*

- 17 (A) *Resale*  
18 (B) *Network Elements*  
19 (C) *Interconnection*  
20 (D) *Collocation*  
21 (E) *LNP/INP*  
22 (F) *Billing Records*  
23 (G) *Other*

24  
25 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

1  
2 A. BellSouth's position on these issues is that the rates the Commission  
3 established in its May 25, 2001 Order in Docket No. 990649-TP are the rates  
4 that should be incorporated into the Agreement. Of course, while that docket  
5 established cost-based rates for the vast majority of elements, including  
6 conversion of tariffed services to UNEs or UNE combinations, there are a few  
7 elements that were not addressed in that docket. For example, the Commission  
8 determined that collocation rates would not be established in Docket No.  
9 990649-TP. Instead, the Commission intends to address collocation rates in a  
10 generic collocation pricing proceeding. In the interim, BellSouth proposes that  
11 BellSouth's tariffed rates, which are cost-based, be incorporated into the  
12 Agreement. Another topic that was not addressed in Docket No. 990649-TP is  
13 line-sharing rates. This Commission recently considered line-sharing rates in  
14 the MCI arbitration. BellSouth proposes that the line sharing rates the  
15 Commission established in the MCI arbitration decisions be incorporated into  
16 Supra's Agreement.

17

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

21 ***Issue 28: What terms and conditions, and what separate rates if any, should apply***  
22 ***for Supra Telecom to gain access to and use BellSouth facilities to serve multi- unit***  
23 ***installations?***

24

25 Q. WHAT IS BELL SOUTH'S POSITION ON THESE ISSUES?

1

2 A. Regarding Issue 26, BellSouth and AT&T have agreed upon language for  
3 inclusion in AT&T's Interconnection Agreement that resolved this issue. In an  
4 effort to resolve this issue with Supra, BellSouth is willing to make this same  
5 contract language available for inclusion in Supra's agreement. The proposed  
6 contract language to resolve this issue is provided in Exhibit JAR-1 attached to  
7 my testimony.

8

9 Regarding Issue 28, Mr. Kephart discusses BellSouth's position regarding the  
10 terms and conditions that should apply for Supra to gain access to and use  
11 BellSouth's facilities to serve multi-unit installations. As I stated above in  
12 response to Issue 18, the rates the Commission established in its May 25, 2001  
13 Order in Docket No. 990649-TP are the rates that should be incorporated into  
14 the Agreement.

15

16 ***Issue 21: What does "currently combines" mean as that phrase is used in 47 C.F.R.***  
17 ***§ 51.315(b)?***

18 ***Issue 22: Under what conditions, if any, may BellSouth charge Supra Telecom a***  
19 ***"non-recurring charge" for combining network elements on behalf of Supra***  
20 ***Telecom?***

21 ***Issue 23: Should BellSouth be directed to perform, upon request, the functions***  
22 ***necessary to combine unbundled network elements that are ordinarily combined in***  
23 ***its network? If so, what charges, if any, should apply?***

24 ***Issue 24: Should BellSouth be required to combine network elements that are not***  
25 ***ordinarily combined in its network? If so, what charges, if any, should apply?***

1

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

3

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

9

10 Q. HASN'T THE FLORIDA COMMISSION RECENTLY RULED ON THIS  
11 ISSUE IN OTHER ARBITRATION PROCEEDINGS?

12

13 A. Yes. In its Final Order on Arbitration in the BellSouth/AT&T arbitration  
14 (Order No. PSC-01-1402-FOF-TP in Docket No. 000731-TP) issued June 28,  
15 2001, the Florida Commission concluded that:

16

17 Based on the foregoing, we find that it is not the duty of  
18 BellSouth to "perform the functions necessary to combine  
19 unbundled network elements in any manner." Rule 51.315(b)  
20 only requires BellSouth to make available at TELRIC rates  
21 those combinations requested by an ALEC that are, in fact,  
22 already combined and physically connected in its network at the  
23 time a requesting carrier places an order. Accordingly, we  
24 conclude that the phrase "currently combines" pursuant to FCC  
25 Rule 51.315(b) is limited to combinations of unbundled network  
26 elements that are, in fact, already combined and physically  
27 connected in BellSouth's network to serve a specific customer  
28 or location at the time a requesting carrier places an order. In  
29 other words, there is no physical work that BellSouth must  
30 complete in order to effect the combination that the requesting  
31 telecommunications carrier requests.

31

32 (Order at page 23.)



1  
2 In Order No. PSC-01-0824-FOF-TP, dated March 30, 2001, in the  
3 BellSouth/WorldCom arbitration, the Florida Commission found that  
4 “BellSouth is not required to combine unbundled network elements that are  
5 ordinarily combined in its network for ALECs at TELRIC rates.” (Order at  
6 page 35). In support of its decisions, the Florida Commission cited the Eighth  
7 Circuit Court’s July 18, 2000 ruling, wherein the Court reaffirmed its decision  
8 to vacate FCC Rules 51.315(c)-(f), stating that “[i]t is not the duty of the ILECs  
9 to ‘perform the functions necessary to combine unbundled network elements in  
10 any manner’ . . . .” (*Id.*). Finally, in Order No. PSC-01-1095-FOF-TP, dated  
11 May 8, 2001, in the BellSouth/Sprint arbitration, the Commission found that  
12 “BellSouth shall not be required to provide combinations of unbundled  
13 network elements that it ordinarily or typically combines in its network for  
14 Sprint at TELRIC rates.” (Order at page 23).

15

16 Q. WHAT IS BELLSOUTH REQUESTING OF THE COMMISSION?

17

18 A. BellSouth requests that the Commission find, consistent with its recent rulings  
19 in the AT&T, MCI, and Sprint arbitration proceedings with BellSouth, that  
20 BellSouth is only obligated to provide combinations to Supra at cost-based  
21 rates those combinations that are, in fact, already combined and physically  
22 connected in its network at the time a requesting carrier places an order.

23

24 ***Issue 27: Should there be a single point of interconnection within the LATA for the***  
25 ***mutual exchange of traffic? If so, how should the single point be determined?***

1

2 Q. IS THIS ISSUE ALREADY BEING ADDRESSED BY THE COMMISSION  
3 IN A GENERIC DOCKET?

4

5 A. Yes. The Commission is currently considering this issue in Phase 2 of Docket  
6 No. 000075-TP. As such, the Commission should defer any decision in this  
7 immediate proceeding to its decision in Docket No. 000075-TP.

8

9 Q. SHOULD THE COMMISSION DECIDE TO RULE ON THIS ISSUE IN  
10 THIS PROCEEDING, PLEASE EXPLAIN BELLSOUTH'S POSITION ON  
11 THIS ISSUE.

12

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

24

1 Q. DOES BELLSOUTH'S POSITION MEAN THAT SUPRA WOULD HAVE  
2 TO BUILD A NETWORK TO EACH BELLSOUTH LOCAL CALLING  
3 AREA, OR OTHERWISE HAVE A POINT OF INTERCONNECTION WITH  
4 BELLSOUTH'S LOCAL NETWORK IN EVERY LOCAL CALLING  
5 AREA?

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

15  
16 Q. HOW HAS THE FCC ADDRESSED THE ADDITIONAL COSTS CAUSED  
17 BY THE FORM OF INTERCONNECTION AN ALEC CHOOSES?

18  
19 A. In its First Report and Order in Docket No. 96-325, the FCC states that the  
20 ALEC must bear the additional costs caused by an ALEC's chosen form of  
21 interconnection. Paragraph 199 of the Order states that "a requesting carrier  
22 that wishes a 'technically feasible' but expensive interconnection would,  
23 pursuant to section 252(d)(1), be required to bear the cost of the that  
24 interconnection, including a reasonable profit." (Emphasis added) Further, at  
25 paragraph 209, the FCC states that "Section 251(c)(2) lowers barriers to

1 competitive entry for carriers that have not deployed ubiquitous networks by  
2 permitting them to select the points in an incumbent LEC's network at which  
3 they wish to deliver traffic. Moreover, because competing carriers must  
4 usually compensate incumbent LECs for the additional costs incurred by  
5 providing interconnection, competitors have an incentive to make  
6 economically efficient decisions about where to interconnect." (Emphasis  
7 added)

8

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

13

14 ***Issue 29: Is BellSouth obligated to provide local circuit switching at UNE rates to***  
15 ***Supra to serve the first three lines to a customer located in Density Zone 1? Is***  
16 ***BellSouth obligated to provide local circuit switching at UNE rates to Supra to serve***  
17 ***four or more lines provided to a customer located in Density Zone 1?***

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

21

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

23

24 A. These issues involve the application of FCC rules regarding the exemption for  
25 unbundling local circuit switching. When a particular customer has four or

1 more lines within a specific geographic area, even if those lines are spread over  
2 multiple locations, BellSouth is not required to provide unbundled local circuit  
3 switching to ALECs, so long as the other criteria for FCC Rule 51.319(c)(2)  
4 are met. This rule states:

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

15 (i) The top 50 Metropolitan Statistical Areas as set forth in  
16 Appendix B of the Third Report and Order and Fourth  
17 Further Notice of Proposed Rulemaking in CC Docket No.  
18 96-98, and

19 (ii) In Density Zone 1, as defined in § 69.123 of this chapter  
20 on January 1, 1999.

21  
22 Q. HASN'T THE FLORIDA COMMISSION RECENTLY RULED ON THIS  
23 ISSUE IN OTHER ARBITRATION PROCEEDINGS?  
24

1 A. Yes. In its Final Order on Arbitration in the BellSouth/AT&T arbitration  
2 (Order No. PSC-01-1402-FOF-TP in Docket No. 000731-TP) issued June 28,  
3 2001, the Commission found “that BellSouth will be allowed to aggregate lines  
4 provided to multiple locations of a single customer, within the same MSA to  
5 restrict AT&T’s ability to purchase local circuit switching at UNE rates to  
6 serve any of the lines of that customer.” (Order at page 61)

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

9  
10 A. BellSouth requests this Commission reject Supra’s attempt to violate the  
11 FCC’s rules. The Commission should reach a conclusion consistent with its  
12 previous ruling. ALECs are not impaired without access to unbundled local  
13 circuit switching when serving customers with four or more lines in Density  
14 Zone 1 in the top 50 MSAs. Consequently, ALECs are not entitled to  
15 unbundled local circuit switching in these areas for any of an end user’s lines  
16 when the end user has four or more lines in the relevant geographic area, as  
17 long as BellSouth will provide the ALEC with EELs at UNE rates.

18  
19 ***Issue 32A: Under what criteria may Supra Telecom charge the tandem switching***  
20 ***rate?***

21 ***Issue 32B: Based on Supra Telecom’s network configuration as of January 31,***  
22 ***2001, has Supra Telecom met these criteria?***

23  
24 Q. IS THIS ISSUE ALREADY BEING ADDRESSED BY THE COMMISSION  
25 IN A GENERIC DOCKET?

1

2 A. Yes. The Commission is currently considering this issue in Phase 2 of Docket  
3 No. 000075-TP. As such, the Commission should defer any decision in this  
4 immediate proceeding to its decision in Docket No. 000075-TP.

5

6 Q. SHOULD THIS BE AN ISSUE IN THIS ARBITRATION?

7

8 No. As stated above, the Commission is addressing this issue in a generic  
9 proceeding. Furthermore, Supra does not utilize its own switch in Florida.  
10 The fact that Supra does not utilize its own switch to serve its customers,  
11 clearly demonstrates that Supra is unable to satisfy the criteria that its switch  
12 covers a geographic area comparable to that of BellSouth's tandem switch.

13

14 Q. WHAT DOES BELL SOUTH REQUEST OF THE COMMISSION?

15

16 A. While the Commission has addressed this same issue in previous arbitrations,  
17 the Commission is currently considering this issue in a generic docket to  
18 address all reciprocal compensation issues. Therefore, BellSouth recommends  
19 that a decision on this issue be deferred to the outcome of Docket No. 000075-  
20 TP.

21

22 *Issue 44: What are the appropriate criteria under which rates, terms or conditions*  
23 *may be adopted from other filed and approved interconnection agreements? What*  
24 *should be the effective date of such an adoption?*

1 *Issue 45: Should BellSouth be required to post on its web-site all BellSouth*  
2 *interconnection agreements with third parties? If so, when?*

3

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

5

6 A. Under Part A, Section 5.1 of BellSouth's proposed Interconnection Agreement,  
7 BellSouth agrees to make available, pursuant to Section 252(i) of the 1996 Act  
8 and 47 C.F.R. § 51.809, any interconnection, service, or network element  
9 provided under any Commission-approved agreement to which BellSouth is a  
10 party at the same rates, terms and conditions as provided in that agreement.  
11 This is commonly known as the "most favored nation" or "pick and choose"  
12 option. BellSouth can require Supra to accept all terms that are legitimately  
13 related to the terms that Supra desires to adopt for itself. (See *AT&T Corp.*  
14 *Iowa Utilities Board*, 525 U.S. 366, 396, 119 S. Ct. 721, 738 (1999)).  
15 Further, 47 C.F.R. § 51.809(c) requires such adoption request must be made  
16 within a reasonable period of time after the agreement to be adopted is filed  
17 with the Commission. Thus, any existing interconnection agreement can be  
18 adopted so long as that agreement has more than six months remaining on it. If  
19 Supra adopts a third party's existing interconnection agreement, Supra's  
20 agreement will expire on the same date as that third party's agreement.

21

22 When Supra selects such terms, it should be required to amend its  
23 interconnection agreement to effectuate its adoption of these additional terms.  
24 The parties' relationship is governed by the contract, and changes to the  
25 relationship should properly be affected only by amending the contract.



1  
2 Further, BellSouth's position is that the adoption or substitution of a specific  
3 provision contained in a previously approved agreement is effective on the date  
4 the amendment memorializing the adoption is signed by BellSouth and the  
5 adopting ALEC. In other words, the effective date will not be retroactive to the  
6 date when the provision became effective between BellSouth and the third  
7 party. BellSouth's authority to charge for service is governed by the execution  
8 of an agreement or amendment. Until both parties sign the agreement or  
9 amendment, there is no authority by which the rates, terms and conditions can  
10 be implemented.

11  
12 BellSouth is in the process of implementing the Commission's Order in the  
13 BellSouth/WorldCom Arbitration proceeding with respect to posting filed  
14 agreements on BellSouth's website. (Order No. PSC-01-0824-FOF-TP at pp.  
15 186-187). Although clearly not obligated by the 1996 Act, BellSouth will post  
16 its interconnection agreements with third parties on its website on or before  
17 five (5) days after the issuance date of the Commission's Order approving the  
18 agreement.

19  
20 ***Issue 49: Should Supra Telecom be allowed to share with a third party, the***  
21 ***spectrum on a local loop for voice and data when Supra Telecom purchases a***  
22 ***loop/port combination and if so, under what rates, terms and conditions?***

23

24 Q. HAS THE COMMISSION RECENTLY RULED ON THIS ISSUE?

25

1 Yes. In Order No. PSC-01-0824-FOF-TP, dated March 20, 2001, the  
2 Commission ruled that “[w]e believe the FCC requires BellSouth to provide  
3 line sharing only over loops where BellSouth is the voice provider. If  
4 WorldCom purchases the UNE-P, WorldCom becomes the voice provider over  
5 that loop/port combination. Therefore, BellSouth is no longer required to  
6 provide line sharing over that loop/port combination.

7

8 Q. WHAT DOES BELLSOUTH REQUEST OF THE COMMISSION?

9

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

15

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

18

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

20

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

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

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

10

11       ***Issue 52: For purposes of the Interconnection Agreement between Supra Telecom***  
12       ***and BellSouth, should the resale discount apply to all telecommunications services***  
13       ***BellSouth offers to end users, regardless of the tariff in which the service is***  
14       ***contained?***

15

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

17

18           Consistent with the Commission's decision in its BellSouth/WorldCom  
19           Arbitration Order, BellSouth will offer Supra a resale discount on all retail  
20           telecommunications services BellSouth provides to end-user customers,  
21           regardless of the tariff in which the service is contained. (See Order No. PSC-  
22           01-0824-FOF-TP at page 28). Contract language to resolve this issue is  
23           reflected in Exhibit JAR-1 attached to my testimony.

24

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

3

4 A. BellSouth's position is that Supra and all ALECs are entitled to purchase  
5 BellSouth's retail telecommunications services at a resale discount.

6

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

10

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

12

13 A. First, I must say that it is not clear to BellSouth why Supra has raised this issue.  
14 Supra has never purchased stand-alone UNE loops, the elements to which  
15 expedited charges apply. Further, Supra did not raise this issue during  
16 negotiations, nor has it raised the issue with its account team. I understand that  
17 during issue identification, Supra claimed that it intends this issue to be the  
18 same as Issue 87 in the MCI arbitration. BellSouth and MCI settled this issue  
19 with the same language that BellSouth has proposed to Supra.

20

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

22

23 A. BellSouth is under no obligation to expedite service for Supra or any other  
24 ALEC. If BellSouth does so, however, Supra should be required to pay  
25 expedite charges when BellSouth expedites a service request and completes the

1 order before the standard interval expires. As I mentioned above, in an effort  
2 to settle this issue, BellSouth offered Supra the following language in  
3 BellSouth's January 31, 2001 filing with the Commission:

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

13  
14 Q. WAS THIS SAME ISSUE SETTLED BETWEEN BELLSOUTH AND  
15 WORLDCOM?

16  
17 A. Yes. In an effort to resolve this issue, BellSouth offer for inclusion in Supra's  
18 agreement, the same language that resolved this issue with WorldCom.  
19 Exhibit JAR-1 attached to my testimony contains BellSouth's proposed  
20 language.

21  
22 ***Issue 65: Should the parties be liable in damages, without a liability cap, to one***  
23 ***another for their failure to honor in one or more material respects any one or more***  
24 ***of the material provisions of the Agreement for purposes of this interconnection***  
25 ***agreement?***

1

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

3

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

14

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

18

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

22

23

24

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

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

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

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

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

22

23 There is no reason for the Commission to allow Supra to seek more damages as  
24 a result of a mistake by BellSouth than BellSouth's retail and wholesale access  
25 customers would be allowed to seek as a result of the same mistake by

1 BellSouth. Supra's position should be denied because it is inconsistent with  
2 standard practices.

3

4 *Issue 66: Should Supra Telecom be able to obtain specific performance as a remedy*  
5 *for BellSouth's breach of contract for purposes of this interconnection agreement?*

6

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

8

9 A. Specific performance is a remedy, not a requirement of Section 251 of the 1996  
10 Act nor is it an appropriate subject for arbitration under Section 252.

11 BellSouth's position is consistent with the Commission's recent ruling in its  
12 BellSouth/WorldCom Arbitration Order in which the Commission found "that  
13 it is not appropriate to impose adoption of a disputed specific performance  
14 provision when it is not required under Section 251 of the Act." (Order No.  
15 PSC-01-0824-FOF-TP at page 181). Further, specific performance is either  
16 available (or not) as a matter of law. To the extent Supra can show that it is  
17 entitled to obtain specific performance under Florida law, Supra can make this  
18 showing without agreement from BellSouth. To the extent Supra, is  
19 attempting to obtain specific performance under circumstances when it is not  
20 available under Florida law, this is not justification for this demand.

21

22 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

23

24 A. Yes.

25 #395603



1 BY MR. TWOMEY:

2 Q Ms. Cox, were there exhibits that went with the  
3 direct testimony?

4 A There were two exhibits.

5 Q And do you have any corrections or additions to those  
6 exhibits?

7 A I do not.

8 MR. TWOMEY: Okay. I'd like to have the exhibits  
9 that were attached to the direct testimony that were labeled as  
10 JAR-1 and JAR-2 given the next exhibit number and marked for  
11 identification as a composite exhibit, please.

12 COMMISSIONER JABER: Composite Exhibit number 7 is  
13 JAR-1 and JAR-2.

14 (Exhibit 7 marked for identification.)

15 BY MR. TWOMEY:

16 Q Ms. Cox, did you file rebuttal testimony consisting  
17 of 25 pages on August 15th?

18 A Yes, I did.

19 Q And do you have any changes, additions, or  
20 corrections to that testimony?

21 A I have one change. It's on Page 14, Line 23. The  
22 order number referenced there should be order number  
23 PSC-01-1181. The rest is the same.

24 Q Okay. If I asked you the same questions, with that  
25 correction that you've made, would your answers be the same?

1           A     Yes, they would.

2                   MR. TWOMEY: I'd like to have the testimony inserted  
3 into the record as though read from the stand.

4                   COMMISSIONER JABER: Prefiled rebuttal testimony of  
5 Cynthia K. Cox shall be inserted into the record as though  
6 read.

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1                   BELLSOUTH TELECOMMUNICATIONS, INC.  
2                   REBUTTAL TESTIMONY OF CYNTHIA K. COX  
3                   BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
4                   DOCKET NO. 001305-TP  
5                   AUGUST 15, 2001  
6  
7    Q.    PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH  
8           TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR  
9           BUSINESS ADDRESS.  
10  
11   A.    My name is Cynthia K. Cox. I am employed by BellSouth as Senior Director  
12           for State Regulatory for the nine-state BellSouth region. My business address  
13           is 675 West Peachtree Street, Atlanta, Georgia 30375.  
14  
15   Q.    PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR EDUCATIONAL  
16           BACKGROUND AND EXPERIENCE IN THE TELECOMMUNICATIONS  
17           INDUSTRY.  
18  
19   A.    I graduated from the University of Cincinnati in 1981, with a Bachelor of  
20           Business Administration degree in Finance. I obtained a Master of Science  
21           degree in Quantitative Economics from the Georgia Institute of Technology in  
22           1984. I then joined Southern Bell in the Rates and Tariffs organization with  
23           the responsibility for demand analysis. In 1985, my responsibilities expanded  
24           to include administration of selected rates and tariffs, including preparation of  
25           tariff filings. In 1989, I accepted an assignment in the North Carolina

1 regulatory office where I was BellSouth's primary liaison with the North  
2 Carolina Utilities Commission Staff and the Public Staff. In 1993, I moved to  
3 BellSouth's Governmental Affairs department in Washington D.C. While in  
4 this office, I worked with national organizations of state and local legislators,  
5 NARUC, the Federal Communications Commission ("FCC") and selected  
6 House delegations from the BellSouth region. In February 2000, I was  
7 appointed Senior Director for State Regulatory.

8

9 Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

10

11 A. No. However, due to scheduling conflicts, I am adopting all of the testimony  
12 that John Ruscilli has pre-filed in this proceeding. Throughout my rebuttal  
13 testimony, when referring to the pre-filed direct testimony, I will refer to it as  
14 my direct testimony.

15

16 Q. HAVE YOU TESTIFIED IN OTHER ARBITRATION PROCEEDINGS IN  
17 BELLSOUTH'S REGION?

18

19 A. Yes. As BellSouth's policy witness in other arbitration proceedings I have  
20 testified before various state commissions, including this Commission on the  
21 some of same issues that are being addressed in this proceeding.

