



ORIGINAL

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June 18, 2001

Bianca Bayo
Director of Public Records
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, FL 32399-0850

RECEIVED FPSC
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RECORDS AND
REPORTING

Docket No. 00-1305-TP-

Dear Ms. Bayo:

Enclosed Please find Supra's Status and Complaint regarding BellSouth's Bad Faith Negotiations Tactics. A copy has been filed with you by our office in Tallahassee.

Regards

Adenet Medacier

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FPSC-RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for Arbitration of the)
Interconnection Agreement between Bell-)
South Telecommunications, Inc. and)
Supra Telecommunications & Information)
Systems, Inc. pursuant to Section 252(b))
of the Telecommunications Act of 1996)
_____)

Docket No. 00-1305-TP

Dated: June 18, 2001

SUPRA TELECOMMUNICATIONS AND
INFORMATION SYSTEMS, INC.'S STATUS AND COMPLAINT
REGARDING BELL SOUTH'S BAD FAITH NEGOTIATIONS TACTICS

NOW COMES Supra Telecommunications & Information Systems, Inc. ("Supra"), by and through its undersigned counsel, pursuant to Florida Public Service Commission Order No. PSC-01-1180-FOF-TP issued on May 23, hereby provides the Commission with a status report of the outstanding issues between the parties, and requests that this Commission participate in the negotiation of an interconnection agreement and mediate any differences arising in the course of such, due to BellSouth Telecommunication Inc.'s ("BellSouth") willful and intentional, bad faith violations of Section 251(c)(1) of the Communications Act of 1934, as amended by the 1996 Act (47 U.S.C. § 151, *et seq.*), and 47 C.F.R. § 51.301, and in support hereof states as follows:

I. BRIEF INTRODUCTION

On or about October 25, 1999, Supra adopted an Interconnection Agreement ("Current Agreement") entered into by BellSouth and AT&T of the Southern States, such Current Agreement having been approved by the Florida Public Service Commission. The Current Agreement provides for the term of the agreement, a termination date, and a time frame for the negotiations of a "Follow-On Agreement." Most importantly, the

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ENCLOSURE REPORTING

Current Agreement provides for a procedure to be followed **before** either party files a petition with the FPSC for arbitration of such. On or about September 1, 2000, BellSouth filed a Petition for Arbitration knowing that it had not followed contractual procedures. On or about January 26, 2001, Supra filed a Motion to Dismiss BellSouth's Petition citing as one of the grounds for dismissal, BellSouth's failure to follow contractual procedure. On or about February 26, 2001, BellSouth filed its Response in Opposition to Supra's Motion to Dismiss, arguing that its failure to follow agreed contractual procedure was a matter of form over substance. On or about May 23, 2001, this Commission issued Order No. PSC-01-1180-FOF-TP, wherein the parties were ordered to follow the contractual procedures before continuing before the Commission. The Order directed the parties to conduct the Inter-Company Review Meeting and within 10 days of the completion of the meeting, notify the Commission of any outstanding issues. The parties discussed the follow-on agreement at four Inter-Company Review Meetings held on April 11, 2001; May 29, 2001; June 4, 2001; and June 6, 2001. See attached as **Composite Exhibit "A"**, meeting agenda prepared by Supra.

II. NEGOTIATED ISSUES

At the meeting of June 6, 2001, the parties resolved issues 2, 3 and 39, and Supra agreed to propose language on the following issues to BellSouth:

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

Issues 7 and 8: Should Supra be required to pay the end user line charged requested by BellSouth?

- Issue 11: Should the Interconnection Agreement allow either party (first party) offset from the other party (second party) disputed charges and other amounts due to the first party, from sums due to the second party?
- Issue 13: What should be the appropriate definition of “local traffic” for purposes of the parties’ reciprocal compensation obligations under Section 251(b)(5) of the 1996 Act?
- Issue 16: Should the Interconnection Agreement be a complete agreement or should BellSouth be allowed to keep issues open in order to preclude providing service until the negotiation of subsequent? -- As narrowed: Should BellSouth be obligated to provide services for which no price is listed in the agreement, such price to be determined at a later date and applied retroactively?
- Issue 17: Should Supra Telecom be allowed to engage in comparative advertising using BellSouth’s name and marks?
- Issue 21: What does “currently combines” mean as that phrase is used in 57 C.F.R. § 51.315(b)?
- Issue 22: Should BellSouth be permitted to charge Supra Telecom a “glue charge” when BellSouth combines network elements.
- Issue 23: Should BellSouth be directed to perform, upon request, the Functions necessary to combine unbundled network elements that are ordinarily combined in its network?
- Issue 24: Should BellSouth be required to combine network elements that are not ordinarily combined in its network?
- Issue 41: Should BellSouth be required to continue providing Supra Telecom the right to audits BellSouth’s books and records in order to confirm the accuracy of BellSouth” bills?
- Issue 45: Should BellSouth be required to permit Supra Telecom to substitute more favorable terms and conditions obtained by a third party through negotiation or otherwise, effective as of the date of Supra Telecom’s request. Should BellSouth be required to post on its web-site all BellSouth interconnection agreements with third parties within fifteen days of the filing of such agreement with the FPSC?

- A. What criteria should be used to determine which are the available terms of a filed and approved interconnection agreement which may be adopted by Supra?
- B. What should be the effective date of such an adoption?

Issue 52: Should the resale discount apply to all telecommunication services BellSouth offers to end users, regardless of the tariff in which the service is contained?

Issue 64: Should the Interconnection Agreement contain a provision establishing that BellSouth will provide services in any combination requested by Supra Telecom?

Issue 65: Should the parties be liable in damages, without a liability cap, to one another for their failure to honor in one or more material respects any one or more of the material provisions of the Agreements?

Issue 66: Should Supra Telecom be able to obtain specific performance as a remedy for BellSouth's breach of contract?

Added Issue: Should the agreement provide for punitive damages where the parties are found to have acted with malice or in an egregious manner?

Supra submitted the proposed language to BellSouth on June 15, 2001. See attached **Supra Exhibit B**.

III. UNRESOLVED ISSUES - BELLSOUTH BAD FAITH NEGOTIATIONS TACTICS.

A. BELLSOUTH'S REFUSAL TO PROVIDE SUPRA INFORMATION ABOUT ITS NETWORK

On or about April 26, 2000, Supra sent a letter to BellSouth requesting that BellSouth provide Supra with information regarding its network which Supra reasonably required in order to negotiate a new agreement with BellSouth. A true copy of this letter

is attached hereto as **Supra Exhibit C**. Furthermore, on or about August 8, 2000, Supra handed a copy of the same document request to representatives of BellSouth, asking for the responsive documents. Again, BellSouth ignored the request. Thereafter, Supra persistently requested for the responsive documents from BellSouth as could be evidenced from the following:

- (i) Supra's Motion to Dismiss dated January 26, 2001 filed in this Docket, which alleged among other things, BellSouth's bad faith negotiations tactics as evidenced in BellSouth's refusal to provide Supra information regarding its network. **See Supra Exhibit D.**
- (ii) BellSouth's Response to Supra's Motion to Dismiss; which again ignored Supra's request for information and stated that "if Supra actually had some basis for a claim to this effect, then it could bring its claim before the FCC."¹ **See Supra Exhibit E.**
- (iii) Letter dated March 2, 2001 from Supra to the FCC regarding BellSouth's intentional and willful violations of Section 251(c)(1) of the Communications Act as amended by the 1996 Act, as well as Section 51.301 of the FCC rules. **See Supra Exhibit F.** It is Supra's belief that BellSouth has intended to harm Supra by making it impossible for Supra to negotiate a new interconnection agreement on equal footing with BellSouth, and thereby force Supra into an agreement which is one-sided in favor of BellSouth. Given the parties numerous disagreements during their relationship, many of which having ended up in litigation (before the FPSC, Federal District Court, and commercial arbitrators) which resulted in favorable rulings for Supra, it is obvious now that BellSouth's

strategy is to attempt to box Supra into a one-sided agreement, so as to prevent Supra from receiving the full benefits of the Telecom Act and its progeny.

- (iv) Letter dated April 4, 2001 from Supra to BellSouth demanding for the requested information. See attached **Supra Exhibit G.**
- (v) Letter dated April 9, 2001 from BellSouth to Supra stating that BellSouth is “not certain what information [Supra is] asking BellSouth to provide.” See attached **Supra Exhibit H.**
- (vi) Letter dated April 11, 2001 from Supra to BellSouth demanding for the requested information. See attached **Supra Exhibit I.**
- (vii) Letter dated April 13, 2001 from BellSouth to Supra directing Supra to BellSouth’s website for the responsive information. See attached **Supra Exhibit J.**
- (viii) Conference call of April 24, 2001, between Supra, BellSouth and the FCC. On that call, Supra reiterated its demand for the responsive documents.
- (ix) Letter dated April 25, 2001 from Supra to the FCC regarding BellSouth’s intentional and willful violations Section 251(c)(1) of the Communications Act as amended by the 1996 Act, as well as Paragraph 155 of the FCC First Report and Order and Section 51.301 of the FCC rules. **See Supra Exhibit K.**
- (x) Letter dated May 1, 2001 from Supra to BellSouth demanding for the requested information. **See Supra Exhibit L.**
- (xi) Letter dated May 8, 2001 from Supra to BellSouth demanding for the requested information. **See Supra Exhibit M.**

¹ See BellSouth’s Response to Supra’s Motion to Dismiss dated February 6, 2001 at ¶14.

- (xii) Letter dated May 18, 2001 from BellSouth to the FCC in response to Supra's letters dated March 15, 2001 and April 25, 2001. **See Supra Exhibit N.**

BellSouth's lack of response is a violation of: (a) 47 U.S.C. § 252, (b) Paragraph 155 of the FCC First Report and Order, and (c) 47 CFR §51.301(c)(8), which provides:

If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following practices, among others, violate the duty to negotiate in good faith:

(8) Refusing to provide information necessary to reach an agreement. Such refusal includes, but is not limited to:

(i) Refusal by an incumbent LEC to furnish information about its network that a requesting telecommunications carrier reasonably requires to identify the network elements that it needs in order to serve a particular customer . . .

Perhaps, one of the reasons for BellSouth's willful and intentional refusal to provide Supra with information regarding its network is Supra's lack of bargaining power as Supra has nothing that BellSouth desires. According to the FCC in its First Report and Order (Local Competition Order):

Congress recognized that, because of the incumbent LEC's incentives and superior bargaining power, its negotiations with new entrants over the terms of such agreements would be quite different from typical commercial negotiations. **As distinct from bilateral commercial negotiation, the new entrant comes to the table with little or nothing the incumbent LEC needs or wants.** The statute addresses this problem by creating an arbitration proceeding in which the new entrant may assert certain rights, including that the incumbent's prices for unbundled network elements must be "just, reasonable and nondiscriminatory."² We adopt rules herein to implement these requirements of section 251(c)(3). ¶15 Emphasis added.

² See 47 U.S.C. § 251(c)(3)

We find that incumbent LECs have no economic incentive, independent of the incentives set forth in sections 271 and 274 of the 1996 Act, to provide potential competitors with opportunities to interconnect with and make use of the incumbent LEC's network and services. **Negotiations between incumbent LECs and new entrants are not analogous to traditional commercial negotiations in which each party owns or controls something the other party desires. Under section 251, monopoly providers are required to make available their facilities and services to requesting carriers that intend to compete directly with the incumbent LEC for its customers and its control of the local market. Therefore, although the 1996 Act requires incumbent LECs, for example, to provide interconnection and access to unbundled elements on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, incumbent LECs have strong incentives to resist such obligations. The inequality of bargaining power between incumbents and new entrants militates in favor of rules that have the effect of equalizing bargaining power in part because many new entrants seek to enter national or regional markets.** National (as opposed to state) rules more directly address these competitive circumstances. ¶55. Emphasis added.

Because of BellSouth's willful and intentional refusal to provide information about its network, Supra has been unable to identify all of the issues it seeks to raise, much less resolve a number of those which have already been identified. As a result, Supra has been severely disadvantaged in that it does not have the necessary, and required, information from which to even begin negotiations of the issues as BellSouth has made it impossible for Supra to negotiate on equal-footing with BellSouth. As explained to BellSouth, Supra seeks the responsive information in order to include such information in the parties' follow-on agreement so as to ensure **clarity and parity**. Supra wants to avoid excessive litigation which has taken place to date as a result of the lack of parity and clarity in the parties' current agreement.

Despite the fact that BellSouth refused to provide any of the requested information, Supra had agreed to an Inter Company Review Board meeting. At the first ICRB meeting on May 29, 2001. Supra again requested that BellSouth provide the

Network Information to allow the parties to include same in the pertinent portions of the Interconnection Agreement. The day of the meeting, Supra faxed BellSouth a plain language request for the template information, which could not be discussed as the BellSouth personnel claimed they had not yet seen it. BellSouth provided different reasons why it should not provide the network information at the meeting. First, BellSouth made the self-serving statement that the network information is not necessary for Supra to negotiate; second, it argued that it did not understand the document (containing the template) it is a signatory to; third, it argued that the template was not created for the purpose of negotiation; fourth, it claimed that no other CLEC ever requested that information from BellSouth³, and therefore neither should Supra.

The information requested by Supra was the subject of AT&T's negotiation with BellSouth in 1996⁴. The record shows that the failure of BellSouth to provide some of this same information to AT&T back in 1996 led to various proceedings and arbitrations before this Commission in Dockets 96-0833, 97-1140, 97-1597, 98-0604, and 98-0810 inter alia.

The arbitrated BellSouth / AT&T Interconnection agreement is weak in the technical issues of interconnection (911/E911 being just one example). A full year after the parties executed the agreement, and as a result of FPSC arbitration, a minimal set of

³ This claim is patently disingenuous and can be proven so by public records. In the negotiations between BellSouth and AT&T for an interconnection agreement during the Spring of 1996 and memorialized by documents filed with the FPSC for arbitration in Docket 96-0833, this template, and the document that contains it, was agreed to be used as a guide by the both parties representatives to the core negotiating team. This is documented in meeting minutes published in "AT&T's Documents filed under the Telecommunications Act of 1996 in docket FPSC FOF 96-0833-TP, Volume XII, Tab 291 Dated July 17, 1996"

⁴ AT&T's Documents filed under the Telecommunications Act of 1996 in docket FPSC FOF 96-0833-TP, Volume XII, Tab 291 Dated July 17, 1996.

three potential interconnection methods were finally described in an amendment to the interconnection agreement.⁵ The process of interconnecting with BellSouth's network has proven arbitrary, poorly documented, subject to change without notice and is more treacherous than even the collocation process. Indeed each time Supra has approached BellSouth on an interconnection agreement, the process and business rules had changed, and only recently have these procedures been documented.

Interestingly however, BellSouth never denied that it had the information that Supra requested, never bothered to take Supra's request to its Subject Matter Experts ("SMEs"), and did not bring a single SME to the meetings, while Supra brought its Network Engineer, fully prepared to discuss interconnection, to the meeting. Instead of providing the information, BellSouth merely offered to send a contract negotiator, not even a SME, to Supra's office in Miami to explain the proposed draft of its standard / UNE-P Agreement, filed with the FPSC in this arbitration, to Supra. Apparently BellSouth believes that its draft language document cannot speak for itself.

Supra explained that it is a logical impossibility to use the draft document, alone, to determine if omissions existed. Nor can the draft document be used to illuminate any technical position other than the ONE position that BellSouth puts forward. This prevents Supra from negotiating on an equal footing with BellSouth, and down the road may lead to network instabilities and / or increased costs for Supra customers. That was what the Increased Reliability Task Force document was intended to eliminate in the first place.

⁵ 6/10/1997 amendment to the parties interconnection agreement, further amended on 8/1/1997. Attachemnt 2, page 108.

On June 4, 2001, the parties met again for yet another Inter-Company Review Board meeting, without BellSouth having provided a single document responsive to Supra's request. BellSouth's Patrick Finlen stated that after receiving Supra's plain language explanation of the template, he now requested clarification of but three issues. Supra provided clarification of all three issues⁶. However BellSouth still tried to convince Supra that it did not need the information. After lengthy discussions, BellSouth reluctantly promised to contact its SMEs for the same network information that was requested fourteen months ago. This Review Board, which, continued on long after normal business hours, concluded with BellSouth's attorney expressing "disappointment" that Supra refused her final request to discuss some of the fifty-six (56) issues that might not depend on the network information requested by Supra.

On June 5, 2001, Supra proposed that the Parties reconvene to discuss the issues that did not require input of the information requested from BellSouth. Supra provided a list of twenty-four (24) issues that might be resolved without the network information.

To date, BellSouth has still refused to provide any of the requested network information, despite its June 4, 2001 promises to do so.

B. BELLSOUTH'S REFUSAL TO NEGOTIATE FROM THE PARTIES' CURRENT AGREEMENT

Despite repeated requests, BellSouth has willfully and intentionally ignored Supra's request to negotiate from the parties' current agreement, and instead, has unreasonably insisted to commence negotiations from its standard agreement. On or about June 7, 2000, Supra requested for the execution of an agreement, which would

⁶ The differences between the template, attached as **Exhibit O** and the plain language explanation attached as **Exhibit P** are minor enough to prompt a consideration of whether BellSouth is actually trying to obstruct

retain the exact same terms and conditions as the parties' current agreement. See attached **Supra Exhibit Q**. On or about June 8, 2000, BellSouth responded that it had proposed the agreement that it would like to execute.⁷ See attached **Supra Exhibit R**. On or about June 9, 2000, Supra again requested that the parties commence negotiations of the follow-on agreement from the current agreement. BellSouth is well aware that Supra has been operating under its current agreement, and is very familiar with the terms of such. BellSouth, in yet another attempt to put Supra at a disadvantage in the negotiation process, seeks to force Supra to negotiate from a draft agreement which Supra is unfamiliar with.

III. CONCLUSION

BellSouth has acted in a willful and intentional manner in order to harm Supra. Under the present circumstances, in light of BellSouth's bad faith negotiations, Supra requests the mediation of this Commission § 252 (a)(2) of the Communications Act of 1934, as amended by the 1996 Act (codified at 47 U.S.C § 201, *et seq.*)

In order to conduct any fruitful negotiations, BellSouth should be ordered to immediately tender information responsive to Supra's requests.

WHEREFORE, Supra respectfully requests that this Honorable Commission enter an Order:

- A. To mediate this arbitration proceeding pursuant to § 252 (a)(2) of the Communications Act of 1934, as amended by the 1996 Act (codified at 47 U.S.C § 201, *et seq.*)

the negotiation process, while outwardly trying to appear to be negotiating in good faith.

⁷ It is interesting to note that Supra never received such agreement until BellSouth filed same in its Petition for Arbitration.

- B. Ordering BellSouth to immediately tender information responsive to Supra's requests contained in its April 26, 2000 letter;
- C. Finding that BellSouth acted in Bad Faith with the intent to inflict harm on Supra;
- D. For all such further relief as is deemed equitable and just.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been served via facsimile and Federal Express upon Nancy White, Esq., BellSouth, 150 West Flagler Street, Suite 1910, Miami, Florida 33130; R. Douglas Lackey and J. Philip Carver, BellSouth, Suite 4300, 675 W. Peachtree St., NE, Atlanta, GA 30375; and Staff Counsel, Florida Public Service Commission, Division of Legal Services, 2450 Shumard Oak Boulevard, Tallahassee, Florida; this 18th day of June, 2001.

SUPRA TELCOMMUNICATIONS
& INFORMATION SYSTEMS,
INC.
2620 S.W. 27th Ave.
Miami, Florida 33133
Telephone: 305/476-4248
Facsimile: 305/443-1078

By: 

BRIAN CHAIKEN, ESQ.
Florida Bar No. 0118060

Medacier, Adenet

From: Medacier, Adenet
Sent: Tuesday, June 05, 2001 3:14 PM
To: Parkey Jordan (E-mail)
Subject: follow-on Agreement

Attached please find the issues to be discussed at the Inter-Company Review Board Meeting, proposed for Wednesday, June 6, 2001 at 4:00 p.m.



Letter to P.Jordan
ICRB.doc



Issues for ICRB.doc

Regards,

Adenet Medacier
Assistant General Counsel
2620 S.W. 27th Avenue
Miami, FL 33133
Telephone: (305) 476-4240
Facsimile: (305) 443-9516

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Medacier, Adenet

From: Medacier, Adenet
Sent: Thursday, May 24, 2001 11:11 AM
To: Parkey Jordan (E-mail)
Cc: Chaiken, Brian; Ramos, Kay; Turner, Paul
Subject: Meeting Agenda:

Attached is an agenda for the ICRB meeting. Let me know if you have any question.



AGENDA FOR THE
MAY 29TH CALL_...

Adenet Medacier
Assistant General Counsel
2620 S.W. 27th Avenue
Miami, FL 33133
Telephone: (305) 476-4240
Facsimile: (305) 443-9516

COMPOSITE
EXHIBIT A

Medacier, Adenet

From: Medacier, Adenet
Sent: Tuesday, May 15, 2001 11:49 AM
To: Parkey Jordan (E-mail)
Subject: ICRB

Ms. Jordan:

Please contact me to schedule an ICRB meeting regarding the follow-on agreement. Supra's representatives are available next week. Let me know after you make arrangements with BST's representatives.

AM

Adenet Medacier
Assistant General Counsel
2620 S.W. 27th Avenue
Miami, FL 33133
Telephone: (305) 476-4240
Facsimile: (305) 443-9516

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Meeting Agenda:

I. xDSL:

- (1) BST's clarification of Supra's LSR for the conversion of BellSouth's end-users with xDSL service on their customer service record .
- (2) BST is advising potential Supra customers that they will lose their xDSL service and/or BellSouth will increase xDSL service rate if they switch to Supra.
- (3) Supra's ability to "switch-as-is" customers with BellSouth's xDSL Service..

Applicable law and provisions:

- a) Table 1 of Revised 7/25/98 Attachment of Interconnection Agreement.
- b) Sections 251, 252 and 272 of the TA of 1996
- c) *AT&T v. Iowa Utilities Board*, 525 U.S. 366, 394 (1999)
- d) Attachment 4, § 4.5: "When [Supra] orders Elements or Combinations that are currently interconnected and functional, such Elements and Combinations will remain interconnected and functional without any disconnection or **disruption of functionality**. This shall be known as Contiguous Network Interconnection of network elements."
- e) Deployment of Wireline Services Offering Advanced Telecommunications Capability CC Docket 98-147, Memorandum Opinion and Order, and Notice of Proposed Rulemaking (adopted August 6, 1998)
- f) Deployment of Wireline Services Offering Advanced Telecommunications Capability. CC Docket 98-147, Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98 (adopted November 18, 1999)

II. INSIDE WIRE MAINTENANCE

- (1) Converted customers who do not purchase inside wire maintenance plans are being unlawfully disconnected by BellSouth on the account that Supra ordered disconnection.

Applicable Law and provision:

- a) *AT&T v. Iowa Utilities Board*, 525 U.S. 366, 394 (1999)
- b) Section 4.5 of Attachment 4 of Agreement: "When [Supra] orders Elements or Combinations that are currently interconnected and functional, such Elements and Combinations will remain interconnected and functional without any disconnection or disruption of functionality. This shall be known as Contiguous Network Interconnection of network elements."

- c) Implementation of the Local Competition Provisions of the Telecommunications Act of 1996. CC Docket No. 96-98, First Report and Order (adopted August 1, 1996)

III. **CLARIFICATIONS.** An inordinate amount of LSRs are being clarified by BellSouth's systems. These clarifications are not caused by Supra, and are being clarified for reasons previously unseen.

Applicable Law and Provisions

- a) Parity. Section 30.10.3 of the Interconnection Agreement. "Each Network Element provided by BellSouth to AT&T shall be at least equal in the quality of design, performance, features, functions and other characteristics, including but not limited to levels and types of redundant equipment and facilities for power, diversity and security, that BellSouth provides in the BellSouth network to itself, BellSouth's own Customers, to a BellSouth affiliate or to any other entity for the same Network Element."

- b) Sections 251, 252 and 272 of the TA of 1996

- c) *AT&T v. Iowa Utilities Board*, 525 U.S. 366, 394 (1999)

IV. **FOLLOW-ON AGREEMENT.**

All issues.

Supra's letter dated January 30, 2001 and BellSouth's response of February 22, 2001.

Attachement to Letter of June 5, 2001

- Issue 1:** Should the Parties be required to submit disputes under this Agreement to an Alternative Dispute Resolution Process (Commercial Arbitration) or alternatively should the parties be allowed to resolve disputes before any Court of competent jurisdiction and should at least mandatory mediation (informal dispute resolution) be required prior to bringing a petition?
- Issue 2:** What is the scope of the ability to use the other party's Confidential Information that is obtained pursuant to this Interconnection Agreement?
- Issue 3:** What is the appropriate amount of general liability insurance coverage for the Parties to maintain under the Interconnection Agreement?
- Issue 4:** Should the Interconnection Agreement contain language to the effect that it will not be filed with the Florida Public Service Commission for approval prior to an ALEC obtaining ALEC certification from the Florida Public Service Commission?
- Issue 7 and 8:** Should Supra be required to pay the end user line charged requested by BellSouth?
- Issue 9:** What should be the definition of "ALEC"?
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- Issue 23:** Should BellSouth be directed to perform, upon request, the functions necessary to combine unbundled network elements that are ordinarily combined in its network?
- Issue 24:** Should BellSouth be required to combine network elements that are not ordinarily combined in its network?
- Issue 35:** Is conducting a statewide investigation of criminal history records for each Supra Telecom employee or agent being considered to work on a BellSouth premises as security measure that BellSouth may impose on Supra Telecom?
- Issue 39:** Should BellSouth provide Supra Telecom access to EDI interfaces Which have already been created as a result of BellSouth working with other ALECs?
- Issue 41:** Should BellSouth be required to continue providing Supra Telecom the right to audits BellSouth's books and records in order to confirm the accuracy of BellSouth's bills?
- Issue 42:** What is the proper time frame for either party to render bills for overdue charges?
- Issue 45:** Should BellSouth be required to permit Supra Telecom to substitute more favorable terms and conditions obtained by a third party through negotiation or otherwise, effective as of the date of Supra Telecom's request. Should BellSouth be required to post on its web-site all BellSouth interconnection agreements with third parties within fifteen days of the filing of such agreement with the FPSC?
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Issue 63: Should BellSouth be permitted to disconnect service to Supra Telecom (or a Supra Telecom customer) while a payment dispute is pending?

Issue 64: Should the Interconnection Agreement contain a provision establishing that BellSouth will provide services in any combination requested by Supra Telecom?

Issue 65: Should the parties be liable in damages, without a liability cap, to one another for their failure to honor in one or more material respects any one or more of the material provisions of the Agreements?

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Added Issue: Should the agreement provide for punitive damages where the parties are found to have acted with malice or in an egregious manner?

retain the exact same terms and conditions as the parties' current agreement. See attached **Supra Exhibit Q**. On or about June 8, 2000, BellSouth responded that it had proposed the agreement that it would like to execute.⁷ See attached **Supra Exhibit R**. On or about June 9, 2000, Supra again requested that the parties commence negotiations of the follow-on agreement from the current agreement. BellSouth is well aware that Supra has been operating under its current agreement, and is very familiar with the terms of such. BellSouth, in yet another attempt to put Supra at a disadvantage in the negotiation process, seeks to force Supra to negotiate from a draft agreement which Supra is unfamiliar with.

III. CONCLUSION

BellSouth has acted in a willful and intentional manner in order to harm Supra. Under the present circumstances, in light of BellSouth's bad faith negotiations, Supra requests the mediation of this Commission § 252 (a)(2) of the Communications Act of 1934, as amended by the 1996 Act (codified at 47 U.S.C § 201, *et seq.*)

In order to conduct any fruitful negotiations, BellSouth should be ordered to immediately tender information responsive to Supra's requests.

WHEREFORE, Supra respectfully requests that this Honorable Commission enter an Order:

- A. To mediate this arbitration proceeding pursuant to § 252 (a)(2) of the Communications Act of 1934, as amended by the 1996 Act (codified at 47 U.S.C § 201, *et seq.*)

the negotiation process, while outwardly trying to appear to be negotiating in good faith.

⁷ It is interesting to note that Supra never received such agreement until BellSouth filed same in its Petition for Arbitration.

- B. Ordering BellSouth to immediately tender information responsive to Supra's requests contained in its April 26, 2000 letter;
- C. Finding that BellSouth acted in Bad Faith with the intent to inflict harm on Supra;
- D. For all such further relief as is deemed equitable and just.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been served via facsimile and Federal Express upon Nancy White, Esq., BellSouth, 150 West Flagler Street, Suite 1910, Miami, Florida 33130; R. Douglas Lackey and J. Philip Carver, BellSouth, Suite 4300, 675 W. Peachtree St., NE, Atlanta, GA 30375; and Staff Counsel, Florida Public Service Commission, Division of Legal Services, 2450 Shumard Oak Boulevard, Tallahassee, Florida; this 18th day of June, 2001.

SUPRA TELCOMMUNICATIONS
& INFORMATION SYSTEMS,
INC.

2620 S.W. 27th Ave.

Miami, Florida 33133

Telephone: 305/476-4248

Facsimile: 305/443-1078

By: 

BRIAN CHAIKEN, ESQ.

Florida Bar No. 0118060

AGREEMENT

between ~~between~~

BellSouth Telecommunications, Inc.

and ~~AT&T Communications of the Southern States,~~ And Supra Telecommunications
and Information Systems, Inc.

Effective Date: June 10, 1997 _____

FLORIDA

EXHIBIT 3

FL6/10/97

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AGREEMENT

PREFACE

This Agreement, which shall become effective as of the ~~10th day of June, 1997,~~ _____, is entered into by and between ~~AT&T Communications of the Southern States, Inc., a New York~~ Supra Telecommunications and Information Systems, Inc., a Florida Corporation, having an office at ~~4200 Peachtree Street, N.E., Atlanta, Georgia 30309,~~ 2620 S.W. 27th Avenue, Miami, FL 33133, on behalf of itself, its successors and assigns, (individually and collectively "~~AT&T~~"; "Supra"), and ~~BellSouth Telecommunications, Inc. ("BellSouth")~~, a Georgia corporation, on behalf of itself, its successors and assigns, having an office at 675 West Peachtree Street, Atlanta, Georgia 30375.

