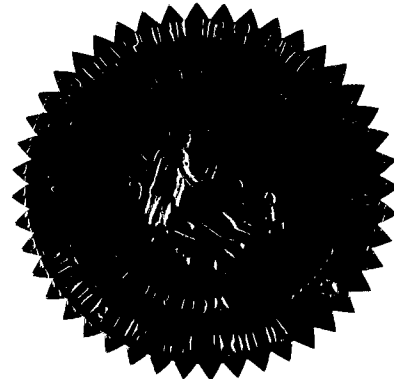


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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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VOLUME 6

Pages 784 through 944

PROCEEDINGS: HEARING

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

DATE: Thursday, September 27, 2001

TIME: Commenced at 9:30 a.m.

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

REPORTED BY: TRICIA DeMARTE
Official FPSC Reporter
(850) 413-6736

APPEARANCES: (As heretofore noted.)

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION

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P R O C E E D I N G S

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COMMISSIONER JABER: Staff.

MR. KNIGHT: We have a few questions.

CROSS EXAMINATION

BY MR. KNIGHT:

Q Mr. Ramos, first, I'd like to go back to the exhibits and the testimony of Ms. Bentley. Does Supra keep its books on an accrual basis?

A Yes, we do.

Q Can you explain what that means?

A Accrual basis means a type of recordkeeping that happens after the fact. So that means that costs are actually accrued and a portion based on a historical basis, if you may.

Q Okay. In terms of payment to BellSouth, does it also mean that the payment is put on the books as soon as it is owed, not necessarily when it's paid?

A Can you repeat your question, sir?

Q Yes. I was saying in terms of making a payment to BellSouth, does that mean that the payment is put on the books as soon as it is owed and not necessarily when it's paid?

A That's correct.

Q Okay. Is this in accordance with generally accepted accounting principles?

A That's correct.

1 Q Do you calculate your RAF using the same method you
2 use for your books?

3 A Yes.

4 Q Does the rule specify whether the RAF should be
5 calculated on the same basis that the company uses for its
6 books? And by "rule," I'm referring to the Commission's rules.

7 A I'm not familiar with that rule, sir.

8 Q The rules regarding regulatory assessment fees.

9 COMMISSIONER JABER: Mr. Knight, perhaps if you --
10 he's got a copy of the rule. Perhaps if you are specific --

11 MR. KNIGHT: Sure. It's Rule 25-4.0161.

12 COMMISSIONER JABER: What part of that rule?

13 MR. KNIGHT: Sub 1.

14 A It does not specify the basis.

15 Q Okay. Earlier you spoke of money that BellSouth owes
16 Supra. In what years did BellSouth's obligation to pay Supra
17 arise?

18 A Can you repeat that question, sir? I'm sorry.

19 Q Right. You earlier spoke about the moneys that
20 BellSouth owes Supra. In what years did that obligation to pay
21 BellSouth arise, I mean, to pay Supra from BellSouth?

22 A 2000 and as well as this current year, 2001.

23 Q Okay. Has any court or any Commission stated that
24 these amounts are owed to Supra, without disclosing any
25 confidential information?

1 A Yes, yes.

2 Q Can you elaborate without disclosing any confidential
3 information?

4 A It's in Exhibit OAR-3. And if you go to Page 49 of
5 OAR-3, Supra's damages setoff.

6 Q Okay. The document you referenced, was that award
7 filed after your filing other RAFs?

8 A I'm sorry, sir. This document?

9 Q Right. Was that filed after the filing of the RAFs?

10 A Yes.

11 Q Okay. Turning to the RAF document, if you have a
12 copy of that.

13 A Yes, I do.

14 Q And looking at Line 7 of that document.

15 A Yes.

16 Q It's Exhibit 23.

17 A That's correct.

18 Q Does Line 7 of the RAF for 2000 reflect the amount of
19 revenue that you believe BellSouth owes Supra for 2000?

20 A That is stated on Line 3.

21 Q Not what you paid, but what you believe BellSouth
22 owes Supra.

23 A 1.9. That is what we have on Line 3, the
24 1.9 million. And then what BellSouth billed to us is
25 1,032,000. Based on our own calculation, BellSouth owes Supra

1 money.

2 Q Does a RAF for any other year reflect the amount of
3 revenue that you believe BellSouth owes Supra?

4 A I'm not familiar with their filings with the RAFs.
5 I'm not really familiar with them. This one also -- this is my
6 first time I've seen it, but I've got to take responsibility
7 for the document. It's Supra.

8 Q Okay.

9 COMMISSIONER JABER: So your answer is that you don't
10 know the answer to his question; right?

11 THE WITNESS: I do not know.

12 BY MR. KNIGHT:

13 Q If you could, turn to Exhibit 1, which was Supra's
14 responses to Staff's interrogatories. And if you could, turn
15 to Page 39.

16 COMMISSIONER JABER: Mr. Knight, that was an exhibit
17 passed out yesterday; right? So you need to give him a copy.

18 MR. KNIGHT: We're taking a copy to him.

19 COMMISSIONER JABER: Go ahead, Mr. Knight.

20 BY MR. KNIGHT:

21 Q If you could, start at Page 39, and including Page
22 45, would you agree that this is your response on Issue 55?

23 A Yes.

24 Q Subject to check, would you agree with me that Issue
25 55 was phrased, "Should BellSouth be required to provide an

1 application-to-application access service order inquiry process
2 for purposes of the interconnection agreement between Supra
3 Telecom and BellSouth"?

4 A Yes.

5 Q Would you agree that in your response to this
6 interrogatory, you highlight the deficiencies that you perceive
7 with BellSouth's OSS systems; correct?

8 A Correct.

9 Q Very briefly, in your opinion, what would it take to
10 improve BellSouth's OSS systems?

11 A BellSouth's OSS, the one they use in the original
12 operations or the ALEC's OSS?

13 Q BellSouth's OSS.

14 A There's nothing, in my opinion, for BellSouth to
15 assess that's going to change that. Give it to us the way it
16 is; we'll use it that way.

17 Q Okay. I've just got a couple of questions regarding
18 the commercial arbitrator. What is your understanding of the
19 parties' current adopted interconnection agreement as it
20 relates to the use of a commercial arbitrator?

21 A My understanding is that all issues between BellSouth
22 and Supra, all disputes are arbitrable. And also, the
23 attachment provides for the Commission to decide certain issues
24 if they are legal issues, like the follow-on -- to negotiate a
25 new agreement or when the Commission issues a new order

1 regarding network elements or collocation or anything that --
2 the parties have got to follow the amendment and put it and
3 incorporate it into the agreement, and as well as if the FCC
4 retained jurisdiction over a particular matter in the
5 agreement.

6 Q Do you believe that the findings of the arbitration
7 tribunal are final?

8 A Yes, they are final.

9 Q Do those findings apply to Florida?

10 A Yes, they apply to Florida, sir.

11 Q Okay. Are the commercial arbitrators bound by prior
12 Commission orders and legal precedent?

13 A Yes, they are.

14 Q Without divulging any confidential information, have
15 any of the issues before this Commission been addressed in the
16 commercial arbitration?

17 A Yes.

18 MR. KNIGHT: If we could ask for a late-filed exhibit
19 on which issues in the commercial arbitration directly address
20 issues in this proceeding.

21 COMMISSIONER JABER: You are talking about OAR-3,
22 Mr. Knight?

23 MR. KNIGHT: Correct.

24 COMMISSIONER JABER: So you want to know which issues
25 addressed in OAR-3 are similar to the issues addressed in this

1 proceeding?

2 MR. KNIGHT: Yes, Commissioner.

3 COMMISSIONER JABER: And would that have to be a
4 confidential document?

5 MR. KNIGHT: Yes, it would be filed as a confidential
6 document.

7 COMMISSIONER JABER: Okay. Late-filed Exhibit 28
8 will be response regarding which issues in OAR-3 are similar to
9 issues in this proceeding.

10 Mr. Chaiken, do you understand what Staff is asking
11 for?

12 MR. CHAIKEN: I'm sorry, could you please repeat
13 that.

14 COMMISSIONER JABER: Sure. Staff counsel wants
15 Mr. Ramos to identify which issues resolved by OAR-3 are
16 similar to the issues that are being addressed here. And it
17 will be a confidential document until OAR-3 is ruled upon.

18 MR. CHAIKEN: We understand.

19 COMMISSIONER JABER: It's Late-filed 28, Staff.

20 MR. KNIGHT: Okay.

21 (Late-Filed Exhibit 28 identified.)

22 BY MR. KNIGHT:

23 Q Mr. Ramos, again, without divulging into anything
24 confidential, what is your assessment if there is a provision
25 in OAR-3, the arbitration that contravenes an order of this

1 Commission, what is your assessment on how that provision
2 should be dealt with as it pertains to an interconnection
3 agreement?

4 A There's nothing, sir, in this OAR-3 that contradicts
5 the Commission's rulings or orders in any docket.

6 Q Okay. If there are rulings of this Commission which
7 address issues that are currently on the table in this
8 proceeding, is it your belief that Supra should not be -- the
9 provisions of those rulings should not be incorporated into
10 this agreement?

11 A Please, can you ask the question again, please.

12 Q Certainly. If there are rulings of this Commission,
13 prior rulings or other orders which directly address issues
14 that Supra has raised in this proceeding, or Supra or BellSouth
15 have raised in this proceeding, is it your belief that those
16 issues as dealt with by the Commission, previously dealt with
17 by the Commission, should not be incorporated into the
18 provisions of the arbitrated agreement between Supra and
19 BellSouth flowing from this proceeding?

20 A That's my belief, sir. But respectfully, I will say
21 this, that parties litigate issues, present their case,
22 evidence based on the documents and how well-reasoned they
23 apply themselves in the proceeding. For instance, the issue of
24 this dispute resolution was resolved against AT&T because
25 AT&T's witness at that time was Mr. Follensbee that left AT&T

1 and went to BellSouth, and because of that, AT&T could not
2 present its own case on that. So that kind of issue has been
3 decided by the Commission based on BellSouth's evidence only,
4 and that's why we believe that -- I will respectfully believe
5 that our situation should be treated differently, and the
6 evidence in the record should be considered to determine the
7 relief to be given to the parties.

8 Q Okay. Regarding that, did that come out of a generic
9 proceeding?

10 A It did not. That's an arbitration. Is your question
11 regarding generic proceedings?

12 Q Well, I was going to follow up with that.

13 A No, that one was an arbitration. If it's generic
14 proceedings, Supra will abide by the rulings of the Commission.

15 MR. KNIGHT: Okay. That's all I had.

16 COMMISSIONER JABER: Commissioners?

17 Mr. Chaiken, redirect.

18 MR. CHAIKEN: Thank you.

19 REDIRECT EXAMINATION

20 BY MR. CHAIKEN:

21 Q Mr. Ramos, do you have Exhibit 23 in front of you?

22 A Yes.

23 Q At Line Number 3, it states "access services," and it
24 sets forth the amount of 1,929,959. Do you see that?

25 A Yes.

1 Q Do you know if Supra ever received those moneys?

2 A Never. We did not get it.

3 Q So Supra reported on this document that it had
4 received those moneys, and it reported that it had paid
5 BellSouth a figure substantially less than that, 1,032,596; is
6 that correct?

7 A That's correct.

8 Q Now, if, in fact, Supra had not receive those moneys
9 and didn't list it and did not pay BellSouth those moneys and
10 did not list it, in fact, the amount of tax to Supra would be
11 less or the RAF would be less, wouldn't it?

12 A That's correct, it would be less.

13 Q So, in fact, because Supra uses the accrual
14 accounting method, it paid more tax for the year 2000; correct?

15 A That's correct.

16 Q I believe you discussed the issue regarding
17 disconnections with Mr. Twomey; correct?

18 A That's correct.

19 Q Now, do you know whether or not Supra disconnects
20 customers for undisputed unpaid bills in a situation which the
21 customer claims it has a right to a setoff against Supra
22 Telecom?

23 A We did not disconnect our customers.

24 Q Has there ever arisen a situation in which a customer
25 said, you know what Supra? You have billed for me \$50, but in

1 fact, you owe me \$100? Has that ever happened?

2 A That's correct.

3 Q And in a situation such as that, has Supra determined
4 by itself that has the right to disconnect that customer?

5 A We did not. And as a policy for Supra, we go the
6 extra mile to give our customers satisfaction and that includes
7 the billing disputes.

8 Q Now, do you have Exhibit 24 in front of you? And I
9 believe that's the final arbitrator's report in the matter
10 before the Public Utilities Commission of the state of
11 California.

12 A I do.

13 Q Now, do you know if there was ever a factual hearing
14 on that case?

15 A There was not.

16 Q Did the Public Utilities Commission of the state of
17 California ever identify as an issue for arbitration whether or
18 not Pac Bell provided Supra with relevant network information?

19 A They did not.

20 Q In fact, isn't it true that the Public Utilities
21 Commission of the state of California made its decision based
22 solely on motions and not on any factual evidence?

23 MR. TWOMEY: Commissioner, I'm going to object to his
24 question. I'm trying to be flexible, but I don't think it's
25 appropriate for Mr. Chaiken to testify and for Mr. Ramos to

1 simply give the appropriate yes answer. I think it's a leading
2 question and I object.

3 COMMISSIONER JABER: Mr. Chaiken, just ask more
4 direct questions, not leading questions.

5 MR. CHAIKEN: Sure.

6 BY MR. CHAIKEN:

7 Q Do you know whether or not -- or do you know the
8 manner in which the Public Utilities Commission of the state of
9 California based its decision?

10 A Like I told Mr. Twomey previously, they just based it
11 on the motions that were filed. There was no evidence --
12 collection of evidence. There was no testimonies that you will
13 see in a normal proceeding.

14 Q Thank you. Now, Mr. Twomey questioned you regarding
15 whether or not Supra had collocated a switch as of I believe
16 the date was January 31, 2001. Do you recall that question?

17 A That's correct.

18 Q And your response was that Supra had not; correct?

19 A That's correct.

20 Q Do you know why?

21 A Because of BellSouth's refusal to allow Supra to
22 collocate.

23 Q Has there been any findings -- and I don't want you
24 to point me to any specific document, but has there been any
25 finding of fact that BellSouth, in fact, denied Supra the right

1 to collocate?

2 A That's correct, Exhibit OAR-3.

3 Q Please don't mention any confidential information.

4 Now, as of June 1, 2001, Supra was leasing ports from
5 BellSouth; is that true?

6 A That's correct.

7 Q So as of January 1, 2001, Supra was, in fact, a
8 facilities-based provider, were they not?

9 MR. TWOMEY: Commissioner, I'm going to object.
10 Mr. Chaiken is testifying. I don't think that's appropriate
11 examination of your witness to just elicit yes answers to your
12 counselor's testimony. That's what this is, and I object to
13 it.

14 COMMISSIONER JABER: Mr. Chaiken, redirect, you have
15 to ask questions that don't indicate to the witness what answer
16 you're trying to get, so don't ask leading questions.

17 MR. CHAIKEN: Sure.

18 BY MR. CHAIKEN:

19 Q Mr. Ramos, do you consider Supra to have been a
20 facilities-based provider as of January 1, 2001?

21 A Yes.

22 Q Why?

23 A Because Supra, through conversion of customers, was
24 able to lease some UNE combinations from BellSouth, and the UNE
25 combinations involve UNE ports and UNE loops.

1 Q Thank you. Mr. Twomey asked you some questions
2 regarding Supra's request for network template data. Did you
3 ever have any specific conversations with members of BellSouth
4 regarding Supra's request?

5 A Yes.

6 Q When was the first time you had a specific
7 conversation?

8 A That was April of 2000 with Mr. Finlen.

9 Q And what was the nature of that conversation?

10 A After Mr. Finlen sent us the request to negotiate an
11 agreement in March of 2000, I recollect, we had several
12 telephone conversations, including the fact that BellSouth was
13 going to allow Supra an extension of one year of the parties'
14 current agreement. And BellSouth does that for all their
15 carriers. BellSouth gives their carriers extension of their
16 agreement. And then also during the course of that
17 conversation, we discussed the issue of the network template.

18 Q And was anyone else present at that time?

19 A It was just Mr. Finlen and I. But also, when
20 Mr. Finlen and Ms. Parkey Jordan came to Miami at Supra on
21 August 7 and 8, 2000, Ms. Kelly Kester, who was an assistant
22 general counsel for Supra at that time, also gave the network
23 template request to Ms. Jordan and I was there.

24 Q Now, earlier, there was some discussion regarding the
25 actual citation in the FCC First Report and Order regarding

1 what was a good faith basis for a request for information
2 regarding network information. Do you recall that?

3 A Yes, I do.

4 Q And I'm not sure what page of your testimony you
5 referred us to. I believe it was Page 18 of your direct
6 testimony, and specifically much was made about the fact
7 regarding network information necessary to serve a particular
8 customer. Do you recall that conversation?

9 A That's correct.

10 Q Do you know whether or not BellSouth ever asked Supra
11 to identify a particular customer to whom it decided it needed
12 network information?

13 A They never did, not one time.

14 Q Did BellSouth ever ask Supra to clarify and make more
15 specific requests based on the network template data?

16 A Never, until one of the -- I think the May 29th
17 InterCompany review board meeting or the June 4th when they
18 requested for that clarification.

19 Q Do you know whether or not BellSouth ever claimed
20 that they were unfamiliar with the template?

21 A They never said that. BellSouth never said that.

22 Q They never said that they were familiar or
23 unfamiliar?

24 A They never said that they were unfamiliar with the
25 template.

1 Q Now, in response to BellSouth's -- or did Supra ever
2 respond to BellSouth's request that they would make the request
3 more specific?

4 A Yes, we did.

5 Q When was that?

6 A Immediately. Mr. Nilson sent a letter. I've
7 forgotten the date of the letter that Mr. Nilson sent to
8 address the concerns that BellSouth raised.

9 Q And after Supra sent that letter, what happened?

10 A After Supra sent that letter, BellSouth provided
11 Supra some information which was generic and totally
12 unresponsive to Supra's requests. And that's why after the
13 order establishing procedure in this docket was issued Supra
14 had to file a formal discovery request in August.

15 Q Did BellSouth ever promise to provide Supra with any
16 of the network template information?

17 A Yes, they did.

18 Q When was that?

19 MR. TWOMEY: I'm going to object to this question to
20 the extent it call for hearsay. He can talk about what he said
21 to BellSouth, but it not appropriate for him to talk about what
22 people from BellSouth said to him. It's an out-of-court
23 statement used for the purpose of proving the truth of the
24 matter asserted and it's hearsay and it's improper.

25 MR. CHAIKEN: It's an admission of a party opponent,

1 Your Honor.

2 MR. TWOMEY: Well --

3 COMMISSIONER JABER: Wait.

4 MR. TWOMEY: I'm sorry.

5 COMMISSIONER JABER: Actually, in administrative
6 proceedings hearsay is allowed if it can be corroborated with
7 other evidence, and I know we have heard evidence on this
8 issue. Ask the question. Let's see if he can answer the
9 question.

10 BY MR. CHAIKEN:

11 Q Mr. Ramos, when did BellSouth make such a promise?

12 A The first time BellSouth made a promise was in April
13 of 2000 to me; that's from Mr. Finlen. And based on that, I
14 wrote a letter to Mr. Finlen, which is Exhibit OAR-10. Then
15 thereafter, when we didn't receive anything, on the conference
16 call of maybe June 4th, BellSouth promised -- I was on the
17 call -- BellSouth's Mr. Finlen promised that he was going to
18 contact the subject matter experts and that he will get the
19 responsive documents across to Supra.

20 Q Now, do you have Exhibit 26 in front of you? And
21 that's the June 5th, 2001 letter from Mr. Nilson to
22 Parkey Jordan.

23 A Yes, I do.

24 Q I'd ask you to turn to the fourth page of that
25 document. And there's a heading of "III, The Increased

1 Reliability Interconnection Template." Do you see that?

2 A Which page, please.

3 Q The third page -- actually, excuse me, the fourth
4 page.

5 A Okay.

6 Q Do you see that heading?

7 A Yes.

8 Q And could you please read into the record the
9 first two sentences of that following paragraph.

10 A "Mr. Finlen reported that they had read the template
11 explanation written by Mr. Nilson that had been faxed to
12 BellSouth on May 29th, and now understood what Supra wanted
13 from the process. He reported that the letter had been sent
14 out to various SMEs and that some had begun forwarding the
15 required documents back to Mr. Finlen. Mr. Ramos" --

16 Q That's enough. Thank you.

17 A Okay.

18 Q Did, at any time, Supra ever receive any information
19 regarding the request related to the network reliability
20 council template?

21 A Not one time.

22 Q Do you believe that if Supra had received such
23 information, it could have settled more issues in this case?

24 A Absolutely, that's my belief.

25 Q I'm going to ask you to turn to the next page, and

1 you'll see a heading for UNE combination ordering. Do you see
2 that?

3 A Yes.

4 Q And I'd ask you to read the first sentence of the
5 second paragraph under that heading.

6 A "Supra, in the minutes" --

7 Q No, no. The second paragraph, the first sentence.

8 A "Ms. Jordan expressed that BellSouth was unprepared
9 to discuss this since the account team was no longer present on
10 the conference call."

11 Q Do you know whether or not UNE combination ordering
12 was an issue in this arbitration?

13 A Yes, it is.

14 Q Now, Mr. Ramos, you were asked some questions by
15 Mr. Twomey regarding Issue B, which is the base agreement from
16 which the parties seek to negotiate from. Do you know whether
17 or not Supra's current BellSouth/AT&T agreement is approved by
18 the Florida Public Service Commission?

19 A Yes, it is.

20 Q Do you know whether it's on file with the Florida
21 Public Service Commission?

22 A Yes, it is on file.

23 Q That's a public document?

24 A That's correct.

25 Q You were asked some questions as to why Supra adopted

1 the AT&T agreement without having any network information in
2 1999. Were you familiar with the AT&T/BellSouth agreement
3 before you adopted it?

4 A Yes. As a matter of fact, before we adopted the
5 agreement, we purchased -- we copied from here maybe about
6 10,000 pages of documents from the docket itself, all the
7 testimonies, direct, rebuttal, all the attachments, because
8 AT&T conducted -- provided extensive information into the
9 record regarding this AT&T/BellSouth agreement in 1996-'97. So
10 we copied all those documents. We reviewed them for a period
11 of about a year before we adopted the AT&T/BellSouth agreement.

12 Q You were asked some questions from Commissioner Jaber
13 regarding Supra's incentive to enter into a follow-on
14 agreement. Now, isn't it true that if you were found by
15 commercial arbitrators to owe BellSouth money, that you would
16 be forced to pay that money?

17 A Yes.

18 Q So through the parties' current alternative dispute
19 resolution procedures, BellSouth could, in fact, obtain the
20 judgement against Supra, couldn't they?

21 COMMISSIONER JABER: Mr. Chaiken, reword the
22 question.

23 MR. CHAIKEN: Sure.

24 BY MR. CHAIKEN:

25 Q Based on the dispute resolution procedures in the

1 parties' agreement, does Supra have an incentive -- or does
2 BellSouth have a remedy should Supra not pay its bills?

3 A That's correct, they do. They have a remedy. And as
4 a matter of fact, of recent, BellSouth filed another billing
5 dispute against Supra in front of the commercial arbitrators.
6 Supra has filed its counterclaims regarding that bill.

7 Q Mr. Ramos, please let me caution you not to discuss
8 confidential matters between the parties.

9 A Okay.

10 COMMISSIONER JABER: Mr. Chaiken, was there any part
11 of that answer that should be stricken, or did you stop it
12 before --

13 MR. CHAIKEN: I believe I stopped him before he got
14 into the substance of any pending issues.

15 COMMISSIONER JABER: Okay.

16 BY MR. CHAIKEN:

17 Q Now, you were asked some questions regarding
18 Exhibit 27. Do you have Exhibit 27 in front of you?

19 A Yes, I do.

20 Q And Supra proposed a list of issues which it believed
21 it could discuss without having any of the requested
22 information; correct?

23 A Yes.

24 Q Did BellSouth ever propose any issues which it
25 believed were not related to the network information which the

1 parties could have discussed at that time?

2 A Not one time, never.

3 Q You were asked some questions regarding Issue Number
4 1, the dispute resolutions in the proper forum for such. And I
5 believe you testified that the Florida Public Service
6 Commission couldn't award damages. Do you know whether or not
7 the Florida Public Service Commission can enforce its awards?

8 A Unfortunately, the FPSC cannot enforce its award.

9 MR. TWOMEY: I know I can't do any recross, but I
10 still would like to hear the answer. I didn't hear that last
11 answer.

12 COMMISSIONER JABER: I didn't either, frankly.

13 Mr. Chaiken, tell me the question, and we'll have the
14 court reporter read back the answer.

15 MR. CHAIKEN: I believe the question was, does he
16 know whether the FPSC can enforce its awards or orders?

17 THE WITNESS: And I said --

18 COMMISSIONER JABER: Excuse me, Mr. Ramos.

19 Court reporter.

20 (Answer read back by the court reporter.)

21 COMMISSIONER JABER: Thank you.

22 BY MR. CHAIKEN:

23 Q Much was also made of the amount of time in which it
24 takes to arbitrate a proceeding, whether it be before the FPSC
25 or before commercial arbitrators. You're familiar with the

1 fact that Supra has had many proceedings before this
2 Commission; correct?

3 A Correct.

4 Q Do you know whether or not Supra has ever had a final
5 order answered in a docket before the FPSC involving BellSouth
6 in which BellSouth has not appealed an unfavorable order?

7 A The two proceedings that Supra has had in front of
8 the PSC, 980119, in that proceeding, the Commission ordered
9 BellSouth to provide Supra with on-line edit checking
10 capability. BellSouth appealed that ruling, and up to today,
11 BellSouth has not complied with the order. Then the other one
12 is on the collocation, 980800-TP. The Commission ordered
13 BellSouth to provide Supra space and allow Supra to collocate
14 its Class 5 switches in, I believe, three BellSouth central
15 offices. Up to today, that has not happened.

16 Q Mr. Ramos, you were asked some questions regarding
17 Issue Number 5, and specifically whether or not Supra ever
18 proposed language regarding that issue. I'm going to hand you
19 Supra Exhibit OAR-61. And actually, I'm going to turn to Page
20 27. And please at the bottom of that page, would you please
21 read over Paragraph 21.C.1, and that goes on to the next page.
22 When you're done, let me know.

23 A Yes, I have read it.

24 Q Would you agree that Supra proposed language
25 regarding Issue 5 in that section?

1 A I agree.

2 Q Do you take back your previous response to Mr. Twomey
3 in which you answered his question in the negative as to that
4 issue?

5 A Yes, I take it back. And it's also because I limited
6 myself to -- I limited my answer to the relevant pages of my
7 testimony.

8 Q Now, Mr. Ramos, if Supra was granted direct access to
9 BellSouth's OSS, do you believe that Issue 5 would still be an
10 issue?

11 A It would not be an issue anymore.

12 Q Mr. Ramos, do you know if Supra has received the
13 right to use an ILEC's OSS or if Supra has been granted direct
14 access to an ILEC's OSS in any other state?

15 A Yes, in Texas.

16 Q And is that pursuant to an order?

17 A That's correct, pursuant to a Texas Commission order
18 regarding Southwestern Bell. They asked Southwestern Bell to
19 give competitive local exchange carriers access to two systems.
20 It's call CEs and BEs. BEs is for the business services, and
21 CEs is for the residential services.

22 Q Mr. Ramos, I want to go back to one other issue which
23 was the alternative dispute resolution issue. And I'm going to
24 show you Attachment 1 of Exhibit 4, which is the copy of the
25 BellSouth/Supra interconnection agreement, the current one.