22

23 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

24

25

1 A. The purpose of my rebuttal testimony is to respond to portions of the testimony  
2 filed on behalf of Supra Telecommunications and Information Systems, Inc.  
3 (“Supra”) witnesses Mr. Olukayode A. Ramos, Mr. David Nilson, and Ms.  
4 Carol Bentley filed with the Florida Public Service Commission  
5 (“Commission”) on July 30, 2000.

6

7 Q. DO YOU HAVE ANY GENERAL COMMENTS REGARDING THE  
8 TESTIMONY FILED BY SUPRA’S WITNESSES?

9

10 A. Yes. Throughout their testimony, Supra witnesses Mr. Nilson and Mr. Ramos  
11 ask the Commission to order the inclusion of liquidated damages provisions as  
12 the means to provide incentives for BellSouth’s compliance with the  
13 Commission’s rules and orders. Although I am not a lawyer, it is my  
14 understanding that the Commission does not have the authority to take such  
15 action absent BellSouth’s concurrence. As the Commission is aware, state law  
16 and Commission procedures are available, and are appropriate, to address any  
17 breach of contract situation should it arise. Furthermore, the Commission is  
18 actively addressing the issue of penalties associated with the level of  
19 performance BellSouth provides to ALECs. The outcome of Docket No.  
20 000121-TP will appropriately address Supra’s concerns in these areas.

21

22 Q. ARE THERE FPSC DECISIONS FROM OTHER PROCEEDINGS THAT  
23 ARE RELEVANT TO SEVERAL OF THE ISSUES RAISED BY SUPRA?

24

25

1 A. Yes. As the Commission is aware, several of the “unresolved” issues that  
2 Supra included in its response to BellSouth’s Petition for Arbitration are  
3 identical to the issues contained in the arbitration proceedings between  
4 BellSouth and AT&T and BellSouth and MCI/WorldCom, Docket Nos.  
5 000731-TP and 000649-TP, respectively. Since the time that Supra included  
6 these issues in its arbitration proceeding, the Commission has either issued its  
7 Order resolving the issue or BellSouth and AT&T or MCI/WorldCom have  
8 settled the issue outside of the arbitration proceeding. As such, for issues 1,  
9 11A, 11B, 63, 21, 22, 23, 24, 29, 31, 44, 52 and 59 discussed in my testimony,  
10 BellSouth has offered Supra the same language consistent with the  
11 Commission’s order or the language agreed to in the settlement of the issue  
12 with AT&T and/or MCI/WorldCom. Given these circumstances, BellSouth  
13 believes that Supra should be satisfied with the options that BellSouth has  
14 offered and such issues should be resolved.

15

16 *Issue 1: What are the appropriate fora for the submission of disputes under the new*  
17 *agreement?*

18

19 Q. ON PAGE 67, MR. RAMOS CONTENDS THAT SINCE “COMMERCIAL  
20 ARBITRATORS HAVE THE ABILITY TO ASSESS DAMAGES” AND  
21 “THE COMMISSION DOES NOT”, BELLSOUTH WOULD HAVE AN  
22 INCENTIVE TO COMPLY WITH THE PROVISIONS OF THE  
23 INTERCONNECTION AGREEMENT. DO YOU AGREE?

24

25

1 A. No. Supra seems to imply that the only way to get BellSouth to comply with  
2 the provisions of the interconnection agreement is through damages that could  
3 be assessed by commercial arbitrators. Contrary to Mr. Ramos' claims,  
4 BellSouth fully intends to comply with the terms of the interconnection  
5 agreement regardless of whether or not it would be subject to claims for  
6 damages.

7  
8 As I stated in my direct testimony, BellSouth's experience with commercial  
9 arbitration has proven that the process is an impractical, time-consuming and  
10 costly way to resolve interconnection disputes. Our experience shows that it is  
11 difficult to find neutral commercial arbitrators that are sufficiently experienced  
12 in the telecommunications industry so that a decision can be made  
13 expeditiously without having to train the arbitrator on the very basics of the  
14 industry.

15  
16 As such, the Commission should reach the same conclusion as it did in its June  
17 28, 2001 Order in the BellSouth and AT&T arbitration proceeding. In its  
18 Order, the Commission found "that third party arbitration is neither speedy nor  
19 inexpensive. Moreover nothing in the law gives us explicit authority to require  
20 third party arbitration. Consequently, we find that this Commission shall  
21 resolve disputes under the Interconnection Agreement." (Order No. PSC-01-  
22 1402-FOF-TP at page 105). The Commission and its staff are clearly more  
23 capable to handle disputes between telecommunications carriers than are  
24 commercial arbitrators.

25

1 ***Issue 4: Should the Interconnection Agreement contain language to the effect that***  
2 ***it will not be filed with the Florida Public Service Commission for approval prior to***  
3 ***an ALEC obtaining ALEC certification from the Florida Public Service***  
4 ***Commission?***

5 ***Issue 9: What should be the definition of "ALEC"?***

6

7 Q. IN ADDRESSING SUPRA'S POSITION ON THESE TWO ISSUES, MR.  
8 RAMOS ASKS THE COMMISSION TO REQUIRE BELL SOUTH TO  
9 PROVISION SERVICES TO AN ALEC, WHETHER CERTIFICATED OR  
10 NOT. IS THIS APPROPRIATE?

11

12 A. No. Mr. Ramos appears to ignore the fact that the Commission has expressly  
13 concurred in the appropriateness of BellSouth's position to hold  
14 interconnection agreement filings for non-certificated entities until they obtain  
15 certification. (See Exhibit JAR-2 attached to my direct testimony). Supra has  
16 presented no reason for the Commission to reach a different conclusion in this  
17 proceeding. As I discussed in my direct testimony, it is unclear to BellSouth  
18 why Supra holds this position, considering that Supra is certificated as an  
19 ALEC in Florida.

20

21 ***Issue 7: Which end user line charges, if any, should Supra be required to pay***  
22 ***BellSouth?***

23

24 Q. IN RESPONSE TO THIS ISSUE, MR. NILSON CITES VARIOUS  
25 PARAGRAPHS FROM THE FCC'S UNE REMAND ORDER, THE FCC'S



1 LOCAL COMPETITION ORDER AND THE FCC'S *CALLS* ORDER. DO  
2 THESE ORDERS SUPPORT SUPRA'S POSITION ON THIS ISSUE?

3

4 A. No. It appears that Mr. Nilson does not understand which costs are recovered  
5 through the rates Supra pays BellSouth for the UNEs it purchases. Mr. Nilson  
6 apparently believes that the cost-based UNE rates approved by this  
7 Commission somehow override any recovery mechanism established by the  
8 FCC for the recovery of interstate costs. The UNE rates charged to Supra do  
9 not compensate BellSouth for the interstate-allocated costs of the subscriber  
10 loops. As such, the FCC has authorized end user line charges be assessed to  
11 recover the interstate-allocated cost portion of the local loop and for the cost of  
12 local number portability implementation. The FCC specified that BellSouth  
13 can assess these end-user line charges on CLECs.

14

15 Q. HAS THE COMMISSION RECENTLY ADDRESSED THIS ISSUE IN  
16 ANOTHER PROCEEDING?

17

18 A. Yes. Since the filing of my direct testimony, the Commission has issued its  
19 Order regarding this same issue in an arbitration complaint proceeding between  
20 BellSouth and Supra in Docket No. 001097-TP. In its Order, the Commission  
21 found "that BellSouth appropriately billed Supra for EUCLs." (*See* Order No.  
22 PSC-01-1585-FOF-TP issued July 31, 2001 at page 7). As reflected in Exhibit  
23 JAR-1 attached to my direct testimony, the contract language that BellSouth  
24 proposes for the new agreement with Supra is consistent with the contract  
25 language at issue in Docket No. 001097-TP. As such, the Commission should

1 reach the same conclusion in this proceeding and require Supra to pay end user  
2 line charges.

3

4 ***Issue 11A: Under what conditions, if any, should the Interconnection Agreement***  
5 ***state that the parties may withhold payment of disputed charges?***

6 ***Issue 11B: Under what conditions, if any, should the Interconnection Agreement***  
7 ***state that the parties may withhold payment of undisputed charges?***

8 ***Issue 63: Under what circumstances, if any, would BellSouth be permitted to***  
9 ***disconnect service to Supra for nonpayment?***

10

11 Q. IN ADDRESSING THESE ISSUES, MS BENTLEY APPEARS TO ARGUE  
12 THAT SUPRA SHOULD BE ALLOWED TO WITHHOLD PAYMENT OF  
13 UNDISPUTED CHARGES BILLED BY BELLSOUTH, AND AVOID  
14 DISCONNECTION, WHILE BELLSOUTH SHOULD NEVER BE  
15 ALLOWED TO WITHHOLD PAYMENT TO SUPRA. PLEASE  
16 COMMENT.

17

18 A. It appears that Supra wants to “have its cake and eat it too”. The language  
19 BellSouth proposes would enable both parties to withhold payment of  
20 appropriately disputed charges. BellSouth contends that the parties should pay  
21 undisputed charges on a timely basis, regardless of the amount of any disputed  
22 charges. Allowing one party to withhold payment of all charges, not just those  
23 that are in dispute, would enable that party to “game” the billing system to  
24 avoid paying bills.

25

1 Q. PLEASE RESPOND TO MS. BENTLEY'S CONTENTION ON PAGE 14,  
2 LINE 18, THAT BELLSOUTH'S PROPOSED LANGUAGE WILL GIVE  
3 BELLSOUTH THE ABILITY TO "TAKE WHATEVER ACTION IT  
4 DESIRES WHEN IT SO DESIRES."

5

6 A. BellSouth's proposed language clearly states that BellSouth could disconnect  
7 for nonpayment of *undisputed* amounts. Furthermore, BellSouth's position is  
8 consistent with the Commission's recent decision in the BellSouth/WorldCom  
9 Arbitration proceeding in Docket No. 000649-TP. In its Order, the  
10 Commission found that "BellSouth is within its rights to deny service to  
11 customers that fail to pay undisputed amounts within reasonable time frames.  
12 Therefore, absent a good faith billing dispute, if payment of account is not  
13 received in the applicable time frame, BellSouth shall be permitted to  
14 disconnect service to WorldCom for nonpayment." (Order No. PSC-01-0824-  
15 FOF-TP at pages 155-156). BellSouth must be able to deny service in order to  
16 obtain payment for services rendered and/or prevent additional past due  
17 charges from accruing. It would not be a reasonable business practice for  
18 BellSouth to operate "on faith" that an ALEC will pay its bills. Indeed, a  
19 business could not remain viable if it were obligated to continue to provide  
20 service to customers who refuse to pay lawful charges.

21

22 As I stated in my direct testimony, BellSouth must also consider that the terms  
23 and conditions of any agreement it reaches with one ALEC are subject to being  
24 adopted by another ALEC. The FCC's Rule 51.809 requires that, subject to  
25 certain restrictions, BellSouth must, "make available without unreasonable

1 delay to any requesting telecommunications carrier any individual  
2 interconnection, service, or network element arrangement contained in any  
3 agreement to which it is a party that is approved by a state commission  
4 pursuant to section 252 of the 1996 Act, upon the same rates, terms, and  
5 conditions as those provided in the agreement.” This “pick and choose”  
6 requirement makes it imperative that each executed interconnection agreement  
7 includes language that addresses disconnection of service for non-payment.

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

14

15 ***Issue 12: Should BellSouth be required to provide transport to Supra Telecom if***  
16 ***that transport crosses LATA boundaries?***

17

18 Q. ON PAGE 20 LINES 7-16, MR. NILSON ATTEMPTS TO DISCUSS  
19 “BELLSOUTH’S VIEW” OF THIS ISSUE. IS HIS UNDERSTANDING OF  
20 BELLSOUTH’S POSITION CORRECT?

21

22 A. No. As I discussed in my direct testimony, this issue is basically a legal matter  
23 and, while I am not an attorney, a plain reading of Section 271 of the Act  
24 reveals that BellSouth is prohibited from providing interLATA facilities or  
25 services to Supra or any other customer. Neither BellSouth nor its affiliates

1 are allowed to provide services that cross LATA boundaries prior to receiving  
2 authorization from the Federal Communications Commission (“FCC”) to do  
3 so, pursuant to the requirements of Section 271 of the Act. Specifically,  
4 Section 271(a) states:

5

6 GENERAL LIMITATION. – Neither a Bell operating company, nor  
7 any affiliate of a Bell operating company, may provide interLATA  
8 services except as provided within this section.

9

10 The only interLATA services that BellSouth can provide without FCC  
11 approval are out-of-region services, and incidental services. The transport  
12 services Supra is requesting do not fit either of these exceptions. Supra  
13 erroneously contends that BellSouth should provide Supra with DS1 interoffice  
14 transport facilities between BellSouth central offices located in different  
15 LATAs because interoffice transport is an unbundled network element  
16 (“UNE”). Although the DS1 facilities that Supra is requesting are UNEs,  
17 BellSouth is still prohibited by law from providing those elements across  
18 LATA boundaries. Section 271(a) of the Act provides no qualification of the  
19 nature of the service, whether retail or wholesale, in the phrase “interLATA  
20 services”.

21

22 ***Issue 14: Should BellSouth pay reciprocal compensation to Supra Telecom where***  
23 ***Supra Telecom is utilizing UNEs to provide local service for the termination of local***  
24 ***traffic to Supra’s end users? If so, which end user line charges should Supra be***  
25 ***required to pay BellSouth?***

1 Q. IN RESPONSE TO THIS ISSUE, MR. NILSON CLAIMS (PAGES 25-33)  
2 THAT SUPRA SHOULD BE COMPENSATED FOR THE COST TO  
3 SUPRA TO TERMINATE CALLS ON BEHALF OF BELLSOUTH.  
4 PLEASE RESPOND.

5

6 A. BellSouth agrees that Supra should be compensated for the cost it incurs in  
7 terminating calls and in essence that is exactly what BellSouth's has proposed.  
8 Since BellSouth does not charge Supra the end office switching rates when a  
9 BellSouth customer places a local call to a Supra end user, and Supra does not  
10 have its own network, Supra incurs no cost in terminating that call. Thus, it is  
11 inappropriate for Supra to receive any additional compensation for costs it does  
12 not incur.

13

14 Q. WHAT IS THE NET IMPACT ON THE PARTIES OF BELLSOUTH'S  
15 PROPOSAL VERSUS SUPRA'S PROPOSAL?

16

17 A. From an administrative standpoint, BellSouth's proposal is more efficient and  
18 cost effective for both parties. Under BellSouth's proposal, both parties avoid  
19 the expenses associated with billing the other party for the same amounts of  
20 money. Under Supra's proposal, BellSouth would incur the expense of billing  
21 Supra for end office switching, and Supra would incur the expense of billing  
22 BellSouth for reciprocal compensation that is equal to the end office switching  
23 amount that BellSouth billed Supra. This back and forth billing is totally  
24 unnecessary and is avoided under BellSouth's proposal.

25

1 *Issue 16: Under what conditions, if any, may BellSouth refuse to provide service*  
2 *under the terms of the interconnection agreement?*

3

4 Q. IN RESPONSE TO THIS ISSUE, MR. RAMOS CONTENDS (PAGE 71)  
5 THAT BELLSOUTH SHOULD BE OBLIGATED TO PROVIDE SUPRA  
6 WITH ANY REQUESTED SERVICES EVEN IF THE RATES, TERMS  
7 AND CONDITIONS FOR SUCH SERVICES HAVE NOT BEEN  
8 DETERMINED. PLEASE RESPOND.

9

10 A. Supra's position is nonsensical. It is ludicrous for Supra to contend that  
11 BellSouth must provide Supra with services, items or elements without  
12 compensation when those services, items or elements are not in Supra's  
13 Interconnection Agreement. In order to incorporate new or different terms,  
14 conditions or rates into the parties Agreement, it is imperative that an  
15 Amendment be executed. When an ALEC notifies BellSouth that it wishes to  
16 add something to or modify something in its Agreement, BellSouth negotiates  
17 an Amendment with that ALEC if the agreement has not expired. Not only is  
18 this BellSouth's practice, but the Act requires that BellSouth and ALECs  
19 operate pursuant to filed and approved interconnection agreements.  
20 Furthermore, this Commission's recent Order in the generic UNE cost  
21 proceeding appears to confirm BellSouth's position regarding the requirement  
22 for amendments to agreements (Order No. 01-1181-FOF-TP issued May 25,  
23 2001). At page 473, the Commission states "Therefore, upon consideration,  
24 we find that it is appropriate for the rates to become effective when the  
25 interconnection agreements are amended to reflect the approved UNE rates and

1 the amended agreement is approved by us.” Given this fact, there will never be  
 2 a case where BellSouth provides a service to Supra that is not part of its  
 3 Interconnection Agreement. To do otherwise as Supra requests, and not  
 4 include all of the services that BellSouth provides to Supra in its  
 5 Interconnection Agreement would circumvent the “pick and choose”  
 6 opportunity of other ALECs. Additionally, if BellSouth did provide services to  
 7 Supra not covered by the agreement, there would be no language to turn to in  
 8 cases of a dispute over what was provided or how it was provided.

9

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

13

14 Q. ON PAGE 78, MR. RAMOS CLAIMS THAT THE NONRECURRING  
 15 RATES FOR THE MIGRATION OF EXISTING BELLSOUTH  
 16 CUSTOMERS TO AN ALEC THAT WERE ESTABLISHED BY THE  
 17 COMMISSION IN ITS 1998 ORDER SHOULD BE INCLUDED IN THE  
 18 AGREEMENT. IS THIS APPROPRIATE?

19

20 A. Absolutely not. The rates referenced by Mr. Ramos are outdated and have  
 21 been replaced with new Commission-approved cost-based rates. The  
 22 Commission established cost-based rates for migrating tariffed services to  
 23 UNEs in Order No. PSC-01-~~0824~~-FOF-TP issued May 25, 2001. The  
 24 Commission should reject Supra’s request to incorporate any rates other than  
 25 those recently established by this Commission.



1 *Issue 21: What does “currently combines” mean as that phrase is used in 47 C.F.R.*  
2 *§ 51.315(b)?*

3 *Issue 22: Under what conditions, if any, may BellSouth charge Supra Telecom a*  
4 *“non-recurring charge” for combining network elements on behalf of Supra*  
5 *Telecom?*

6 *Issue 23: Should BellSouth be directed to perform, upon request, the functions*  
7 *necessary to combine unbundled network elements that are ordinarily combined in*  
8 *its network? If so, what charges, if any, should apply?*

9 *Issue 24: Should BellSouth be required to combine network elements that are not*  
10 *ordinarily combined in its network? If so, what charges, if any, should apply?*

11

12 Q. ON PAGES 36-37, MR. NILSON ARGUES AT LENGTH THAT THE  
13 COMMISSION, IN ITS RECENT ARBITRATION DECISIONS, FAILED TO  
14 DISTINGUISH BETWEEN “CURRENTLY COMBINES” AND  
15 “CURRENTLY COMBINED”. SHOULD THIS ARGUMENT CAUSE THE  
16 COMMISSION TO REVERSE ITS PREVIOUS DECISIONS ON THESE  
17 ISSUES?

18

19 A. No. This Commission has heard this issue argued at length in the Intermedia,  
20 AT&T, WorldCom and Sprint arbitration proceedings, and has ruled  
21 consistently that BellSouth is only obligated to provide combinations to  
22 ALECs at cost-based rates for those combinations that are, in fact, already  
23 combined and physically connected in its network at the time a requesting  
24 carrier places an order. Further, in its UNE Remand Order the FCC expressly

25

1 declined to interpret “currently combines” in the manner Supra is suggesting.  
 2 The Eighth Circuit Court has also ruled consistent with the rulings of this  
 3 Commission and with BellSouth’s position. Whether one uses the term  
 4 “currently combines” or “currently combined”, does not change the  
 5 Commission’s decision. Nothing that Supra has presented warrants the  
 6 Commission to change its previous position on these issues, which is that  
 7 BellSouth is only obligated to provide combinations to Supra at cost-based  
 8 rates for those combinations that are, in fact, already combined and physically  
 9 connected in its network at the time a requesting carrier places an order.

10

11 ***Issue 29: Is BellSouth obligated to provide local circuit switching at UNE rates to***  
 12 ***Supra to serve the first three lines to a customer located in Density Zone 1? Is***  
 13 ***BellSouth obligated to provide local circuit switching at UNE rates to Supra to serve***  
 14 ***four or more lines provided to a customer located in Density Zone 1?***

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

18

19 Q. ON PAGE 84, MR. NILSON CLAIMS THAT BELLSOUTH HAS NOT  
 20 PROVEN THAT BELLSOUTH MAKES ENHANCED EXTENDED LOOPS  
 21 (“EELS”) AVAILABLE AT TELRIC RATES. PLEASE RESPOND.

22

23 A. Apparently, Mr. Nilson has not seen the Commission’s May 25, 2001 Order,  
 24 which established cost-based rates for new EELs. As I discussed in my direct  
 25 testimony, the Commission should reach a conclusion consistent with its

1 previous ruling. ALECs are not impaired without access to unbundled local  
2 circuit switching when serving customers with four or more lines in Density  
3 Zone 1 in the top 50 MSAs. When a particular customer has four or more lines  
4 within a specific geographic area, even if those lines are spread over multiple  
5 locations, BellSouth is not required to provide unbundled local circuit  
6 switching to ALECs, so long as the other criteria for FCC Rule 51.319(c)(2)  
7 are met. Consequently, ALECs are not entitled to unbundled local circuit  
8 switching in these areas for any of an end user's lines when the end user has  
9 four or more lines in the relevant geographic area, as long as BellSouth will  
10 provide the ALEC with EELs at UNE rates. Issue 31 is the exact same issue  
11 raised by AT&T in its arbitration with BellSouth, and the Commission should  
12 render the same decision it did there.

13

14 ***Issue 33: What are the appropriate means for BellSouth to provide unbundled local***  
15 ***loops for provision of DSL service when such loops are provisioned on digital loop***  
16 ***carrier?***

17

18 Q. ON PAGES 95-96, MR. NILSON CONTENDS THAT BELLSOUTH  
19 SHOULD BE REQUIRED TO PROVIDE SUPRA THE ABILITY TO  
20 ORDER PACKET SWITCHING AS A UNE AT TELRIC RATES  
21 "WHEREVER BELLSOUTH DEPLOYS LOCAL SWITCHING OVER  
22 DLCfacilities." PLEASE RESPOND.

23

24 A. It appears that Mr. Nilson believes that BellSouth is obligated to provide  
25 unbundled packet switching at cost-based rates solely because Supra chooses to

1 utilize UNE-P as its market entry strategy. His comment on page 95 that the  
2 “FCC did not adequately address the needs of carriers who choose their  
3 entrance strategy to be solely UNE Combination based” is without merit and  
4 misplaced. Supra’s use of UNE-P and its ability to offer DSL service are not  
5 dependent upon Supra’s ability to order a “packet switching UNE”. Supra has  
6 the ability to provide DSL service to its end users served by UNE-P.