RECITALS

WHEREAS, The Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996; and

WHEREAS, the Act places certain duties and obligations upon, and grants certain rights to Telecommunications Carriers; and

WHEREAS, BellSouth is an Incumbent Local Exchange Carrier; and

WHEREAS, BellSouth is willing to provide Telecommunications Services for resale, Interconnection, Unbundled Network Elements and Ancillary Functions which include, but are not limited to, access to poles, ducts, conduits and rights-of-way, and collocation of equipment at BellSouth's Premises on the terms and subject to the conditions of this Agreement; ~~and~~

WHEREAS, ~~AT&T~~ Supra is a Telecommunications Carrier and has requested that BellSouth negotiate an Agreement with ~~AT&T~~ Supra for the provision of Interconnection, Unbundled Network Elements and Combinations, and Ancillary Functions as well as Telecommunications Services for resale, pursuant to the Act and in conformance with BellSouth's duties under the ~~Act,~~ Act. (ISSUE 9) and

WHEREAS, the Parties intend the rates, terms and conditions of this Agreement, and their performance of obligations thereunder, to comply with the Act, as amended by the Telecommunications Act of 1996, the Rules of the Federal Communications Commission ("FCC"), and the Orders, rules and regulations of the Florida Public Service Commission ("Commission")

NOW, THEREFORE, in consideration of the promises and the mutual covenants of this Agreement, ~~AT&T~~ Supra and BellSouth hereby agree as follows:

DEFINITIONS and ACRONYMS

For purposes of this Agreement, certain terms have been defined in Attachment 11 and elsewhere in this Agreement to encompass meanings that may differ from, or be in addition to, the normal connotation of the defined word. Unless the context clearly indicates otherwise, any term defined or used in the singular shall include the plural. The words "shall" and "will" are used interchangeably throughout this Agreement and the use of either connotes a mandatory requirement. The use of one or the other shall not mean a different degree of right or obligation for either Party. A defined word intended to convey its special meaning is capitalized when used. Other terms that are ~~capitalized, and capitalized, and~~ -not defined in this Agreement, shall have the meaning in the Act, meanings ascribed to them in the Act and the FCC Rules and Regulations. For convenience of reference, Attachment 10 provides a list of acronyms used throughout this Agreement.

GENERAL TERMS AND CONDITIONS

1. Provision of Local Service and Unbundled Network Elements

This Agreement sets forth the terms, conditions and prices under which BellSouth agrees to provide (a) Telecommunications Service that BellSouth, its affiliates and or subsidiaries currently provides, or may offer hereafter for resale along with the Support Functions and Service Functions set forth in this Agreement (hereinafter collectively referred to as "Local Services") and (b) certain unbundled Network Elements, or combinations of such Network Elements ("Combinations") and (c) Ancillary Functions to AT&T^{Supra} (Local Services, Network Elements, Combinations, and Ancillary Functions, collectively referred to as "Services and Elements"). This Agreement also sets forth the terms and conditions for the interconnection of AT&T's^{Supra} network to BellSouth's network and the mutual and reciprocal compensation for the transport and termination of telecommunications. BellSouth may fulfill the requirements imposed upon it by this Agreement by itself or, in the case of directory listings for white pages may cause BellSouth Advertising and Publishing Company ("BAPCO") to take such actions to fulfill BellSouth's responsibilities. This Agreement includes Parts I through IV, and their Attachments 1 - 15 and all accompanying Appendices and Exhibits. Unless otherwise provided in this Agreement, BellSouth will perform all of its obligations hereunder throughout its entire service area. The Parties further agree to comply with all provisions of the Act, including Section 271(e) (1).

- 1.A The Services and Elements provided pursuant to this Agreement may be connected to other Services and Elements provided by BellSouth or to any Services and Elements provided by AT&T^{Supra} itself or by any other vendor. AT&T^{Supra} may purchase unbundled Network Elements for the purpose of

combining Network Elements in any manner that is technically feasible, including recreating existing BellSouth services. Upon Supra's request, BellSouth will combine such elements in any manner that is technically feasible. (ISSUE 23)

Currently combined Network Elements are defined as elements that BellSouth combines in its own network in order to provide its tariffed Telecommunications services. Supra may order Combinations of elements that BellSouth currently combines, even if the particular elements being ordered are not actually, physically connected at the time the order is placed.

1.B Unless the Parties agree otherwise, the Network Element(s) requested shall be priced in accordance with Section 252(d)(1) of the Act.

1.1 Subject to the requirements of this Agreement, AT&T^{Supra} may, at any time add, relocate or modify any Services and Elements purchased hereunder. Requests for additions or other changes shall be handled pursuant to the Bona Fide Request Process provided in Attachment 14. Terminations of any Services or Elements shall be handled pursuant to Section 3.1 of the General Terms and Conditions of this Agreement.

1.2 1.2—BellSouth shall not discontinue any Network Element, Ancillary Function, or Combination provided hereunder without the prior written consent of AT&T^{Supra}. Such consent shall not be unreasonably withheld. BellSouth shall not discontinue any Local Service provided hereunder unless BellSouth provides AT&T^{Supra} prior written notice of intent to discontinue any such service. BellSouth agrees to make any such service available to AT&T^{Supra} for resale to AT&T's^{Supra's} Customers who are subscribers of such services from AT&T^{Supra} until the date BellSouth discontinues any such service for BellSouth's customers. BellSouth also agrees to adopt a reasonable, nondiscriminatory transition schedule for BellSouth or AT&T^{Supra} Customers who may be purchasing any such service.

4.31.4 This Agreement may be amended from time to time as mutually agreed in writing between the Parties. ~~The Parties agree that neither Party will take any action to proceed, nor shall either have any obligation to proceed on a requested change unless and until a modification to this Agreement is signed by authorized representatives of each Party.~~

2. Term of Agreement

2.1 When executed by authorized representatives of BellSouth and AT&T^{Supra}, this Agreement shall become effective as of the Effective Date stated above, and shall expire three (3) years from the Effective Date unless terminated in

accordance with the provisions of Section 3.2 of the General Terms and Conditions.

- 2.2 No later than one hundred and eighty (180) days prior to the expiration of this Agreement, the Parties agree to commence negotiations with regard to the terms, conditions, and prices of a follow-on agreement for the provision of Services and Elements to be effective on or before the expiration date of this Agreement ("Follow-on Agreement"). The Parties further agree that any such Follow-on Agreement shall be for a term of no less than three (3) years unless the Parties agree otherwise. Absent the receipt by one Party of written notice from the other Party at least one hundred twenty (180) days prior to the expiration of the Term to the effect that such Party intends to terminate this Agreement, this Agreement shall automatically renew and shall remain in full force and effect on and after the expiration of the Term.
- 2.3 If, within one hundred and thirty-five (135) days of commencing the negotiation referenced to Section 2.2, above, the Parties are unable to satisfactorily negotiate new terms, conditions and prices, either Party may petition the Commission to establish an appropriate Follow-on Agreement pursuant to 47 U.S.C. § 252. The Parties agree that in such event they shall encourage the Commission to issue its order regarding such Follow-on Agreement no later than the expiration date of this Agreement. The Parties further agree that in the event the Commission does not issue its order by the expiration date of this Agreement, or if the Parties continue beyond the expiration date of this Agreement to negotiate without Commission intervention, the terms, conditions and prices ultimately ordered by the Commission, or negotiated by the Parties, will be effective, retroactive to the day following the expiration date of this ~~Agreement~~ Agreement. Until the Follow-on Agreement becomes effective, BellSouth shall provide Services and Elements pursuant to the terms, conditions and prices of this Agreement that are then in effect. Prior to filing a Petition pursuant to this Section 2.3, the Parties agree to utilize the informal dispute resolution process provided in Section 3 of Attachment 1.

3. Termination of Agreement; Transitional Support

- 3.1 AT&T^{Supra} may terminate any Local Service(s), Network Element(s), Combination(s), or Ancillary Function(s) provided under this Agreement upon thirty (30) days written notice to BellSouth unless a different notice period or different conditions are specified for termination of such Local Services(s), Network Element(s), or Combination(s) in this Agreement or pursuant to any applicable tariff, in which event such specific period or conditions shall apply, provided such period or condition is reasonable, nondiscriminatory and narrowly tailored. Where there is no such different notice period or different condition specified, AT&T's^{Supra} liability shall be limited to payment of the

amounts due for any terminated Local Service(s), Network Element(s), Combination(s) or Ancillary Service provided up to and including the date of termination. Notwithstanding the foregoing, the provisions of section 10, infra, shall still apply. Upon termination, BellSouth agrees to cooperate in an orderly and efficient transition to AT&TSupra or another vendor such that the level and quality of the Services and Elements is not degraded and to exercise its best efforts to effect an orderly and efficient transition. AT&TSupra agrees that it may not terminate the entire Agreement pursuant to this section.

- 3.2 If a Party is in breach of a material term or condition of this Agreement ("Defaulting Party"), the other Party shall provide written notice of such breach to the Defaulting Party. The Defaulting Party shall ~~have ten~~ have ten (10) business days from receipt of notice to cure the breach. If the breach is not cured, the Parties shall follow the dispute resolution procedure of ~~Section of~~ Section 16 of the General Terms and Conditions and Attachment 1. If the Arbitrator determines that a breach has occurred and the Defaulting Party fails to comply with the decision of the Arbitrator within the time period provided by the Arbitrator (or a period of thirty (30) days if no time period is provided for in the Arbitrator's order), this Agreement may be terminated in whole or part by the other Party upon sixty (60) days prior written notice.

4. Good Faith Performance

In the performance of their obligations under this Agreement, the Parties shall act in good faith and consistently with the intent of the Act and FCC Rules and Regulations. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement, (including, without limitation, the obligation of the Parties to further negotiate the resolution of new or open issues under this Agreement) such action shall not be unreasonably delayed, withheld or conditioned.

5. Option to Obtain Local Services, Network Elements and Combinations Under Other Agreements

If as a result of any proceeding or filing before any Court, State Commission, or the Federal Communications Commission, voluntary agreement or arbitration proceeding pursuant to the Act or pursuant to any applicable state law, BellSouth becomes obligated to provide Services and Elements, whether or not presently covered by this Agreement, to a third Party at ~~rates or on terms~~ and rates, terms, and/or conditions more favorable to such third Party than the applicable ~~provisions~~ rates, terms, and/or conditions of this Agreement, AT&TSupra shall have the option to substitute such more favorable rates, terms, and/or conditions for the relevant ~~provisions~~ rates, terms, and/or conditions of this Agreement which shall apply to the same States as such other Party, and such substituted rates, ~~terms or terms, and/or conditions~~ shall be deemed to have been effective under this Agreement as of the effective

date thereof. BellSouth shall provide to AT&T^{Supra} any BellSouth agreement between BellSouth and any third Party within fifteen (15) days of the filing of such agreement with any state Commission.

5.1 Effective Date of Substituted Services, Rates and/or Elements.

The effective dates for the substituted Services, Rates and/or Elements shall be the date of promulgation in the case of an order, a statute or a rule, or the time of execution in the case of an agreement. Accordingly, BellSouth shall make the appropriate adjustments and appropriate accounting credits or debits no later than the next monthly billing period, to the extent that provisioning of the substituted services or elements occur at least five days prior to the next monthly billing period. Otherwise, it will apply to the following billing period.
(ISSUE 45)

6. Responsibility of Each Party

Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at Work Locations or, (ii) Waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the Work Locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (i) its own acts and performance of all obligations imposed by Applicable Law in connection with its activities, legal status and property, real or personal and, (ii) the acts of its own affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

7. Governmental Compliance

7.1 AT&T^{Supra} and BellSouth each shall comply at its own expense with all Applicable Law that relates to (i) its obligations under or activities in connection with this Agreement or (ii) its activities undertaken at, in connection with or relating to Work Locations. AT&T^{Supra} and BellSouth each agree to indemnify, defend (at the other Party's request) and save harmless the other,

each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) its failure or the failure of its contractors or agents to so comply or (ii) any activity, duty or status of it or its contractors or agents that triggers any legal obligation to investigate or remediate environmental contamination. BellSouth, at its own expense, will be solely responsible for obtaining from governmental authorities, building owners, other carriers, and any other persons or entities, all rights and privileges (including, but not limited to, space and power), which are necessary for BellSouth to provide the Services and Elements pursuant to this Agreement. AT&T, Supra, at its own expense, will be solely responsible for obtaining from governmental authorities, building owners, other carriers, and any other persons or entities, all rights and privileges which are AT&T's Supra's obligation as a provider of telecommunications services to its Customers pursuant to this Agreement.

7.2 7.2—BellSouth shall accept orders for Service and Elements in accordance with the Federal Communications Commission Rules or State Commission Rules.

7.3 Compliance with the Communications Law Enforcement Act of 1994 ("CALEA"). Each party represents and warrants that any equipment, facilities or services provided to the other party under this agreement comply with CALEA, to the extent that CALEA is effective. Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such non-compliance and shall at the non-compliant parties sole cost and expense, modify or replace any equipment, facilities or services provided to the other Party under this agreement to ensure that such equipment, facilities and services fully comply with CALEA.

8. Responsibility For Environmental Contamination

8.1 AT&T Supra shall in no event be liable to BellSouth for any costs whatsoever resulting from the presence or Release of any Environmental Hazard or Hazardous Materials that AT&T Supra did not introduce to the affected Work Location so long as AT&T's Supra's actions do not cause or substantially contribute to the release of any Environmental Hazard or Hazardous Materials. BellSouth shall indemnify, defend (at AT&T's Supra's request) ~~and~~ and hold harmless AT&T, Supra, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any Environmental Hazard or Hazardous Materials that BellSouth, its contractors or agents introduce to the Work Locations or (ii) the presence or Release of any Environmental Hazard or Hazardous Materials for

which BellSouth is responsible under Applicable Law, to the extent the release of any Environmental Hazard or Hazardous Materials is not caused or substantially contributed to by AT&T's Supra's actions.

- 8.2 BellSouth shall in no event be liable to AT&T Supra for any costs whatsoever resulting from the presence or Release of any Environmental Hazard or Hazardous Materials that BellSouth did not introduce to the affected Work Location, so long as BellSouth's actions do not cause or substantially contribute to the release of any Environmental Hazards or Hazardous Materials. AT&T Supra shall indemnify, defend (at BellSouth's request) and hold harmless BellSouth, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any Environmental Hazard or Hazardous Materials that AT&T, Supra, its contractors or agents introduce to the Work Locations or (ii) the presence or Release of any Environmental Hazard or Hazardous Materials for which AT&T Supra is responsible under Applicable Law, to the extent the release of any Environmental Hazard or Hazardous Materials is not caused or substantially contributed to by BellSouth's actions.

9. Regulatory Matters

- 9.1 BellSouth shall be responsible for obtaining and keeping in effect all Federal Communications Commission, State Commissions, franchise authority and other regulatory approvals that may be required in connection with the performance of its obligations under this Agreement. AT&T Supra shall be responsible for obtaining and keeping in effect all Federal Communications Commission, state regulatory Commission, franchise authority and other regulatory approvals that may be required in connection with its offering of services to AT&T Supra Customers contemplated by this Agreement. AT&T Supra shall reasonably cooperate with BellSouth in obtaining and maintaining any required approvals for which BellSouth is responsible, and BellSouth shall reasonably cooperate with AT&T Supra in obtaining and maintaining any required approvals for which AT&T Supra is responsible.
- 9.2 In the event that BellSouth is required by any governmental authority to file a tariff or make another similar filing ("Filing") in order to implement this Agreement, BellSouth shall (i) consult with AT&T Supra reasonably in advance of such Filing about the form and substance of such Filing, (ii) provide to AT&T Supra its proposed tariff and obtain AT&T's Supra's agreement on the form and substance of such Filing, and (iii) take all steps reasonably necessary to ensure that such Filing imposes obligations upon BellSouth that are no less favorable than those provided in this Agreement and preserves for AT&T Supra the full benefit of the rights otherwise provided in this Agreement. In no event shall BellSouth file any tariff to implement this Agreement that purports to govern Services and Elements that is inconsistent with the rates and other

terms and conditions set forth in this Agreement unless such rate or other terms and conditions are more favorable than those set forth in this Agreement.

- 9.3 In the event that any ~~final and nonappealable~~ legally effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of AT&TSupra or BellSouth to perform any material terms of this Agreement, AT&TSupra or BellSouth may, on thirty (30) days' written notice (delivered not later than thirty (30) days following the date on which such action has become legally binding and has otherwise become ~~final and nonappealable~~) legally effective) require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Alternative Dispute Resolution procedures set forth in Attachment 1.

10. Liability and Indemnity

- 10.1 ~~Liabilities of BellSouth - Unless expressly stated otherwise in this Agreement, the liability of BellSouth to AT&TSupra during any Contract Year resulting from any and all causes shall not exceed the amount due and owing by AT&TSupra to BellSouth during the Contract Year in which such cause arises or accrues.~~
- 10.2 ~~Liabilities of AT&TSupra - Unless expressly stated otherwise in this Agreement, the liability of AT&TSupra to BellSouth during any Contract Year resulting from any and all causes shall not exceed the amount due and owing by AT&TSupra to BellSouth during the Contract Year in which such cause arises or accrues.~~
- 10.3 Each party shall, to the greatest extent permitted by Applicable Law, include in its local switched service tariff (if it files one in a particular State) or in any State where it does not file a local service tariff, in an appropriate contract with its customers that relates to the Services and Elements provided under this Agreement, a limitation of liability (i) that covers the other Party to the same extent the first Party covers itself and (ii) that limits the amount of damages a customer may recover to the amount charged the applicable customer for the service that gave rise to such loss.
- 10.4 ~~**10.4—No Consequential Damages - NEITHER AT&TSupra NOR BELLSOUTH SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTIES), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF**~~

~~THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT. EACH PARTY HEREBY RELEASES THE OTHER PARTY AND SUCH OTHER PARTY'S SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY SUCH CLAIM. NOTHING CONTAINED IN THIS SECTION 10 SHALL LIMIT BELLSOUTH'S OR AT&T'S^{Supra}'S LIABILITY TO THE OTHER FOR (i) WILLFUL OR INTENTIONAL MISCONDUCT (INCLUDING GROSS NEGLIGENCE); (ii) BODILY INJURY, DEATH OR DAMAGE TO TANGIBLE REAL OR TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY BELLSOUTH'S OR AT&T'S^{Supra}'S NEGLIGENT ACT OR OMISSION OR THAT OF THEIR RESPECTIVE AGENTS, SUBCONTRACTORS OR EMPLOYEES, NOR SHALL ANYTHING CONTAINED IN THIS SECTION 10 LIMIT THE PARTIES' INDEMNIFICATION OBLIGATIONS AS SPECIFIED HEREIN.~~

10.4 **Consequential Damages.**(65, 66 and added issue) NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PROVISION OF SERVICE HEREUNDER. **NOTWITHSTANDING THE FOREGOING LIMITATION, A PARTY'S LIABILITY SHALL NOT BE LIMITED BY THE PROVISIONS OF THIS SECTION 10 IN THE EVENT OF ITS WILLFUL OR INTENTIONAL MISCONDUCT, INCLUDING GROSS NEGLIGENCE, OR ITS REPEATED BREACH OF ANY ONE OR MORE OF ITS MATERIAL OBLIGATIONS UNDER THIS AGREEMENT. A PARTY'S LIABILITY SHALL NOT BE LIMITED TO ITS INDEMNIFICATION OBLIGATIONS.**

10.4.1 Nothing in this agreement shall prevent any party from obtaining specific performance of any term, rate or condition contained in this Agreement.

10.4.2 Should either party be found to have acted with actual or legal malice, intent to harm the other party or in an otherwise egregious manner, the other party may recover punitive damages.

10.5 Obligation to Indemnify - Each Party shall, and hereby agrees to, defend at the other's request, indemnify and hold harmless the other Party and each of its officers, directors, employees and agents (each, an "Indemnitee") against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated, including without limitation all reasonable costs and expenses incurred (legal, accounting or otherwise) (collectively, "Damages") arising out of, resulting from or based upon any pending or threatened claim, action, proceeding or suit by any third Party (a "Claim") (i) alleging any breach of any representation, warranty or covenant made by such indemnifying Party (the "Indemnifying Party") in this Agreement, (ii) based upon injuries or damage to

any person or property or the environment arising out of or in connection with this Agreement that are the result of the Indemnifying Party's actions, breach of Applicable Law, or status of its employees, agents and subcontractors, or (iii) for actual or alleged infringement of any patent, copyright, trademark, service mark, trade name, trade dress, trade secret or any other intellectual property right, now known or later developed (referred to as "Intellectual Property Rights") to the extent that such claim or action arises from AT&T or AT&T's Supra or Supra's Customer's use of the Services and Elements provided under this Agreement.

10.5.1 BellSouth Indemnification. BellSouth will defend Supra against claims of infringement arising solely from the use by Supra of Services and Elements and will indemnify Supra for any damages awarded based solely on such claims in accordance with Section 11.4 of this Agreement.

For purposes of Section 11.4 of this Agreement, BellSouth's obligation to indemnify Supra shall include the obligation to indemnify and hold Supra harmless from and against any loss, cost, expense or liability arising out of a claim that Supra's use, pursuant to the terms of this Agreement, of BellSouth's facilities, equipment or software infringes the intellectual property rights of a third party. Should any such facilities, equipment or software, or any portion thereof, provided by BellSouth hereunder become, or, in BellSouth's reasonable opinion, be likely to become the subject of a claim of infringement, or should BellSouth's use thereof be finally enjoined, then BellSouth shall, at its expense, after consultation with Supra, (i) procure for Supra the right to continue using such facilities, equipment or software or portion thereof; or (ii) replace or modify such facilities, equipment or software or portion thereof to make it non-infringing, provided, however, that such replacement or modification shall be functionally equivalent to the facilities, equipment or software or portion thereof that is replaced or modified.

Supra Indemnification. Supra (if and only to the extent Supra provides BellSouth access to its facilities and equipment, including software) will defend BellSouth against claims of infringement arising solely from the use by BellSouth of Supra facilities or equipment, including software, and to the extent BellSouth uses Supra facilities or equipment, including software, and will indemnify BellSouth for any damages awarded based solely on such claims in accordance with Section 11.5 of this Agreement.

For purposes of Section 11.5 of this Agreement, Supra's obligation to indemnify BellSouth shall include the obligation to indemnify and hold BellSouth harmless from and against any loss, cost, expense or liability arising out of a claim that BellSouth's use, pursuant to the terms of this Agreement, of Supra facilities or equipment, including software, infringes the intellectual property rights of a third party. Should any such facilities or equipment, including software, or any portion thereof, provided by Supra hereunder

become, or, in Supra's reasonable opinion, be likely to become the subject of a claim of infringement, or should Supra's use thereof be finally enjoined, then Supra shall, at its expense, after consultation with BellSouth, (i) procure for BellSouth the right to continue using such facilities, equipment or software or portion thereof; or (ii) replace or modify such facilities, equipment or software or portion thereof to make it non-infringing, provided, however, that such replacement or modification shall be functionally equivalent to the facilities, equipment or software or portion thereof that is replaced or modified.

In the event that the provisions of Section 11.4.1 or Section 11.5.1 of this Agreement are unreasonable for the Indemnifying Party to perform, then the Indemnified Party shall have the right, in its sole discretion, to waive its indemnification rights under either Section 11.4 or Section 11.5 of this Agreement or to terminate the portion of the Agreement, upon thirty (30) days written notice, solely with respect to the facilities or equipment, including software, provided through the use of the infringing facilities or equipment, including software.

The Party providing access to its facilities or equipment, including software, will inform the other Party of any pending or threatened intellectual property claims of which it is aware and will provide to the other Party periodic and timely updates of such notification, as appropriate, so that the other Party receives maximum notice of any intellectual property risks that it may want to address.

In no event shall either Party be responsible for obtaining any license or right to use agreement associated with any facilities or equipment, including software, by either Party.

- 10.6** **Obligation to Defend; Notice; Cooperation** - Whenever a Claim shall arise for indemnification under this Section 10, the relevant Indemnitee, as appropriate, shall promptly notify the Indemnifying Party and request the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such Claim. The Indemnifying Party shall have the right to defend against such liability or assertion in which event the Indemnifying Party shall give written notice to the Indemnitee of acceptance of the defense of such Claim and the identity of counsel selected by the Indemnifying Party. Except as set forth below, such notice to the relevant Indemnitee shall give the Indemnifying Party full authority to defend, adjust, compromise or settle such Claim with respect to which such notice shall have been given, except to the extent that any compromise or settlement shall prejudice the Intellectual Property Rights of the relevant Indemnitees. The Indemnifying Party shall consult with the relevant Indemnitee prior to any

compromise or settlement that would affect the Intellectual Property Rights or other rights of any Indemnitee, and the relevant Indemnitee shall have the right to refuse such compromise or settlement and, at the refusing Party's or refusing Parties' cost, to take over such defense, provided that in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the relevant Indemnitee against, any cost or liability in excess of such refused compromise or settlement. With respect to any defense accepted by the Indemnifying Party, the relevant Indemnitee shall be entitled to participate with the Indemnifying Party in such defense if the Claim requests equitable relief or other relief that could affect the rights of the Indemnitee and also shall be entitled to employ separate counsel for such defense at such Indemnitee's expense. In the event the Indemnifying Party does not accept the defense of any indemnified Claim as provided above, the relevant Indemnitee shall have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such Claim and the relevant records of each Party shall be available to the other Party with respect to any such defense.

11. Audits and Inspections

- 11.1 For carrier billing purposes, the Parties have agreed pursuant to Section 12 of Attachment 6, to create a process for pre-bill certification. Until such time as that process is in place, the audit process provided in Section 11.1 shall apply.
- 11.1.1 Subject to BellSouth's reasonable security requirements and except as may be otherwise specifically provided in this Agreement, AT&T^{Supra} may audit BellSouth's books, records and other documents once in each Contract Year for the purpose of evaluating the accuracy of BellSouth's billing and ~~invoicing~~. AT&T^{invoicing and performance reports}. Supra may employ other persons or firms for this purpose. Such audit shall take place at a time and place agreed on by the Parties no later than thirty (30) days after notice thereof to BellSouth. The parties agree to perform the audit in accordance with Generally Accepted Auditing Standards. (ISSUE 41)
- 11.1.2 BellSouth shall promptly correct any billing error that is revealed in an audit, including making refund of any overpayment by AT&T^{Supra} in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results. Any Disputes concerning audit results shall be resolved pursuant to the Alternate Dispute Resolution procedures described in Section 16 of the General Terms and Conditions and Attachment 1.

- 11.1.3 BellSouth shall cooperate fully in any such audit, providing reasonable access to any and all appropriate BellSouth employees and books, records and other documents reasonably necessary to assess the accuracy of BellSouth's bills and performance reports.
- 11.1.4 AT&T^{Supra} may audit BellSouth's books, records and documents more than once during any Contract Year if the previous audit found previously uncorrected net variances or errors in invoices in BellSouth's favor with an aggregate value of at least two percent (2%) of the amounts payable by AT&T^{Supra} for Services and Elements or Combinations provided during the period covered by the audit.
- 11.1.5 Audits shall be at AT&T's^{Supra} expense, subject to reimbursement by BellSouth in the event that an audit finds an adjustment in the charges or in any invoice paid or payable by AT&T^{Supra} hereunder by an amount that is, on an annualized basis, greater than two percent (2%) of the aggregate charges for the Services and Elements during the period covered by the audit.
- 11.1.6 Upon (i) the discovery by BellSouth of overcharges not previously reimbursed to AT&T^{Supra} or (ii) the resolution of disputed audits, BellSouth shall promptly reimburse AT&T^{Supra} the amount of any overpayment times the highest interest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily for the number of days from the date of overpayment to and including the date that payment is actually made. In no event, however, shall interest be assessed on any previously assessed or accrued late payment charges.
- 11.2 Subject to reasonable security requirements, either Party may audit the books, records and other documents of the other for the purpose of evaluating usage pertaining to transport and termination of local traffic. Where such usage data is being transmitted through CABS, the audit shall be conducted in accordance with CABS or other applicable requirements approved by the appropriate State Commission. If data is not being transferred via CABS, either Party may request an audit for such purpose once each Contract Year. Either Party may employ other persons or firms for this purpose. Any such audit shall take place no later than thirty (30) days after notice thereof to the other Party.
- 11.2.1 Either Party shall promptly correct any reported usage error that is revealed in an audit, including making payment of any underpayment after the Parties have agreed upon the accuracy of the audit results. Any Disputes concerning audit results shall be resolved pursuant to the Alternate Dispute Resolution procedures described in Section 16 of the General Terms and Conditions and Attachment 1.
- 11.2.2 ~~11.2.2~~The Parties shall cooperate fully in any such audit, providing reasonable access to any and all appropriate employees and books, records and other

documents reasonably necessary to assess the usage pertaining to transport and ~~terminating~~termination of local traffic.

12. Performance Measurement

- 12.1 In providing Services and Elements, BellSouth will provide AT&T Supra with the quality of service BellSouth provides itself and its end-users. BellSouth's performance under this Agreement shall provide AT&T Supra with the capability to meet standards or other measurements that are at least equal to the level that BellSouth provides or is required to provide by law or its own internal procedures. BellSouth shall satisfy all service standards, measurements, and performance requirements set forth in the Agreement and the Direct Measures of Quality ("DMOQs") that are specified in Attachment 12 of this Agreement. In the event that BellSouth demonstrates that the level of performance specified in Attachment 12 of this Agreement are higher than the standards or measurements that BellSouth provides to itself and its end users pursuant to its own internal procedures, BellSouth's own level of performance shall apply.
- 12.2 The Parties acknowledge that the need will arise for changes to the DMOQ's specified in Attachment 12 during the term of this Agreement. Such changes may include the addition or deletion of measurements or a change in the performance standard for any particular metric. The parties agree to review all DMOQ's on a quarterly basis to determine if any changes are appropriate.
- 12.3 The Parties agree to monitor actual performance on a monthly basis and develop a Process Improvement Plan to continually improve quality of service provided as measured by the DMOQs.