1 Oh, you have --

2 COMMISSIONER JABER: Do we still not have copies of
3 Exhibit 4?

4 MR. CHAIKEN: Actually, subject to the review of
5 BellSouth, I believe we have copies.

6 BY MR. CHAIKEN:

7 Q Before I get to that question, Mr. Ramos, what's the
8 BellSouth equivalent to Southwestern Bell's BEs and CEs?

9 A Say what?

10 Q I said, do you know what the BellSouth systems that
11 are equivalent to Southwestern Bell's BEs and CEs?

12 MR. TWOMEY: I'm going to object to this question. I
13 think it goes beyond the scope of what I had asked on cross. I
14 didn't ask about any other company or state or system other
15 than BellSouth's, and I did not object the last time because
16 I'm trying to be restrained over here. But I don't think that
17 it's appropriate for him to try to put evidence into the record
18 now about Southwestern Bell's system under the guise of
19 redirect.

20 COMMISSIONER JABER: So, Mr. Twomey, your objection
21 is, it goes beyond the scope of cross examination?

22 MR. TWOMEY: Yes.

23 COMMISSIONER JABER: Mr. Chaiken, your response.

24 MR. CHAIKEN: Mr. Twomey asked Mr. Ramos questions
25 regarding Supra's right to direct access to BellSouth's own

1 operating support systems.

2 COMMISSIONER JABER: Mr. Twomey, you asked that. You
3 also opened the door for Pac Bell in California.

4 But, Mr. Chaiken, tell me what issue your questions
5 related to Exhibit 4 will go to.

6 MR. CHAIKEN: Exhibit 4 goes to Issue 1. The
7 question I just asked goes to Issue 38.

8 COMMISSIONER JABER: So I'm assuming you were just
9 about -- you were just laying the foundation for the real
10 question, which is coming right now.

11 MR. CHAIKEN: Actually, I was referring back. It was
12 the final question to Issue 38, and I was going to ask one last
13 question regarding Issue 1.

14 COMMISSIONER JABER: Okay. Ask it.

15 MR. CHAIKEN: Can I first get a response to my one on
16 Issue 38? And then I'll go on.

17 COMMISSIONER JABER: Yes.

18 BY MR. CHAIKEN:

19 Q What would be the BellSouth equivalent to
20 Southwestern Bell's CEs and BEs?

21 MR. TWOMEY: Objection.

22 A CEs will be RNS; BEs would be ROS.

23 COMMISSIONER JABER: Mr. Ramos, wait a second.
24 What is your objection?

25 MR. TWOMEY: Well, I didn't know if you ruled on my

1 objection. I didn't --

2 COMMISSIONER JABER: Yes. I said I would allow the
3 question --

4 MR. TWOMEY: I'm sorry.

5 COMMISSIONER JABER: -- and allowed counsel very
6 limited time to finish the foundation and ask the final
7 question.

8 MR. CHAIKEN: That was the final question on that
9 issue.

10 COMMISSIONER JABER: Mr. Ramos, were you done with
11 your response?

12 THE WITNESS: CEs is RNS, and BEs is ROS.

13 BY MR. CHAIKEN:

14 Q Thank you. Now, with regard to Exhibit 4, which I
15 just handed you, I'd ask you to turn to Attachment 1, Page 1,
16 and specifically you were asked questions regarding whether or
17 not commercial arbitrators were bound by Commission precedent.
18 Do you have Attachment 1, Page 1 open in front of you?

19 A Yes, I do.

20 Q And specifically, I'd refer you to Paragraphs 2.1.2,
21 2.1.2.1. and 2.1.2.2. And read that over and let me know when
22 you're done.

23 COMMISSIONER JABER: Mr. Chaiken, say that slowly.
24 You are referring him to what?

25 MR. CHAIKEN: Sure. Attachment 1, Page 1,

1 specifically Sections 2.1.2 -- and if you'd like, I'll slow
2 down and let you catch up.

3 COMMISSIONER JABER: Thank you. That would be good.
4 Is there a page number that would make it easier for us to
5 find?

6 MR. CHAIKEN: You know what? I don't believe it has
7 a page number other than being identified as Attachment 1, Page
8 1.

9 MR. TWOMEY: Commissioner, as you go through the
10 document, you will see that in the upper right-hand corner for
11 the general terms and conditions it just says "Page." It's
12 hard to read but it just says "Page." Once you start getting
13 to the attachments, it says the attachment and the page number.
14 So if you spin through all the pages, there's about 66 of them,
15 the next thing you come to is Attachment 1.

16 COMMISSIONER JABER: Go ahead, Mr. Chaiken.

17 MR. CHAIKEN: Thank you.

18 BY MR. CHAIKEN:

19 Q Specifically, Mr. Ramos, provisions on that page
20 2.1.2, 2.1.2.1, and if you would, read that one into the
21 record, 2.1.2.1.

22 A 2.1.2.1.

23 Q Yes.

24 A "To the extent required by law, the agency ruling
25 shall be binding upon the parties for the limited purposes of

1 regulation within the jurisdiction and authority of such
2 agency."

3 Q So would you say that based upon these provisions,
4 specifically 2.1.2, 2.1.2.1, and 2.1.2.2, that a commercial
5 arbitrator is bound by Commission precedent?

6 A That's correct, and as well as in my direct
7 testimony, Page 61, Line 17 right through to Page 62, Line 25.

8 MR. CHAIKEN: If I could have just about 30 seconds,
9 I think I'm done.

10 COMMISSIONER JABER: There is agreement now that this
11 is Exhibit 4; correct?

12 MR. TWOMEY: Yes.

13 MR. CHAIKEN: I have no further questions. Thank
14 you.

15 COMMISSIONER JABER: Thank you, Mr. Chaiken.

16 Mr. Ramos, hang on one minute while we do exhibits.
17 Since there is agreement on Exhibit 4, let's go ahead and admit
18 that exhibit into the record without objection.

19 (Exhibit 4 admitted into the record.)

20 COMMISSIONER JABER: Supra, you've got Exhibits 18
21 through 22.

22 Actually, Exhibit 20 does not have to be entered into
23 the record; right, Mr. Knight?

24 MR. KNIGHT: Correct.

25 COMMISSIONER JABER: So Exhibits 18 and 19, any

1 objection? Without objection, Exhibits 18 and 19 are admitted
2 into the record.

3 (Exhibits 18 and 19 admitted into the record.)

4 COMMISSIONER JABER: Exhibit 20 we are not going to
5 enter into the record because we identified it again later on.

6 Exhibits 21 and 22 without objection are entered into
7 the record.

8 (Exhibits 21 and 22 admitted into the record.)

9 COMMISSIONER JABER: BellSouth.

10 MS. WHITE: Yes. We would move Exhibits 23 through
11 27.

12 MR. CHAIKEN: I have an objection to Exhibit 25.

13 COMMISSIONER JABER: Okay. Exhibits 23 and 24 are
14 entered into the record without objection.

15 (Exhibits 23 and 24 admitted into the record.)

16 COMMISSIONER JABER: Mr. Chaiken, what did you say?

17 MR. CHAIKEN: I said we object to Exhibit 25.

18 COMMISSIONER JABER: BellSouth.

19 MR. TWOMEY: That's the exhibit regarding the
20 lawsuit.

21 COMMISSIONER JABER: Yes. And as I recall,
22 Mr. Twomey, I did not allow your questions on that exhibit, so
23 Exhibit 25 will not be entered into the record.

24 Exhibits 26 through 27.

25 MS. WHITE: Yes. We would ask they be moved in the

1 record.

2 MR. CHAIKEN: No objection.

3 COMMISSIONER JABER: Without objection, 26 and 27 are
4 entered into the record.

5 (Exhibits 26 and 27 admitted into the record.)

6 COMMISSIONER JABER: Twenty-eight was a late-filed.

7 Mr. Ramos, before you leave, I hope that you listened
8 to the comments the Commissioners made to you. And I don't
9 know if you plan on sticking around tonight, but I fully intend
10 to make David Smith available to the parties between now and
11 when Staff has to file its recommendation. There is a lot of
12 room here for compromise, a lot of room for compromise. And
13 you have an ongoing relationship with BellSouth as they do with
14 you, and I hope that you could put aside your differences and
15 reach a resolution on this case and any future case. Thank you
16 for testifying today.

17 THE WITNESS: Thank you, ma'am.

18 (Witness excused.)

19 COMMISSIONER JABER: We're going to take a 20-minute
20 break. We'll be back at 10 till 4:00.

21 (Brief recess.)

22 COMMISSIONER JABER: Supra call your next witness.

23 MR. MEDACIER: My name is Adenet Medacier for Supra
24 Telecom, and Supra is calling Mr. David Nilson.

25 COMMISSIONER JABER: Ms. Keating, I understand

1 there's some question with respect to the confidentiality of a
2 document that has been entered into the record. Is this an
3 appropriate time to take that up?

4 MS. KEATING: Yes, Commissioner, I believe that would
5 be fine. Staff is working with BellSouth and Supra to clarify
6 the confidential information that was contained in that
7 exhibit, and that will be completed before the close of the
8 hearing.

9 COMMISSIONER JABER: Okay. Remind me to address it
10 so that the appropriate attention is given to that exhibit and
11 the appropriate procedure be put in place.

12 I want to talk to you, Beth, about future proceedings
13 and how confidential matters are treated. Correct me if I'm
14 wrong, we have a confidentiality statute?

15 MS. KEATING: That's correct.

16 COMMISSIONER JABER: We have rules that address how
17 materials should be handled and how parties should seek
18 confidential classification?

19 MS. KEATING: That's correct.

20 COMMISSIONER JABER: The Prehearing Officer in this
21 case issued an order on procedure that delineates the use of
22 the procedure for using confidential information at the
23 hearing?

24 MS. KEATING: That's correct.

25 COMMISSIONER JABER: We have a prehearing order in

1 this case that was issued by the Prehearing Officer that,
2 again, delineates the procedure for using confidential material
3 in the hearing?

4 MS. KEATING: That's correct.

5 COMMISSIONER JABER: So it is within this
6 Commission's discretion and mine to initiate show cause
7 proceedings for any party that violates a statute, rule, or
8 order?

9 MS. KEATING: That's correct.

10 COMMISSIONER JABER: I want you to consider that in
11 this case.

12 MS. KEATING: We certainly will.

13 COMMISSIONER JABER: Go ahead, Mr. Medacier.

14 MR. MEDACIER: Thank you, ma'am.

15 DAVID A. NILSON

16 was called as a witness on behalf of Supra Telecommunications
17 and Information Systems, inc., and, having been duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. MEDACIER:

21 Q Good morning Mr. -- good afternoon, Mr. Nilson.

22 A Good afternoon.

23 Q Did you file testimony in this case?

24 A I did.

25 Q Did you file direct testimony on July 23, 2001?

1 A I did, consisting of some 121 pages.

2 Q Do you wish at this time to make any corrections to
3 your direct testimony?

4 A I do. Due to some editing error during the final
5 release of this, my answer to Issue 22 was deleted, and it was
6 quite small. It was -- Issue 22 being, "Under what conditions,
7 if any, may BellSouth charge Supra Telecom a nonrecurring
8 charge" --

9 COMMISSIONER JABER: Mr. Nilson, what page of your
10 testimony are you on?

11 THE WITNESS: It should have been at approximately
12 Page 38, and it's totally missing. Issue 22 being, "Under what
13 conditions, if any, may BellSouth charge Supra Telecom a
14 nonrecurring charge for combining network elements on behalf of
15 Supra Telecom?" My answer to that question was, "All such
16 nonrecurring charges should be cost-based."

17 BY MR. MEDACIER:

18 Q Any other corrections?

19 A None.

20 Q If I were to ask you the same questions today, would
21 your answers be the same?

22 A They would.

23 MR. MEDACIER: Commissioner, I'm moving to have
24 Mr. Nilson's direct testimony admitted into evidence.

25 MR. TWOMEY: I don't have necessarily an objection.

1 but I'm looking around Page 38 for that testimony he just added
2 in, and I'm having trouble finding it. I'm sorry.

3 COMMISSIONER JABER: Mr. Twomey, what Mr. Nilson
4 stated is that he neglected to answer Issue 2 (sic) in his
5 testimony.

6 So read what the addition is, Mr. Nilson, once more
7 for BellSouth.

8 THE WITNESS: My answer to Issue 22 was, "All such
9 nonrecurring charges should be cost-based." The question and
10 the answer somehow were deleted in the editing process.

11 COMMISSIONER JABER: Mr. Nilson, when was it that you
12 became aware that the question and answer to Issue 2 was not in
13 your testimony?

14 THE WITNESS: During Mr. Ramos's testimony when I was
15 reviewing it.

16 COMMISSIONER JABER: Just today. You did not look at
17 your testimony again and get ready for this hearing until
18 today?

19 THE WITNESS: I did not notice it till today.

20 COMMISSIONER JABER: Mr. Twomey, do you have an
21 objection or not?

22 MR. TWOMEY: Maybe I'm not listening correctly, but I
23 don't see an Issue 22 even identified in his testimony.

24 COMMISSIONER JABER: That's what he said, Mr. Twomey.

25 MR. TWOMEY: I thought he said there was a question

1 and answer missing.

2 COMMISSIONER JABER: What he said was the question,
3 yes, the question and the answer were missing from his
4 testimony as it relates to Issue 22.

5 MR. TWOMEY: Oh, I thought there was an Issue 22,
6 heading, and then a question and answer that got deleted, but
7 he didn't address Issue 22 at all in his direct or rebuttal
8 testimony.

9 COMMISSIONER JABER: That's correct.

10 MR. TWOMEY: And he wants to add testimony on that
11 issue today.

12 COMMISSIONER JABER: Is that correct, Mr. Nilson?

13 THE WITNESS: Yes.

14 MR. TWOMEY: Well, I mean, I do object to it, but I
15 don't know -- is his answer different than what's in the
16 prehearing statement that we have?

17 THE WITNESS: I don't believe it is.

18 COMMISSIONER JABER: Mr. Medacier, this is your
19 client. Why don't you help Mr. Twomey out here? I understand
20 his concern. You come to the hearing, you're about to tender
21 your witness for cross examination, and there is a whole issue
22 that's been left out of his testimony that was filed -- when?

23 MR. MEDACIER: I believe it was filed July 23rd.

24 COMMISSIONER JABER: So we're going to take five
25 minutes --

1 MR. MEDACIER: Let's see if we can --

2 COMMISSIONER JABER: -- you work this out.

3 MR. MEDACIER: Okay.

4 (Brief recess.)

5 COMMISSIONER JABER: Mr. Medacier, you have
6 resolved --

7 MR. MEDACIER: Yes, I believe in the midst of
8 confusion, we have resolved another issue --

9 COMMISSIONER JABER: Good.

10 MR. MEDACIER: -- because our witness's answer was
11 very consistent with what BellSouth's position is.

12 COMMISSIONER JABER: Why don't you explain it to me
13 since we are not privy to your negotiations. Is there an Issue
14 22 or not?

15 MR. MEDACIER: There was an Issue 22, and we will
16 agree on BellSouth's position on such.

17 COMMISSIONER JABER: I didn't hear you. You agree
18 with BellSouth's position on Issue 2?

19 MR. MEDACIER: 22.

20 COMMISSIONER JABER: 22. Is that what you said?

21 MR. MEDACIER: Yes.

22 COMMISSIONER JABER: Okay. So that issue is
23 withdrawn.

24 MR. TWOMEY: Here's my concern. I want to make sure
25 that he -- when he says he agrees with my position, he agrees

1 with the language that we have proposed for inclusion in the
2 agreement that will settle the issue, and they're pulling the
3 language for me right now just to make sure that we don't leave
4 here today and then later find out that we don't have an
5 agreement on the actual language that goes into the contract.

6 I suspected, we are not in agreement on that issue.
7 So I'm going to object to it on the basis that because he
8 omitted it from his direct testimony, I did not --

9 COMMISSIONER JABER: Mr. Twomey, let's wait for the
10 parties to sit down.

11 MR. TWOMEY: I'm sorry, I'm sorry.

12 COMMISSIONER JABER: Mr. Medacier.

13 MR. MEDACIER: Yes.

14 COMMISSIONER JABER: Mr. Twomey, what were you
15 saying?

16 MR. TWOMEY: We don't have an agreement, at least
17 based on what we just talked about. I'm not saying we can't
18 reach an agreement, but we don't have one right now. And I'm
19 going to object to supplemental testimony at this time. We
20 addressed the issue in our direct testimony, but we did not
21 address it in rebuttal testimony that we filed because there
22 was no direct testimony from Supra on this subject. So I've
23 been effectively denied the opportunity to file rebuttal
24 testimony to his position, however brief it may be.

25 COMMISSIONER JABER: Mr. Medacier, what's your

1 response to that?

2 MR. MEDACIER: Supra disagrees, ma'am. It was just
3 an oversight, and I don't believe that BellSouth will be
4 disadvantaged or prejudiced by Mr. Nilson just including such
5 in his direct testimony at this time. And what --

6 COMMISSIONER JABER: I'm not going to allow the
7 supplemental testimony. And I'll be clear as to why I'm not
8 going to allow it. We have a process here that has not been
9 followed very well. There are prehearing orders that are
10 issued that very clearly tell the parties that all testimony
11 shall be prefiled.

12 Staff, when was this case filed?

13 MR. KNIGHT: September 1st.

14 COMMISSIONER JABER: When was Supra's testimony
15 filed?

16 MR. KNIGHT: Supra's testimony was filed July 18th.

17 COMMISSIONER JABER: Supra's testimony for the record
18 was filed July 18th. If testimony on that issue had been
19 included in your prefiled direct testimony as required,
20 BellSouth would have had the opportunity to file rebuttal.
21 That opportunity has not been afforded to BellSouth, and I
22 cannot let you supplement the testimony today.

23 Did your witness have any other changes to the
24 testimony?

25 MR. MEDACIER: He had indicated no.

1 COMMISSIONER JABER: Okay. Mr. Nilson's prefiled
2 direct testimony shall be included into the record as was
3 originally filed as though read.

4 MR. MEDACIER: Thank you.

5 BY MR. MEDACIER:

6 Q Did you attach any exhibits to your direct testimony?

7 A Yes, I did.

8 Q Are those exhibits DAN-1 to DAN-9?

9 A They are.

10 MR. MEDACIER: Commissioner, I understand that we
11 have two exhibits being considered confidential, DAN-2 and
12 DAN-3.

13 COMMISSIONER JABER: Thank you. Let's identify
14 DAN-1, DAN-4 through 9 as Composite Exhibit 29, and Composite
15 Exhibit 30 will be confidential exhibits DAN-2 and DAN-3.
16 Thank you, Mr. Medacier.

17 MR. MEDACIER: Thank you.

18 (Exhibits 29 and 30 marked for identification.)
19
20
21
22
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25

1 SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.

2 DIRECT TESTIMONY OF DAVID A. NILSON

3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

4 DOCKET 00-1305

5 JULY 23, 2001

6

7 **Q PLEASE STATE YOUR NAME AND ADDRESS**

8 A. My name is David A. Nilson. My address is 2620 SW 27th Avenue,
9 Miami, Florida 33133.

10

11 **Q BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

12 A. I am the Chief Technology Officer of Supra Telecommunications and
13 Information Systems, Inc. ("Supra").

14

15 **Q PLEASE DESCRIBE YOUR BACKGROUND AND WORK
16 EXPERIENCE.**

17 A. I have been an electrical engineer for the past 27 years, with the last 23
18 years spent in management level positions in engineering, quality assurance, and
19 regulatory departments. In 1976, I spent two years working in the microwave
20 industry, producing next generation switching equipment for end customers such
21 as AT&T Long Lines, ITT, and the U.S. Department of Defense. This job
22 involved extensive work with various government agencies. I was part of a three-
23 man design team that produced the world's first microwave integrated circuit. At

1 that time, our design was considered the “Holy Grail” of the microwave industry
2 and was placed in production for AT&T within 30 days of its creation. This job
3 also involved communications equipment design work with various government
4 entities covered by United States Department of Defense security restrictions. I
5 spent several years in quality control management, monitoring and trouble-
6 shooting manufacturing process deviations, and serving as liaison and auditor to
7 our regulatory dealings with the government. I spent 14 years in the aviation
8 industry designing communications systems, both airborne and land-based, for
9 various airlines and airframe manufacturers worldwide. This included ASIC and
10 Integrated Circuit design, custom designed hardware originally designed for the
11 Pan American Airlines call centers, and the H.F. long range communications
12 system controllers used on Air Force One and Two and other government aircraft.
13 I was responsible for the re-design of the Communications and Navigation
14 systems’ controllers installed in the fleet of aircraft(s) used by the Royal Family
15 in England. I have also designed special purpose systems used by both the FAA
16 and the FCC in monitoring and compliance testing. I was also responsible for
17 validation design testing and FAA system conformance testing. Since 1992 I
18 have been performing network and system design consulting for various industry
19 and government agencies, including the Argonne National Laboratories. I joined
20 Supra Telecom in the summer of 1997.

21 I am the architect of Supra’s ATM backbone network, designer of our central
22 office deployments to provide products and services designed for the consumer
23 market. This includes capacity and traffic analysis to define equipment capacity

1 from market projections for both voice services, Class 5 switch design and
2 planning, data and Internet services, xDSL, voicemail and ILEC interconnection.

3

4 **Q HAVE YOU EVER TESTIFIED BEFORE?**

5 A. Yes, I testified before the Florida Public Service Commission (FPSC) in
6 numerous generic dockets and in various disputes between Supra Telecom and
7 BellSouth regarding central office space availability, rates, requirements, and
8 specifications for Collocation, Unbundled Network Elements (UNEs), and UNE
9 Combinations . I have participated in settlement procedures before the FPSC staff
10 on matters relating to OSS and OSS performance against BellSouth. I have
11 testified before the Texas Public Utilities Commission (TPUC) on matters of
12 collocation regarding disputes with SWBT. I have made ex-parte presentations
13 before the Federal Communications Commission (FCC) regarding the Bell
14 Atlantic / GTE merger, and the Department of Agriculture (RUS) regarding
15 Network Design and Expansion policies for CLECs. I have appeared before the
16 FCC staff on several occasions in disputes against BellSouth regarding
17 collocation. I have testified before regulatory arbitrators in Texas, and in
18 Commercial arbitration against BellSouth. I have been deposed numerous times
19 by BellSouth, and SWBT.

20

21 **Q WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

1 A. The purpose of my testimony is to address the issues identified in this
2 proceeding. Specifically I will address issues 7, 8, 10, 12, 13, 14, 19, 21, 22, 23,
3 24, 25, 27, 28, 29, 31, 32, 33, 34, 40, 49, and 53.

4

5 **Issues 7 & 8: Should Supra be required to pay the end user line charges**
6 **requested by BellSouth?**

7

8 **Q WHAT IS THE FCC RECOGNIZED STATUS OF A COMPETITIVE**
9 **LOCAL EXCHANGE CARRIER PROVIDING SERVICES VIA**
10 **UNBUNDLED NETWORK ELEMENT COMBINATIONS?**

11 A. The FCC recognizes an ALEC providing services via UNE Combinations
12 to be a facilities-based provider. When purchasing a UNE alone or in
13 combination, the ALEC becomes the owner of that circuit responsible for all
14 costs, and entitled to exclusive use of the element including all features, functions,
15 and revenues associated with that circuit. As this is repeated from various FCC
16 orders, I cite from the *UNE Remand Order*, issued to be in compliance with the
17 Supreme Court and Eighth Circuit rulings. First for the Loop, *UNE Remand*
18 *Order CC Order 99-238 ¶ 167*

19 **We modify the definition of the loop network element to**
20 **include all features, functions, and capabilities of the**
21 **transmission facilities, including dark fiber and attached**
22 **electronics (except those used for the provision of advanced**
23 **services, such as DSLAMs) owned by the incumbent LEC,**
24 **between an incumbent LEC's central office and the loop**

1 **demarcation point at the customer premises.**¹ In order to
 2 secure access to the loop's full functions and capabilities, we
 3 require incumbent LECs to condition loops. This broad
 4 approach accords with section 3(29) of the Act, which defines
 5 network elements to include their "features, functions and
 6 capabilities."² Our intention is to ensure that the loop definition
 7 will apply to new as well as current technologies, and to ensure
 8 that competitors will continue to be able to access loops as an
 9 unbundled network element as long as that access is required
 10 pursuant to section 251(d)(2) standards. (Emphasis added)
 11

12 Second, for the Local Switching UNE, *UNE Remand Order CC Order 99-238 ¶*

13 244

14 244. In the *Local Competition First Report and Order*, the
 15 Commission defined local circuit switching as including the
 16 basic function of connecting lines and trunks.³ **In addition to**
 17 **line-side and trunk-side facilities, the definition of the local**
 18 **switching element encompasses all the features, functions**
 19 **and capabilities of the switch.**⁴ With the exception of MCI

¹ CC Order 99-238 footnote -- In other words, our revised definition retains the definition from the *Local Competition First Report and Order*, but replaces the phrase "network interface device" with "demarcation point," and makes explicit that dark fiber and loop conditioning are among the "features, functions and capabilities" of the loop. Issues regarding an incumbent LEC's obligation to afford access under section 251(c)(3) to facilities that it controls but does not own are being addressed in the *Competitive Networks Notice*.

² CC Order 99-238 footnote -- 47 U.S.C. 153(29).

³ CC Order 99-238 footnote -- See *Local Competition First Report and Order*, 11 FCC Rcd. at 15706, para. 412. The line-side switch facilities include the connection between a loop termination at, for example, a main distribution frame (MDF), and a switch line card. Trunk-side facilities include the connection between trunk termination at a trunk-side cross-connect panel and a trunk card. The "features, functions, and capabilities" of the local switch include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines and trunks to trunks.

⁴ CC Order 99-238 footnote -- *Id.* The local switching element includes all vertical features that the switch is capable of providing, including customized routing functions, CLASS features, Centrex and any technically feasible customized routing functions. Custom calling features, such as call waiting, three-way calling, and call forwarding, are switch-based calling functions. CLASS features, such as caller ID, are number translation services that are based on the availability of interoffice signaling.

1 WorldCom, no commenter proposes that we modify the current
 2 definition of local switching. **We disagree with MCI**
 3 **WorldCom, and find no reason to alter our current**
 4 **definition of local circuit switching.** (Emphasis added)
 5

6 Finally for the Transport element the Shared Transport UNE, *UNE Remand Order*

7 *CC Order 99-238 ¶ 372*

8
 9 372. We reject Ameritech's arguments. The Supreme Court
 10 upheld the Commission's interpretation that the phrase "on an
 11 unbundled basis" in section 251(c) does not refer to physically
 12 separated elements but rather to separately priced elements.⁵
 13 Shared transport is an "unbundled" element because it consists
 14 of separately priced switching and transport network elements.
 15 The fact it is technically infeasible for a competitor to use
 16 shared transport with self-provisioned switching is irrelevant to
 17 whether an element is "unbundled" pursuant to section
 18 251(c)(3). **In addition, the Eighth Circuit, in affirming our**
 19 **decision in the *Local Competition Third Reconsideration***
 20 ***Order*, rejected Ameritech's argument when it held that**
 21 **shared transport meets the definition of an unbundled**
 22 **network element because it is a "feature, function, [or]**
 23 **capability," that is provided by facilities and equipment**
 24 **used in the provision of a telecommunications service.**⁶
 25 Accordingly, we conclude that shared transport meets the
 26 definition of an unbundled network element. (Emphasis added)
 27

28
 29 By law the ALEC pays for all UNEs at the ILEC's cost, and is entitled to
 30 all associated cost recovery. As such PIC, TIC, CCLC, and SCL / EUCL charges

⁵ CC Order 99-238 footnote -- *Iowa Utils. Bd.*, 119 S. Ct. at 737.

⁶ CC Order 99-238 footnote -- *Southwestern Bell Tel. Co. v. Federal Communications Commission*, 153 F.3d 597, 603 (8th Cir. 1998).