7

8 ALECs are not precluded from offering DSL service where Digital Loop  
9 Carrier (“DLC”) is deployed. When BellSouth provides ADSL service where  
10 DLC is deployed, BellSouth must locate Digital Subscriber Line Access  
11 Multiplexer (“DSLAM”) equipment at the DLC remote terminal (“RT”).  
12 Through the collocation process, currently offered by BellSouth, an ALEC that  
13 wants to provide xDSL where DLC is deployed also can collocate DSLAM  
14 equipment at BellSouth DLC RT sites. This allows the ALEC to provide the  
15 high speed data access in the same manner as BellSouth. BellSouth will  
16 attempt in good faith to accommodate any ALEC requesting such collocation  
17 access at a BellSouth DLC RT site that contains a BellSouth DSLAM. In the  
18 very unlikely event that BellSouth cannot accommodate collocation at a  
19 particular RT, where a BellSouth DSLAM is located, BellSouth will unbundle  
20 the BellSouth packet switching functionality at that RT in accordance with  
21 FCC requirements.

22

23 In its UNE Remand Order, the FCC expressly declined “to unbundle specific  
24 packet switching technologies incumbent LECs may have deployed in their  
25 networks.” (¶ 311). Consistent with FCC Rule 51.319(c)(5) regarding packet

1 switching, BellSouth is only required to provide unbundled packet switching  
2 when all of the following conditions have been satisfied:

3

- 4 1) The incumbent LEC has deployed digital loop carrier systems,  
5 including but not limited to, integrated digital carrier or universal  
6 digital loop carrier systems; or has deployed any other system in which  
7 fiber optic facilities replace copper facilities in the distribution section  
8 (e.g. end office to remote terminal, pedestal or environmentally  
9 controlled vault);
- 10 2) There are no spare copper loops capable of supporting the x DSL  
11 services the requesting carrier seeks to offer;
- 12 3) The incumbent LEC has not permitted a requesting carrier to deploy a  
13 Digital Subscriber Line Access Multiplexer at the remote terminal,  
14 pedestal or environmentally controlled vault or other interconnection  
15 point, nor has the requesting carrier obtained a virtual collocation  
16 arrangement at these subloop interconnection points as defined under  
17 Section 51.319(b); and,
- 18 4) The incumbent LEC has deployed packet switching capability for its  
19 own use.

20

21 Because all of the above conditions have not been satisfied, BellSouth is not  
22 obligated to unbundled packet switching.

23

24

25

1 ***Issue 44: What are the appropriate criteria under which rates, terms or conditions***  
2 ***may be adopted from other filed and approved interconnection agreements? What***  
3 ***should be the effective date of such an adoption?***

4  
5 Q. ON PAGE 83, MR. RAMOS CLAIMS THAT SUPRA SHOULD BE ABLE  
6 TO ADOPT A *SINGLE* RATE, TERM OR CONDITION FROM OTHER  
7 FILED AND APPROVED INTERCONNECTION AGREEMENTS. PLEASE  
8 COMMENT.

9  
10 A. Consistent with the Supreme Court's decision, BellSouth can require Supra or  
11 any other ALEC to accept all terms that are legitimately related to the terms  
12 that Supra desires to adopt for itself. (See *AT&T Corp. Iowa Utilities Board*,  
13 525 U.S. 366, 396, 119 S. Ct. 721, 738 (1999)). If Supra's position is  
14 adopted, Supra could likely choose to incorporate into its agreement the lowest  
15 rates and the most favorable terms for individual elements from the entire  
16 universe of approved interconnection agreements without any obligation to  
17 include all of the terms that are legitimately related to the single element being  
18 adopted.

19  
20 In addition, as discussed under Issue 16, when Supra selects such terms, it  
21 should be required to amend its interconnection agreement to effectuate its  
22 adoption of these additional terms. The parties' relationship is governed by the  
23 contract, and changes to the relationship should properly be affected only by  
24 amending the contract.

25

1 Further, BellSouth's position is that the adoption or substitution of a specific  
2 provision contained in a previously approved agreement is effective on the date  
3 the amendment memorializing the adoption is signed by BellSouth and the  
4 adopting ALEC. In other words, the effective date will not be retroactive to the  
5 date when the provision became effective between BellSouth and the third  
6 party. BellSouth's authority to charge for service is governed by the execution  
7 of an agreement or amendment. Until both parties sign the agreement or  
8 amendment, there is no authority by which the rates, terms and conditions can  
9 be implemented.

10

11 ***Issue 49: Should Supra Telecom be allowed to share with a third party, the***  
12 ***spectrum on a local loop for voice and data when Supra Telecom purchases a***  
13 ***loop/port combination and if so, under what rates, terms and conditions?***

14

15 Q. ON PAGE 111, MR. NILSON STATES THAT BELLSOUTH SHOULD BE  
16 REQUIRED TO ALLOW SUPRA ACCESS TO THE SPECTRUM ON A  
17 LOCAL LOOP FOR VOICE AND DATA WHEN SUPRA PURCHASES A  
18 LOOP/PORT COMBINATION. DOES BELLSOUTH'S POSITION ON  
19 THIS ISSUE PREVENT SUPRA'S ACCESS TO THE HIGH FREQUENCY  
20 PORTION OF THE LOOP?

21

22 A. No. When Supra purchases UNE-P from BellSouth, it becomes the owner of  
23 all the features, function and capabilities that the switch and loop is capable of  
24 providing. This includes calling features and capabilities, carrier pre-  
25 subscription, the ability to bill switched access charges associated with this

1 service, and access to both the high and low frequency spectrums of the loop.

2

3 Q. MR. NILSON STATES ON PAGE 113 THAT BELL SOUTH SHOULD BE  
4 REQUIRED TO CONTINUE TO PROVIDE DSL SERVICES FOR  
5 CUSTOMERS THAT SWITCH TO SUPRA'S VOICE SERVICES. IS THIS  
6 APPROPRIATE?

7

8 A. No. BellSouth has no obligation to provide its DSL service on a line where it  
9 is not the voice provider. The FCC addressed this issue in its line sharing order  
10 and clearly stated that incumbent carriers are not required to provide line  
11 sharing to requesting carriers that are purchasing UNE-P combinations. Again,  
12 in the Line Sharing Reconsideration Order, the FCC stated, "We deny,  
13 however, AT&T's request that the Commission clarify that incumbent LECs  
14 must continue to provide xDSL service in the event customers choose to obtain  
15 service from a competing carrier on the same line because we find that the Line  
16 Sharing Order contained no such requirement." *See In Re: Deployment of*  
17 *Wireline Services Offering Advanced Telecommunications Capability*, Order  
18 No. FCC 01-26 in CC Docket Nos. 98-147, 96-98 (Release January 19, 2001)  
19 at ¶26. The FCC then expressly stated that the *Line Sharing Order* "does not  
20 require the [LECs] provide xDSL service when they are no longer the voice  
21 provider." *Id.*

22

23 In addition, this Commission has previously ruled "While we acknowledge  
24 WorldCom's concern regarding the status of the DSL service over a shared  
25 loop when WorldCom wins the voice service from BellSouth, we believe the



1 FCC addressed this situation in its Line Sharing Order.” The FCC states, “We  
2 note that in the event that the customer terminates its incumbent LEC provided  
3 voice service, for whatever reason, the competitive data LEC is required to  
4 purchase the full stand-alone loop network element if it wishes to continue  
5 providing xDSL service.” FCC 98-147 and 96-98 ¶ 72. We believe the FCC  
6 requires BellSouth to provide line sharing only over loops where BellSouth is  
7 the voice provider. If WorldCom purchases the UNE-P, WorldCom becomes  
8 the voice provider over that loop/port combination. Therefore, BellSouth is no  
9 longer required to provide line sharing over that loop/port combination.” (*See*  
10 Order No. PSC-01-0824-FOF-TP issued March 20, 2001 at page 51). Contrary  
11 to Mr. Ramos’ position, the Commission should again find, consistent with the  
12 FCC and its previous rulings, that BellSouth is not obligated to provide DSL  
13 services for customers who switch to Supra’s voice services. Nothing  
14 precludes Supra from entering into a line splitting arrangement with another  
15 carrier to provide DSL services to Supra’s voice customers. The language that  
16 BellSouth has proposed for inclusion in the Agreement is consistent with the  
17 FCC’s rules and this Commission’s decisions.

18

19 ***Issue 52: For purposes of the Interconnection Agreement between Supra Telecom***  
20 ***and BellSouth, should the resale discount apply to all telecommunications services***  
21 ***BellSouth offers to end users, regardless of the tariff in which the service is***  
22 ***contained?***

23

24 Q. ON PAGE 92, MR. RAMOS CONTENDS THAT BELLSOUTH IS  
25 ATTEMPTING TO “DISCRIMINATE AGAINST SUPRA BY DENYING IT

1 THE RIGHT TO RESELL SERVICES INCLUDED IN BELLSOUTH'S  
2 FEDERAL AND STATE ACCESS TARIFFS, EVEN WHEN BELLSOUTH  
3 OFFERS THOSE SERVICES TO END USERS. IS HE CORRECT?

4  
5 A. No. As I stated in my direct testimony BellSouth will offer Supra, in its  
6 capacity as an ALEC, a resale discount on all retail telecommunications  
7 services BellSouth provides to end-user customers, regardless of the tariff in  
8 which the service is contained. BellSouth's position is consistent with the  
9 Commission's decision in the BellSouth/WorldCom Arbitration Order issued  
10 March 30, 2001. (See Order No. PSC-01-0824-FOF-TP at page 28). Contract  
11 language to resolve this issue is reflected in Exhibit JAR-1 attached to my  
12 direct testimony.

13  
14 ***Issue 59: Should Supra Telecom be required to pay for expedited service when***  
15 ***BellSouth provides services after the offered expedited date, but prior to BellSouth's***  
16 ***standard interval?***

17  
18 Q. ON PAGE 97, MR. RAMOS STATES "IF BELLSOUTH IS ABLE TO  
19 EXPEDITE ORDERS FOR ITS CUSTOMERS, IT MUST ALSO DO SO FOR  
20 SUPRA'S CUSTOMERS." IS BELLSOUTH REFUSING TO EXPEDITE  
21 ORDERS UPON REQUEST FROM SUPRA?

22  
23 A. Absolutely not. BellSouth has proposed language to Supra that enables Supra  
24 to request expedited due dates. It appears, however, that Supra does not want  
25 to pay for the costs incurred by BellSouth to expedite due dates. Just as

1 BellSouth charges its end users for expedited due dates, it is appropriate for  
2 Supra to pay these same expedite charges. BellSouth is under no obligation to  
3 provide service on an expedited basis. However, if BellSouth does so at  
4 Supra's request, Supra should be required to pay expedite charges when  
5 BellSouth expedites a service request and completes the order before the  
6 standard interval expires. As I mentioned in my direct testimony, in an effort to  
7 settle this issue, BellSouth offered Supra the following language in BellSouth's  
8 January 31, 2001 filing with the Commission:

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

18

19 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

20

21 A. Yes.

22 #404500

1 BY MR. TWOMEY:

2 Q Ms. Cox, there were no exhibits to the rebuttal  
3 testimony; is that right?

4 A That's correct.

5 Q Okay. Have you prepared a summary of your testimony?

6 A Yes, I have.

7 Q Would you please proceed.

8 A Good afternoon. My testimony presents BellSouth's  
9 position on several disputed issues that remain between  
10 BellSouth and Supra. The majority of these unresolved issues  
11 are identical to arbitration issues that have been resolved  
12 with other ALECs, either through agreed upon language or  
13 through arbitration decisions rendered by this Commission.

14 For instance, Issues 21, 22, 23, and 24 pertain to  
15 BellSouth's obligation to combine unbundled network elements.  
16 The Commission decided in both the AT&T and MCI arbitration  
17 proceedings with BellSouth that BellSouth is not obligated to  
18 combine UNEs for ALECs. BellSouth has also offered to resolve  
19 Issues 25, 26, 27, 28, 29, 31, 52 with a proposal to include  
20 the same language, whether it was ordered by the Commission or  
21 agreed upon between AT&T or MCI in the new agreement with  
22 Supra.

23 In fact, for each of these previously-arbitrated  
24 issues BellSouth has offered Supra contract language reflective  
25 of the Commission's decision or the language as agreed to

1 between the parties. Many of the unresolved issues are either  
2 being addressed or have been addressed in generic proceedings  
3 before this Commission.

4 For example, Issue 15 pertains to the performance  
5 measurements that should be included in the interconnection  
6 agreement. The Commission recently issued its order after  
7 conducting an extensive generic proceeding to establish  
8 performance measurements. BellSouth has offered to incorporate  
9 the outcome of the Commission's decision in the interconnection  
10 agreement.

11 Additionally, Issues 18 and 26, along with portions  
12 of Issues 28 and 51, pertain to the appropriate rates to be  
13 included in the proposed agreement. Again, the Commission has  
14 recently issued an order establishing rates for the majority of  
15 the services, items, or elements being offered under the  
16 agreement. And again, BellSouth has offered to incorporate  
17 these Commission-established rates in the new agreement.

18 While each of the issues before the Commission is  
19 important to BellSouth, I will limit my summary, however, to  
20 the following two issues: Use of a third party or commercial  
21 arbitrators and BellSouth's ability to disconnect service to  
22 Supra for nonpayment.

23 The commercial arbitration is Issue 1. BellSouth's  
24 position is that the appropriate regulatory authority should  
25 resolve disputes and that BellSouth should not be precluded

1 from petitioning the Commission for resolution of disputes  
2 under the interconnection agreement.

3           It is critical that the interconnection agreements be  
4 interpreted consistently. One of the primary guiding  
5 principles of the Telecommunications Act is that carriers  
6 should be treated in a nondiscriminatory fashion. This goal  
7 cannot be reached without a means to ensure that similar  
8 disputes arising under different agreements are handled in a  
9 similar fashion.

10           Use of commercial arbitrators could produce results  
11 inconsistent in matters dealing with interconnection issues  
12 that arise between BellSouth and ALECs, because different  
13 arbitrators could reach different conclusions. Having the  
14 Commission resolve disputes provides the needed consistency in  
15 how ILECs and ALECs interconnect and generally deal with each  
16 other.

17           Commission control of dispute resolution ensures that  
18 disputes between two carriers that potentially affect the  
19 entire industry are dealt with consistently. BellSouth  
20 requests that this Commission find, as it has in previous  
21 arbitrations, that the Commission should resolve disputes under  
22 the interconnection agreement.

23           The next issue I'll discuss involves BellSouth's  
24 ability to disconnect service for nonpayment, and this involves  
25 Issues 11 and 63. BellSouth contends that the parties should

1 pay undisputed charges on a timely basis, regardless of the  
2 amount of disputed charges. Furthermore, BellSouth should be  
3 permitted to disconnect service to Supra or any other ALEC that  
4 fails to pay undisputed charges within the applicable time  
5 period, just as occurs with our retail end user customers.

6           A business cannot remain viable if it were obligated  
7 to continue to provide service to customers who refuse to pay  
8 lawful charges. As the Commission decided in its BellSouth/MCI  
9 arbitration order, BellSouth encourages the Commission to adopt  
10 BellSouth's proposed language permitting BellSouth to  
11 disconnect an ALEC's service, if the ALEC fails to provide bill  
12 charges that are not disputed. The simple way to resolve this  
13 issue is for Supra to pay undisputed amounts within the  
14 applicable time frames, and this portion of the agreement will  
15 never become an issue.

16           Thank you, and that concludes my summary.

17           MR. TWOMEY: Thank you, Ms. Cox. Madam Chairman, the  
18 witness is available for cross examination.

19           COMMISSIONER JABER: Ms. Cox, before we start cross  
20 examination, you were here when I gave the witnesses directions  
21 on keeping their answers concise, beginning with a yes or no,  
22 and not going too far off from the answer?

23           THE WITNESS: Yes, ma'am.

24           COMMISSIONER JABER: Okay. Who's doing cross?

25           MR. CHAIKEN: I will be, Your Honor.

1 COMMISSIONER JABER: Okay, go ahead, Mr. Chaiken.

2 MR. CHAIKEN: Thank you.

3 CROSS EXAMINATION

4 BY MR. CHAIKEN:

5 Q Good afternoon, Ms. Cox.

6 A Good afternoon.

7 Q Ms. Cox, is it true that you weren't present at any  
8 of the parties' intercompany review board meetings regarding  
9 discussions of a new interconnection agreement?

10 A Yes, that is true.

11 Q It's not part of your job?

12 A It could be, depending on what was going to be  
13 discussed, but I was not at the Supra ones.

14 Q Okay. When parties negotiate a follow-on agreement,  
15 do you believe it's important to take into consideration the  
16 party's current and past conduct?

17 A Not necessarily, no.

18 Q Why not?

19 A I believe, when we're negotiating a new  
20 interconnection agreement what we should take into account,  
21 first and foremost, are what is the current state of the  
22 industry, of the obligations of the parties, and that that's  
23 what should be reflected in the agreement, and the parties'  
24 positions on the various issues that are in dispute are what  
25 would guide our continued negotiations.



1 Q Would you agree that continuity is important in any  
2 business relationship, specifically, ones such as that between  
3 Supra and BellSouth?

4 A Yes, I would agree, it could be.

5 Q I'm going to show you what's been marked as Exhibit  
6 OAR-3, which is a confidential exhibit.

7 A Thank you.

8 BY MR. CHAIKEN:

9 Q Ms. Cox, have you seen that document before?

10 A Yes, I have.

11 Q Have you read it?

12 A I have skimmed it, I haven't read it extensively, no.

13 Q I've tagged a couple of pages that I'd like you to  
14 take a look at. And actually, I'd only like you to take a look  
15 at the second tab, which is Page 40. I don't want you to read  
16 any part of it into the record. If you could just read to  
17 yourself, I believe, it's highlighted, it goes from the middle  
18 of Page 40 to the end of -- or to the top of Page 41.

19 A Okay, thank you. I've read it.

20 Q Thank you. In light of what you've just read, do you  
21 think those paragraphs should have any effect on what happens  
22 in this follow-on agreement?

23 A Not necessarily. I would, basically, say what I said  
24 before. I think that when we're looking at the current  
25 agreement, what I would urge the Commission to consider is the

1 various parties' positions on the issues that we have  
2 identified as being in dispute and the current state of the  
3 industry and of your rules and of your policies and, I believe,  
4 that is what would guide the language to go into the new  
5 interconnection agreement.

6 Q I want to speak to you a little bit about Issue  
7 number one, which is the proper fora for dispute resolution.

8 A Okay.

9 Q You mentioned that you would like to see this  
10 Commission adopt the same position it took in docket 000731,  
11 which is the AT&T/BellSouth docket; is that correct?

12 A Yes.

13 Q Are you familiar with what AT&T filed in support of  
14 its position in that case?

15 A Not particularly, no.

16 Q Isn't it true that the FPSC found that AT&T didn't  
17 provide any evidence in support of its position in that case?

18 A I believe, there is language to that effect in the  
19 order.

20 Q Do you believe that Supra Telecom should be subject  
21 to AT&T's arguments and stuck with AT&T's arguments when it  
22 argues a position that AT&T had also argued?

23 A No. And I wouldn't -- I didn't attempt to imply that  
24 Supra should be tied to AT&T's arguments. BellSouth's position  
25 and rationale on this issue in this proceeding is the same as

1 our rationale on the proceeding regarding AT&T. What I'm  
2 urging the Commission to do is reach the similar conclusion as  
3 to what they reached in AT&T. I recognize that Supra is fully  
4 entitled to make their arguments on this issue and I'm sure  
5 will.

6 Q Do you know who Greg Follensbee is?

7 A Yes, I do.

8 Q Didn't he formerly work for AT&T?

9 A Yes, he did.

10 Q Does he now work for BellSouth?

11 A He does.

12 Q Do you know if he filed testimony on behalf of AT&T  
13 on that issue in that docket?

14 A I don't remember, specifically, which witnesses filed  
15 testimony on which issues, so I couldn't say specifically  
16 without going back and looking.

17 Q Ms. Cox, isn't it true that you've never had any  
18 personal experience in commercial arbitration proceedings?

19 A Yes, that is correct. I personally have never been  
20 involved in a commercial arbitration.

21 Q And you have no direct knowledge of any of  
22 BellSouth's experiences in commercial arbitration proceedings?

23 A I have knowledge of BellSouth's experience. I have  
24 not personally been in -- I'm not sure when you say direct  
25 knowledge, but I have not been in a commercial arbitration.

1 Q Have you -- well, isn't it true that you've never  
2 actually sought to choose commercial arbitrators for an  
3 arbitration case?

4 A That's correct, I have not personally chosen  
5 arbitrators for a commercial arbitration.

6 Q Yet you testified that BellSouth has had difficulty  
7 finding neutral commercial arbitrators?

8 A Yes, that's correct, and that's based on BellSouth's  
9 experience, and I'm here to speak to BellSouth's experience  
10 with commercial arbitration and it has been that, that it has  
11 been difficult to find knowledgeable arbitrators in the area of  
12 telecommunications.

13 Q And who did you discuss that with?

14 A I have discussed that with Ms. Jordan, I've discussed  
15 that with Mr. Finlen, I've discussed that with Mr. Twomey, I've  
16 discussed that with a number of people inside BellSouth.

17 Q None of those people have filed testimony in this  
18 case, have they?

19 A I don't know if I said Mr. Hendrix. If I didn't,  
20 he's filed. I don't know if I said him or not, but no, the  
21 others have not.

22 Q Would you agree with me that the Florida Public  
23 Service Commission cannot award damages for a breach of an  
24 interconnection agreement?

25 MR. TWOMEY: I'm going to object to that question to

1 the extent it calls for a legal conclusion.

2 COMMISSIONER JABER: Mr. Chaiken, there's been an  
3 objection.

4 MR. CHAIKEN: I'll rephrase the question.

5 BY MR. CHAIKEN:

6 Q Is it your understanding that the Florida Public  
7 Service Commission cannot award damages for a breach of an  
8 interconnection agreement?

9 A That is my understanding.

10 Q Are you familiar with the parties' current  
11 interconnection agreement?

12 A Yes, generally.

13 Q Are you familiar with the alternative dispute  
14 resolution provisions in that agreement?

15 A Yes, generally.

16 Q Are you familiar with the fact that commercial  
17 arbitrators, pursuant to that agreement, are permitted to award  
18 damages in circumstances of a breach of the agreement?

19 A Yes, I believe, I recall seeing language to that  
20 effect.

21 Q Is it your position that either party should not be  
22 able to recover damages in the event the other party is found  
23 to be in breach of this follow-on agreement?

24 A I'm sorry, could you rephrase your question?

25 Q Sure. Is it your position that either party should

1 be unable to recover damages in the event the other party is  
2 found to have breached this new follow-on agreement?

3 A Well, our position -- and I guess that sort of covers  
4 two issues, and one is to the extent that we believe the  
5 Commission should hear disputes about the interconnection  
6 agreement, that's not really tied to the issue of damages. We  
7 also have a dispute on the limitation of liability, and we  
8 believe there should be a limitation of liability for both  
9 parties in the interconnection agreement. I'm not sure if that  
10 answered your question or not.

11 Q I don't think it does, so maybe I'll try another way.  
12 Should either BellSouth or Supra be found in breach  
13 of the follow-on agreement, how would they be able to recover  
14 damages?