13. DELETED

- 12.2 BellSouth and Supra agree that delays in the provision of Services, Network Elements or Combinations, failures to meet the DMOQs required by this Agreement and delays in providing Customer Usage Dates in accordance with the requirements of this Agreement, will cause Supra to suffer damages, the amount of which cannot easily be determined.
- 12.3 In the event that any Network Element, combination or Service is not installed or provisioned in accordance with the Due Dates specified in this Agreement, BellSouth shall grant Supra a credit ("Delay Credit") calculated as provided in Attachment 12 of this Agreement.
- 12.4 IN the event that a Network Element, a combination or a service fails to meet the DMOQ requirements imposed by this Agreement (or is interrupted causing loss of continuity or functionality), BellSouth shall grant Supra a credit ("Performance Failure Credit"), as set forth in Attachment 12 of this Agreement

- 12.5 In the event that Customer Usage Data is not provided within the time period required by this Agreement, or in the event that Customer Usage Data is not provided in accordance with the specifications of this Agreement, BellSouth shall grant Supra a credit ("Customer Usage Credit") calculated as provided in Attachment 12 of this Agreement.
- 12.6 Supra shall have the option to obtain an alternative Network Element, Combination or Service from BellSouth to replace any Network Element, combinations or Service(s) for which a Performance Failure Credit or Delay Credit is due. BellSouth will be responsible for any charges (including installation charges) in excess of the otherwise applicable charges under this Agreement for the affected Network Element, Combination or Service. Supra may obtain an alternative Network Element, Combinations or Service from another vendor. Supra shall choose the least costly Network Element, Combination, or Service provided by such vendor that reasonable meets its needs, shall subscribe to such Network Element, Combinations or Services for the minimum commercially available period and shall move all affected traffic to the newly installed, repaired or restored Network Element, Combinations or Services as soon as possible after the end of such period. BellSouth shall be fully responsible for all obligations and shall pay in full all charges associated with the cost of such replacement Network Element, Combinations or Services.
- 12.7 BellSouth and Supra agree that remedies at law alone are inadequate to compensate Supra for failures to meet the DMOQ requirements specified by this Agreement, failures to install or provision Network Elements, Combinations or Services in accordance with the Due Dates specified in this Agreement, or for failures to provide Customer usage Data in accordance with this Agreement. Supra shall have the right to seek injunctive relief and other equitable remedies (in addition to remedies provided in this Agreement, at law and through administrative process) to require BellSouth (1) to cause the Network Elements, Combinations or Services ordered by Supra to meet DMOQ requirements specified by this Agreement, (2) to install or provision the Network Elements, Combinations or Services ordered by Supra within the Due Dates specific in this Agreement and (3) to provide Customer Usage Data in accordance with this Agreement.

14. Force Majeure

- 14.1 Neither Party shall be liable for any delay or failure in performance of any part of this Agreement caused by a Force Majeure condition, including acts of the United States of America or any state, territory or political subdivision thereof, acts of God or a public enemy, fires, floods, disputes, freight embargoes, strikes, earthquakes, volcanic actions, wars, civil disturbances, or other causes beyond the reasonable control of the Party claiming excusable delay or other failure to perform. Force Majeure shall not include acts of any Governmental Authority relating to environmental, health or safety conditions at Work

Locations. If any Force Majeure condition occurs, the Party whose performance fails or is delayed because of such Force Majeure condition shall give prompt notice to the other Party, and upon cessation of such Force Majeure condition, shall give like notice and commence performance hereunder as promptly as reasonably practicable.

- 14.2 Notwithstanding Subsection 1, no delay or other failure to perform shall be excused pursuant to this Section 14 by the acts or omission of a Party's subcontractors, material persons, suppliers or other third persons providing products or services to such Party unless: (i) such acts or omissions are themselves the product of a Force Majeure condition, (ii) such acts or omissions do not relate to environmental, health or safety conditions at Work Locations and, (iii) unless such delay or failure and the consequences thereof are beyond the control and without the fault or negligence of the Party claiming excusable delay or other failure to perform. Notwithstanding the foregoing, this Section 14 shall not excuse failure or delays where BellSouth is required to implement Disaster Recovery plans to avoid such failures and delays in performance.

15. Certain Federal, State and Local Taxes

- 15.1 Definition** For purposes of this Section 15, the terms "taxes" and "fees" shall include but not be limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) imposed on, or sought to be imposed, either of the parties and measured by the charges or payments, for the services furnished hereunder, excluding any taxes levied on income.
- 15.2 Taxes And Fees Imposed Directly On Either Seller Or Purchaser**
- 15.2.1 Taxes and fees imposed on the providing Party, which are neither permitted nor required to be passed on by the providing Party to its Customer, shall be borne and paid by the providing Party.
- 15.2.2 Taxes and fees imposed on the purchasing Party, which are not required to be collected and/or remitted by the providing Party, shall be borne and paid by the purchasing Party.
- 15.3 Taxes And Fees Imposed On Purchaser But Collected And Remitted By Seller**
- 15.3.1 Taxes and fees imposed on the purchasing Party shall be borne by the purchasing Party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing Party.

- 15.3.2 To the extent permitted by Applicable Law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.
- 15.3.3 If the purchasing Party determines that in its opinion any such taxes or fees are not lawfully due, the providing Party shall not bill such taxes or fees to the purchasing Party if the purchasing Party provides written certification, reasonably satisfactory to the providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the purchasing Party has determined and certified not to be lawfully due, or any such tax or fee that was not billed by the providing Party, the purchasing Party may contest the same in good faith, at its own expense. In the event that such contest must be pursued in the name of the providing Party, the providing Party shall permit the purchasing Party to pursue the contest in the name of providing Party and the providing Party shall have the opportunity to participate fully in the preparation of such contest. In any such contest, the purchasing Party shall promptly furnish the providing Party with copies of all filings in any proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing Party and the taxing authority.
- 15.3.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency or such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.
- 15.3.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 15.3.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereof, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are reasonably and necessarily incurred by the providing Party in connection with any claim for or contest of any such tax or fee.
- 15.3.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but

in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

15.4 Taxes And Fees Imposed On Seller But Passed On To Purchaser

15.4.1 Taxes and fees imposed on the providing Party, which are permitted or required to be passed on by the providing Party to its Customer, shall be borne by the purchasing Party.

15.4.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.

15.4.3 If the purchasing Party disagrees with the providing Party's determination as to the application or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee and with respect to whether to contest the imposition of such tax or fee. Notwithstanding the foregoing, the providing Party shall retain responsibility for determining whether and to what extent any such taxes or fees are applicable. The providing Party shall further retain responsibility for determining whether and how to contest the imposition of such taxes or fees, provided, however, the Parties agree to consult in good faith as to such contest and that any such contest undertaken at the request of the purchasing Party shall be at the purchasing Party's expense. In the event that such contest must be pursued in the name of the providing Party, the providing Party shall permit the purchasing Party to pursue the contest in the name of the providing Party and the providing Party shall have the opportunity to participate fully in the preparation of such contest.

15.4.4 If, after consultation in accordance with the preceding Section 15.4.3, the purchasing Party does not agree with the providing Party's final determination as to the application or basis of a particular tax or fee, and if the providing Party, after receipt of a written request by the purchasing Party to contest the imposition of such tax or fee with the imposing authority, fails or refuses to pursue such contest or to allow such contest by the purchasing Party, the purchasing Party may utilize the dispute resolution process outlined in Section 16 of the General Terms and Conditions of this Agreement and Attachment 1. Utilization of the dispute resolution process shall not relieve the purchasing party from liability for any tax or fee billed by the providing Party pursuant to this subsection during the pendency of such dispute resolution proceeding. In the event that the purchasing Party prevails in such dispute resolution proceeding, it shall be entitled to a refund in accordance with the final decision therein. Notwithstanding the foregoing, if at any time prior to a final decision in such dispute resolution proceeding the providing Party initiates a contest with the imposing authority with respect to any of the issues involved in such

dispute resolution proceeding, the dispute resolution proceeding shall be dismissed as to such common issues and the final decision rendered in the contest with the imposing authority shall control as to such issues.

- 15.4.5 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee with the imposing authority, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.
- 15.4.6 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 15.4.7 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other reasonable charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.
- 15.4.8 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority, such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

15.5 Mutual Cooperation

In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest. Each Party agrees to indemnify and hold harmless the other Party from and against any losses, damages, claims, demands, suits, liabilities, and expenses, including reasonable attorney's fees, that arise out of its failure to perform its obligations under this Section.

16. Alternative Dispute Resolution

- 16.1 All disputes, claims or disagreements (collectively "Disputes") arising under or related to this Agreement or the breach hereof shall be resolved in accordance with the procedures set forth in Attachment 1, except: (i) ~~disputes arising~~ disputes arising pursuant to Attachment 6, Connectivity Billing; and (ii)

disputes or matters for which the Telecommunications Act of 1996 specifies a particular remedy or procedure. Disputes involving matters subject to the Connectivity Billing provisions contained in Attachment 6, shall be resolved in accordance with the Billing Disputes section of Attachment ~~6-6~~, and, if said disputes remain unresolved, in accordance with the procedures set forth in Attachment 1. In no event shall the Parties permit the pendency of a Dispute to disrupt service to, or delay orders for service to any AT&T Supra Customer contemplated by this Agreement. The foregoing notwithstanding, neither this Section nor Attachment 1 shall be construed to prevent either Party from seeking and obtaining temporary equitable remedies, including temporary restraining orders. A request by a Party to a court or a regulatory authority for interim measures or equitable relief shall not be deemed a waiver of the obligation to comply with Attachment 1.

17. Notices

Any notices or other communications required or permitted to be given or delivered under this Agreement shall be in hard-copy writing (unless otherwise specifically provided herein) and shall be sufficiently given if delivered personally or delivered by prepaid overnight express service to the following (unless otherwise specifically required by this Agreement to be delivered to another representative or point of contact):

If to AT&T Supra:

~~Pamela A. Nelson
Vendor Management
AT&T
1200 Peachtree St., N.E.
Atlanta, GA 30309~~
Olukayode Ramos
Chairman & C.E.O.
Supra Telecommunications and Information Systems, Inc.
2620 S.W. 27th Avenue
Miami, FL 33133

If to BellSouth:

Randy Jenkins
Interconnection Services
Suite 410
1960 W. Exchange Place
Tucker, GA 30064

Either Party may unilaterally change its designated representative and/or address for the receipt of notices by giving seven (7) days prior written notice to the other Party in compliance with this Section. Any notice or other communication shall be deemed given when received.

18. Confidentiality and Proprietary Information

- 18.1 For the purposes of this Agreement, "Confidential Information" means confidential or proprietary technical or business Information given by the Discloser to the Recipient. ~~All information which is disclosed by one Party to the other in connection with this Agreement~~ information, which is disclosed by one Party to the other in connection with this Agreement, shall automatically be deemed proprietary to the Discloser and subject to this Agreement, unless otherwise confirmed in writing by the Discloser. In addition, by way of example and not limitation, all orders for Services and Elements placed by AT&T Supra pursuant to this Agreement, and information that would constitute Customer Proprietary Network pursuant to the Act and the rules and regulations of the Federal Communications Commission, and Recorded Usage Data as described in Attachment 7, whether disclosed by AT&T Supra to BellSouth or otherwise acquired by BellSouth in the course of the performance of this Agreement, shall be deemed Confidential Information of AT&T Supra for all purposes under this Agreement.
- 18.2 For a period of five (5) years from the receipt of Confidential Information from the Discloser, except as otherwise specified in this Agreement, the Recipient agrees (a) to use it only for the purpose of performing under this Agreement, (b) to hold it in confidence and disclose it to no one other than its employees having a need to know for the purpose of performing under this Agreement, and (c) to safeguard it from unauthorized use or disclosure with at least the same degree of care with which the Recipient safeguards its own Confidential Information. If the Recipient wishes to disclose the Discloser's Confidential Information to a third Party agent or consultant, the agent or consultant must have executed a written agreement of non-disclosure and non-use comparable in scope to the terms of this Section.
- 18.3 The Recipient may make copies of Confidential Information only as reasonably necessary to perform its obligations under this Agreement. All such copies shall bear the same copyright and proprietary rights notices as are contained on the original.
- 18.4 The Recipient agrees to return all Confidential Information in tangible form received from the Discloser, including any copies made by the Recipient, within thirty (30) days after a written request is delivered to the Recipient, or to destroy all such Confidential Information, except for Confidential Information that the Recipient reasonably requires to perform its obligations under this Agreement, another agreement between the parties or if that information is needed to continue to provide services to Supra's customers. If either Party loses or makes an unauthorized disclosure of the other Party's Confidential Information, it shall notify such other Party immediately and use reasonable efforts to retrieve the lost or wrongfully disclosed information.
- 18.5 The Recipient shall have no obligation to safeguard Confidential Information: (a) which was in the possession of the Recipient free of restriction prior to its

receipt from the Discloser; (b) after it becomes publicly known or available through no breach of this Agreement by the Recipient; (c) after it is rightfully acquired by the Recipient free of restrictions on its disclosure; or (d) after it is independently developed by personnel of the Recipient to whom the Discloser's Confidential Information had not been previously disclosed. In addition, either Party shall have the right to disclose Confidential Information to any mediator, arbitrator, state or federal regulatory body, the Department of Justice or any court in the conduct of any mediation, arbitration or approval of this Agreement or in any proceedings concerning the provision of interLATA services by BellSouth that are or may be required by the Act. Additionally, the Recipient may disclose Confidential Information if so required by law, a court, or governmental agency, so long as the Discloser has been notified of the requirement promptly after the Recipient becomes aware of the requirement. In all cases, the Recipient must undertake all lawful measures to avoid disclosing such information until Discloser has had reasonable time to seek and comply with a protective order that covers the Confidential Information to be disclosed.

- 18.6 The parties acknowledge that an individual end user may simultaneously seek to become or be a customer of both parties. Nothing in this agreement is intended to limit the ability of either party to use customer specific information lawfully obtained from end users or sources other than the Disclosing Party.
- 18.7 BellSouth OSS(s) supplied to Supra shall not hinder, impair or preclude Supra from providing products and services under this agreement or any effective tariff when a customers chooses to purchase product or services from both companies.
- 18.618.8 Each Party's obligations to safeguard Confidential Information disclosed prior to expiration or termination of this Agreement shall survive such expiration or termination.
- 18.718.9 Except as otherwise expressly provided elsewhere in this Agreement, no license is hereby granted under any patent, trademark, or copyright, nor is any such license implied, solely by virtue of the disclosure of any Confidential Information.
- 18.818.10 Each Party agrees that the Discloser would be irreparably injured by a breach of this Agreement by the Recipient or its representatives and that the Discloser shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement, but shall be in addition to all other remedies available at law or in equity.

19. Branding

The Parties agree that the services offered by AT&TSupra that incorporate Services and Elements made available to AT&TSupra pursuant to this Agreement shall be branded as AT&TSupra services, unless BellSouth determines to unbrand such Services and Elements for itself, in which event BellSouth may provide unbranded Services and Elements. ~~AT&T shall provide the exclusive interface to AT&T Customers, except as AT&T shall otherwise specify. In those instances where AT&TSupra requires BellSouth personnel or systems to interface with AT&TSupra Customers, such personnel shall identify themselves as representing AT&TSupra, and shall not identify themselves as representing BellSouth. Except for material provided by AT&TSupra, all forms, business cards or other business materials furnished by BellSouth to AT&TSupra Customers shall be subject to AT&T'sSupra's prior review and approval, and shall bear no corporate name, logo, trademark or tradesman other than approval. Supra's or such other brand as Supra shall determine. In no event shall BellSouth, acting on behalf of AT&TSupra pursuant to this Agreement, provide information to AT&TSupra local service Customers about BellSouth products or services, contact information or referrals. BellSouth agrees to provide in sufficient time for AT&TSupra to review and provide comments, the methods and procedures, training and approaches, to be used by BellSouth to assure that BellSouth meets AT&T'sSupra's branding requirement. For installation and repair services, AT&TSupra agrees to provide BellSouth with branded material at no charge for use by BellSouth ("Leave Behind Material"). ~~AT&T will reimburse BellSouth for the reasonable and demonstrable costs BellSouth would otherwise incur as a result of the use of the generic leave behind material. BellSouth will notify AT&TSupra of material supply exhaust in sufficient time that material will always be available. BellSouth may leave a generic card if BellSouth does not have an AT&TSupra specific card available. Supra will reimburse BellSouth for the reasonable and demonstrable costs BellSouth would otherwise incur as a result of the use of the generic leave behind material. ~~BellSouth will not be liable for any error, mistake or omission, other than intentional acts or omissions or gross negligence, resulting from the requirements to available. Supra will reimburse BellSouth for the reasonable and demonstrable costs BellSouth would otherwise incur as a result of the use of the generic leave behind material.~~~~~~

distribute AT&T's Leave Behind Material.

20. Directory Listings Requirements

- 20.1 BellSouth shall make available to AT&T, for AT&TSupra, for Supra subscribers, non-discriminatory access to its telephone number and address directory listings ("Directory Listings"), under the below terms and conditions. In no event shall AT&TSupra subscribers receive Directory Listings that are at less favorable rates, terms or conditions than the rates, terms or conditions that BellSouth provides its subscribers.

20.1.1 DELETED

20.1.2 DELETED

~~20.1.3 Subject to execution of an Agreement between AT&T and BellSouth's affiliate, BellSouth Advertising & Publishing Corporation ("BAPCO") substantially in the form set forth in Attachment 13: (1) listings shall be included in the appropriate White Pages or local alphabetical directories (including Foreign Language directories as appropriate), via the BellSouth ordering process, (basic listing shall be at no charge to AT&T or AT&T's subscribers); (2) AT&T's business subscribers' listings shall also be included in the appropriate Yellow Pages or local classified directories, via the BellSouth ordering process, at no charge to AT&T or AT&T's subscribers; (3) copies of such directories shall be delivered by BAPCO to AT&T's subscribers; (4) AT&T will sell enhanced White Pages Listings to AT&T subscribers and BellSouth shall provide the~~

20.1.1 BellSouth shall provide to Supra customers, at no charge, the same White Pages basic listing(s) that BellSouth provides its customers. Where a Supra Customer has two numbers for a line due to the implementation of interim Local Number Portability, the second number shall be considered part of the one White Pages basic listing. BellSouth shall permit Supra Customers the option of not having a published White Pages listing(s). Where BellSouth offers free Yellow Pages basic listings to business customers, BellSouth shall provide, at no charge to Supra, Yellow Pages basic listing(s) for Supra business customers.

20.1.2 BellSouth will require its wholly owned subsidiary, BellSouth Advertising and Publishing Corporation ("BAPCO") to provide and publish directory listing in accordance with the agreement attached hereto as Attachment 13. Supra will sell enhanced White and Yellow Pages listings to Supra Customers pursuant to said agreement between the Parties. BellSouth shall provide, at the rates set forth in Part IV of this Agreement, the Enhanced White Pages Listings and Enhanced Yellow Pages Listings for Supra to offer for resale.

~~enhanced White Listings; and (5) BellSouth shall include in its master subscriber system database all Subscriber List Information for Supra Customer. Yellow Pages Advertising will be sold and billed to AT&T subscribers.~~

Supra customers pursuant to Attachment 13, provided however, that Supra will assume all billing for Supra 20.1.4 — BAPCO will provide AT&T the necessary publishing information to process AT&T's subscribers directory listings requests including, but not limited to:

1. ~~Classified Heading Information~~
2. ~~Telephone Directory Coverage Areas by NPA/NXX~~

~~3. Publishing Schedules~~

~~4. Processes for Obtaining Foreign Directories~~

~~5. Information about Listing AT&T's Customer Services, including telephone numbers, in the Customer Call Guide Pages.~~

~~20.2 BellSouth will provide AT&T the proper format for submitting subscriber listings as outlined in the OLEC Handbook. BellSouth and BAPCO will accord AT&T's directory listing information the same level of confidentiality that BellSouth and BAPCO accord BellSouth's and BAPCO'S own directory listing information, and BellSouth shall limit access to AT&T's Customer proprietary, confidential directory information to those BellSouth or BAPCO employees who are involved in the preparation of listings.~~

~~20.3 BellSouth will include AT&T subscriber listings in BellSouth's directory assistance databases and BellSouth will not charge AT&T to maintain the Directory Assistance database. The Parties agree to cooperate with each other in formulating appropriate procedures regarding lead time, timeliness, format, and content of listing information.~~

~~20.1.3 20.4 DELETED Customers for Yellow Pages Advertising.~~

21. Subscriber List Information/Local Number Portability

~~21.1 DELETED~~

~~21.1 BellSouth shall provide to Supra, at Supra's request, within (30) days after the Effective Date, all published Subscriber List Information (including such information that resides in BellSouth's master subscriber system database) via electronic data transfer acceptable to Supra, on the same terms and conditions and at the same rates that the BellSouth provides its own Subscriber List information to itself or to other third parties. Changes to the Subscriber List Information shall be updated on a daily basis through the same electronic data transfer means used to transmit the initial list. Subscriber List Information provided shall indicate whether the customer is a residence or business customer.~~

~~21.2 BellSouth shall refer any requests from third parties for AT&T's BellSouth shall provide Subscriber List Information that includes Supra Customers to third parties, as required by the Act, on the same terms and conditions and at the same rates that BellSouth provides its own Subscriber List Information to AT&T.~~

~~21.2 third parties, Supra shall receive its pro-21.3 Local Number Portability shall be provided as set forth in Attachment 8: rata share of any amounts paid by third parties to BellSouth for such Subscriber List Information. Supra's pro-rata~~

share shall be calculated based on the proportionate share of Supra Customers to the total numbers of customers included in the Subscriber List Information.

21.A Insurance Requirements

At all times during the term of this Agreement, each Party shall maintain, at its own expense, (i) all insurance required by applicable Law including insurance and approved self insurance for statutory workers compensation coverage and (ii) commercial general liability coverage in the amount of not less than ten million dollars (\$10,000,000) or a combination of commercial general liability and excess/umbrella coverage totaling ten million dollars ~~(\$10,000,000)~~ (\$10,000,000). Upon request from the other Party, each Party shall furnish the other Party with certificates of insurance which evidence the minimum levels of insurance set forth herein. Each Party may satisfy all or part of the coverage specified herein through ~~self insurance~~ self-insurance. Each Party shall give the other Party at least thirty (30) days advance written notice of any cancellation or non-renewal of insurance required by this Section.

21.B Costs

Except as otherwise specified in this Agreement, the Act, or any Commission order, each Party shall be responsible for all costs and expenses that it incurs to comply with its obligations under this Agreement.

21.B.1 DELETED

21.C Pre-Ordering Information

21.C.1 BellSouth shall provide AT&T Supra with access on a real-time basis via ~~electronic interfaces~~ real-time access to BellSouth's own OSS(s) to for all services and features technically available from each switch, by switch CLLI and access to street address detail for the provisioning of a service request. This information is currently contained in BellSouth's Regional Street Address Guide ("RSAG") and ~~Products and Services Inventory Management (P/SIMS)~~.

~~21.C.2 If AT&T dials in, AT&T will obtain from BellSouth a security card featuring a unique password identification which will be changed periodically by BellSouth. A nonrecurring charge of One Hundred (\$100.00) Dollars will be applied to each security card provided, including duplicates furnished to additional users or furnished as a replacement of lost or stolen cards.~~

21.C.3 ~~AT&TRNS, ROS, DOE, SONGS, SOCS, BOCRIS, CRIS, RSAG, COFFI, ATLAS, and P/SIMS. Supra acknowledges that (i) this information is provided for the limited purposes of facilitating the establishment of new Customer accounts and identifying services and features available in specific BellSouth central offices. AT&TSupra agrees that it will not sell or otherwise transfer such information to any third Party for any purpose whatsoever without the prior written consent of BellSouth except as it relates to the selling and provisioning of Telecommunicatins services to customers; (ii) BellSouth does not warrant that services provided under this Section will be uninterrupted or error free. In the event of interruptions, delays, errors or other failure of the services, BellSouth's obligation shall be limited to using reasonable efforts under the circumstances to restore the services. BellSouth shall have no obligation to retrieve or reconstruct any transmitted messages or transmission data which data, which may be lost or damaged. AT&TSupra is responsible for providing back-up for data deemed by BellSouth to be necessary to its operations; (iii) the services provided under this Section are provided "As Is."~~ BellSouth makes no warranty, express or implied, with respect to the services, including but not limited to any warranty BellSouth shall provide the services under this Section of a quality of merchantability or fitness for a particular purpose, which warranties are hereby expressly disclaimed basis that is equal to or better than the quality that BellSouth provides to itself, BellSouth's own Customers, to a BellSouth affiliate or to any other entity for the same services.

21.D

Disaster Recovery

BellSouth and AT&TSupra agree to jointly develop and implement a detailed service restoration plan and disaster recovery plan to be in effect by December 31, 1997. ~~A joint task team will~~ If such plan has not yet been implemented, the parties agree to commence the joint development of such no later than November 1, 1996, _____ for implementation throughout 1997 _____ reaching full deployment by December 31, 1997. _____.

Such plans shall incorporate BellSouth Emergency Contingency Plans for Residence and Business Repair Centers. The Plans shall conform to the FCC Restoration Guidelines, to the National Security Emergency Preparedness ("NSEP") procedures and adhere to the guidelines developed by the Telecommunications Service Priority ("TSP") System office within the National Communications System ("NCS") Agency.

In developing the plans, the team will address the following AT&TSupra proposed terms: (i) provision for immediate notification to AT&TSupra via the Electronic Interface, to be established pursuant to Section 3 of Attachment 6 of the Agreement, of the existence, location, and source of any emergency network outage affecting AT&TSupra Customers; (ii) establishment of a single point of contact responsible for initiating and coordinating the restoration of all

Local Services and Network Elements or Combinations; (iii) establishment of procedures to provide AT&TSupra with real-time access to information relating to the status of restoration efforts and problem resolution during the restoration process; (iv) provision of an inventory and description of mobile restoration equipment by locations; (v) establishment of methods and procedures for the dispatch of mobile equipment to the restoration site; (vi) establishment of methods and procedures for re-provisioning all Services and Elements, after initial restoration; (vii) provision for equal priority, as between AT&TSupra Customers and BellSouth Customers, for restoration efforts, consistent with FCC Service Restoration guidelines, including, but not limited to, deployment of repair personnel and access to spare parts and components; and (viii) establishment of a mutually agreeable process for escalation of maintenance problems, including a complete, up-to-date list of responsible contacts, available twenty-four (24) hours per day, seven (7) days per week.

Such plans shall be modified and updated as necessary. For purposes of this Section, an emergency network outage is defined as 5,000 or more blocked call attempts in a ten (10) minute period in a single exchange.

In the event the Parties are unable to reach agreement on either plan, the matter shall be resolved pursuant to Section 16 and Attachment 1 of this Agreement.

22. Miscellaneous

22.1 Delegation or Assignment

BellSouth may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of AT&T ~~which~~ Supra, which will not be unreasonably withheld. Notwithstanding the foregoing, BellSouth may assign its rights and benefits and delegate its duties and obligations under this Agreement without the consent of AT&TSupra to a 100 percent owned Affiliate company of BellSouth if such Affiliate provides wireline communications, provided that the performance of any such assignee is guaranteed by the assignor. Any prohibited assignment or delegations shall be null and void.

22.2 Subcontracting

If any Party's obligation under this Agreement is performed by a subcontractor or Affiliate, the Party subcontracting the obligation nevertheless shall remain fully responsible for the performance of this Agreement in accordance with its terms, and shall be solely responsible for payments due its subcontractors or Affiliate. In entering into any contract, subcontract or other agreement for the performance of any obligation under this Agreement, the Party shall not enter into any agreement that it would not enter into if the supplier was performing services directly for said Party.

22.3 Nonexclusive Remedies

Except as otherwise expressly provided in this Agreement, each of the remedies provided under this Agreement is cumulative and is in addition to any remedies that may be available at law or in equity.

22.4 No Third-Party Beneficiaries

Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide third Parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.

22.5 Referenced Documents

Whenever any provision of this Agreement refers to a technical reference, technical publication, AT&T^{Supra} Practice, BellSouth Practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of such document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, AT&T^{Supra} Practice, BellSouth Practice, or publication of industry standards (unless AT&T^{Supra} elects otherwise). Should there be an inconsistency between or among publications or standards, the Parties shall mutually agree upon which requirement shall apply. If the Parties cannot reach agreement, the matter shall be handled pursuant to Attachment 1 of this Agreement.

22.6 Applicable Law

The validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties shall be governed by the laws of the State of Florida other than as to conflicts of laws, except insofar as federal law may control any aspect of this Agreement, in which case federal law shall govern such aspect. The Parties submit to personal jurisdiction alternatively in Atlanta, Georgia, or Miami, Florida, and waive any objections to a ~~Georgia venue~~ venue in Georgia and/or Florida.

22.7 ~~Publicity and Advertising~~ Intellectual Property Rights and Indemnification

Use of Mark. Both Parties are prohibited from any use, including but not limited to in sales and in marketing or advertising of telecommunications services of any name, trade name, service mark or trademark of the other Party, except that the parties may engage in truthful comparative advertising, and such other advertising that conforms to trademark laws.

Ownership of Intellectual Property. Any intellectual property, which originates from or is developed by a Party, shall remain in the exclusive ownership of that Party. Except for limited licenses, to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any services solely as provided under this Agreement, no patent, copyright, trademark, trade name or other proprietary right is licensed, granted or otherwise transferred by this Agreement.

BellSouth and Supra (if and to the extent BellSouth uses Supra facilities or equipment, including software) warrant that each other may use any facilities or equipment, including software, provided hereunder that contains intellectual property owned or controlled by third parties without being subject to any claims of infringement by such third parties. Each Party further warrants that it will not enter into any licensing agreements with respect to any facilities or equipment, including software, that contain provisions that would disqualify the other Party from using or interconnecting with such facilities or equipment, including software, pursuant to the terms of this Agreement. Each Party further warrants that it has not and will not intentionally modify any existing license agreements for any network facilities or equipment, including software, in whole or in part for the purpose of disqualifying the other Party from using or interconnecting with such facilities or equipment, including software, pursuant to the terms of this Agreement. To the extent that providers of facilities or equipment, including software, in either Party's network provide indemnities covering intellectual property liabilities and those indemnities allow a flow-through of protection to third parties, the indemnified party shall flow those indemnity protections through to the other Party. Finally each Party shall indemnify the other pursuant to the terms of this Agreement, with respect to the other Party's use of intellectual property associated with any new network facilities or equipment, including software, acquisitions.

Exception to Obligations. Both Parties' obligations under this Section shall not apply to the extent the infringement is caused by: (i) modification of the facilities or equipment (including software) by the indemnitee; (ii) use by the Indemnitee of the facilities or equipment (including software) in combination with equipment or facilities (including software) not provided or authorized by the Indemnitor provided the facilities or equipment (including software) would not be infringing if used alone; (iii) conformance to specifications of the Indemnitee which would necessarily result in infringement; or (iv) continued use by the Indemnitee of the affected facilities or equipment (including software) after being placed on notice to discontinue use as set forth herein.

