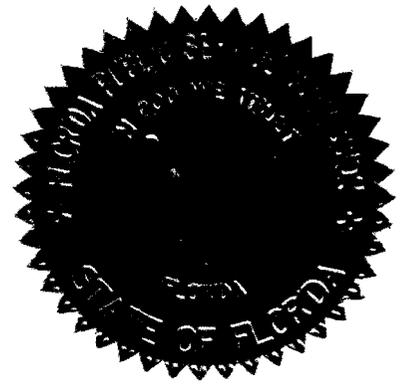


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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of  
  
Complaint of Supra Telecommuni-  
cations & Information Systems,  
Inc. against BellSouth  
Telecommunications, Inc. for  
violation of the Telecommuni-  
cations Act of 1966; Petition  
for resolution of disputes as  
to implementation and inter-  
pretation of interconnection,  
resale and collocation  
agreements; and petition for  
emergency relief.  
-----

DOCKET NO. 980119-TP



PROCEEDINGS:           **PREHEARING CONFERENCE**

BEFORE:                **COMMISSIONER E. LEON JACOBS, JR.**  
                          Prehearing Officer

DATE:                   **Friday, April 17, 1998**

TIME:                   Commenced at 9:35 a.m.  
                          Concluded at 10:04 a.m.

PLACE:                  Betty Easley Conference Center  
                          Room 152  
                          4075 Esplanade Way  
                          Tallahassee, Florida

REPORTED BY:           **JOY KELLY, CSR, RPR**  
                          Chief, Bureau of Reporting

DOCUMENT NUMBER - DATE

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FPSC RECORDS/REPORTING

1 **APPEARANCES:**

2                   **SUZANNE FANNON SUMMERLIN**, 1311-b Paul  
3 Russell Road, #201, Tallahassee, Florida 32301,  
4 appearing on behalf of **Supra Telecommunications &**  
5 **Information Systems, Inc.**

6                   **NANCY B. WHITE**, c/o Nancy Sims, 150 South  
7 Monroe Street, Suite 400, Tallahassee, Florida 32301,  
8 appearing on behalf of **BellSouth Telecommunications,**  
9 **Inc.**

10                   **BETH KEATING and JOHN BOWMAN**, Florida Public  
11 Service Commission, Division of Legal Services, 2540  
12 Shumard Oak Boulevard, Tallahassee, Florida  
13 32399-0870, appearing on behalf of the **Commission**  
14 **Staff.**

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1 Supra's motion for leave to file amended testimony of  
2 Mr. Ramos and Mr. Reinke, and a motion to extend date  
3 for rebuttal testimony, which was filed April 8th,  
4 1998. That was an agreed upon motion and Staff  
5 recommends that that be granted at this time.

6 **COMMISSIONER JACOBS:** Okay. Go ahead.

7 **MS. SUMMERLIN:** Well, I guess in terms --  
8 are you talking about the amended testimony not being  
9 agreed; you're not referring to that as an agreed --  
10 you're just talking --

11 **MS. KEATING:** The agreed motion for leave to  
12 file the amended testimony of Mr. Ramos and Mr. Reinke  
13 on April 8th.

14 **MS. SUMMERLIN:** So you're saying that that  
15 was an agreed one, and that that should be granted. Is  
16 that what you just said?

17 **MS. KEATING:** And the motion for extension  
18 of rebuttal testimony.

19 **MS. SUMMERLIN:** Okay. Fine. I'm sorry, I  
20 didn't understand what you said.

21 **COMMISSIONER JACOBS:** Okay. Well, let's go  
22 ahead and address that motion. Is there anything that  
23 the parties would like to add?

24 **MS. SUMMERLIN:** If it's being reflected that  
25 it was an agreed upon motion, then --

1           **MS. WHITE:** Yeah. BellSouth has had no  
2 problem with Supra filing the amended direct testimony  
3 of Mr. Reinke and Mr. Ramos on the 8th of April. We  
4 do have another motion concerning parts of that  
5 testimony, but just the motion for leave to file, we  
6 have no opposition.

7           **COMMISSIONER JACOBS:** Okay. I'll grant that  
8 motion then.

9           Okay. As I understand it, there's a motion  
10 for reconsideration on the issues.

11           **MS. SUMMERLIN:** Yes, sir.

12           **COMMISSIONER JACOBS:** Okay. And there's  
13 also my understanding that Staff has prepared a  
14 recommendation for a decision of that motion of the  
15 Commission.