15 A I don't know.

16 Q It's not something you've considered?

17 A Not specifically, no. I mean, it's not, I don't  
18 think, either party's intent to breach the interconnection  
19 agreement, so I haven't really thought of that, no.

20 Q Well, I'm just asking you, based on your -- what you  
21 know of the parties and what you know of their past, don't you  
22 think it would be important for the parties to be able to have  
23 the recovery of damages, if the other party had breached the  
24 agreement?

25 A I don't know.

1 Q You don't know or you don't want to answer?

2 A I don't know. I don't know if it would be important  
3 or not.

4 Q It's not important to you?

5 A Well, I think, not necessarily. As I said earlier, I  
6 would say I don't think either party is going in with the  
7 intention of breaching the agreement. We have proposed  
8 language regarding limitation of liability that would address  
9 how certain issues would be addressed, how certain breaches  
10 would be handled, as far as the liability between the parties,  
11 and that is my view on how it should be addressed.

12 Q But if the FPSC doesn't have the ability to award  
13 damages, how would a party receive them?

14 A I don't know, and I can't really address all of the  
15 legal avenues open to the parties.

16 Q You made a claim in your testimony that BellSouth's  
17 past commercial arbitrations were neither speedy or  
18 inexpensive.

19 A Correct.

20 Q You don't have any direct knowledge of the speed or  
21 the expense of such arbitrations, do you?

22 A Well, I have knowledge about how long they took and  
23 about how much they cost, and we had provided this information,  
24 in fact, to the Commission in the context of the AT&T  
25 arbitration.

1 Q But you didn't file such in this arbitration?

2 A No. It was filed in response to a request. I mean,  
3 I could address it, generally.

4 Q What's the basis for your knowledge?

5 A I have looked at invoices and I looked at a calendar  
6 and figured out, you know, if an arbitration started on a  
7 certain date and ended on another date, how long a period of  
8 time that was.

9 Q You claim that commercial arbitrators would not be  
10 bound by FPSC precedence; do you recall that testimony?

11 A I don't recall it specifically, but--

12 Q What's the basis for that statement?

13 A Well, the basis for that statement is my  
14 understanding of commercial arbitration and that these are  
15 arbitrators who are really just concerned with the two parties  
16 in that case and the particular dispute in that case. And they  
17 would not be bound by the fact that, let's say, because in  
18 every interconnection agreement except this one, depending on  
19 how this goes, we bring the disputes with the interconnection  
20 agreements to the Commission. So, the arbitrators are not  
21 bound by any language that I saw in there to consider the fact  
22 that the Commission might have ruled on the same or similar  
23 dispute in one way to result in the arbitrators ruling in that  
24 way.

25 Q Do you know if BellSouth ever proposed language which



1 would state that any commercial arbitrators would be bound by  
2 Commission precedent?

3 A Not that I'm aware of.

4 Q Do you know if a court of law is bound by Commission  
5 precedent?

6 A I don't know, I'm not a lawyer.

7 Q Do you know how commercial arbitration awards are  
8 enforced?

9 A I'm not sure what you mean by enforced.

10 Q Let's say someone doesn't abide by the terms of an  
11 award. Do you know how -- who would enforce those terms?

12 A No, not specifically I don't, but I know that the  
13 Commission would enforce the terms, if the dispute was brought  
14 to the Commission.

15 Q You claim that BellSouth seeks consistency in rulings  
16 regarding interconnection agreements, correct?

17 A Yes, correct.

18 Q Can you point to an instance in which BellSouth has  
19 received a ruling from a commercial arbitrator which was  
20 inconsistent with a ruling of the Florida Public Service  
21 Commission?

22 MR. TWOMEY: I need to state --

23 A Well --

24 MR. TWOMEY: Hold on. I need to object -- I don't  
25 know if it's an objection. The terms of the award are

1 confidential. I'm not sure if it's a sufficient response to  
2 Mr. Chaiken for her to answer yes or no to that question  
3 without disclosing more details. And we also have some other  
4 commercial arbitrations with other companies that are also  
5 confidential. So, I just want to -- I guess, I'm cautioning  
6 the witness not to disclose confidential information, and I'm  
7 objecting to the question to the extent it requires her to do  
8 so, so if that's appropriate.

9 COMMISSIONER JABER: I understand. Mr. Chaiken, be  
10 careful that your questions don't trigger Ms. Cox's revealing  
11 confidential information. So you might -- in asking the  
12 question you might say, you know, I'm not asking you to reveal  
13 confidential information, if you know that it might.

14 MR. CHAIKEN: Understood.

15 COMMISSIONER JABER: If you're not sure, ask the  
16 question, let's talk about it, and then she'll respond.

17 MR. CHAIKEN: Understood.

18 COMMISSIONER JABER: Okay. Try again.

19 BY MR. CHAIKEN:

20 Q Without disclosing any confidential information, are  
21 you aware of any instance in which a commercial arbitrator has  
22 ruled inconsistently with the Florida Public Service  
23 Commission?

24 A Yes.

25 MR. CHAIKEN: Commissioner, I'm really not sure how

1 to ask the next question. Could I have a sidebar, please?

2 COMMISSIONER JABER: Mm-hmm. With me or with  
3 counsel? Show it to counsel.

4 MR. CHAIKEN: With both. I think, I need both.

5 COMMISSIONER JABER: Show it to counsel first.

6 MR. CHAIKEN: Sure.

7 MR. TWOMEY: Commissioner, both parties have  
8 identified the award as confidential for purposes of this  
9 proceeding. The prehearing order says that you're not supposed  
10 to talk about it, if possible. I will agree with Mr. Chaiken  
11 that for him to ask the next question he's got to ask her in  
12 what way -- or he intends to ask her in what way was it  
13 inconsistent.

14 I think, a reading of the award and the -- you could  
15 divine that for yourself, but I don't have any objection to her  
16 answering the question if there's some way to keep her answer  
17 confidential. And I just don't know what the ability is to do  
18 that.

19 COMMISSIONER JABER: Ms. Cox, in responding to the  
20 next question, you may be able to refer to provisions of the  
21 award, lines in those provisions, without revealing the  
22 specifics. And I know that's difficult, but we will look at  
23 the award -- in fact, we have looked at the award, so try to  
24 respond in that manner. And if you are not sure, let us know,  
25 and we'll take another break. Go ahead, Mr. Chaiken.

1 THE WITNESS: Okay. Can I have an -- well, I'll let  
2 you ask your question, and then I'll look for it.

3 MR. CHAIKEN: Sure.

4 BY MR. CHAIKEN:

5 Q Ms. Cox, based on what the Commissioner just said,  
6 please try to tailor your answer as specifically as possible,  
7 but what -- your response to my last question was yes, so the  
8 follow-up actually has to be what did you find to be  
9 inconsistent?

10 A Okay.

11 THE WITNESS: Can I have a minute to find it?

12 COMMISSIONER JABER: Yes.

13 MR. TWOMEY: I'm not attempting to coach the witness,  
14 but I know she's unfamiliar with the award. The last couple of  
15 pages are summaries of the findings, and you may be able to  
16 find what you're looking for there.

17 COMMISSIONER JABER: Thank you for not coaching the  
18 witness.

19 A I still can't find the summary. Oh, there we go.  
20 Okay. I'm going to take a stab at it here. On Page 48, and  
21 this is in Section 8, Summary of Award, and there are a series  
22 of bullet points, I guess, I'll refer to those. The third  
23 bullet point --

24 COMMISSIONER JABER: The third bullet point is where  
25 it would be inconsistent, Ms. Cox?

1 THE WITNESS: Yes.

2 COMMISSIONER JABER: That's an example of an  
3 inconsistency?

4 THE WITNESS: Yes.

5 COMMISSIONER JABER: Okay.

6 BY MR. CHAIKEN:

7 Q And can you tell me what FPSC Order or award is that  
8 inconsistent with?

9 A It's in a previous decision, actually, involving  
10 BellSouth and Supra and, I believe, it was for -- regarding the  
11 old agreement, perhaps. And then, I would also say with -- I  
12 don't know how to say the next one without getting kind of  
13 close to saying what it is.

14 COMMISSIONER JABER: All right. Let me ask the  
15 parties, is there a way -- we are going to take another half an  
16 hour break. Is there a way to share the questions, come up  
17 with the responses from Ms. Cox and have those responses be  
18 identified as an exhibit that becomes a confidential exhibit in  
19 this hearing?

20 MR. TWOMEY: BellSouth thinks that's a great idea.  
21 We would be willing to do that.

22 COMMISSIONER JABER: They never think my ideas are  
23 great. You need to take this opportunity and run with it.

24 MR. CHAIKEN: With that as a premise, I guess, I  
25 can't refuse that.

1           COMMISSIONER JABER: No. Mr. Chaiken, let's move to  
2 your next series of questions. And if I need to give you even  
3 more than a half an hour -- and I know this is unusual, but I  
4 really don't want to risk divulging confidential information,  
5 that's just not something any of us want to do, so we'll take a  
6 break at the appropriate time, let you share the questions, let  
7 her come up with the responses. I'm sure that we could make a  
8 computer or typewriter available to create a document that we  
9 will identify as an exhibit.

10           MR. CHAIKEN: Let me just -- my only --

11           COMMISSIONER JABER: Follow-up, additional questions?

12           MR. CHAIKEN: Well, additional questions, and I want  
13 to ensure that, you know, if there was a way to have someone  
14 transcribe her answers. I mean, I want to ensure that she's  
15 the one responding to the question, it's not being written.

16           COMMISSIONER JABER: Can you -- we don't close our  
17 hearings, that's the problem. Can we have an affidavit from  
18 Ms. Cox that the answers that she's given you during the break  
19 are true and correct?

20           MR. CHAIKEN: That really doesn't address my issue  
21 with it. Hold on one moment.

22           COMMISSIONER JABER: Okay. Staff, do you have any  
23 suggestions here?

24           MR. KNIGHT: There has been in-camera cross  
25 examination where we have closed --

1 COMMISSIONER JABER: We're not doing that.

2 MR. KNIGHT: Okay.

3 COMMISSIONER JABER: Any other suggestion?

4 MR. KNIGHT: Could we provide her with a laptop?

5 COMMISSIONER JABER: Hang on a second.

6 MR. TWOMEY: Commissioner -- oh, I'm sorry.

7 The parties have reached an agreement, if it's  
8 acceptable to you, that we can list the inconsistencies, there  
9 are only two of them, in a late-filed confidential exhibit that  
10 both parties would be free to address in their briefs.

11 COMMISSIONER JABER: Do you agree with that,  
12 Mr. Chaiken?

13 MR. CHAIKEN: Yes, we agree.

14 COMMISSIONER JABER: I'm so proud of you guys, great.  
15 That's what we'll do. Move to the next series of questions,  
16 then.

17 MR. CHAIKEN: Sure. Actually, Mr. Twomey and I --

18 COMMISSIONER JABER: Do we need to go ahead and  
19 identify that as an exhibit, then?

20 MR. CHAIKEN: Yes, if we could.

21 COMMISSIONER JABER: As a late-filed exhibit?

22 MR. CHAIKEN: Well, actually, it's OAR-3. It's  
23 already been identified.

24 COMMISSIONER JABER: Yeah, but I thought the --

25 MR. CHAIKEN: Oh, her response, I'm sorry.

1           COMMISSIONER JABER: Right. So, the responses to  
2 what are the inconsistencies will be identified as late-filed  
3 Exhibit Number 8 and, Mr. Chaiken, you will have an opportunity  
4 to address Exhibit 8 in your brief.

5           (Late-filed Exhibit 8 identified for the record.)

6           MR. CHAIKEN: Thank you. I was going to say that  
7 Mr. Twomey and I actually agree on a great many things often.

8           COMMISSIONER JABER: That means there's hope for you  
9 all yet.

10          THE WITNESS: Or no hope for either.

11 BY MR. CHAIKEN:

12          Q     Ms. Cox, you would agree that the parties are free to  
13 negotiate terms which would be greater or more broad than those  
14 placed on the parties by the Telecommunications Act?

15          A     Yes, I would agree.

16          Q     One of the issues in this case is BellSouth seeking  
17 the right to disconnect Supra for not paying undisputed  
18 amounts; do you agree with that?

19          A     Yes, I agree that's an issue.

20          Q     Isn't it true that under BellSouth's proposal it is  
21 BellSouth that gets to determine which amounts are undisputed?

22          A     No, I wouldn't agree with that.

23          Q     No?

24          A     No. I would say the first person who decides that is  
25 Supra; and that is, they decide after looking at their bill



1 whether or not they're going to dispute charges. The  
2 procedures would call for, at that point, I guess, to the  
3 extent that BellSouth really got no information at which they  
4 could determine the dispute they might say, well, this -- we  
5 don't understand this, we need more information.

6           There could be a case where we could say this doesn't  
7 really seem to be a good-faith dispute, we don't have any  
8 specifics that we can use to determine the outcome of this, so  
9 I would say it is not strictly BellSouth that would determine  
10 the amount of the disputed charges.

11           Q     Ms. Cox, who makes the determination as to whether a  
12 dispute is brought in good faith?

13           A     BellSouth would make that decision. They would  
14 advise the, in this case, Supra of our belief about that. At  
15 that point we could receive additional information or Supra  
16 could come to the Commission, if they had an issue to the  
17 extent their dispute was good faith or not.

18           Q     Don't you think it would be appropriate for a mutual  
19 third party to make a determination as to when BellSouth could  
20 disconnect services to a competitive local exchange provider?

21           A     No. I think, the process that we have outlined, and  
22 it's a process that's used with all other ALECs with our end  
23 users, and that is, we render a bill for services that we  
24 provide. If that bill is not disputed, then we would expect to  
25 be paid for that bill. And if we're not, we believe we would

1 have the right to disconnect service and should have that same  
2 right in the case of Supra as we do with other ALECs. It's not  
3 an uncommon business practice for people to expect to be paid  
4 for undisputed charges.

5 Q What if BellSouth were found to have wrongfully  
6 disconnected Supra? Do you believe Supra should be entitled to  
7 damages as a result?

8 A I don't know. I don't know what I'd say to that.  
9 What I would say is that procedures that we have in place, I  
10 believe, would make that a very remote possibility to the  
11 extent -- and even with end users. To the extent that a  
12 dispute is brought ultimately to this Commission, until the  
13 Commission reaches a decision as to whether or not there was a  
14 good-faith dispute and if there was, what is the resolution of  
15 that, who was in the wrong and who was in the right, there is  
16 no disconnection of service for the party.

17 Q So, in that case, it would be the neutral third party  
18 making a decision, correct?

19 A That is one avenue for the parties to take, if they  
20 feel the need to.

21 Q What about in a situation in which Supra claims that  
22 BellSouth owes Supra money at the same time BellSouth claims  
23 that Supra owes BellSouth money? Did you follow that?

24 A Not quite. I sort of did, but --

25 Q Well, basically, the gist of it is in a situation

1 where Supra claims it is entitled to a setoff, amounts that  
2 would set off the amount BellSouth is claiming, do you believe  
3 that BellSouth should be able to disconnect Supra when Supra  
4 claims it's owed money?

5 MR. TWOMEY: I'm going to object just to the form of  
6 the question. I think, the term setoff has a very specific  
7 legal meaning, and I don't know whether Mr. Chaiken is asking  
8 Ms. Cox about -- which is also a legal term -- liquidated claim  
9 or any kind of a claim. And, I think, use of the term setoff  
10 could provide some legal meaning if she were to respond in a  
11 particular way that would concern me.

12 COMMISSIONER JABER: Mr. Chaiken?

13 MR. CHAIKEN: I don't think the witness stated that  
14 she was unfamiliar with the term or that she needed any further  
15 explanation.

16 MR. TWOMEY: My objection is not with her  
17 unfamiliarity. It's the fact that it's a legal term that has  
18 very specific meaning.

19 COMMISSIONER JABER: So, are you objecting to the  
20 form of the question?

21 MR. TWOMEY: Yes, because it includes the word  
22 setoff.

23 COMMISSIONER JABER: Mr. Chaiken, try rephrasing it  
24 to include what your definition of setoff is.

25 MR. CHAIKEN: Sure. Well, how about I ask the

1 witness.

2 BY MR. CHAIKEN:

3 Q Ms. Cox, do you have an understanding of what setoff  
4 means.

5 A Not necessarily. I mean, I had understood your  
6 question to mean you think we owe you money for services you  
7 have rendered us and we think you owe us money, what would  
8 happen in that interim time period?

9 Q Correct.

10 A Well, I think, probably there's not a definite answer  
11 as to what would happen. What I would envision happening is --  
12 and, I guess, you must be referring to a case where these are  
13 disputed charges? Have the parties -- maybe I should have  
14 asked that for clarification. Have the parties disputed the  
15 charges?

16 Q Let's say, for instance, that some of the charges are  
17 undisputed, but some are disputed.

18 A Could you be more specific?

19 Q Sure.

20 A Maybe a hypothetical would help me.

21 Q Sure. Let's say, for instance, that a portion of  
22 what BellSouth claims is being owed BellSouth is undisputed and  
23 everything that Supra claims BellSouth owes Supra is disputed.  
24 In that situation, and let's throw into the hypothetical the  
25 fact that Supra claims it is owed more money than what -- it is

1 owed more money from BellSouth than what BellSouth is claiming  
2 Supra owes it. Do you follow that?

3 A I think, I did, actually.

4 Q Okay.

5 A Scary, but I think I did.

6 Q In that situation.

7 A Well, I would say that to the extent BellSouth has  
8 rendered bills that are not disputed, then those bills should  
9 be paid. In the other direction, if there is a dispute, then  
10 that dispute would play out and that dispute would be resolved  
11 in and of itself. I don't think that just because we have  
12 disputed some of the bills to Supra that automatically entitles  
13 Supra to not pay bills that they don't dispute. I don't know  
14 if that -- did you follow that?

15 Q Actually I did.

16 A Okay.

17 COMMISSIONER JABER: I really wonder why you haven't  
18 settled this case before.

19 MR. CHAIKEN: Because Ms. Cox is not at the  
20 negotiating --

21 THE WITNESS: Don't plant that seed.

22 BY MR. CHAIKEN:

23 Q In that last hypothetical that we just spoke of, and  
24 I don't want it to get too complicated, but isn't it true that  
25 it would be under the terms proposed by BellSouth it would be

1 BellSouth making that determination that, in effect, the amount  
2 Supra claims is disputed, the amount that BellSouth claims is  
3 undisputed and, therefore, BellSouth would have the ability to  
4 disconnect Supra?

5 A I'm not sure I follow that quite so well, but let me  
6 take a stab at it.

7 Q Sure.

8 A Let's look at the case where BellSouth has rendered  
9 bills to Supra and those are undisputed, as I understood -- as  
10 I thought I understood.

11 Q Maybe a portion of them are.

12 A Now, see, you're changing your hypothetical on me.

13 Q Sorry.

14 A Generally speaking -- and I don't want to sound flip  
15 about this. Generally speaking, to the extent Supra or any  
16 party has disputed charges, then we don't require them to pay  
17 those charges, we don't disconnect them during the pendency of  
18 that dispute until the dispute has been resolved. And there  
19 are procedures laid out in the proposed language as to how the  
20 dispute should get resolved, time frames, how it should happen.  
21 We would expect those same procedures to apply in a case of  
22 money that BellSouth was billed by Supra, so we would expect  
23 them to be treated similarly.

24 I don't -- what I'm saying and maybe not very  
25 artfully is the fact that we have disputed billing from Supra,

1 we do not believe should entitle them to withhold billings that  
2 they do not dispute -- we don't believe that those things  
3 should necessarily be related. A billing dispute should play  
4 out and get resolved based on the procedures we have proposed  
5 in the interconnection agreement.

6 Q So, basically, you're claiming the setoff should not  
7 apply or that if Supra has amounts that it believes BellSouth  
8 rightfully owes it should have no impact on BellSouth's right  
9 to disconnect Supra, should it be found that there are  
10 undisputed amounts owing from Supra?

11 MR. TWOMEY: I'm going to object on the grounds that  
12 that question's been asked and answered at least twice, and I  
13 don't think it's appropriate to just keep reploting. I think,  
14 it's a very lengthy hypothetical, she gave a very lengthy and  
15 thoughtful answer, and I don't think she should be put on the  
16 spot to try to repeat the answer again. It's an improper  
17 question.

18 COMMISSIONER JABER: Mr. Chaiken, the objection is  
19 asked and answered.

20 MR. CHAIKEN: That was my last question on the issue,  
21 and I don't think it was asked and answered. In fact, I think  
22 that was the conclusive question on that issue.

23 COMMISSIONER JABER: Mr. Twomey, witnesses are put on  
24 the spot and this will be the final question, Mr. Chaiken, I  
25 allow you to ask on this issue.

1 MR. CHAIKEN: Thank you.

2 BY MR. CHAIKEN:

3 Q Boy, if I could just remember how I asked it.

4 Basically, it's your position that regardless of the  
5 amounts that Supra claims it's owed by BellSouth, if BellSouth  
6 believes that Supra owes it undisputed amounts, it should still  
7 have the right to disconnect Supra; is that correct?

8 A I'm sorry, could you break it up, maybe into -- I  
9 sort of got lost in the disputed and the nondisputed there.

10 Q Sure. Regardless of the amount Supra claims it is  
11 owed from BellSouth --

12 A Which we have disputed -- there's a dispute there.

13 Q Which BellSouth disputes --

14 A Or some portion, okay.

15 Q Regardless of that amount, BellSouth should still  
16 have the right to disconnect Supra for Supra's unwillingness to  
17 pay undisputed amounts?

18 A Yes, I think, potentially we could have that right.  
19 Now, that's not to say that the parties wouldn't be able to  
20 work something out on this, but I don't think that we should be  
21 bound to, in effect, not receive payment based -- of undisputed  
22 charges based on a billing dispute we have on another issue.

23 Q Okay. I'm going to move on. We have an issue  
24 regarding interLATA transport; are you familiar with that  
25 issue?



1 A Yes, I am.

2 Q Now, if Supra is providing services to end users via  
3 the UNE-P platform, it is considered to be a facilities-based  
4 provider; would you agree with that?

5 A Yes, I would.

6 Q And you would agree that it's technically feasible  
7 for BellSouth to provide interoffice transport across LATA  
8 boundaries?

9 A Yes, I imagine it is.

10 Q But BellSouth claims that it's unable to do so as a  
11 result of Section 271 of the Act?

12 A Yes, we do claim that, and we certainly hope that  
13 will change in the near future, but the current state of the  
14 law is yes, we are precluded from providing interLATA services.

15 Q Now, if Supra is considered to be the  
16 facilities-based provider, if BellSouth provided the  
17 interoffice transport across LATA boundaries, it would be Supra  
18 deemed to be the provider, not BellSouth; would you agree with  
19 that?

20 A Not necessarily. BellSouth would still be providing  
21 a transport service to Supra, which we are, unfortunately, not  
22 permitted to do.