Exclusive Remedy. The foregoing shall constitute the sole and exclusive remedies and obligations with respect to a third party claim of intellectual property infringement arising out of the conduct of business under this Agreement.

~~Neither Party shall publish or use any advertising, sales promotions or other publicity materials that use the other Party's logo, trademarks or service marks without the prior written approval of the other Party.~~

22.8 Amendments or Waivers

Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement, and no consent to any default under this Agreement, shall be effective unless the same is in writing and signed by an officer of the Party against whom such amendment, waiver or consent is claimed. In addition, no course of dealing or failure of a Party strictly to enforce any term, right or condition of this Agreement shall be construed as a waiver of such term, right or condition.

22.9 Severability

If any term, condition or provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not invalidate the entire Agreement, unless such construction would be unreasonable. The Agreement shall be construed as if it did not contain the invalid or unenforceable provision or provisions, and the rights and obligations of each Party shall be construed and enforced accordingly; provided, however, that in the event such invalid or unenforceable provision or provisions are essential elements of this Agreement and substantially impair the rights or obligations of either Party, the Parties shall promptly negotiate a replacement provision or provisions.

22.10 Entire Agreement

This Agreement, which shall include the Commercial Arbitration Award dated June 5th, 2001, Attachments, Appendices and other documents referenced herein, constitutes the entire Agreement between the Parties concerning the subject matter hereof and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein.

22.11 Survival of Obligations

Any liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement, any obligation of a Party under the provisions regarding indemnification, Confidential Information, limitations on liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, shall survive cancellation or termination thereof.

22.12 Executed in Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed ~~an original~~; but such counterparts original; but such counterparts shall together constitute one and the same instrument.

22.13 Headings of No Force or Effect

The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

22.14 Filing of Agreement

Upon execution of this Agreement, it shall be filed with the appropriate state regulatory agency pursuant to the requirements of Section 252 of the Act. If the regulatory agency imposes any filing or public interest notice fees regarding the filing or approval of the Agreement, the Parties shall equally share the cost of such filing and/or public interest notice fee. Once executed and filed with the FPSC, BellSouth agrees to perform under the Agreement regardless of the certification status of Supra, its affiliates, subsidiaries and/or assigns. Supra agrees to indemnify BellSouth for any damages incurred BellSouth as a result of the certification status of itself, its affiliates, subsidiaries and/or assigns

Part I: Local Services Resale

23. Telecommunications Services Provided for Resale

- 23.1 At the request of AT&T, Supra, and pursuant to the requirements of the Act, and all rules and orders pertaining thereto, BellSouth will make available to AT&TSupra for resale (see Section 24.3 of Part 1) any Telecommunications Service that BellSouth currently provides, or may offer hereafter. BellSouth shall also provide Support Functions and Service Functions, as set forth in Sections 27 and 28 of this Part. The Telecommunications Services, Service Functions and Support Functions provided by BellSouth to AT&TSupra pursuant to this Agreement are collectively referred to as "Local Service."
- 23.2 This Part describes several ~~services which~~services, which BellSouth shall make available to AT&TSupra for resale pursuant to this Agreement. This list of services is neither ~~all-inclusive~~all-inclusive nor exclusive. All Telecommunications Services of BellSouth which are to be offered for resale pursuant to the Act are subject to the terms herein, even though they are not specifically enumerated or described.
- 23.2.1 Features and Functions Subject to Resale**
- BellSouth agrees to make available for resale all features and functions available in connection with Telecommunications Services, including but not limited to the following:
- Dial tone and ring
 - Capability for either dial pulse or touch tone recognition
 - Capability to complete calls to any location
 - Same extended local calling area
 - 1+ IntraLATA toll calling
 - PIC 1+ service
 - CIC dialing (10 XXXX)
 - Same access to vertical features and functions
 - Call detail recording capability required for end user billing
 - Flat and Measured Service
 - International Calling
 - 911, 500, 700, 800, 888, 900, 976 dialing
 - Ringling
 - Repeat dial capability
 - Multi-line hunting
 - PBX trunks and DID service
- 23.3 BellSouth will provide AT&TSupra with at least the capability to provide an AT&TSupra Customer the same experience as BellSouth provides its own Customers with respect to all Local Services. The capability provided to AT&TSupra by BellSouth shall be in accordance with standards or other

measurements that are at least equal to the level that BellSouth provides or is required to provide by law and its own internal procedures.

23.4 By way of example, BellSouth will provision Feature Group-D Switched Access Service (I thought we really wanted inter-office transport here) between BellSouth Access Tandems. BellSouth will also provision DS1 interoffice transport facilities across interLATA boundaries as explained in Attachment 2 of this Agreement. BellSouth will provision any such services in such a manner as to accomplish the parity requirement of the Telecommunication Act and section 23.3 of this Agreement. (Issue)-FOR DAVE

24. General Terms and Conditions for Resale

24.1 Primary Local Exchange Carrier Selection

BellSouth shall apply the principles set forth in Section 64.1100 of the Federal Communications Commission Rules, 47 C.F.R. §64.1100, to the process for end-user selection of a primary local exchange carrier. BellSouth shall not require a disconnect order from the Customer, another carrier, or another entity, in order to process an AT&T Supra order for Local Service for a Customer.

24.2 Pricing

The prices charged to AT&T Supra for Local Services are set forth in Part IV of this Agreement.

24.3 Restrictions on Resale

With the exception of short-term promotions, defined as those promotions that are offered for a ~~ninety (90)~~ eighty-nine (89) day period or less and which are not offered on a consecutive basis, BellSouth shall offer for resale at wholesale prices all telecommunications services that BellSouth provides at retail to non-telecommunications carriers, including governmental bodies and information providers. Short-term promotions may be resold at the retail rate. Long term promotions, defined as those promotions that are offered for more than a ninety (90) day period, may be resold at the tariff rate, be it resale, local access tariff or otherwise, less the wholesale discount. **(ISSUE 52)**

No terms and conditions, including use and user restrictions, shall be applicable to the resale of BellSouth's telecommunications services except for:

- (i) ~~a~~ A restriction on the resale of residential service to residential customers;

- (ii) LifeLine/Link-up services shall be available for resale by AT&TSupra only to those customers who are eligible to purchase such service directly from BellSouth;
- (iii) All grandfathered services are available for resale by AT&TSupra to those customers or subscribers who already have grandfathered status; and
- (iv) N11/E911/911 services shall be available for resale by AT&TSupra.

24.3.1 Dialing Parity

24.3.1.1 BellSouth agrees that AT&TSupra Customers will experience the same dialing parity as BellSouth's Customers, such that, for all call types: (i) an AT&TSupra Customer is not required to dial any greater number of digits than a BellSouth Customer; (ii) the post-dial delay (time elapsed between the last digit dialed and the first network response), call completion rate and transmission quality experienced by an AT&TSupra Customer is at least equal in quality to that experienced by a BellSouth Customer; and (iii) the AT&TSupra Customer may retain its local telephone number.

24.3.2 Changes in Retail Service

- 24.3.2.1 BellSouth agrees to notify AT&TSupra electronically of any changes in the terms and conditions under which it offers Telecommunications Services to subscribers who are non-telecommunications carriers, including, but not limited to, the introduction or discontinuance of any features, functions, services or promotions, at least forty-five (45) days prior to the effective date of any such change or concurrent with BellSouth's internal notification process for such change, whichever is earlier. AT&TSupra recognizes that certain revisions may occur between the time BellSouth notifies AT&TSupra of a change pursuant to this Section and BellSouth's tariff filing of such change. BellSouth shall notify AT&TSupra of such revisions consistent with BellSouth's internal notification process but AT&TSupra accepts the consequences of such mid-stream changes as an uncertainty of doing business and, therefore, will not hold BellSouth responsible for any resulting inconvenience or cost incurred by AT&TSupra unless caused by the intentional misconduct of BellSouth for the purposes of this section. The notification given pursuant to this Section will not be used by either party to market its offering of such changed services externally in advance of BellSouth filing of any such changes.
- 24.3.2.2 BellSouth agrees to notify AT&TSupra electronically of proposed price changes at least thirty (30) days prior to the effective date of any such price change.
- 24.3.2.3 BellSouth agrees to use electronic mail to notify AT&TSupra of any operational changes within at least six (6) months before such changes are proposed to

become effective and within twelve months for any technological changes. If such operational or technological changes occur within the six or twelve month notification period, BellSouth will notify AT&TSupra of the changes concurrent with BellSouth's internal notification process for such changes.

25. Requirements for Specific Services

25.1 CENTREX Requirements

At AT&T's option, AT&TSupra's option, Supra may purchase CENTREX services. Where AT&TSupra purchases such CENTREX services, AT&TSupra may purchase the entire set of features, any single feature, or any combination of features which BellSouth has the capability to provide. BellSouth will provide AT&TSupra with the same service levels and features of CENTREX Service provided by BellSouth to its end users. Requests by AT&TSupra for CENTREX Service levels and features that are different from what BellSouth provides to its end users will be handled under the Bona Fide Request Process. The CENTREX service provided for resale will meet the following requirements:

- 25.1.1 All features and functions of CENTREX Service, whether offered under tariff or otherwise, shall be available to AT&TSupra for resale, without any geographic or Customer class restrictions.
- 25.1.2 BellSouth's CENTREX Service may be used by AT&TSupra to provide Local Service to AT&T'sSupra's end users
- 25.1.3 BellSouth shall provide to AT&TSupra a list which describes all CENTREX features and functions offered by BellSouth within ten (10) days of the Effective Date, and shall provide updates to said list as required by Section 24.3.2 of Part 1.
- 25.1.4 **DELETED**
- 25.1.5 AT&TSupra may aggregate the CENTREX local exchange and IntraLATA traffic usage of AT&TSupra Customers to qualify for volume discounts on the basis of such aggregated usage.
- 25.1.6 AT&TSupra may aggregate multiple AT&TSupra Customers on dedicated access facilities. AT&TSupra may require that BellSouth suppress the need for AT&TSupra Customers to dial "9" when placing calls outside the CENTREX System. When dedicated facilities are utilized, BellSouth will provide, upon AT&T'sSupra's request, station ID or ANI, as well as FGD trunking.
- 25.1.7 AT&TSupra may use remote call forwarding in conjunction with CENTREX Service to provide service to AT&TSupra Local Service Customers residing outside of the geographic territory in which BellSouth provides local exchange service. In cases where existing BellSouth Customers choose AT&TSupra for

their local service provider, and where AT&TSupra serves these Customers via CENTREX, in order that such Customers may keep the same phone number, BellSouth shall either move Customer's line and phone number to a CENTREX system, or use remote call forwarding to route Customer's old phone number to new CENTREX phone number. Not all features and functions will be compatible when remote call forwarding is utilized. In such cases, AT&TSupra customers shall have the same functionality as BellSouth customers under the same circumstances.

25.1.8 DELETED

25.1.9 BellSouth shall make available to AT&TSupra for resale, at no additional charge, intercom calling among all AT&TSupra Customers who utilize resold CENTREX service where the AT&TSupra Customers' numbers all reside in the same central office switch.

25.1.10 AT&TSupra may utilize BellSouth's Automatic Route Selection (ARS) service features to provision and route calls from various end users to various Interexchange Carriers (IXC) Networks.

25.2 CLASS and Custom Features Requirements

AT&TSupra may purchase the entire set of CLASS and Custom features and functions, or a subset of any one or any combination of such features, on a Customer-specific basis, without restriction on the minimum or maximum number of lines or features that may be purchased for any one level of service. BellSouth shall provide to AT&TSupra a list of all such CLASS and Custom features and functions within ten (10) days of the Effective Date and shall provide electronic updates to such list when new features and functions become available.

25.3 Voluntary Federal and State Customer Financial Assistance Programs

Local Services provided to low-income subscribers, pursuant to requirements established by the appropriate state regulatory body, include programs such as Voluntary Federal Customer Financial Assistance Program and Link-Up America ("Voluntary Federal Customer Financial Assistance Programs"). When a BellSouth Customer eligible for the Voluntary Federal Customer Financial Assistance Program or other similar state programs chooses to obtain Local Service from AT&T,Supra, BellSouth shall forward available information regarding such Customer's eligibility to participate in such programs to AT&T,Supra, in accordance with procedures to be mutually established by the Parties and applicable state and federal law.

25.4 E911/911 Services

BellSouth shall provide access to E911/911 ~~in the same manner that it is provided~~ at parity with the support and services that BellSouth provides to

~~BellSouth Customers-retail Customers, itself, affiliates, or any other entity.~~
 BellSouth will enable AT&T Supra Customers to have E911/911 call routing to the appropriate Public Safety Answering Point (PSAP). BellSouth shall provide and validate AT&T Supra Customer information to the PSAP using the same rules, procedures and edits used by BellSouth for its end users. BellSouth shall use its service order process to update and maintain, on the same schedule that it uses for its end users, the AT&T Supra Customer service information in the ALI/DMS (Automatic Location Identification/Database Management System) used to support E911/911 services.

- 25.4.1 ~~25.4.1 DELETED~~ BellSouth will indemnify Supra from any and all liability from any source for any failure on BellSouth's part to properly and timely update, according to municipal, state or Federal law, the ALI/DMS with 911/E911 records submitted to BellSouth by Supra.
- 25.4.2 Basic 911 and E911 access from the Supra local switch(s) shall be provided to Supra in accordance with the following requirements.
- 25.4.2.1 If required, BellSouth shall provide direct trunks for the Supra network to the appropriate 911 hubs for specific geographic locations. Such trunks may alternatively be provided by Supra.
- 25.4.2.2 Interconnection and database access shall be priced as specified in Section IV
- 25.4.2.3 BellSouth shall comply with established, competitively neutral intervals for installation of facilities, including any collocation facilities, diversity requirement, etc.
- 25.4.2.4 BellSouth will provide for resale or UNE combination service that is at least equal in quality to that provided by BellSouth to its own subscribers.
- 25.4.2.5 BellSouth no later than fifteen (15) days after the Effective Date, telephone numbers of the emergency public agency (e.g. police, fire, and ambulance) linked to all NPA NXXs for the states in which BellSouth provides service. Such data will be compiled as an electronic flat file in a mutually agreed format and transmitted via either diskette or Network Data Mover (Connect:Direct). BellSouth will transmit to Supra, in a timely manner, all changes, alterations, modifications and updates to such data base via the same method as the initial transfer.
- 25.4.3 The following are Basic 911 and E911 Database requirements:
- 25.4.3.1.1 Each party shall maintain ownership of their respective records in the ALI database. BellSouth will maintain responsibility for the management of that database.

- 25.4.3.1.2 BellSouth will provide Supra with a complete copy of the MSAG at the start of Supra's 911 implementation. Copies of the MSAG shall be provided annually with weekly updates. BellSouth will provide Supra with the changes to the MSAG each Sunday. These changes will be available the next business day.
- 25.4.3.1.3 BellSouth agrees to treat all ALI data on Supra's subscribers provided under this agreement as strictly confidential and to use data on Supra subscribers only for the purpose of providing 911 / E911 service.
- 25.4.3.1.4 BellSouth shall identify which ALI databases cover, which states, counties or parts thereof, and identify and communicate a point of contact for each.
- 25.4.4 Copies of Selective Routing boundary maps or equivalent shall be available to Supra upon request. Each map shows the boundary around the outside of the set of exchange areas served by that selective router. The map provides Supra the information necessary to set up its network to route E911 callers to the correct selective router.
- 25.4.5 Equipment and circuits for 911 shall be monitored at all times. Monitoring of circuits shall be done to the individual circuit level. BellSouth shall conduct monitoring for trunks between the tandem and all associated PSAPs.
- 25.4.6 Repair service shall begin immediately upon receipt of a report of a malfunction. BellSouth repair efforts shall be provided in the same manner as BellSouth provides repair service to itself.
- 25.4.7 BellSouth shall notify Supra 48 hours in advance of any scheduled testing or maintenance affecting Supra 911 service, and provide notification as soon as possible of any unscheduled outage affecting Supra 911 service.

25.4.2 Telephone Relay Service

Where BellSouth provides to speech and hearing-impaired callers a service that enables callers to type a message into a telephone set equipped with a keypad a keypad and message screen and to have a live operator read the message to a recipient and to type message recipient's response to the speech or hearing-impaired caller ("Telephone Relay Service"), BellSouth shall make such service available to AT&T Supra at no additional charge, for use by AT&T Supra Customers who are speech or hearing-impaired. If BellSouth maintains a record of Customers who qualify under any applicable law for Telephone Relay Service, BellSouth shall make such data available to AT&T Supra as it pertains to AT&T Supra Customers.

25.5 Contract Service Arrangements ("CSAS")

- 25.5.1 CSA's shall be available for resale at the wholesale discount.
- 25.5.2 If AT&TSupra identifies a specific CSA, BellSouth shall provide AT&TSupra a copy within ten ~~(10)~~(2) business days of AT&T'sSupra's request.
- 25.6 DELETED**
- 25.7 DELETED**
- 25.8 DELETED**
- 25.9 DELETED**
- 25.10 Nonrecurring Services**
- 25.10.1 BellSouth shall offer for resale all non-recurring services.
- 25.11 Inside Wire Maintenance Service**
- 25.11.1 BellSouth shall provide Inside Wire Maintenance Service for resold services, but the resale discount will not apply.
- 25.12 Pay Phone Service**

BellSouth shall offer for resale, at a minimum, the following pay phone services: Coin Line (currently sold as SmartLinesm), COCOT Line Coin (currently sold as Independent Payphone Provider (IPP) Line), and COCOT Line Coinless (currently sold as IPP Line Coinless). To the extent BellSouth demonstrates that it does not provide the payphone features and functionality requested by AT&TSupra to BellSouth Customers, AT&TSupra may request that BellSouth provide such functionality pursuant to the Bona Fide Request Process identified in Section 1.1 of the General Terms and Conditions of this Agreement.

- Billed Number Screening
- Originating line screening
- Ability to "freeze" PIC selection
- One bill per line
- Point of demarcation at the Network Interface location
- Detailed billing showing all 1+ traffic on paper, diskette or electronic format
- Wire Maintenance option
- Touchtone service
- Option for listed or non-listed numbers
- Access to 911 service
- One directory per line
- Access to ANI Information
- Line and/or station monitoring and diagnostic routines

- 25.12.1 In addition, BellSouth shall offer for resale, at a minimum, the following features with its resold Coin Line service:
- Access to all CO intelligence required to perform answer detection, coin collection, coin return, and disconnect.
 - Answer Detection
 - Option to block all 1+ calls to international destinations
 - IntraLATA Call Timing
 - Option of one way or two way service on line
 - Coin Refund and Repair Referral Service
 - Ability to block any 1+ service that cannot be rated by the coin circuits
 - AT&TSupra rate tables for local and intraLATA service
 - Option of Flat Rate Service or Measured Service or both
 - Protect against clip on fraud
 - Protect against blue box fraud
- 25.12.2 BellSouth shall offer for resale, at a minimum, the following features with its COCOT Line Coin and COCOT Line Coinless services:
- Ability to keep existing serving telephone numbers if ~~cut-over~~cutover to AT&TSupra Resale Line
 - Option of One Way or Two Way service on the line
 - Option of Flat Rate Service or Measured Service or both
- 25.12.3 BellSouth shall offer for resale, at a minimum, the following feature with its COCOT Line Coin service:
- Blocking for 1+ international, 10XXXX1+ international, 101XXXX1+ international, 1+900, N11, 976
 - Option to block all 1-700 and 1-500 calls
 - Line side supervision option
- 25.12.4 BellSouth shall offer for resale, at a minimum, the following features with its COCOT Line Coinless service:
- Blocking for 1+ international, 10XXXX1+ international, 101XXXX1+ international, 1+900, N11, 976, 7 or 10 digit local, 1+DDD
- 25.12.5 BellSouth shall offer for resale, at a minimum, the following features with its ~~SemiPublic~~semipublic Coin service:
- Ability to keep existing serving telephone numbers if ~~cut-over~~ to AT&TSupra
 - Touchtone Service
 - Option for listed, non-listed, or ~~non-published~~non-published numbers
 - Provision 911 service
 - Access to ANI information
 - Access to all CO intelligence required to perform answer supervision, coin collect, coin return and disconnect
 - Far end disconnect recognition

Call timing
 PIC protection for all 1+local, interLATA, and intraLATA traffic
 Same call restrictions as available on BellSouth phones for
 interLATA, international, intraLATA, and local calling
 One bill per line
 Detailed billing showing all 1+ traffic in paper or electronic format
 Option to have enclosure installed with set
 One directory per line installed
 Install the station to at least BellSouth standards
 Ability to block any 1+ service that cannot be rated by the coin
 circuits
AT&TSupra to be the PIC for local and intraLATA calls
 Option to block all 1+ international calls
 Option of one way or two way service
 Wire Maintenance option
AT&TSupra rate tables for local and intraLATA service
 Option to have BellSouth techs collect, count, and deposit vault
 contents on behalf of AT&TSupra
 Monitor vault contents for slugs and spurious non-US currency or theft
 and notify AT&TSupra of discrepancies
 Station or enclosure equipment should only bear the name/brand
 designated by AT&TSupra on the order form
 Protect against clip on fraud
 Protect against red box fraud
 Protect against blue box fraud
 Provide option for use of "bright" station technology including debit
 cards
 Provide revenue, maintenance, collection reports as specified by
AT&TSupra on order form on a periodic basis in paper or electronic
 format

25.12.6 BellSouth shall provide the following features for Coin Line, SemiPublic Coin, COCOT Line Coin, and COCOT Line Coinless services:

Blocking of inbound international calls
 Point of demarcation at the set location
 Special screen codes unique to AT&TSupra and/or its Customers
 Single Point of Contact for bills and orders dedicated to Public
 Service outage transfers to AT&TSupra help center
 Access to AT&TSupra Directory Assistance
 Access to AT&T'sSupra's Network Access Interrupt
 Use AT&TSupra branded invoice
 Provide all information requested to ensure AT&TSupra can bill for
 access line
 Provide all information requested to ensure AT&TSupra can bill for
 usage on the line

All calls originating from stations serviced by these lines should be routed to AT&TSupra lines, except where designated

25.13 Voice Mail Service

25.13.1 Where available to BellSouth's end users, BellSouth shall provide the following feature capabilities to allow for voice mail services:

Station Message Desk Interface - Enhanced ("SMDI-E")
 Station Message Desk Interface ("SMDI")
 Message Waiting Indicator ("MWI") stutter dialtone and message waiting light feature capabilities
 Call Forward on Busy/Don't Answer ("CF-B/DA")
 Call Forward on Busy ("CF/B")
 Call Forward Don't Answer ("CF/DA")

25.14 Hospitality Service

25.14.1 BellSouth shall provide all blocking, screening, and all other applicable functions available for hospitality lines.

25.15 Blocking Service

25.15.1 BellSouth shall provide blocking of 700, 900, and 976 services individually or in any combination upon request, including bill to third Party and collect calls, from AT&TSupra on a line, trunk, or individual service basis at parity with what BellSouth provides its end users.

26. DELETED

26.1 DELETED

26.1.1 DELETED

26.1.2 DELETED

26.1.3 DELETED

26.1.4 DELETED

27. Support Functions

27.1 Routing to Directory Assistance, Operator and Repair Services

27.1.1 BellSouth shall make available to AT&TSupra the ability to route:

27.1.1.1 Local Directory Assistance calls (411, (NPA) 555 1212) dialed by AT&TSupra Customers directly to the AT&TSupra Directory Assistance Services platform. Local Operator Services calls (0+, 0-) dialed by AT&TSupra Customers directly

to the AT&TSupra Local Operator Services Platform. Such traffic shall be routed over trunk groups between BellSouth end offices and the AT&TSupra Local Operator Services Platform, using standard Operator Services dialing protocols of 0+ or 0-.

- 27.1.1.2 611 repair calls dialed by AT&TSupra Customers directly to the AT&TSupra repair center.
- 27.1.2 Until a permanent industry solution exists for routing of traffic from BellSouth's local switch to other than BellSouth platforms, BellSouth will provide such routing using line class codes. BellSouth agrees to work with AT&TSupra on a routing resource conservation program to relieve routing resource constraints to ensure that no switch exceeds 95% capacity of line class codes. BellSouth and AT&TSupra shall continue to work with the appropriate industry groups to develop a long-term solution for selective routing. BellSouth may reserve for itself an appropriate and reasonable number of line class codes for its own use.
- 27.1.3 All direct routing capabilities described herein shall permit AT&TSupra Customers to dial the same telephone numbers for AT&TSupra Directory Assistance, Local Operator Service and Repair that similarly situated BellSouth Customers dial for reaching equivalent BellSouth services.
- 27.1.4 BellSouth, no later than fifteen (15) days after the Effective Date, shall provide to AT&T,Supra, the emergency public agency (e.g., police, fire, ambulance) telephone numbers linked to each NPA-NXX. Such data will be compiled as an electronic flat file in a mutually agreed format and transmitted via either diskette or Network Data Mover. BellSouth will transmit to AT&T,Supra, in a timely manner, all changes, alterations, modifications and updates to such data base via the same method as the initial transfer.

27.2 Operator Services –~~Interim Measures~~

- 27.2.1 Where BellSouth is the provider of Directory Assistance service, BellSouth agrees to provide AT&TSupra Customers with the same Directory Assistance available to BellSouth Customers. If requested by AT&T,Supra, BellSouth will provide AT&TSupra Directory Assistance Service under the AT&TSupra brand.
- 27.2.1.1 AT&TSupra recognizes that BellSouth's providing to AT&TSupra Directory Assistance Service under AT&T'sSupra's brand may require additional costs to be incurred by BellSouth. BellSouth will charge AT&TSupra for such branded Directory Assistance capability under the wholesale rate plus the reasonable and demonstrable costs necessary to implement AT&T'sSupra's branding request.
- 27.2.2 Additionally, BellSouth warrants that such service will provide the following minimum capabilities to AT&T'sSupra's Customers:

- (1) Two Customer listings and/or addresses per AT&TSupra Customer call.
- (2) Name and address to AT&TSupra Customers upon request, except for unlisted numbers, in the same states where such information is provided to BellSouth Customers.
- (3) Upon request, call completion to the requested number for local and intraLATA toll calls, where this service is available.
- (4) Populate the listing database in the same manner and in the same time frame as if the Customer was a BellSouth Customer.
- (5) Any information provided by a Directory Assistance Automatic Response Unit (ARU) will be repeated the same number of times for AT&TSupra Customers as for BellSouth's Customers.
- (6) Service levels will comply with Tennessee Regulatory Authority requirements for:
 - a) number of rings to answer
 - b) average work time
 - c) disaster recovery options.
- (7) Intercept service for Customers moving service will include:
 - a) referral to new number, either 7 or 10 digits
 - b) repeat of the new number twice on the referral announcement
 - c) repeat of the new recording twice.

27.2.3 BellSouth shall provide Operator Services to AT&T'sSupra's Customers at the same level of service available to BellSouth end users.

27.2.4 DELETED

27.2.5 BellSouth agrees to provide AT&TSupra Customers the same Operator Services available to BellSouth Customers, branded as required by Section 19.

27.2.6 Additionally, BellSouth warrants that such service will provide the following minimum capabilities to AT&TSupra Customers:

- (1) Instant credit on calls, as provided to BellSouth Customers.

- (2) Routing of calls to AT&TSupra when requested via existing Operator Transfer Service (OTS).
- (3) Busy Line Verification/Emergency Line Interrupt (BLV/ELI) services.
- (4) Emergency call handling.
- (5) Notification of the length of call.
- (6) Caller assistance for the disabled in the same manner as provided to BellSouth Customers.
- (7) Handling of collect calls: person to person and/or station to station.

27.3 Busy Line Verification and Emergency Line Interrupt

Where BellSouth does not route Operator Services traffic to AT&T'sSupra's platform, BellSouth shall perform Busy Line Verification and Emergency Line Interrupt for AT&TSupra on resold BellSouth lines. Where BellSouth routes Operator Services traffic to AT&T'sSupra's platform, BellSouth shall provide BLV/ELI services when requested by AT&TSupra Operators. AT&TSupra and BellSouth shall work together to ensure that sufficient facilities exist to support increased BLV/ELI volume due to AT&T'sSupra's presence as a Local Service provider. Specifically, BellSouth will engineer its BLV/ELI facilities to accommodate the anticipated volume of BLV/ELI requests during the Busy Hour. AT&TSupra may, from time to time, provide its anticipated volume of BLV/ELI requests to BellSouth for planning purposes. In those instances when the BLV/ELI facilities/systems cannot satisfy forecasted volumes, BellSouth shall promptly inform AT&T,Supra, and the Parties shall work together to resolve capacity problems expediently.

27.4 Access to the Line Information Database

BellSouth shall use its service order process to update and maintain, on the same schedule that it uses for its end users, the AT&TSupra Customer service information in the Line Information Database ("LIDB").

27.5 Telephone Line Number Calling Cards

Effective as of the date of an end-user's subscription to AT&TSupra Service, BellSouth will terminate its existing telephone line number - based calling cards and remove any BellSouth-assigned Telephone Line Calling Card Number (including area code) ("TLN") from the LIDB. AT&TSupra may issue a new telephone calling card to such Customer, utilizing the same TLN and enter

such TLN in LIDB for calling card validation purposes via the service order process.

BellSouth shall provide Supra real-time direct access to BellSouth's own OSS(s) for the LIDB to allow Supra the capability to fully view or edit all fields of the LIDB as of the Effective Date.