16           **MS. KEATING:** That is correct, Commissioner.

17           **COMMISSIONER JACOBS:** In that event, I'm  
18 going to defer ruling on that motion and allow it to  
19 come on to the regular cycle of this Commission's  
20 vote. Okay.

21           **MS. WHITE:** Just for clarification,  
22 Commissioner Jacobs, you're going to defer ruling on  
23 BellSouth's motion to strike that testimony or  
24 portions of that testimony?

25           **COMMISSIONER JACOBS:** Yes.

1           **MS. WHITE:** That's fine.

2           **COMMISSIONER JACOBS:** Okay. And next?

3 There are other motions, and Staff has indicated that  
4 probably those other motions are not ripe for decision  
5 at this time.

6           Just so we're clear, as I understand it,  
7 BellSouth's Motion to Strike Amended Direct Testimony,  
8 Supra's Motion for Leave to File Amended Testimony --  
9 let me see -- and the second, BellSouth's motion  
10 regarding the testimony of Mr. Bradford as well.

11           **MS. SUMMERLIN:** Brad Hamilton.

12           **COMMISSIONER JACOBS:** No, the first one was  
13 for Ms. Hamilton, I think, right? There's one April  
14 3rd motion; that's regarding Mr. Hamilton?

15           **MS. WHITE:** No. That's regarding Mr. Ramos  
16 that you said you will defer to after the full  
17 Commission rules on the Motion for Reconsideration.

18           **MR. BOWMAN:** Commissioner, it's Bradford  
19 Hamilton. That's the same person.

20           **COMMISSIONER JACOBS:** I see. Okay. Those  
21 motions, I'm going to go with Staff's recommendation.  
22 As I understand it, much hinges upon what happens with  
23 the vote of the Commission on the motion that will go  
24 before them, and these motions should have some  
25 clarity added after that, and we can deal with those

1 after the motion.

2 My desire is that we not have any additional  
3 argument on those, just go and rule on -- if there's  
4 any difference with that, you can let counsel know.  
5 Are there any other preliminary matters?

6 **MS. KEATING:** Commissioner, it's my  
7 understanding that Ms. Summerlin may want to make a  
8 request at this time.

9 **COMMISSIONER JACOBS:** Okay.

10 **MS. SUMMERLIN:** Yes. Commissioner, we can  
11 do it now or after we go through the Prehearing Order,  
12 but Supra wants to make a motion this morning, orally,  
13 to continue the hearing to May 21st and 22nd. Also,  
14 in doing that, to extend the discovery date.

15 BellSouth has filed one motion that --  
16 regarding the amended testimony of Mr. Hamilton. And  
17 in their motion they ask that that amended testimony  
18 be stricken, or that the hearing be continued. We may  
19 or may not want to get into discussing that motion  
20 right now. But part of the basis for me making the  
21 motion for continuance is that it is appropriate, I  
22 think, for BellSouth to have time to respond to  
23 Mr. Hamilton's amended testimony.

24 I would make, just as a sideline the point  
25 that Mr. Hamilton's amended testimony could have been

1 filed as rebuttal testimony on a much later date, at  
2 which time BellSouth would have had no opportunity to  
3 rebut it. But I think that it is appropriate to  
4 continue the hearing to May 21st and 22nd. I  
5 understand from Staff that those dates are available  
6 at this point.

7           Another very important reason is that Supra  
8 needs to depose a number of BellSouth employees.  
9 BellSouth has indicated that they'll be perfectly  
10 willing to make their witnesses, the five individuals  
11 that have provided prefiled testimony in this case,  
12 for deposition and that's very good. The problem is  
13 we've got a number of people who have not prefiled  
14 testimony in this proceeding that are witnesses that  
15 we need to depose because they have information  
16 relevant to this proceeding. They are people that  
17 Supra employees interacted with and Supra customers  
18 interacted with during the months leading up to this  
19 case. And Supra has a right to depose those people.  
20 Because BellSouth has stated to us they are not going  
21 to make these people available, produce them  
22 voluntarily, and we're going to have to get personal  
23 service on each of these employees, that will extend  
24 the amount of time it will take for us to get these  
25 depositions set up. And, you know, in order to be

1 able to do what we need to do, we're going to have to  
2 have a little more time to do that. And that's --  
3 those are the major reasons.

4 I also think it's important to note that we  
5 may need a two-day period for this hearing as opposed  
6 to the one day, April 30th, that we have currently  
7 set. I think a two-day period would be much more  
8 reasonable based on what we're looking at, at this  
9 point in time.