23 Q That's your interpretation?

24 A That's, I believe, a lot of people's interpretation,  
25 yes.

1 Q Have you ever seen any case authority or any cites, a  
2 court ruling or FCC or FPSC ruling which states that?

3 A That states we cannot provide interLATA services?

4 Q No, which states that Supra, acting as a UNE platform  
5 provider to end users can't purchase that interoffice interLATA  
6 transport from BellSouth to do so?

7 A I don't know that I've seen anything specifically on  
8 that point, no.

9 Q Do you know if BellSouth ever asked any authority for  
10 an opinion on that?

11 A Specifically, on the transport issue I don't know  
12 that we have.

13 Q Now, interoffice transport is a network element; is  
14 it not?

15 A Yes, it.

16 Q That's to be unbundled; is that correct?

17 A That's correct.

18 Q Move on to another issue. Issue 33 is regarding DSL  
19 service. Would you agree with me that when BellSouth provides  
20 end users with ADSL service that it is a retail service?

21 A Yes, it can be. Our BellSouth's fast-access service,  
22 which is our Internet access service that uses DSL, I would  
23 agree, is a retail service. We also have a wholesale service  
24 that we sell to network service providers.

25 Q Now, when BellSouth provides ADSL service to an end

1 user and the end user converts their voice services to Supra  
2 via UNE-P, is it BellSouth's position that BellSouth may  
3 disconnect that customer's DSL service?

4 A Yes, that is our position, and we say that for a  
5 number of reasons. The first is that the voice provider who is  
6 purchasing the UNE loop is getting the whole loop so that it is  
7 -- that's the high-frequency portion, the whole loop is the  
8 UNE-P providers. And the second reason we say that is the FCC  
9 has looked at this issue two or three times and reached the  
10 same conclusion and that is that we are not obligated to  
11 provide our DSL service when we are not the voice provider.

12 Q Just let me get this straight. A customer has  
13 BellSouth voice and BellSouth DSL, and BellSouth will tell the  
14 customer if you transfer your service to Supra you're going to  
15 lose your DSL; is that correct?

16 A That is what would happen, that is correct. If Supra  
17 is making use of UNEs, that is what would happen. If Supra is  
18 making use of resale, it would not happen, and that is because  
19 in the resale environment we do not consider the reseller to  
20 get the full loop, if you will, they haven't purchased the full  
21 loop.

22 Q Now, if BellSouth had agreed to continue to provide  
23 the DSL service to that end user, would BellSouth still be  
24 making a profit on that service?

25 A I don't know.

1           COMMISSIONER JABER: Ms. Cox, the Act allows  
2 competitors to enter the market through resale UNE using the  
3 UNE platform and then becoming a facilities-based provider;  
4 correct?

5           THE WITNESS: Correct.

6           COMMISSIONER JABER: For the customers that have DSL  
7 service from BellSouth, do you see that you've eliminated a  
8 point of entry for a competitor that uses UNE elements as a way  
9 to compete with BellSouth?

10          THE WITNESS: No, not necessarily. And the reason I  
11 say that is the FCC has also made clear that CLECs purchasing  
12 UNEs have the right to line split, if you will; and that is,  
13 they have the right to enter into an agreement with another DSL  
14 provider and still provide that full package of service to  
15 their customers.

16          COMMISSIONER JABER: So, isn't -- but isn't that then  
17 creating another barrier to entry to competitive entry using  
18 the UNE element?

19          THE WITNESS: I don't think so, I really don't. And  
20 I believe that when the FCC was looking at the DSL market, they  
21 were very specific and they looked at that and they looked at  
22 the advanced services market, in general, and they've  
23 determined that there are a number of competitors in that area,  
24 and they didn't want to, I think, prejudge any carrier or any  
25 technology. And I believe that's the reason they left it to

1 our discretion, to other ILECs' discretion, did not mandate  
2 when we would be required to provide our DSL when other DSL  
3 providers don't have that same mandate on them.

4 COMMISSIONER JABER: Okay, but that's the competitor  
5 that also provides DSL, but let's say Lila Jaber is a customer  
6 of BellSouth, and I'm a phone customer, DSL customer, and a  
7 BellSouth customer all the way. I have been approached by a  
8 competitor or I have sought a competitor for phone service. I  
9 really cannot use that competitor for phone service and keep my  
10 BellSouth DSL service, can I?

11 THE WITNESS: No, you could not with a UNE, and let  
12 me make that clarification, making use of a UNE or UNE-P,  
13 that's correct.

14 COMMISSIONER JABER: Right. And you should assume in  
15 my question that I am talking about the competitor who has  
16 chosen the UNE element.

17 THE WITNESS: Okay. That is correct. Now, there is  
18 nothing that prohibits the new provider that's offering you  
19 voice from offering you the full package. It would not  
20 necessarily be -- it would not be BellSouth DSL, but they're  
21 free to enter into agreements with any of the other DSL  
22 providers that are out there to still provide you the full  
23 package.

24 COMMISSIONER JABER: Right, but what if that  
25 competitive provider that I found has no desire to enter into

1 the DSL market, it's just strictly a voice telephone provider,  
2 and I like their prices, I like their rates, like their  
3 service, I want to get basic phone service from them. I am not  
4 able to, am I, and keep the DSL service from BellSouth?

5 THE WITNESS: That's correct, that's correct.

6 COMMISSIONER PALECKI: And if that competitor wanted  
7 to provide the complete package of voice service and DSL  
8 service that provider would have to have DSLAMS in every one of  
9 your branch offices; would they not? Not branch offices, your  
10 branch --

11 COMMISSIONER JABER: Central office.

12 COMMISSIONER PALECKI: Not branch office, remote  
13 terminals, your remote terminals.

14 THE WITNESS: I'm not sure about that. I don't know  
15 for sure. Maybe Mr. Kephart would be able to answer that.

16 COMMISSIONER PALECKI: I will ask him, but I believe  
17 we've -- in other proceedings, that is the answer we've  
18 received from BellSouth, that it would require a DSLAM, at  
19 least in that remote location where the customer was located to  
20 serve that customer if there was not direct copper to the  
21 central office. I think that's what we've heard from  
22 BellSouth.

23 THE WITNESS: Okay.

24 COMMISSIONER PALECKI: So, would you agree that there  
25 are severe limitations to the competitor who would want to

1 provide both DSL and voice service using the UNE platform?

2 THE WITNESS: Well, my understanding is to the extent  
3 competitors are required to put DSLAMS in a remote terminal for  
4 a particular serving arrangement, BellSouth really has to do  
5 the same thing, so it's -- it's not a -- it's not something  
6 that a CLEC would have to do that BellSouth would not have to  
7 do, is my understanding, to the extent a DSLAM is required to  
8 be collocated in a remote terminal.

9 COMMISSIONER PALECKI: Will a CLEC have access to the  
10 names of all your customers and their addresses being served  
11 out of a remote terminal?

12 THE WITNESS: I'm not sure. I'm not sure how that  
13 information is available.

14 COMMISSIONER PALECKI: If they did not have access to  
15 that information it would be quite foolish for them to install  
16 that DSLAM; would it not?

17 THE WITNESS: I don't know. I mean, I guess, it  
18 would be a risk.

19 COMMISSIONER PALECKI: And BellSouth's territory is  
20 unique in the number of remote terminals that you have; is that  
21 not true?

22 THE WITNESS: I'm not sure about that, how we compare  
23 to other regions.

24 COMMISSIONER PALECKI: Well, most regions in most --  
25 both metropolitan and rural areas are more often served out of

1 central offices; are they not?

2 THE WITNESS: I'm not a very good person to ask about  
3 network engineering. I would agree that -- my understanding  
4 would be metro areas would be more likely to be served from a  
5 central office, yes.

6 COMMISSIONER PALECKI: Thank you.

7 COMMISSIONER JABER: Let me go back to my  
8 hypothetical, and then we're going to break for half an hour.

9 THE WITNESS: Okay.

10 COMMISSIONER JABER: Set aside the competitive  
11 provider that wants to provide DSL, that's not what I'm talking  
12 about. The competitive provider that is only entering the  
13 market providing phone service, the more and more DSL that is  
14 deployed by BellSouth, the harder it becomes for that  
15 competitive provider to provide service to BellSouth customers  
16 just for phone; is that a correct statement, using the UNE  
17 platform?

18 THE WITNESS: That could be the case and, I believe,  
19 it could be the case with DSL being deployed in general. I  
20 mean, to the extent the CLEC only wants to provide voice and  
21 doesn't want to have any provider on the line, I would argue  
22 that to the extent a customer has DSL from any provider they  
23 could risk losing it because of the way the competing provider  
24 has structured their offerings. And I think that's probably,  
25 you know, the type of thing that sort of shakes out in the



1 competitive market, different providers have different packages  
2 of offerings that appeal to certain customers and not to  
3 certain customers and have certain ramifications.

4 COMMISSIONER JABER: Okay. We're going to take a  
5 half an hour break. We'll be back at 3:00.

6 (Recess taken.)

7 COMMISSIONER JABER: Let's get back on the record.  
8 Mr. Chaiken, you were in the middle of cross examination.

9 MR. CHAIKEN: Thank you, Your Honor.

10 BY MR. CHAIKEN:

11 Q We were discussing the issue of DSL service and the  
12 situation in which a BellSouth voice customer switches to Supra  
13 voice service via UNE-Ps, and I had asked you earlier, Ms. Cox,  
14 whether or not BellSouth still stood to make a profit by  
15 continuing to provide DSL service to that end user, and your  
16 response was you did not know. So, my question based on that  
17 answer is if BellSouth still could take a profit providing that  
18 service why does it disconnect the DSL service?

19 A Well, first of all, I don't know about whether or not  
20 we can make a profit, but there are operational issues. As I  
21 said earlier, to the extent in this case, Supra or any number  
22 of ALECs purchase a UNE-P, the loop portion of that UNE-P is  
23 entirely in the control of that ALEC. That ALEC may wish to  
24 share their loop with a third party to provide DSL, they may  
25 wish not to.

1           And it's difficult to keep up with in a real-time  
2 manner when customers move from provider to provider, okay,  
3 does this UNE-P provider allow DSL on their loop or do they  
4 not? Do they want it to be totally under their control? In  
5 line sharing, which is where BellSouth is the voice provider we  
6 know and we're obligated to make line sharing available on our  
7 loops, so we do not have that issue to contend with.

8           Q     Are there any other reasons?

9           A     There could be other operational issues that I don't  
10 know about, but I can't think of any right now.

11          Q     If those operational issues could be resolved, would  
12 BellSouth continue to provide the DSL service?

13          A     I don't know.

14          Q     Physically, what needs to be done to a loop in order  
15 to disconnect the DSL service?

16          A     I don't know.

17          Q     Do you know if the copper loop actually has to be  
18 disconnected from the splitter and the DSLAM?

19          A     I don't know specifically.

20          Q     If BellSouth were actually physically disconnecting  
21 already-connected network elements, do you think they would be  
22 in violation of Supreme Court and FCC rules?

23          A     To the extent they were, yes; however, DSLAMS and  
24 splitters and the types of things you talk about are not, in  
25 fact, unbundled network elements.

1 Q Do you know if in order to disconnect DSL service,  
2 does a customer stand to lose voice service for any amount of  
3 time?

4 A I don't know.

5 Q If that was the case, would you agree that that would  
6 be an improper thing for BellSouth to do?

7 A Well, when you say if a customer loses their DSL  
8 service, that could be BellSouth, that could be any other DSL  
9 provider, so to the extent that changes occur that cause  
10 outages, what we do is the best case to keep those outages to a  
11 minimum.

12 Q That doesn't really answer my question.

13 A I'm sorry, could you repeat your question?

14 Q The question was do you think it would be improper  
15 for a customer to lose voice service in the process of  
16 BellSouth disconnecting their DSL service?

17 A Well, I don't know if they would. And to the extent  
18 that that's what would be required, I think, we could keep that  
19 to a minimum, so no, I don't think necessarily that's improper.

20 Q When or if a customer sought to use a different  
21 provider for DSL service, isn't it true that they would go --  
22 that BellSouth would have to disconnect their own DSL service  
23 before that alternative provider could provide DSL service?

24 A I would imagine so. I don't know specifically how --  
25 again, what happens from a technology standpoint.

1 Q It certainly wouldn't be a seamless change, would it?

2 A I don't know.

3 Q I'm going to move to another issue, Issue 31. Are  
4 you aware as to whether or not there is a shortage of EEL  
5 facilities in Fort Lauderdale?

6 A No, I'm not aware whether there is or there is not.

7 Q How about Miami?

8 A I don't know.

9 Q Now, what would happen if Supra requested an EEL in a  
10 situation where BellSouth determines that it doesn't have any  
11 EELs currently available?

12 A I'm not sure. Could you give a little more detail to  
13 your question?

14 Q Sure. Say Supra has a customer in Fort Lauderdale,  
15 Miami that is being served by four or more lines and BellSouth  
16 says, well, pursuant to our contract and pursuant to the law,  
17 we're not required to provide unbundled local switching, but  
18 they tell Supra, well, we don't have any extra EELs available  
19 at the time, so you're not going to be able to provide service  
20 to this customer either via EELs or via unbundled local circuit  
21 switching; is that what would happen?

22 A No, I don't think that's necessarily what would  
23 happen. What I think would happen is, first of all, it could  
24 be a number of reasons that the EEL is not available but may be  
25 available shortly, maybe it's a facilities issue. To the

1 extent that can get resolved and the EEL could be made  
2 available, we could provide that.

3 My reading of the FCC's exemption for local switching  
4 obligates us to provide an EEL in order to receive the  
5 exemption for local switching, so to the extent that for some  
6 reason we cannot or are unwilling to provide an EEL in a  
7 particular case, then I don't believe we would be entitled to  
8 the local switching exemption.

9 Q So, you're saying in such a case BellSouth would  
10 immediately provide unbundled local circuit switching to  
11 Supra's end user in that case?

12 A Not necessarily. What I premise that with is to the  
13 extent the EEL could be provided shortly. I mean, I believe,  
14 if we can get an EEL to Supra or to an ALEC, that's what we're  
15 going to want to do, and that's what we're going to try to do.  
16 Now, it might take longer than the target interval, and so, if  
17 that's what you mean by not being available, then I would say  
18 it might not be available at the target interval, but we would  
19 get it if it's a facilities issue, so it wouldn't necessarily  
20 trigger us to immediately provide local switching.

21 Q How long would Supra and its customers have to wait?  
22 I mean, what's the greatest amount of time they would have to  
23 wait until or -- strike that.

24 Do you believe that Supra and its end users should  
25 have to wait more than a week for an EEL in such circumstance?

1           A     I believe, there could be cases where, yes, they  
2 would wait longer than a week, that could be the case.

3           Q     Would BellSouth be willing to provide unbundled local  
4 circuit switching for that week while they're waiting to put in  
5 the EEL facility?

6           A     I don't think so. I mean, that's something we could  
7 certainly discuss, but I don't think that the exemption would  
8 be removed because of that situation.

9           Q     So, in a situation where BellSouth claims that it can  
10 make the EEL facility available for an indefinite period of  
11 time, the customer would have to go without Supra's service?

12          A     No, not necessarily. Again, as I said, I think, we  
13 could certainly discuss this issue, and to the extent that we  
14 don't have EELs available in a reasonable period of time, if we  
15 needed to provide the local switching in that period of time, I  
16 just don't think a week would trigger that.

17          Q     How long a period of time do you think should trigger  
18 that?

19          A     I don't know. I don't have a specific time. I  
20 think, it would depend on the circumstance. If we could tell  
21 Supra we have a facilities issue, we think it's going to be  
22 resolved in this period of time that that would be sufficient.

23          Q     Ms. Cox, I'd like to hand you an exhibit which is  
24 BellSouth's production of documents served on Supra on  
25 September 17th, 2001. I believe, that's the supplemental

1 production.

2 A Thank you.

3 COMMISSIONER JABER: Mr. Chaiken, this is not  
4 confidential, right?

5 MR. CHAIKEN: I don't believe so. This is what we  
6 received from BellSouth. I believe, it's not confidential.

7 MR. TWOMEY: Commissioner, there are confidential  
8 documents in addition to these; that is, I agree, this  
9 particular document is not confidential.

10 COMMISSIONER JABER: Okay.

11 MR. TWOMEY: But nor is it a complete reflection of  
12 what we produced.

13 MR. CHAIKEN: Correct, that is correct.

14 COMMISSIONER JABER: Go ahead, Mr. Chaiken. Did you  
15 need this identified?

16 MR. CHAIKEN: Yes, if I could have that identified.

17 COMMISSIONER JABER: Give me a short title. Is  
18 BellSouth's supplemental responses to Supra's second request  
19 for PODs sufficient? That will be Exhibit 9.

20 (Exhibit 9 marked for identification.)

21 MR. CHAIKEN: Thank you.

22 BY MR. CHAIKEN:

23 Q Ms. Cox, I would ask you to turn to BellSouth's  
24 supplemental response to request 4-A. I think, you'll find  
25 that that is a 22-page document containing unbundled network

1 elements for Florida. Are you with me?

2 A Yes, I am. The chart?

3 Q Yes, the spreadsheet. And if you would, I'd ask you  
4 to turn to Page 5 of that document -- actually, take that back.

5 I'd ask you to turn to Page 7 of that document. On  
6 the bottom of Page 7, you'll see on the left-hand side of the  
7 page, the very left-hand side of the page, E911 Service; are  
8 you with me?

9 A Yes, I am.

10 Q Now, there's a bunch of things listed there for which  
11 there are no USOCs contained; do you see that?

12 A I do.

13 Q Do you know why Supra was not provided with those  
14 USOCs?

15 A No, I don't.

16 Q Do you know if USOCs for those items exist?

17 A No, I don't know that without checking.

18 Q If you could turn to Page 8, on the left-hand side of  
19 the page, the second one down says LNP Query Service, and the  
20 one after that states Operator Call Processing, after that it  
21 says Inward Operator Services, after that it says  
22 Branding-Operator Call Processing, and after that it says  
23 Directory Assistance Services. And, I think, you'll find that  
24 there are no USOCs associated with the services listed in those  
25 categories either.



1 A Yes, that's correct.

2 Q Do you know if USOCs exists for those categories?

3 A No, I don't.

4 Q Do you know why they were not provided?

5 A No, I don't.

6 Q I'd ask you to turn to Page 13 near the bottom of  
7 Page 13 you'll see the very left-hand side of the page, it's  
8 entitled, "Unbundled Local Switching, Port Usage." And below  
9 that you'll see that there are no USOCs listed for the services  
10 set forth thereunder; do you see that?

11 A I do.

12 Q Do you know if there are USOCs for those services?

13 A I don't know if there are USOCs for those services or  
14 not.

15 Q So, you wouldn't know why those are provided either?

16 A No, I don't know. I don't know if they are USOCs.

17 Q Okay. If you can turn to the next page, you'll see  
18 on the very left-hand side near the top it states, "Unbundled  
19 Port Loop Combinations-Cost Based Rates." And below that after  
20 the sentences you'll see 2-wire voice grade loop with 2-wire  
21 line port residential, in parenthesis, and it gives the UNE  
22 port loop combination rates, and you'll see if you go across  
23 there are no USOCs for those either.

24 A Yeah, I see that.

25 Q Do you know if USOCs for those exist?

1 A I don't know if they exist or not.

2 Q So, you wouldn't know why those were not provided?

3 A No, because I don't know if there are USOCs.

4 Q Do you know if BellSouth provides these as services  
5 as an unbundled network element?

6 A Yes, we do.

7 Q Further down on that page you'll see, not on the very  
8 left, but in the second column it'll state 2-wire voice grade  
9 loop with 2-wire line port business, in parenthesis, that's  
10 kind of three-fifths of the way down.

11 A I see it.

12 Q And beneath that it states UNE port loop combination  
13 rates and, again, there are no USOCs for the three services  
14 listed thereunder.

15 A Yes.

16 Q Would your responses to my two questions be the same?

17 A They would. They would be for any other services you  
18 would ask, specifically, if there were USOCs. I can't say from  
19 memory where we have USOCs and where we don't.

20 Q Okay. Do you know how Supra is supposed to order  
21 these services if it's not given USOCs?

22 A No, I don't.

23 Q Who would be the right person to ask these questions  
24 of?

25 A Possibly -- I don't know maybe Mr. Pate. I don't

1 know.

2 COMMISSIONER JABER: Mr. Twomey, so that we're not  
3 asking all of the witnesses that same question and then winding  
4 up with no one that can answer those questions, would you  
5 please make sure that Mr. Chaiken knows who the appropriate  
6 witness is?

7 MR. TWOMEY: Yes, I will. And if -- what I can also  
8 do is investigate why the USOC rates -- USOCs are not listed,  
9 and I can provide a late-filed exhibit with either an  
10 explanation for why there are no USOCs or the USOCs themselves.

11 COMMISSIONER JABER: At our next break, you and  
12 Mr. Chaiken talk about that. My only concern is I don't want  
13 to get to the conclusion of this hearing and not have those  
14 answers in the record.

15 MR. TWOMEY: I agree.

16 MR. CHAIKEN: Thank you.

17 BY MR. CHAIKEN:

18 Q Ms. Cox, I'd like to hand you another exhibit, and  
19 it's entitled, "BellSouth's Service Quality Management Plan,"  
20 and this was also produced in response to Supra's second  
21 request for production of documents. It was a supplemental  
22 response.

23 MR. CHAIKEN: And if I can go off the record for a  
24 second --

25 MR. TWOMEY: I think, I'm anticipating what

1 Mr. Chaiken was going to say, but this document has been  
2 labeled by Supra as confidential. It is not, in fact,  
3 confidential and BellSouth did not identify it as confidential  
4 when it produced it.

5 COMMISSIONER JABER: Mr. Chaiken, I'm assuming you  
6 want an exhibit number for this?

7 MR. CHAIKEN: Yes, ma'am.

8 COMMISSIONER JABER: Okay. It shall be identified as  
9 Exhibit 10; it's BellSouth's Service Quality Measurement Plan,  
10 and it is not a confidential exhibit.

11 (Exhibit 10 marked for identification.)

12 MR. CHAIKEN: Thank you.

13 BY MR. CHAIKEN:

14 Q Ms. Cox, have you ever seen this document before?

15 A I don't know if I've seen this particular document.  
16 I have seen documents that have our service quality measurement  
17 plan in it.

18 Q In response to Supra's request, BellSouth has  
19 provided the Georgia performance metrics. Is there such a  
20 document for the state of Florida?

21 A I'm sorry, I don't have the response that this was --  
22 I'm sorry, you say, this was number two?

23 Q I'm not sure -- hold on a second.

24 A Okay.

25 Q Excuse me.

1           COMMISSIONER JABER: Court Reporter, do you need a  
2 copy of Exhibit 9?

3           COURT REPORTER: Yes.

4           COMMISSIONER JABER: Okay.

5           MR. TWOMEY: Commissioner Jaber, I don't know if this  
6 will clear up the record or assist Mr. Chaiken, but I was  
7 responsible for putting the production together. We provided  
8 some data to Supra in response to its request that contains  
9 field code identifiers for all the data, that if you don't know  
10 what the data is -- if you don't know what's being referred to,  
11 it doesn't make any sense. We provided them this additional  
12 document, because it contains explanations of what the terms  
13 are. This is in fact, a Georgia document, but the data we  
14 provided was for Florida.

