

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration  
concerning complaint of  
BellSouth Telecommunications,  
Inc. against Supra  
Telecommunications and  
Information Systems, Inc. for  
resolution of billing disputes.

DOCKET NO. 001097-TP  
ORDER NO. PSC-01-0898-PHO-TP  
ISSUED: April 9, 2001

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on April 6, 2001, in Tallahassee, Florida, before Commissioner Lila A. Jaber, as Prehearing Officer.

APPEARANCES:

NANCY B. WHITE, ESQUIRE, 150 South Monroe Street, Suite  
400, Tallahassee, Florida 32301-1556  
On behalf of BellSouth Telecommunications. Inc.

PAUL TURNER, ESQUIRE, 2620 S.W. 27th Avenue, Miami,  
Florida 33133  
On behalf of Supra Telecommunications and Information  
Systems, Inc.

C. LEE FORDHAM, ESQUIRE, Florida Public Service  
Commission, 2540 Shumard Oak Boulevard, Tallahassee,  
Florida 32399-0850  
On behalf of the Commission Staff.

**PREHEARING ORDER**

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

DOCUMENT NUMBER-DATE  
04330 APR-98  
FPSC-RECORDS REPORTING

On August 9, 2000, BellSouth Telecommunications, Inc. (BellSouth) filed a complaint against Supra Telecommunications and Information Systems, Inc. (Supra), alleging that Supra has violated Attachment 6, Section 13 of their present agreement by refusing to pay non-disputed sums. The complaint also alleges billing disputes arising from the prior resale agreement with Supra. On August 30, 2000, Supra filed a timely Motion to Dismiss or, in the Alternative, to Stay Proceedings and/or Compel Arbitration.

On November 28, 2000, Order No. PSC-00-2250-FOF-TT was issued, granting in part and denying in part Supra's Motion to Dismiss or, in the Alternative, to Stay Proceedings and/or Compel Arbitration. The matter is set for administrative hearing on May 3, 2001. Parties shall be allowed ten minutes for opening statements.

### III. 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, 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.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to

present their justifications at hearing, so that a ruling can be made at hearing.

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

- a) 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.
- b) 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.
- c) 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.
- d) 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.

- e) 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's confidential files.

#### IV. POST-HEARING PROCEDURES

Each party shall 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. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, 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 40 pages, and shall be filed at the same time.

#### V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties 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. Summaries of testimony shall be limited to five minutes. 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.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct and Rebuttal</u>		
Patrick C. Finlen	BellSouth	1-4
Claude P. Morton	BellSouth	1 (Direct Only)
Carol Bentley	Supra	1-4

VII. BASIC POSITIONS

**BELLSOUTH:**

BellSouth has appropriately and properly billed Supra for End-User Common Line Charges, secondary service charges and for changes in service, unauthorized local service changes, and reconnections under the 1997 resale agreement between BellSouth and Supra.

**SUPRA:**

In this docket the Commission will determine which terms and rates apply with respect to parties' agreements, the 1997 Resale Agreement or the 1999 Interconnection Agreement. The parties have been unable to resolve any of the issues raised in Supra's amended counterclaim or in BellSouth's petition. Supra submits that its proposed resolution of the issues below is consistent with the parties' controlling agreement and intent. Supra

therefore respectfully requests that each of the issues below be resolved in its favor.

**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. Staff has no position at this time.

#### VIII. ISSUES AND POSITIONS

**ISSUE 1:** Should the rates and charges contained (or not contained) in the 1997 AT&T/BellSouth Agreement apply to the BellSouth bills at issue in this Docket?

#### POSITIONS

##### **BELLSOUTH:**

No. The 1997 AT&T/BellSouth agreement is not applicable to the BellSouth bills at issue in this docket. The 1997 BellSouth/Supra resale agreement governs the BellSouth bills at issue in this docket.

##### **SUPRA:**

Yes. Pursuant to Section XVI, paragraphs B and F of the BellSouth/Supra resale agreement, the terms of any successive agreement that contains more favorable provisions apply as of the period from the successive agreement's effective date until the date that the parties executed same. Furthermore, pursuant to Section 22.10 of the General Terms & Conditions of the AT&T/BellSouth Agreement, this Agreement constitutes the parties' entire agreement and supersedes any prior agreements, including the BellSouth/Supra interconnection, collocation and resale agreements.

**STAFF:** Staff has no position at this time.

**ISSUE 2:** Did BellSouth bill Supra appropriately for End-User Common Line Charges pursuant to the BellSouth/Supra interconnection and resale agreement?

**POSITIONS**

**BELLSOUTH:**

Yes. BellSouth billed Supra appropriately for End-User Common Line Charges pursuant to Section VII (L) of the BellSouth/Supra resale agreement, FCC Tariffs, and FCC rules.

