

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Supra
Telecommunications & Information
Systems, Inc. against BellSouth
Telecommunications, Inc. for
violation of the
Telecommunications Act of 1996;
petition for resolution of
disputes as to implementation
and interpretation of
interconnection, resale and
collocation agreements; and
petition for emergency relief.

DOCKET NO. 980119-TP
ORDER NO. PSC-98-0576-PHO-TP
ISSUED: April 24, 1998

Pursuant to Notice, a Prehearing Conference was held on April 17, 1998, in Tallahassee, Florida, before Commissioner E. Leon Jacobs, as Prehearing Officer.

APPEARANCES:

Suzanne Fannon Summerlin, Esquire, 1311-B Paul Russell Road, Suite 201, Tallahassee, Florida 32301.
On behalf of Supra Telecommunications & Information Systems.

Nancy B. White, Esquire, 150 South Monroe Street, Room 400, Tallahassee, Florida 32301.
On behalf of BellSouth Telecommunications, Inc.

Beth Keating, Esquire, and John Bowman, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

PREHEARING ORDER

I. CASE BACKGROUND

On January 23, 1998, Supra Telecommunications and Information Systems, Inc. (Supra) filed a Complaint against BellSouth Telecommunications, Inc. (BellSouth) for alleged violations of the Telecommunications Act of 1996 (Act) and Petition for resolution of certain disputes between BellSouth and Supra regarding interpretation of the Interconnection, Resale, and Collocation Agreements between Supra and BellSouth (Petition). Supra also requested relief on an emergency basis. On February 16, 1998, BellSouth filed its Answer and Response to Supra's Petition. This matter has been set for hearing on April 30, 1998.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall

notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting confidential files.

Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

III. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

IV. ORDER OF WITNESSES

<u>WITNESS</u>	<u>APPEARING FOR</u>	<u>ISSUE NO.</u>
<u>DIRECT</u>		
Olukayode A. Ramos	SUPRA	all issues
John Reinke	SUPRA	1(c) and 1(d)
Bradford Hamilton	SUPRA	1(d), 1(e), 2, and 5
<u>DIRECT AND REBUTTAL</u>		
Patrick C. Finlen	BellSouth	2,3,4,5 and 6
W. Keith Milner	BellSouth	1
<u>REBUTTAL</u>		
Olukayode A. Ramos	SUPRA	all issues
David P. Scollard	BellSouth	1
Marcus B. Cathey	BellSouth	2
William N. Stacy	BellSouth	1 and 2

V. BASIC POSITIONS

SUPRA:

Supra Telecommunications & Information Systems, Inc.'s basic position in this proceeding is that BellSouth Telecommunications, Inc., has violated the provisions of the Telecommunications Act of 1996 and the provisions of the Resale, Collocation and Interconnection Agreements executed by Supra and BellSouth and that these violations have resulted in Supra being unable to provide local exchange services equivalent to those provided by BellSouth. Supra believes that BellSouth has violated the Telecommunications Act of 1996 by failing to negotiate in good faith with Supra the rates, terms, and conditions of the Resale, Collocation and

Interconnection Agreements that Supra and BellSouth entered into and by numerous anti-competitive behaviors that have severely hampered Supra's efforts to establish its local exchange business.

Supra believes BellSouth has also violated the Telecommunications Act and the Resale, Collocation, and Interconnection Agreements by failing to provide Supra with access to unbundled network elements on parity with that BellSouth provides for itself and by interpreting the agreements in such a fashion as to prohibit Supra from providing local exchange telecommunications services equivalent to those provided by BellSouth. The numerous ways in which BellSouth has prevented Supra from providing equivalent local exchange services are described in the issues identified in this proceeding. Supra urges the Commission to address these violations by BellSouth by arbitrating the rates, terms, and conditions of the Resale, Collocation and Interconnection Agreements and by requiring BellSouth to provide Supra access to unbundled network elements on parity with BellSouth, including BellSouth's billing service and dark fiber, and prohibiting anti-competitive behavior by BellSouth.