10 We also have outstanding discovery that we  
11 have sent to BellSouth. They've responded with  
12 objections to a number of those interrogatories and  
13 request for production of documents. We will be  
14 filing a Motion to Compel momentarily. It has not  
15 been filed yet. But discovery is actually due Monday,  
16 the 20th. So until Monday we won't know what else  
17 they may or may not be willing to produce. And we  
18 need to have the opportunity -- at least have the  
19 opportunity to pursue that discovery and make our  
20 arguments that we have a right to it.

21 I just have to reiterate that it's critical  
22 for Supra to have the opportunity to depose witnesses  
23 that have relevant information. And we have today  
24 provided a letter to Ms. White asking for the full  
25 names and business addresses of the other individuals

1 that we haven't already been given that information  
2 on, so that we can proceed with what we need to do to  
3 get those people deposed. Those are the basic  
4 reasons.

5           And I think that there's one problem that  
6 I'm aware of that Ms. White can present herself, I  
7 guess, but one of the witnesses they have might not be  
8 available on May 21st or 22nd.

9           Supra is willing to try to work with  
10 BellSouth and Staff to try to deal with that problem.  
11 Perhaps we can depose that individual and stipulate  
12 that individual's testimony into the record. Whatever  
13 needs to be done to address that problem, Supra is  
14 willing to do that. So that's basically our motion.

15           **COMMISSIONER JACOBS:** So you basically --  
16 the motion would be to continue the hearing until the  
17 21st and extend it into a two-day hearing for the 22nd  
18 as well?

19           **MS. SUMMERLIN:** Yes, sir.

20           **COMMISSIONER JACOBS:** Ms. White?

21           **MS. WHITE:** Well, I have a number of  
22 concerns. The first is that the Commission rules  
23 state that a continuance is only to be granted for  
24 good cause. BellSouth is prepared to go forward on  
25 the 30th with the hearing in this matter. I don't

1 believe that the reasons that Ms. Summerlin has stated  
2 are sufficient to warrant a continuance. She says  
3 there's outstanding written discovery that's due.  
4 Well, there's been a discovery period of over two  
5 months. Procedure order was issued on February 24th,  
6 1999, with a discovery cutoff date of, I believe,  
7 April 23rd or 24th, 1998, so there's been sufficient  
8 time for discovery.

9           With regard to the employees of BellSouth  
10 that she wants to depose, those are considered  
11 nonparty witnesses under the Florida Rules of Civil  
12 Procedure. BellSouth is not required to produce  
13 those. If Ms. Summerlin wants to issue personal  
14 service of a subpoena on these people, then they will  
15 have to appear for a deposition.

16           In addition, what she's handed me today is  
17 she wants us to provide Supra with the addresses for  
18 these people. Well, that's discovery. And it's not  
19 issued as a form of discovery. It's issued in a  
20 letter. She should have put it in the form of an  
21 interrogatory or production of document request. And  
22 if that's done, it's not going to be able to be  
23 answered before the discovery cutoff.

24           So all in all we feel like there hasn't been  
25 good cause shown and the matter should go forward on

1 the 30th. We agree it probably is going to take more  
2 than one day, but I think that we just have to find  
3 that day where we could.

4 Now, if the next available date is the 21st  
5 and 22nd of May, the problem with that, as  
6 Ms. Summerlin has iterated, is that one of our  
7 witnesses is not available on those days, on either  
8 one of those two days. So that's a concern I have and  
9 something would have to be worked out for that.

10 So I guess the bottom line is we're prepared  
11 to go forward on the 30th, and we don't see any valid  
12 reason why it should be continued.

13 **COMMISSIONER JACOBS:** I hear there is  
14 agreement, though, that we're probably going beyond  
15 one day.

16 **MS. WHITE:** There are eight witnesses in the  
17 case: Three from Supra and five from BellSouth. So I  
18 don't know -- I guess it's possible it could be done  
19 in a day but probably not likely.

20 **COMMISSIONER JACOBS:** Okay. Staff?

21 **MS. KEATING:** I guess I should point out  
22 first that although May 21 and 22 do appear to be  
23 clear on the calendar, they would have to be cleared  
24 with the Chairman's office first before this hearing  
25 could be moved. I have checked May 1st, which is --

1 this hearing is set for April 30th. May 1st is open,  
2 so there may be a possibility if this hearing runs  
3 long on the 30th of extending it on to May 1st, if  
4 that's approved, again, by the Chairman's office. So  
5 there is a possibility that if this hearing is  
6 retained on the 30th, and does go long, that May 1st  
7 would be available.