28. Service Functions

28.1 Electronic Interface

~~BellSouth shall provide real time electronic access to order processing interfaces ("EI")("OPI") for transferring and receiving Service Orders and Provisioning data and materials (e.g., access to Street Address Guide ("SAG") and Telephone Number Assignment database). These interfaces shall be administered through as specified in the commercial arbitration award dated June 5th, 2001.e., direct access to BellSouth's OSS) as of the a gateway that will serve as a point of contact for the transmission of such data from AT&T to BellSouth, and from BellSouth to AT&T. The requirements and implementation of such a data transfer system shall be negotiated in good faith by the Parties as specified below and in Attachment 15 of this Agreement. AT&T and BellSouth agree to use best efforts to provide the Electronic Communications gateway described above as soon as practicable, but in no event later than the dates specified in Attachment 15. In addition, (i) BellSouth agrees to use its best efforts to carry out its responsibilities, and (ii) AT&T agrees to use its best efforts to carry out its responsibilities. AT&T and BellSouth have agreed on interim solutions described below and in Attachment 15 to address the Pre-ordering, Ordering and Provisioning interfaces. Effective Date. BellSouth warrants that such interim solutions shall provide AT&T Supra Customers with the same level of service available to BellSouth Customers.~~

28.1.1 Pre-Ordering

28.1.1.1 DELETED

28.1.1.2 DELETED

28.1.1.3 BellSouth will supply AT&T Supra with Interval Guide Job Aids to be used to determine service installation dates. ~~BellSouth will implement an electronic interface to it shall provide real-time direct access to BellSouth's own OSS(s) Due for Due Date Support Application (DSAP) by December 31, 1996 but no later than April 1, 1997. as of the Effective Date.~~

28.1.1.4 BellSouth will reserve up to 1000 telephone numbers per NPA-NXX at AT&T's Supra's request, for AT&T's Supra's sole use. BellSouth will provide

additional numbers at AT&T's Supra's request in order that AT&T Supra have sufficient numbers available to meet expected needs. The telephone number reservations made in this manner are valid for AT&T's Supra's assignment for ninety (90) days from the reservation date. BellSouth will make the telephone number reservations available to AT&T via diskette by no later than August 15, 1996 and by electronic file transfer no later October 15, 1996. shall provide Supra real-time direct access to BellSouth's own OSS(s) for number reservation system as of the Effective Date.

~~BellSouth agrees to implement an electronic interface to improve this process by December 31, 1996, but no later than April 1, 1997.~~

28.1.1.5 ~~BellSouth Local Carrier Service Center (LCSC) will shall provide Supra with the ability to assign vanity numbers via real-time direct access to BellSouth's own OSS(s) and blocks of numbers for use with complex services including, but not limited to, DID and Hunting arrangements, as requested by AT&T, Supra, and documented in Work Center Interface agreements.~~

28.1.1.6 ~~BellSouth will migrate all Pre-ordering functionality to the "Pre-Ordering" Electronic Communications Gateway by December 31, 1996, but no later than April 1, 1997. This migration effort shall be accomplished as described by BellSouth in its "Phase II interactive solution" report to the Georgia Public Service Commission of July 21, 1996. **DELETED**~~

28.1.2 **Ordering**

28.1.2.1 ~~BellSouth agrees to develop, and AT&T agrees to cooperate in the development of, a mutually acceptable Electronic Data Interchange (EDI) for ordering Local Services. Shall provide Supra with real-time direct access to BellSouth's own OSS(s) for Service order creation for ordering Local Services as of the Effective Date. The ordering process and related transactions, (i.e., order, confirmation, firm order commitments, supplements and completions) shall be via via the EDI interface. these OSS(s).~~

28.1.2.2 ~~BellSouth agrees to implement the EDI interface to support processes for Local Services for residence POTS and features, business POTS and features and PBX trunks with Direct Inward Dialing by September 1, 1996. By December 15, 1996, all Local Services shall be available for ordering via EDI interface. **DELETED**~~

28.1.2.3 **DELETED**

28.2 **Work Order Processes**

28.2.1 BellSouth shall ensure that all work order processes used to provision Local Service to AT&T Supra for resale meet the service parity requirements set forth in this part.

28.2.2 Prior to AT&T^{Supra} sending BellSouth the first Service Order, BellSouth and AT&T^{Supra} shall develop mutually agreed-upon escalation and expedite procedures to be employed at any point in the Service Ordering, Provisioning, Maintenance, Billing and Customer Usage Data transfer processes to facilitate rapid and timely resolution of disputes. These procedures will be maintained in the Work Center Interface Agreements.

28.3 Point of Contact for the AT&T^{Supra} Customer

28.3.1 Except as otherwise provided in this Agreement, AT&T^{Supra} shall be the single and sole point of contact for all AT&T^{Supra} Customers.

28.3.2 DELETED

28.3.3 BellSouth shall ensure that all BellSouth representatives who receive inquiries regarding AT&T^{Supra} services when providing services on behalf of AT&T^{Supra}: (i) refer such inquiries to AT&T^{Supra} at a telephone number provided by AT&T^{Supra}; (ii) do not in any way disparage or discriminate against AT&T^{Supra}, or its products or services; and (iii) do not provide information about BellSouth products or services.

28.4 Single Point of Contact

28.4.1 Each Party shall provide the other Party with a single point of contact ("SPOC") for all inquiries regarding the implementation of this Part. Each Party shall accept all inquiries from the other Party and provide timely responses.

28.4.2 BellSouth Contact numbers will be kept current in the Work Center Interface Agreements.

28.5 Service Order

To facilitate the ordering of new service for resale or changes to such service to an AT&T^{Supra} Customer ("Service Order"), BellSouth shall provide AT&T's^{Supra} representative with real time access (as described in Section 28.1 of this Part 1) to BellSouth Customer information to enable the AT&T^{Supra} representative to perform the following tasks:

28.5.1 Obtain Customer profile information via telephone. ~~Methods and procedures for this interim interface will be defined in a Work Center Interface Agreement.~~ real-time direct access to BellSouth's own OSS(s) as of the Effective Date.

28.5.2 Obtain information on all Telecommunication Services that are available for resale, or UNE Combinations, including new services via ~~an electronic file with feature and service information in each BellSouth switch.~~ real-time direct access to BellSouth's own OSS(s) as of the Effective Date

- 28.5.3 BellSouth will provide AT&T with Supra with real-time direct interactive direct order entry no later than March 31, 1997 via BellSouth's own OSS(s) as of the Effective Date. Until this capability is available, BellSouth agrees to establish the Local Carrier Service Center (LCSC) as the SPOC for order entry. Orders will be received at the LCSC via ~~the ED~~ any approved LSR interface. BellSouth agrees to enter the Service Order promptly on receipt and provide Firm Order Confirmation (FOC) within 24 hours of receipt of a correct Local Service Request.
- 28.5.4 BellSouth will provide AT&T with ~~on-line~~ Supra with real-time direct access to BellSouth's own OSS(s) for telephone number reservations by December 31, 1996, but no later April 1, 1997. Until ~~on-line access is available via electronic interface,~~ BellSouth agrees to provide AT&T with a ready supply of telephone numbers as of the Effective Date. The process for telephone number reservations is described in Section 28.1.1.4 of this Agreement.
- 28.5.5 BellSouth will provide AT&T Supra with the capability to establish directory listings via the Service Order Process.
- 28.5.6 BellSouth will provide AT&T Supra with the appropriate information and training materials (job aids) to assist AT&T Supra work centers to determine whether a service call will be required on a service installation. These job aids are to be the same information available to BellSouth employees.
- 28.5.7 BellSouth will provide AT&T Supra on line ability to schedule dispatch and by December 31, 1996 but no later than April 1, 1997. Until on line access is available, BellSouth agrees to provide AT&T Supra with interval guides for BellSouth services.
- 28.5.8 ~~28.5.8~~ BellSouth will provide AT&T Supra with the ability to order local service, local intraLATA toll service, and designate the end users' choice of primary intraLATA carrier and interLATA Interexchange Carriers on a single unified order.
- 28.5.9 ~~28.5.9~~ BellSouth will suspend, terminate or restore service to an AT&T Supra Customer at AT&T's Supra's request.

28.6 Provisioning

28.6.1 DELETED

28.6.1.1 DELETED

28.6.1.2 DELETED

28.6.1.3 DELETED

28.6.1.4 DELETED

28.6.1.5 DELETED

28.6.2 ~~BellSouth shall provide AT&T with service status notices, within mutually agreed upon intervals. Supra with real-time direct access to BellSouth's own (s) for provisioning, pending order and service status notices as of the Effective Date.~~ Such status notices shall include the following:

28.6.2.1 ~~Firm order confirmation, including service~~Service availability date and information regarding the need for a service dispatch for installation.

28.6.3 ~~BellSouth will provide AT&T with on-line~~Supra with real-time direct notice of service installation by no later than March 31, 1997. ~~Until this capability is available, BellSouth will provide AT&T with completion information on a daily basis for all types of Service Orders. BellSouth will utilize the EDI interface to transmit that data to AT&T. If as of the Effective Date~~ If an installation requires deviation from the Service Order in any manner, or if an AT&T a Supra Customer requests a service change at the time of installation, BellSouth will call AT&T Supra in advance of performing the installation for authorization. BellSouth will provide to AT&T Supra at that time an estimate of additional labor hours and/or materials required for that installation. After installation is completed, BellSouth will immediately inform AT&T Supra of actual labor hours and/or materials used.

28.6.4 ~~BellSouth will provide AT&T with on-line information exchange for~~Supra with real-time direct access to BellSouth's own OSS(s Service) Service Order rejections, Service Order errors, installation jeopardiesjeopardous and missed appointments by no later than March 31, 1997, until this capability is available,as of the Effective Date. In the event that there is a failure of this system BellSouth, BellSouth agrees to:

28.6.4.1 ~~Use its best efforts to notify AT&T via telephone~~Notify ~~of~~Supra of any Service Order rejections or errors ~~errors within one hour of receipt;~~in the same time and manner such notice is provided to BellSouth's retail operations.

28.6.4.2 ~~Confirm such telephone notices in writing via facsimile at the end of each business day; and~~

28.6.4.3 ~~BellSouth shall promptly notify AT&T via telephone if an installation or service appointment is in jeopardy of being missed.~~

28.6.4.4 ~~The notification process will be described further in the Work Center Interface agreement between AT&T and BellSouth.~~

28.6.4.4

28.6.5 DELETED

- 28.6.6 ~~BellSouth will provide AT&T with on-line information on charges associated with necessary construction no later than March 31, 1997. Until this capability is available, BellSouth agrees that BellSouth's LCSC will promptly notify AT&T of any Supra with real-time direct access to charges associated with necessary construction.~~
- 28.6.7 ~~BellSouth will provide AT&T with on-line access Supra with real-time direct access to BellSouth's own OSS(s) to status information on Service Orders no later than March 31, 1997. Until this capability is available, BellSouth agrees to provide status at the following critical intervals: acknowledgment, firm order confirmation, and completion on Service Orders. In addition, BellSouth Local Carrier Service Center will provide AT&T with status, via telephone, upon request. as of the Effective Date.~~
- 28.6.8 BellSouth will perform all pre-service testing on resold Local Services.
- 28.6.9 Where BellSouth provides installation and the AT&T Supra Customer requests a service change at the time of installation, BellSouth shall immediately notify AT&T Supra at the telephone number on the Service Order of ~~that of that~~ request. The BellSouth technician should notify AT&T Supra in the presence of the AT&T Supra Customer so that AT&T Supra can negotiate authorization to install the requested services directly with that Customer and the technician, and revise appropriate ordering documents as necessary.
- 28.6.10 To ensure that AT&T's Supra's Customers have the same ordering experience as BellSouth's Customers:
- 28.6.10.1 ~~BellSouth shall provide AT&T with the capability to have AT&T's Customer orders input to and accepted by BellSouth's Service Order Systems outside of normal business hours, twenty-four (24) hours a day, seven (7) days a week, the same as BellSouth's Customer orders received outside of normal business orders are input and accepted. Supra with direct access to BellSouth's OSS.~~
- 28.6.10.2 ~~Such ordering and provisioning capability shall be provided via an electronic interface, except for scheduled electronic interface downtime at parity with the capability BellSouth provides itself as of the Effective Date. Downtime shall not be scheduled during normal business hours and shall occur during times where systems experience minimum usage.~~
- 28.6.10.3 ~~Until the Electronic Interface is available, BellSouth shall~~ BellSouth shall also provide Local Carrier Service Center (LCSC) order entry capability to AT&T Supra to meet the requirements set forth in Section 28.6.10.1 above.
- 28.6.11 BellSouth shall provide training for all BellSouth employees who may communicate with AT&T Supra Customers, during the provisioning process.

Such training shall conform to Section 19 of the General Terms and Conditions of this Agreement.

- 28.6.12 BellSouth will provide AT&T Supra with the capability to provide AT&T Supra Customers the same ordering, provisioning intervals, and level of service experiences as BellSouth provides to its own Customers, in accordance with standards or other measurements that are at least equal to the level that BellSouth provides or is required to provide by law and its own internal procedures.
- 28.6.13 BellSouth will maintain and staff an account team to support AT&T's Supra's inquiries concerning the ordering of local complex service and designed business services for local services resale. This team ~~will provide~~ will provide information regarding all services, features and functions ~~available,~~ available and, ~~the forms and additional information required beyond the standard local service request,~~ assist AT&T Assist Supra in preparation of such orders, and coordinate within BellSouth departments including the Complex Services Resale Group (CSRG) or equivalent.
- 28.6.14 BellSouth will provide AT&T Supra with the information AT&T Supra will need to certify Customers as exempt from charges, or eligible for reduced charges associated with the provisioning of new services, including but not limited to handicapped individuals, and certain governmental bodies and public institutions. BellSouth, when notified that an order for new service is exempt in some fashion, will not bill AT&T Supra.
- BellSouth will provide Supra all products and services in compliance with applicable laws regarding service to the handicapped. BellSouth will indemnify and hold Supra harmless from any and all claims from any source regarding compliance, or lack thereof.
- 28.6.15 BellSouth will provide the same intercept treatment and transfer of service announcements to AT&T's Supra's Customers as BellSouth provides to its own end users without any branding.
- 28.6.16 BellSouth will provide AT&T Supra with appropriate notification of all area transfers with line level detail 120 days before service transfer, and will also notify AT&T Supra within 120 days before such change of any LATA boundary changes, or within the time frame required by an approving regulatory body, if any.
- 28.6.17 BellSouth agrees to develop with AT&T's Supra's cooperation, mutually acceptable interface agreements between work centers regarding the exchange of information and process expectations.
- 28.6.18 BellSouth will suspend AT&T Supra local Customers' service upon AT&T's Supra's request via the ~~receipt of a Local Service Request.~~ BellSouth

supplied real-time direct access to BellSouth's own OSS(s). The service will remain suspended until such time as ~~as~~ AT&T^{Supra} submits a ~~Local Service Request Order~~ requesting BellSouth to reactivate as of the Effective Date.

- 28.6.19 BellSouth will provide AT&T's^{Supra}'s end users the same call blocking options available to BellSouth's own end users.
- 28.6.20 BellSouth will work cooperatively with AT&T^{Supra} in practices and procedures regarding Law Enforcement and service annoyance call handling. To the extent that circuit-specific engineering is required for resold services, BellSouth will provide the same level of engineering support as BellSouth provides for its comparable retail services.
- 28.6.21 BellSouth will provide information about the certification process for the provisioning of LifeLine, Link-up and other similar services.
- 28.6.22 BellSouth will provide a daily electronic listing of AT&T^{Supra} Customers who change their local carrier. The process is described as OUTPLOC (See reference in Local Account Maintenance Requirements of Attachment 7.)

28.7 Maintenance

Maintenance shall be provided in accordance with the requirements and standards set forth in Attachment 5. Maintenance will be provided by BellSouth in accordance with the service parity requirements set forth in this Part.

28.8 Provision of Customer Usage Data

BellSouth shall provide the Customer Usage Data recorded by the BellSouth switch. Such data shall include ~~complete AT&T~~complete, non-filtered, Supra Customer usage data for Local Service, including ~~both~~ both local and intraLATA and interLATA toll service (e.g., call detail for all services, including flat-rated and usage-sensitive features), in accordance with the terms and conditions set forth in Attachment 7.

28.9 Service/Operation Readiness Testing

- 28.9.1 In addition to testing described elsewhere in this Section, BellSouth shall test the systems used to perform the following functions in a mutually agreed upon time frame prior to commencement of BellSouth's provision of Local Service, in order to establish system readiness capabilities:
- 28.9.1.1 All interfaces between AT&T^{Supra} and BellSouth work centers for Service Order, Provisioning;
- 28.9.1.2 Maintenance, Billing and Customer Usage Data;

- 28.9.1.3 The process for BellSouth to provide Customer profiles;
- 28.9.1.4 The installation scheduling process;
- 28.9.1.5 DELETED**
- 28.9.1.6 Telephone number assignment;
- 28.9.1.7 Procedures for communications and coordination between AT&TSupra SPOC and BellSouth SPOC;
- 28.9.1.8 Procedures for transmission of Customer Usage Data; and
- 28.9.1.9 Procedures for transmitting bills to AT&TSupra for Local Service and the process for wholesale billing for local service.
- 28.9.2 The functionalities identified above shall be tested by BellSouth in order to determine whether BellSouth performance is in parity with what it provides itself and its affiliates, meets the applicable ~~service parity requirements~~, quality measures and other performance standards set forth in this Agreement. BellSouth shall make available sufficient technical staff to perform such testing. BellSouth technical staff shall be available to meet with AT&TSupra as necessary to facilitate testing. BellSouth and AT&TSupra shall mutually agree on the schedule for such testing.
- 28.9.3 At AT&T'sSupra's reasonable request, BellSouth shall provide AT&TSupra with service readiness test results of the testing performed pursuant to the terms of this Part.
- 28.9.4 During the term of this Agreement, BellSouth shall participate in cooperative testing requested by AT&TSupra whenever both companies agree it is necessary to ensure service performance, reliability and Customer serviceability.
- 28.10 Billing For Local Service**
- 28.10.1 BellSouth shall bill AT&TSupra for Local Service provided by BellSouth to AT&TSupra pursuant to the terms of this Part, and in accordance with the terms and conditions for Connectivity Billing and Recording in Attachment 6.
- 28.10.2 BellSouth shall recognize AT&TSupra as the Customer of record for all Local Service and will send all notices, bills and other pertinent information directly to AT&TSupra unless AT&TSupra specifically requests otherwise.

PART II: UNBUNDLED NETWORK ELEMENTS

29. Introduction

This Part II sets forth the unbundled Network Elements that BellSouth agrees to offer to AT&TSupra in accordance with its obligations under Section 251(c)(3) of the Act. The specific terms and conditions that apply to the unbundled Network Elements and the requirements for each Network Element are described below and in the Network Elements Service Description, Attachment 2. The price for each Network Element is set forth in Part IV of this Agreement. BellSouth shall offer Network Elements to AT&TSupra as of the Effective Date.

30. Unbundled Network Elements

- 30.1 BellSouth shall offer Network Elements to AT&TSupra on an unbundled basis on rates, terms and conditions that are just, reasonable, and non-discriminatory in accordance with the terms and conditions of this Agreement.
- 30.2 BellSouth will permit AT&TSupra to interconnect AT&T'sSupra's facilities or facilities provided by AT&TSupra or by third Parties with each of ~~BellSouth's unbundled~~BellSouth's unbundled Network Elements at any point designated by AT&TSupra that is technically feasible.
- 30.3 BellSouth will deliver to AT&T'sSupra's Served Premises any interface that is technically feasible. AT&T,Supra, at its option, may designate other interfaces through the Bona Fide Request process delineated in Attachment 14.
- 30.4 AT&TSupra may use one or more Network Elements to provide any feature, function, or service option that such Network Element is capable of providing or any feature, function, or service option that is described in the technical references identified herein.
- 30.5 ~~30.5 BellSouth shall offer~~BellSouth shall offer, without restriction, each Network Element individually and in combination, in the manner requested by Supra, with any other Network Element or Network Elements in order to permit AT&TSupra to provide Telecommunications Services to its Customers subject to the provisions of Section 1A of the General Terms and Conditions of this Agreement.
- 30.6 Upon request, BellSouth shall be required to perform the functions necessary to combine unbundled network elements that are not ordinarily combined in its network to permit Supra to provide Telecommunications Services to its customers, including the re-creation of BellSouth retail services. BellSouth shall be prohibited from refusing to provide

combinations of Network Elements that are technically feasible. (Issues 22, 23, 24)

30.7 ~~30.6~~—For each Network Element, BellSouth shall provide a demarcation point (e.g., an interconnection point at a Digital Signal Cross Connect or Light Guide Cross Connect panel or a Main Distribution Frame) and, if necessary, access to such demarcation point, which AT&T^{Supra} agrees is suitable. However, where BellSouth provides contiguous Network Elements to AT&T^{Supra}, BellSouth may provide the existing interconnections and no demarcation point shall exist between such contiguous Network Elements.

30.7 **DELETED**

BellSouth shall not charge Supra an fee or demand other consideration for directly interconnecting any network element or Combination to any other Network Element or Combination provided by BellSouth to Supra if BellSouth directly interconnects same two Network Elements or Combinations in providing service to its own customers or a BellSouth affiliate, including the use of intermediate devices, such as digital cross connect panel, to perform such interconnection.

30.8 The charge assessed to AT&T^{Supra} to interconnect any Network Element or Combination to any other Network Element or Combination provided by BellSouth to AT&T^{Supra} ~~if BellSouth~~ if BellSouth does not directly interconnect the same two Network Elements or Combinations in providing any service to its own Customers or a BellSouth affiliate ~~(e.g., the interconnection required to connect the Loop Feeder to an ALEC's collocated equipment)~~, shall be cost based. **(ISSUE 22)**

30.9 Attachment 2 of this Agreement describes the Network Elements that AT&T^{Supra} and BellSouth have identified as of the Effective Date of this Agreement. AT&T^{Supra} and BellSouth agree that the Network Elements identified in Attachment 2 are not exclusive. Either Party may identify additional or revised Network Elements as necessary to improve services to Customers, to improve network or service efficiencies or to accommodate changing technologies, Customer demand, or regulatory requirements. Upon BellSouth's identification of a new or revised Network Element, BellSouth shall notify AT&T^{Supra} of the existence of and the technical characteristics of the new or revised Network Element.

~~AT&T shall make it's request for a~~ Within thirty (30) days of Supra and BellSouth agreeing on the technical characteristics of the new or revised Network Element, the parties will negotiate the rates, terms and conditions that would apply to such Network Elements and the effects, if any, on the price, performance or other terms and conditions of existing Network Elements. If the parties do not agree on rates, terms and conditions and other matters set forth Element pursuant to the Bona Fide Request

Process identified in Section 1.1 of the General Terms and Conditions of herein, any issues that have not been resolved by the parties within thirty (30) days shall be submitted to the Dispute Resolution Procedures as set forth in this Agreement.

Additionally, if BellSouth provides any Network Element that is not identified in this Agreement, to itself, to its own Customers, to a BellSouth affiliate or to any other entity, BellSouth ~~will~~ shall provide the same Network Element to AT&T Supra on rates, terms and conditions no less favorable to AT&T Supra than those provided to itself or to any other Party. Additional descriptions and requirements for each Network Element are set forth in Attachment 2.

30.9.1 ~~Whenever BellSouth provides Telecommunications service or a network element to itself, a BellSouth affiliate, a subsidiary, a partner, to any Local Exchange Carrier or Interexchange Carrier, Supra shall have the right to request that same service or network element as if incorporated in this Agreement. BellSouth must provide such service or network element at cost to Supra, even in the absence of cost studies, pricing or agreement between the parties Supra shall have the right to demand negotiation of the pricing, terms and conditions of such service or network elements, or if in existence to pick such prices, terms and conditions as it deems most favorable to itself. The prices thus agreed to for the service or network element will be applied retroactive to the date of the provision of the service or network element. (Issue # 16)~~

30.9.2 DELETED

30.9.3 DELETED

30.9.4 DELETED

30.9.5 DELETED

30.9.6 DELETED

30.9.7 DELETED

30.9.8 DELETED

30.9.9 DELETED

30.9.10 DELETED

30.9.11 DELETED

30.10 Standards for Network Elements

- 30.10.1 BellSouth shall comply with the requirements set forth in the technical references, as well as any performance or other requirements identified in this Agreement, to the extent that they are consistent with the greater of BellSouth's actual performance or applicable industry standards. If another Bell Communications Research, Inc. ("~~Belleore~~"), Telcordia, or industry standard (e.g., American National Standards Institute ("ANSI")) technical reference or a more recent version of such reference sets forth a different requirement, AT&TSupra may request, where technically feasible, that a different standard apply by making a request for such change pursuant to the Bona Fide Request Process identified in Section 1.1 of the General Terms and Conditions of this Agreement.
- 30.10.2 If one or more of the requirements set forth in this Agreement are in conflict, ~~the parties~~ Supra shall ~~mutually agree on which~~ elect which requirement shall apply. If the parties cannot reach agreement, the Alternative Dispute Resolution Process identified in Section 16 of the General Terms and Conditions of this Agreement shall apply.
- 30.10.3 Each Network Element provided by BellSouth to AT&TSupra shall be at least equal in the quality of design, performance, features, functions, capabilities and other characteristics, including but not limited to levels and types of redundant equipment and facilities for power, diversity and security, that BellSouth provides in the BellSouth network to itself, ~~BellSouth's own~~ BellSouth's own Customers, to a BellSouth affiliate or to any other entity for the same Network Element.
- 30.10.3.1 **DELETED**
- BellSouth shall provide to Supra, upon reasonable request, such engineering, performance and other network data sufficient for Supra to determine that the requirements of this Section 30 are been met. In the event that such data indicates that the requirements of this Section 30 are not been met, BellSouth shall within ten (10) days, cure any design, performance or other deficiency and provide new data sufficient for Supra to determine that such deficiencies have been cured.
- 30.10.3.2 BellSouth agrees to work cooperatively with AT&TSupra to provide Network Elements that will meet AT&T'sSupra's needs in providing services to its Customers.
- 30.10.4 Unless otherwise designated by AT&T,Supra, each Network Element and the interconnections between Network Elements provided by BellSouth to AT&TSupra shall be made available to AT&TSupra on a priority basis that is equal to or better than the priorities that BellSouth provides to itself, ~~BellSouth's own~~ BellSouth's own Customers, to a BellSouth affiliate or to any other entity for the same Network Element or corresponding service.

PART III: ANCILLARY FUNCTIONS

31. Introduction

This Part and Attachment 3 set forth the Ancillary Functions and requirements for each Ancillary Function that BellSouth agrees to offer to AT&T^{Supra} so that AT&T^{Supra} may provide Telecommunication Services to its Customers.

32. BellSouth Provision of Ancillary Functions

Part IV of this Agreement sets forth the prices for such Ancillary Functions. BellSouth will offer Ancillary Functions to AT&T^{Supra} on rates, terms and conditions that are just, reasonable, and non-discriminatory and in accordance with the terms and conditions of this Agreement. Rates shall be cost based unless otherwise specified by applicable regulatory authorities.

- 32.1 The Ancillary Functions that AT&T^{Supra} has identified as of the Effective Date of this Agreement are Collocation, Rights Of Way (ROW), Conduits and Pole Attachments. AT&T^{Supra} and BellSouth agree that the Ancillary Functions identified in this Part III are not exclusive. Either Party may identify additional or revised Ancillary Functions as necessary to improve services to Customers, to improve network or service efficiencies or to accommodate changing technologies, Customer demand, or regulatory requirements. Upon BellSouth's identification of a new or revised Ancillary Function, BellSouth shall notify AT&T^{Supra} of the existence of and the technical characteristics of the new or revised Ancillary Function.

AT&T^{Supra} shall make its request for a new or revised Ancillary Function pursuant to the Bona Fide Request Process identified in Section 1.1 of the General Terms and Conditions of this Agreement.

- 32.2 If BellSouth provides any Ancillary Function to itself, to its own Customers, to a BellSouth affiliate or to any other entity, BellSouth will provide the same Ancillary Function to AT&T^{Supra} at rates, terms and conditions no less favorable to AT&T^{Supra} than those provided by BellSouth to itself or to any other Party. If BellSouth's provides any Ancillary Function not part of this agreement to any party, BellSouth shall notify Supra of the existence of and the technical characteristics of the new or revised provides any Ancillary Function. The Ancillary Functions and requirements for each Ancillary Function are set forth in Attachment 3.

33. Standards for Ancillary Functions

- 33.1 Each Ancillary Function shall meet or exceed the requirements set forth in the technical references, as well as the performance and other requirements, identified in this Agreement. If another Bell

Communications Research, Inc. (“Bellcore”), Inc., Telcordia, or industry standard (e.g., American National Standards Institute (“ANSI”)) technical reference sets forth a different requirement, AT&T^{Supra} may elect, where technically feasible, which standard shall apply by making a request for such change pursuant to the Bona Fide Request Process identified in Section 1.1 of the General Terms and Conditions of this Agreement.

33.2 Except as otherwise expressly agreed to herein, each Ancillary Function provided by BellSouth to AT&T^{Supra} herein shall be at least equal in the quality of design, performance, features, functions, capabilities and other characteristics, including, but not limited to levels and types of redundant equipment and facilities for diversity and security, that BellSouth provides in BellSouth network to itself, its own Customers, its affiliates or any other entity. This Section is not intended to limit BellSouth’s ability during this Agreement to offer to AT&T nor AT&T’s^{Supra} nor ^{Supra}’s ability to accept Ancillary Functions with varying degrees of features, functionalities and characteristics.

33.3 DELETED

BellSouth shall provide to ^{Supra}, upon reasonable request, such engineering, performance and other network data sufficient for ^{Supra} to determine that the requirements of this Section 30 are been met. In the event that such data indicates that the requirements of this Section 33 are not been met, BellSouth shall within ten (10) days, cure any design, performance or other deficiency and provide new data sufficient for ^{Supra} to determine that such deficiencies have been cured.

33.3.1 BellSouth agrees to work cooperatively with AT&T^{Supra} to provide Ancillary Functions that will meet AT&T’s^{Supra}’s needs in providing services to its Customers.

33.4 Ancillary Functions provided by BellSouth to AT&T^{Supra} shall be allocated to AT&T^{Supra} on a basis that is at least equal to that which BellSouth provides to itself, its Customers, its affiliates or any other entity.

PART IV: PRICING

34. General Principles

All services currently provided hereunder (including resold Local Services, Network Elements, Combinations and Ancillary Functions) and all new and additional services to be provided hereunder shall be priced in accordance with all applicable provisions of the Act and the rules and orders of the Federal Communications Commission and the Florida Public Service Commission, and applicable laws.

35. Local Service Resale

The rates that AT&T^{Supra} shall pay to BellSouth for resold Local Services shall be BellSouth's Retail Rates less the applicable discount. The following discount will apply to all Telecommunications Services available for resale in Florida.

| | |
|---------------------|--------------------|
| Residential Service | 21.83% <u>TBD%</u> |
| Business Service: | 16.81% <u>TBD%</u> |

36. Unbundled Network Elements

The prices that AT&T^{Supra} shall pay to BellSouth for Unbundled Network Elements are set forth in Table 1.