BELLSOUTH:

On November 24, 1997, BellSouth and Supra filed a request for approval of a resale, interconnection, and unbundling agreement under the Act. The agreement covers a two-year period and governs the relationship between BellSouth and Supra regarding resale, unbundling, and interconnection pursuant to the Act. On February 3, 1998, this Commission approved the BellSouth-Supra Agreement in Order No. PSC-98-0206-FOF-TP. The Commission found that the agreement complied with the Telecommunications Act of 1996.

BellSouth has used its best efforts to assist Supra in implementing the various provisions of the agreements. BellSouth has made a good faith effort to comply with all the requirements and obligations of the BellSouth-Supra Interconnection Agreement. BellSouth is fully committed to continue, cooperative efforts.

STAFF:

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VI. ISSUES AND POSITIONS

The issues set forth below are the issues preliminarily identified in Order No. PSC-98-0416-PCO-TP, issued March 24, 1998. I note, however, that Order No. PSC-98-0416-PCO-TP is the subject of a Motion for Reconsideration filed by Supra. That Motion is scheduled to be addressed by the Commission panel assigned to this case at our April 28, 1998, Agenda Conference. I note that the positions of the parties may go beyond the scope of the approved issues to include the issues contested in Supra's Motion for Reconsideration.

ISSUE 1:

Has BellSouth failed to properly implement the following provisions of its Interconnection, Collocation and Resale agreements with Supra such that Supra is unable to provide local exchange service on parity with that which BellSouth provides:

- a. billing requirements;
- b. telephone number access;
- c. provision of dial tone;
- d. electronic access to Operations Support Systems (OSS) and OSS interfaces (Ordering and provisioning, Installation, maintenance and repair);
- e. notification requirements;
- f. timeliness of installation, repair, and maintenance.

POSITION:

SUPRA:

Yes, BellSouth has failed to properly implement the listed provisions of the Resale, Collocation and Interconnection

Agreements with Supra. Supra's testimony and exhibits go into detail regarding each of the above sub-issues. Supra's basic position is that if BellSouth is not required to resell its billing service to Supra or other ALECs it will be practically impossible for Supra or any other new or relatively small ALEC to succeed in the local exchange market. Likewise, Supra must be given appropriate access to BellSouth's operational support systems to make it possible for Supra to provide equivalent local exchange service. It must be made absolutely mandatory for BellSouth to process orders and provision service and repairs for Supra or any other ALEC on a basis equivalent to its internal performance if Supra or any other ALEC is to have any possibility of surviving long enough to provide any competition to BellSouth in the provision of local exchange service.

BELLSOUTH:

- a. No. BellSouth has provided Supra with the information needed by Supra in order to bill its customers.
- b. No. BellSouth has provided Supra with access to telephone numbers available at parity with itself.
- c. No. BellSouth is aware of one incident in which the dial tone for Supra's corporate offices was disconnected as a result of a location move by Supra. The cause was human error.
- d. No. BellSouth has provided Supra access to BellSouth's Operations Support Systems.
- e. No. BellSouth notifies all ALECs of changes in its Operational Support Systems via written notification and BellSouth's Interconnection Services Website.
- f. No. BellSouth has provided Supra with timely provisioning, maintenance, and repair services.

STAFF:

Staff has no position at this time.

ISSUE 2:

Has BellSouth provided adequate written rules, regulations, codes, instructions, descriptions of procedures, other written materials, technical guidance, and actual support service, or made any modifications of procedures, if necessary, in timely fashion, to permit Supra to understand and utilize effectively BellSouth's procedures for billing, ordering, provisioning, installation, repair, etc., that are essential to Supra's ability to provide local exchange service on parity with BellSouth?