8           **COMMISSIONER JACOBS:** Something strikes a  
9 bell with me for May 1st. I think there's SEARUC  
10 summit on the 1st. May want to check on that.

11           What I'd like to do -- first of all, a  
12 couple of questions. How much of the discovery that  
13 is in dispute pertains to issues that are involved in  
14 the reconsideration -- are amongst those issues that  
15 are in the reconsideration?

16           **MS. SUMMERLIN:** Some of the discovery that  
17 is in dispute --

18           **COMMISSIONER JACOBS:** Is it a small part or  
19 a large part?

20           **MS. SUMMERLIN:** I can't tell you right off  
21 if it's half and half, but there's a substantial  
22 amount that is not necessarily related to those  
23 issues. And we don't know yet what is actually going  
24 to be produced on Monday, so we don't know.

25           **COMMISSIONER JACOBS:** Yes.

1           **MS. KEATING:** Staff discussed a possible  
2 alternative method of remedying some of  
3 Ms. Summerlin's concerns with counsel before we  
4 started the prehearing.

5           We had suggested that it may be possible to  
6 extend the time for Ms. White to file rebuttal  
7 testimony to Mr. Hamilton; allow Ms. Summerlin to  
8 retain Mr. Hamilton's amended direct testimony in this  
9 case. And might be a possible option to just extend  
10 the discovery deadline a little bit and still keep  
11 that April 30th date. That's just a possibility we  
12 had discussed earlier.

13           **COMMISSIONER JACOBS:** Okay. How does that  
14 address your concerns?

15           **MS. SUMMERLIN:** That would be perfectly  
16 fine, except for the fact we're now going to have to  
17 get personal service on potentially 14 employees of  
18 the company.

19           Ms. White's statement that BellSouth does  
20 not have to produce these people because they are  
21 nonparty individuals. It is quite common in Circuit  
22 Court cases for corporations to produce witnesses that  
23 are their employees that have information that is  
24 relevant to a proceeding. And if BellSouth decides to  
25 take the approach that it's necessary to get personal

1 service on all of these individuals, and that Supra  
2 needs to wait for -- I don't know how long Ms. White  
3 is saying that we will need to wait to just simply get  
4 addresses on individuals -- that I would think would  
5 take two hours, at the most, of BellSouth's -- or less  
6 of BellSouth's time to provide for us.

7 **COMMISSIONER JACOBS:** Can't personal service  
8 be at the employment address?

9 **MS. SUMMERLIN:** That's exactly what we're  
10 going to try to do. What we're asking is simply the  
11 business address of these 14 individuals. We're going  
12 to have to get that personal service on all of these  
13 individuals. They are located in a lot of different  
14 locations. Some of these people are in -- I believe  
15 some of them are in Miami, some may be in Birmingham,  
16 some may be in Atlanta. I'm not sure right off the  
17 top of my head where every one of them is located, but  
18 they are in various locations. So that's going to add  
19 several day's worth of time. Whereas, if BellSouth  
20 chose to try to cooperate and produce them on a  
21 certain date, you know, and work with us, we could  
22 probably do this a lot quicker.

23 **COMMISSIONER JACOBS:** Here's what I'd like  
24 to do. I'd like for you guys to attempt to work  
25 through that solution, the proposed solution,

1 basically of extending discovery and resolving the  
2 issues of filing rebuttal.

3 I'm not going to rule on the Motion to  
4 Continue right now. I'd like to wait until the  
5 Commission votes to see what happens with that vote  
6 and resolution of the respective issues. Because in  
7 my mind that could have an impact on this issue. And  
8 then if I hear -- if I can hear how things are  
9 progressing with that, we'll make a determination as  
10 soon as possible after that, after that vote, within a  
11 day, to give you a ruling on that. Will that be  
12 adequate enough notice for you?

13 **MS. SUMMERLIN:** You're talking the day  
14 before the hearing, I think, because the 28th is that  
15 agenda; is that right? So we're talking about having  
16 to assume that the hearing is taking place --

17 **COMMISSIONER JACOBS:** We'll assume that the  
18 hearing is taking place. We'll have a ruling that  
19 afternoon.