36.1 Charges for Multiple Network Elements

Any BellSouth non-recurring and recurring charges shall not include duplicate charges or charges for functions or activities that AT&T^{Supra} does not need when two or more Network Elements are combined in a single order. BellSouth and AT&T^{Supra} shall work together to mutually agree upon the total non-recurring and recurring charge(s) to be paid by AT&T^{Supra} when ordering multiple Network Elements. Additionally, if BellSouth provides any rate for non-recurring charges to combine Network Elements (or equivalent BellSouth Retail Services) to itself, to its own Customers, to a BellSouth affiliate or to any other entity, BellSouth shall provide the same rates, terms and conditions no less favorable to Supra than those provided to itself or to any other Party. If the parties cannot agree to the total non-recurring and recurring charge(s) to be paid by AT&T^{Supra} when ordering multiple Network Elements within sixty (60) days of the Effective Date, either party may petition the Florida Public Service Commission to settle the disputed charge or charges.

37. Compensation For Call and Transport Termination

The prices that AT&T^{Supra} and BellSouth shall pay are set forth in Table 1.

The parties shall pay each other transport and termination charges for ISP traffic in compliance with applicable state and FCC orders at the rate set forth in Table 1.

38. Ancillary Functions

- 38.1 Collocation - The prices that AT&TSupra shall pay to BellSouth are set forth in Table 2. (TBD)
- 38.2 Rights-of-Way - The prices that AT&TSupra shall pay to BellSouth are set forth in Table 3. (TBD)
- 38.3 Poles, Ducts and Conduits - The prices that AT&TSupra shall pay to BellSouth are set forth in Table 4. (TBD)

39. Local Number Portability

~~The prices for interim number portability are set forth in Table 5.~~

40. Recorded Usage Data

~~The prices for recorded usage data are set forth in Table 6. (TBD)~~

41. Electronic Interfaces

~~Each party shall bear its own cost of developing and implementing Electronic Interface Systems because those systems will benefit all carriers. If a system or process is developed exclusively for certain carriers, however, those costs shall be recovered from the carrier who is requesting the customized system.~~

~~The parties acknowledge the Florida Public Service Commission's language in its Order No. PSC 98-0604 FOF TP dated April 29, 1998 in Docket No. 960833 TP stating: "... BellSouth has a statutory obligation to negotiate or arbitrate this issue when requested to do so by a CLEC" and "... we strongly encourage the parties to negotiate in good faith to establish rates for OSS functions. If, however, the companies are unable to reach agreement through such negotiations, they may of course seek our guidance." **(Revised 7/25/98)**~~

TABLE 1

UNBUNDLED NETWORK ELEMENTS

| | |
|---|--|
| Network Interface Device, Per Month | <u>TBD</u> \$0.76 (interim rate) |
| | |
| Loops, including NID | |
| _____ 2 wire, per month | \$ 17.00 |
| _____ NRC First | \$140.00 |
| _____ NRC Add'l | \$ 42.00 |
| _____ 2 wire, per month | \$ 17.00 -- Geographically de-averaged rates |
| _____ NRC New installation SL1 First | <u>TBD</u> |
| _____ NRC New installation SL1 Add'l | <u>TBD</u> |
| <u>NRC New installation SL2 First</u> | <u>TBD</u> |
| <u>NRC New installation SL2 First</u> | <u>TBD</u> |
| <u>NRC Conversion - To colo space First</u> | <u>\$0.00</u> |
| <u>NRC Conversion - To colo space First</u> | <u>\$0.00</u> |
| _____ 4 wire, per month | <u>TBD</u> \$ 30.00 |
| _____ NRC First | <u>TBD</u> \$141.00 |
| _____ NRC Add'l | <u>TBD</u> \$ 43.00 |
| <u>NRC New installation SL2 First</u> | <u>TBD</u> |
| <u>NRC New installation SL2 First</u> | <u>TBD</u> |
| <u>NRC Conversion - To colo space First</u> | <u>\$0.00</u> |
| <u>NRC Conversion - To colo space First</u> | <u>\$0.00</u> |
| _____ 2 wire ISDN, per month | \$ 40.00 |
| _____ 2 wire ISDN, per month | <u>TBD</u> |
| _____ NRC First | \$306.00 |
| _____ NRC First | <u>TBD</u> |
| _____ NRC Add'l | \$283.00 |
| _____ NRC Add'l | <u>TBD</u> |

| | |
|---|--------------------------------|
| <u>NRC New installation SL2 First</u> | <u>TBD</u> |
| <u>NRC New installation SL2 First</u> | <u>TBD</u> |
| <u>NRC Conversion - To colo space First</u> | <u>\$0.00</u> |
| <u>NRC Conversion - To colo space First</u> | <u>\$0.00</u> |
| <u>DS1, per month</u> | <u>\$ 80.00</u> |
| <u>DS1, per month</u> | <u>TBD</u> |
| <u>NRC First</u> | <u>\$540.00</u> |
| <u>NRC First</u> | <u>TBD</u> |
| <u>NRC Add'l</u> | <u>\$465.00</u> |
| <u>NRC Add'l</u> | <u>TBD</u> |
| <u>NRC New installation SL2 First</u> | <u>TBD</u> |
| <u>NRC New installation SL2 First</u> | <u>TBD</u> |
| <u>NRC Conversion - To colo space First</u> | <u>\$0.00</u> |
| <u>NRC Conversion - To colo space First</u> | <u>\$0.00</u> |
| Unbundled Loop Channelization System (DS1 to VG) | |
| Per system, per month | <u>TBD</u> \$480.00 |
| NRC, First | <u>TBD</u> \$350.00 |
| NRC, Add'l | <u>\$ TBD</u> 90.00 |
| | |
| | |
| Per voice interface, per month | <u>TBD</u> \$ 1.50 |
| NRC, First | <u>TBD</u> \$ 5.75 |
| NRC, Add'l | <u>TBD</u> \$ 5.50 |
| | |
| End Office Switching | |
| Ports | |
| 2 wire | <u>TBD</u> \$ 2.00 |

| | |
|-----------------------------------|-----------------------------------|
| NRC First | <u>TBD</u> \$38.00 |
| NRC Add'l | <u>TBD</u> \$15.00 |
| 4 wire | <u>TBD</u> \$10.00 (interim rate) |
| NRC First | <u>TBD</u> \$38.00 (interim rate) |
| NRC Add'l | <u>TBD</u> \$15.00 (interim rate) |
| 2 wire ISDN | <u>TBD</u> \$13.00 |
| NRC First | <u>TBD</u> \$88.00 |
| NRC Add'l | <u>TBD</u> \$66.00 |
| 2 wire DID | TBD |
| NRC First | TBD |
| NRC Add'l | TBD |
| 4 wire ISDN | TBD |
| NRC First | TBD |
| NRC Add'l | TBD |
| 4 wire DS1 | <u>TBD</u> \$125.00 |
| NRC First | <u>TBD</u> \$112.00 |
| NRC Add'l | <u>TBD</u> \$ 91.00 |
| Usage | |
| Initial Minute | <u>TBD</u> \$0.0175 |
| Additional Minutes | <u>TBD</u> \$0.005 |
| Features, functions, capabilities | No additional charge |

| | |
|---|------------------------------------|
| Operator Systems | |
| Operator Call Handling-Station & Person | <u>TBD</u> \$1.00 per minute |
| Automated Call Handling | <u>TBD</u> \$0.10 per call attempt |
| Directory Assistance | <u>TBD</u> \$0.25 per call |
| DA Call Completion | <u>TBD</u> \$0.03 per call attempt |
| Intercept | <u>TBD</u> \$0.01 per call |
| Busy Line Verification | <u>TBD</u> \$0.80 per call |
| Emergency Interrupt | <u>TBD</u> \$1.00 per call |
| | |
| Directory Assistance | |
| DA Database | |
| per listing | <u>TBD</u> \$0.004 |
| monthly | <u>TBD</u> \$100.00 |
| Direct access to DA service | |
| per query | <u>TBD</u> \$0.01 |
| monthly | <u>TBD</u> \$5,000.00 |
| NRC, service establish charge | <u>TBD</u> \$820.00 |
| DA transport | |
| switched local channel | <u>TBD</u> \$133.81 (interim rate) |
| NRC, first | <u>TBD</u> \$866.97 (interim rate) |
| NRC, add'l | <u>TBD</u> \$486.83 (interim rate) |
| switched dedicated DS1 level | |
| per mile | <u>TBD</u> \$16.75 (interim rate) |
| per facility termination | <u>TBD</u> \$59.75 (interim rate) |
| NRC | <u>TBD</u> \$100.49 (interim rate) |
| switched common | |

| | |
|-------------------------------|------------------------------------|
| per DA call | <u>TBD</u> \$0.0003 |
| per DA call per mile | <u>TBD</u> \$0.00004 |
| tandem switching | |
| per DA call | <u>TBD</u> \$0.00055 |
| | |
| Dedicated Transport | |
| DS1, facility termination | <u>TBD</u> \$ 59.75 |
| DS1, per mile | <u>TBD</u> \$ 1.60 |
| NRC | <u>TBD</u> \$100.49 (interim rate) |
| | |
| Common Transport | |
| Facility termination, per MOU | <u>TBD</u> \$0.0005 |
| Per mile, per MOU | <u>TBD</u> \$0.000012 |
| | |
| Tandem Switching | <u>TBD</u> \$0.00029 per minute |
| | |
| Signaling Links | |
| Link | \$5.00 per link, per month |
| non-recurring | <u>TBD</u> \$400.00 |
| Link termination | <u>TBD</u> \$113.00 |
| | |

| | |
|---|---|
| Signal Transfer Points | |
| ISUP | TBD \$0.00004-per message |
| TCAP | TBD \$0.00004 per message |
| Usage surrogate | TBD \$64.00 per month |
| | |
| Service Control Points | |
| LIDB (1) | TBD |
| Toll Free Database (1) | TBD |
| | |
| AIN, per message | TBD\$0.00004 (interim rate) |
| AIN, Service Creation Tools (1) | TBD |
| AIN, Mediation (1) | TBD |
| (1) BellSouth and AT&T shall negotiate rates for this offering. If agreement is not reached within sixty (60) days of the Effective Date, either party may petition the Florida PSC to settle the disputed charge or charges. | |
| <u>(1) BellSouth and Supra shall negotiate rates for this offering. If agreement is not reached within sixty (60) days of the Effective Date, either Party may petition the Florida PSC to settle the disputed charge or charges.</u> | |
| Call Transport and Termination (2) | |
| Direct End Office interconnection | TBD\$.002 per MOU |
| Interconnection at the Tandem Switch, - Tandem switch + transport - End Office Switch - Combined | TBD\$.00125 per MOU TBD\$.00200 per MOU TBD\$.00325 per MOU |
| (2) The Parties agree to bill a mutually agreed upon composite interconnection rate of \$0.002 until approximately January, 1998, unless otherwise agreed to by the parties. This interim composite rate will be billed in lieu of interconnection rates on an elemental basis and shall be retroactive to the Effective Date. | |

TABLE 2

PHYSICAL AND VIRTUAL COLLOCATION

The following are interim rates, subject to true-up based on permanent rates. Permanent rates will be set once BellSouth files appropriate TSLRIC cost studies and such studies are reviewed and approved by the Florida PSC.

PHYSICAL COLLOCATION

| | |
|---|------------------------|
| Application - Per Arrangement/Per Location-Nonrecurring | TBD\$3,100.00 |
| Space Preparation Fee - Nonrecurring | — ICBTBD |
| Space Construction Fee - Nonrecurring | TBD\$3,750.00 |
| Cable Installation - Per Entrance Cable | TBD\$2,750.00 |
| Floor Space Zone A, Per Square Foot, Per Month | \$4.28 |
| Floor Space Zone B, Per Square Foot, Per Month | \$4.09 |
| Power Per AMP, Per Month | \$3.86 |
| Cable Support Structure, Per Entrance Cable | \$13.35 |
| | |
| POT Bay (Optional Point of Termination Bay) | |
| Per 2-Wire Cross-Connect, Per Month | \$0.18 |
| Per 4-Wire Cross-Connect, Per Month | \$0.44 |
| Per DS1 Cross-Connect, Per Month | \$0.44 |
| Per DS3 Cross-Connect, Per Month | \$3.66 |
| | |
| Cross-Connects | |
| 2-Wire Analog, Per Month | \$0.30 |
| 4-Wire Analog, Per Month | \$0.50 |
| Nonrecurring 2-wire and 4-wire | \$9.25 |
| DS1, Per Month | \$3.07 |
| Nonrecurring - First/Additional | \$113.75/14.25 |
| DS3, Per Month | \$39.64 |
| Nonrecurring - First/Additional | \$113.75/14.25 |
| | |
| Security Escort | |
| Basic - 1st half hour | \$41.00 |
| Overtime - 1st half hour | \$48.00 |
| Premium - 1st half hour | \$55.00 |
| Basic - additional | \$25.00 |
| Overtime - additional | \$30.00 |
| Premium - additional | \$35.00 |

VIRTUAL COLLOCATION

TBD Rates tariffed by BellSouth in its FCC Tariff No. 1, Section 20.

TABLE 3

RIGHTS OF WAY

BellSouth shall provide access to rights-of-way at rates that are consistent with Section 224 of the Telecommunications Act of 1934. To this end, BellSouth shall file appropriate rates to be approved by the Florida Public Service Commission.

TABLE 4**POLE ATTACHMENTS, CONDUIT AND DUCT OCCUPANCY**

| | |
|--|--|
| Pole Attachment | \$4.20 per attachment, per year |
| Conduit, per foot | \$0.56 per foot, per year |
| Work performed by BellSouth Employee, per hour | Labor rate as developed in accordance with FCC Accounting Rules for work performed by BellSouth employees. |

TABLE 5

LOCAL NUMBER PORTABILITY

~~AT&T and BellSouth shall pay its own costs in the provision of interim number portability. AT&T and BellSouth shall track their costs of providing interim number portability with sufficient detail to verify the costs, in order to facilitate the Florida PSC's consideration of recovery of these costs in Docket No. 950737-TP.~~

TBD

TABLE 6

(Interim Rates Pending Further Negotiation)**RECORDED USAGE DATA**

| | | |
|--|------------------|--|
| Recording Services (only applied to unbundled operator services messages), per message | <u>TBD\$.008</u> | |
|--|------------------|--|

| | | |
|-----------------------------------|------------------|--|
| Message Distribution, per message | <u>TBD\$.004</u> | |
|-----------------------------------|------------------|--|

| | | |
|--------------------------------|------------------|--|
| Data Transmission, per message | <u>TBD\$.004</u> | |
|--------------------------------|------------------|--|

42. ~~Execution of the Interconnection Agreement by either Party does not confirm or infer that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s). If such appeals or challenges result in changes in the decision(s), the Parties agree that appropriate modifications to this Agreement will be made promptly to make its terms consistent with those changed decision(s).~~

IN WITNESS WHEREOF, the Parties have executed this Agreement through their authorized representatives.

~~AT&T COMMUNICATIONS OF~~ SUPRA TELECOMMUNICATIONS
BELLSOUTH
~~THE SOUTHERN STATES, INC. & INFORMATION SYSTEMS, INC.~~
TELECOMMUNICATIONS, INC.

By: _____
William J. Carroll

Vice President

By: _____
Olukayode Ramos
Jerry D. Hendrix
Director
Interconnection Services/
Pricing

June 10, 1997

Date

June 10,

Date

DUPLICATE ORIGINAL

April 26, 2000

VIA FACSIMILE

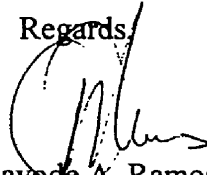
Mr. Pat Finlen
Manager – Interconnection Services
BellSouth Telecommunications, Inc.
Room 34S91 BellSouth Center
675 West Peachtree Street, N.E.
Atlanta, GA 30375

Re: Request for Information Regarding Negotiations of Interconnection Agreement

Dear Mr. Finlen:

Pursuant to our telephone conversation and the FCC's First Report and Order, §155, Supra Telecom hereby requests for all the information attached as Exhibit "A" to this letter. The information so provided must cover the entire BellSouth territory. I am counting on your promise to provide the information requested in a speedy manner.

Regards,



Olukayode A. Ramos
Chairman & CEO

Cc: Mark Buechele, Wayne Stavanja and Victor Miriki (Supra Telecom)
Parkey Jordan (Esq.) (BellSouth)

EXHIBIT C

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for Arbitration of the)
Interconnection Agreement between Bell-)
South Telecommunications, Inc. and)
Supra Telecommunications & Information)
Systems, Inc. pursuant to Section 252(b))
of the Telecommunications Act of 1996)
_____)

Docket No. 00-1305-TP

Dated: January 26, 2001

SUPRA TELECOMMUNICATIONS AND INFORMATION
SYSTEMS, INC.'S MOTION TO DISMISS

NOW COMES Supra Telecommunications & Information Systems, Inc. ("Supra"), by and through its undersigned counsel, pursuant to Florida Administrative Code Rule 28-106.204 and Florida Rule of Civil Procedure 1.140(b), moves to Dismiss the Complaint of BellSouth Telecommunications, Inc. ("BellSouth") for lack of subject matter jurisdiction as well as BellSouth's violations of Section 251(c)(1) of the Communications Act of 1934, as amended (47 U.S.C. § 201, *et seq.*), and 47 C.F.R. § 51.301, and in support hereof states as follows:

I. BRIEF INTRODUCTION

On or about October 25, 1999, Supra adopted an Interconnection Agreement ("Current Agreement") entered into by BellSouth and AT&T of the Southern States, such Current Agreement having been approved by the Florida Public Service Commission. The Current Agreement provides for the term of the agreement, a termination date, and a time frame for the negotiations of a "Follow-On Agreement." Most importantly, the Current Agreement provides for a procedure to be followed **before** either party files a petition with the FPSC for arbitration of such. BellSouth has failed to follow this

EXHIBIT D

procedure, and, therefore, the FPSC lacks subject matter jurisdiction over the present dispute.

Additionally, BellSouth prematurely filed this petition in that, pursuant to 47 U.S.C. § 252(b)(1), BellSouth was only entitled to file such “during the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation . . .” BellSouth did not receive a request for negotiation from Supra until on or about June 9, 2000. Therefore, BellSouth’s filing on September 1, 2000 was premature, and did not give the parties sufficient time to negotiate a Follow-On Agreement.

Furthermore, on or about April 26, 2000, Supra sent a letter to BellSouth requesting that BellSouth provide Supra with information regarding its network which Supra reasonably required in order to negotiate with BellSouth. A true copy of this letter is attached hereto as **Exhibit A**. Furthermore, on or about August 8, 2000, Supra handed a copy of the same document request to representatives of BellSouth, asking for the responsive documents. Again, BellSouth ignored the request. BellSouth ignored these requests, in violation of Section 251(c)(1) of the Communications Act of 1934, as amended, and 47 C.F.R. § 51.301. As a result, Supra has been severely disadvantaged in that it does not have the necessary, and required, information from which to even begin negotiations. BellSouth has made it impossible for Supra to negotiate on equal-footing with BellSouth.

II. ARGUMENT

A. LACK OF SUBJECT MATTER JURISDICTION

Florida Rule of Civil Procedure 1.140(h)(2) provides, in pertinent part:

The defense of lack of subject matter jurisdiction may be raised at any time.

The FPSC lacks subject matter jurisdiction over this action for 2 reasons: (1) BellSouth failed to comply with the procedural requirements of the parties' current, FPSC-approved Interconnection Agreement, and (2) BellSouth prematurely filed its Petition, in violation of 47 U.S.C. 252(b).

First, Section 2.3 of the General Terms and Conditions of the parties' current Interconnection Agreement, which was arbitrated by BellSouth and AT&T of the Southern States before the FPSC, provides, in pertinent part:

Prior to filing a Petition [with the FPSC] pursuant to this Section 2.3, the Parties agree to utilize the informal dispute resolution process provided in Section 3 of Attachment 1.

Section 3 of Attachment 1 provides

The Parties to this Agreement shall submit any and all disputes between BellSouth and [Supra] for resolution to an Inter-Company Review Board consisting of one representative from [Supra] at the Director-or-above level and one representative of BellSouth at the Vice-President-or-above level (or at such lower level as each Party may designate).

BellSouth failed to even request that this matter be submitted to an Inter-Company Review Board prior its filing the present Petition. In fact, BellSouth raised this very same point against Supra via a letter dated September 22, 2000, in response to Supra's filing of a Complaint for commercial arbitration pursuant to Attachment 1 of the current agreement. A true copy of said letter is attached hereto as **Exhibit B**.

BellSouth has not made a good faith attempt to honor the parties' current agreement, much less a good faith effort to negotiate a Follow-On Agreement. Unless or until the parties follow the procedures of their current agreement, by submitting the

matter to an Inter-Company Review Board, this Commission lacks jurisdiction to resolve the issues raised by BellSouth.

Second, and perhaps even more importantly, BellSouth has prematurely filed its petition, in violation of 47 U.S.C. § 252(b)(1), which provides, in pertinent part:

During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues. (Emphasis added.)

BellSouth did not **receive a request** for renegotiation until June 9, 2000. In fact, prior to that time, the parties had discussed the possibility of simply extending the term of the current Interconnection Agreement. Admittedly, BellSouth did send Supra correspondence on March 29, 2000 regarding renegotiations. However, after that correspondence, Supra's CEO, Kay Ramos, spoke with one of BellSouth's negotiators, Pat Finlen, regarding Supra's ability to simply extend the parties' current agreement. It was Supra's understanding that BellSouth agreed to the extension. As a result, the parties did not enter into any negotiations between March 29, 2000 and June 9, 2000. Only on June 8, 2000 did BellSouth first take the position that it would refuse to extend the parties' current agreement. The very next day, Supra notified BellSouth of its request for renegotiation. Supra raised this issue in paragraph 6 of its Response to BellSouth's Petition for Arbitration, dated October 16, 2000.

Furthermore, ¶149 of the FCC First Report and Order (adopted August 1, 1996) on the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, provides, in pertinent part that:

Because section 252 permits parties to seek mediation "at any point in the negotiation," and also allows parties to seek arbitration as early as 135 days after an incumbent LEC **receives a request** for negotiation under section 252, we conclude that Congress specifically contemplated that one or more of the parties may fail to negotiate in good faith, and created at least one remedy in the arbitration process.

Because BellSouth prematurely filed its petition, the parties have not been able to fully identify and discuss the issues for arbitration existing between the parties. This fact was made very clear at the issue identification conferences at the Commission, as the parties have not even had an opportunity to discuss any proposed language. The FPSC simply does not have jurisdiction to arbitrate interconnection agreements before 135 days after an incumbent LEC receives a request for negotiation under section 252, whether such an action is filed by the incumbent LEC or by a competitive LEC. As such, the present petition should be dismissed.

B. BELLSOUTH HAS ACTED IN BAD FAITH.

Despite numerous requests, BellSouth has refused to provide information about its network necessary to reach an agreement. See **Exhibit A**. BellSouth's lack of response is a violation of: (a) 47 U.S.C. § 252, (b) Paragraph 155 of the FCC First Report and Order, and (c) 47 CFR §51.301(c)(8), which provides:

If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following practices, among others, violate the duty to negotiate in good faith:

(8) Refusing to provide information necessary to reach an agreement. Such refusal includes, but is not limited to:

(i) Refusal by an incumbent LEC to furnish information about its network that a requesting telecommunications carrier reasonably

requires to identify the network elements that it needs in order to serve a particular customer;

Furthermore, paragraph 148 of the FCC First Report and Order defined good faith as:

The Uniform Commercial Code defines "good faith" as "honesty in fact in the conduct of the transaction concerned." When looking at good faith, the question "is a narrow one focused on the subjective intent with which the person in question has acted." Even where there is no specific duty to negotiate in good faith, certain principles or standards of conduct have been held to apply. For example, parties may not use duress or misrepresentation in negotiations. Thus, the duty to negotiate in good faith, at a minimum, prevents parties from intentionally misleading or coercing parties into reaching an agreement they would not otherwise have made. We conclude that intentionally obstructing negotiations also would constitute a failure to negotiate in good faith, because it reflects a party's unwillingness to reach agreement. (Emphasis added.)

BellSouth has ignored Supra's request for information, has prematurely filed a petition (knowing that it had not followed contractual and statutory procedures), has intentionally obstructed negotiations and has filed a never-before seen template agreement as its proposed language in this proceeding, all in an attempt to rush Supra and this Commission into an arbitration for an agreement which will substantially favor BellSouth to the detriment of Supra and Florida telephone subscribers who have not benefited from the promotion of competition promised by the Communications Act, as amended by the Telecommunications Act of 1996 (codified at 47 U.S.C. 201, et seq.). BellSouth should not be allowed to benefit from this type of conduct.

Significantly, this is not the first time BellSouth has engaged in such conduct. On or about November 2, 2000, the Federal Communications Commission ("FCC") entered a consent decree against BellSouth for BellSouth's violations of section 251(c)(1) of the Communications Act of 1934, as amended, and section 51.301 of the Commission's rules, in connection with BellSouth's alleged failure to negotiate in good faith the terms

and conditions of an amendment to an interconnection agreement with Covad Communications Company (Covad) relating to BellSouth's provision of unbundled copper loops in nine states. A copy of the news release and consent decree are attached as **Exhibit C**. BellSouth was fined \$750,000 by the FCC for the very act it has committed against Supra.

It is interesting to note that Covad and other Alternative Local Exchange Carriers are about to go out of business. Please see **Exhibit D**, "Dead Companies Walking", an article in the Business Week of January 22, 2001. Aside from Covad, other companies mentioned in that article as going out of business are Rhythms NetConnections, Intermedia Communications, Northpoint Communications, RSL Communications and ICG Communications. All these companies have either filed complaints or participated in proceedings against BellSouth before this very Commission. It appears that BellSouth is winning its battle to prevent competition in the local telephone industry.

It should also be noted that, in addition to the present proceeding, Supra is currently battling BellSouth on many fronts:

- a. Supra Telecommunications & Information Systems, Inc. v. BellSouth Telecommunications, Inc., Case No. 99-1706 – CIV-SEITZ, before the Southern District Court of Florida, Miami Division, for anti-trust violations, breach of contract, fraud, etc.
- b. Supra v. BellSouth, Before the CPR Institute for Dispute Resolution Arbitral Tribunal, re: enforcement of interconnection agreement, filed in September 2000.
- c. In re: Complaint of BellSouth Telecommunications, Inc. against Supra Telecommunications and Information Systems, Inc., for Resolution of Billing Disputes, Docket No. 001097-TP, regarding a billing dispute (BellSouth's substantial complaint in this proceeding was dismissed by this Commission to be heard at commercial arbitration proceeding pursuant to the parties' agreement.)

- d. BellSouth Intellectual Property Company v. Supra Telecommunications & Information Systems, Inc., Case No. CASE NO. 00-4205 – CIV-GRAHAM/TURNOFF, before the Southern District Court of Florida, Miami Division, for trademark infringement and dilution.

While BellSouth has the resources to litigate all of these issues, as well as numerous others, Supra's lack of resources places it at a severe disadvantage. Of course, it may well be BellSouth's strategy to spread Supra's resources as thin as possible so as to be able to force through its agenda in the present arbitration proceeding and eventually force Supra out of business as it has other CLECs (see **Exhibit D**) as well as deny Florida telephone subscribers the benefits of competition.

BellSouth's actions have been intentional and willful. Under the present circumstances, in light of BellSouth's bad faith negotiations, the present petition should be dismissed.

III. CONCLUSION

As BellSouth has failed to follow contractual and statutory procedures, this Commission lacks subject matter jurisdiction over the present controversy. As such, BellSouth's actions should be dismissed. Furthermore, BellSouth has acted in bad faith in conducting negotiations with Supra. BellSouth should immediately tender information responsive to Supra's requests contained in its April 26, 2000 letter.

WHEREFORE, Supra respectfully requests that this Honorable Commission enter an Order:

- A. Dismissing BellSouth's Complaint with prejudice;
- B. Ordering that the parties continue to operate under their current interconnection agreement until a new agreement is properly negotiated or arbitrated;

- C. Ordering BellSouth to immediately tender information responsive to Supra's requests contained in its April 26, 2000 letter;
- D. Entering a judgment against BellSouth in favor of Supra for the costs and attorney's fees Supra has incurred as a result of this proceeding, and
- E. For all such further relief as is deemed equitable and just.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been served via facsimile and/or U.S. Mail upon Nancy White, Esq., BellSouth, 150 West Flagler Street, Suite 1910, Miami, Florida 33130; R. Douglas Lackey and J. Philip Carver, BellSouth, Suite 4300, 675 W. Peachtree St., NE, Atlanta, GA 30375; and Staff Counsel, Florida Public Service Commission, Division of Legal Services, 2450 Shumard Oak Boulevard, Tallahassee, Florida; this 29th day of January, 2001.

SUPRA TELCOMMUNICATIONS
& INFORMATION SYSTEMS,
INC.
2620 S.W. 27th Ave.
Miami, Florida 33133
Telephone: 305/476-4248
Facsimile: 305/443-1078

By: _____
BRIAN CHAIKEN, ESQ.
Florida Bar No. 0118060

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

| | | |
|---|---|-------------------------|
| In re: |) | |
| |) | |
| Petition for Arbitration of the Interconnection |) | Docket No. 001305-TP |
| Agreement Between BellSouth |) | |
| Telecommunications, Inc. and Supra |) | |
| Telecommunications and Information |) | |
| Systems, Inc., Pursuant to Section 252(b) |) | Filed: February 6, 2001 |
| of the Telecommunications Act of 1996. |) | |
| |) | |

**BELLSOUTH'S RESPONSE IN OPPOSITION TO
SUPRA TELECOMMUNICATIONS AND INFORMATION
SYSTEMS, INC.'S MOTION TO DISMISS**

BellSouth Telecommunications, Inc ("BellSouth"), hereby files, pursuant to Rule 25-22.037(b), Florida Administrative Code, its Response in Opposition to the Motion to Dismiss of Supra Telecommunications and Information Systems, Inc.'s ("Supra"), and states the following:

1. Supra's Motion should be denied because it fails to provide any basis upon which this Commission could find that it lacks subject matter jurisdiction over the arbitration of the Interconnection Agreement between the parties. All other grounds for bringing the Motion are untimely under the Florida Rules of Civil Procedure. Moreover, even if Supra's Motion were timely, it still fails to state a legally sufficient basis to grant a dismissal.