POSITION:

SUPRA:

No, BellSouth has not provided adequate written rules, regulations, codes, instructions, etc., as delineated in Supra's testimony and exhibits. Supra believes that BellSouth has neglectfully and purposefully assured that Supra would not know the information it needed to know to succeed. BellSouth has made overtures and gestures such as providing training and handbooks. However, Supra has experienced overwhelming disregard by BellSouth for providing Supra accurate information in a timely fashion or for informing Supra of procedures and the tremendous amount of BellSouth information needed for Supra or any ALEC to effectively resell BellSouth's local exchange services.

BELLSOUTH:

Yes. BellSouth has provided Supra with sufficient information for Supra to provide local exchange service on parity with BellSouth.

STAFF:

Staff has no position at this time.

ISSUE 3:

Has BellSouth acted appropriately in its billing of Supra and has Supra timely paid its bills to BellSouth?

SUPRA:

No, BellSouth has not acted appropriately in its billing of Supra and yes, Supra has timely paid its bills to BellSouth except for occasions on which Supra has disputed the amounts billed by BellSouth. Supra has, at this point, paid everything BellSouth has demanded. Supra requests the Commission to order BellSouth to refund monies that Supra has been overcharged as a result of BellSouth's errors and inappropriate application of its tariff.

BELLSOUTH:

BellSouth has billed Supra in an appropriate fashion. Supra has a history of untimely payment of those bills.

STAFF:

Staff has no position at this time.

ISSUE 4:

Has BellSouth appropriately applied Sections A2.3.8A and A2.3.8B of its General Subscriber Services Tariff to Supra?

SUPRA:

No, BellSouth has not appropriately applied Sections A2.3.8A and A2.3.8B of its General Subscriber Services Tariff to Supra. This tariff was adopted to apply to end users, not resellers of BellSouth's local exchange telecommunications services. This tariff provision will make it impossible for Supra or any ALEC to lure any customer away from BellSouth.

BELLSOUTH:

Yes. BellSouth appropriately applied the tariff sections to Supra in an appropriate manner.

STAFF:

Staff has no position at this time.

ISSUE 5:

Has BellSouth responded appropriately to consumer queries regarding Supra?

SUPRA:

No. Supra's testimony and exhibits detail the many problems Supra has had with BellSouth's interactions with Supra customers. Basically, BellSouth has utilized its frequent opportunities to interact with Supra customers to aggressively compete with Supra in a way that will make it absolutely impossible for Supra or any other ALEC to provide local exchange service.

BELLSOUTH:

Yes. BellSouth has responded reasonably and responsibly to consumer queries regarding Supra.

STAFF:

Staff has no position at this time.

ISSUE 6:

What relief, if any, should the Commission order for Supra or BellSouth?

SUPRA:

The Commission should arbitrate the rates, terms, and conditions of the Resale, Collocation, and Interconnection Agreements between Supra and BellSouth. The Commission should require BellSouth to resell its billing service to Supra. The Commission should require BellSouth to resell its dark fiber to Supra. The Commission should require BellSouth to provide electronic access to BellSouth's operational support systems such that Supra may provide local exchange service on parity with that provided by BellSouth. The Commission should require BellSouth to modify its procedures in any reasonable way necessary to make it possible for Supra or any other ALEC to have a decent possibility of providing competitive local

exchange service. The Commission should require BellSouth to modify its General Subscriber Services Tariff to prohibit BellSouth from charging Supra one full month's service in advance for each customer Supra obtains from BellSouth. The Commission should prohibit BellSouth from continuing the many anti-competitive actions and practices described in Supra's testimony and exhibits. The Commission should sanction BellSouth for its anti-competitive behaviors. The Commission should order BellSouth to refund monies that have been overcharged to Supra.

BELLSOUTH:

The Commission should order no relief for Supra and should order Supra to pay BellSouth's bill in a timely manner.

STAFF:

Staff has no position at this time.