1 are all due to the ALEC. The ILEC is already considered to have been
2 compensated for all its costs by the arbitrated cost of the specific UNE. Based
3 upon proceedings establishing UNE rates in Florida⁷, the ILEC has been fully
4 compensated for all costs and overheads. The ILEC is not due further cost
5 recovery.
6 Further the ALECs rights to exclusive use of the network element are represented
7 by *The First Report and Order on Local Competition* CC Order 96-325 at ¶ 357:

8 357. We also confirm our conclusion in the NPRM that,
9 for the reasons discussed below in section V.J, **carriers**
10 **purchase rights to exclusive use of unbundled loop elements,**
11 **and thus, as the Department of Justice and Sprint observe,**
12 **such carriers, as a practical matter, will have to provide**
13 **whatever services are requested by the customers to whom**
14 **those loops are dedicated.** This means, for example, that, if
15 there is a single loop dedicated to the premises of a particular
16 customer and that customer requests both local and long
17 distance service, then any interexchange carrier purchasing
18 access to that customer's loop will have to offer both local and
19 long distance services. That is, interexchange carriers
20 purchasing unbundled loops will most often not be able to
21 provide solely interexchange services over those loops.
22 (Emphasis added)
23

24 A carrier purchasing "**exclusive use of unbundled loop elements**" purchased at
25 cost from the ILEC can have no further payment obligations to the ILEC as will
26 be proven in testimony for the remaining issues I testify to.
27

⁷ Docket 99-0649, PSC-01-1181-FOF-TP

1 The FCC held in the *Intercarrier Compensation for ISP-Bound Traffic* CC Order
 2 01-131 in Dockets 96-98⁸ and 99-68⁹:

3
 4 Some CLECs take this argument one step further. Whatever the
 5 merits of bill and keep or other reforms to intercarrier
 6 compensation, they say, any such reform should be undertaken
 7 only in the context of a comprehensive review of *all* intercarrier
 8 compensation regimes, including the interstate access charge
 9 regime.¹⁰ First, we reject the notion that it is inappropriate to
 10 remedy some troubling aspects of intercarrier compensation
 11 until we are ready to solve all such problems. In the most recent
 12 of our access charge reform orders, we recognized that it is
 13 “preferable and more reasonable to take several steps in the
 14 right direction, even if incomplete, than to remain frozen”
 15 pending “a perfect, ultimate solution.”¹¹ **Moreover, it may**
 16 **make sense to begin reform by rationalizing intercarrier**
 17 **compensation between competing providers of**
 18 **telecommunications services, to encourage efficient entry**
 19 **and the development of robust competition, rather than**
 20 **waiting to complete reform of the interstate access charge**
 21 **regime that applies to incumbent LECs, which was created**
 22 **in a monopoly environment for quite different purposes.**
 23 Second, the interim compensation scheme we adopt here is fully
 24 consistent with the course the Commission has pursued with
 25 respect to access charge reform. **A primary feature of the**
 26 ***CALLS Order* is the phased elimination of the PICC and**
 27 **CCL,¹² two intercarrier payments we found to be**
 28 **inefficient, in favor of greater recovery from end-users**
 29 **through an increased SLC, an end-user charge.¹³ Finally,**
 30 like the *CALLS Order*, the interim regime we adopt here
 31 “provides relative certainty in the marketplace” pending further
 32 Commission action, thereby allowing carriers to develop

⁸ *Implementation of Local Competition*

⁹ *Intercarrier Compensation for ISP-Bound Traffic*

¹⁰ CC order 01-131 footnote - *See, e.g.*, Letter from Karen L. Gulick, Harris, Wiltshire & Grannis, to Magalie Roman Salas, Secretary, FCC, at 1 (Dec. 22, 2000).

¹¹ CC order 01-131 footnote - *See CALLS Order*, 15 FCC Rcd at 12974.

¹² CC order 01-131 footnote - The PICC, or presubscribed interexchange carrier charge, and the CCLC, carrier common line charge, are charges levied by incumbent LECs upon IXCs to recover portions of the interstate-allocated cost of subscriber loops. *See* 47 C.F.R. §§ 69.153, 69.154.

¹³ CC order 01-131 footnote - *CALLS Order*, 15 FCC Rcd at 12975 (permitting a greater proportion of the local loop costs of primary residential and single-line business customers to be recovered through the SLC).

1 business plans, attract capital, and make intelligent
2 investments.^{14,15} (Emphasis Added)

3

4 **Q WHAT SPECIFIC RELIEF IS SOUGHT BY SUPRA**

5 A. Supra merely requests that the parties' Follow-On Agreement follow the
6 current state of the law in all matters, and specific to this issue, if Supra is
7 operating as a facilities based provider, and Supra is operating as a facilities-based
8 provider via UNEs, Supra, not BellSouth, is entitled to collect reciprocal
9 compensation, CCLC, TIC, SLC, EUCLs and access charges from any circuit
10 served by UNE or UNE combination(s)

11

12 Supra requests that the Commission ensure that the full measure of the *UNE*
13 *Remand Order* CC Order 99-238 is included in the text of the follow on
14 agreement, that BellSouth is enjoined from illegally collecting both monthly and
15 usage based charges correctly due to Supra Telecom

16

17 Supra requests this Commission ensures that the follow-on agreement include a
18 liquidated damages provision in the parties' Follow On Agreement to provide
19 incentives for BellSouth's compliance with these rules and orders.

20

¹⁴ CC order 01-131 footnote - *CALLS Order*, 15 FCC Rcd at 12977 (The *CALLS* proposal is aimed to "bring lower rates and less confusion to consumers; and create a more rational interstate rate structure. This, in turn, will support more efficient competition, more certainty for the industry, and permit more rational investment decisions.").

¹⁵ CC order 01-131 § 94

1 Supra requests that this Commission ensures that the Follow On Agreement
2 include a liquidated damages provision to provide incentives for BellSouth's
3 compliance with these rules and orders.

4

5 Furthermore, as BellSouth has refused to provide Supra with any information
6 regarding its network, Supra is unsure as to whether it has provided a complete
7 response in support of its position. Should it be found that Supra is entitled to
8 additional information, and, should Supra discover relevant information as a
9 result, Supra request the right to supplement the record on this issue.

10

11

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

14

15 **Q WHAT ARE THE ISSUES TO THIS QUESTION?**

16 A. BellSouth uses DAML to provide additional loops in areas where they
17 have “run out of loops”. In making this explanation BellSouth fails to add that
18 BellSouth often adds DAML to the first line of a CLEC customer, with two
19 perfectly good working telephone circuits, in order to provide a CLEC customer
20 *two* DAML provisioned lines. This then frees up a loop for a new BellSouth
21 customer. BellSouth never announces these changes to ALECs, and continues
22 charging the ALEC for two loops. In essence, BellSouth is getting the newly

1 derived loop for free. However, this also increases the ALECs support costs as
2 will be explained below.

3

4 **Q WHAT IS WRONG WITH THIS APPROACH?**

5 A. DAML is a digital technology that synthesizes the normal operation of
6 two loops by digitizing each telephone circuit and passing the digitized
7 information over a single loop. The digitized signals are extracted by
8 corresponding central office based electronics and placed on separate two wire
9 copper circuits and fed to the Class 5 switch. Much like DSL data, the two
10 digitized voice channels are transmitted over the copper loop in two different
11 frequency bandwidth carrier frequencies, higher than the established analog voice
12 bands. While the technical details of modulation can be different than those of
13 xDSL due to the limited bandwidth required, on the whole, the architecture of the
14 solution is virtually identical to that of xDSL services.

15

16 **Q SO WHY WOULD SUPRA OR ITS CUSTOMERS CARE THAT THIS**
17 **APPROACH IS USED TO PROVIDE SERVICE?**

18 A. Ever since modem speeds increased above 28.8 BPS, it has become
19 essential that the loop serving a customer have, at most, a single analog to digital
20 conversion. The compression algorithms inherent in 56K modems will tolerate no
21 more, and indeed require non-standard implementations of the GR-303 to achieve
22 full rated speed. GR-303 is the standard communication protocol between Digital
23 Loop Carrier (DLC) equipment and the Class 5 switch that serves it. With a

1 standard GR-303 interface a 56K modem can easily be limited to 28.8K or less.
2 With DAML added in such a loop communications can fall as low as 4.8K!

3

4 **Q HOW DOES THIS AFFECT COST?**

5 A. Typically the scenario is that a BellSouth customer converts to Supra. At
6 some point in time, either at conversion or sometime after, with no prior warning
7 to Supra, the Customer line is converted to DAML. Immediately the customer
8 begins complaining about the drop in modem speed. Supra's costs are increased
9 until Supra can get the DAML removed, or ultimately, the customer returns to
10 BellSouth where it **can** get the DAML removed and full modem speed restored.
11 Throughout this process, Supra's customer support costs increase due to increased
12 call volume and the costs to identify and correct this problem, caused by a lack of
13 notification / authorization prior to a BellSouth action. BellSouth gets a free loop
14 paid for by Supra, and potentially reclaims the customer due to Supra's "bad
15 service."

16

17 This final issue is most insidious to Supra as it represents hidden, undocumented,
18 and often denied violations of the Telecommunications Act¹⁶, all FCC orders in

¹⁶ Telecommunications Act of 1996, 47 U.S.C.A. § 251(c)(3).

1 this regard¹⁷, including orders that have been sustained by the Supreme Court of
2 the United States¹⁸.

3

4 Lest BellSouth argues, based upon a misreading of 251(c)(3) that there is no
5 requirement upon them not to disconnect or otherwise disturb a functioning
6 telecommunications circuit, the Supreme Court, at *AT&T v. Iowa Utilities Bd.*,
7 525 U.S. 366, 119 S.Ct 721 (Iowa Utilities Board II) at pg. Pg. 395 held:

8 "The reality is that § 251(c)(3) is ambiguous on whether leased
9 network elements may or must be separated, and the rule the
10 Commission has prescribed is entirely rational, finding its basis
11 in § 251(c)(3)'s nondiscrimination requirement. As the
12 Commission explains, it is aimed at preventing incumbent LECs
13 from disconnect[ing] previously connected elements, over the
14 objection of the requesting carrier, not for any productive
15 reason, but just to impose wasteful reconnection costs on new
16 entrants" ... It is well within the bounds of the reasonable for
17 the Commission to opt in favor of ensuring against an
18 anticompetitive practice."
19

20 BellSouth's deployment of DAML equipment on the lines of Supras customers
21 when those customers were not provisioned via DAML a) as BellSouth
22 customers, or b) when initially converted to Supra is a violation of Federal law
23 intended as an anticompetitive practice against ALEC customers. If this issue is
24 truly as benign and insignificant as BellSouth represents, then there should be no
25 problem with limiting use of this technology to ALEC customers. The
26 Commission should take BellSouth's promises to heart and enjoin ILECs from

¹⁷ 47 C.F.R. § 51.315(b).

1 deploying DAML on an ALEC customer circuit, and subject the ILEC to fines for
2 so doing.

3

4 **Q WHAT SPECIFIC RELIEF IS SOUGHT BY SUPRA?**

5 A. Supra believes that BellSouth should be enjoined from deploying this
6 technology on ALEC subscriber circuits. The potential for abuse and “bad acts”
7 is just too high, because it is an anti-competitive tool for ILECs. Should an
8 agreement be reached to deploy such equipment on specific ALEC lines, the
9 ALEC should not be charged for two loops, when it is in fact utilizing just one, or
10 in some cases, just one half of a loop. In addition, BellSouth should be required
11 to periodically disclose the use of such equipment on ALEC lines.

12

13 Supra requests that this Commission ensures that the Follow On Agreement
14 include a liquidated damages provision to provide incentives for BellSouth's
15 compliance with these rules and orders.

16

17 Furthermore, as BellSouth has refused to provide Supra with any information
18 regarding its network, Supra is unsure as to whether it has provided a complete
19 response in support of its position. Should it be found that Supra is entitled to
20 additional information, and, should Supra discover relevant information as a
21 result, Supra request the right to supplement the record on this issue.

¹⁸ *AT&T v. Iowa Utilities Bd.* 525 U.S. 366, 119 S.Ct 721 (Iowa Utilities Board II) at pg. 368, and

1

2

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

5

6 **Q WHAT ARE THE ISSUES TO THIS QUESTION?**

7 A. BellSouth is very quick to quote from section 271 in denying Supra the its
8 request for dedicated transport across LATA boundaries. However while
9 Supra acknowledges that BellSouth is itself precluded from providing
10 services to end users across LATA boundaries, that does not specifically
11 preclude BellSouth from wholesaling such services to other carriers. The
12 FCC, in its First Report and Order, addressed this issue as follows:

13

14 We also disagree with MECA, GTE, and Ameritech that we
15 should consider "pricing distortions" in adopting rules for
16 unbundled interoffice facilities. Section, (sic) below, addresses
17 the pricing of unbundled network elements identified pursuant
18 to section 251(c)(3) as it relates to our current access charge
19 rules. Nor are we are persuaded by MECA's argument that
20 incumbent LECs not subject to the MFJ¹⁹ should not be required
21 to unbundle transport facilities because, according to MECA,
22 such facilities are unnecessary for local competition. **As**
23 **discussed above, the ability of a new entrant to obtain**
24 **unbundled access to incumbent LECs' interoffice facilities,**
25 **including those facilities that carry interLATA traffic, is**
26 **essential to that competitor's ability to provide competing**
27 **telephone service."**²⁰ (Emphasis Added)

pg. 393-395

¹⁹ MFJ -- Modified Final Judgement.

²⁰ CC Order 96-325 in Docket No. 96-98 -- Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 at ¶ 449.

1
2 Here, Congress and the FCC acknowledge what BellSouth already knows, that a
3 competitor must have full access to both the local and long distance portions of an
4 RBOC's network in order to be a successful competitor. Interoffice Transport
5 was a hotly contested issue in the days after the Act was signed. However, a
6 CLEC's right to unbundled interoffice transport has been fully upheld, and the
7 intent of the Act is clearly explained to give a CLEC access to local, intraLATA
8 and interLATA interoffice facilities. BellSouth has such facilities in place based
9 on pre-divestiture information and as can be seen by the Agreement between
10 BellSouth and its affiliate BellSouth Long Distance to test and trial just such a
11 service.²¹
12 BellSouth terribly confuses its prohibition from offering interLATA services
13 directly to end users, and leasing network facilities to another carrier. A
14 BellSouth interLATA facility, once leased to Supra, is no longer BellSouth's
15 property for the term of the lease. Any and all prohibitions regarding the use of
16 the facility must now fall upon Supra, not BellSouth. Section 271 of the ACT
17 does not prohibit Supra from offering long-distance service, as it does BellSouth.
18 The FPSC, in CC Order 96-325 in Docket No. 96-98 -- Implementation of the
19 Local Competition Provisions in the Telecommunications Act of 1996 at ¶ 336,
20 recognized this fact:

²¹ Supra Exhibit # DAN-2 -- BellSouth and BSLD agreement to "INTERLATA END TO END TEST AGREEMENT." Dated June 13, 2000.

1 We note, moreover, that the 1996 Act does not prohibit all
2 forms of joint marketing. For example, it does not prohibit
3 carriers who own local exchange facilities from jointly
4 marketing local and interexchange service. Nor does it prohibit
5 joint marketing by carriers who provide local exchange service
6 through a combination of local facilities which they own or
7 possess, and unbundled elements. Because the 1996 Act does
8 not prohibit all forms of joint marketing, we see no principled
9 basis for reading into section 271(e)(1) a further limitation on
10 the ability of carriers to jointly market local and long distance
11 services without concluding that this section prohibits all forms
12 of joint marketing. In other words, we see no basis upon which
13 we could conclude that section 271(e)(1) restricts joint
14 marketing of long distance services, and local services provided
15 solely through the use of unbundled network elements, without
16 also concluding that the section restricts the ability of carriers to
17 jointly market long distance services and local services that are
18 provided through a combination of a carriers' own facilities and
19 unbundled network elements.²² Moreover, we do not believe
20 that we have the discretion to read into the 1996 Act a
21 restriction on competition which is not required by the plain
22 language of any of its sections.²³

23
24 Thus, CLECs are not barred by 47 USC §271(e)(1) from providing local and
25 long distance services, or, intraLATA and interLATA services. As such,
26 BellSouth's reliance on Section 271 as a means to prevent Supra from being
27 a long-distance carrier is nonsensical. Furthermore, 47 CFR §51.309 Use of
28 unbundled network elements provides that:

29 (b) A telecommunications carrier purchasing access to an
30 unbundled network element may use such network element to
31 provide exchange access services to itself in order to provide
32 interexchange services to subscribers.
33

²² 96-325 Footnote -- See also AT&T reply at 14-15 (the added risk of unbundled elements also means that new entrants are not circumventing section 271's joint marketing restriction because the additional risk justifies allowing carriers more flexibility to jointly market services); LDDS reply at 28-30.

²³ CC Order 96-325 in Docket No. 96-98 -- Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 at ¶ 336

1 BellSouth argues that Section 271 of the Act prohibits BellSouth from
2 providing interLATA service, be it retail or wholesale. However, should
3 BellSouth provide interoffice transport across LATA boundaries via UNE(s),
4 BellSouth would not be deemed to be providing the service. Furthermore,
5 **BellSouth's only role would be providing wholesale elements to a carrier, not**
6 **prohibited retail service to an end-user.** Supra, as the facilities-based provider,
7 would be deemed to be the service provider, and the temporary owner of the
8 facility, just as it is when Supra leases a switching port or local transport facility.

9 BellSouth may argue that an Order in favor of Supra on this point would
10 be an Order creating new law. This is simply not the case. In paragraph 356 of
11 the FCC's First Report and Order the FCC concluded that 47 USC §251(c)(3)
12 permits all telecommunications carriers, including interexchange carriers, to
13 purchase UNEs for the purpose of offering exchange access services or to provide
14 exchange access services to themselves in order to provide interexchange services
15 to consumers. In ¶ 440, the FCC concluded that ILECs must provide interoffice
16 facilities between central offices, not limit facilities to which such interoffice
17 facilities are connected, allow a competitor (ALEC) to use an interoffice facility
18 to connect to an ILEC's switch, provide unbundled access to shared transmission
19 facilities between end offices and the tandem switch, as well as transmission
20 capabilities such as DS1. In ¶ 449, the FCC further added that the ability of a new
21 entrant to obtain unbundled access to ILECs' interoffice facilities, **including those**
22 **facilities that carry interLATA traffic, is essential** to that competitor's ability to

1 provide competing telephone service.

2 Interoffice transport is a UNE. Therefore, BellSouth's refusal to provide
3 Supra with interoffice transport, is a refusal to provide Supra with the Services
4 and Elements contained in the Agreement as well as required by the FCC's First
5 Report and Order, ¶¶ 342 to 365. Yet, BellSouth has never sought any guidance
6 from the FCC on this issue.

7 In BellSouth's view, BellSouth would provide the transport up to the
8 LATA boundaries, then Supra must provide a link which actually takes it across
9 the boundaries, whereinafter BellSouth would then provide another link on the
10 other side. BellSouth would have this Commission believe that Supra must break
11 up a single wire connection by inserting its own piece of wire, right where the two
12 LATA boundaries meet, in order to provide long-distance service. Neither the
13 ACT, nor any FCC order, supports BellSouth's position that Supra must provide
14 this link which actually crosses the LATA boundary, particularly where Supra (as
15 a facility-based provider) is already deemed to be the party responsible for taking
16 the transport across the LATA boundary.

17 In fact, in *AT&T v. Iowa Utilities Bd.* 525 U.S. 366, 119 S.Ct 721 (Iowa
18 Utilities Board II) the Supreme Court affirmed that facilities ownership **was not** a
19 requirement that LECs may impose upon an ALEC for the use or combination of
20 a UNE:

21 "But whether an requesting carrier can access the incumbents

1 network in whole or in part, we think that the Commission reasonably
2 omitted a facilities ownership requirement. The 1996 Act imposes no
3 such limitation; if anything it suggests the opposite, by requiring in §
4 251(c)(3) that incumbents provide access to "any" requesting carrier. We
5 agree with the Court of Appeals that the Commission's refusal to impose a
6 facilities-ownership requirement was proper."²⁴

7 Yet that is exactly what BellSouth's "link -at-the-border" approach requires
8 Supra owned facilities to join two lengths of Interoffice transport, and a Bona-
9 Fide request process to even see if they will actually consider doing it at all, in
10 violation of the Supreme Court ruling.

11

12 **Q WHAT RELIEF IS BEING REQUESTED BY SUPRA:**

13

14 A. Supra requests that following language be inserted in the Follow-On
15 Agreement:

16 BellSouth shall provision tandem switching, one or two-way trunk
17 groups, inter-office transport, and all features, functions and capabilities
18 therewith, across LATA boundaries, in the manner requested by Supra, where
19 technically feasible.
20

21 Supra requests that this Commission ensure that the Follow On Agreement
22 include a liquidated damages provision to provide incentives for BellSouth's
23 compliance with these rules and orders.

24

25 Furthermore, as BellSouth has refused to provide Supra with any information
26 regarding its network, Supra is unsure as to whether it has provided a complete

²⁴ *AT&T v. Iowa Utilities Bd.* 525 U.S. 366, 119 S.Ct 721 (Iowa Utilities Board II) at pg. 392.

1 response in support of its position. Should it be found that Supra is entitled to
2 additional information, and, should Supra discover relevant information as a
3 result, Supra request the right to supplement the record on this issue.

4

5

6 **Issue 13: What should be the appropriate definition of "local traffic" for**
7 **purposes of the parties' reciprocal compensation obligations under Section**
8 **251(b)(5) of the 1996 Act?**

9

10 **Q IS THIS QUESTION STILL GERMANE TO THESE PROCEEDINGS?**

11 A. It should not be. On April 18, 2001 the FCC adopted order 01-131 in
12 dockets 96-98²⁵ and 99-68²⁶. This issue has become effectively moot since the
13 filing of this arbitration. Supra would expect BellSouth to surrender its position
14 and fall in line with current FCC rulings and Part 51, Subpart H of Title 47 of the
15 Code of Federal Regulations (C.F.R.) as adopted on April 18, 2001. In that order
16 the FCC amended the rules on reciprocal compensation to remove the word
17 "local" and to provide for reciprocal compensation regulations in a clear and
18 unambiguous fashion:

19 "In this Order, we strive to balance the need to rationalize an
20 intercarrier compensation scheme that has hindered the
21 development of efficient competition in the local exchange and
22 exchange access markets with the need to provide a fair and
23 reasonable transition for CLECs that have come to depend on

²⁵ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996

²⁶ Intercarrier Compensation for ISP-Bound Traffic

1 intercarrier compensation revenues. We believe that the interim
 2 compensation regime we adopt herein responds to both
 3 concerns. The regime should reduce carriers' reliance on
 4 carrier-to-carrier payments as they recover more of their costs
 5 from end-users, while avoiding a "flash cut" to bill and keep
 6 which might upset legitimate business expectations. The
 7 interim regime also provides certainty to the industry during the
 8 time that the Commission considers broader reform of
 9 intercarrier compensation mechanisms in the *NPRM* proceeding.
 10 **Finally, we hope this Order brings an end to the legal**
 11 **confusion resulting from the Commission's historical**
 12 **treatment of ISP-bound traffic, for purposes of jurisdiction**
 13 **and compensation, and the statutory obligations and**
 14 **classifications adopted by Congress in 1996 to promote the**
 15 **development of competition for all telecommunications**
 16 **services. We believe the analysis set forth above amply**
 17 **responds to the court's mandate that we explain how our**
 18 **conclusions regarding ISP-bound traffic fit within the**
 19 **governing statute.**^{27,28} (Emphasis added)
 20

21 The FCC has amended the CFR in the following manner:

22 "Part 51, Subpart H, of Title 47 of the Code of Federal
 23 Regulations (C.F.R.) is amended as follows:

24
 25 The title of part 51, Subpart H, is revised to read as follows:

26
 27 **Subpart H--Reciprocal Compensation for Transport and**
 28 **Termination of Telecommunications Traffic**

29
 30 2. Section 51.701(b) is revised to read as follows:

31
 32 § 51.701 Scope of transport and termination pricing rules.

33
 34 *****

35 *Telecommunications traffic.* For purposes of this subpart,
 36 telecommunications traffic means:
 37

²⁷ CC order 01-131 footnote - *Bell Atlantic*, 206 F.3d at 8.

²⁸ CC order 01-131 § 95, Conclusion

1 Telecommunications traffic exchanged between a LEC and a
2 telecommunications carrier other than a CMRS provider, except
3 for telecommunications traffic that is interstate or intrastate
4 exchange access, information access, or exchange services for
5 such access (*see* FCC 01-131, paras. 34, 36, 39, 42-43); or
6 Telecommunications traffic exchanged between a LEC and a
7 CMRS provider that, at the beginning of the call, originates and
8 terminates within the same Major Trading Area, as defined in §
9 24.202(a) of this chapter.

10
11
12 Sections 51.701(a), 51.701(c) through (e), 51.703, 51.705,
13 51.707, 51.709, 51.711, 51.713, 51.715, and 51.717 are each
14 amended by striking "local" before "telecommunications traffic"
15 each place such word appears."²⁹
16

17 **Q WHAT SPECIFIC RELIEF IS REQUESTED BY SUPRA?**

18 A. Supra merely requests that the parties' Follow-On Agreement follow the
19 current state of the law in all matters, and specific to this issue in regard to
20 reciprocal compensation for traffic to Internet Service providers be paid to Supra
21 Telecom for all calls origination on BellSouth's network that terminate at ISP's on
22 Supra's network, and vice versa, regardless of the method used to provision
23 service to the end user customer, as long as that method is not resale
24
25 Supra requests that this Commission ensure that the Follow On Agreement
26 includes a liquidated damages provision to provide incentives for BellSouth's
27 compliance with these rules and orders.

28

²⁹ CC order 01-131 – Appendix B – Final Rules.

1 Furthermore, as BellSouth has refused to provide Supra with any information
2 regarding its network, Supra is unsure as to whether it has provided a complete
3 response in support of its position. Should it be found that Supra is entitled to
4 additional information, and, should Supra discover relevant information as a
5 result, Supra request the right to supplement the record on this issue.

6

7

8 **Issue 14: Should BellSouth pay reciprocal compensation to Supra Telecom**
9 **where Supra Telecom is utilizing UNE's to provide local service (i.e.**
10 **unbundled switching and the unbundled local loop) for the termination of**
11 **local traffic to Supra's end users?**

12

13 **Q SHOULD BELLSOUTH PAY RECIPROCAL COMPENSATION TO**
14 **SUPRA TELECOM WHERE SUPRA TELECOM IS UTILIZING**
15 **UNE'S TO PROVIDE LOCAL SERVICE**

16 A. Yes.

17

18 **Q ARE YOU SUPRISED THAT BELLSOUTH HAS TAKEN A**
19 **CONTRADICTORY POSITION ON THIS SUBJECT?**

20 A. Yes and no. No because they opposed this issue when the FCC was
21 considering the *First Report and Order*. Yes, because as I will show below, the
22 FCC did not adopt BellSouth's position in 1996, and has not since. Why this is
23 still an issue remains a mystery. I consider this a bad faith attempt by BellSouth

1 to collect revenues it knows it is not entitled to, because the FCC ruled against
2 BellSouth's position in 1996.

3 In one case, BellSouth incredibly claimed that its economies were poorer
4 than a startup ALEC in *First Report and Order* CC Order 96-325 at ¶ 1074:

5 "BellSouth contends that, because the costs of an incumbent
6 LEC and new entrant are likely to be quite different, the
7 Commission does not have the authority to contravene the
8 mutual and reciprocal recovery language of section 252(d)(2)
9 and require symmetry.^{30,31}
10

11 BellSouth argues against an "uncompensated taking", yet in this issue it would
12 somehow have us believe that it is correct for BellSouth to do to an ALEC, what
13 it is incorrect to do to BellSouth:

14 BellSouth further asserts that bill and keep would lead to no
15 compensation for use of incumbent LEC property and will
16 therefore constitute an uncompensated taking in violation of the
17 Constitution.³² (Emphasis added)
18

19 Besides misusing the universally accepted definition of reciprocal compensation,
20 this show BellSouth's lack of good faith. The position a corporation takes should
21 not change to challenge each competitor that it faces unless said corporation
22 stands ready to be accused of bad faith dealings.
23
24

³⁰ 96-325 footnote -- BellSouth comments at 72-73.