2. BellSouth sent to Supra a request for negotiation by letter dated March 29, 2000. The Petition in this matter was filed September 1, 2000. Thus, BellSouth did, in fact, file the Petition in the timeframe provided in Section 252(b)(1) of the

EXHIBIT E

Telecommunications Act, i.e., between the 135th and 160th day after the request for negotiation. Supra initially responded to BellSouth's Petition by requesting additional time, until October 2, 2000, to file its response. Supra subsequently filed its Response on October 16, 2000. Supra again attempted to delay this proceeding by filing on December 20, 2000, a Motion to postpone the Issue Identification conference set for January 8, 2001. This Motion was denied by the Prehearing Officer. Supra's Motion to Dismiss is nothing more than another dilatory tactic.

3. Rule 1.140, Fla. R. Civ. Pro. provides that all defenses, including a defense that would be a basis for dismissal, must be stated in the initial responsive pleading or motion. The Rule further provides that "any ground not stated shall be deemed to be waived except any ground showing that the Court lacks jurisdiction of the subject matter may be made at any time." Thus, if Supra's Motion is not sufficient to demonstrate that this Commission lacks subject matter jurisdiction over the arbitration of interconnection agreements, then Supra's Motion must be summarily denied. Supra has, in fact, completely failed to support such a contention.

4. Subject matter jurisdiction is vested in a particular tribunal by organic law. In other words, this jurisdiction exists pursuant to the state or federal constitution, or the pertinent statutory authority. This jurisdiction was defined by the Florida Supreme Court in Cunningham v. Standard Guaranty Insurance Co., 630 So. 2d 179, 181 (Fla. 1994) as "the power of the . . . [tribunal] . . . to deal with a class of cases to which a particular case belongs." The Supreme Court continued by noting the following long-standing definition of subject matter jurisdiction:

'Jurisdiction,' in the strict meaning of the term, as applied to judicial officers and tribunals, means no more than the power lawfully existing

to hear and determine a cause. It is the power lawfully conferred to deal with the general subject involved in the action. It does not depend upon the ultimate existence of a good cause of action in the plaintiff, in the particular case before the court. 'It is the power to adjudge concerning the general question involved, and is not dependent upon the state of facts which may appear in a particular case.' *Hunt v. Hunt*, 72 N.Y. 217.

(Id.).

Further, "the parties cannot stipulate to jurisdiction where none exists. (Id.).

Conversely, the parties cannot, by agreement, deprive a tribunal of subject matter jurisdiction that it possesses. See Manrique v. Fabbri, 493 So. 2d 437 (Fla. 1986).¹

In our case, this Commission's jurisdiction over the arbitrations of interconnection agreements is clear.

5. As set forth in BellSouth's Petition (p. 3), "pursuant to Section 252(b)(1) of the 1996 Act, which allows either party to the negotiation to request arbitration, this Commission is empowered to arbitrate any and all unresolved issues regarding Supra's Interconnection with BellSouth's network." Supra has not disputed this Commission's subject matter jurisdiction under the Act, and the matters raised in Supra's Motion (even if otherwise meritorious) cannot legally divest this Commission of its jurisdiction. Therefore, Supra's Motion fails because it does not go to this Commission's jurisdiction over the subject matter, and all other grounds for dismissal have been waived due to Supra's failure to assert them in a timely manner.

6. Moreover, even if Supra's Motion to Dismiss did state some basis that went to the subject matter jurisdiction of this Court, the fact remains that, as to each

¹ In Manrique, the Florida Supreme Court noted that parties may express a choice of forum, and a court recognizing this choice may decline to exercise jurisdiction. However, the parties can not, by agreement, deprive a court of jurisdiction that otherwise exists (Id. at 440).

of Supra's bases for dismissal, Supra is simply wrong. Supra's first "jurisdictional argument" is premised upon the contention that 1) BellSouth cannot petition for arbitration until after an Inter-Company Review Board meeting has been held, and 2) there has been no such meeting. The most charitable comment that could be made about Supra's argument is that it is an extreme example of form over substance. Section 2.3 of the Agreement's general terms and conditions states the parties' agreement that, prior to filing a petition pursuant to this Section, they will utilize the informal dispute resolution process provided in Section 3 of Attachment 1. The attachment provides that the parties will attempt to resolve disputes by submitting them to an Inter-Company Review Board for discussion and negotiation, and that the Board will consist of representatives at a prescribed level of each company or other employees "at such lower level as each party may designate."

7. In other words, the requirements of the Agreement are very much like the requirements of the Act: parties are required to negotiate and attempt to reach an agreement before filing a Petition. BellSouth and Supra did engage in negotiations, a fact that Supra does not deny. Further, the negotiations were attended by the same representatives of each company that would negotiate in the context of an Inter-Company Review Board meeting. Apparently, Supra's contention boils down to the notion that because these negotiations were not designated as an official Inter-Company Review Board meeting, they cannot fulfill the requirements of the Agreement. Again, this is rather an extreme example of form over substance.

8. Further, even if Supra were correct that there must be a negotiation session that is formally designated as such, Supra has inexplicably failed to invoke

this provision of the Agreement either during negotiations or at any previous time during the five months since BellSouth filed its Petition. As with any other contractual right, by electing not to raise this issue sooner (or by simply neglecting to do so) Supra has waived any contractual right that it may have had to an Inter-Company Board meeting. It is well settled that rights that exist under a contract are waived if not asserted within a reasonable period of time. See Fort Walton Beach Lincoln Mercury, Inc. v. Pearson, 731 So. 2d 859 (Fla. 1st DCA 1999). Further in an analogous context, the Florida Supreme Court rejected an argument that is more like Supra's argument in our case. In Butler v. Allied Dairy Products, Inc., 151 So. 2d 279 (Fla. 1963), an employer claimed that the Commission in a workman's compensation proceeding lacked subject matter jurisdiction because the claim was barred by a statute that made hiring within the state a prerequisite to recovery. The Supreme Court held that the defense did not go to the subject matter jurisdiction of the Commission. The Court also ruled that the employer, by its past conduct, had waived the statutory requirement and was estopped from raising it as a defense.

9. Again, in substance, the requirement of an intercompany board meeting has been met. Moreover, even if Supra were correct in arguing the technicality that the negotiations that occurred were not actually designated as intercompany board meetings, this is, at most, a relatively minor requirement of the Agreement, which Supra has waived by its actions. Further, even if not waived, the lack of an intercompany board meeting does not divest the Commission of subject matter jurisdiction.

10. Supra's second "jurisdictional argument" is that BellSouth did not file the Petition for Arbitration within the filing window prescribed by Section 252(b)(1). In its Motion, Supra acknowledges receiving from BellSouth on March 29, 2000, "correspondence regarding negotiations." What Supra does not acknowledge is that this letter was a clear and unequivocal demand for negotiation. Further, the letter clearly states that it "serves as notification that BellSouth chooses to negotiate a new Interconnection Agreement rather than to extend the term of Supra's existing Agreement." (A copy of the letter is attached as Exhibit A).

11. Apparently Supra's theory is that at some point subsequent to this March 29, 2000 letter, Supra developed the purely subjective opinion that the then current agreement would be extended. Under Supra's theory, "negotiations" did not begin until it was disabused of this notion, and Supra (as opposed to BellSouth) requested negotiations on June 9, 2000, i.e., more than two months after negotiations had been opened by BellSouth. Even if Supra's factual contentions were correct (and they are not), Supra's position is that because negotiations concerned an extension rather than a new agreement, they were somehow not negotiations at all. Although Supra's theory is novel, there is no support, either in law or otherwise, for the notion that the nature of the negotiations (i.e., what was discussed) can somehow toll the running of the time under 252(b)(1), which began with the clear and unequivocal earlier request for negotiation by BellSouth.

12. In Supra's Motion, it also appears to imply (although it does not state directly) that BellSouth's request for negotiation is not effective because only an ALEC, such as Supra, can request negotiations. Assuming this is Supra's

contention, it has provided no support for this position. Moreover, Petitions for Arbitration have been filed by BellSouth, Verizon, and by Sprint before this Commission on a fairly routine basis over the past several years, and these arbitrations have been heard.

13. Further, Section 2.3 of the General Terms and Conditions (which Supra relies on so heavily for other purposes) states specifically that in the process of negotiating a new agreement, if "the parties are unable to satisfactorily negotiate new terms, conditions and prices, either party may petition the Commission to establish an appropriate follow-on agreement pursuant to 47 U.S.C. § 252." Thus, if Supra is contending that only it can commence negotiations (and it is truly difficult to tell what Supra is arguing) then this argument must also fall.

14. Finally, Supra makes a variety of wild allegations to the effect that BellSouth has acted in bad faith. Even if these allegations were true (which they are not), they would provide no basis for dismissal. Supra relies heavily on a settlement of a case before the FCC in which it was alleged that BellSouth exercised bad faith during negotiations. If Supra actually had some basis for a claim to this effect, then it could bring its claim before the FCC. However, such a claim would not render the Petition in our case legally insufficient, nor would it provide any other legal basis to support dismissal. Again, Supra has failed to state a basis for dismissal, and has raised yet another matter that has absolutely nothing to do with subject matter jurisdiction.

15. Supra's plea for dismissal with prejudice is unfounded, but it is noteworthy only that it demonstrates that Supra's Motion is yet one more attempt to

"game" the process. Typically, if a petition were filed prematurely (as Supra alleges), the remedy would be to delay commencement of the proceeding until the window under 252(b)(1) actually opened. Supra has, instead, waited until after the window has opened and closed under the correct calculation of this time frame (and even under its own incorrect calculation) to raise as a basis for dismissal the contention that the Petition was filed prematurely. Thus, Supra has (apparently intentionally) delayed raising what it claims is a basis for dismissal, and is now requesting that the Petition be dismissed with prejudice, so that, presumably, there would never be arbitration between the parties. This request is as outlandish as it is untenable. Again, it simply shows the lengths to which Supra will go to delay this proceeding.

16. As mentioned previously, Supra's conduct throughout this proceeding has been characterized by extreme foot-dragging. Supra initially filed a motion that had the effect of delaying their response to the Petition. Then Supra attempted unsuccessfully to postpone the Issue Identification meeting. Now, Supra continues this pattern of dilatory behavior by filing this frivolous motion to dismiss the complaint. These tactics should not be rewarded. Instead, Supra's motion should be summarily denied.

WHEREFORE, BellSouth respectfully requests the entry of an Order denying Supra's Motion to Dismiss for the reasons set forth above.

Respectfully submitted this 6th day of February, 2001.



NANCY B. WHITE
Museum Tower
150 West Flagler Street
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Miami, Florida 33130



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COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

245562



BellSouth Interconnection Services
34970 BellSouth Center
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375

March 29, 2000

Olukayde Ramos
Supra Telecommunications & Information Systems, Inc.
2620 SW 27th Avenue
Miami, FL 33133

Dear Mr. Ramos:

On October 5, 1999, BellSouth Telecommunications, Inc. ("BellSouth") and Supra Telecommunications & Information Systems, Inc. ("Supra") entered into an Interconnection Agreement in the state of Florida (the "Agreement"). The expiration date for that Agreement is June 9, 2000. Please be advised that this correspondence serves as notification that BellSouth chooses to negotiate a new Interconnection Agreement rather than to extend the term of Supra's existing Agreement.

As such, pursuant to Section 2 of the General Terms and Conditions of the Agreement and in compliance with Section 251(c)(1) of the Communications Act of 1934, as amended ("Act"), BellSouth is hereby requesting that Supra commence good-faith negotiations with BellSouth to enter into a new Agreement.

In an effort to move the negotiation process along, an electronic copy of the BellSouth proposed Interconnection Agreement is enclosed for your review. Once you have had an opportunity to review the proposed agreement, please contact me with questions. If need be, we can begin scheduling meetings between the companies to address issues raised during your review.

Should you have questions regarding this, please do not hesitate to call me at 404-927-8389.

Sincerely,

A handwritten signature in cursive script that reads "Pat".

Pat Finlen
Manager - Interconnection Services

Cc: Parkey Jordan, Esq.
Nancy White, Esq.

Enclosure

ATTACHMENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

FACSIMILE and U.S. Mail this 6th day of February, 2001 to the following:

Staff Counsel
Division of Legal Services
Florida Public Service Commission
2640 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Supra Telecommunications and
Information Systems, Inc.
1311 Executive Center Drive
Koger Center - Ellis Building
Suite 200
Tallahassee, FL 32301-5027
Tel. No. (850) 402-0510
Fax. No. (850) 402-0522
mbucochelo@stis.com

Supra Telecommunications and
Information Systems, Inc.
Brian Chaiken/Kelly Kester
2620 S. W. 27th Avenue
Miami, FL 33133
Tel. No. (305) 476-4248
Fax. No. (305) 443-1078
bchaiken@stis.com



J. Phillip Carver

Legal Department

J. PHILLIP CARVER
General Attorney

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0710

February 6, 2001

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

**Re: Florida Docket No. 001305-TP
Petition for Arbitration between BellSouth and Supra**

Dear Ms. Bayó:

Enclosed is an original and 15 copies of BellSouth Telecommunications, Inc.'s Response in Opposition to Supra Telecommunication and Information Systems, Inc.'s Motion to Dismiss, which we ask that you file in the captioned matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



J. Phillip Carver

Enclosures

cc: All parties of record
Marshall M. Criser, III
Nancy B. White
R. Douglas Lackey

BELLSOUTH TELECOMMUNICATIONS, INC.
 LEGAL DEPARTMENT
 SUITE 1910 - 150 WEST FLAGLER STREET
 MIAMI, FLORIDA 33130
 FAX NUMBER (305) 577-4491
 FAX TRANSMITTAL SHEET

DATE 2/6/01 TIME 2:20pm
 DELIVER TO Brian Chalker
 FROM Phil Carver
 FAX # OR ONE TOUCH # OF RECIPIENTS(S) 305-443-1078
 NUMBER OF PAGES INCLUDING COVER SHEET 13
 PERSON SENDING THIS FAX Jo Anne Nadeau (305) 347-5330
 REMARKS _____

This facsimile contains PRIVILEGED AND/OR CONFIDENTIAL INFORMATION intended only for the use of the addressee(s) named above. If you are not the intended recipient of this facsimile, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please notify us by telephone and return the original facsimile to us at the above address via the U. S. Postal Service. We will reimburse you for postage.

NOTE: PLEASE CALL IMMEDIATELY IF ALL PAGES ARE NOT RECEIVED



Paul D. Turner, Esq.
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Miami, FL 33133-3001
Phone: (305) 476-4247
Fax: (305) 443-1078
Email: pturner@stis.com
www.stis.com

March 2, 2001

VIA FEDERAL EXPRESS MAIL

GLENN T. REYNOLDS, ESQ.
FRANK G. LAMANCUSA, ESQ.
Federal Communications Commission
Enforcement Division – Common Carrier Bureau
445 12th Street, S.W.
Suite 5-A848
Washington, D.C. 20554

**Re: Supra Telecom adv. BellSouth; Request for
Accelerated Docket & Pre-filing Mediation**

Gentlemen:

This letter is a follow-up to our last meeting at your office. Supra apologizes for not providing this letter any sooner as Supra is currently litigating numerous issues in its continual effort to implement its agreements with BellSouth and other ILECs. The intent of this letter is to characterize BellSouth's violations of Section 251(c)(1) of the Communications Act as amended by the 1996 Act (the "Act") as well as Section 51.301 of the FCC rules, in connection with BellSouth's:

1. failure to negotiate, in good faith, the terms and conditions of an amendment to the parties' Interconnection Agreement;
2. failure to negotiate, in good faith, the terms and conditions of a follow-on agreement; and
3. refusal to proceed with Supra's collocation arrangements as a result of BellSouth's failure to provide cost data in support of its collocation rates, terms and conditions.

Supra hopes that by identifying these harmful practices and showing the absence of any material factual dispute, that the FCC will consider this letter appropriate for summary disposition and resolution on the accelerated docket procedure. The following is a listing of practices, by issue, through which BellSouth purposely avoids compliance with the requirements and intent of the Act and FCC and state Commission orders.

EXHIBIT F

Glenn T. Reynolds, Esq.
Frank G. Lamancusa, Esq.
March 2, 2001
Page 2 of 6

Issue No. 1: BellSouth's failure to negotiate, in good faith, the terms and conditions of an amendment to the parties' Interconnection Agreement.

On or about October 6, 2000, pursuant to Section 252(i) of the Communications Act as amended by the 1996 Act, 47CFR Sections 51.303(c) and 51.809 and Section 5, General Terms and Conditions of the Interconnection Agreement between Supra and BellSouth, Supra requested the right to adopt Paragraph 9.1 of the General Terms & Conditions – Part A of the June 21, 2000, Interconnection Agreement between BellSouth and MGC Communications d/b/a Mpower Communications Corporation (“Mpower”). The Mpower Interconnection Agreement, in paragraph 9.1 of the General Terms and Conditions – Part A, a true copy of which is attached hereto as **Exhibit A**, provides:

No License. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. Unless otherwise mutually agreed upon, neither Party shall publish or use the other Party's logo, trademark, service mark, name, language, pictures, or symbols or words from which the Party's name may reasonably be inferred or implied in any product, service, advertisement, promotion, or any other publicity matter, except that nothing in this paragraph shall prohibit a Party from engaging in valid comparative advertising.

The adoption of this language was and is of importance to Supra as BellSouth was and is attempting to prohibit Supra from using its name and marks in valid comparative advertising.

Interestingly, BellSouth's only response to that October 6, 2000, letter was to have BellSouth Intellectual Property Corporation (“BIPCO”), BellSouth's sister corporation, file a lawsuit against Supra. See BellSouth Intellectual Property Corporation v. Supra Telecommunications & Information Systems, Inc. and Olukayode A. Ramos, Case No. 00-4205 – CIV-GRAHAM/TURNOFF.

In having BIPCO, a non-party to the Interconnection Agreement, file the lawsuit, BellSouth circumvented the mandatory arbitration requirement of the parties' Interconnection Agreement. Furthermore, Supra is yet to receive a response to its request to adopt the applicable section of the Mpower agreement.

Glenn T. Reynolds, Esq.
Frank G. Lamancusa, Esq.
March 2, 2001
Page 3 of 6

Issue No. 2: BellSouth's failure to negotiate, in good faith, the terms and conditions of a "Follow-On" Agreement.

Despite numerous requests, BellSouth has refused to provide information about its network necessary to reach an agreement. See **Exhibit B**. BellSouth's lack of response is a violation of: (a) 47 U.S.C. §§ 251(c)(1) and 252, (b) Paragraph 155 of the FCC First Report and Order, and (c) 47 CFR §51.301.

Not only did BellSouth ignore Supra's request for information, but also (i) prematurely filed an arbitration petition (knowing that it had not followed the mandatory inter-company review board meeting prior to filing the petition before the FPSC and statutory procedures); (ii) intentionally obstructed negotiations; and (iii) filed a never-before seen template agreement as its proposed language in the arbitration proceeding, all in an attempt to rush Supra into an arbitration for an agreement which will substantially favor BellSouth to the detriment of Supra and Florida telephone subscribers who have not benefited from the promotion of competition promised by the Act.

Issue No. 3: BellSouth's refusal to proceed with Supra's collocation arrangements as a result of (i) BellSouth's failure to provide cost data in support of its collocation rates, terms and conditions; and (ii) refusal to proceed with buildout of collocation arrangements pending resolution of disputed charges.

In order to bring down its operational costs, reduce its over-dependence on BellSouth's network and provide advanced telecommunications services, utilizing cost-based elements, Supra has attempted to deploy a facilities-based network for over three years by collocating its equipment in BellSouth Central Offices. Currently, Supra has applied and secured space in approximately 23 of BellSouth's central offices, but has been unable to proceed with the collocation arrangement because of (i) BellSouth's refusal to provide cost data in support of its collocation rates, terms and conditions; and (ii) BellSouth's refusal to proceed with the buildout of Supra's collocation arrangements pending resolution of disputed amounts.

Glenn T. Reynolds, Esq.
Frank G. Lamancusa, Esq.
March 2, 2001
Page 4 of 6

On or about September 8, 1999, Supra submitted the first of many written requests for cost data with respect to Supra's physical collocation in various BellSouth Central Offices. BellSouth has either refused to provide the necessary cost data or has provided cost data in such a generic format that it is impossible to breakdown and allocate the cost associated with each expense of the requested collocation. It should be noted that in the few instances where BellSouth provided incomplete and general cost data, that Supra was able to determine that BellSouth was double charging Supra for the same expense.

As Supra quickly grew weary of BellSouth's endless delays in providing the necessary and required cost data, Supra attempted to move forward by compromising and remitting payment of fifty percent (50%) of the estimated costs to BellSouth in light of the matter pending before the FPSC at that time. Supra, while still disputing the matter, proposed that if the FPSC found that BellSouth's proposed costs were reasonable, than Supra would submit any amount due. Likewise, if the FPSC rejected BellSouth's position, Supra would expect a refund of any excess monies paid towards collocation. BellSouth summarily rejected this good faith compromise.

Pursuant to paragraph 38 of the FCC Order on Reconsideration and the Second Further Notice of Proposed Rulemaking, the FCC's "good faith" rules bar ILECs from refusing to provide necessary information to reach an agreement and require that ILECs proceed with buildout of collocation arrangements pending the resolution of disputed charges. As such, BellSouth's failure and refusal to provide adequate cost support to justify its price quote upon a request by Supra as well as its failure and refusal to proceed with the buildout arrangements can be subject to a FCC enforcement action.

Furthermore, Supra, in an attempt to move forward requested, received, and selected subcontractors pursuant to BellSouth's list of its approved subcontractors. However, BellSouth has steadfastly refused to allow Supra to subcontract the construction of such collocation arrangements.

The above list of practices is not a complete list, but rather, a list of selected examples of BellSouth's bad faith practices. A clear look at the practices listed above can only lead one to conclude that it is BellSouth's policy to engage in a pattern of bad faith. According to Black's Law Dictionary, bad faith is defined as:

Glenn T. Reynolds, Esq.
Frank G. Lamancusa, Esq.
March 2, 2001
Page 5 of 6

The opposite of “good faith,” generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one’s rights or duties, but by some interested or sinister motive. Term “bad faith” is not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity, it is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with furtive design or ill will. *Stath v. Williams, Ind. App.*, 367 N.E.2d 1120, 1124. An intentional tort which results from breach of duty imposed as consequence of relationship established by contract. *Davis v. Allstate Ins. Co.* 101 Wis.2d 1, 303 N.W.2d 596, 599.

Significantly, this is not the first time BellSouth has engaged in such conduct. On or about November 2, 2000, this Commission entered a consent decree against BellSouth for BellSouth’s violations of section 251(c)(1) of the Act, and section 51.301 of the Commission’s rules, in connection with BellSouth’s alleged failure to negotiate in good faith the terms and conditions of an amendment to an interconnection agreement with Covad Communications Company (“Covad”) relating to BellSouth’s provision of unbundled copper loops in nine states. BellSouth was fined \$750,000 by the FCC for the very act it has committed against Supra.

It is interesting to note that Covad and other Competitive Local Exchange Carriers are about to go out of business. Please see **Exhibit C**, “Dead Companies Walking”, an article in the Business Week of January 22, 2001. Aside from Covad, other companies mentioned in that article as going out of business are Rhythms NetConnections, Intermedia Communications, Northpoint Communications, RSL Communications and ICG Communications. All these companies have either filed complaints or participated in proceedings against BellSouth before this very Commission. It appears that BellSouth is winning its battle to prevent competition in the local telephone industry.

While BellSouth has the resources to continually refuse to negotiate in good faith to delay the implementation of Supra’s business plan or to litigate every issue, Supra’s lack of resources places it at a severe disadvantage. Of course, it may well be BellSouth’s strategy to spread Supra’s resources as thin as possible so as to be able to force through its agenda and eventually force Supra out of business as it has other CLECs, thereby denying telephone subscribers the benefits of competition.

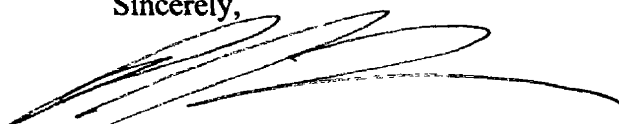
Accordingly, Supra believes that the above-referenced violations are appropriate for inclusion in the Common Carrier Bureau’s Accelerated Docket proceedings. Supra

Glenn T. Reynolds, Esq.
Frank G. Lamancusa, Esq.
March 2, 2001
Page 6 of 6

respectfully requests the assistance of the Commission and Staff to resolve said violations in an expedited manner through mediation and, if such mediation is not successful, by inclusion in the Accelerated Docket proceedings.

If you have any questions or comments, please feel free to contact me at my office at (305) 476-4247.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul D. Turner", with a long, sweeping underline that extends to the right.

Paul D. Turner
Assistant General Counsel

cc: Phillip J. Carver, Esq. (BellSouth)
Nancy B. White, Esq. (BellSouth)
Brian W. Chaiken, Esq. (Supra Telecom)
Mr. Olukayode Ramos (Chairman & CEO, Supra Telecom)



Adenet Medacier
Assistant General Counsel
2620 SW 27th Avenue
Miami, FL 33133-3001
Phone: (305) 476-4240
Fax: (305) 443-9516
Email: amedacier@stis.com

April 4, 2001

Parkey Jordan, Esq.
General Attorney
675 West Peachtree Street
Atlanta, GA 30375-0001

Re: Inter-Company Review Board Meeting for the Purpose of Negotiating a
Follow-On Agreement Pursuant to FPSC Order in CC Docket No. 001305

Dear Ms. Jordan:

I received your message regarding BellSouth's intent to request an Inter-Company Review Board meeting regarding above subject matter. As Supra has previously indicated to BellSouth, in order to be able to commence negotiations of a follow-on agreement on equal footing, Supra requires the information responsive to its letter dated April 26, 2000. See attached **Exhibit A**. On or about August 8, 2000, Ms. Kester handed you a copy of the same document request. It is almost a year that Supra made the first request without receiving any response from BellSouth.

In addition to the documents responsive to **Exhibit A**, Supra demands any and all cost studies and supporting documentation that have been conducted on any costs associated with all services and network elements, bundled or unbundled, that BellSouth provides to itself, its customers, its affiliates, subsidiaries and any other party.

Be reassured you that Supra will be able to proceed with negotiations as soon as it receives the necessary documents. Please let me know when said documents will be forwarded to our office.

Truly,


Adenet Medacier

Cc: Olukayode Ramos
Brian Chaiken

EXHIBIT G

Parkey D. Jordan
General Attorney

BellSouth Telecommunications, Inc.
Legal Department - Suite 4300
875 West Peachtree Street
Atlanta, Georgia 30375-0001
Telephone: 404-335-0794
Facsimile: 404-658-9022

April 9, 2001

Via FACSIMILE (305-443-1078)
and
FEDERAL EXPRESS

Adenet Medacier, Esq.
Supra Telecom
2620 S.W. 27th Avenue
Miami, Florida 33133

Re: Intercompany Review Board Meeting

Dear Mr. Medacier:

I have received your letter dated April 4, 2001¹, regarding the Intercompany Review Board meeting for the purpose of discussing the interconnection agreement that is currently in arbitration before the Florida Public Service Commission. First, you are mistaken that Ms. Kester provided me with a copy of Exhibit A attached to your letter when Mr. Finlen and I were in Miami to negotiate the new interconnection agreement with Supra. In any event, after reviewing Exhibit A to your letter, I am not certain what information you are asking BellSouth to provide. Your Exhibit A appears to be a suggested template for carriers to utilize when negotiating to interconnect their networks. The document specifically states that it should be used in joint planning sessions, and it merely provides topics that should be considered and discussed. Certainly, we are happy to discuss with you any issues relating to the new interconnection agreement. In fact, the purpose of our negotiation meetings was to discuss the issues related to the proposed agreement. However, the Florida Staff has specifically asked that we hold an Intercompany Review Board meeting to discuss the issues that are currently in arbitration. Further, in reviewing Exhibit A attached to your letter, I cannot ascertain what information you are asking BellSouth to provide.

As for your request for cost studies, BellSouth will provide cost studies for the unbundled network elements set forth in your agreement. We will need Supra to execute a confidentiality agreement with respect to such cost studies, but we will then make them available for your review. Cost studies relating to all services BellSouth may offer, regardless of whether those services are made available under the interconnection agreement, are neither available nor relevant to the new interconnection agreement.

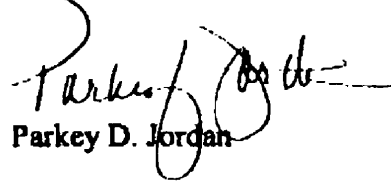
¹ Although Supra's letter was dated April 4, 2001, it clearly should have been dated April 5, 2001. The fax cover sheet was dated April 5, 2001, and your letter was in response to a letter from BellSouth dated April 5, 2001.

EXHIBIT H

Adenet Medacier, Esq.
Supra Telecom
April 9, 2001
Page 2

Notwithstanding any of the foregoing, there is no reason to delay the Intercompany Review Board meeting. We will cooperate with Supra in providing specific requested information that is relevant to the new interconnection agreement, and we can discuss the information you would like to receive when the parties meet. Again, please review the dates and times I suggested for a meeting in my letter of April 5, 2001, and let me know when Supra is available to meet with regard to this topic.

Sincerely,



Parkey D. Jordan

cc: Nancy White, Esq.
Phil Carver, Esq.
Jerry Hendrix
Pat Finlen



Adenet Medacier
Assistant General Counsel
2620 SW 27th Avenue
Miami, FL 33133-3001
Phone: (305) 476-4240
Fax: (305) 443-9516
Email: amedacier@stis.com

April 10, 2001

Parkey D. Jordan, Esq.
BellSouth Telecommunications, Inc.
675 West Peachtree Street
Atlanta, Georgia 30375-0001


Re: Intercompany Review Board Meeting
Interconnection Agreement

Dear Ms. Jordan:

This is to acknowledge receipt of your letter dated April 9, 2001, and at the same time address issues pertaining to same. Be aware that Supra already executed a non-disclosure agreement in prior related matters. From a legal standpoint an additional execution is at best redundant.