**SUPRA:**

No. As the 1997 AT&T/BellSouth Agreement that Supra opted into on October 5, 1999, had an effective date of June 10, 1997, the above-referenced section of the BellSouth/Supra resale agreement requires that the terms and rates of the 1997 AT&T/BellSouth Agreement apply to this dispute for the period from June 10, 1997 through October 5, 1999. Furthermore, pursuant to 47 CFR 5 5 1.617(b), when BellSouth provided telephone exchange service to Supra at wholesale rates for resale, BellSouth was barred from assessing End-User Common Line Charges ("EUCLs"). Finally, there is no language in the controlling agreement, the 1997 AT&T/BellSouth Agreement, or in the BellSouth/Supra interconnection agreement that authorizes BellSouth to charge Supra for EUCLs; however, the BellSouth/Supra resale agreement does speak to the disputed charges.

**STAFF:** Staff has no position at this time.

**ISSUE 3:** Did BellSouth bill Supra appropriately for changes in services, unauthorized local service changes, and reconnections pursuant to the BellSouth/Supra interconnection and resale agreements?

**POSITIONS**

**BELLSOUTH:**

Yes. BellSouth billed Supra appropriately pursuant to Section VI (F) of the BellSouth Supra resale agreement.

**SUPRA:** No. There is no language in the controlling agreement, the 1997 AT&T/BellSouth Agreement, or in the BellSouth/Supra interconnection agreement that authorizes BellSouth to charge Supra for changes in services, unauthorized local service changes, and reconnections; however, the BellSouth/Supra resale agreement does speak to the disputed charges.

**STAFF:** Staff has no position at this time.

**ISSUE 4:** Did BellSouth bill Supra appropriately for secondary service charges pursuant to the BellSouth/Supra interconnection and resale agreements?

**POSITIONS**

**BELLSOUTH:**

Yes. BellSouth billed Supra appropriately pursuant to BellSouth's tariffs and Section IV (3) of the BellSouth/Supra resale agreement.

**SUPRA:**

No. There is no language in the controlling agreement, the 1997 AT&T/BellSouth Agreement, or in the BellSouth/Supra interconnection agreement that authorizes BellSouth to charge Supra for secondary service charges; however, the BellSouth/Supra resale agreement does speak to the disputed charges.



**STAFF:** Staff has no position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Patrick C. Finlen	BellSouth	_____ (PCF-1)	Resale Agreement - 6/1/97
		_____ (PCF-2)	Letter from Reinke to Beck - 10/20/97
		_____ (PCF-3)	Letter from Fields to Ramos - 10-20- 97
		_____ (PCF-4)	E-mail from Finlen to Ramos
		_____ (PCF-5)	Letter from Finlen to Ramos - 10/23/97
		_____ (PCF-6)	Attachment 2 - 10/15/97
		_____ (PCF-7)	Order No. PSC-99- 1092-FOF-TP

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		_____ (PCF-8)	Tariff FCC No. 1 Sections 4.5 - 4.6
		_____ (PCF-9)	47 CFR 51-617
		_____ (PCF-10)	Letter from Bentley to Fleming - 3/11/00
		_____ (PCF-11)	Letter from Smith to Bentley - 3/30/00
		_____ (PCF-12)	Letter from Bentley to Finlen - 4/10/00
Patrick C. Finlen	BellSouth	_____ (PCF-13)	Letter from Finlen to Bentley - 4/28/00
		_____ (PCF-14)	Order No. PSC-98- 0279-PCO-TX
		_____ (PCF-15)	Section A4, GSST
		_____ (PCF-16)	Order No. PSC-98- 1001-FOF-TP
Claude P. Morton	BellSouth	_____ (CPM-1)	BellSouth Master A c c o u n t Application

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		_____ (CPM-2)	Billing Portion of Supra Order
Carol Bentley	Supra	_____ (CB-1)	Pertinent portions of the 1997 BellSouth/Supra Resale Agreement
		_____ (CB-2)	Pertinent portions of Part IV of the General Terms and Conditions of the AT&T/BellSouth Interconnection Agreement
		_____ (CB-3)	PSC Order No. PSC- 98-0500-AS-TX in CC Docket No. 97- 1527, issued on April 10, 1998

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

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

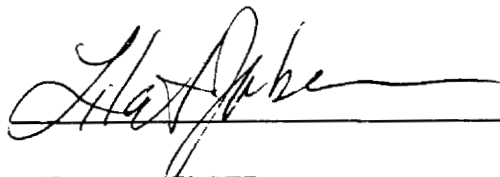
There are no pending requests for confidentiality at this time.

XIII. RULINGS

It is therefore,

ORDERED by Commissioner Lila A. Jaber, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Lila A. Jaber, as Prehearing Officer, this 9th Day of April, 2001.



LILA A. JABER  
Commissioner and Prehearing Officer

( S E A L )

CLF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, 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 review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.