VII. EXHIBIT LIST

<u>WITNESS</u>	<u>PROFFERED BY</u>	<u>I.D. NUMBER</u>	<u>DESCRIPTION</u>
Olukayode A. Ramos	SUPRA	<u>Direct</u> <u>(OAR-1)</u>	Supra Letter to Scott Schaefer of BellSouth
		<u>(OAR-2)</u>	Oct. 20, 1997, Letter to Gregg Beck
		<u>(OAR-3)</u>	Jan. 15, 1997, Letter from BellSouth
		<u>* (OAR-4)</u>	Example of Manually-Typed Bill

<u>WITNESS</u>	<u>PROFFERED BY</u>	<u>I.D. NUMBER</u>	<u>DESCRIPTION</u>
		_____ *(OAR-5)	Example of BellSouth Lines Billed to Supra
Olukayode A. Ramos	SUPRA	_____ (OAR-6)	Documents Related to Telephone Number Availability
		_____ *(OAR-7)	Supra Order Tracking and Inquiry Forms Showing Obsolete USOC Code and Other Problems Causing Delays
		_____ *(OAR-8)	BellSouth PIC Adds/Disconnects Report
		_____ (OAR-9)	Supra Chart Comparing BellSouth Required Interconnection Intervals With Actual Completion Intervals
		_____ (OAR-10)	Supra Internet Trouble Sheets Showing Examples of Periods of Time BellSouth's LENS System Has Been Down

<u>WITNESS</u>	<u>PROFFERED BY</u>	<u>I.D. NUMBER</u>	<u>DESCRIPTION</u>
Olukayode A. Ramos	SUPRA	_____ (OAR-11)	Selected Pages of Interconnection Agreement, Attachment 11, Exhibit 2-FL, Showing Rates for Unbundled Network Elements and Collocation
		_____ (OAR-12)	Selected Pages of Interconnection Agreement, Attachment 10, Showing Provisioning Performance Measurements
		_____ (OAR-13)	Example Page of Encrypted Data from BellSouth DAB Program
		_____ (OAR-14)	Two Examples of BellSouth Retention Letters
John Reinke	SUPRA	_____ (JR-1)	Nov. 13, 1997, Letter to BellSouth
Bradford Hamilton	SUPRA	_____ *(BH-1)	Supra Customer Letter Regarding Repair Problem With BellSouth

<u>WITNESS</u>	<u>PROFFERED BY</u>	<u>I.D. NUMBER</u>	<u>DESCRIPTION</u>
Bradford Hamilton	SUPRA	<u> </u> *(BH-2)	Chart Showing Supra Customers Stating that BellSouth Told Them to Ask "Who will repair my phone?"
		<u> </u> (BH-3)	Information Regarding "Call Them On It" Promotion and Other Anti-Competitive Propaganda by BellSouth/U.S. Telephone Ass'n
		<u> </u> (BH-4)	Internet Information Showing BellSouth Full Member of U.S. Telephone Ass'n
		<u> </u> *(BH-5)	Two Example Supra Customer Letters Showing Problems With Timely Installation and Processing of Orders by BellSouth
		<u> </u> *(BH-6)	Chart Showing Supra Customers Who Stated BellSouth Said It Had Never Heard of Supra

<u>WITNESS</u>	<u>PROFFERED BY</u>	<u>I.D. NUMBER</u>	<u>DESCRIPTION</u>
Bradford Hamilton	SUPRA	_____ *(BH-7)	Chart Showing Supra Customers Told to Report Supra to FPSC
		_____ *(BH-8)	Chart Showing Supra Customers Told by BellSouth that Supra is Unreliable
		_____ *(BH-9)	Chart Showing Supra Customers Told by BellSouth They Would Lose Yellow Pages Advertising if Stayed With Supra
		_____ *(BH-10)	Chart Showing Supra Customers Told by BellSouth They Do Not Have to Pay Supra Bill if They Dispute It
		_____ *(BH-11)	Series of Faxes Between Supra and Supra Customer Showing BellSouth Errors Resulting in Supra's Loss of Customer