15           COMMISSIONER JABER: Okay.

16           MR. TWOMEY: I don't believe we have a similar plan  
17 in place in Florida yet, that's why we had to use this one.

18           COMMISSIONER JABER: Okay. Mr. Chaiken, was that  
19 your question?

20           MR. CHAIKEN: I was just wondering if there was such  
21 a document for the state of Florida.

22           COMMISSIONER JABER: Okay. With the explanation by  
23 counsel, ask the witness the question again, because we really  
24 need the witness to testify to your question.

25           MR. CHAIKEN: Sure.

1 BY MR. CHAIKEN:

2 Q Ms. Cox, were you aware as to whether or not such a  
3 service quality measurement plan exists for the state of  
4 Florida?

5 A The Commission has just concluded their proceeding on  
6 this issue and has issued an Order, so right now there is no  
7 Commission plan. The Commission has -- it's my understanding,  
8 has been operating under some interim performance measurements,  
9 and we have been reporting data based on that.

10 Q Are you familiar with this document?

11 A I'm not familiar with the details of the document,  
12 no, I would not be able to --

13 Q So, if I ask you questions regarding things contained  
14 in this document, would your response be similar to the last  
15 document I placed in front of you?

16 A Yes, I would not be able to answer any specifics  
17 about the plan.

18 Q Who would be the right person at BellSouth to  
19 question regarding this document?

20 A I'm not sure. You mean of the witnesses here?

21 Q I'm just asking for any witness -- any employee of  
22 BellSouth would be the right person to ask regarding this  
23 document?

24 A Mr. Dave Coon or Mr. Al Varner.

25 COMMISSIONER JABER: Mr. Twomey, the same directions

1 you had for providing a witness on Exhibit 9, please be able to  
2 identify a witness for Exhibit 10, if there is a witness.

3 MR. TWOMEY: There is no witness for Exhibit 10.  
4 BellSouth's position is as stated in Ms. Cox's testimony. I  
5 won't testify to what she's already testified to. We did not  
6 -- our position is that -- well, it's as stated in Ms. Cox's  
7 testimony. We do not have a witness that we've tendered in our  
8 direct or rebuttal case on this point, although, they could  
9 have been subpoenaed by Supra or they could have taken  
10 depositions.

11 COMMISSIONER JABER: Mr. Chaiken, you may want,  
12 during the break, to give Mr. Twomey some indication of what  
13 your questions are with respect to this exhibit. And to the  
14 degree that that they can be answered in this proceeding with a  
15 witness that already is present, I'm sure that Mr. Twomey will  
16 accommodate that request, but if there is no witness in this  
17 hearing, there is no witness in this hearing.

18 MR. CHAIKEN: I appreciate that. And in light of  
19 that fact, I feel I have to ask a few questions.

20 BY MR. CHAIKEN:

21 Q If you could please turn to Page 1-2 of this document  
22 and, I believe, at the top of the page it states, "SQM  
23 disaggregation analog benchmark"; do you see that?

24 A Yes, over on the right-hand side?

25 Q Actually, up on the left-hand side.

1 A Oh, I'm sorry. Oh, SQM disaggregation?

2 Q Yes.

3 A Okay, it's up under the clip.

4 Q Do you see that?

5 A I do.

6 Q And it sets forth SQM level of disaggregation, gives  
7 two columns, and it lists a number of different databases; is  
8 that accurate?

9 A Yes, that's what it appears to show.

10 Q Okay. And based on the descriptions set forth  
11 therein, if you go to the last one it states, oasis, and it  
12 states information on feature rate availability, and then it  
13 states BellSouth queries this legacy system. Do you know if  
14 CLECs are able to query that legacy system?

15 A No, I don't.

16 Q Ms. Cox, isn't it true that you testified regarding  
17 Issue number 15 in this case?

18 A Yes, it is. And our position on Issue 15 which was,  
19 I believe, what should be the performance measurements included  
20 in the parties' agreement, and our position on that issue is  
21 that it should be the plan that's been developed by this  
22 Commission and will be implemented as a result of their generic  
23 docket, and that's really the extent of my testimony on the  
24 issue.

25 MR. TWOMEY: I don't know if Mr. Chaiken is leaving



1 this document, but I have confirmed that the last question he  
2 asked Ms. Cox about the oasis system, Mr. Pate can answer that  
3 question.

4 COMMISSIONER JABER: Okay, thank you.

5 MR. CHAIKEN: Thank you.

6 BY MR. CHAIKEN:

7 Q Ms. Cox, I'm going to hand you another exhibit, which  
8 is BellSouth's monthly state summary for Florida June 2001,  
9 which was also produced at the same time that Exhibit Number 10  
10 was produced.

11 COMMISSIONER JABER: After you all confirm it's not a  
12 confidential exhibit, please remember to give the court  
13 reporter a copy.

14 MR. TWOMEY: The document that Mr. Medacier is  
15 handing out is part of the additional documentation BellSouth  
16 produced in response to the question about performance  
17 measurements. This information is also not confidential. It's  
18 available on BellSouth's web site.

19 COMMISSIONER JABER: Thank you, Mr. Twomey.  
20 Mr. Chaiken, did you want an exhibit number for this?

21 MR. CHAIKEN: Yes, please.

22 COMMISSIONER JABER: Okay. Exhibit 11 shall be the  
23 BellSouth Monthly State Summary for Florida June 21, Exhibit  
24 11, and it's not confidential.

25 (Exhibit 11 marked for identification.)

1 MR. CHAIKEN: Thank you.

2 BY MR. CHAIKEN:

3 Q Ms. Cox, are you familiar with BellSouth Monthly  
4 State Summaries?

5 A Not in any great detail. I know that we produce them  
6 as a result of our performance measures issues, but I'm not  
7 familiar with the details of them.

8 Q Who at BellSouth would be able to answer questions  
9 regarding these spreadsheets?

10 A Well, without knowing the specifics of your questions  
11 I would say, again, Mr. Dave Coon or Al Varner would be able to  
12 answer the questions. I don't know who here.

13 Q The final column of the spreadsheet you'll see it  
14 states, "Equity," and you'll run down the line, you'll see in  
15 that column here it states, "Diagnostic-no or yes." Do you  
16 know what diagnostic stands for?

17 A My understanding is that diagnostic is a measurement  
18 that perhaps was not ordered as part of a state Commission  
19 plan, but is something that we produce for diagnostic purposes.

20 MR. CHAIKEN: Commissioner, if I could just have a  
21 couple minutes, I'm almost done with this witness.

22 COMMISSIONER JABER: Yeah, absolutely.

23 MR. CHAIKEN: Thank you.

24 Commissioner, if I may, I'd just like to inform the  
25 Commission the last two exhibits that we discussed were

1 tendered to Supra on September 18th. We have not had an  
2 opportunity to depose any BellSouth witness on the matter. The  
3 present BellSouth witness, Ms. Cox, is the one who filed  
4 testimony on Issue 15, which directly relates to the  
5 performance measurements, and we request the ability to have  
6 someone who is familiar with these exhibits testify in this  
7 matter, as we have not had the opportunity to depose anybody on  
8 it.

9 COMMISSIONER JABER: I understand that it's your  
10 position that you have not had an opportunity to depose  
11 witnesses. I disagree with you, and that was reflective in the  
12 ruling I made this morning. However, I have been flexible with  
13 respect to cross examination on all of these exhibits, and to  
14 the degree there is a BellSouth witness that can be made  
15 available that is already testifying, I will continue to allow  
16 flexibility in cross examination.

17 Mr. Twomey, you said Mr. Pate could answer some  
18 questions?

19 MR. TWOMEY: Mr. Pate could answer one of the  
20 questions. In the reference to Exhibit 10, there was a  
21 specific list of some of our operational support systems, and  
22 Mr. Chaiken asked a question about how one of those operational  
23 support systems works, and Mr. Pate can answer that question.  
24 Mr. Pate is not an expert nor is he providing testimony in this  
25 docket on the performance measurement data. And I'm not sure I

1 need to, but I echo your statements that they had an  
2 opportunity to depose our people last week and made no effort  
3 whatsoever to do so.

4 COMMISSIONER JABER: Mr. Chaiken, the other thing we  
5 can do during Mr. Pate's testimony or anytime during the other  
6 witnesses' testimony is to consider the identification of a  
7 late-filed exhibit that will answer your specific questions.

8 So, during the next break, sit down with Mr. Twomey,  
9 tell him more about what your questions are and let's see if we can  
10 work this out. There is an opportunity for late-filed exhibits  
11 to be filed and perhaps that would satisfy your concerns. You  
12 have an opportunity to address late-filed exhibits in your  
13 briefs. Maybe after he hears what your questions are there is  
14 another witness that can answer them, so, you know, in the  
15 spirit of being flexible, I'll continue to give you that sort  
16 of direction, but the ruling stands.

17 MR. CHAIKEN: Then, I have no further questions for  
18 this witness.

19 COMMISSIONER JABER: Thank you, Mr. Chaiken. Staff?

20 MR. KNIGHT: Just a couple of questions.

21 COMMISSIONER JABER: Hang on, Mr. Knight.

22 And BellSouth, you are directed to accommodate my  
23 concern and my wish to remain flexible during cross  
24 examination, so you sit down and have a conversation with your  
25 witnesses and figure out who can answer the questions.

1                   Go ahead, Mr. Knight.

2                                   CROSS EXAMINATION

3 BY MR. KNIGHT:

4           Q     Ms. Cox, will you consider BellSouth and AT&T to be  
5 sophisticated participants in the telecommunications industry?

6           A     BellSouth and AT&T?

7           Q     Yes.

8           A     Yes.

9           Q     Do you think either party in the AT&T and BellSouth  
10 agreement thought that they would be in breach of the  
11 interconnection agreement they signed?

12          A     No. I think, they probably did not go in with that  
13 thought.

14          Q     Did they not include a provision for commercial  
15 arbitration in that agreement?

16          A     Yes, we did, in the very early agreement we did, and  
17 as a result of what we have learned since that time we have  
18 moved away from that. And, in fact, AT&T, even during the  
19 course of the agreement, I don't think they ever chose to go to  
20 a commercial arbitrator. They always chose to the relative  
21 state Commissions.

22          Q     Okay. I just had a couple questions on the disputed  
23 charges.

24          A     Okay.

25          Q     Is there a situation where Supra would be the last

1 determinant of what would be a disputed charge?

2 A Yes, based on the language we proposed, to the extent  
3 it's a bill that Supra has rendered to BellSouth that BellSouth  
4 would dispute, Supra would be in the position of saying, well,  
5 we don't -- we need more detail -- just like BellSouth would,  
6 we don't have enough detail, we don't think that is truly a  
7 dispute, a good-faith dispute, so there could be cases where  
8 they would make that determination. It really would be  
9 whatever party has provided the service and has provided the  
10 billing would be the point where that decision would be made.

11 Q And once that decision is made, what recourse would  
12 Supra have against BellSouth?

13 A If Supra had determined that it was not a good-faith  
14 dispute --

15 Q Correct.

16 A -- on BellSouth's part that we had rendered? Then,  
17 they would have -- the same language would apply to them. They  
18 would give us notice that, you know, we don't think that was a  
19 good-faith dispute. If we don't get something more we're going  
20 to be disconnecting you to the extent we have services that we  
21 would disconnect. The language we proposed is reciprocal.

22 Q So, you're saying Supra could disconnect BellSouth?

23 A Yes, they would be within their rights to do that.

24 Q Okay. If Supra disconnected BellSouth would that  
25 affect BellSouth's ability to provide telecommunications

1 services?

2 A Yes, I imagine it could. I could think of a case  
3 where it could, yes.

4 Q If you could elaborate on that.

5 A Let's say that there is -- we're purchasing  
6 interconnection facilities and Supra were to decide to turn  
7 those off. Our ability for customers to place calls -- our  
8 customers to get calls through would be affected.

9 Q Would you have alternative means of providing that  
10 service to the customers?

11 A Possibly. We could, possibly.

12 Q Okay. From your knowledge of Supra's network, if  
13 BellSouth disconnected Supra would Supra also have alternative  
14 means of providing services to its customers?

15 A They could, possibly. In the case of  
16 interconnections or transport facilities there are alternative  
17 transport providers out there in the market.

18 Q Are there any other means for providing  
19 telecommunications services?

20 A I'm sorry, could you rephrase your question? I'm not  
21 sure I understood that one.

22 Q Are there any other avenues Supra could use to  
23 provide telecommunications services to its customers if  
24 BellSouth disconnects Supra's service?

25 A I don't know, other than the one I mentioned. I

1 guess, it could depend on the particular service.

2 MR. KNIGHT: Okay. Just a minute. I didn't know if  
3 Supra intended to introduce your deposition as an exhibit. If  
4 not, I've got some other questions.

5 COMMISSIONER JABER: Mr. Knight, I didn't hear what  
6 you said.

7 MR. KNIGHT: I didn't know if Supra was going to  
8 introduce Witness Cox's deposition testimony as an exhibit.

9 COMMISSIONER JABER: Well, they haven't.

10 MR. KNIGHT: Okay.

11 COMMISSIONER JABER: So, what is your desire?

12 MR. KNIGHT: I just had one analogy, a hypothetical,  
13 that I wanted to go through.

14 COMMISSIONER JABER: That was in her deposition?

15 MR. KNIGHT: I believe, we addressed it in her  
16 deposition.

17 COMMISSIONER JABER: Then, you need to refer her to  
18 the deposition.

19 MR. KNIGHT: Okay.

20 COMMISSIONER JABER: Supra has cross examined her and  
21 they have not introduced the deposition exhibit.

22 MR. CHAIKEN: I'm sorry, I intended to and I told  
23 Staff earlier I was going to introduce her deposition  
24 transcript as an exhibit at the proceeding.

25 COMMISSIONER JABER: And you had cross examination



1 questions on the deposition transcript?

2 MR. CHAIKEN: Correct.

3 COMMISSIONER JABER: You've cross examined. I'm not  
4 going to allow it. You've got questions on the deposition? If  
5 you intend to use the deposition to cross examine her, then  
6 pass out the deposition.

7 MR. KNIGHT: Okay. If we could have just a minute.

8 COMMISSIONER JABER: Or show it to her. I mean, if  
9 you don't want it in, you can show her the deposition  
10 transcript and ask her the questions.

11 MR. KNIGHT: Commissioner Jaber?

12 COMMISSIONER JABER: Yes.

13 MR. KNIGHT: If we could ask for your indulgence for  
14 just a moment while we make a copy of this?

15 COMMISSIONER JABER: Yes. Hang on, Wayne. Do the  
16 parties have any objection to a stipulation to bring in  
17 Ms. Cox's deposition into the record?

18 MR. TWOMEY: Yes. I think that if BellSouth -- I  
19 mean, to the extent that Ms. Cox is here to answer questions,  
20 there's no -- I don't think it's appropriate to introduce the  
21 deposition. It's certainly appropriate to ask questions using  
22 the deposition for impeachment or even to ask some of the same  
23 questions, but I don't think it's appropriate to put the whole  
24 deposition into the record when the witness is available for  
25 hearing.

1           COMMISSIONER JABER: Do you have a copy of the  
2 deposition transcript, Supra?

3           MR. CHAIKEN: Yes, ma'am.

4           COMMISSIONER JABER: Do you have a copy of the  
5 deposition transcript, BellSouth?

6           MR. TWOMEY: I do have a copy of the deposition  
7 transcript.

8           COMMISSIONER JABER: Okay. Mr. Knight, do you have  
9 at least a copy to show to the witness?

10          MR. KNIGHT: Yes, we have.

11          COMMISSIONER JABER: Okay. Then, let's go ahead and  
12 do that.

13 BY MR. KNIGHT:

14          Q     Ms. Cox?

15          A     Yes.

16          Q     The copy we were given was not numbered, but it's the  
17 start of Page 4 to the middle section.

18          A     Okay, talking about expedite --

19          Q     Right.

20          A     -- service?

21          Q     Right.

22          A     Okay.

23          Q     Wherein I asked you -- I gave an analogy wherein I  
24 used the example of if you paid for expedited mail service and  
25 you, for instance, sent mail by second-day air expecting it to

1 be delivered in two days and regular mail would have got it  
2 there in four days. If the mail got it there in three days,  
3 would you consider to have -- would you consider yourself to  
4 have been cheated out of the expense of paying for an expedited  
5 service that you received sooner than -- you still received  
6 sooner than regular mail would have gotten it but not as soon  
7 as the time frame in which you paid for?

8 A Well, I guess, it would depend on how it had been  
9 explained to me. When I have used Express Mail, I guess, is a  
10 term at the post office, what they've always told me is, well,  
11 we try to get it there in two days or three days, it doesn't  
12 always get there. So, to the extent that's my understanding  
13 and it's clearly going to get there before it would normally,  
14 then I would feel that I had received what I paid for.

15 Q Okay. And so, if Supra paid for an expedited service  
16 and the service was not provided in the time frame that they  
17 contemplated but was provided in a faster time frame than it  
18 would had they not asked for expedited service, you still think  
19 that Supra would have gotten the benefit of what they agreed to  
20 or what they contemplated receiving?

21 A Yes. And I say that because of the language in the  
22 tariff that we refer to in how we handle our expedite service.  
23 The tariff is clear that to the extent you don't get it on --  
24 in our example, the mail doesn't get there in day two, but it  
25 gets there in day three, that that would still be expedited

1 service and the payment would be based on the number of days in  
2 advance that it was received.

3 Q Okay. And so, you would charge Supra the full  
4 expedited service fee?

5 A Actually, the way the tariff is structured it's -- I  
6 mean, I think, it's \$200, but it's an amount per day that's  
7 expedited, so if instead of expedited two days it was expedited  
8 one day, then that's how the tariff would apply.

9 MR. KNIGHT: Okay. We have no further questions.

10 COMMISSIONER JABER: Commissioners?

11 COMMISSIONER PALECKI: I have a couple of questions  
12 about alternative dispute resolution. In this Commission, we  
13 are becoming more and more burdened with telecommunications  
14 dockets where this Commission is acting as the police officer  
15 between the ALEC community and the ILECs. It's gotten to the  
16 point where it's taken up probably 50% of this Commission's  
17 hearing time.

18 Do you have any suggestion that you could give us as  
19 to how the burden of acting as the peacekeeper between these  
20 parties could be lessened? Are there any other forms of  
21 dispute resolution that could be used other than this  
22 Commission, because it -- honestly, it's becoming more and more  
23 overly burdensome to this Commission.

24 THE WITNESS: I don't have a -- probably a great  
25 silver bullet to give you. I'll just make a few comments, and

1 I'll make them not knowing any restrictions or legal  
2 requirements how the Commission should operate, but I will note  
3 that in a few states we have these types of issues can be heard  
4 by what are called administrative law judges within the state  
5 Commission, so they are not heard by the Commission. They are  
6 ultimately ruled on by the Commission, but that could be one  
7 means to break the logjam, I guess, if you will, or not burden  
8 the Commission, to a certain extent.

9 Another example I would point out, and this is one  
10 that this Commission has used, when you see the same issues  
11 start to be in arbitration after arbitration, and there are a  
12 few that are in this case, you have opened a generic docket to  
13 address it on a generic basis. And so, to the extent that a  
14 generic decision is going to apply across the board, I mean,  
15 that could cut out on some of the individual disputes.

16 COMMISSIONER PALECKI: Now, you may be aware that the  
17 federal district courts, the Florida circuit courts, and even  
18 the Florida county courts have been looking more and more  
19 towards alternative dispute resolution as a means of  
20 controlling their burdensome caseloads.

21 What if, as a compromise, we look to third-party  
22 arbitration subject to limited review by this Commission to  
23 determine consistency with other Public Service Commission  
24 decisions, would that be something, a compromise that BellSouth  
25 might consider?

1 THE WITNESS: I don't know. I mean, I'd have to  
2 think about that and talk to some folks about that, and I will  
3 do that, but I don't know right off the bat.

4 COMMISSIONER PALECKI: Is there any reason you can  
5 think that that would not be a desirable compromise?

6 THE WITNESS: Well, not knowing -- I'm afraid it  
7 could still result in a lot of decisions coming out of a  
8 third-party arbitrator that to the extent they're going to come  
9 to the Commission for consistency, I guess, that is a backstop  
10 to it, but I could just see some decisions still coming out of  
11 third-party arbitrators that because of consistency -- I'm not  
12 sure how, if they get overturned on what that really means.

13 COMMISSIONER PALECKI: Are you familiar in Florida  
14 with DOAH, the Department of Administrative Hearings?

15 THE WITNESS: No, I am not.

16 COMMISSIONER PALECKI: In the past, quite a bit or  
17 quite a number of Public Service Commission dockets would  
18 actually be -- factual matters would be determined by the  
19 administrative law judges at DOAH subject to review by the  
20 Commission. Is that an alternative resolution that BellSouth  
21 could agree to?

22 THE WITNESS: Again, it's something that we could  
23 think about and discuss some. We still would have the concern,  
24 and our experience has been it's been very difficult to find  
25 third-party arbitrators who are really knowledgeable with the

1 telecommunications industry, and there are a lot of  
2 complexities, both from a technical standpoint and from legal  
3 and regulatory standpoints so we still, I believe, would have  
4 that concern with what you discussed.

5 COMMISSIONER PALECKI: But you would agree that in an  
6 arbitration such as we have here, we're talking about  
7 negotiating with another party, with Supra, and a give and take  
8 is involved. And, I believe, Mr. Twomey identified three main  
9 issues in this docket; one was commercial arbitration, the  
10 other was direct access to BellSouth's operation support  
11 system, and then the third were the terms and conditions under  
12 which BellSouth could disconnect Supra for nonpayment of an  
13 undisputed portion of the bill.

14 If there were concessions made by Supra on the direct  
15 access and the disconnection issue, do you believe that  
16 BellSouth could be flexible insofar as alternate dispute  
17 resolution and back off on what seems to be an inflexible stand  
18 that you're taking on that issue?

19 THE WITNESS: Probably not entirely. Some of the  
20 scenarios you've discussed with the possibility of a Commission  
21 backstop to ensure consistency is something we would certainly  
22 be willing to discuss with Supra to see if that was possible.  
23 I just don't know if that's something that they would even  
24 consider.

25 COMMISSIONER PALECKI: Thank you.

1 COMMISSIONER JABER: Redirect.

2 MR. TWOMEY: Thank you.

3 REDIRECT EXAMINATION

4 BY MR. TWOMEY:

5 Q Ms. Cox, you were questioned by both Mr. Chaiken and  
6 Commissioner Palecki about the commercial arbitration issue.  
7 Without disclosing any confidential information, can you  
8 provide the Commission with an approximation of how long it has  
9 taken for the arbitration proceedings to be concluded?

10 A Yes, I can, generally. The shortest was about seven  
11 months, and these were for disputes regarding an  
12 interconnection agreement. It wasn't a negotiation of an  
13 interconnection agreement, these were about disputes. One was  
14 about a year, and one is still going on and has been for close  
15 to a year.