³¹ *First Report and Order* CC Order 96-325 at ¶ 1074:

³² 96-325 footnote -- BellSouth comments at 74-75.

1 Q WHY ARE THERE ANY CHARGES FOR TELEPHONE CIRCUITS
2 OTHER THAN A STRAIGHT MONTHLY RECURRING CHARGE, A
3 CHARGE BASED ON USAGE AND TAXES.

4 A. This problem finds its roots in the fact that for much of the 20th century
5 there was one predominant telephone company, AT&T, which provided long
6 distance and local services to most of, but not the entire United states over the
7 same network facilities. The issues with properly accounting for costs due to the
8 various division of AT&T, which later became separate telephone companies is
9 explained well by the FCC in the CALLS order CC order 00-193 at ¶ 5 writes:

10 5. For much of this century, most telephone subscribers
11 obtained both local and long-distance services from the same
12 company, the pre-divestiture Bell System, owned and operated
13 by AT&T. Its provision of local and intrastate long-distance
14 services through its wholly-owned operating companies, the
15 Bell Operating Companies (BOCs), was regulated by state
16 commissions. The Commission regulated AT&T's provision of
17 interstate long-distance service. **Much of the telephone plant**
18 **that is used to provide local telephone service, such as the**
19 **local loop,³³ is also needed to originate and terminate**
20 **interstate long-distance calls. Consequently, a portion of the**
21 **costs of this common plant historically was assigned to the**
22 **interstate jurisdiction and recovered through the rates that**
23 **AT&T charged for interstate long-distance calls. *The***
24 ***balance of the costs of the common plant was assigned to the***
25 ***intrastate jurisdiction and recovered through the charges for***
26 ***intrastate services regulated by the state commissions. The***
27 **system of allocating costs between the interstate and**
28 **intrastate jurisdictions is known as the separations process.**
29 The difficulties inherent in allocating the costs of facilities that

³³ 96-325 footnote -- A local loop is the connection between the telephone company's
central office building and the customer's premises.

1 are used for multiple services between the two jurisdictions are
 2 discussed below. (Emphasis added).

3
 4 Thus it forms the basis for recovering portions of the cost associated with the
 5 local loop, the local switch port, Transport and Tandem costs from those who
 6 benefit from those services proportional to their use of the element. In no case
 7 can the recovery of this cost exceed 100%. This is emphasized over and over in
 8 the FCC order citations that follow.

9

10 **Q WHAT IS THE LEGAL BASIS FOR THIS POSITION?**

11 A. In the *First Report and Order* CC Order 96-325 the FCC defines
 12 reciprocal compensation at ¶ 1034:

13 1034. We conclude that section 251(b)(5) reciprocal
 14 compensation obligations should apply only to traffic that
 15 originates and terminates within a local area, as defined in the
 16 following paragraph. We disagree with Frontier's contention
 17 that section 251(b)(5) entitles an IXC to receive reciprocal
 18 compensation from a LEC when a long-distance call is passed
 19 from the LEC serving the caller to the IXC. Access charges
 20 were developed to address a situation in which three carriers --
 21 typically, the originating LEC, the IXC, and the terminating
 22 LEC -- collaborate to complete a long-distance call. As a
 23 general matter, in the access charge regime, the long-distance
 24 caller pays long-distance charges to the IXC, and the IXC must
 25 pay both LECs for originating and terminating access service.³⁴
 26 **By contrast, reciprocal compensation for transport and**
 27 **termination of calls is intended for a situation in which two**
 28 **carriers collaborate to complete a local call. In this case, the**
 29 **local caller pays charges to the originating carrier, and the**
 30 **originating carrier must compensate the terminating carrier**

³⁴ 96-325 footnote -- In addition, both the caller and the party receiving the call pay a flat-rated interstate access charge -- the end-user common line charge -- to the respective incumbent LEC to whose network each of these parties is connected.

1 for completing the call. This reading of the statute is
2 confirmed by section 252(d)(2)(A)(i), which establishes the
3 pricing standards for section 251(b)(5). Section
4 251(d)(2)(A)(i) provides for "recovery by each carrier of
5 costs associated with the transport and termination on each
6 carrier's network facilities of calls that originate on the
7 network facilities of the other carrier."³⁵ We note that our
8 conclusion that long distance traffic is not subject to the
9 transport and termination provisions of section 251 does not in
10 any way disrupt the ability of IXCs to terminate their interstate
11 long-distance traffic on LEC networks. Pursuant to section
12 251(g), LECs must continue to offer tariffed interstate access
13 services just as they did prior to enactment of the 1996 Act. We
14 find that the reciprocal compensation provisions of section
15 251(b)(5) for transport and termination of traffic do not apply to
16 the transport or termination of interstate or intrastate
17 interexchange traffic. (Emphasis added)
18
19

20 Further, while the FCC retained sole jurisdiction over the definitions of local
21 exchange areas for wireless carriers, it ceded that jurisdiction over wireline
22 carriers to the state commissions *First Report and Order* CC Order 96-325 the
23 FCC defines reciprocal compensation at ¶ 1035:

24 1035. With the exception of traffic to or from a CMRS
25 network, state commissions have the authority to determine
26 what geographic areas should be considered "local areas" for
27 the purpose of applying reciprocal compensation obligations
28 under section 251(b)(5), consistent with the state
29 commissions' historical practice of defining local service areas
30 for wireline LECs. Traffic originating or terminating outside
31 of the applicable local area would be subject to interstate and
32 intrastate access charges. We expect the states to determine
33 whether intrastate transport and termination of traffic between
34 competing LECs, where a portion of their local service areas
35 are not the same, should be governed by section 251(b)(5)'s
36 reciprocal compensation obligations or whether intrastate

³⁵ 96-325 footnote -- 47 U.S.C. § 252(d)(2)(A)(i).

1 access charges should apply to the portions of their local
 2 service areas that are different. This approach is consistent
 3 with a recently negotiated interconnection agreement between
 4 Ameritech and ICG that restricted reciprocal compensation
 5 arrangements to the local traffic area as defined by the state
 6 commission.³⁶ Continental Cablevision, in an ex parte letter,
 7 states that many incumbent LECs offer optional expanded
 8 local area calling plans, in which customers may pay an
 9 additional flat rate charge for calls within a wider area than
 10 that deemed as local, but that terminating intrastate access
 11 charges typically apply to calls that originate from competing
 12 carriers in the same wider area.³⁷ Continental Cablevision
 13 argues that local transport and termination rates should apply
 14 to these calls. We lack sufficient record information to
 15 address the issue of expanded local area calling plans; we
 16 expect that this issue will be considered, in the first instance,
 17 by state commissions. In addition, we expect the states to
 18 decide whether section 251(b)(5) reciprocal compensation
 19 provisions apply to the exchange of traffic between incumbent
 20 LECs that serve adjacent service areas. (Emphasis added)
 21

22 In defining the responsibility of the ILEC to pay reciprocal compensation charges
 23 to offset the costs incurred by other carriers in completing calls to or from ILEC
 24 customers the commission wrote first about corporate responsibility between
 25 carriers, not about the methods the opposing carrier chose to implement its
 26 circuits:

27 358. Section 251(b)(5) obligates LECs to establish reciprocal
 28 compensation arrangements for the transport and termination of
 29 telecommunications traffic. **Although section 252(b)(5) does**
 30 **not explicitly state to whom the LEC's obligation runs, we**

³⁶ 96-325 footnote -- See letter from Albert H. Kramer, Dickstein, Shapiro, Morin & Oshinsky LLP to John Nakahata, Senior Legal Advisor to the Chairman, FCC, July 11, 1996.

³⁷ 96-325 footnote -- Letter from Brenda L. Fox, Vice President, Federal Relations, Continental Cablevision, to Robert Pepper, Chief, Office of Plans and Policy, FCC, July 22, 1996, attached to Letter from Donna N. Lampert, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., to William F. Caton, Acting Secretary, FCC, July 22, 1996.

1 **find that LECs have a duty to establish reciprocal**
 2 **compensation arrangements with respect to local traffic**
 3 **originated by or terminating to any telecommunications**
 4 **carriers.** CMRS providers are telecommunications carriers
 5 and, thus, LECs' reciprocal compensation obligations under
 6 section 251(b)(5) apply to all local traffic transmitted between
 7 LECs and CMRS providers. (Emphasis added)
 8

9 359. We conclude that, pursuant to section 251(b)(5), a LEC
 10 may not charge a CMRS provider **or other carrier for**
 11 **terminating LEC-originated traffic.** Section 251(b)(5)
 12 specifies that LECs and interconnecting carriers shall
 13 compensate one another for termination of traffic on a
 14 reciprocal basis. This section does not address charges payable
 15 to a carrier that originates traffic. We therefore conclude that
 16 section 251(b)(5) prohibits charges such as those some
 17 incumbent LECs currently impose on CMRS providers for
 18 LEC-originated traffic. As of the effective date of this order, a
 19 LEC must cease charging a CMRS provider or other carrier for
 20 terminating LEC-originated traffic and must provide that traffic
 21 to the CMRS provider or other carrier without charge.
 22 (Emphasis added)
 23

24 Within the Statutory Standard Section of the *First Report and order* (CC Order

25 96-325) the FCC deals with the payment of reciprocal compensation charges for

26 UNE elements clearly in ¶ 4.

27 360. We conclude that the pricing standards established
 28 by section 252(d)(1) for interconnection and unbundled
 29 elements, and by section 252(d)(2) for transport and termination
 30 of traffic, are sufficiently similar to permit the use of the same
 31 general methodologies for establishing rates under both
 32 statutory provisions. *Section 252(d)(2) states that reciprocal*
 33 *compensation rates for transport and termination shall be based*
 34 *on "a reasonable approximation of the additional costs of*
 35 *terminating such calls."*³⁸ Moreover, there is some
 36 substitutability between the new entrant's use of unbundled
 37 network elements for transporting traffic and its use of transport
 38 under section 252(d)(2). Depending on the interconnection

³⁸ 96-325 footnote -- 47 U.S.C. § 252(d)(2)(A)(ii).

1 arrangements, carriers may transport traffic to the competing
2 carriers' end offices or hand traffic off to competing carriers at
3 meet points for termination on the competing carriers' networks.
4 Transport of traffic for termination on a competing carrier's
5 network is, therefore, largely indistinguishable from transport
6 for termination of calls on a carrier's own network. Thus, we
7 conclude that transport of traffic should be priced based on the
8 same cost-based standard, whether it is transport using
9 unbundled elements or transport of traffic that originated on a
10 competing carrier's network. We, therefore, find that the
11 "additional cost" standard permits the use of the forward-
12 looking, economic cost-based pricing standard that we are
13 establishing for interconnection and unbundled elements.³⁹
14 (Emphasis added)
15

16 Here the FCC clearly represents the use of unbundled elements to deploy service
17 as being every bit as entitled to cost recovery by collecting reciprocal
18 compensation as the corresponding method or network buildout by the
19 competitive LEC. Further the FCC clearly equates reciprocal compensation to be
20 a cost recovery mechanism, and in the instant issue it is undisputed that all of the
21 **costs** for the UNE circuit under consideration have been born by Supra Telecom.
22 This mechanism is the method by which the FCC compensates Supra for
23 performing work on behalf of BellSouth, since BellSouth has charged Supra for
24 all costs incurred in providing service via loop and port, now BellSouth must pay
25 some of that cost back to Supra to terminate calls on behalf of BellSouth .
26

27 **Q WHAT SPECIFIC RELIEF IS REQUESTED BY SUPRA?**

³⁹ 96-325 footnote -- *See supra*, Section VII.B.

1 Supra merely requests that the parties' Follow-On Agreement follow the current
2 state of the law in all matters, and specific to this issue, if Supra is operating as a
3 facilities based provider, and Supra is operating as a facilities-based provider via
4 UNEs, Supra, not BellSouth, is entitled to collect reciprocal compensation,
5 CCLC, TIC, SLC, EUCLs and access charges from any circuit served by UNE or
6 UNE combination(s)

7

8 Supra requests that this Commission ensures that the Follow On Agreement
9 include a liquidated damages provision to provide incentives for BellSouth's
10 compliance with these rules and orders.

11

12 Furthermore, as BellSouth has refused to provide Supra with any information
13 regarding its network, Supra is unsure as to whether it has provided a complete
14 response in support of its position. Should it be found that Supra is entitled to
15 additional information, and, should Supra discover relevant information as a
16 result, Supra request the right to supplement the record on this issue.

17

18

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

21

22 **Q WHAT IS THE CURRENT STATE OF THE LAW ON THIS ISSUE?**

1 A. This issue has become effectively moot since the filing of this arbitration.
2 I cannot understand why BellSouth has continued to make it an open issue since
3 the FCC order on this matter, unless they are trying to shirk their responsibility
4 for payment throughout a prolonged appeal. Delay only harms Supra. Supra
5 would expect BellSouth to surrender its position and fall in line with current FCC
6 rulings and Part 51, Subpart H of Title 47 of the Code of Federal Regulations
7 (C.F.R.) as adopted on April 18, 2001. In that order the FCC amended the rules
8 on reciprocal compensation to remove the word “local” and to provide for
9 reciprocal compensation regulations in a clear and unambiguous fashion:

10 “... Finally, we hope this Order brings an end to the legal
11 confusion resulting from the Commission’s historical treatment
12 of ISP-bound traffic, for purposes of jurisdiction and
13 compensation, and the statutory obligations and classifications
14 adopted by Congress in 1996 to promote the development of
15 competition for all telecommunications services. We believe
16 the analysis set forth above amply responds to the court’s
17 mandate that we explain how our conclusions regarding ISP-
18 bound traffic fit within the governing statute.^{40,41}
19

20

21 **Q WHAT SPECIFIC RELIEF IS REQUESTED BY SUPRA?**

22 Supra merely requests that the parties’ Follow-On Agreement follow the current
23 state of the law in all matters, and specific to this issue, if Supra terminates calls
24 from Bellsouth customers to ISP’s who are Supra customers, and to pay BellSouth
25 if it is vice-versa.

⁴⁰ CC order 01-131 footnote - *Bell Atlantic*, 206 F.3d at 8.

⁴¹ CC order 01-131 § 95, Conclusion

1

2 Supra requests that this Commission ensures that the follow-on agreement include
3 a liquidated damages provision in the parties' Follow On Agreement to provide
4 incentives for BellSouth's compliance with these rules and orders.

5

6 Furthermore, as BellSouth has refused to provide Supra with any information
7 regarding its network, Supra is unsure as to whether it has provided a complete
8 response in support of its position. Should it be found that Supra is entitled to
9 additional information, and, should Supra discover relevant information as a
10 result, Supra request the right to supplement the record on this issue.

11

12

13 **Issue 21: What does "currently combines" mean as that phrase is used in 57**
14 **C.F.R. § 51.315(b)(Network Elements and Combinations, Attachment 2,**
15 **Section 2.7.1)?**

16

17 **Q DOES BELLSOUTH ACHIEVE A COMPETITIVE ADVANTAGE**
18 **OVER AN ALEC IF IT PREVAILS ON THIS ISSUE?**

19

20 A. Of course. It means that BellSouth gets first shot at any and all new
21 telephone circuits installed in an area -- they cannot be provisioned by a UNE
22 combination provider. It is not sufficient to merely say "Well the customer can be
23 provisioned as resale." The simple fact is that not all telecommunications carriers
24 possess the ability to order circuits both as UNE Combination, or as Resale.

1 Issues such as not having an agreement that covers both, employees training, and
2 the complex and costly methods needed to achieve electronic bonding with
3 BellSouth's CLEC OSS's. In this particular case I can affirmatively state that the
4 products one must buy from OSS middleware vendors (at price tags exceeding 1
5 million dollars) support one regime or the other. Even in the rare occasions today
6 where a vendor is finally able to offer both, the costs are doubled and may prove
7 prohibitive to a startup like Supra. In the best of circumstances, BellSouth's own
8 CLEC OSS - LENS, requires different procedures and training; there are
9 limitations placed upon the ALEC related to existing customer xDSL services,
10 and other issues.

11

12 **Q WHAT DOES "CURRENTLY COMBINES" MEAN?**

13 A. To start with, there is a world of difference between the term "Currently
14 Combines" and "Currently Combined". In Florida docket 00-731, the recent
15 arbitration between AT&T and BellSouth, much was written on this issue in an
16 attempt to make a case that the two terms were identical. With all due respect, the
17 English language does not allow for that leap of faith. "Currently Combined"
18 uses the past tense of the verb "combine", and since currently does not modify
19 that term in any way, it clearly indicates that two or more items are, at the very
20 present time, already combined. "Currently Combines" is the uses the present and
21 future tenses of "combine", a form of the word that covers in the recent context of
22 "Currently" present and future activities. In other words, the ability and

1 likelihood that BellSouth will in the near future, combine these elements as they
2 would for a tariffed product.

3 Had Congress intended to restrict the UNE entry strategy so that it could **not**
4 accomplish circuits possible over resale and collocation, (i.e. the connection of
5 new service at a customers premises), it could have done so by the simple
6 expedient of using the past tense of the word "combine", i.e. "combined." That
7 Congress did not choose that form, and instead used "Currently Combines",
8 implicitly gives broader meaning to the term than what BellSouth seeks to have
9 ordered in this case.

10

11 **Q WHAT SPECIFIC RELIEF IS REQUESTED BY SUPRA?**

12 Supra merely requests that the parties' Follow-On Agreement follow the current
13 state of the law in all matters, and specific to this issue, recognize the difference
14 between "Currently Combines" and previous attempts to have the FPSC rule that
15 it means "Currently Combined" . Supra requests a finding that "Currently
16 Combines" is found to be representative of normal, expected, and possible future
17 work done to establish a BellSouth tariffed telecommunications service and that
18 Supra be granted full rights to effect the same via UNE combinations in such clear
19 language that further litigation will not be necessary.

20

21 Supra requests that this Commission ensures that the Follow On Agreement
22 include a liquidated damages provision to provide incentives for BellSouth's
23 compliance with these rules and orders.

1

2 Furthermore, as BellSouth has refused to provide Supra with any information
 3 regarding its network, Supra is unsure as to whether it has provided a complete
 4 response in support of its position. Should it be found that Supra is entitled to
 5 additional information, and, should Supra discover relevant information as a
 6 result, Supra request the right to supplement the record on this issue.

7

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

12 ----- And -----

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

16

17 **Q ARE THERE ANY DIFFERENCES BETWEEN ISSUE 23 AND ISSUE**
 18 **24?**


19 A. In seeking to escape its requirement to combine UNE(s) by arguing that
 20 BellSouth is only obligated to offer UNE combinations for circuits that are
 21 already combined, BellSouth has caused these two issues to be identical. Supra
 22 does not agree that BellSouth's position is sustainable given the current state of

1 the law, however in the interests of avoiding duplicative arguments, I will address
2 these two issues simultaneously.

3

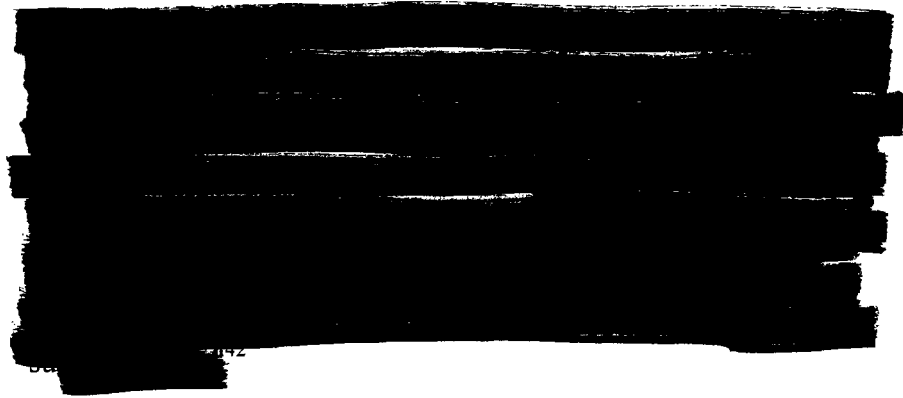
4 **Q HAVE THE PARTIES ESTABLISHED ANY HISTORY REGARDING**
5 **THE ORDERING OF UNE COMBINATIONS?**

6

7 A. Yes. BellSouth, after having contracted with Supra Telecom to combine
8 UNEs in not one, but two Interconnection Agreements, steadfastly refused to
9 honor its contractual obligations. In fact, the first interconnection agreement
10 between the parties contained provisions for cost based UNE combinations on the
11 day it was signed by Supra Telecom. By the time it was filed with the FPSC, the
12 Eighth Circuit Court made its ill-advised and subsequently overturned decision in
13 *AT&T v. Iowa Utilities Bd.* (Iowa Utilities Board I). 

14 

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1 Despite Supra's repeated attempts to order UNE combinations from this
2 agreement, despite the fact that the altered Agreement was subsequently replaced
3 with the correct version in Florida and the other 8 states where BellSouth filed
4 altered agreements, BellSouth never provided a single UNE combination,
5 ordering instructions of any kind, or even an OSS that was capable of ordering
6 UNE combinations under that agreement.

7
8 To overcome BellSouth's refusal, Supra adopted the already arbitrated
9 AT&T/BellSouth Agreement in Florida on October 5, 1999. Despite this
10 Commission's unambiguous order that BellSouth was obligated under the
11 Agreement to combine UNE(s) for [Supra] at cost based rates, and combine any
12 UNE to any other UNE(s)⁴³, BellSouth still refused to accept orders, or provide
13 OSS and / or effective ordering instructions, or to modify Supra's OSS profile to
14 allow ordering of UNE combinations until June 18, 2001.

15
16 For its own reasons, BellSouth is willing to violate contractual and FPSC orders
17 requiring it to provide UNE combinations at cost based rates, despite the specter
18 of potential legal and financial penalties. (Thus proving to this Commission that
19 the inclusion of a limitation of liability provision or inclusion of same without
20 Supra's suggested exceptions, is not a viable incentive for BellSouth to comply
21 with the terms of the Agreement nor state or federal law.) This should be

⁴³ FPSC Order PSC-98-0810-FOF-TP

1 considered when listening to any BellSouth argument on this subject. [REDACTED]

2 [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
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16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

29
30 In an illustration of BellSouth's bad faith towards Supra in this regard the

31 [REDACTED]

32 [REDACTED]
33 [REDACTED]
34 [REDACTED]
35 [REDACTED]
36 [REDACTED]
37 [REDACTED]

[REDACTED]

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[REDACTED]

17 In considering any of BellSouth's claims regarding UNE combinations, it is
18 imperative to at all times view such claims in the light of BellSouth's proven
19 record of refusal to comply with this Commission's orders, its contractual
20 obligations, its "tortious intent to harm". It is BellSouth's policy to avoid
21 providing cost based UNE combinations to competitors that forms the basis of
22 their position on this issue. That policy is anti-competitive and designed to appear
23 to regulatory bodies as " to give the impression of responding to Supra in a
24 substantive manner, without actually doing so."

25

26 **Q SHOULD BELLSOUTH BE DIRECTED TO PERFORM, UPON**
27 **REQUEST, THE FUNCTIONS NECESSARY TO COMBINE**

[REDACTED]

1 **UNBUNDLED NETWORK ELEMENTS THAT ARE ORDINARILY**
 2 **COMBINED IN ITS NETWORK?**

3 A. Yes.

4

5 **Q WHAT IS THE LEGAL BASIS FOR THIS POSITION?**

6 A. Despite the fact that BellSouth and Supra have had in continuous effect, since
 7 June of 1997, an agreement requiring that BellSouth provision recombined
 8 Network Elements for Supra at Cost based rates, Supra's current agreement
 9 expired without Supra ever being allowed to enjoy the benefits of ordering and
 10 receiving UNE combinations. It would not be improper to require BellSouth
 11 provide UNE combinations for no other reason than to compensate Supra for the
 12 deceitful denial of the contracted services since 1997.

13 Beyond that, the law is very clear on this issue despite the RBOCs attempts to
 14 avoid their responsibility by arguing otherwise for the past 5 years. C.F.R. 47
 15 §51.309 states that BellSouth must provide without

16 “limitations, restrictions, or requirements on request for, or the
 17 use of, unbundled network elements that that would impair the
 18 ability of a requesting telecommunications carrier to offer a
 19 telecommunications **service in the manner the requesting**
 20 **telecommunications carrier intends.**” (Emphasis added)

21

22 The law clearly states “**in the manner the requesting telecommunications**
 23 **carrier intends.**”⁴⁷ It does NOT state in the manner that BellSouth intends, nor
 24 does the Act make any provision for the ILEC to determine, limit, coerce, or

⁴⁷ Id.

1 mandate an ALEC to limit the uses it has for a UNE to anything other than “a
 2 **telecommunications service**”⁴⁸. The definition of a Telecommunications Service
 3 is as set forth in the Communications Act of 1934, as amended, by the
 4 Telecommunications Act of 1996:

5 (46) TELECOMMUNICATIONS SERVICE. – The term
 6 telecommunications service means the offering of
 7 telecommunications for a fee directly to the public, or to such
 8 classes of users as to be effectively available directly to the
 9 public, regardless of the facilities used.⁴⁹

10
 11 So as long as Supra is providing a telecommunications service, and not interfering
 12 with other users, BellSouth cannot dictate uses of UNEs, and they cannot require
 13 collocation as a method to combine the UNEs into services.

14 "But whether an requesting carrier can access the incumbents
 15 network in whole or in part, we think that the Commission
 16 reasonably omitted a facilities ownership requirement. The
 17 1996 Act imposes no such limitation; if anything it suggests the
 18 opposite, by requiring in § 251(c)(3) that incumbents provide
 19 access to "any" requesting carrier. **We agree with the Court of**
 20 **Appeals that the Commissions refusal to impose a facilities-**
 21 **ownership requirement was proper.**"⁵⁰ (Emphasis added)
 22

23 Yet BellSouth offers no information as to HOW such UNEs might be combined
 24 by an ALEC, given that the Supreme Court has ruled there can be no collocation
 25 requirement placed upon an ALEC for this purpose.

26

⁴⁸ Id.

⁴⁹ The Communications Act of 1934, as amended, SEC 3(46) [47 U.S.C. 153] Definitions,

⁵⁰ **Error! Reference source not found.** *AT&T v. Iowa Utilities Bd.* 525 U.S. 366, 119 S.Ct 721 (Iowa Utilities Board II) at pg. 392.

1 Nor does BellSouth address how its arguments true up with the three prongs of
2 the entry strategy as defined by the Act.