20 **MS. SUMMERLIN:** Well, Commissioner,  
21 respectfully, it won't do any good for Supra to know  
22 the day before. I mean, the purpose of trying to get  
23 the continuance is to be able to plan to have a couple  
24 of weeks more time. But if that's not going to be  
25 available --

1                   **COMMISSIONER JACOBS:** Again, what I'm  
2 suggesting is work through the proposals that have  
3 been given today of extending discovery and extending  
4 the time for filing of rebuttal. And let's assume  
5 that the 30th will be the date. Again, it is possible  
6 that we could have a continuance. I'm deferring  
7 ruling on that motion. I'm not ruling on it today.

8                   **MR. BOWMAN:** Could Staff just interject?  
9 Basically, I hate to sound partisan, but acting as  
10 arbitrator, we just wanted to remind the Prehearing  
11 Officer that Supra filed this matter on January 23rd,  
12 and at that date requested expedited process. And  
13 basically we've gone out of our way to assure that  
14 that's taken place.

15                   So we just wanted to make sure that the  
16 Commissioner was mindful of the date that it was  
17 filed. And there has been at least some four months  
18 in which some of these matters -- to be settled.

19                   **COMMISSIONER JACOBS:** I want to allow you as  
20 best -- each party all possible opportunities to bring  
21 the best case that they can bring to this hearing. At  
22 this moment I think we can proceed under these  
23 circumstances and I think give you a reasonable  
24 opportunity to do that.

25                   Another concern I have is the longer we push

1 this hearing back, the more involved it gets. And  
2 that simply means then that the parties are becoming  
3 more interactive as opposed to resolving issues. So  
4 the hearing is the best place to get that resolved.  
5 Discovery won't do that.

6 But having said that, I'll defer ruling on  
7 the Motion to Continue at this moment. We'll have a  
8 ruling the afternoon of the 28th, so you'll know by  
9 the end of the business day on the 28th whether or not  
10 you will have a hearing on the 30th, and hopefully  
11 that will be a sufficient amount time to notify your  
12 witnesses. But as of this point I would assume that  
13 we'll be having the hearing on the 30th.

14 Any other matters?

15 **MS. KEATING:** Now would be appropriate to  
16 proceed to the Prehearing Order.

17 **COMMISSIONER JACOBS:** Yes.

18 **MS. WHITE:** If this will make it shorter,  
19 I've looked at our sections of the draft Prehearing  
20 Order and I don't have any changes.

21 **MS. SUMMERLIN:** I've looked at it and I have  
22 a few changes. One is that I would note that there's  
23 no reference to the fact that there are issues that  
24 have not been decided on yet. I assume they have been  
25 left out because of the current status. But if a

1 motion for reconsideration were granted, then it would  
2 have to be redone to show that those issues are in  
3 there.

4 **COMMISSIONER JACOBS:** That's correct.

5 **MS. SUMMERLIN:** There are a couple of typo  
6 things I'll be glad to show the Staff. And there's  
7 one significant thing that I do want to point out.

8 On the order of witnesses, Supra would very  
9 much want to have Mr. Ramos as our first witness.  
10 Right now the order of witnesses shows Mr. Reinke as  
11 the first witness. I guess the idea was to combine  
12 the direct and rebuttal. Whatever we need to do, we  
13 want Mr. Ramos as our first witness, you know, and we  
14 can either just do his direct and do the rebuttal  
15 later, or whatever you want to do, but --

16 **MS. KEATING:** That's fine.

17 **MS. WHITE:** That brings us to a question,  
18 BellSouth doesn't have any problems combining direct  
19 and rebuttal. I don't know about Supra.

20 **MS. SUMMERLIN:** I don't have a problem with  
21 it.

22 **MS. WHITE:** Then the order of your witnesses  
23 would be Ramos first, Mr. Reinke second, Mr. Hamilton  
24 third?

25 **MS. SUMMERLIN:** Uh-huh.

1           **MS. WHITE:** And --

2           **MS. SUMMERLIN:** Actually, I'm sorry. Let me  
3 just exercise the right to change my mind. I do want  
4 to do Mr. Ramos's rebuttal last. In terms of the  
5 order of the witnesses, I would like to have Mr. Ramos  
6 on his direct testimony, then Mr. Reinke, Mr. Hamilton  
7 and at the end do Mr. Ramos's rebuttal, because he's  
8 the only one that filed rebuttal.