16 Q Ms. Cox, do you have -- without disclosing any  
17 confidential information, the ability to provide this  
18 Commission with some approximation of the cost involved in  
19 commercial arbitration?

20 A Yes. We've had from anywhere from around \$55,000 up  
21 to one that's between the two parties in the hundreds of  
22 thousands of dollars in arbitrators fees.

23 Q And, for example, the case involving hundreds of  
24 thousands of dollars of arbitrators fees, that doesn't include  
25 the attorneys fees that each party may have incurred; is that



1 right?

2 A That's correct.

3 Q On the issue of ADSL service over UNE-P, you answered  
4 some questions from Mr. Chaiken and from Commissioner Jaber  
5 about that. One of the questions that Mr. Chaiken asked you  
6 was whether BellSouth might make a profit if it continued to  
7 offer the DSL service over the line; do you remember that  
8 question?

9 A Yes.

10 Q And, I believe, your response was you weren't sure;  
11 isn't that right?

12 A Yes. I said, I didn't know.

13 Q In determining whether BellSouth would make a profit,  
14 would one of the considerations be whether Supra would be  
15 compensated for the high-frequency portion of the loop that  
16 BellSouth would be using?

17 A Yes, Supra or any ALEC.

18 Q Has Supra expressed an interest in being compensated  
19 for the high-frequency portion of the loop when BellSouth  
20 provides ADSL service?

21 A I don't know.

22 Q Is that an issue the Commission would have to resolve  
23 if it were to order BellSouth to provide ADSL service over  
24 UNE-P?

25 A Yes, I believe, that would be one of the issues that

1 would need to be resolved.

2 MR. TWOMEY: That's all I have. Thank you.

3 At this time, I'd like to move into the record  
4 Exhibits -- previously marked and identified as Exhibit 7, and  
5 I think that was my only exhibit.

6 COMMISSIONER JABER: Any objection to Exhibit 7?

7 MR. CHAIKEN: No, ma'am.

8 COMMISSIONER JABER: Okay. Without objection,  
9 Exhibit 7 shall be admitted into the record.

10 (Exhibit 7 admitted into the record.)

11 COMMISSIONER JABER: Exhibit 8 is a late-filed  
12 exhibit. We'll talk about when late-filed exhibits are due at  
13 the end of the hearing.

14 Exhibits 9, 10, and 11, Supra, are yours.

15 MR. CHAIKEN: Yes, we'd move those into the record as  
16 well.

17 COMMISSIONER JABER: Okay. BellSouth, any objection?

18 MR. TWOMEY: No objection.

19 COMMISSIONER JABER: Okay. Exhibits 9, 10, and 11  
20 shall be admitted into the record without objection.

21 (Exhibits 9, 10, and 11 admitted into the record.)

22 COMMISSIONER JABER: Ms. Cox, thank you.

23 THE WITNESS: Thank you.

24 COMMISSIONER JABER: BellSouth, call your next --

25 MR. TWOMEY: Is Ms. Cox excused?

1 COMMISSIONER JABER: Yes.

2 MR. TWOMEY: Thank you.

3 COMMISSIONER JABER: BellSouth call your next  
4 witness.

5 MS. WHITE: Yes, BellSouth calls Clyde Greene.

6 COMMISSIONER JABER: Mr. Greene, were you sworn?

7 THE WITNESS: Yes.

8 CLYDE L. GREENE

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

12 DIRECT EXAMINATION

13 BY MS. WHITE:

14 Q Mr. Greene, would you please state your name and  
15 address for the record?

16 A My name is Clyde Greene. My business address is 600  
17 North 19th Street, Birmingham, Alabama.

18 Q By whom are you employed?

19 A BellSouth.

20 Q Have you previously caused to be prepared and  
21 prefiled in this case direct testimony consisting of seven  
22 pages?

23 A Yes, I have.

24 Q Do you have any additions, corrections, or changes to  
25 make to that direct testimony at this time?

FLORIDA PUBLIC SERVICE COMMISSION

1 A No, I do not.

2 Q If I were to ask you the same questions that are  
3 contained in your prefiled direct testimony today would your  
4 answers to those questions be the same?

5 A Yes, they would.

6 MS. WHITE: Commissioner Jaber, I'd ask that  
7 Mr. Greene's direct testimony be inserted into the record as if  
8 read.

9 COMMISSIONER JABER: The prefiled direct testimony of  
10 Clyde L. Greene shall be inserted into the record as though  
11 read.

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BELLSOUTH TELECOMMUNICATIONS, INC.  
DIRECT TESTIMONY OF CLYDE L. GREENE  
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET NO. 001305-TP  
JULY 27, 2001

Q. PLEASE STATE YOUR NAME, ADDRESS, AND POSITION WITH  
BELLSOUTH TELECOMMUNICATIONS, INC.

A. I am Clyde L. Greene, Room 28A1, 600 N. 19th St., Birmingham, AL 35203.  
My current position is Specialist, Wholesale Billing at BellSouth Billing, Inc.,  
a wholly owned subsidiary of BellSouth Telecommunications, Inc. In that role,  
I am responsible for overseeing the implementation of various changes to  
BellSouth's Customer Records Information System ("CRIS") and Carrier  
Access Billing System ("CABS").

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from the University of Alabama at Birmingham with a Bachelor of  
Science Degree in Electrical Engineering in 1990. I began my career at  
BellSouth in July 1990 as an Administrative Assistant within the Network  
Department with responsibility for mechanized call testing and call recording  
trouble investigation. Since July 1994, I have served in various CABS support  
roles within the billing organization. I am familiar with the billing services

1 provided by BellSouth Telecommunications to local competitors,  
2 interexchange carriers and retail end user customers.

3

4 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS  
5 PROCEEDING?

6

7 A. The purpose of my testimony is to address issues raised in this arbitration  
8 relating to BellSouth's billing for services provided to Supra. Specifically, I  
9 will address issues 41, 42, and 48.

10

11 *Issue 41: Should BellSouth be required to continue to provide Supra Telecom the*  
12 *right to audit BellSouth's books and records in order to confirm the accuracy of*  
13 *BellSouth's bills?*

14

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

16

17 A. BellSouth has agreed to include language in the Agreement that gives Supra  
18 the right to audit the bills BellSouth provides to Supra. Section 12 of the  
19 proposed General Terms and Conditions language states:

20

21 "Subject to BellSouth's reasonable security requirements and except as  
22 may be otherwise specifically provided in this Agreement, Supra  
23 Telecom may audit BellSouth's books, records, and other documents  
24 once in each Contract Year for the purpose of evaluating the accuracy  
25 of BellSouth's billing invoicing."

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The proposed language goes on to state:

“BellSouth shall cooperate fully in any such audit, providing reasonable access to any and all appropriate BellSouth employees, books, records and other documents reasonably necessary to assess the accuracy of BellSouth’s bills.”

Any claim by Supra that BellSouth is not willing to allow audits of the invoices provided to Supra is false.

*Issue 42: What is the proper timeframe for either party to render bills for overdue charges?*

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

A. BellSouth agrees that in the vast majority of cases, twelve months is more than sufficient time to bill Supra for the services it has ordered from BellSouth. However, there are instances where BellSouth relies on billing information from either third parties or from Supra itself to bill accurately. In these cases, BellSouth should be permitted to bill charges to the full extent allowed by law rather than artificial time limits proposed by Supra.

BellSouth proposes the following language in paragraph 1.2.3 of Attachment 6 of the Agreement:

1

2

“ Bills shall not be rendered for any charges which are incurred after the applicable statute of limitations has run or as stated in any Access Billing Supplier Quality Certification Operating Agreement. Until an Access Billing Supplier Quality Certification Operating Agreement is developed, the statute of limitations will apply.”

3

4

5

6

7

8 Q. EXPLAIN THE BASIS FOR BELL SOUTH'S POSITION ON THIS ISSUE.

9

10 A. BellSouth is committed to providing all ALECs, including Supra, with accurate  
11 and timely invoices for services provided under the Interconnection  
12 Agreements. From time to time, however, there are instances when this billing  
13 may be delayed. For example, BellSouth would often need to rely on usage  
14 records from a third party to bill Supra when services are jointly provided by  
15 that third party (via meet point billing procedures) – records that BellSouth  
16 may not receive for an extended period of time after the date of the usage in  
17 question. In other cases, the ALECs themselves may misreport ordering  
18 information such as the Percent Interstate Usage (PIU) and Percent Local  
19 Usage (PLU) factors that BellSouth relies on to accurately bill the ALECs.  
20 BellSouth's position is that the only limiting factor should be the applicable  
21 laws and commission rules set out in each state. Supra states that the limit  
22 should be set at 1 year from the date the charge was incurred. While this would  
23 be sufficient in the vast majority of cases, BellSouth should be permitted to bill  
24 charges to the full extent allowed by law.

25



1 Q. HAS THIS ISSUE BEEN RESOLVED BETWEEN BELLSOUTH AND ANY  
2 OTHER CARRIERS?

3

4 A. Yes. BellSouth has reached an agreement on this issue with AT&T and  
5 MCIWorldCom, and BellSouth's proposed language on this issue with Supra is  
6 the same language that was agreed to between BellSouth and WorldCom.  
7 (Please refer to BellSouth witness John Ruscilli's Exhibit JAR-1.)

8

9 *Issue 48: What billing records should BellSouth be obligated to provide Supra*  
10 *Telecom? Should BellSouth be required to provide Supra Telecom with billing*  
11 *records with all EMI standard fields?*

12

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

14

15 A. BellSouth provides and is willing to continue to provide Supra with billing  
16 records consistent with EMI guidelines, which include all EMI standard fields  
17 as requested by Supra.

18

19 BellSouth's proposed language on this issue includes the following from page  
20 32 of Attachment 6 of the Agreement:

21

22 "All messages and related data exchanged between BellSouth and  
23 Supra Telecom will be formatted in accordance with accepted industry  
24 standards for EMI formatted records and packed between appropriate

25

1 EMI header and trailer records, also in accordance with accepted  
2 industry standards.”

3

4 The Agreement goes on to say the following on page 37 of Attachment 6:

5

6 “The Optional Daily Usage Feed will contain both rated and unrated  
7 messages. All messages will be in the standard Alliance for  
8 Telecommunications Industry Solutions (“ATIS”) EMI record format.”

9

10 Also, page 41 of Attachment 6 of the Agreement states the following  
11 concerning Enhanced Optional Daily Usage File (EODUF) records:

12

13 “All messages will be in the standard Alliance for Telecommunications  
14 Industry Solutions (“ATIS”) EMI record format.”

15

16 Q. IS BELLSOUTH’S POSITION ON THIS ISSUE CONSISTENT WITH THIS  
17 COMMISSION’S DECISION ON THE ISSUE IN ANY OTHER DOCKET?

18

19 A. Yes. The Commission’s decision on this issue from Docket 000649-TP states:

20

21 “ We believe that BellSouth should be required to provide WorldCom  
22 with billing records in the industry-standard EMI format, with all EMI  
23 standard fields, as opposed to a record which only provisions a portion  
24 of the EMI standard fields.”

25

1 BellSouth's position is consistent with the Commission's above decision  
2 because BellSouth, as stated above, provides Supra with billing records  
3 consistent with EMI guidelines, which include all EMI standard fields.

4

5 Q. WHAT RECORDS OR FIELDS IS SUPRA CLAIMING ARE NOT  
6 AVAILABLE UNDER THE PROVISIONS OF THE INTERCONNECTION  
7 AGREEMENT?

8

9 A. Supra provides precious few details on this point. However, Supra claims that  
10 BellSouth does not provide usage records that will enable Supra to bill for  
11 reciprocal compensation. This is not true. The Access Daily Usage File  
12 (ADUF) that currently is being provided to Supra under its existing Agreement  
13 contains records that Supra can use to bill reciprocal compensation to facility-  
14 based ALECs that terminate calls to the unbundled switch ports Supra orders  
15 from BellSouth. The proposed language for the new Agreement also makes the  
16 ADUF available to Supra.

17

18 Q. HAVE THE PARTIES NEGOTIATED THIS ISSUE?

19

20 A. No. Although Supra has identified this issue, they have refused to discuss this  
21 issue with BellSouth in Inter-company Review Board meetings.

22

23 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

24

25 A. Yes.

1 BY MS. WHITE:

2 Q And there were no exhibits attached to your direct  
3 testimony; is that correct?

4 A That is correct.

5 Q And did you cause to be prepared and prefiled in this  
6 case rebuttal testimony consisting of seven pages?

7 A Yes, I did.

8 Q Do you have any changes to that testimony?

9 A No, I do not.

10 Q If I were to ask you the questions that are contained  
11 in your rebuttal testimony today would your answers be the  
12 same?

13 A Yes, they would.

14 MS. WHITE: I would ask that Mr. Greene's rebuttal  
15 testimony be inserted into the record.

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1                   BELLSOUTH TELECOMMUNICATIONS, INC.  
2                   REBUTTAL TESTIMONY OF CLYDE L. GREENE  
3                   BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
4                   DOCKET NO. 001305-TP  
5                   AUGUST 15, 2001  
6

7 Q.     PLEASE STATE YOUR NAME, ADDRESS, AND POSITION WITH  
8           BELLSOUTH TELECOMMUNICATIONS, INC.

9  
10 A.    I am Clyde L. Greene, Room 28A1, 600 N. 19th St., Birmingham, AL 35203.  
11        My current position is Specialist, Wholesale Billing at BellSouth Billing, Inc.,  
12        a wholly owned subsidiary of BellSouth Telecommunications, Inc. In that role,  
13        I am responsible for overseeing the implementation of various changes to  
14        BellSouth's Customer Records Information System ("CRIS") and Carrier  
15        Access Billing System ("CABS").  
16

17 Q.    ARE YOU THE SAME CLYDE L. GREENE WHO EARLIER FILED  
18        DIRECT TESTIMONY IN THIS DOCKET?

19  
20 A.    Yes.

21  
22 Q.    WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS  
23        PROCEEDING?  
24  
25

1 A. The purpose of my rebuttal testimony is to address billing related comments  
2 that have been made in the Direct Testimony of Supra witness Carol Bentley in  
3 this docket. Specifically, I will address comments made by Ms. Bentley that  
4 are associated with issues 41, 42, and 48.

5

6 Q. HAVE THE PARTIES DISCUSSED EACH OF THESE ISSUES IN AN  
7 INTER-COMPANY REVIEW BOARD MEETING AS ORDERED BY THE  
8 FLORIDA PUBLIC SERVICE COMMISSION?

9

10 A. The parties have discussed Issues 41 and 42 in Inter-company Review Board  
11 meetings; however, they have not discussed Issue 48. Although Supra has  
12 identified Issue 48, they have refused to discuss this issue with BellSouth in the  
13 meetings.

14

15 *Issue 41: Should BellSouth be required to provide Supra Telecom the right to audit*  
16 *BellSouth's books and records in order to confirm the accuracy of BellSouth's*  
17 *bills?*

18

19 Q. ON PAGE 10 OF HER DIRECT TESTIMONY, SUPRA WITNESS CAROL  
20 BENTLEY STATES: "IT IS REASONABLE HOWEVER, FOR SUPRA TO  
21 CONDUCT PERIODIC AUDITS OF BELL SOUTH'S UNDERLYING  
22 DATA, PROCEDURES, SYSTEMS AND PROCESSES, PURSUANT TO  
23 GAAS, IN ORDER TO INSURE THAT SUPRA IS RECEIVING  
24 REASONABLY ACCURATE BILLS." DO YOU AGREE?

25

1 A. Yes. As I explained in my direct testimony, BellSouth has agreed to include  
2 language in the Agreement that gives Supra the right to audit the bills  
3 BellSouth provides to Supra. Any claim by Supra that BellSouth is not willing  
4 to allow audits of the invoices provided to Supra is false.

5

6 Q. ON PAGE 9 OF HER TESTIMONY, MS. BENTLEY STATES THAT THE  
7 ONLY REASONABLE ALTERNATIVE [TO AUDITS] IS TO REQUIRE  
8 BELL SOUTH TO PROVIDE [SUPRA WITH] DIRECT ACCESS TO ITS  
9 ORDERING, PROVISIONING, RATING AND BILLING SYSTEMS.  
10 PLEASE COMMENT.

11

12 A. First of all, since BellSouth is willing to allow Supra to audit its bills, the  
13 discussion of alternatives to audits is irrelevant. Secondly, I disagree with Ms.  
14 Bentley on the point that it would be reasonable to require BellSouth to provide  
15 Supra with direct access to BellSouth's ordering, provisioning, rating and  
16 billing systems. It would not be reasonable to require BellSouth to provide  
17 such access for four main reasons: 1) access to internal BellSouth systems is  
18 not necessary in order for Supra to verify the bills that they receive from  
19 BellSouth, 2) BellSouth is not responsible for providing or maintaining Supra's  
20 end user customer records, 3) BellSouth does not provide this type of direct  
21 access to any of its other customers, and 4) the requested access is not needed  
22 by Supra to successfully compete. Finally, BellSouth already provides Supra  
23 and all of its other ALEC customers with nondiscriminatory access to its  
24 operations support systems ("OSS"). BellSouth provides this  
25 nondiscriminatory access through various manual and electronic interfaces

1 which include Optional Daily Usage File (“ODUF”), Access Daily Usage File  
2 (“ADUF”), and Expanded Optional Daily Usage File (“EODUF”). The subject  
3 of nondiscriminatory access to BellSouth’s OSS is discussed in more detail by  
4 Mr. Pate.

5

6 ***Issue 42: What is the proper time frame for either party to render bills?***

7

8 Q. ON PAGE 11 OF HER TESTIMONY MS. BENTLEY STATES THAT  
9 SUPRA IS NOT ASKING ANY PARTY TO WAIVE ITS STATUTORY  
10 RIGHTS TO COLLECT CHARGES FOR SERVICES PROVIDED, BUT  
11 SIMPLY SUGGESTING THAT BILLS FOR THOSE SERVICES MUST BE  
12 RENDERED WITHIN A REASONABLE TIME FRAME. PLEASE  
13 COMMENT?

14

15 A. BellSouth agrees that neither party should waive its statutory rights to collect  
16 charges for services provided. Furthermore, I would also like to point out that  
17 BellSouth is fully committed to providing the most timely, accurate and  
18 complete bills possible. However, as stated in my direct testimony, there are  
19 instances where BellSouth relies on billing information from either third  
20 parties or from Supra itself to bill accurately. In these cases, BellSouth should  
21 be permitted to bill charges to the full extent allowed by law rather than  
22 artificial time limits proposed by Supra.

23

24 ***Issue 48: Is BellSouth obligated to provide Supra Telecom with billing records? If***  
25 ***so, which records should be provided and in what format?***



1 Q. ON PAGE 12 OF HER TESTIMONY, MS. BENTLEY STATES THAT  
2 BELLSOUTH SHOULD BE REQUIRED TO PROVIDE ALL OF THE  
3 UNDERLYING BILLING RECORDS IN INDUSTRY STANDARD  
4 FORMATS AS WELL AS TO PERIODICALLY VALIDATE THAT THE  
5 RECORDS IT [BELLSOUTH] HAS SUPPLIED ARE COMPLETE, TRUE  
6 AND ACCURATE? PLEASE COMMENT.

7

8 A. The only billing records that BellSouth should be required to provide to Supra  
9 are Supra's invoices and the usage records that BellSouth records that are  
10 necessary for Supra to bill its end users for usage events. All other data needed  
11 to bill its end users (rates, account information, etc.) is the responsibility of  
12 Supra to maintain, and BellSouth should not be required to provide end user  
13 information for Supra or any of its other customers.

14

15 Furthermore, BellSouth has several processes and controls in place to monitor  
16 and verify the timeliness, accuracy and completeness of the billing information  
17 that is provided to its customers. In addition, as discussed above for Issue 41,  
18 BellSouth has agreed to include language in the Agreement that gives Supra  
19 the right to audit the bills BellSouth provides to Supra.

20

21 Q. DOES BELLSOUTH PROVIDE SUPRA WITH THE NECESSARY  
22 BILLING RECORDS?

23

24 A. Yes. BellSouth provides Supra with nondiscriminatory access to Supra's  
25 invoices and usage data. Furthermore, as stated in my direct testimony,

1 BellSouth provides and is willing to continue to provide Supra with billing  
2 records consistent with EMI guidelines, which include all EMI standard fields  
3 as requested by Supra. These billing records are provided so that Supra can  
4 bill its end users in the same time and manner as BellSouth does for its  
5 customers.

6

7 Q. ON PAGE 12 OF HER DIRECT TESTIMONY, MS. BENTLEY STATES  
8 THAT, AS AN ALTERNATIVE, BELLSOUTH SHOULD PROVIDE  
9 SUPRA WITH DIRECT ACCESS TO ALL OF THE NETWORK  
10 ELEMENTS THAT EITHER GENERATE OR HOUSE BILLING DATA  
11 AND ALL OF THE ORDERING, PROVISIONING, RATING AND BILLING  
12 SYSTEMS. PLEASE COMMENT.

13

14 A. The data that Supra has requested is not housed in a network element.  
15 Furthermore, BellSouth should not be required to provide Supra or any other  
16 customer with direct access to the internal guts of its billing system. As I  
17 stated above, BellSouth already provides Supra and other ALEC customers  
18 with nondiscriminatory access to its OSS. This nondiscriminatory access  
19 should be sufficient for Supra to successfully compete, bill its end user  
20 customers and verify its invoices from BellSouth. BellSouth provides all of the  
21 necessary billing information to its customers without the need to also provide  
22 any customers with direct access to the internal databases or processes that are  
23 mentioned by Ms. Bentley.

24

25

1 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

2

3 A. Yes.

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1           COMMISSIONER JABER: The prefiled rebuttal testimony  
2 of Clyde L. Greene shall be inserted into the record as though  
3 read.

4 BY MS. WHITE:

5           Q     And there were no exhibits attached to your rebuttal  
6 testimony; is that correct?

7           A     That is correct.

8           Q     Okay. Mr. Green, would you please provide the  
9 Commission with your summary?

10          A     Yes. Good afternoon. My name is Clyde Greene, and I  
11 am here to testify on behalf of BellSouth regarding the  
12 following three billing-related issues: Issue 41, should  
13 BellSouth be required to provide Supra Telecom the right to  
14 audit BellSouth's books and records in order to confirm the  
15 accuracy of BellSouth's bills? BellSouth has agreed to include  
16 language in the agreement that gives Supra the right to conduct  
17 a reasonable audit once per contract year of the bills  
18 BellSouth provides to Supra.

19                 Issue 42, what is the proper time frame for either  
20 party to render bills? In the vast majority of cases, 12  
21 months is more than sufficient time to bill Supra for the  
22 services it has ordered from BellSouth. However, there are  
23 instances where BellSouth relies on billing information from  
24 either third parties or from Supra itself to bill accurately.  
25 In these cases, BellSouth should be permitted to bill charges

1 to the full extent allowed by law rather than artificial time  
2 limits proposed by Supra.