3 12. The Act contemplates three paths of entry into the
4 local market -- the **construction of new networks, the use of**
5 **unbundled elements of the incumbent's network, and resale.**
6 The 1996 Act requires us to implement rules that eliminate
7 statutory and regulatory barriers and remove economic
8 impediments to each. We anticipate that some new entrants will
9 follow multiple paths of entry as market conditions and access
10 to capital permit. **Some may enter by relying at first entirely**
11 **on resale of the incumbent's services and then gradually**
12 **deploying their own facilities.** This strategy was employed
13 successfully by MCI and Sprint in the interexchange market
14 during the 1970's and 1980's. **Others may use a combination**
15 **of entry strategies simultaneously -- whether in the same**
16 **geographic market or in different ones. Some competitors**
17 **may use unbundled network elements in combination with**
18 **their own facilities to serve densely populated sections of an**
19 **incumbent LEC's service territory, while using resold**
20 **services to reach customers in less densely populated areas.**
21 **Still other new entrants may pursue a single entry strategy**
22 **that does not vary by geographic region or over time.**
23 *Section 251 neither explicitly nor implicitly expresses a*
24 *preference for one particular entry strategy. Moreover, given*
25 *the likelihood that entrants will combine or alter entry*
26 *strategies over time, an attempt to indicate such a preference in*
27 *our section 251 rules may have unintended and undesirable*
28 *results.* Rather, our obligation in this proceeding is to establish
29 rules that will ensure that all pro-competitive entry strategies
30 may be explored. **As to success or failure, we look to the**
31 **market, not to regulation, for the answer**⁵¹ (Emphasis
32 Added)

33
34 BellSouth would have us believe that there is legal basis that allows UNE
35 Combinations to be less effective, less pervasive, to offer fewer circuit variations,

⁵¹ 96-325 para 12 where the FCC defines the three pronged entry strategy provided for competitors under the Act. The FCC goes to great lengths to identify that the three prongs were equal and that they steadfastly avoided any distortions between the three prongs.

1 or to be provided to a smaller group of customers than resale or an ALECs own
2 network. To subscribe to this would violate one of the most important tenant of
3 the Act, so important it is documented in ¶ 12 of an order containing 1441
4 paragraphs. BellSouth cannot prevail on this issue without violating this section
5 of the *First Report and Order*.

6

7 **Q WHAT IS THE PREVAILING LAW ON THIS ISSUE?**

8 A. UNE Combinations as an equal and effective means of providing
9 Telecommunications services (in lieu of Resale or Collocation) is an issue that
10 RBOCs in general and BellSouth in particular has vigorously fought since the
11 Telecom Act was promulgated. After reviewing dozens of citations to prove this
12 point, I feel nothing can illustrate this point as simply as the FCC's own words in
13 *The UNE Remand Order* CC Order 99-238 at ¶ 12:

14 **12. Only recently have incumbent LECs provided access to**
15 **combinations of unbundled loops, switches, and transport**
16 **elements,** often referred to as "the platform." Since these
17 combinations of unbundled network elements have become
18 available in certain areas, competitive LECs have started
19 offering service in the residential mass market in those areas.
20 For example, in January of this year, Bell Atlantic, as part of an
21 agreement with the New York Public Service Commission,
22 began offering the unbundled network element platform out of
23 particular end offices in New York City. As a result, MCI
24 WorldCom had acquired upwards of 60,000 new local
25 residential customers in New York as of June 1999.⁵² AT&T

⁵² CC Order 99-238 Footnote -- *Id.* at para. 17.

1 also plans to serve local residential customers over the platform
2 in Texas.⁵³ (Emphasis Added)
3

4 Here the FCC Acknowledges that ALECs have been denied UNE combinations
5 nationwide from the creation of the Act until limited deployment began in 1999.
6 Supras own access to order UNE combinations is today extremely poor and was
7 non-existent before June 18, 2001.⁵⁴
8

9 As part of its grudging acceptance of its statutory obligation to provide UNE
10 Combinations to ALECs in general and Supra in particular, BellSouth is still
11 trying to limit its exposure by trying to limit the telecommunications circuits that
12 can be provisioned by UNE combinations. Why? They know as we all do, that ,
13 only because the margins on Resale are so thin as to be non profitable for ALECs,
14 and the startup costs for a collocated facilities based provider are so high (and the
15 recent failure rate so obvious to us all), that if BellSouth can prevail on limiting
16 the types of circuits that can be provided as UNE Combinations or UNE-P, then
17 in effect, BellSouth will win the battle for local competition. Let us be very clear
18 on this fact.

⁵³ CC Order 99-238 Footnote -- Letter from Frank S. Simone, Government Affairs Director, AT&T, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, Attachment at 4-5 (filed June 25, 1999).

v.

1

2 To be perfectly clear, 47 CFR § 51.311 imposes a duty upon ILECs to provide
3 unbundled network elements, as well as the quality of the access to such, at least
4 at the level of quality equal or superior to that the ILEC provides to itself. At
5 issue is who should be responsible for combining such network elements. Should
6 the Commission impose the obligation upon Supra to combine such, Supra
7 requests some guidance as to how the Commission proposes to allow Supra
8 access to the requested network elements so as to be able to combine them.

9 1. There are two unanswered questions in BellSouth's view of this issue:

10 Must an ALEC be allowed to combine UNE(s) without restriction.

11 2. If BellSouth is allowed to be relieved of its obligation to combine

12 UNE(s) on behalf of the ALEC, how exactly will that be handled
13 without violating other provisions of law.

14 Frankly this issue is so heavily intertwined with other law, that BellSouth's
15 position is unsustainable.

16 First regarding the availability of network elements and combinations to ALECs,
17 C.F.R. 47 §51.309 states that BellSouth must provide without

18 “limitations, restrictions, or requirements on request for, or the
19 use of, unbundled network elements that that would impair the
20 ability of a requesting telecommunications carrier to offer a
21 telecommunications service **in the manner the requesting**
22 **telecommunications carrier intends.”** (Emphasis added)

23

24 Combinations of UNEs were upheld by the Supreme Court in *AT&T v. Iowa*
25 *Utilities Bd.* 525 U.S. 366, 368(1999)(Iowa Utilities Board II):

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(d) Rule 315(b), which forbids incumbents to separate already-combined network elements before leasing them to competitors, reasonably interprets § 251(c)(3), which establishes the duty to provide access to network elements on **nondiscriminatory rates, terms, and conditions and in a manner that allows requesting carriers to combine such elements that are provided in discrete pieces, but it does not say, or even remotely imply, that elements *must* be provided in that fashion.** Pp 736-738. (Bold emphasis added, Italics by the Supreme Court)

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Here it could not be clearer -- UNE(s) Sold by the ILEC must be provided in a form that allows them to be combined at the ALECs request. It does not necessarily say that the ALEC must perform the work themselves. In fact, the final thought is that ILEC may provide the combinations themselves to avoid having to allow the ALEC to effect the combination. It also deals with "nondiscriminatory ... terms". If the ILEC is providing a tariffed telecommunications service, the ALEC must have the right to duplicate that service using UNEs. Said UNEs must be provided combined as requested or in a manner that allows recombination. No BFR process or other anti-competitive barrier must be allowed to bar an ALEC's ability to compete with the ILEC for business on tariffed communications services. Here again we look to *AT&T v. Iowa Utilities Bd.* 525 U.S. 366, 736 (1999) for guidance:

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TELRIC allows an entrant to lease network elements based on forward looking costs, Rule 319 subjects virtually all network elements to the unbundling requirement, and the all-elements rule allows requesting carriers to rely only on the incumbents network in providing service. When rule 315(b) is added to these, a competitor can lease a complete, preassembled network at (allegedly very low) cost based rates. (Emphasis added)

1

2 The Supreme Court reaffirms that all network elements, up to and including the
3 **entire** BellSouth network may be leased from BellSouth at cost based rates. Such
4 language defies any attempt to limit the scope of these issues.

5

6 The final Agreement language presented must be very clear in terms that all UNE
7 equivalents of all tariffed communications are covered in the base agreement and
8 that the ALEC may combine any UNE with any other UNE(s) at their request.

9

10 Second on the issue of who will combine UNE(s), the Supreme Court has already
11 ruled that collocation cannot be a requirement placed upon an ALEC for this
12 purpose. In fact, in *AT&T v. Iowa Utilities Bd.* 525 U.S. 366, 392 (1999), the
13 Supreme Court held that facilities ownership **was not** a requirement that LECs
14 may impose upon an ALEC for the use or combination of a UNE:

15 "But whether an requesting carrier can access the incumbents
16 network in whole or in part, we think that the Commission
17 reasonably omitted a facilities ownership requirement. The
18 1996 Act imposes no such limitation; if anything it suggests the
19 opposite, by requiring in § 251(c)(3) that incumbents provide
20 access to "any" requesting carrier. **We agree with the Court of
21 Appeals that the Commissions refusal to impose a facilities-
22 ownership requirement was proper.**"⁵⁵ (Emphasis added)

23

24
25 So if BellSouth is not allowed to require Supra to collocate in order to effect
26 recombination of UNE(s), how then will the combination be effected? BellSouth

1 seeks an anti-competitive advantage in shirking its responsibility to combine
2 network elements while simultaneously seeking to avoid providing a means for
3 competitive LECs to do so for themselves. The **only** way BellSouth's positions
4 could be sustained on this issue is if **all** competitors had the unbridled right to
5 enter any and all BellSouth central offices for the purpose of effecting their own
6 crossconnects, facilities assignments and switch translations. Such ALECs would
7 need to be provided full access to all BellSouth OSS's including PREDICTOR,
8 LFACS, COSMOS, ERMA and all other facilities and provisioning interface that
9 are currently restricted from ALEC access. This is not a revolutionary idea. In
10 1996, AT&T got BellSouth to agree to this access by AT&T personnel if
11 BellSouth refused to combine any UNE to any other UNE at AT&T's request.
12 Since we are negotiating a follow-on agreement to that very agreement, this
13 language is necessary to protect Supra and other ALECs from BellSouth's anti-
14 competitive tactics. Short of providing that relief to all ALECs, BellSouth must
15 not be allowed to prevail on this issue.

16

17 **Q IS THERE ANY OTHER TESTIMONY YOU WISH TO OFFER?**

18 A. Yes. I wish to adopt the Direct Testimony of Gregory R. Follensbee,
19 formerly of AT&T now the lead contract negotiator at BellSouth for Supra's
20 Interconnection agreement with BellSouth. This testimony was filed in Florida

⁵⁵ -- *AT&T v. Iowa Utilities Bd.* 525 U.S. 366, 119 S.Ct 721 (Iowa Utilities Board II) at pg. 392.

1 Docket 00-731, AT&T's Interconnection Agreement arbitration against
2 BellSouth.⁵⁶

3
4 In this context I will be adopting his testimony in regard to AT&T issue numbers
5 23 and 24 as related to the cost issues Mr. Follensbee testified to in AT&T issue
6 6, which resides on pages 5-9 of his testimony. The only exception I take to Mr.
7 Follensbee is that Supra is not requesting this Commission to make a finding on
8 the cancellation charges for tariffed services. Supra does request that this
9 Commission order language allowing combination of network elements as
10 ordered by Supra, regardless of whether or not they re-create Tariffed services.

11

12 **Q ARE THERE ANY OTHER ISSUES REGARDING THIS QUESTION?**

13 A. In the recent AT&T v. BellSouth arbitration (Docket 00-731-TP) the staff
14 recommendation contains the following quotation:

15

16 Though framed in a different manner, this issue is
17 similar to an issue in the recent arbitration in Docket No.
18 000828-
19 TP, the Sprint/BellSouth arbitration. In **this** case, however, the
20 specific issue considers whether the aggregation **of** lines
21 provided
22 to multiple locations **of** a single customer is allowable in
23 determining whether BellSouth must offer unbundled local
24 switching as a UNE.

⁵⁶ Supra Exhibit # DAN-5-- Direct Testimony of Gregory R. Follensbee, formerly of AT&T now the lead contract negotiator at BellSouth for Supra's Interconnection agreement with BellSouth. This testimony was filed in Florida Docket 00-731, AT&T's Interconnection Agreement arbitration against BellSouth.

1
2 As in the Sprint/BellSouth arbitration, an underlying
3 assumption is that alternative switching providers are likely to
4 be
5 located in the Density Zone 1 areas in Florida, which include the
6 Miami, Orlando, and Ft. Lauderdale Metropolitan Statistical
7 Areas
8 (MSAs) .
9

10 It is not merely enough to **assume** that there is local switching available to meet
11 the FCC requirement, because there really isn't such a supply. Look at the record.
12 Bot AT&T and Sprint, arguably the 1st and 3rd largest CLEC organizations in the
13 country **both** petitioned the FPSC to require BellSouth to sell Unbundled Local
14 Switching. If these two behemoths cant
15 1. Supply their own switching in the top 50 MSA's
16 2. Have enough clout in the industry to identify suppliers of unbundled
17 switching that can provide same to customers of BellSouth's UNEs,
18 then frankly, the supply doesn't actually exist. Supra maintains that the
19 availability of Unbundled Local Switching in the Top 50 MSA's is an illusory
20 issue. It should exist, but it doesn't.

21
22 BellSouth bears the burden of proof in this case and should be required to prove
23 to this Commission that a supply of Unbundled Local Switching exists to allow
24 customers of its EEL UNE to obtain local switching without the need for facilities
25 ownership by the ALEC, which would be prohibited by *AT&T v. Iowa Utilities*
26 *Bd.* (Iowa Utilities Board II).

27

1 This Commission should order BellSouth to prove that a discontinuation of the
2 unbundled Local Switching Product will not affect the telephone subscribers of
3 Florida. Supra has over 70,000 customer lines served by UNE combinations. Is
4 the Commission clear on what will happen to these customers if BellSouth is
5 allowed to discontinue Local Switching UNE, or raise its rate from \$1.62 to
6 \$14.00 (or more) per port? The potential for BellSouth to exercise anti-
7 competitive behavior is too great for the FPSC not to regulate this issue further.

8

9 **Q WHAT SPECIFIC RELIEF IS SOUGHT BY SUPRA?**

10 A. Supra merely requests that the parties' Follow-On Agreement follow the
11 current state of the law in all matters, and specific to this issue, BellSouth should
12 be directed to perform, upon request, the functions necessary to combine
13 unbundled network elements that are ordinarily combined in its network. Further
14 BellSouth should be required to combine network elements that are not ordinarily
15 combined in its network.

16

17 In the abundance of caution, should this Commission rule against this specific
18 relief, Supra would request that BellSouth be ordered to provide all UNEs to
19 Supra Telecom in a manner that allows Supra Telecom to effect their own
20 crossconnects, facilities assignments and switch translations and any other tasks
21 required to combine UNE(s). Such ALECs would need to be provided full access
22 to all BellSouth OSS functions supported by an BellSouth's databases and
23 information, including PREDICTOR, LFACS, COSMOS, ERMA and all other

1 facilities and provisioning interfaces and OSS functions that are currently
2 restricted from ALEC access. This language should be inserted in the language as
3 a contract defined alternate requirement on BellSouth if for **any** reason
4 (manpower shortage, strike, Act of God, anti-competitive behavior on BellSouth's
5 part, etc.) This provision should be invoked automatically anytime BellSouth
6 refuses to perform combination of one or more Unbundled Network Elements
7 where the equivalent circuit could and would be provisioned by BellSouth as a
8 Retail or other tariffed service.

9
10 The labor to effect such combinations should be performed by BellSouth at
11 TELRIC cost. This should be reflected as a one time, non recurring cost, constant
12 with the manner in which it is performed and the number of carriers that will
13 benefit (Supra alone).

14
15 There shall be no monthly recurring costs charged for elements that do not have a
16 physical representation (i.e. they don't exist). All elements shall be charged to
17 Supra at TELRIC cost.

18
19 Supra shall have rights to exclusive use of unbundled loop elements, regardless if
20 the UNE is used alone, or in combination with other network elements provided
21 by BellSouth or any other carrier.

22

1 This Commission should order BellSouth to prove that a discontinuation of the
2 unbundled Local Switching Product will not affect the telephone subscribers of
3 Florida.

4

5 Supra requests that this Commission ensures that the Follow On Agreement
6 include a liquidated damages provision to provide incentives for BellSouth's
7 compliance with these rules and orders.

8

9 Furthermore, as BellSouth has refused to provide Supra with any information
10 regarding its network, Supra is unsure as to whether it has provided a complete
11 response in support of its position. Should it be found that Supra is entitled to
12 additional information, and, should Supra discover relevant information as a
13 result, Supra request the right to supplement the record on this issue.

14

15

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

19

20 **Q SHOULD UNES ORDERED AND USED BY SUPRA TELECOM BE**
21 **CONSIDERED PART OF ITS NETWORK FOR RECIPROCAL**
22 **COMPENSATION, SWITCHED ACCESS CHARGES INTER/INTRA**

1 **LATA SERVICE, COMMON CARRIER IN TRANSPORT / TANDEM**
2 **CHARGES AND SUBSCRIBER LINE CHARGES (EUCL).**

3 A. Yes.

4
5 Q **CAN YOU EXPLAIN THE ISSUES REGARDING THE MONTHLY**
6 **RECURRING CHARGES COLLECTED FROM OTHER CARRIERS**
7 **AS IT PERTAINS TO THIS QUESTION?**

8 A. Certainly. I explained the issues related to reciprocal compensation in my
9 answer to issue 14 and will adopt that answer fully in partial answer to this
10 question. Specifically the cite I presented there to the FCC CALLS order (00-
11 193) at ¶ 5 bears repeating:

12 5. For much of this century, most telephone subscribers
13 obtained both local and long-distance services from the same
14 company, the pre-divestiture Bell System, owned and operated
15 by AT&T. Its provision of local and intrastate long-distance
16 services through its wholly-owned operating companies, the
17 Bell Operating Companies (BOCs), was regulated by state
18 commissions. The Commission regulated AT&T's provision of
19 interstate long-distance service. **Much of the telephone plant**
20 **that is used to provide local telephone service, such as the**
21 **local loop,⁵⁷ is also needed to originate and terminate**
22 **interstate long-distance calls. Consequently, a portion of the**
23 **costs of this common plant historically was assigned to the**
24 **interstate jurisdiction and recovered through the rates that**
25 **AT&T charged for interstate long-distance calls. *The***
26 ***balance of the costs of the common plant was assigned to the***
27 ***intrastate jurisdiction and recovered through the charges for***
28 ***intrastate services regulated by the state commissions. The***
29 **system of allocating costs between the interstate and**
30 **intrastate jurisdictions is known as the separations process.**

⁵⁷ 96-325 footnote -- A local loop is the connection between the telephone company's central office building and the customer's premises.

1 The difficulties inherent in allocating the costs of facilities that
2 are used for multiple services between the two jurisdictions are
3 discussed below. (Emphasis added).
4

5 This issue, like issue 14, is related to the recovery of costs for services provided
6 under one jurisdiction where some or all of the circuit facilities are provided by a
7 service provider providing services under another jurisdiction. In this rather than
8 the carrier to carrier cost recovery exclusively discussed in issue 14, where are
9 here also discussing the recovery of costs that must be properly and separately
10 allocated to intraLATA, intrastate, and interstate jurisdictions. Again a reminder
11 that cost recovery cannot exceed 100% of cost. To better understand these
12 charges I refer to the FCC's *First Report and Order* at ¶ 718 for the cost recovery
13 a LEC (ILEC or ALEC) is entitled to recover from other telecommunications
14 carriers:

15 718. The access charge system includes non-cost-based
16 components and elements that at least in part may represent
17 subsidies, such as the carrier common line charge (CCLC) and
18 the transport interconnection charge (TIC). **The CCLC**
19 **recovers part of the allocated interstate costs for incumbent**
20 **LECs to provide local loops to end users.** In the universal
21 service NPRM, we observed that the CCLC may result in
22 higher-volume toll users paying rates that exceed cost, and some
23 customers paying rates that are below cost. We sought
24 comment on whether that subsidy should be continued, and on
25 whether and how it should be restructured.⁵⁸ **The nature of**
26 **most of the revenues recovered through the TIC is unclear**
27 **and subject to dispute, although a portion of the TIC is**
28 **associated with certain costs related to particular transport**
29 **facilities. Although the TIC was not created to subsidize**
30 **local rates, some parties have argued in the *Transport***

⁵⁸ 96-325 footnote -- *Universal Service NPRM* at paras. 113-14.

1 **proceeding and elsewhere that some portion of the revenues**
 2 **now recovered through the TIC may be misallocated local**
 3 **loop or intrastate costs that operate to support universal**
 4 **service.**⁵⁹ In the forthcoming access reform proceeding, we
 5 intend to consider the appropriate disposition of the TIC,
 6 including the development of cost-based transport rates as
 7 directed by the United States Court of Appeals for the District
 8 of Columbia Circuit in *Competitive Telecommunications*
 9 *Association v. FCC (CompTel v. FCC)*.⁶⁰ (Emphasis added)
 10

11 Such is the nature of the cost recovery from other telecommunications in support
 12 of the costs of supplying local service utilized by long distance carriers on a
 13 monthly recurring basis. I would note that as citations are presented from 96-325
 14 the TIC charge is alternately referred to as Transport and/or Tandem
 15 Interconnection charge. This is one combined charge.

16

17 **Q PLEASE EXPLAIN THE MONTHLY RECURRING CHARGES**
 18 **COLLECTED FROM END USER SUBSCRIBERS IN SUPPORT OF**
 19 **UNIVERSAL SERVICE.**

20 A. The Subscriber Line Charge (SLC) has many names. It is often known as
 21 EUCL (End User Common Line Charge or even the FCC charge for network

⁵⁹ 96-325 footnote -- *Transport Rate Structure and Pricing*, CC Docket No. 91-213, Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd 7006, 7065-7066 (1992) (*First Transport Order*). Cf. Letter from Bruce K. Cox, Government Affairs Director, AT&T, to William F. Caton, Acting Secretary, FCC, September 7, 1995 (filed in CC Docket No. 91-213) (suggesting that TIC revenues not allocable to specific transport facilities may represent misallocated common line costs).

⁶⁰ 96-325 footnote -- *Competitive Telecommunications Association v. FCC*, No. 96-1168 (D.C. Cir. July 5, 1996).

1 access on BellSouth's retail bills.) The FCC provides a definition of this charge in
2 the *First Report and Order* at ¶ 364:

3 364. We further conclude that when a carrier purchases a
4 local loop for the purpose of providing interexchange services
5 or exchange access services,⁶¹ **incumbent LECs may not**
6 **recover the subscriber line charge (SLC) now paid by end**
7 **users. The SLC recovers the portion of loop costs allocated**
8 **to the interstate jurisdiction, but as discussed in Section II.C,**
9 ***supra*, we conclude that the 1996 Act creates a new**
10 **jurisdictional regime outside of the current separations**
11 **process. The unbundled loop charges paid by new entrants**
12 **under section 251(c)(3) will therefore recover the**
13 **unseparated cost of the loop, including the interstate**
14 **component now recovered through the SLC. If end users or**
15 **carriers purchasing access to local loops were required to**
16 **pay the SLC in this situation, LECs would enjoy double**
17 **recovery, and the effective price of unbundled loops would**
18 **exceed the cost-based levels required under section**
19 **251(d)(1).** (Emphasis added)
20

21 This section quite shows that if BellSouth were to collect SLC (a.k.a. EUCL)
22 from Supra Telecom, BellSouth would inherently enjoy double recovery of this
23 money, which of course is improper. SLC being a pass through charge is
24 rightfully collected by Supra from the end user and retained, as Supra has already
25 paid BellSouth its portion of this subsidy through the purchase of the specific
26 unbundled elements under which BellSouth is entitled to such subsidy.

27

28 **Q ARE THERE ADDITIONAL CHARGES INVOLVED?**

⁶¹ 96-325 footnote -- As discussed at *infra*, Section VIII, a different result will occur when interconnecting carriers purchase LEC retail services at wholesale rates under section 251(c)(4).

1 A. Absolutely, CCLC and SLC are fixed monthly recurring charges in
2 support of universal service. Reciprocal compensation is cost recovery that any
3 LEC is entitled to recover for termination **local** calls originated on another carrier
4 network. By the same token, the same LEC is responsible for paying the
5 equivalent reciprocal compensations charges for calls originated on his network.

6
7 Access charges recover the same costs for originating an terminating Long
8 Distance calls on a carriers network. Since there is both a local long distance
9 provider (intraLATA LPIC) in addition to an intra/interstate provider (PIC) these
10 charges are further separated into intraLATA and intra/interstate separations

11

12 In the background section of the Access charges section of *First Report and*
13 *Order* at ¶ 344 the FCC documented:

14 344. Finally, in the NPRM, we tentatively concluded that, if
15 carriers purchase unbundled elements to provide exchange
16 access services to themselves, irrespective of whether they
17 provide such services alone or in connection with local
18 exchange services, **incumbent LECs cannot assess Part 69**
19 **access charges in addition to charges for the cost of the**
20 **unbundled elements.** We based this tentative conclusion on
21 the view that the imposition of access charges in addition to
22 cost-based charges for unbundled elements would depart from
23 the statutory mandate of cost-based pricing of elements.⁶²
24 (Emphasis added)
25

⁶² 96-325 footnote -- NPRM at para. 165.

1 Lest there be any argument that this finding was tentative at the point it was made,
2 the FCC re-affirmed its position on access charges once again in its conclusion
3 *First Report and Order* at ¶ 356

4 **356. We confirm our tentative conclusion in the NPRM that**
5 **section 251(c)(3) permits interexchange carriers and all other**
6 **requesting telecommunications carriers, to purchase unbundled**
7 **elements for the purpose of offering exchange access services,**
8 **or for the purpose of providing exchange access services to**
9 **themselves in order to provide interexchange services to**
10 **consumers.⁶³ Although we conclude below that we have**
11 **discretion under the 1934 Act, as amended by the 1996 Act, to**
12 **adopt a limited, transitional plan to address public policy**
13 **concerns raised by the bypass of access charges via unbundled**
14 **elements, we believe that our interpretation of section**
15 **251(c)(3) in the NPRM is compelled by the plain language of**
16 **the 1996 Act. As we observed in the NPRM, section**
17 **251(c)(3) provides that requesting telecommunications**
18 **carriers may seek access to unbundled elements to provide a**
19 **"telecommunications service," and exchange access and**
20 **interexchange services are telecommunications services.**
21 **Moreover, section 251(c)(3) does not impose restrictions on**
22 **the ability of requesting carriers "to combine such elements**
23 **in order to provide such telecommunications service[s]."**⁶⁴
24 **Thus, we find that there is no statutory basis upon which we**
25 **could reach a different conclusion for the long term.**
26 **(Emphasis added).**
27

28 **357. We also confirm our conclusion in the NPRM that, for the**
29 **reasons discussed below in section V.J, carriers purchase**
30 **rights to exclusive use of unbundled loop elements, and thus,**
31 **as the Department of Justice and Sprint observe, such carriers,**
32 **as a practical matter, will have to provide whatever services are**
33 **requested by the customers to whom those loops are dedicated.**
34 **This means, for example, that, if there is a single loop**
35 **dedicated to the premises of a particular customer and that**

⁶³ 96-325 footnote -- See NPRM at paras. 159-65.

⁶⁴ 96-325 footnote -- 47 U.S.C. § 251(c)(3).

1 **customer requests both local and long distance service, then**
2 **any interexchange carrier purchasing access to that**
3 **customer's loop will have to offer both local and long**
4 **distance services.** That is, interexchange carriers purchasing
5 unbundled loops will most often not be able to provide solely
6 interexchange services over those loops.

7
8 358. We reject the argument advanced by a number of
9 incumbent LECs that section 251(i) demonstrates that
10 requesting carriers using unbundled elements must continue to
11 pay access charges. Section 251(i) provides that nothing in
12 section 251 "shall be construed to limit or otherwise affect the
13 Commission's authority under section 201."⁶⁵ We conclude,
14 however, that our authority to set rates for these services is not
15 limited or affected by the ability of carriers to obtain unbundled
16 elements for the purpose of providing interexchange services.
17 Our authority to regulate interstate access charges remains
18 unchanged by the 1996 Act. What has potentially changed is
19 the volume of access services, in contrast to the number of
20 unbundled elements, interexchange carriers are likely to demand
21 and incumbent LECs are likely to provide. When interexchange
22 carriers purchase unbundled elements from incumbents, they are
23 not purchasing exchange access "services." They are
24 purchasing a different product, and that product is the right to
25 exclusive access or use of an entire element. Along this same
26 line of reasoning, we reject the argument that our conclusion
27 would place the administration of interstate access charges
28 under the authority of the states. When states set prices for
29 unbundled elements, they will be setting prices for a different
30 product than "interstate exchange access services." Our
31 exchange access rules remain in effect and will still apply where
32 incumbent LECs retain local customers and continue to offer
33 exchange access services to interexchange carriers who do not
34 purchase unbundled elements, and also where new entrants
35 resell local service.⁶⁶ (Emphasis added)

⁶⁵ 96-325 footnote -- 47 U.S.C. § 251(i).