<u>WITNESS</u>	<u>PROFFERED BY</u>	<u>I.D. NUMBER</u>	<u>DESCRIPTION</u>
Bradford Hamilton	SUPRA	<u> </u> *(BH-12)	Local Service Request Documentation Showing Supra's Problems With BellSouth Related to Ordering New Service
		<u> </u> *(BH-13)	Documentation Showing Supra Being Billed for BellSouth Customer
		<u> </u> *(BH-14)	Documentation Showing Problems and Delays Related to Ordering a Change in Service for an Existing Supra Customer
Patrick C. Finlen	BellSouth	<u>Direct</u> <u> </u> (PCF-1)	Pages from BellSouth Interconnection Services Website
		<u> </u> (PCF-2)	Attachment 7 of the BellSouth-Supra Interconnection Agreement
		<u> </u> (PCF-3)	October 6, 1997 letter from R.J. Campbell

<u>WITNESS</u>	<u>PROFFERED BY</u>	<u>I.D. NUMBER</u>	<u>DESCRIPTION</u>
Patrick C. Finlen	BellSouth	<u>Rebuttal</u> (PCF-4)	Draft Agreement
		(PCF-5)	Company newsletters; executive letters
		(PCF-6)	Tips on Telephone Service
Marcus B. Cathey	BellSouth	<u>Rebuttal</u> (MBC-1)	Supra feedback
		(MBC-2)	October 29, 1997, letter from O.A. Ramos
		(MBC-3)	Supra feedback
William N. Stacy	BellSouth	<u>Rebuttal</u> (WNS-1)	Evaluations of November 5, 1997, LENS class

*These are exhibits for which Supra has requested confidential classification.

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PENDING MOTIONS

The following motions remain outstanding in this Docket: Supra's Motion for Reconsideration by the Commission of Order on Disputed Issues, Order No. PSC-98-0416-PCO-TL, filed March 24, 1998; BellSouth's Motion to Strike Portions of Supra's Direct Testimony of Olukayode Ramos, filed April 3, 1998; BellSouth's Motion to Strike Portions of Supra's Amended Direct Testimony, filed April 9, 1998; Supra's Motion for Leave to File the Amended Testimony of Bradford Hamilton, filed April 9, 1998; and BellSouth's Motion to Strike Supra's Amended Direct Testimony of Bradford Hamilton.

X. RULINGS

On April 8, 1998, Supra filed a Motion for Leave to File Amended Testimony of Olukayode Ramos and John Reinke and Motion to Extend Date for Rebuttal Testimony, filed April 8, 1998. By this Motion, Supra sought leave to file amended direct testimony for witnesses Ramos and Reinke on April 8, 1998, and to extend the date for filing rebuttal testimony to April 15, 1998. Counsel for BellSouth and Supra have stated that this motion has been agreed upon by both parties. In view of the fact this will not affect the April 30, 1998, hearing date and because the parties have indicated that they are in agreement that this is appropriate, I hereby grant the Motion for Leave to File Amended Testimony of Olukayode Ramos and John Reinke and Motion to Extend Date for Rebuttal Testimony filed by Supra.

As previously noted, Supra's Motion for Reconsideration will be addressed by the Commission panel assigned to this case at our April 28, 1998, Agenda Conference. Once a decision has been made on that motion, I will rule upon the procedural motions that remain outstanding.

It is therefore,

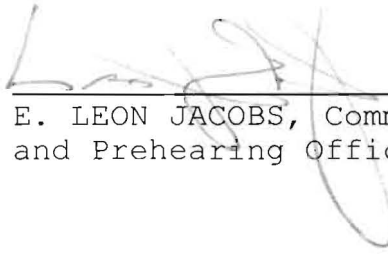
ORDERED by Commissioner E. Leon Jacobs, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission. It is further

ORDERED that the Motion for Leave to File Amended Testimony of Olukayode Ramos and John Reinke and Motion to Extend Date for

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Rebuttal Testimony filed by Supra Telecommunications and Information Systems, Inc. is granted.

By ORDER of Commissioner E. Leon Jacobs, as Prehearing Officer, this 24th day of April, 1998.



E. LEON JACOBS, Commissioner
and Prehearing Officer

(S E A L)

BK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such

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review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.