3 And finally, Issue number 48, is BellSouth obligated  
4 to provide Supra Telecom with billing records? If so, which  
5 records should be provided and in what format? BellSouth  
6 provides and is willing to continue to provide Supra with  
7 billing records consistent with EMI or Exchange Message  
8 Interface guidelines, which include all EMI standard fields as  
9 requested by Supra. BellSouth's position on this issue is  
10 consistent with this Commission's decision on this issue in MCI  
11 Docket 000649-TP.

12 Thank you. That concludes my summary.

13 MS. WHITE: Mr. Greene is available for cross  
14 examination.

15 MR. CHAIKEN: Mr. Medacier will be handling that on  
16 behalf of Supra.

17 COMMISSIONER JABER: Thank you.

18 MR. MEDACIER: Thank you.

19 CROSS EXAMINATION

20 BY MR. MEDACIER:

21 Q Good afternoon, Mr. Greene.

22 A Good afternoon.

23 Q I am going to ask you a few questions regarding Issue  
24 41.

25 A Okay.

1 Q Are you an accountant?

2 A No, I am not.

3 Q Are you an auditor?

4 A No, I am not.

5 Q Have you performed any audit as part of your job at  
6 BellSouth?

7 A I have been involved in audits, but I wouldn't say  
8 that I have performed an audit.

9 Q Which audit were you involved in?

10 A I don't remember exactly, but these were audits in a  
11 previous position I had at BellSouth concerning CABS usage.

12 Q And as part of your participation, what kind of  
13 function have you performed?

14 A Answering questions for auditors, providing  
15 information for auditors, and ensuring that the audit findings  
16 are handled by BellSouth.

17 Q Are you familiar with the Generally Accepted Auditing  
18 Standards?

19 A No, I wouldn't say that I am familiar with that, but  
20 I have discussed that with BellSouth experts.

21 Q Which BellSouth experts?

22 A Well, one in particular, Mr. Greg Follensbee, who is  
23 a CPA and one of our negotiators.

24 Q Is Mr. Follensbee one of the BellSouth auditors?

25 A No, I don't believe he is an auditor.

1 Q Okay. Did you try to reach out to one of the  
2 BellSouth auditors?

3 A No, I did not.

4 Q Is there a group inside BellSouth that is responsible  
5 for auditing?

6 A Yes, BellSouth has an internal auditing group.

7 Q I remember last time we spoke at the deposition I had  
8 asked you if BellSouth was agreeable on including languages  
9 regarding the Generally Accepted Auditing Standards in the  
10 section involving audit. Do you have an answer for me now?

11 A I beg your pardon?

12 Q Do you have an answer?

13 A It's BellSouth's position that we would not agree to  
14 that language that Supra has proposed.

15 Q And can you tell me the reason why?

16 A It's my understanding that the Generally Accepted  
17 Auditing Standards has mainly to do with financial statement  
18 audits or compliance type audits and does not necessarily  
19 specifically address billing invoice audits. So, if the  
20 language as Supra has proposed is included in the agreement,  
21 there would be room for further disagreement, maybe, among the  
22 parties as to exactly what records would be allowed for review  
23 in an audit, because the Generally Accepted Auditing Standards  
24 is not specific to billing invoices.

25 Q Are you aware of any auditing standards that apply

1 specifically to billing and invoicing?

2 A No, I am not.

3 Q In performing the audit that you proposed to Supra,  
4 what standard would be applicable?

5 A Do you mean BellSouth's position --

6 Q Yes.

7 A -- as far as the type of audit? It's BellSouth's  
8 position that for an audit of billing invoices, Supra would be  
9 allowed to review the records that are needed for verifying  
10 billing. And these records may include service request  
11 information, adjustment information, usage records. Off the  
12 top of my head, that's all I can think of right now, but those  
13 types of things that are really needed to verify billing.

14 Q Okay. I am about to show you what is --

15 MR. MEDACIER: I'd like to have this marked for  
16 identification purposes.

17 COMMISSIONER JABER: What is it?

18 MR. MEDACIER: And it is Section 150 titled,  
19 "Generally Accepted Auditing Standards."

20 BY MR. MEDACIER:

21 Q Have you reviewed this document before coming here  
22 today?

23 A No, I have not.

24 MS. WHITE: Excuse me, I'd like to get my copy and  
25 look at it before anymore questions are asked.



1           COMMISSIONER JABER: Okay. Mr. Medacier, "AU Section  
2 150, Generally Accepted Auditing Standards shall be identified  
3 as Exhibit 12."

4           (Exhibit 12 marked for identification.)

5           MR. MEDACIER: Thank you.

6           COMMISSIONER JABER: And you may go forward.

7           MR. MEDACIER: Thank you.

8 BY MR. MEDACIER:

9           Q     Have you reviewed this document with Mr. Follensbee?

10          A     No, I have not.

11          Q     When we last spoke, I believe, it was on September  
12 17th in Atlanta we had conversation on this very document,  
13 haven't we?

14          A     Yes.

15          Q     And you have not taken this opportunity to review  
16 this document?

17          A     Actually, I have attempted to get a copy of the  
18 document, but I was unsuccessful in doing so, and I have not  
19 discussed this with anyone other than what I mentioned earlier  
20 about talking with Mr. Follensbee about it.

21          Q     Okay. Is Mr. Follensbee, to your knowledge, a member  
22 of the auditing group inside BellSouth?

23          A     I don't believe so.

24          Q     Did Mr. Follensbee file testimony regarding auditing  
25 in this matter?

1 A I beg your pardon?

2 Q Did Mr. Follensbee file testimony regarding auditing  
3 in this docket?

4 A No, I don't believe he did.

5 Q Can you please take a look at this document?

6 A Yes.

7 Q And take your time and please let me know where it  
8 excludes -- if there's any portion of it that excludes billing  
9 and invoicing.

10 A Well, I'm not sure that I'm qualified or able to go  
11 through this document and tell you exactly what would be  
12 excluded and what would not be excluded. I'm not sure if even  
13 after reading this whether I would be qualified to do that.

14 Q Isn't it true that you are the voice of BellSouth on  
15 this very issue?

16 A Yes, that is true, I am here to testify on Issue 41  
17 and, again, I've given you BellSouth's position on that issue.

18 Q Are you telling me by this that there is someone  
19 inside BellSouth that is more qualified than you to present  
20 testimony on this issue?

21 A Well, I think, what I'm saying is BellSouth is surely  
22 willing to take this document as a part of the negotiations to  
23 discuss which parts might be acceptable and which parts might  
24 not be acceptable in the interconnection agreement, but --

25 COMMISSIONER JABER: Mr. Green, is it your testimony

1 that BellSouth is willing to include language in the agreement  
2 that Supra has the right to perform an audit?

3 THE WITNESS: Oh, yes, definitely.

4 COMMISSIONER JABER: But it's your testimony that you  
5 are unable to testify on how the audit should be conducted?

6 THE WITNESS: I believe that is the disagreement. I  
7 recall in Ms. Bentley's testimony a reference to the Generally  
8 Accepted Auditing Standards that said something about this  
9 document or these standards allowing Supra to review underlying  
10 systems and processes, and it's BellSouth's position that Supra  
11 does not need to and should not be allowed to review underlying  
12 systems and processes in order to verify their invoices.

13 COMMISSIONER JABER: Okay. That's one level of the  
14 dispute, apparently. Is the second level of dispute what  
15 auditing principles should apply?

16 THE WITNESS: I believe, BellSouth's language says  
17 something to the effect of agreed upon procedures. And that  
18 would mean that the two parties would just get together to  
19 decide on exactly which documents and records would be  
20 acceptable. Whether those are related to a set of standards,  
21 I'm not sure.

22 COMMISSIONER JABER: Okay. Mr. Medacier, go ahead.

23 MR. MEDACIER: Thank you.

24 BY MR. MEDACIER:

25 Q You stated on Page 5, Line 15, of your Direct that

1 BellSouth has several processes and controls in place to  
2 monitor and verify the timeliness, accuracy, and completeness  
3 of the billing information that is provided to its customers.

4 A I'm sorry, what page?

5 Q Page 5, Lines 15 to 17.

6 A Of my direct testimony?

7 Q Yes, that's right. No, actually, of your Rebuttal,  
8 my fault.

9 A That's correct.

10 Q When you say several processes, what do you mean?

11 A BellSouth has edits in place for usage records that  
12 come through the billing system, we have tracking and trending  
13 systems to monitor volumes of usage records, we have bill  
14 verification processes in place to verify invoices and billing  
15 that we do for our customers, we have the performance measures  
16 that would monitor billing.

17 Q I'm turning to your direct testimony now, Page 3,  
18 starting at Line 4 through Line 7.

19 A Yes.

20 Q "BellSouth shall cooperate fully in any such audit  
21 providing reasonable access to any and all appropriate  
22 BellSouth employees, books, records and other documents  
23 reasonably necessary to assess the accuracy of a BellSouth  
24 bill." I have a question for you. If the records that are  
25 needed to perform the audit are located within your processes,

1 are these records excluded from the audit?

2 A No. It's BellSouth's position that we will allow  
3 Supra to review any records and processes that are reasonably  
4 necessary to verify invoices.

5 Q Okay, but who establishes what is reasonably  
6 necessary?

7 A I think, BellSouth should be the one that is at least  
8 involved in deciding what is reasonably necessary, maybe the  
9 only party to decide, I'm not sure.

10 Q So, you are proposing that Supra perform an audit of  
11 BellSouth employees, books, records and other documents, but  
12 BellSouth is the one to determine what is reasonable; is that  
13 correct?

14 A Yes. And as I mentioned before, we'd be willing to  
15 give Supra access to service request information, adjustment  
16 information, usage records, anything that's necessary to verify  
17 invoices.

18 Q Mr. Green, do you know if BellSouth keeps usage  
19 records?

20 A If BellSouth keeps usage records?

21 Q Yes, retain them?

22 A For a period of time, yes.

23 Q And what is your period of time?

24 A I'm not exactly sure.

25 Q Who would know?

1           A     I don't know if I can give you a name, but someone  
2 within our usage groups would be able to tell you that, someone  
3 within billing that works in the usage area.

4           Q     Is it possible that you can give us a late-filed  
5 exhibit regarding the length of time BellSouth retains those  
6 usage records?

7           A     Sure. If that's okay with the Commission, I think, I  
8 would be able to do that.

9           Q     You would be able to do it?

10           COMMISSIONER JABER: It is okay with me. Late-filed  
11 Exhibit 13 will be a response regarding the length of time  
12 BellSouth maintains usage records. Exhibit 13, Mr. Medacier.

13           MR. MEDACIER: Yes, thank you.

14           (Late-Filed Exhibit 13 identified for the record.)

15 BY MR. MEDACIER:

16           Q     Now, turning to your rebuttal testimony, Page 5, Line  
17 24, you stated BellSouth provides Supra with nondiscriminatory  
18 access to Supra's invoices and usage data; is that correct?

19           A     Yes, that is correct.

20           Q     Which system inside BellSouth contains the usage  
21 data?

22           A     I beg your pardon?

23           Q     What system inside BellSouth contains the data?

24           A     What system inside BellSouth contains usage data?  
25 Usage data would be associated with several systems, I would

1 think.

2 Q Which ones?

3 A Usage data could be associated with many different  
4 systems.

5 Q Please elaborate.

6 A The switches, of course, the collector, the data  
7 files associated with billing programs, those are some that I  
8 can think of.

9 Q You also mention the same statement on Page 6 between  
10 Lines 16 and 18; do you see that?

11 A What are you referring to?

12 Q Line 17, "BellSouth already provides Supra and other  
13 ALEC customers with nondiscriminatory access to OSS."

14 A Yes.

15 Q Okay. What is your definition of nondiscriminatory  
16 access?

17 A I'm not sure if I am the person that can give you a  
18 precise definition for that. That might be better directed at  
19 another witness, I'm not sure.

20 Q But this is your statement --

21 A Yes.

22 Q -- is that correct?

23 A Yes.

24 Q So, how do you know it's nondiscriminatory access?

25 A Because I've talked with BellSouth experts who have

1 told me that we do provide nondiscriminatory access.

2 Q Have you had a chance to review any document which  
3 not necessarily have the same conclusion as your expert's just  
4 made?

5 A I'm not sure I understand your question. Can you  
6 rephrase?

7 Q Have you come across any document that would disagree  
8 with your statement?

9 A That would disagree with my statement?

10 Q Yes.

11 A No.

12 MR. MEDACIER: Commissioner, I'm going to refer to  
13 this document that is confidential, and it's OAR-3, and I will  
14 refer Mr. Greene to Page 23.

15 BY MR. MEDACIER:

16 Q And I will caution you not to read anything into the  
17 record. Can you please, Mr. Greene, review the last two  
18 paragraphs?

19 A Yes. Okay.

20 Q Mr. Green, before I ask another question, you've seen  
21 this document before, haven't you?

22 A This document here?

23 Q Yes.

24 A I'm not exactly sure what it is.

25 Q Do you remember when the last time we spoke at the



1 depo I referred you to the same page in the same document?

2 A I have -- yes, I have seen this document before, yes.

3 Q Okay. Are those two paragraphs in this document  
4 consistent with your statement that BellSouth provide customers  
5 with nondiscriminatory access?

6 A No, it's not. It appears that it is not consistent.

7 Q Thank you.

8 Mr. Greene, do you know what a completion date is?

9 A I beg your pardon?

10 Q A completion date?

11 A A completion date? Associated with a service  
12 request?

13 Q Yes, that's correct.

14 A Yes.

15 Q Do you know if Supra, through its OSS, is able to  
16 determine a completion date of a conversion?

17 A Again, I'm not able to answer questions related to  
18 our OSS, possibly, unless you're talking about our DUF files,  
19 maybe, but as far as our BellSouth OSS, I don't know if I'm  
20 able to answer specific questions about those.

21 Q And who would be able to better answer my question?

22 A I'm not sure.

23 Q I'm going now to Page 3, Line 24 and, I believe,  
24 that's your Direct. No, I'm sorry, that should be Rebuttal.  
25 You made the exact same statements in those last pages and also

1 in Page 4; do you see that?

2 A What statement are you referring to?

3 Q Nondiscriminatory access.

4 A Yes.

5 Q Is your answer still the same regarding you not being  
6 able to answer those questions?

7 A Yes, it is, but I do see that I referred to Mr. Pate.  
8 Maybe Mr. Pate would be able to answer those questions for you.

9 Q Okay. Mr. Greene, regarding Issue 48 -- no,  
10 actually, let's go back to Issue 42. You stated that BellSouth  
11 should be permitted to bill charges for the full extent allowed  
12 by law rather than artificial time limits proposed by Supra,  
13 and I'm reading from Page 4, Line 20 of your Rebuttal.

14 A Right, that is correct.

15 Q Okay. How long does it take BellSouth to render  
16 bills to Supra?

17 A I'm sorry, I didn't understand.

18 Q How long does it take BellSouth to render bills to  
19 Supra?

20 A How long does it take? Generally, billing would  
21 normally be accomplished within one bill period or  
22 approximately one month.

23 Q During the relationship between Supra and BellSouth  
24 has there been any situation where you had to bill -- where  
25 your bill extends over more than a year?

1           A     Well, I don't specifically recall any instances, but  
2 I'm sure that that could possibly have been the case, yes, but  
3 I don't know of any specific instances where that has occurred.

4           Q     Do you know what the statute of limitation is on  
5 rendering bills in the state of Florida?

6           A     No, I'm not sure about that, but I would say that  
7 it's at least three years, maybe more.

8           Q     At least three years?

9           A     I think that it might be. As I said, I'm not exactly  
10 sure.

11          Q     Okay.

12          A     I have reviewed the statute of limitations for the  
13 BellSouth region, but I just do not remember what they were for  
14 Florida. And also, it depends on the type of billing that  
15 we're talking about.

16          Q     This is the same question I asked you last time we  
17 met on September 18; was that correct?

18          A     September 17th?

19          Q     September 17th.

20          A     And, I believe, my answer is basically the same that  
21 I don't know.

22          Q     But you have not made any effort to determine what  
23 the statute of limitation is in the state of Florida?

24          A     Actually, I did make an effort, but I did not get a  
25 good answer.

1 Q Would BellSouth be agreeable to the year proposed by  
2 Supra?

3 A A year?

4 Q Yes.

5 A Yeah. It's BellSouth's position that in most cases  
6 we should be able to render your billing within 12 months, but  
7 as I mentioned in my testimony, there are cases where we  
8 believe there should be exceptions to that. These are in meet  
9 point billing situations where two or more parties are  
10 providing service to a third party and record exchange has to  
11 occur and in situations where factors have to be supplied to  
12 BellSouth by Supra for the billing. And another situation that  
13 I didn't mention in my testimony may have to do with mandated  
14 situations where BellSouth is required to do back billing for  
15 some reason. Those are the only reasons I can think of that  
16 might require us to bill late.

17 MR. MEDACIER: If the Commission can give me one  
18 moment.

19 (Pause in proceedings.)

20 MR. MEDACIER: Back on the record, Commissioner.

21 COMMISSIONER JABER: Mm-hmm.

22 MR. MEDACIER: Just a couple more questions.

23 BY MR. MEDACIER:

24 Q You said that in some cases 12 months might not be  
25 sufficient for BellSouth to issue a bill to Supra?

1 A That's correct.

2 Q Is there anything that Supra could do to, in this  
3 instance, to help BellSouth issue the bill within the 12-month  
4 period?

5 A Well, in the meet point billing situation BellSouth  
6 may be waiting on the receipt of summary billing records from a  
7 third party to bill Supra. And unless there is something you  
8 can do to make that third party give us the records in a timely  
9 manner, I don't think there is much you can do. That's not to  
10 say that all companies take that long to provide us with  
11 billing records, but in some cases we have to wait, and I've  
12 seen cases where we have had to wait over a year to receive  
13 billing records.

14 Q In this situation where you participated in audit  
15 inside BellSouth, was it for the purpose of internal auditing  
16 or was BellSouth being audited by some outside company?

17 A I have participated in a couple of internal audits  
18 and maybe even other audits that weren't internal  
19 auditing-related.

20 Q Mm-hmm. Have you had a chance to review the findings  
21 of these audits?

22 A Yes. As a matter of fact, I was responsible for  
23 ensuring the implementation of some of the findings within the  
24 billing system.

25 Q When I asked you that same question on September

1 17th, you had denied ever participating in any auditing inside  
2 BellSouth. What has jogged your memory?

3 A As I recall, I interpreted your question to mean  
4 within my present responsibilities within the BBI regulatory  
5 group. I only came to this group on March 19th of this year.  
6 And if I recall correctly, I did go back and re-answer that  
7 question or at least, I think, I tried to clarify that I meant  
8 -- when I said no, I meant within this present function that I  
9 do I have not participated in an audit. If I did not do that,  
10 that was a mistake.

11 Q Okay. Do you know if BellSouth ever failed an audit?

12 A Failed an audit? I don't know if I understand  
13 exactly what it means to fail, but I do know that there have  
14 been situations where we have been required to make changes as  
15 a result of an audit, if that's what you mean.

16 Q Do you know if BellSouth ever made billing errors?

17 A Yes.

18 Q Would an audit reveal that?

19 A Yes.

20 Q Would the GAAS standards reveal that?

21 A Again, I'm not familiar enough with those standards  
22 to say whether they would or not.

23 MR. MEDACIER: I don't think I have anymore questions  
24 for this witness.

25 COMMISSIONER JABER: Okay, Mr. Medacier. Staff?

1 MR. KNIGHT: We have no questions.

2 COMMISSIONER JABER: Commissioners? Redirect?

3 MS. WHITE: Just a couple.

4 REDIRECT EXAMINATION

5 BY MS. WHITE:

6 Q Mr. Greene, could you look at the hand-out that  
7 Mr. Medacier gave you. It's been marked as Exhibit 12, and the  
8 caption is "AU Section 150, Generally Accepted Auditing  
9 Standards."

10 A Yes.

11 Q Could you go to the second page of that handout and  
12 go to the section labeled .02 and read the first sentence for  
13 me into the record?

14 A My second page does not have a label .02.

15 Q Okay, on the left-hand side about the middle of the  
16 page.

17 MS. WHITE: May I approach the witness?

18 A Oh.

19 BY MS. WHITE:

20 Q Or did you find it?

21 A I'm not sure I know where you mean.

22 COMMISSIONER JABER: You may approach the witness.

23 BY MS. WHITE:

24 Q I'm sorry, could you read that sentence aloud,  
25 please?

1           A     Yes. "Generally Accepted Auditing Standards are  
2 applicable when an auditor conducts an audit of and reports on  
3 any financial statement." Would you like me to read the top?

4           Q     No, that's fine. Would you consider the invoices and  
5 bills rendered by BellSouth to be financial statements?

6           A     No, I would not.

7           MS. WHITE: Okay. Thank you. I have nothing  
8 further.

9           COMMISSIONER JABER: Okay.

10          MS. WHITE: I would note for Mr. Medacier that  
11 Mr. Greene's copy appeared to have something on the back of the  
12 first page.

13          THE WITNESS: Right.

14          MS. WHITE: And mine doesn't, so --

15          MR. MEDACIER: Which one?

16          THE WITNESS: Yes, it has two sides.

17          COMMISSIONER JABER: Mr. Medacier, why don't you  
18 approach the witness and take a look at it so we can address  
19 that.

20          MR. MEDACIER: Yes, let me -- actually, it's the one  
21 with the better copy, because it was printed on both sides.

22          COMMISSIONER JABER: Come into the microphone.

23          MR. MEDACIER: I'm sorry. Actually, Mr. Greene has  
24 the better copy, because his was printed on both sides.

25          Actually, mine is missing pages.



1 MS. WHITE: Well, could we get a complete copy? I  
2 just want to make sure everybody's on the same thing.

3 MR. MEDACIER: We'll fix it.

4 MS. WHITE: I hate to say page, but --

5 MR. MEDACIER: Literally.

6 COMMISSIONER JABER: Sometime during the evening if  
7 you would make copies of the entire exhibit, and we'll make  
8 that Exhibit 12.

9 MR. MEDACIER: Yes.

10 MS. WHITE: And may Mr. Greene be excused?

11 COMMISSIONER JABER: Yes, absolutely.

12 MS. WHITE: And I have no exhibits to move.

13 COMMISSIONER JABER: That's right, you don't. Supra,  
14 you've got Exhibit 12. Without objection, we'll go ahead and  
15 enter it into the record with the understanding that you'll  
16 make some copies.

17 MR. MEDACIER: Yes, thank you.

18 COMMISSIONER JABER: Okay. Exhibit 12 entered into  
19 the record.

20 (Exhibit 12 admitted into the record.)

21 (Transcript continues in sequence in Volume 3.)

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1 STATE OF FLORIDA     )  
2                             :     CERTIFICATE OF REPORTER  
3 COUNTY OF LEON        )

4

5             I, KORETTA E. FLEMING, 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 2ND DAY OF OCTOBER, 2001.

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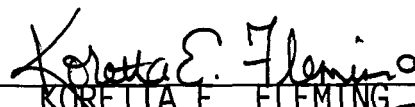
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FLORIDA PUBLIC SERVICE COMMISSION