⁶⁶ 96-325 footnote -- The application of our exchange access rules in the circumstances described will continue beyond the transition period described at *infra*, Section VII.

1 Here the FCC clearly rejects BellSouth's position that they are entitled to collect
2 usage based access charges for traffic exchanged over unbundled loops sold to
3 ALECs by BellSouth. The FCC limits BellSouth's ability to collect Part 69 access
4 charges to "**interexchange carriers who do not purchase unbundled elements,**
5 **and also where new entrants resell local service.**" Thus is a carrier purchase
6 tariffed access products, rather than UNE(s), or for an ALEC under resale are the
7 only two conditions where BellSouth is entitled to this revenue.
8 Lest there be any further disagreement, the FCC is quite clear on this issue in the
9 *First Report and Order* at ¶ 717:

10 359. Specifically, as we conclude above, the 1996 Act
11 permits telecommunications carriers that purchase access to
12 unbundled network elements from incumbent LECs to use those
13 elements to provide telecommunications services, including the
14 origination and termination of interstate calls. **Without further**
15 **action on our part, section 251 would allow entrants to use**
16 **those unbundled network facilities to provide access services**
17 **to customers they win from incumbent LECs, without**
18 **having to pay access charges to the incumbent LECs.** This
19 result would be consistent with the long term outcome in a
20 competitive market. In the short term, however, while other
21 aspects of our regulatory regime are in the process of being
22 reformed, such a change may have detrimental consequences.
23 (Emphasis added)
24
25

26 Q DOES BELLSOUTH'S POSITION SUPRISE YOU?

27 A. Not at all. BellSouth has consistently and repeatedly violated this rule by
28 exercising its monopoly powers. BellSouth controls the billing records for all
29 calls generated on its switch(es). Despite arbitration before the Florida Public
30 Service Commission, the original Interconnection agreement between AT&T and

1 BellSouth only specified a limited set of billing records to be submitted to AT&T.
2 Despite arbitration orders PSC-98-0604-FOF-TP and PSC-98-0810-FOF-TP,
3 BellSouth continues to keep billing records it contracted to provide, that it was
4 ordered to provide by the FPSC, and that which would be necessary to fulfill its
5 legal obligations to Supra as defined above. Lacking a serious penalty for failure
6 in this matter, Supra believes that BellSouth will continue to defy the Florida and
7 Federal Commissions in this regard.

8

9 **Q WHY IS THAT?**

10 A. There is a lot of money involved. Take for example a long distance
11 provider providing service for a telephone call between a BellSouth customer in
12 Jacksonville and a BellSouth customer in Miami. Assume that the long distance
13 company is charging its customer five (5) cents per minute. BellSouth collects an
14 origination fee from the long distance company of 2.1⁶⁷ cents per minute for its
15 originating customers. BellSouth also collects another 2.1 cents per minute for its
16 terminating customers. So out of the long distance companies 5 cent per minute
17 rate, 4.2 cents flows directly to BellSouth **without BellSouth ever getting 271**
18 **approval!** The long distance company must suffer competition with the
19 remaining 0.8 cents per minute as its only revenue. Because in this example they
20 are keeping 84% of every dollar spent on long distance between two BellSouth

⁶⁷ Data based upon MCI/ Worldcom database of LEC origination and termination charges nationwide. BellSouth's rates in this regard are among the highest ILEC in the nation.

1 customers, and 42% of every other long distance dollar spent calling to or from a
2 BellSouth customer in Florida, BellSouth is collecting more revenue than most
3 IXC operating in Florida without ever having to obtain 271 approval. Since that
4 is the one issue that is most often quoted as the reason regulators expect
5 BellSouth's compliance with their laws and orders, I submit that BellSouth has no
6 motivation whatsoever for compliance with any regulatory order that is not
7 backed up with sufficiently large financial penalties that can be brought to bear on
8 the ILEC immediately without significant legal recourse for the ILEC to effect a
9 delay. Substantial dollars flow into BellSouth's war chest for every day they
10 illegally collect revenue due other carriers. Only a fraction is ever collected back
11 from BellSouth by ALECs.

12

13 BellSouth is financially motivated to ignore laws, orders and regulations on this
14 matter and only when there are binding penalties will ALECs in the BellSouth
15 region achieve what Congress intended in passing the Act.

16

17 **Q WHAT SPECIFIC RELIEF DOES SUPRA SEEK?**

18 A. Supra merely requests that the parties' Follow-On Agreement follow the
19 current state of the law in all matters, and specific to this issue. The law allows
20 supra to collect CCLC, TIC, SLC, reciprocal compensation, and access charges as
21 proscribed by law. Supra has a responsibility to turn none of this revenue to
22 BellSouth. BellSouth is prohibited from collecting CCLC, TIC, SLC, and access
23 charges from any circuit served by UNE or UNE combination(s). BellSouth is

1 entitled to collect reciprocal compensation for calls originated by Supra customer
2 terminated to a BellSouth customer.

3

4 BellSouth must be ordered to provide **all** detail records, not a filtered subset
5 thereof. BellSouth must be enjoined from attempting to collect CCLC, TIC, SLC,
6 and access charges for any line served by a UNE or UNE Combinations. This
7 restriction **MUST** be supported by sufficient financial penalties immediately
8 collectable as to discourage BellSouth willful and intentional violations of the
9 law.

10

11 Supra shall have rights to exclusive use of unbundled loop elements, regardless if
12 the UNE is used alone, or in combination with other network elements provided
13 by BellSouth or any other carrier. Supra requests that this Commission ensure
14 that the Follow On Agreement include a liquidated damages provision to provide
15 incentives for BellSouth's compliance with these rules and orders.

16

17 Furthermore, as BellSouth has refused to provide Supra with any information
18 regarding its network, Supra is unsure as to whether it has provided a complete
19 response in support of its position. Should it be found that Supra is entitled to
20 additional information, and, should Supra discover relevant information as a
21 result, Supra request the right to supplement the record on this issue.

22

1 **Issue 27: Should there be a single point of entry within each LATA for the**
2 **mutual exchange of traffic? If so, how should the single point be established**
3 **determined?**

4

5 **Q WHAT IS THIS ISSUE ABOUT?**

6 A. Supra wishes to designate a technically feasible single point of
7 interconnection (POI) in each LATA of its choosing for the interconnection of its
8 network with BellSouth's network. Many LATAs in the BellSouth region are
9 served by more than one, physically separated tandem switch. Of particular
10 example in Florida alone the South Florida (Miami, Ft Lauderdale, West Palm)
11 market is served by three tandem switches, Orlando and Jacksonville by two.
12 Supra believes that traffic brought to BellSouth or from BellSouth at one point in
13 the LATA is all that should be required for interconnection. This is exactly what
14 BellSouth promised Supra at our first network planning meeting held on June 4,
15 1998, and at the inter company meeting held in Birmingham on March 28 2000. I
16 was never notified that BellSouth held a different position until this arbitration.

17

18 Frankly, I don't understand why BellSouth has changed its mind. Supra
19 understands that the law requires each carrier to maintain its own costs of
20 transportation to the interconnection point. Thus, under BellSouth's proposal,
21 Supra would be responsible for carrying the traffic of BellSouth customers calling
22 Supra customers in West Palm, and then **also** be required to carry the traffic of
23 Supra customers calling BellSouth customers. This is inherently unfair, and it

1 would place a larger percent of the burden on Supra rather than an arrangement
2 that is equal.

3

4 Since BellSouth is Supra's transport vendor of choice in the LATA, they would
5 also be reaping the benefit of supplying the transport! Clearly BellSouth cannot
6 be allowed to prevail on this issue.

7

8 **Q WHAT IS SUPRA'S POSITION?**

9 A. The FCC's Local Competition Order is unambiguous when it states at
10 paragraph 172 that "The interconnection obligation of section 251(c)(2),
11 discussed in this section, allows competing carriers to choose the most efficient
12 points at which to exchange traffic with incumbent LECs, thereby lowering the
13 competing carriers' cost of, among other things, transport and termination of
14 traffic." Subsequently, at paragraph 176 of the Local Competition Order, FCC
15 96-325, the FCC states that "we conclude the term "interconnection" under
16 section 251 (c)(2) refers only to the physical linking of two networks for the
17 mutual exchange of traffic." As such, it is Supra, not BellSouth, who is entitled
18 to select the POIs for the mutual exchange of traffic.

19

20 **Q WHAT SPECIFIC RELIEF DOES SUPRA SEEK?**

21 A. Supra merely requests that the parties' Follow-On Agreement follow the
22 current state of the law in all matters, and specific to this issue, Supra requests

1 that this Commission include language that BellSouth **shall not require** Supra to
2 effect interconnection with more than one point of interconnection per LATA.

3

4 Both parties shall bear their own respective costs for transport of traffic to the
5 Point of Interconnection.

6

7 Nothing in this issue relieves BellSouth of its responsibility to provide
8 interconnection at more than one technically feasible Point of Interconnection if
9 so requested by Supra.

10

11 Supra requests that this Commission ensure that the Follow On Agreement
12 include a liquidated damages provision to provide incentives for BellSouth's
13 compliance with these rules and orders.

14

15 Furthermore, as BellSouth has refused to provide Supra with any information
16 regarding its network, Supra is unsure as to whether it has provided a complete
17 response in support of its position. Should it be found that Supra is entitled to
18 additional information, and, should Supra discover relevant information as a
19 result, Supra request the right to supplement the record on this issue.

20

21

1 **Issue 28: What terms and conditions and what separate rates if any should**
 2 **apply for Supra Telecom to gain access to and use BellSouth facilities to**
 3 **serve multitenant environments?**

4

5 **Q WHAT ARE THE ISSUES SURROUNDING THIS QUESTION?**

6 A. This issue of access to facilities to serve multitenant environments is
 7 largely an issue surrounding recent law regarding subloop unbundling. If not, it
 8 should be. Why it remains an issue in this docket is beyond my understanding. In
 9 the *UNE Remand Order* (CC order 99-238), the FCC addressed this issue head-
 10 on. First the FCC defines the nature of the problem and assigns a portion of the
 11 responsibility to state commissions to resolve specific technical issues regarding
 12 the location of the demarc point that vary by state due to differences in the outside
 13 plant design:

14 224. Our approach to subloop unbundling permits evaluation of
 15 the technical feasibility of subloop unbundling on a case-by-
 16 case basis, and takes into account the different loop plant that
 17 has been deployed in different states. We find that the questions
 18 of technical feasibility, including the question of whether or not
 19 sufficient space exists to make interconnection feasible at
 20 assorted huts, vaults, and terminals, and whether such
 21 interconnection would pose a significant threat to the operation
 22 of the network, are fact specific. **Such issues of technical**
 23 **feasibility are best determined by state commissions,**
 24 **because state commissions can examine the incumbent's**
 25 **specific architecture and the particular technology used over**
 26 **the loop, and thus determine whether, in reality, it is**
 27 **technically feasible to unbundle the subloop where a**
 28 **competing carrier requests.**⁶⁸ We also note we are

⁶⁸ CC order 99-238 Footnote --See, e.g., Florida PSC Comments at 8; Iowa Comments at 9; Ohio PUC Comments at 18. See also Kentucky PSC Comments at para. 1; New York DPS Comments at 6.

1 considering legal issues regarding access to premises in the
2 *Access to Competitive Networks* proceeding.⁶⁹ (Emphasis
3 added)
4

5 The FCC goes on to deal with issues that could arise when an ever increasing
6 number of carriers all want access to a specific premises for the purposes of
7 providing service. Supra endorses the approach offered by SBC that was
8 ultimately documented as law in § 51.319(a)(2)(E) -- the single point of
9 interconnection shared by all carriers and established by the ILEC. *UNE Remand*
10 *Order* (CC order 99-238) ¶ 225:
11 225. We further note that SBC proposes to avoid difficulties associated with
12 competing carriers serving multi-unit premises by eliminating multiple
13 demarcation points in favor of a single demarcation point, which, according to
14 SBC, would remedy competitive LECs' concerns.⁷⁰ OpTel similarly suggests that
15 the incumbent should provide a single point of interconnection at or near the
16 property line of multi-unit premises.⁷¹ OpTel further maintains that the cost of
17 any network reconfiguration required to create a point of interconnection that
18 would be accessible to multiple carriers should be shared by all the carriers
19 concerned.⁷² (Emphasis added)

⁶⁹ CC order 99-238 Footnote --See Competitive Networks Notice at para. 28 et seq.

⁷⁰ CC order 99-238 Footnote --SBC Reply Comments at 9 (citing OpTel Comments at 10; Teligent Comments at 3).

⁷¹ CC order 99-238 Footnote --OpTel Comments at 10.

⁷² CC order 99-238 Footnote --*Id.*

1 Then the FCC states its own conclusion after hearing testimony and reading
 2 comments of those who responded to the NPRM *UNE Remand Order* (CC order
 3 99-238) ¶ 226:

4 226. Although we do not amend our rules governing the
 5 demarcation point in the context of this proceeding, **we agree**
 6 **that the availability of a single point of interconnection will**
 7 **promote competition.**⁷³ To the extent there is not currently a
 8 single point of interconnection that can be feasibly accessed by
 9 a requesting carrier, we encourage parties to cooperate in any
 10 reconfiguration of the network necessary to create one. If
 11 parties are unable to negotiate a reconfigured single point of
 12 interconnection at multi-unit premises, we require the
 13 incumbent to construct a single point of interconnection that
 14 will be fully accessible and suitable for use by multiple
 15 carriers.⁷⁴ Any disputes regarding the implementation of this
 16 requirement, including the provision of compensation to the
 17 incumbent LEC under forward-looking pricing principles, shall
 18 be subject to the usual dispute resolution process under section
 19 252.⁷⁵ We emphasize that this principle in no way diminishes a
 20 carrier's right to access the loop at any technically feasible point,
 21 including other points at or near the customer premises. We
 22 also note that unbundling inside wire, and access to premises
 23 facilities in general, present specific technical issues, and that
 24 we have sought additional comment on these issues in our
 25 *Access to Competitive Networks* proceeding.⁷⁶ If the record
 26 developed in that proceeding demonstrates the need for
 27 additional federal guidance on legal or technical feasibility
 28 issues related to subloop unbundling, we will provide such
 29 additional guidance, consistent with the policies established in
 30 this Order.⁷⁷ (Emphasis added)
 31

⁷³ CC order 99-238 Footnote --See 47 C.F.R. § 68.3.

⁷⁴ CC order 99-238 Footnote --The incumbent is obligated to construct the single point of interconnection whether or not it controls the wiring on the customer premises.

⁷⁵ CC order 99-238 Footnote --See 47 U.S.C. § 252

⁷⁶ CC order 99-238 Footnote --See *generally Competitive Networks Notice* at paras. 49-51 and 65-67.

⁷⁷ CC Order 99-238 in Docket No. 96-98 -- Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 at ¶ 224-226.

1 The FCC goes on in CC Order 99-238 to document the changes to 47 C.F.R.
2 §51.317, 51.319 and 51.5 in Appendix C. There, §51.319(a)(1 and 2) define the
3 demarcation point for loop and subloop regardless of whether they serve
4 multitenant or not, and defines Inside Wire as network element and specifies its
5 demarc subject to further examination in the *Network Access* docket. It then goes
6 on to define the specific requirements for multi-unit premises in 51.319(a)(2)(E),
7 discussed above. The version of Rule 319 as modified by CC Order 99-238
8 appears below. Supra expects only that its rights as represented by this rule be
9 ordered by this Commission in answer to this issue and all others in this
10 arbitration: *UNE Remand Order* (CC order 99-238) Appendix C:

11 § 51.319 Specific unbundling requirements.

12
13 (a) *Local Loop and Subloop.* An incumbent LEC shall provide
14 nondiscriminatory access, in accordance with § 51.311 and section
15 251(c)(3) of the Act, to the local loop and subloop, including inside
16 wiring owned by the incumbent LEC, on an unbundled basis to any
17 requesting telecommunications carrier for the provision of a
18 telecommunications service.

19 (1) *Local Loop.* **The local loop network element is defined as a**
20 **transmission facility between a distribution frame (or its**
21 **equivalent) in an incumbent LEC central office and the**
22 **loop demarcation point at an end-user customer premises,**
23 **including inside wire owned by the incumbent LEC.** The
24 local loop network element includes all features, functions, and
25 capabilities of such transmission facility. Those features,
26 functions, and capabilities include, but are not limited to, **dark**
27 **fiber, attached electronics (except those electronics used for**
28 **the provision of advanced services, such as Digital**
29 **Subscriber Line Access Multiplexers), and line**
30 **conditioning. The local loop includes, but is not limited to,**
31 **DS1, DS3, fiber, and other high capacity loops.**

32 (2) *Subloop.* The subloop network element is defined as **any**
33 **portion of the loop that is technically feasible to access at**
34 **terminals in the incumbent LEC's outside plant, including**
35 **inside wire.** An accessible terminal is any point on the loop

1 where technicians can access the wire or fiber within the cable
2 without removing a splice case to reach the wire or fiber
3 within. **Such points may include, but are not limited to, the**
4 **pole or pedestal, the network interface device, the**
5 **minimum point of entry, the single point of interconnection,**
6 **the main distribution**
7 **frame, the remote terminal, and the feeder/distribution**
8 **interface.**

- 9 (A) *Inside Wire.* Inside wire is defined as all loop plant owned by the
10 incumbent LEC on end-user customer premises as far as the point
11 of demarcation as defined in § 68.3, including the loop plant near
12 the end-user customer premises. **Carriers may access the inside**
13 **wire subloop at any technically feasible point including, but**
14 **not limited to, the network interface device, the minimum**
15 **point of entry, the single point of interconnection, the**
16 **pedestal, or the pole.**
- 17 (B) *Technical feasibility.* If parties are unable to reach agreement,
18 pursuant to voluntary negotiations, as to whether it is technically
19 feasible, or whether sufficient space is available, to unbundle the
20 subloop at the point where a carrier requests, **the incumbent**
21 **LEC shall have the burden of demonstrating to the state,**
22 **pursuant to state arbitration proceedings under section 252 of**
23 **the Act, that there is not sufficient space available, or that it is**
24 **not technically feasible, to unbundle the subloop at the point**
25 **requested.**
- 26 (C) *Best practices.* Once one state has determined that it is
27 technically feasible to unbundle subloops at a designated
28 point, an incumbent LEC in any state shall have the burden of
29 demonstrating, pursuant to state arbitration proceedings
30 under section 252 of the Act, that it is not technically feasible,
31 or that sufficient space is not available, to unbundle its own
32 loops at such a point.
- 33 (D) *Rules for collocation.* Access to the subloop is subject to the
34 Commission's collocation rules at §§ 51.321-323.
- 35 (E) *Single point of interconnection.* **The incumbent LEC shall**
36 **provide a single point of interconnection at multi-unit**
37 **premises that is suitable for use by multiple carriers. This**
38 **obligation is in addition to the incumbent LEC's obligation to**
39 **provide nondiscriminatory access to subloops at any**
40 **technically feasible point. If parties are unable to negotiate**
41 **terms and conditions regarding a single point of interconnection,**
42 **issues in dispute, including compensation of the incumbent LEC**
43 **under forward-looking pricing principles, shall be resolved under**
44 **the dispute resolution processes in section 252 of the Act.**

1 (3) *Line conditioning.* **The incumbent LEC shall condition**
2 **lines required to be unbundled under this section wherever**
3 **a competitor requests, whether or not the incumbent LEC**
4 **offers advanced services to the end-user customer on that**
5 **loop.**

6 (A) Line conditioning is defined as the removal from the
7 loop of any devices that may diminish the capability of
8 the loop to deliver high-speed switched wireline
9 telecommunications capability, including xDSL
10 service. Such devices include, but are not limited to,
11 bridge taps, low pass filters, and range extenders.

12 (B) Incumbent LECs shall recover the cost of line
13 conditioning from the requesting telecommunications
14 carrier in accordance with the Commission's forward-
15 looking pricing principles promulgated pursuant to
16 section 252(d)(1) of the Act.

17 (C) Incumbent LECs shall recover the cost of line
18 conditioning from the requesting telecommunications
19 carrier in compliance with rules governing
20 nonrecurring costs in § 51.507(e).

21 (D) In so far as it is technically feasible, the incumbent
22 LEC shall test and report trouble for all the features,
23 functions, and capabilities of conditioned lines, and
24 may not restrict testing to voice-transmission only.

25 (b) *Network Interface Device.* An incumbent LEC shall provide
26 nondiscriminatory access, in accordance with § 51.311 and section
27 251(c)(3) of the Act, to the network interface device on an unbundled
28 basis to any requesting telecommunications carrier for the provision of
29 a telecommunications service. **The network interface device**
30 **network element is defined as any means of interconnection of**
31 **end-user customer premises wiring to the incumbent LEC's**
32 **distribution plant, such as a cross connect device used for that**
33 **purpose. An incumbent LEC shall permit a requesting**
34 **telecommunications carrier to connect its own loop facilities to on-**
35 **premises wiring through the incumbent LEC's network interface**
36 **device, or at any other technically feasible point.**

37 (c) *Switching Capability.* An incumbent LEC shall provide
38 nondiscriminatory access, in accordance with § 51.311 and section
39 251(c)(3) of the Act, to local circuit switching capability and local
40 tandem switching capability on an unbundled basis, except as set
41 forth in § 51.319(c)(1)(B), to any requesting telecommunications
42 carrier for the provision of a telecommunications service. An
43 incumbent LEC shall be required to provide nondiscriminatory
44 access in accordance with § 51.311 and section 251(c)(3) of the Act
45 to packet switching capability on an unbundled basis to any

1 **requesting telecommunications carrier for the provision of a**
 2 **telecommunications service only in the limited circumstance**
 3 **described in § 51.319(c)(3)(B).**

4 (1)(A) *Local Circuit Switching Capability, including Tandem*
 5 *Switching Capability.* The local circuit switching capability
 6 network element is defined as:

7 (i) Line-side facilities, which include, but are not limited to,
 8 the connection between a loop termination at a main
 9 distribution frame and a switch line card;

10 (ii) Trunk-side facilities, which include, but are not limited
 11 to, the connection between trunk termination at a
 12 trunk-side cross-connect panel and a switch trunk card;
 13 and

14 (iii) All features, functions and capabilities of the switch,
 15 which include, but are not limited to:

16 (1) The basic switching function of connecting lines
 17 to lines, lines to trunks, trunks to lines, and
 18 trunks to trunks, as well as the same basic
 19 capabilities made available to the incumbent
 20 LEC's customers, such as a telephone number,
 21 white page listing and dial tone, and

22 (2) **All other features that the switch is capable**
 23 **of providing, including but not limited to,**
 24 **customer calling, customer local area**
 25 **signaling service features, and Centrex, as**
 26 **well as any technically feasible customized**
 27 **routing functions provided by the switch.**

28 (B) Notwithstanding the incumbent LEC's general duty to
 29 unbundle local circuit switching, an incumbent LEC shall not be
 30 required to unbundle local circuit switching for requesting
 31 telecommunications carriers when the requesting
 32 telecommunications carrier serves end-users with four or more
 33 voice grade (DS0) equivalents or lines, and the incumbent LEC's
 34 local circuit switches are located in:

35 (i) The top 50 Metropolitan Statistical Areas as set forth in
 36 Appendix B of the *Third Report and Order and Fourth*
 37 *Further Notice of Proposed Rulemaking* in CC Docket No.
 38 96-98, and

39 (ii) In Density Zone 1, as defined in § 69.123 on January 1,
 40 1999.

41 (2) *Local Tandem Switching Capability.* The tandem switching
 42 capability network element is defined as:

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

1 **(B) The basic switch trunk function of connecting trunks to**
 2 **trunks; and**

3 **(C) The functions that are centralized in tandem switches (as**
 4 **distinguished from separate end office switches), including but**
 5 **not limited, to call recording, the routing of calls to operator**
 6 **services, and signaling conversion features.**

7 **(3) Packet Switching Capability. (A) The packet switching capability**
 8 **network element is defined as the basic packet switching function of**
 9 **routing or forwarding packets, frames, cells or other data units**
 10 **based on address or other routing information contained in the**
 11 **packets, frames, cells or other data units, and the functions that**
 12 **are performed by Digital Subscriber Line Access Multiplexers,**
 13 **including but not limited to:**

14 **(i) The ability to terminate copper customer loops (which**
 15 **includes both a low band voice channel and a high-band**
 16 **data channel, or solely a data channel);**

17 **(ii) The ability to forward the voice channels, if present, to**
 18 **a circuit switch or multiple circuit switches;**

19 **(iii) The ability to extract data units from the data**
 20 **channels on the loops, and**

21 **(iv) The ability to combine data units from multiple loops**
 22 **onto one or more trunks connecting to a packet switch or**
 23 **packet switches.**

24 **(B) An incumbent LEC shall be required to provide**
 25 **nondiscriminatory access to unbundled packet switching**
 26 **capability only where each of the following conditions are**
 27 **satisfied:**

28 **(i) The incumbent LEC has deployed digital loop carrier**
 29 **systems, including but not limited to, integrated digital**
 30 **loop carrier or universal digital loop carrier systems; or**
 31 **has deployed any other system in which fiber optic**
 32 **facilities replace copper facilities in the distribution section**
 33 **(e.g., end office to remote terminal, pedestal or**
 34 **environmentally controlled vault);**

35 **(ii) There are no spare copper loops capable of supporting**
 36 **the xDSL services the requesting carrier seeks to offer;**

37 **(iii) The incumbent LEC has not permitted a requesting**
 38 **carrier to deploy a Digital Subscriber Line Access**
 39 **Multiplexer at the remote terminal, pedestal or**
 40 **environmentally controlled vault or other interconnection**
 41 **point, nor has the requesting carrier obtained a virtual**
 42 **collocation arrangement at these subloop interconnection**
 43 **points as defined by § 51.319(b); and**

44 **(iv) The incumbent LEC has deployed packet switching**
 45 **capability for its own use.**

1 (d) *Interoffice Transmission Facilities*. An incumbent LEC shall provide
 2 nondiscriminatory access, in accordance with § 51.311 and section 251(c)(3) of
 3 the Act, to interoffice transmission facilities on an unbundled basis to any
 4 requesting telecommunications carrier for the provision of a telecommunications
 5 service.

6 (1) Interoffice transmission facility network elements include:

7 (A) Dedicated transport, defined as incumbent LEC transmission
 8 facilities, including all technically feasible capacity-related
 9 services including, but not limited to, DS1, DS3 and OCn levels,
 10 dedicated to a particular customer or carrier, that provide
 11 telecommunications between wire centers owned by incumbent
 12 LECs or requesting telecommunications carriers, or between
 13 switches owned by incumbent LECs or requesting
 14 telecommunications carriers;

15 (B) **Dark fiber transport, defined as incumbent LEC optical**
 16 **transmission facilities without attached multiplexing,**
 17 **aggregation or other electronics;**

18 (C) Shared transport, defined as transmission facilities shared by more
 19 than one carrier, including the incumbent LEC, between end
 20 office switches, between end office switches and tandem
 21 switches, and between tandem switches, in the incumbent LEC
 22 network.

23 (2) The incumbent LEC shall:

24 (A) Provide a requesting telecommunications carrier exclusive use of
 25 interoffice transmission facilities dedicated to a particular customer
 26 or carrier, or use the features, functions, and capabilities of
 27 interoffice transmission facilities shared by more than one
 28 customer or carrier.