9           **MS. WHITE:** Well, then we're not going to  
10 combine direct and rebuttal, I guess. So it would be  
11 Mr. Finlen first on his direct, Mr. Milner second on  
12 his direct, then -- Mr. Finlen and Mr. Milner can do  
13 their rebuttal and direct at the same time. Then I  
14 assume Mr. Ramos will do his rebuttal and then  
15 Mr. Scollard, Mr. Cathey and Mr. Stacy will do their  
16 rebuttal.

17           **MS. SUMMERLIN:** Okay.

18           **COMMISSIONER JACOBS:** Sounds workable.

19           **MS. SUMMERLIN:** I have a couple of typos,  
20 and I think that's really all I've got left to point  
21 out. I'll give that to the Staff.

22           **COMMISSIONER JACOBS:** Let me just reiterate  
23 the order of witnesses. First will be Mr. Ramos on  
24 direct, second will be Mr. Reinke on direct, third  
25 will be Mr. Hamilton on direct, fourth will be

1 Mr. Finlen on direct --

2 **MS. WHITE:** Direct and rebuttal.

3 **COMMISSIONER JACOBS:** Direct and rebuttal.

4 Fifth will be Mr. Milner on direct and rebuttal as  
5 well?

6 **MS. WHITE:** Yes.

7 **COMMISSIONER JACOBS:** Sixth will be  
8 Mr. Ramos on rebuttal. Seventh would be Mr. Scollard  
9 on rebuttal, eighth will be Mr. Cathey on rebuttal --  
10 is that ninth or did I miscount?

11 **MS. WHITE:** No --

12 **COMMISSIONER JACOBS:** Okay, you're right.  
13 And ninth will be Mr. Stacy on rebuttal. Okay. And  
14 you had some additional revisions, Ms. Summerlin?

15 **MS. SUMMERLIN:** No, I don't. I have a  
16 couple of typos I'll point out to the Staff.

17 **COMMISSIONER JACOBS:** Okay. Any other  
18 matters we should consider at this time?

19 **MS. KEATING:** I want to point out real  
20 quickly Ms. Summerlin had mentioned there were some  
21 issues that still may be outstanding due to the Motion  
22 for Reconsideration. There may be some undecided  
23 issues. I would just point out, in the pending motion  
24 section we did indicate that there is a Motion for  
25 Reconsideration.

1           **MS. SUMMERLIN:** Yes, I noted that.

2           **COMMISSIONER JACOBS:** Now, it occurs to me  
3 we may want to identify some procedures here. I don't  
4 like to prejudge at all, but if the Motion for  
5 Reconsideration is granted, obviously there's  
6 procedural issues that are raised. Is it proper to  
7 come back after that and deal with it, or can we kind  
8 of lay out some tentative procedures here?

9           **MS. KEATING:** I think you may want to wait  
10 until after Tuesday.

11           **COMMISSIONER JACOBS:** Okay. Very well. If  
12 there are no other matters, this hearing is adjourned.

13                   (Thereupon, the hearing concluded at  
14 10:04 a.m.)

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1 STATE OF FLORIDA)  
2 :  
3 COUNTY OF LEON )

CERTIFICATE OF REPORTER

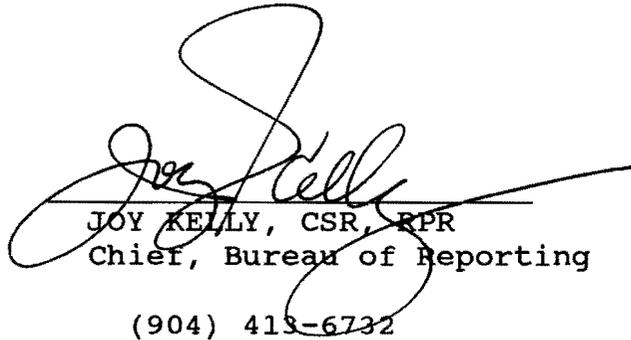
3 I, JOY KELLY, CSR, RPR, Chief, Bureau of  
4 Reporting, Official Commission Reporter,

5 DO HEREBY CERTIFY that the Prehearing  
6 Conference in Docket No. 980119-TP was heard by the  
7 Prehearing Officer at the time and place herein  
8 stated; it is further

9 CERTIFIED that I stenographically reported  
10 the said proceedings; that the same has been  
11 transcribed under my direct supervision; and that this  
12 transcript, consisting of 22 pages, constitutes a true  
13 transcription of my notes of said proceedings.

14 DATED this 17th day of April, 1998.

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JOY KELLY, CSR, RPR  
Chief, Bureau of Reporting  
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