29 (B) **Provide all technically feasible transmission facilities, features,**
 30 **functions, and capabilities that the requesting**
 31 **telecommunications carrier could use to provide**
 32 **telecommunications services;**

33 (C) Permit, to the extent technically feasible, a requesting
 34 telecommunications carrier to connect such interoffice facilities to
 35 equipment designated by the requesting telecommunications
 36 carrier, including but not limited to, the requesting
 37 telecommunications carrier's collocated facilities; and

38 (D) **Permit, to the extent technically feasible, a requesting**
 39 **telecommunications carrier to obtain the functionality**
 40 **provided by the incumbent LEC's digital cross-connect**
 41 **systems in the same manner that the incumbent LEC provides**
 42 **such functionality to interexchange carriers.**

43 (e) *Signaling Networks and Call-Related Databases*. An incumbent LEC
 44 shall provide nondiscriminatory access, in accordance with § 51.311 and section
 45 251(c)(3) of the Act, to signaling networks, call-related databases, and service

1 management systems on an unbundled basis to any requesting
2 telecommunications carrier for the provision of a telecommunications service.

3 (1) *Signaling Networks*: Signaling networks include, but are not limited
4 to, signaling links and signaling transfer points.

5 (A) When a requesting telecommunications carrier purchases
6 unbundled switching capability from an incumbent LEC, the
7 incumbent LEC shall provide access from that switch in the same
8 manner in which it obtains such access itself.

9 (B) An incumbent LEC shall provide a requesting
10 telecommunications carrier with its own switching facilities
11 access to the incumbent LEC's signaling network for each of the
12 requesting telecommunications carrier's switches. This
13 connection shall be made in the same manner as an incumbent
14 LEC connects one of its own switches to a signaling transfer
15 point.

16 (2) *Call-Related Databases*: Call-related databases are defined as
17 databases, other than operations support systems, that are used in signaling
18 networks for billing and collection, or the transmission, routing, or other provision
19 of a telecommunications service.

20 (A) For purposes of switch query and database response through a
21 signaling network, an incumbent LEC shall provide access to its
22 call-related databases, including but not limited to, the Calling
23 Name Database, 911 Database, E911 Database, Line Information
24 Database, Toll Free Calling Database, Advanced Intelligent
25 Network Databases, and downstream number portability
26 databases by means of physical access at the signaling transfer
27 point linked to the unbundled databases.

28 (B) Notwithstanding the incumbent LEC's general duty to unbundle
29 call-related databases, an incumbent LEC shall not be required to
30 unbundle the services created in the AIN platform and
31 architecture that qualify for proprietary treatment.

32 (C) **An incumbent LEC shall allow a requesting**
33 **telecommunications carrier that has purchased an incumbent**
34 **LEC's local switching capability to use the incumbent LEC's**
35 **service control point element in the same manner, and via the**
36 **same signaling links, as the incumbent LEC itself.**

37 (D) **An incumbent LEC shall allow a requesting**
38 **telecommunications carrier that has deployed its own switch,**
39 **and has linked that switch to an incumbent LEC's signaling**
40 **system, to gain access to the incumbent LEC's service control**
41 **point in a manner that allows the requesting carrier to**
42 **provide any call-related database-supported services to**
43 **customers served by the requesting telecommunications**
44 **carrier's switch.**

- 1 (E) An incumbent LEC shall provide a requesting telecommunications
 2 carrier with access to call-related databases in a manner that
 3 complies with section 222 of the Act.
- 4 (3) *Service Management Systems:*
- 5 (A) A service management system is defined as a computer
 6 database or system not part of the public switched network
 7 that, among other things:
- 8 (1) Interconnects to the service control point and sends to that
 9 service control point the information and call processing
 10 instructions needed for a network switch to process and
 11 complete a telephone call; and
- 12 (2) Provides telecommunications carriers with the capability of
 13 entering and storing data regarding the processing and
 14 completing of a telephone call.
- 15 (B) An incumbent LEC shall provide a requesting
 16 telecommunications carrier with the information necessary to
 17 enter correctly, or format for entry, the information relevant
 18 for input into the incumbent LEC's service management
 19 system.
- 20 (C) An incumbent LEC shall provide a requesting
 21 telecommunications carrier the same access to design, create,
 22 test, and deploy Advanced Intelligent Network-based services
 23 at the service management system, through a service creation
 24 environment, that the incumbent LEC provides to itself.
- 25 (D) An incumbent LEC shall provide a requesting
 26 telecommunications carrier access to service management
 27 systems in a manner that complies with section 222 of the Act.
- 28 (f) *Operator Services and Directory Assistance.* An incumbent LEC shall
 29 provide nondiscriminatory access in accordance with § 51.311 and section
 30 251(c)(3) of the Act to operator services and directory assistance on an unbundled
 31 basis to any requesting telecommunications carrier for the provision of a
 32 telecommunications service only where the incumbent LEC does not provide the
 33 requesting telecommunications carrier with customized routing or a compatible
 34 signaling protocol. Operator services are any automatic or live assistance to a
 35 consumer to arrange for billing, or completion, or both, of a telephone call.
 36 Directory assistance is a service that allows subscribers to retrieve telephone
 37 numbers of other subscribers.
- 38 (g) *Operations Support Systems:* An incumbent LEC shall provide
 39 nondiscriminatory access in accordance with § 51.311 and section 251(c)(3)
 40 of the Act to operations support systems on an unbundled basis to any
 41 requesting telecommunications carrier for the provision of a
 42 telecommunications service. Operations support system functions consist of
 43 pre-ordering, ordering, provisioning, maintenance and repair, and billing
 44 functions supported by an incumbent LEC's databases and information. An
 45 incumbent LEC, as part of its duty to provide access to the pre-ordering

1 **function, must provide the requesting carrier with nondiscriminatory access**
2 **to the same detailed information about the loop that is available to the**
3 **incumbent LEC. (Emphasis Added)**
4
5

6 **Q WHAT SPECIFIC RELIEF IS SUPRA REQUESTING?**

7 A. Supra merely requests that the parties' Follow-On Agreement follow the
8 current state of the law in all matters, and specific to this issue, Supra would
9 request that this commission pay particular attention to the implementation of all
10 issues emphasized above in bold. These sections of the newly re-constituted Rule
11 319 represent issues that were either:

- 12 1. Poorly represented or missing from the previous Interconnection
13 Agreement with BellSouth.
- 14 2. Subject of arbitration hearings between AT&T and BellSouth
15 regarding the Previous agreement.
- 16 3. Issues disputed by BellSouth since Supra adopted the
17 Interconnection agreement between AT&T and BellSouth.
- 18 4. Issues which were resolved against BellSouth, for which BellSouth
19 received an effective order from the Florida Public Service
20 Commission to implement, which it steadfastly refused to do.

21 5. 

22 

23

24 Supra seeks the inclusion of specific language in the Follow On Agreement that
25 BellSouth will comply with all sections of Rule 319. Supra requests this

1 Commission to include a liquidated damages provision in the parties' Follow On
2 Agreement to provide incentives for BellSouth's compliance with these rules and
3 orders.

4

5 Furthermore, as BellSouth has refused to provide Supra with any information
6 regarding its network, Supra is unsure as to whether it has provided a complete
7 response in support of its position. Should it be found that Supra is entitled to
8 additional information, and, should Supra discover relevant information as a
9 result, Supra request the right to supplement the record on this issue.

10

11

12 **Issue 29: Is BellSouth obligated to provide local circuit switching at UNE**
13 **rates to allow Supra Telecom to serve (a) the first three lines provided to a**
14 **customer located in Density Zone 1 as defined and / or determined in the**
15 **UNE docket and (b) 4 lines or more?**

16

17 **Q FIRST, HAS BELLSOUTH MET THE REQUIREMENT FOR**
18 **PROVIDING THE EEL UNE AT TELRIC RATES IN THE TOP 50**
19 **MSA'S WITHIN ITS SERVING AREA.**

20 A. No. There is nothing in the record, and I am aware of no evidence to
21 support any other conclusion. As shown in the recent Supra / BellSouth
22 commercial arbitration, BellSouth's word, particularly in issues of UNEs and
23 UNE Combinations is worthless:

1 "The evidence shows that BellSouth breached the
2 Interconnection Agreement in material ways and did so with the
3 tortious intent to harm Supra, an upstart and litigious
4 competitor. The evidence of such tortious intent was extensive,
5 including BellSouth's deliberate delay and lack of cooperation
6 regarding UNE Combos, switching Attachment 2 to the
7 Interconnection Agreement before it was filed with the FPSC,
8 denying access to BellSouth's OSS and related databases,
9 refusals to collocate any Supra equipment, and deliberately
10 cutting-off LENS for three days in May 2000."⁷⁸
11

12 BellSouth has a proven track record of lying to Supra, ignoring its obligations
13 under the Interconnection Agreement between the parties, and ignoring FPSC
14 orders⁷⁹.

15 BellSouth has the burden of proof on this issue. This Commission should
16 establish whether BellSouth has **really** complied with the FCC's order to make
17 EELs UNE available at TELRIC rates before BellSouth is allowed to limit Supra
18 from purchasing unbundled Local Switching.

19

20 **Q ARE THERE ANY OTHER ISSUES REGARDING THIS QUESTION?**

21 A. In the recent AT&T v. BellSouth arbitration (Docket 00-731-TP) the staff
22 recommendation contains the following quotation:

23 . Though framed in a different manner, this issue is

⁷⁸ Id, pg. 40.

⁷⁹ As one example, the final order in Docket 98-0800 (PSC-99-0060-FOF-TP) remains unimplemented by BellSouth to this date. Only the Award in the [REDACTED] between Supra and BellSouth has gotten BellSouth moving on this project since 1999, despite these offices having been part of the infamous *Florida Exemption Docket* where BellSouth actually attempted to obtain FPSC collocation exemptions for the two offices involved. The Dockets were all closed by the FPSC when BellSouth agreed to provide collocation in all offices to all existing applicants in July of 1999. Supra has yet to be allowed to collocate despite these Dockets.

1 similar to an issue in the recent arbitration in Docket No.
2 000828-TP, the Sprint/BellSouth arbitration. In **this** case,
3 however, the specific issue considers whether the aggregation of
4 lines provided to multiple locations of a single customer is
5 allowable in determining whether BellSouth must offer
6 unbundled local switching as a UNE.

7
8 As in the Sprint/BellSouth arbitration, an underlying assumption
9 is that alternative switching providers are likely to be located in
10 the Density Zone 1 areas in Florida, which include the Miami,
11 Orlando, and Ft. Lauderdale Metropolitan Statistical Areas
12 (MSAs) .

13
14 It is not merely enough to **assume** that there is local switching available to meet
15 the FCC requirement, because there really isn't such a supply. Look at the record.
16 Bot AT&T and Sprint, arguably the 1st and 3rd largest CLEC organizations in the
17 country **both** petitioned the FPSC to require BellSouth to sell Unbundled Local
18 Switching. If these two behemoths are unable to (1) supply their own switching
19 in the top 50 MSA's, and (2) have enough clout in the industry to identify
20 suppliers of unbundled switching that can provide same to customers of
21 BellSouth's UNEs, then frankly, the supply doesn't actually exist. Supra maintains
22 that the availability of Unbundled Local Switching in the Top 50 MSA's is an
23 illusory issue. It should exist, but it doesn't.
24 BellSouth bears the burden of proof in this case and should be required to prove
25 to this Commission that a supply of Unbundled Local Switching exists to allow
26 customers of its EEL UNE to obtain local switching without the need for facilities
27 ownership by the ALEC, which would be prohibited by *AT&T v. Iowa Utilities*
28 *Bd.* (Iowa Utilities Board II).

1 This Commission should order BellSouth to prove that a discontinuation of the
2 unbundled Local Switching Product will not affect the telephone subscribers of
3 Florida. Supra has tens of thousands of customer lines served by UNE
4 combinations. Is the Commission clear on what will happen to these customers is
5 BellSouth is allowed to discontinue Local Switching UNE, or raise its rate from
6 \$1.62 to \$14.00 (or more) per port? The potential for BellSouth to exercise anti-
7 competitive behavior is too great for the FPSC not to regulate this issue further.

8

9 **Q WHAT SPECIFIC RELIEF IS SUPRA REQUESTING?**

10 A. Supra merely requests that the parties' Follow-On Agreement follow the
11 current state of the law in all matters, and specific to this issue, Supra would
12 request that BellSouth be first ordered to prove to this Commission that a supply
13 of Unbundled Local Switching exists to allow customers of its EEL UNE to
14 obtain local switching, before relieving BellSouth of its obligation to provide
15 Unbundled Local Switching at UNE rates. To do otherwise would allow
16 BellSouth to damage the peace and livelihood of the telephone subscribers of
17 Florida as BellSouth embarks upon a giant winback campaign empowered by this
18 very provision.

19 This Commission should order BellSouth to prove that a discontinuation of the
20 unbundled Local Switching Product will not adversely affect the telephone
21 subscribers of Florida.

1 Supra requests this Commission to include a liquidated damages provision in the
2 parties' Follow On Agreement to provide incentives for BellSouth's compliance
3 with these rules and orders.

4 Furthermore, as BellSouth has refused to provide Supra with any information
5 regarding its network, Supra is unsure as to whether it has provided a complete
6 response in support of its position. Should it be found that Supra is entitled to
7 additional information, and, should Supra discover relevant information as a
8 result, Supra request the right to supplement the record on this issue.

9

10

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

15

16 **Q WHAT IS THE ISSUE HERE?**

17 BellSouth has taken the position that once it aggregates billing for a customer's
18 convenience, such aggregated billing, covering multiple addresses, can be used to
19 evade its requirement to sell Unbundled Local Switching in the top 50 MSA's.

20 Such regulatory arbitrage was not envisioned by the FCC in its discussion of the
21 reasoning behind exclusion of the requirement to sell local switching in the top 50
22 MSA's. BellSouth can evade their requirement to provide Unbundled Local
23 Switching by combining the bills for just four residences together, each having a

1 single line. This is not what the FCC ordered. Indeed the FCC's exclusion is
2 coupled with the obligation to provide the EEL (Enhanced Extended Loop)
3 FIRST. The purpose of this is to transport that customer traffic to another central
4 office location where it may be switched.

5

6 BellSouth's attempt here would be to create a situation where that customer's
7 traffic could NEVER be switched by BellSouth, retaining the customer for
8 BellSouth. This is most assuredly not what the FCC ordered.

9

10 **Q IS THERE ANY OTHER TESTIMONY YOU WISH TO OFFER ON**
11 **THIS ISSUE?**

12 A. Yes. I wish to adopt the Direct Testimony of Gregory R. Follensbee,
13 formerly of AT&T now the lead contract negotiator at BellSouth for Supra's
14 Interconnection agreement with BellSouth. This testimony was filed in Florida
15 Docket 00-731, AT&T's Interconnection Agreement arbitration against
16 BellSouth.⁸⁰

17

18 In this context I will be adopting his testimony in regard to AT&T issue number
19 11 which directly corresponds to Supra issue 31. The adopted testimony resides
20 on pages 9-13 of his testimony. The only exception I take to Mr. Follensbee is

⁸⁰ Supra Exhibit # DAN-5-- Direct Testimony of Gregory R. Follensbee, formerly of AT&T now the lead contract negotiator at BellSouth for Supra's Interconnection agreement with BellSouth.

1 that I do not agree with his or AT&T's position that the FCC erred in setting the
2 economic cut-off for a customer at two lines rather than the FCC's 4 lines. Supra
3 understands that for most carriers without AT&T's economies of scale, the FCC's
4 figure of 4 is correct, or even a bit low so that usage charges for switching and
5 transport are also factored into the equation. Supra is not seeking a change in the
6 FCC four line limitation and agrees to that for the additional purposes of this
7 arbitration.

8

9 **Q WHAT SPECIFIC RELIEF DOES SUPRA SEEK?**

10 A. Supra merely requests that the parties' Follow-On Agreement follow the
11 current state of the law in all matters, and specific to this issue, Supra asks that
12 this Commission order that any local line limitation that applies to the use of local
13 switching in the three specific MSA's in Florida apply to **each** physical location
14 where Supra orders local switching from BellSouth, and not to a specific
15 customer with multiple locations on the same bill.

16

17 BellSouth has a poor record for signing Interconnection agreements, then refusing
18 to comply. Supra maintains it is impossible to take BellSouth's word that they can
19 and will ("Currently Combines") combine elements to form the EEL UNE and
20 offer it at TELRIC rates. BellSouth must demonstrate to the FPSC a proliferation
21 of EELS without ordering problems for **all** ALECs in Florida. It is not enough for

This testimony was filed in Florida Docket 00-731, AT&T's Interconnection Agreement

1 BellSouth to simply say it is true. The Commission should order language placed
2 into the Follow On Agreement that requires BellSouth to continue to provide
3 Unbundled Local Switching to Supra at UNE rates until such time that the FPSC
4 renders an effective order based upon a generic hearing, that BellSouth is actually
5 supplying the EEL UNE ubiquitously throughout its region in Florida.

6

7 At the point which the FPSC order is released, all customers provisioned over
8 UNE combination circuits should be grandfathered in place. Changes in features
9 should still be allowed, but once the service is cancelled, it should not be re-
10 instated.

11

12 Supra requests that this Commission ensure that the Follow On Agreement
13 include a liquidated damages provision in the parties' Follow On Agreement to
14 provide incentives for BellSouth's compliance with these rules and orders.

15

16 Furthermore, as BellSouth has refused to provide Supra with any information
17 regarding its network, Supra is unsure as to whether it has provided a complete
18 response in support of its position. Should it be found that Supra is entitled to
19 additional information, and, should Supra discover relevant information as a
20 result, Supra request the right to supplement the record on this issue.

21

arbitration against BellSouth.

1

2 **Issue 32 A: Under what circumstances may Supra charge for Tandem rate**
3 **switching?**

4

5 **Q WHAT IS SUPRA'S POSITION?**

6

7 A. Supra must show only that its switches serve geographic areas comparable
8 to those served by BellSouth in order to charge tandem rates. Supra is currently
9 in the process of collocating a number of switches in BellSouth central offices
10 throughout the State of Florida. Specific to this issue, Supra has been granted
11 collocation of host or remote switches in each of the BellSouth Tandem offices in
12 the state of Florida.

13

14 **Issue 32 B : Does Supra meet the criteria based on Supras network of June**
15 **1, 2001?**

16

17 **Q WHAT EVIDENCE DOES SUPRA HAVE TO SUPPORT THAT ITS**
18 **SWITCHES SERVE GEOGRAPHIC AREAS COMPARABLE TO**
19 **THOSE SERVED BY BELLSOUTH?**

20

21 A. Supra has been attempting to collocate its switches in BellSouth's central
22 offices since as early as June, 1998. Only after receiving an Award in its
23 commercial arbitration proceeding wherein BellSouth was ordered to provide

1 collocation, previously ordered by the FPSC in order PSC-99-0060-FOF-TP⁸¹,
2 has Supra received any hope that it may actually collocate its switches. Once
3 Supra is able to achieve this collocation, its switches will be in the same location
4 as BellSouth's switches. It is logical to assume that Supra's switches will serve
5 geographic areas comparable to those served by BellSouth. In fact, this
6 commission is already aware that Supras switches will cover the same geographic
7 area as BellSouth in LATA 460 (Southeast Florida), as this commission ordered
8 BellSouth to provide Supra space to collocate class 5 switches in the North Dade
9 Golden Glades (NDADFLGG) and Palm Beach Gardens (WPBHFLGR) central
10 offices. As these are the only two offices housing the three BellSouth tandem
11 switches in LATA 460, ipso facto, Supra has the same geographic coverage in
12 LATA 460 as does BellSouth. No limitation on this finding can be heard because
13 Supra has access to every network element in these two office that BellSouth
14 does. No refusal to provision the element can be heard because BellSouth has
15 provisioned the element to itself, ipso facto, BellSouth can and must provision the
16 same element to Supra.

17

18 Unfortunately, as Supra has been unduly delayed in collocating such switches, it
19 is unable to provide any further evidence. However, once Supra's switches are
20 collocated in BellSouth's central offices, Supra would then be in a position to
21 present further evidence, if required, to show the geographic coverage to be

⁸¹ in docket 99-0800-TP

1 identical to BellSouth's own. Supra believes no other CLEC is able to make such
2 a precise claim, because no other CLEC has attempted to collocate a switch in a
3 BellSouth Tandem office, much less all of BellSouth Tandem offices in Florida.

4

5 Given the fact that the term of this Follow On Agreement is to be three years,
6 should the Commission find that the fact that Supra's switches are located in the
7 same location as BellSouth's switches to be unpersuasive as to the geographic
8 area which Supra serves, Supra seeks some clarification as to what additional
9 evidence the Commission may require in order for Supra to receive tandem
10 switching rates.

11

12 **Q WHAT SPECIFIC RELIEF DOES SUPRA SEEK?**

13 A. Supra merely requests that the parties' Follow-On Agreement follow the
14 current state of the law in all matters, and specific to this issue, that when Supra
15 collocates in a BellSouth Tandem Office, Supra is deemed to have satisfied the
16 requirement to prove its geographic coverage requirement to entitle Supra to
17 charge Tandem switching.

18

19 If necessary, Supra shall be deemed to have satisfied the requirement to
20 demonstrate that the switch performs functions similar to BellSouth's tandem
21 switch (typically a Nortel DMS 100, sometimes a Lucent 5ESS), by the
22 collocation of a Lucent 5ESS, Nortel DMS 100, 250, or 500, or Siemens EWSD

1 Class 5 switches, or their associate remote switch module subtended off of one of
2 the aforementioned hosts.

3

4 Supra requests that this Commission ensure that the Follow On agreement include
5 a liquidated damages provision in the parties' Follow On Agreement to provide
6 incentives for BellSouth's compliance with these rules and orders.

7

8 Furthermore, as BellSouth has refused to provide Supra with any information
9 regarding its network, Supra is unsure as to whether it has provided a complete
10 response in support of its position. Should it be found that Supra is entitled to
11 additional information, and, should Supra discover relevant information as a
12 result, Supra request the right to supplement the record on this issue.

13

14

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

18

19 **Q IS THIS STILL AN ISSUE IN THIS PROCEEDING?**

20 A. It shouldn't be, since the release of *The UNE Remand Order* CC Order 99-
21 238 created changes to 47 C.F.R. § 51.319. Specifically from 51.319

22 (B) An incumbent LEC shall be required to provide
23 nondiscriminatory access to unbundled packet switching

1 capability only where each of the following conditions are
2 satisfied:

3 (i) The incumbent LEC has deployed digital loop carrier
4 systems, including but not limited to, integrated digital loop
5 carrier or universal digital loop carrier systems; or has
6 deployed any other system in which fiber optic facilities
7 replace copper facilities in the distribution section (*e.g.*, end
8 office to remote terminal, pedestal or environmentally
9 controlled vault);

10 (ii) There are no spare copper loops capable of supporting the
11 xDSL services the requesting carrier seeks to offer;

12 (iii) The incumbent LEC has not permitted a requesting
13 carrier to deploy a Digital Subscriber Line Access
14 Multiplexer at the remote terminal, pedestal or
15 environmentally controlled vault or other interconnection
16 point, nor has the requesting carrier obtained a virtual
17 collocation arrangement at these subloop interconnection
18 points as defined by § 51.319(b); and

19 (iv) The incumbent LEC has deployed packet switching
20 capability for its own use.
21

22 While this section answers most of the questions surrounding this issue, the FCC
23 did not adequately address the needs of carriers who, based upon *The First Report*
24 *and Order* CC Order 96-325 at ¶ 12 chose their entrance strategy to be solely
25 UNE Combination based. This configuration is supported by the *First Report and*
26 *Order*, but falls afoul of the *Third Report and Order* CC Order 99-0238 in
27 subsection (iii) in the previous citation.

28
29 A carrier seeking to deploy ONLY UNE combinations is allowed to do so by the
30 three pronged entry strategy defined in *The First Report and Order* CC Order 96-
31 325 at ¶ 12. So how can the FCC then impose a collocation requirement upon the
32 ALEC in order to be able to order the packet switching UNE?
33

1 Supra requests this Commission to clarify a set of rules by which a carrier who
2 chooses to enter via UNE Combinations is not precluded from purchasing the
3 packet switching UNE in this section.

4

5 **Q WHAT SPECIFIC RELIEF DOES SUPRA SEEK?**

6 A. Supra merely requests that the parties' Follow-On Agreement follow the
7 current state of the law in all matters, and specific to this issue, Supra is asks that
8 this Commission order BellSouth provide Supra the ability to order DSLAM and
9 packet switching as a UNE at TELRIC cost, wherever BellSouth deploys local
10 switching over DLC facilities.

11

12 Supra request that this Commission ensure that the follow on agreement is in full
13 compliance with Rule 319 in every way.

14

15 Supra requests that this Commission ensure that the Follow On Agreement
16 include a liquidated damages provision in the parties' Follow On Agreement to
17 provide incentives for BellSouth's compliance with these rules and orders.

18

19 Furthermore, as BellSouth has refused to provide Supra with any information
20 regarding its network, Supra is unsure as to whether it has provided a complete
21 response in support of its position. Should it be found that Supra is entitled to
22 additional information, and, should Supra discover relevant information as a
23 result, Supra request the right to supplement the record on this issue.

1

2 **Issue 34: What coordinated cut-over process should be implemented to**
3 **ensure accurate, reliable and timely cut-overs when a customer changes local**
4 **service from BellSouth to Supra Telecom**

5

6 **Q IS THIS STILL AN ISSUE IN THIS PROCEEDING**

7 A. Based upon the final order in /Docket 99-0649 (PSC-01-1181-FOF-TP) it
8 appears that once BellSouth proves itself capable of implementing pre-ordering,
9 ordering, provisioning and repair functions to comply with the Commission's
10 orders and other applicable law, this issue will have been satisfied.

11

12 That BellSouth has yet to be able to prove this, despite the availability of SL1 and
13 SL2 for at least three years, is shocking.

14

15 **Q ARE THERE ANY OTHER ISSUES THAT NEED RESOLUTION**

16 **HERE?**

17 A. Yes. The continuing issue whether BellSouth, in violation of federal and
18 state law, should be permitted to continue its practice of submitting an "N" and a
19 "D" (New and Disconnect) instead of a single "C" (Change) order. The effect of
20 this is that a customer's service is actually disconnected during the conversion
21 process, despite the Supreme Court's finding that such should not happen.

22 BellSouth will tell you that the "D" order and the "N" order are, in most cases,
23 provisioned at the same time, and therefore consumers rarely go without service

1 for any length of time. What is wrong with this philosophy is that **no consumer**
2 **should ever go without service as a result of a conversion, ever.** Remember,
3 the conversion is only a **billing change**. Service should remain unaffected. The
4 fact that BellSouth has created its own billing system in a manner which requires
5 a disconnection of service in this process is violative of state and federal law, and
6 is harmful to Florida consumers.

7 What makes matters worse is that, when customers go without service as a result
8 of this process, the customer will blame Supra, not BellSouth, for the problem.
9 Supra can speak ONLY to the BellSouth LCSC in order to resolve problems in
10 provisioning service. A customer, whether of BellSouth, of Supra, or in the
11 transitional phase, cannot even locate the number for the LCSC, and it is only
12 under the most extreme situations a three way call can be setup between Supra,
13 LCSC and the customer. If the customer wants to complain to BellSouth, even if
14 it is on behalf of Supra, the only number the public can see is for the BellSouth
15 retail sales center.

16 And BellSouth's retail sales center will invariably tell the customer that the
17 Disconnect order was issued by Supra, and "... I'm so sorry that I can't help you,
18 you are not our customer any more." This is a formula designed for efficient
19 conversion of winback customers.

20
21 Supra is not the only ALEC to encounter these anti-competitive tactics. As stated
22 in the recent IDS complaint (*Complaint of IDS* in Docket 01-0740-TP at ¶ 31),
23 BellSouth has a glaring tendency to allow ALEC LSRs submitted as "C" Change

1 orders to slip through the LEO/LESOG/ Human Intervention cycle in a manner
2 that sometimes generates both a "D" Disconnect and "N" New service order, from
3 the ALEC LSR. However as Supra found, as long ago as June / July 2000, there
4 are issues that can cause the "N" order to subsequently fail in SOCS, while the
5 "D" Disconnect order is completed normally.

6

7 The customer is left without dialtone, and a call to the only BellSouth ordering
8 telephone number, or the repair department elicits a comment of "Supra ordered
9 your line disconnected", when Supra did nothing of the kind. A fault in
10 LEO/LESOG, or workarounds used by LCSC representatives ("Just erase it and
11 start over") have caused hundreds of cases of lost dialtone, BellSouth winback,
12 and Public Service Commission and Better Business Bureau complaints again
13 Supra.

14

15 Yet, BellSouth does not see this as problematic for Supra, and would request
16 Supra to bring the issue up before the Change Control Process.

17

18 **Q CAN ANYTHING ELSE POSSIBLY GONE WRONG ASSOCIATED**
19 **WITH THIS ISSUE?**

20 A. Unfortunately, yes. BellSouth is, for some unfathomable reason,
21 disconnecting service to ALEC customers in Florida within 1-3 days of the time
22 their service is converted to the ALEC. It is happening to IDS, we hear stories of
23 it happening at MCI, and attached as Supra Exhibit # DAN-7. Supra has released

1 some of these numbers to BellSouth, and the preliminary analysis (which is all
2 BellSouth has completed to date) indicates that half of the disconnections / loss of
3 dialtone were as a result of "BellSouth Error, oops sorry. It shouldn't have
4 happened."

5

6 **Q WHAT SPECIFIC RELIEF DOES SUPRA SEEK?**

7 A. Supra merely requests that the parties' Follow-On Agreement follow the
8 current state of the law in all matters, and specific to this issue, Supra would
9 request that this Commission order BellSouth to prove that it has 1) implemented
10 effective ordering procedures for SL1 and SL2 loops used individually or in
11 combinations (which doesn't exist today).

12

13 Supra requests this Commission include language in the Follow On Agreement
14 that BellSouth shall not issue "N" and "D" orders in lieu of a single "C" order. In
15 the meantime BellSouth shall not be allowed to extend or delay its commitments
16 to deploy services in a timely fashion.

17

18 Supra requests this Commission include language in the Follow On Agreement
19 that BellSouth will be required to identify the true cause of customer loss of
20 dialtone shortly after conversion, to report same to Supra and to this Commission,
21 to offer a proposed corrective action, and to conclude the project so that this type
22 of problem never occurs again, according to a time table ordered by this
23 Commission.

1

2 Supra requests that this Commission ensure that the Follow On Agreement
3 include a liquidated damages provision in the parties' Follow On Agreement to
4 provide incentives for BellSouth's compliance with these rules and orders.

5

6 Furthermore, as BellSouth has refused to provide Supra with any information
7 regarding its network, Supra is unsure as to whether it has provided a complete
8 response in support of its position. Should it be found that Supra is entitled to
9 additional information, and, should Supra discover relevant information as a
10 result, Supra request the right to supplement the record on this issue.

11

12 **Issue 40: Should Standard Message Desk Interface-Enhanced ("SMDE-E")**
13 **and Inter-Switch Voice Messaging Service ("IVMS"), and any other**
14 **corresponding signaling associated with voice mail messaging be included**
15 **within the cost of the UNE switching port? If not, what are the appropriate**
16 **charges, if any?**

17

18 A. Yes. Unbundled Local switching requires that the ALEC who leases a
19 switching port be given all features and functionality of the port. One such
20 feature is the ability of the port to produce stutter dialtone, or activate a light on
21 the telephone set of a subscriber in response to a signal from a voicemail system
22 or provider to let the telephone subscriber know there is a message waiting.
23 Traditionally this task has been done via the System Message Desk Interface

1 (SMDI) and enhancements to it such as Inter Switch Voice Messaging (ISVM)
2 which allows one switch to pass messaging requests across the SS7 network to
3 other switches without the use of a dedicated network.⁸²

4
5 While this is clearly a function of the switch port, and functionality of it comes
6 with the switch port, in Florida there is no unbundled access to this fundamentally
7 important signaling network / switch port functionality. Therefore an ALEC is
8 not in parity with the ILEC for the Local Switching UNE.

9
10 BellSouth does not provide unbundled access to this signaling network, but in its
11 FFC #1 Access Tariff lists SMDI and something called ISMDI. The description
12 of ISMDI is an SS7 / TCAP based network that through a convoluted conversion
13 of conversion between SMDI, ISDN and SS7 / TCAP messages provides a single
14 connection to a signaling connection that is supposed to be able to activate a
15 Message Waiting Indicator (MWI) on a Latawide basis. This is clearly not as cost
16 effective as the ISVM approach. The alternative an ALEC has would be to
17 establish an SMDI connection to each and every BellSouth switch in Florida, a
18 total of 206 individual connections at last count. This is not cost effective
19 compared to ISVM and presents a substantial barrier to entry.

20

⁸² Lucent Document 235-190-104 5ESS 2000 switch ISDN Feature Descriptions, Section 13.4
Message Service System Features, Issue 3 pages 13-67 through 13-126

1 Nowhere is there any mention of direct access to the ISVM signaling, or
2 unbundled access to any signaling required to activate MWI on a leased Local
3 Switching port. These omissions are creating an unusually high barrier to entry
4 for an ALEC like Supra Telecom who is expected by telephone subscribers to
5 provide the same services as the ILEC as seamlessly as the ILEC provides those
6 services.

7
8 As shown in Figure 13-11 , and 13-13⁸³ there is no separate signaling network
9 required to transmit messages switch to switch. It is included in the basic switch
10 port functionality, and network wide signaling across the SS7 network according
11 to meetings Supra Telecom has held with Bell Labs personnel on this issue.
12 Additionally the Bell Labs Engineers confirmed that this ISVM has been adopted
13 as an industry standard for many years now (approx. 7 years). This industry
14 standard is also supported by Nortel and Siemens, so that all switches in
15 BellSouth's network are compliant. Figure 13-14 along with section 13.4.1.2⁸⁴
16 shows that the required software is part of the base generic software since, at
17 least, the 5E8 generic. Since the current software release from Lucent is 5E15,
18 and since Lucent does not support switches with software loads beyond two prior
19 revisions, it is obvious that the required software is already loaded on BellSouth's
20 switches.

⁸³ Supra Exhibit # DAN-1

⁸⁴ Id.

1

2 ALEC's access to the ISVM signaling "network" should be defined as a
3 fundamental component of Local Switching line and trunk ports and ALEC
4 access to this network required of and provided by all Florida ILECs as it is
5 elsewhere in the country. The various message-signaling networks are necessary
6 to an ALEC to compete with the ILEC, and failure to have access to such
7 signaling impairs Supra Telecom's ability to acquire new customers who view
8 such a limitation as the mark of an inferior carrier.

9

10

11 **Q WHAT SPECIFIC RELIEF DOES SUPRA SEEK?**

12 A. Supra merely requests that the parties' Follow-On Agreement follow the
13 current state of the law in all matters, and specific to this issue, Supra asks that
14 this Commission order that SMDI, the so called ESMDI, ISVM are all
15 components of the local switch port and associated SS7 signaling, and are
16 provided at no cost when Supra orders Unbundled Local Switching.

17

18 BellSouth will provide interconnection for SMDI at any technically feasible point
19 as specified by Supra. Both parties will bear their respective costs of transporting
20 traffic to the Point of Interconnection.

21

1 Supra requests that this Commission ensure that the Follow On Agreement
2 include a liquidated damages provision in the parties' Follow On Agreement to
3 provide incentives for BellSouth's compliance with these rules and orders.

4

5 Furthermore, as BellSouth has refused to provide Supra with any information
6 regarding its network, Supra is unsure as to whether it has provided a complete
7 response in support of its position. Should it be found that Supra is entitled to
8 additional information, and, should Supra discover relevant information as a
9 result, Supra request the right to supplement the record on this issue.

10

11

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

15

16 **Q IS THERE ANY OTHER TESTIMONY YOU WISH TO OFFER ON**
17 **THIS ISSUE?**

18 A. Yes. I wish to adopt the Direct Testimony of Gregory R. Follensbee,
19 formerly of AT&T now the lead contract negotiator at BellSouth for Supra's
20 Interconnection agreement with BellSouth. This testimony was filed in Florida

1 Docket 00-731, AT&T's Interconnection Agreement arbitration against
2 BellSouth.⁸⁵

3

4 In this context I will be adopting his testimony in regard to AT&T issue number
5 33 which directly corresponds to Supra issue 49. The adopted testimony resides
6 on pages 23-31 of his testimony. I take no exception to Mr. Follensbee's
7 testimony in this regard. The abuses that are being heaped upon Supra are even
8 more horrific than those Mr. Follensbee reported just last November. Since that
9 time, BellSouth has begun using its tariffed xDSL transport service, sold to
10 Bellsouth.net and other Internet Service Providers to provision DSL service, as a
11 battering ram to hold onto customers that want to change to Supra and other
12 ALECs, as a reason to clarify (reject) Supra's otherwise legitimate orders for
13 residential and business POTS service, with no apparent way to ever clear the
14 clarification (rejection).

15

16 **Q HAS ANYTHING HAPPENED RECENTLY TO MAKE THE**
17 **SITUATION EVEN WORSE?**

18 A. Yes. BellSouth has stated in Inter Company review board meetings that
19 because of the final order in docket 00-0731-TP, BellSouth will no longer be
20 providing xDSL transport service to customers served by UNE combinations in

⁸⁵ Supra Exhibit # DAN-5-- Direct Testimony of Gregory R. Follensbee, formerly of AT&T now the lead contract negotiator at BellSouth for Supra's Interconnection agreement with BellSouth.

1 Florida. This came about as Supra was attempting to negotiate language to set
2 rates and conditions for line sharing in the Follow On Agreement. A BellSouth
3 attorney announced that:

4 "We can choose to pay Supra 1/2 the loop cost and share the line.
5 **However we may just decide not to offer the customer service.**"
6 (Natural Emphasis.)
7

8 I began to worry about the import of this latest BellSouth bombshell. I didn't
9 have long to wait.

10

11 On July 11, 2001 BellSouth sent out a letter⁸⁶ to Supra Business Systems, Inc.
12 announcing the unilateral disconnection of all xDSL services provided over UNE
13 Combinations. It doesn't matter whether the customer has xDSL service from
14 BellSouth.net or any other ISP, BellSouth is going to disconnect the customer on
15 20 days notice.

16

17 BellSouth's Greg Follensbee (the author of the July 11) has told me this is a direct
18 result of the FPSC order in 00-0731 where this commission ordered that
19 BellSouth was not required to provide the splitter.

20

This testimony was filed in Florida Docket 00-731, AT&T's Interconnection Agreement arbitration against BellSouth.

⁸⁶ Supra Exhibit # DAN-6 -- July 11, 2001 letter from G. R. Follensbee to O.A.Ramos of Supra Business Systems announcing that any customers of Supra Business Systems provisioned as UNE Combinations will have any and all existing DSL circuits disconnected in 20 days without further notice.

1 I doubt this Commission realized the magnitude of BellSouth's desire to stifle its
2 emerging competition when it issued that order. BellSouth cannot be allowed to
3 continue this anti-competitive tactic any longer.

4

5 **Q IS THERE ANY NEW INFORMATION FOR THE FPSC TO**
6 **CONSIDER REGARDING THIS ISSUE?**

7 A. Yes. Certainly BellSouth's recent "dirty Tricks" campaign against
8 ALECs, and against Florida telephone subscribers who also are DSL subscribers
9 is but one.

10

11 The issue of the line splitter needs to be investigated.

12

13 It may be possible that the Commission viewed line splitters as a colocatable
14 piece of equipment married to a specific loop. In other words the splitter is
15 brought to the loop.

16

17 This is not the case.

18

19 In each central office, BellSouth has undedicated line splitters installed. When a
20 voice customer orders xDSL, BellSouth breaks the loop at the frame, brings the
21 outside plant side of the loop to the splitter via a crossconnect, and returns the
22 circuit back to the equipment side of the broken loop via a second set of
23 crossconnect jumpers. At that point the voice circuit is in operational, and the

1 third set of connection on the line splitter are taken to the collocated DSLAM
2 owned by BellSouth. BellSouth will not take the xDSL portion of the loop to a
3 third party DSLAM, so effectively line sharing between ALECs doesn't exist in
4 Florida at all. It only exists between BellSouth and a voice ALEC who has their
5 own switch, or for ALEC resale customers (although this has not been allowed by
6 BellSouth until Supra complained about it during Intra Company Review Board
7 Meetings in this arbitration. Support is still a bit random). Line sharing exists in
8 no other manner.

9
10 By not realizing that the loop is brought to the BellSouth splitter and not the other
11 way around, this commission may have erred in 00-731-TP by setting a precedent
12 that will force ALECs in Florida to collocate line splitters in each and every
13 central office in Florida **just to support the provision of BellSouth's tariffed**
14 **xDSL transport service, when BellSouth already has equipment installed that**
15 **can be used.** That's right. 00-731 held that **Supra** must install the linesplitter for
16 BellSouth Telecommunications to provide xDSL transport service to
17 BellSouth.net or other ISP. If Supra does not, BellSouth is in a position, and they
18 have already begun, telling customers that their xDSL service will be
19 discontinued because Supra does not support it.

20

21 Certainly this Commission did not envision this type of arbitrage.

22

23 Q **WHAT IS AT STAKE IN THIS ISSUE?**

1

2 A. Supra's concerns are twofold: Originally, Supra Telecom was concerned
3 with protecting its right to split its line so as to be able to provide both voice and
4 data services, either by itself or with a third party. Via line splitting, Supra
5 expected to share the cost of the loop element with a third party provider of DSL,
6 including BellSouth.net. This is still a concern. However, since approximately
7 May 3, 2001, Supra Telecom has been faced with a new concern. Since that time,
8 BellSouth has been telling customers that if the customer presently has both
9 BellSouth voice and data services (i.e. ADSL), the customer would lose the data
10 services if he or she switched their voice services to Supra Telecom. Attached
11 hereto as Supra Exhibit DAN - 6 is a copy of a letter from BellSouth wherein it
12 indicated it would take this exact action. The harm caused Supra Telecom, as
13 well as customers, by this unilateral action is significant. Not only is BellSouth's
14 action anti-competitive, but it constitutes illegal tying of services in violation of
15 the antidiscrimination clause of 251(c)(3), the separate affiliate requirements of
16 Section 272 of the Act, and the Supreme court ruling in *AT&T v. Iowa Utilities*
17 *Bd.* 525 U.S. 366, 119 S.Ct 721 (199) at 368 (et al). I personally have had to deal
18 with a number of customers who claimed they would have switched to Supra
19 Telecom but for the fact that BellSouth threatened to disconnect their ADSL
20 services. Attached hereto as Supra Exhibit # DAN-4 is a spreadsheet showing a
21 list of potential Supra customers who had called regarding this very issue.

22

1 Q LET'S DEAL WITH THE FIRST CONCERN. WHAT DOES SUPRA
2 WANT?

3
4 A. Supra requests that BellSouth be required to allow Supra access to the
5 spectrums on a local loop for voice and data when Supra purchases a loop/port
6 combination. BellSouth must cross-connect the voice loop to line splitters already
7 in the office for this purpose. To facilitate line splitting, BellSouth should be
8 obligated to provide an unbundled xDSL-capable loop terminated to a collocated
9 or already existing and in-place splitter and DSLAM equipment, and unbundled
10 circuit switching combined with shared transport at TELRIC rates. BellSouth
11 should not be allowed to disconnect any already combined facilities, as such
12 would result in a disconnection of a customer's service, and be in violation of the
13 Act⁸⁷, all FCC orders in this regard⁸⁸, orders that have been sustained by the
14 Supreme Court of the United States⁸⁹. The Supreme Court opinion, often
15 remembered solely for the re-institution of Unbundled Network Elements
16 Combinations taken away by the Eight Circuit Court⁹⁰ has much broader impact.
17 The High Court wrote:

18 "Rule 315(b) forbids an incumbent to separate already
19 combined network elements before leasing them to a
20 competitor"⁹¹

⁸⁷ Telecommunications Act of 1996, 47 U.S.C.A. § 251(c)(3).

⁸⁸ 47 C.F.R. § 51.315(b).

⁸⁹ **Error! Reference source not found.** *AT&T v. Iowa Utilities Bd.* 525 U.S. 366, 119 S.Ct 721 (Iowa Utilities Board II) at pg. 368, and pg. 393-395

⁹⁰ **Error! Reference source not found.** *AT&T v. Iowa Utilities Bd.* 120 F.3d 753 (Iowa Utilities Board I)

⁹¹ *Id* pg. 393.

1

2 Lest BellSouth argue, based upon a misreading of 251(c)(3) that this addresses the
3 provisioning of combinations and not an actual requirement upon them to not
4 disconnect or otherwise disturb a functioning telecommunications circuit, the
5 Court went on to say:

6 The reality is that § 251(c)(3) is ambiguous on whether leased
7 network elements may or must be separated, and the rule the
8 Commission has prescribed is entirely rational, finding its basis
9 in § 251(c)(3)'s nondiscrimination requirement. As the
10 Commission explains, it is aimed at preventing incumbent LECs
11 from disconnect[ing] previously connected elements, over the
12 objection of the requesting carrier, not for any productive
13 reason, but just to impose wasteful reconnection costs on new
14 entrants" ... It is well within the bounds of the reasonable for
15 the Commission to opt in favor of ensuring against an
16 anticompetitive practice."⁹² (Emphasis added)
17

18 Thus the Supreme Court has already addressed any ambiguity in the Act and
19 upheld the FCC's rules in this regard. In addition to LEC charges for
20 reconnection, other wasteful reconnection costs can involve the customers loss of
21 dialtone during conversion, the increased cost an ALEC bears in re-establishing a
22 circuit that should never have been interrupted, customer support costs of
23 communicating with the customer, and the potential for customer dissatisfaction
24 with the ALEC's service, which can lead to the customer reverting back to the
25 LEC. Lest it be argued that these are not all "wasteful reconnection costs" one
26 must only look to the last line: "to opt in favor of ensuring against an

⁹² Id. Pg. 395.

1 anticompetitive practice." These acts, committed for whatever reason, are
2 anticompetitive.

3

4 **Q WHAT DOES SUPRA WANT WITH REGARD TO ITS SECOND**
5 **CONCERN?**

6

7 A. Supra requests that BellSouth be required to continue to provide data
8 services to customers who currently have such services, after such customers
9 decide to switch to Supra's voice services. To allow BellSouth to disconnect such
10 customers' data services would be anti-competitive, discriminatory and a
11 violation of 251(c)(3).

12

13 That this Commission review its order in 00-731 and determine if the weight of
14 evidence that caused the Commission to order that BellSouth not be required to
15 install linesplitters is not overcome by BellSouth's current program to use this
16 order as an anti-competitive tool.

17

18 Supra requests that this Commission ensure that the Follow On Agreement
19 include a liquidated damages provision to provide incentives for BellSouth's
20 compliance with these rules and orders.

21

22 Furthermore, as BellSouth has refused to provide Supra with any information
23 regarding its network, Supra is unsure as to whether it has provided a complete

1 response in support of its position. Should it be found that Supra is entitled to
2 additional information, and, should Supra discover relevant information as a
3 result, Supra request the right to supplement the record on this issue.

4

5

6 **Issue 53 : How should the demarcation points for access to UNEs be**
7 **determined?**

8

9 **Q WHAT IS SUPRAS POSITION.**

10 A. BellSouth must provide UNEs and UNE combinations to Supra at any
11 Technically feasible point of Interconnection specified by Supra. From *The First*
12 *Report and Order* CC Order 96-325 ¶26

13 360. **Section 251(c)(2) requires incumbent LECs to provide**
14 **interconnection to any requesting telecommunications**
15 **carrier at any technically feasible point.** The interconnection
16 must be at least equal in quality to that provided by the
17 incumbent LEC to itself or its affiliates, and must be provided
18 on rates, terms, and conditions that are just, reasonable, and
19 nondiscriminatory. The Commission concludes that the term
20 "interconnection" under section 251(c)(2) refers only to the
21 physical linking of two networks for the mutual exchange of
22 traffic. The Commission identifies a minimum set of five
23 "technically feasible" points at which incumbent LECs must
24 provide interconnection: (1) the line side of a local switch (for
25 example, at the main distribution frame); (2) the trunk side of a
26 local switch; (3) the trunk interconnection points for a tandem
27 switch; (4) central office cross-connect points; and (5) out-of-
28 band signalling facilities, such as signalling transfer points,
29 necessary to exchange traffic and access call-related databases.
30 In addition, the points of access to unbundled elements
31 (discussed below) are also technically feasible points of
32 interconnection. The Commission finds that
33 telecommunications carriers may request interconnection under

1 section 251(c)(2) to provide telephone exchange or exchange
 2 access service, or both. If the request is for such purpose, the
 3 incumbent LEC must provide interconnection in accordance
 4 with section 251(c)(2) and the Commission's rules thereunder to
 5 any telecommunications carrier, including interexchange
 6 carriers and commercial mobile radio service (CMRS)
 7 providers. (Emphasis added)
 8

9 **361. Section 251(c)(3) requires incumbent LECs to provide**
 10 **requesting telecommunications carriers nondiscriminatory**
 11 **access to network elements on an unbundled basis at any**
 12 **technically feasible point on rates, terms, and conditions**
 13 **that are just, reasonable, and nondiscriminatory.** In the
 14 Report and Order, the Commission identifies a minimum set of
 15 network elements that incumbent LECs must provide under this
 16 section. States may require incumbent LECs to provide
 17 additional network elements on an unbundled basis. The
 18 minimum set of network elements the Commission identifies
 19 are: local loops, local and tandem switches (including all
 20 vertical switching features provided by such switches),
 21 interoffice transmission facilities, network interface devices,
 22 signalling and call-related database facilities, operations support
 23 systems functions, and operator and directory assistance
 24 facilities. The Commission concludes that incumbent LECs
 25 must provide nondiscriminatory access to operations support
 26 systems functions by January 1, 1997. The Commission
 27 concludes that access to such operations support systems is
 28 critical to affording new entrants a meaningful opportunity to
 29 compete with incumbent LECs. The Commission also
 30 concludes that incumbent LECs are required to provide access
 31 to network elements in a manner that allows requesting carriers
 32 to combine such elements as they choose, and that incumbent
 33 LECs may not impose restrictions upon the uses to which
 34 requesting carriers put such network elements. (Emphasis
 35 added)
 36

37 362. In addition to specifying the purposes for which carriers
 38 may request interconnection, section 251(c)(2) obligates
 39 incumbent LECs to provide interconnection within their
 40 networks at any "technically feasible point."⁹³ **Similarly,**

⁹³ 47 U.S.C. § 251(c)(2)(B).

1 **section 251(c)(3) obligates incumbent LECs to provide**
2 **access to unbundled elements at any "technically feasible**
3 **point."** Thus our interpretation of the term "technically
4 feasible" applies to both sections.
5
6

7 Here the FCC defines "technically feasible" as a technical concern only, and
8 places the burden of proof on the ILEC to prove that a specific arrangement
9 specified by an ALEC is not "technically feasible" to the state Commission before
10 BellSouth can refuse to provision it. Certainly BellSouth's position in this case is
11 not supported by the law.
12

13 **198. We conclude that the term "technically feasible"**
14 **refers solely to technical or operational concerns, rather**
15 **than economic, space, or site considerations.** We further
16 conclude that the obligations imposed by sections 251(c)(2) and
17 251(c)(3) include modifications to incumbent LEC facilities to
18 the extent necessary to accommodate interconnection or access
19 to network elements. Specific, significant, and demonstrable
20 network reliability concerns associated with providing
21 interconnection or access at a particular point, however, will be
22 regarded as relevant evidence that interconnection or access at
23 that point is technically infeasible. We also conclude that
24 preexisting interconnection or access at a particular point
25 evidences the technical feasibility of interconnection or access
26 at substantially similar points. **Finally, we conclude that**
27 **incumbent LECs must prove to the appropriate state**
28 **commission that a particular interconnection or access point**
29 **is not technically feasible.**
30
31

32 **Q WHAT SPECIFIC RELIEF DOES SUPRA SEEK?**

33 A. Supra merely requests that the parties' Follow-On Agreement follow the
34 current state of the law in all matters, and specific to this issue, Supra asks that

1 this Commission order that BellSouth be required to provide access to Unbundled
2 Network Elements to Supra at any technically feasible point specified by Supra.

3

4 BellSouth shall immediately provision any circuits for which it has not already
5 received an effective order from this Commission stating that the specified Point
6 of Interconnection is not technically feasible.

7

8 BellSouth shall not be allowed to delay provisioning while it seeks an order from
9 this Commission to prove that the Point of Interconnection is not technically
10 feasible.

11

12 BellSouth will be penalized for any instances where it refuses to provision a
13 circuit where the Point of Interconnection has not already been ruled as not
14 "technically feasible".

15

16 Supra requests that this Commission ensure that the Follow On Agreement
17 include a liquidated damages provision to provide incentives for BellSouth's
18 compliance with these rules and orders.

19

20 Furthermore, as BellSouth has refused to provide Supra with any information
21 regarding its network, Supra is unsure as to whether it has provided a complete
22 response in support of its position. Should it be found that Supra is entitled to

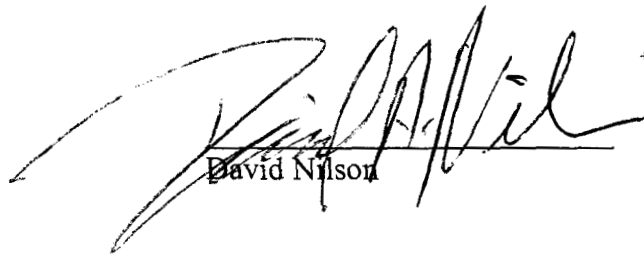
1 additional information, and, should Supra discover relevant information as a
2 result, Supra request the right to supplement the record on this issue.

3
4

5 Q DOES THIS CONCLUDE YOUR TESTIMONY?

6 A. Yes, this concludes my testimony.

7
8

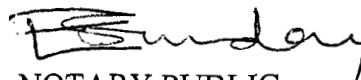

David Nilson

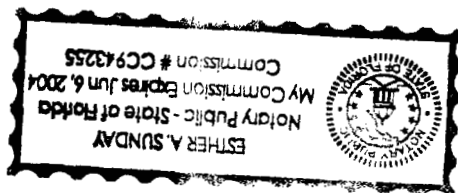
9
10
11
12

13
14 STATE OF FLORIDA)
15) SS:
16 COUNTY OF MIAMI-DADE)
17

18 The execution of the foregoing instrument was acknowledged before me
19 this 27th day of July, 2001, by David Nilson, who is personally known to me
20 or who produced _____ as identification and who did take
21 an oath.

22
23 My Commission Expires:


NOTARY PUBLIC
State of Florida at Large



Print Name:

24
25
26
27
28
29
30

1 STATE OF FLORIDA)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

4
5 I, TRICIA DeMARTE, Official Commission Reporter, do hereby
6 certify that the foregoing proceeding was heard at the time and
7 place herein stated.

8 IT IS FURTHER CERTIFIED that I stenographically
9 reported the said proceedings; that the same has been
10 transcribed under my direct supervision; and that this
11 transcript constitutes a true transcription of my notes of said
12 proceedings.

13 I FURTHER CERTIFY that I am not a relative, employee,
14 attorney or counsel of any of the parties, nor am I a relative
15 or employee of any of the parties' attorneys or counsel
16 connected with the action, nor am I financially interested in
17 the action.

18 DATED THIS 3rd DAY OF OCTOBER, 2001.

19
20
21
22
23
24
25
Tricia DeMarte

TRICIA DeMARTE
FPSC Official Commission Reporter
(850) 413-6736