You are mistaken that the FCC mandated template has not been communicated to you. Such was done by Ms. Kelly Kester, former Supra Counsel, in the presence of Messrs. Ramos and Buechele. Furthermore, that template was sent on or about April 26, 2000 by Supra to BellSouth's Finlen. Supra is seeking information regarding BellSouth's practices, policies and procedures for all the issues identified in the template so as to be able to identify the types of interconnection to be established by our two companies. I have enclosed a copy of the report *Increased Interconnection Task Group II Report Network Reliability Council*.

Supra is encouraged by BellSouth's assurance of cooperation. Supra is able to meet three business days after receipt of the responsive information from BellSouth. We look forward to your

Truly,

Adenet Medacier

Cc: Olukayode Ramos
Brian Chaiken, Esq.

EXHIBIT 1

Parkey D. Jordan
General Attorney

BellSouth Telecommunications, Inc.
Legal Department - Suite 4300
675 West Peachtree Street
Atlanta, Georgia 30375-0001
Telephone: 404-335-0794
Facsimile: 404-858-8022

April 13, 2001

Via FACSIMILE (305-443-1078)
and
FEDERAL EXPRESS

Adenet Medacier, Esq.
Supra Telecom
2620 S.W. 27th Avenue
Miami, Florida 33133

Re: Intercompany Review Board Meeting -- New Interconnection Agreement

Dear Mr. Medacier:

In response to your letter of April 11, 2001, I am aware that Supra signed a confidentiality agreement in connection with the pending commercial arbitration between our companies. However, that agreement covers only information provided to Supra pursuant to the commercial arbitration. As the cost studies are not provided for purposes of the commercial arbitration, that agreement is not relevant. We are simply asking that Supra execute another similar agreement covering the cost studies to be provided. A nondisclosure agreement is attached for your review.

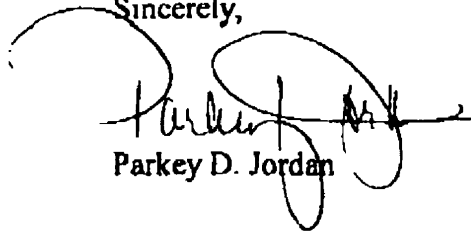
Mr. Medacier, I was unable to locate in my files the document you label in your April 11, 2001 letter as the report "Increased Interconnection Task Group II Report Network Reliability Council." This report, which you provided in full to me yesterday via overnight courier, is not something with which BellSouth is familiar, nor was BellSouth a party to the task force. More specifically, the pages that you reference as containing requests for information are simply suggested checklists to be used in joint planning with interconnecting carriers. You indicated in your April 11 letter, however, that you are seeking BellSouth's interconnection policies and practices. BellSouth posts a wide variety of information on its web site, including information about network interconnection. At www.interconnection.bellsouth.com, you can find such information. From the home page, click on "Local," "Guides and Technical References," and "Activation." From the final screen you can access the BellSouth Start-Up Guide, which has information concerning interconnection with BellSouth. This document, as well as other documents on the web site, contains information regarding interconnection with BellSouth, as you have requested.

EXHIBIT J

Adenet Medacier, Esq.
Supra Telecom
April 13, 2001
Page 2

I trust that Supra will no longer refuse to participate in an Intercompany Review Board meeting with BellSouth. Please let me know your availability for a meeting as soon as possible.

Sincerely,



Parkey D. Jordan

PDJ/jdd

Attachment

cc: Jerry Hendrix (via inter-department mail w/Attachment)
Pat Finlen (via inter-department mail w/Attachment)
Nancy White (via e-mail and interoffice delivery w/Attachment)
Phil Carver (via inter-department mail w/Attachment)

**** Transmit Conf. Report ****

P.1

May 1 2001 13:48

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Adenet Medacier
Assistant General Counsel
2620 SW 27th Avenue
Miami, FL 33133-3001
Phone: (305) 476-4240
Fax: (305) 443-9516
Email: amcdacier@stis.com

May 1, 2001

VIA FACSIMILE (404) 658-9022 and FEDERAL EXPRESS

Parkey D. Jordan, Esq.
General Attorney
BellSouth Telecommunications, Inc.
Legal Department – Suite 4300
675 W. Peachtree St.
Atlanta, Georgia 30375

Re: Inter-Company Review Board Meeting Regarding Follow-On Agreement

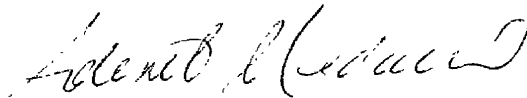
Dear Ms. Jordan:

This is in response to your letter dated April 13, 2001. First, your allegation that Supra has refused to participate at inter-company review board meetings with BellSouth is completely false. You are aware of Supra's position regarding this matter – Supra cannot engage in fruitful meetings regarding the follow-on agreement until Supra is in receipt of the responsive documents to its letter of **April 26, 2000**. That position was articulated to all the BellSouth representatives present at the inter-company review board meeting conference call of April 11, 2001 conducted as a result of BellSouth's refusal to provide SMDI and Megalink services to Supra in order for Supra to provide its branded voice mail service. On the conference call held on April 24, 2001 between BellSouth, FCC and Supra, you stated Supra's position correctly. Your blatant mischaracterization of Supra's position in your letter dated April 13, 2001 is disingenuous and an obvious attempt at legal positioning. BellSouth is yet to provide any information (including cost studies) to Supra necessary for the parties to begin negotiations of a follow-on agreement.

...claim that the "Increased Interconnection Task Group II" report "is not something

would be useful. Pointing Supra to a website/page which speaks to what BellSouth provides CLECs, however, is not fruitful. Supra would greatly appreciate it if BellSouth can either produce the information or confirm its refusal to produce the information. Supra, at no point, has or will refuse to hold an inter-company review meeting with BellSouth. Unfortunately, as has been proven numerous times in the past, as a result of BellSouth's refusal to move even a fraction from its indefensible positions, these meetings end with bitter words. We wish to avoid these results.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Adenet Medacier".

Adenet Medacier
Assistant General Counsel

cc: Olukayode A. Ramos and Brian Chaiken, Esq. (Supra)
Jerry Hendrix (BellSouth)



Adenet Medacier
Assistant General Counsel
2620 SW 27th Avenue
Miami, FL 33133-3001
Phone: (305) 476-4240
Fax: (305) 443-9516
Email: amedacier@stis.com

May 8, 2001

VIA FACSIMILE (404)614-4054 and U.S. MAIL


Parkey D. Jordan
General Attorney
BellSouth Telecommunications, Inc.
675 West Peachtree Street
Suite 4300
Atlanta, Georgia 30375-0001

Re: Follow-on Agreement

Dear Ms. Jordan:

Supra hereby acknowledges receipt of the Cost Study information. I trust that by now you have reviewed my May 2nd's response to BellSouth's alleged lack of familiarity concerning Supra's request for information contained in the Network Interconnection Bilateral Agreement Template. Supra awaits the necessary information regarding BellSouth's network.

I am promptly expecting BellSouth's response to my letter dated May 2, 2001.

Truly,

Adenet Medacier
Assistant General Counsel

Cc: Brian Chaiken
Olukayode Ramos

EXHIBIT M

BellSouth
Suite 900
1133-21st Street, N W
Washington, D C 20036-3351

whit.jordan@bellsouth.com

May 18, 2001

W. W. (Whit) Jordan
Vice President-Federal Regulatory

202 463-4114
Fax 202 463-4198

VIA HAND DELIVERY

Frank G. Lamancusa, Esq.
David Strickland, Esq.
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: BellSouth's Response to Supra's Request for Inclusion of a Dispute with
BellSouth on the Commission's Accelerated Docket

Gentlemen:

This letter is in response to allegations of bad faith made by Supra Telecommunications & Information Systems, Inc. ("Supra") against BellSouth Telecommunications, Inc. ("BellSouth") regarding BellSouth's negotiating and collocation practices. The allegations are without merit and fail to state a claim upon which relief can be granted. Moreover, because of the potentially complex factual discovery that would be necessary to resolve the dispute, inclusion on the Commission's accelerated docket is impracticable and should be denied.

I. INTRODUCTION

Supra filed letters with the Enforcement Bureau ("Bureau") alleging that BellSouth acted in bad faith in its attempts to negotiate an interconnection agreement with Supra and to provide Supra with collocation space within BellSouth's central offices. These allegations identify isolated events, which Supra purposefully distorted to try to support a claim that BellSouth has acted in bad faith. The facts will clearly demonstrate that BellSouth has not acted in bad faith. Beyond those allegations, however, the facts also show it is Supra that has acted in bad faith in its negotiations with BellSouth. The Commission's rules regarding good faith negotiations are not unilateral. Supra is under an equal obligation to negotiate in good faith with BellSouth.¹ Supra, however, has taken every opportunity to avoid entering into a new Interconnection Agreement with BellSouth even though its current Interconnection Agreement expired on June 9, 2000. Supra's actions illustrate its recalcitrant attitude toward negotiations. Supra clearly desires to maintain its current contract and not negotiate a new one. That contract, however, was

¹ See 47 C.F.R. § 51.301(b).

negotiated approximately 5 years ago and significant changes have since occurred in both the BellSouth network and Commission rules. BellSouth has expended substantial resources to develop and modify its procedures and its systems to implement those changes. Accordingly, the parties must move forward with a new contract. Nevertheless, Supra has consistently created roadblocks and used every conceivable tactic to delay BellSouth and the Florida Public Service Commission ("FPSC") in this effort.

BellSouth sets forth in this document the facts surrounding its relationship with Supra. They are lengthy and in many cases are at direct odds with assertions made by Supra. Accordingly, because of the time constraints, BellSouth does not believe that the issues are suitable for an accelerated docket proceeding. Moreover, jurisdictional issues prevent the matter from being included on the docket.² Notwithstanding these issues, if the Bureau accepts the case for the accelerated docket, BellSouth anticipates filing a counter-claim of bad faith against Supra. This response will make BellSouth's reasoning for such a claim abundantly clear.

II. SUPRA'S NEGOTIATION CLAIMS

A. History of Negotiation

An understanding of the relationship between Supra and BellSouth is necessary for the Bureau to properly respond to Supra's claims. On October 5, 1999, Supra adopted the BellSouth/AT&T interconnection agreement ("AT&T Agreement" or "Interconnection Agreement"). While the AT&T Agreement expired by its terms on June 9, 2000, Section 2.3 of the General Terms and Conditions of the AT&T Agreement provides that "[U]ntil the Follow-On Agreement becomes effective, BellSouth shall provide Services and Elements pursuant to the terms, conditions and prices of this Agreement that are *then in effect*."³ Thus, the parties are continuing to operate under the terms of the AT&T Agreement until such time as a new agreement is executed. Section 2.2 of the General Terms and Conditions of the AT&T Agreement provides that the parties will commence negotiations of a "Follow-On" agreement 180 days prior to expiration of the AT&T Agreement. Pursuant to such provision, on March 29, 2000, Mr. Pat Finlen, Director, Interconnection Services for BellSouth ("Mr. Finlen") notified Supra that BellSouth desired to commence renegotiation of the parties' Interconnection Agreement.⁴

In response to Mr. Finlen's March 29, 2000 letter, Mr. Olukayode Ramos, Chairman and CEO of Supra ("Mr. Ramos") by letter dated April 26, 2000, stated that BellSouth should permit

² See Section IV. Jurisdiction, *infra*.

³ Section 2, 3 of the General Terms and Conditions of the AT&T Agreement (emphasis added). A copy of the pertinent sections of the AT&T Agreement is attached as Exhibit 1. BellSouth can provide a copy of the full agreement should the Bureau need it.

⁴ A copy of the letter from Mr. Finlen to Mr. Ramos, dated March 29, 2000, is attached as Exhibit 2.

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Supra to utilize the AT&T Agreement throughout BellSouth's nine state region.⁵ Of course, Supra was not certified in all such states, nor was the AT&T Agreement filed and approved in any state other than Florida, as Mr. Finlen points out in his May 3, 2000 response.⁶ Mr. Ramos did not mention renegotiation of the soon-to-expire AT&T Agreement.

On June 5, 2000, BellSouth again requested that Supra negotiate a new interconnection agreement with BellSouth.⁷ On June 7, 2000, Mr. Mark Buechele, Supra's counsel ("Mr. Buechele"), claimed that Mr. Finlen had agreed with Mr. Ramos to allow Supra to maintain the AT&T Agreement.⁸ There is no documentation concerning such an agreement. To the contrary, BellSouth's correspondence clearly indicates that BellSouth, pursuant to the AT&T Agreement, intended to negotiate a new interconnection agreement with Supra.⁹ In correspondence dated June 9, 2000, June 12, 2000, and June 19, 2000, Mr. Buechele indicated Supra's willingness to negotiate with BellSouth but requested to use the AT&T Agreement as a starting point for negotiations for an interconnection agreement not only in Florida, but also in Georgia and Louisiana.¹⁰ However, because of the substantial changes in the telecommunications industry since the negotiation of the AT&T Agreement, BellSouth believed that using the AT&T Agreement as the base agreement or template would be difficult.

On July 20, 2000, in an effort to compromise with Supra regarding the document from which the parties would begin negotiations, Mr. Finlen forwarded to Mr. Buechele the agreement that AT&T and BellSouth were currently negotiating as a replacement for the AT&T Agreement.¹¹ BellSouth then contacted Supra and suggested that the parties meet as soon as possible to schedule substantive negotiations.

On August 7 and 8, 2000, Mr. Finlen and Ms. Parkey Jordan, BellSouth Legal Department ("Ms. Jordan") traveled to Miami to meet with Supra regarding the new interconnection agreement. On the first day of these meetings, Mr. Buechele discussed some general issues of concern to Supra. Supra did not propose contract language or comment on

⁵ A copy of the letter from Mr. Ramos to Mr. Finlen dated April 26, 2000, is attached as Exhibit 3.

⁶ A copy of the letter from Mr. Finlen to Mr. Ramos, dated May 3, 2000, is attached as Exhibit 4.

⁷ A copy of the letter from Mr. Finlen to Mr. Ramos, dated June 5, 2000, is attached as Exhibit 5.

⁸ A copy of the letter from Mr. Buechele to Ms. Jordan, Senior Operations Counsel for BellSouth ("Ms. Jordan"), dated June 7, 2000, is attached as Exhibit 6.

⁹ A copy of the letter from Ms. Jordan to Mr. Buechele dated June 8, 2000, is attached as Exhibit 7.

¹⁰ Copies of letters from Mr. Buechele to Ms. Jordan dated June 9, 2000, June 12, 2000, and June 19, 2000 and copies of the letters from Ms. Jordan to Mr. Buechele dated June 13, 2000 and July 3, 2000, are attached as Exhibit 8.

¹¹ A copy of the letter from Mr. Finlen to Mr. Ramos, dated July 20, 2000, is attached as Exhibit 9.

BellSouth's proposed contract language but simply raised a few issues that Supra wanted to address. The parties then began going through the proposed interconnection agreement that Mr. Finlen had forwarded to Supra on July 20, 2000, starting with general terms. It quickly became clear that Mr. Buechele had not read the proposed agreement and was not prepared to discuss it in detail. During the two-day meeting, the parties covered no contract language other than general terms and conditions of the proposed agreement.

Because the window for filing for arbitration pursuant to the AT&T Agreement was fast approaching, BellSouth set up additional conference calls with Supra to negotiate the agreement. Supra did not initiate any negotiation meetings, rather all meetings were initiated by BellSouth.

On September 1, 2000, BellSouth filed a petition for arbitration of the new interconnection agreement with Supra. BellSouth raised 15 issues that had been discussed during the negotiations. On October 18, 2000, Supra filed its response to BellSouth's petition, raising an additional 51 issues that had never been discussed or even mentioned during the parties' negotiations. The majority of these issues were copied verbatim from arbitration petitions filed previously in Florida by AT&T and MCIWorldCom.

B. Inclusion of Advertising Clause

Supra's first allegation of bad faith concerns an advertising campaign Supra began in Florida. As part of this campaign, Supra used the BellSouth name inappropriately in violation of the Lanham Act.¹² The advertising campaign began in late May of 2000. BellSouth became aware of the campaign when one of its employees received a brochure in the mail.¹³ Upon receiving this information, BellSouth notified Supra that the use of the BellSouth name in the manner set forth in the brochure was a violation of its interconnection agreement and was also misleading, which constituted a violation of the Lanham Act.¹⁴ In a letter dated June 19, 2000, Ms. Leah Cooper, Operations Counsel for BellSouth ("Ms. Cooper"), demanded that Supra cease and desist this improper use of the BellSouth marks.¹⁵

Supra responded to BellSouth's demand letter on July 3, 2000, stating that the brochure received by the BellSouth employee was presumably printed and mailed by accident. Supra assured BellSouth that the brochure would not be used in the future as printed. Supra went on to state, however, that it could use the BellSouth name in comparative advertising without violating the Lanham Act. Moreover, Supra contended that since BIPCO was not a party to the Interconnection Agreement, then Supra's use of the BellSouth marks did not violate the

¹² See 15 U.S.C.A. § 1051 *et. seq.*

¹³ A copy of the brochure is attached as Exhibit 10.

¹⁴ BellSouth Intellectual Property Corporation ("BIPCO"), a wholly owned affiliate of BellSouth Corporation, owns all BellSouth marks. BIPCO licenses the use of the marks to BellSouth Corporation and its subsidiaries.

¹⁵ A copy of the letter from Ms. Cooper to Mr. Ramos, dated June 19, 2000, is attached as Exhibit 11.

agreement.¹⁶ Supra continued with its advertising campaign, including the prominent placement of several outdoor billboards around the South Florida area.¹⁷

BellSouth responded to Supra's letter on July 11, 2000, informing Supra that unauthorized use of a company's marks infringes on the company's trademark rights and constitutes an act of unfair competition and dilution under both federal and state law. This cause of action is available to BIPCO, as owner of the BellSouth marks, regardless of whether BIPCO is in a contractual relationship with the unauthorized user. Moreover, BellSouth informed Supra that because BIPCO licensed the marks to BellSouth Telecommunications, Inc., the contractual party to the Interconnection Agreement, unauthorized use of the marks was a violation of the Interconnection Agreement.¹⁸

Supra continued with its advertising campaign including the unauthorized use of the BellSouth marks.¹⁹ On September 19, 2000, BellSouth once again wrote Supra informing it of its discovery of additional improper advertisements and again demanded that Supra cease and desist this improper use of the BellSouth marks. In this letter, BellSouth specifically quoted the governing clause of the Interconnection Agreement. Moreover, BellSouth again warned Supra that the use of the marks as they appear in Supra's campaign constituted an act of unfair competition and dilution under both federal and state law.²⁰ Supra responded with the October 6, 2000 letter that Supra attached to its March 15, 2001 letter to the Bureau.

Despite the numerous warnings of BellSouth, Supra continued with its unlawful advertising campaign. Accordingly, BIPCO filed suit against Supra in United States District Court for Lanham Act and Florida advertising law violations.

Supra's allegations in the March 15, 2001 letter to the Bureau appear to be based on two points. First, Supra contends that BellSouth acted in bad faith by not allowing Supra to adopt Section 9.1 of the interconnection agreement between BellSouth and MGC Communications, Inc., d/b/a MPower Communications Corporation ("MPower"). Second, Supra alleges that BIPCO's filing a lawsuit for violations of the Lanham Act "circumvented the mandatory arbitration requirement of the parties' Interconnection Agreement." Neither of these claims describes bad faith acts by BellSouth. Indeed, the facts demonstrate just the opposite.

¹⁶ A copy of the letter from Mr. Buechele to Ms. Cooper, dated July 3, 2000, is attached as Exhibit 12.

¹⁷ Pictures of these billboards are attached as Exhibit 13.

¹⁸ A copy of the letter from Ms. Cooper to Mr. Buechele, dated July 11, 2000 is attached as Exhibit 14.

¹⁹ See copy of the letter from Ms. Cooper to Mr. Buechele, dated August 22, 2000, attached as Exhibit 15.

²⁰ A copy of the Letter from Ms. Cooper to Mr. Buechele, dated September 19, 2000 is attached as Exhibit 16.

Supra's first allegation fails because it does not accurately reflect the facts, but even if it did, the claim is moot. The facts are clear that Supra did not properly attempt to have the MPower clause incorporated into its Interconnection Agreement. To begin, Supra's Interconnection Agreement expired on June 9, 2000. The language of its Interconnection Agreement clearly states that after expiration and until a follow-on agreement is executed, the parties will continue to operate under the terms of the Interconnection Agreement "then in effect."²¹ The Interconnection Agreement does not contemplate amendments to the agreement after expiration, whether by adoption or otherwise.

Moreover, the facts demonstrate that BellSouth has long been attempting to negotiate a new agreement with Supra. The letter of October 6, 2000, which Supra references as the source of its adoption request, is a letter from Mr. Buechele to Ms. Cooper, which was written in response to a letter from Ms. Cooper. Ms. Cooper's letter was simply a notification to Supra that Supra was misusing BellSouth's trademarks. Mr. Buechele included in his two-page response to Ms. Cooper one sentence requesting adoption of the MPower clause. Mr. Buechele had been working with Ms. Jordan and Mr. Finlen on the new agreement negotiations. Not only had BellSouth and Supra exchanged numerous pieces of correspondence on the matter, but also Ms. Jordan and Mr. Finlen had participated in a multi-day negotiation session in Miami with Mr. Buechele. Mr. Buechele therefore knew the proper channel to discuss the inclusion of the clause in Supra's Interconnection Agreement was with Ms. Jordan. Instead of following this channel, Mr. Buechele made the request in one letter to Ms. Cooper, who has never been involved in the negotiation process. Significantly, Supra never raised the issue further. Had Mr. Buechele properly made the request of Ms. Jordan in the proper channel of negotiation, Ms. Jordan and Mr. Finlen could have considered the language for the on-going negotiations. Indeed, BellSouth contract negotiators, prior to learning of Supra's infringing and misleading advertising campaigns, offered language for the new interconnection agreement that permits Supra to engage in truthful and lawful comparative advertising. Supra did not agree to the language, yet never proposed an alternative. Instead, it raised the issue in its response to BellSouth's petition for arbitration before the FPSC. BellSouth's actions in all negotiations with Supra were in good faith.

Even if Supra had acted appropriately in adoption of the MPower clause, Supra's claims are moot because the clause could not have been included in Supra's current Interconnection Agreement nor would it have protected Supra from its unlawful acts.²² Mr. Buechele wrote the letter to Ms. Cooper requesting the adoption of the MPower advertising clause after Supra's Interconnection Agreement had already expired. Accordingly, even if Mr. Buechele had followed the proper notification channel for amending Supra's agreement, any amendment could

²¹ Section 22.7 of the General Terms and Conditions of the AT&T Agreement provides that Supra will not use the logos, trademarks or service marks of BellSouth in sales and advertising without BellSouth's prior approval. Supra violated this provision of the interconnection agreement prior to any alleged request to adopt a different provision.

²² Clearly, Supra's intent in even asking to adopt the clause was an attempt to avoid responsibility for its improper past advertising acts.

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not have taken place after the agreement had expired. Such a practice, if permitted, would allow a party to maintain an agreement in perpetuity by simply adopting the term clause from another agreement each time the expiration date for its agreement approached. This would create a unilateral term provision. Moreover, had Supra followed the proper procedure for amending its agreement and had the agreement still been effective, the clause would only have been effective from the date of the amendment forward. The advertising practices followed by Supra obviously took place prior to Supra even requesting that the advertising clause be amended. Thus, the advertising campaign would still have been in violation of Supra's Interconnection Agreement. Finally, even if the MPower clause could have been properly included in the Supra Interconnection Agreement, it would have provided Supra no protection in the lawsuit filed by BIPCO. The clause only allows for MPower to conduct valid comparative advertising. As discussed below, the advertising conducted by Supra was not valid comparative advertising. In fact, the United States District Court granted BIPCO a preliminary injunction requiring Supra to amend its advertising campaign because BIPCO has a substantial likelihood of prevailing on its Lanham Act claims. Thus, BellSouth's actions were not in bad faith.

In sum, Supra's claim has no merit. Supra made one purported adoption request. The request constituted a single sentence buried in a letter responding to BellSouth's notice of trademark infringement, and the letter was addressed to a BellSouth attorney who is not involved in Supra's negotiations. Supra, knowing full well the BellSouth representatives responsible for negotiations with Supra, failed to copy those representatives on the letter containing the request. Significantly, Supra never again mentioned to its negotiator that it wanted to adopt any portion of the MPower agreement. It instead opted to file this complaint.

Supra's second allegation is equally without merit. The Bureau must agree that BIPCO, as owner of the BellSouth marks, has an independent cause of action available to it against any entity that commits a violation of federal and state trademark laws that infringes on BIPCO's trademark rights. This cause of action is established by federal statute, and in fact, although BellSouth, as licensee of the BellSouth marks has the right to limit third party use of the marks in its agreements, BIPCO, as owner of the marks, is the only party that may bring an action under the trademark law in this matter.²³ Accordingly, when Supra refused to stop its unlawful advertising practices, BIPCO exercised its statutory rights and filed suit in federal court.²⁴ Upon filing the suit, BellSouth also filed a Motion for Preliminary Injunction asking the court to have Supra stop its advertising campaign and remove the billboards that it had in place. In Supra's brief opposing the motion for preliminary injunction, Supra argued that the issue was a dispute

²³ See 15 U.S.C. §§ 1114(1), 1125(a), (c) (providing a remedy to "the registrant," "any person...likely to be damaged," and "the owner of a famous mark," respectively).

²⁴ *BellSouth Intellectual Property Corp. v. Supra Telecommunications & Information Systems, Inc. et al.*, Case No. 00-4205-CIV-GRAHAM/TURNOFF (S.D. Fla. filed Nov. 3, 2000). It is ironic that Supra even suggests that the filing of a suit by BIPCO was in violation of the Interconnection Agreement considering that when BellSouth first approached Supra about ceasing its unlawful practices Supra dismissed the request on the grounds that BIPCO is not a party to the Interconnection Agreement. See Exhibit 12.

subject to the arbitration provisions of the Interconnection Agreement.²⁵ BellSouth disagreed, setting forth its rebuttal in its reply brief.²⁶ With the issue being presented and briefed before the court, the court proceeded with BIPCO's complaint and motion. The court granted BIPCO a preliminary injunction on most of its requests.²⁷

BellSouth conducted research on whether BIPCO could file a complaint in federal court or if its claims were subject to the arbitration clause of the Interconnection Agreement. This research revealed that BIPCO could file the claim. These acts alone are sufficient to defeat any claims of bad faith. The federal court's acceptance of jurisdiction over the complaint not only validates BIPCO's actions but also bars any claim of bad faith on the part of any BellSouth entity.

C. Negotiation of New Interconnection Agreement

Supra claims that BellSouth has failed to negotiate in good faith a "follow-on" Agreement to replace the expired AT&T Agreement. Supra's March 15, 2001 letter to the Bureau alleges that BellSouth "has refused to provide information about its network necessary to reach an agreement." Additionally, Supra alleges that BellSouth "(i) prematurely filed an arbitration petition...; (ii) intentionally obstructed negotiations; and (iii) filed a never before seen template agreement as its proposed language in the arbitration proceeding..." All of these statements are complete fabrication. The Bureau requested additional information from Supra regarding these claims. Supra filed a supplemental letter with the Bureau on April 25, 2001 in which it made further allegations regarding the provision of information and the arbitration proceeding.

1. Request for Information

In its March 15, 2001 and April 25, 2001 letters to the Bureau, Supra alleges that it sent a template to BellSouth requesting BellSouth to provide "all the information" from the template. In its letter to the Bureau, Supra characterizes this information as relating to BellSouth's network. Supra alleges that the information from the templates is necessary for Supra to negotiate an interconnection agreement with BellSouth. As discussed below, the templates were never developed for the purpose of serving as a request for information from one carrier. Indeed, Supra's request as posed is nonsensical.

First, BellSouth disputes the facts as presented by Supra. Supra attached as an Exhibit to its March 15, 2001 letter to the Bureau a letter dated April 26, 2000 from Mr. Ramos to Mr. Finlen requesting information related to the templates. In its supplemental letter to the Bureau, Supra alleges that Mr. Ramos had at least two conversations with Mr. Finlen in which Mr. Ramos described Supra's request in detail. Additionally, Supra claims that it provided the template again to Ms. Jordan on August 8, 2000, when Mr. Finlen and Ms. Jordan flew to Miami

²⁵ A copy of Supra's opposition brief is attached as Exhibit 17.

²⁶ A copy of BIPCO's reply brief is attached as Exhibit 18.

²⁷ A copy of the Order Granting Preliminary Injunction is attached as Exhibit 19.

to negotiate the new interconnection agreement. Mr. Finlen and Ms. Jordan have searched their files thoroughly and cannot find a copy of Mr. Ramos' letter or the template nor do they recall receiving the templates. Moreover, Mr. Finlen does not recall discussing the templates with the Supra CEO. In fact, the first knowledge BellSouth has of Supra's request for the templates is in a letter from Adenet Medacier, Supra's Assistant General Counsel ("Mr. Medacier"), to Ms. Jordan on April 4, 2001.²⁸ Upon receiving that letter from Mr. Medacier, Ms. Jordan responded with a request for clarification of the specific information Supra was requesting.²⁹ Supra has never provided BellSouth with any specificity regarding its request.

The facts are in dispute regarding when BellSouth actually received Supra's request regarding the templates. BellSouth does not make any specific accusations about the differences in the facts, but points out to the Bureau that even if Supra requested the information as it presented to the Bureau, Supra placed a very low priority on obtaining the information from BellSouth. Supra made only one alleged documented request for the information. Supra never again requested the information from BellSouth in any of the correspondence between the parties regarding negotiations, which went on for a period of several months. Moreover, Supra failed to raise any issue regarding the template in its response to BellSouth's petition for arbitration regarding the new interconnection agreement, nor were any of Supra's enumerated issues contained within its response related to issues raised in the template. In fact, it was not until the FPSC Staff recommended and the FPSC approved that the parties meet again in an Intercompany Review Board meeting to discuss the issues raised in the arbitration that Supra mentioned the template, stating, in response to BellSouth's requests for such a meeting, that it would not meet with BellSouth until BellSouth provided all the information from the template.³⁰

One would logically conclude that if the information was necessary for Supra to negotiate, Supra would have raised this issue before the FPSC. Section 252(b)(4)(B) authorizes the state commission to require the parties "to provide such information as may be necessary for the state commission to reach a decision on the unresolved issues." That section also provides that if either party "fails unreasonably to respond on a timely basis to any reasonable request from the state commission, then the state commission may proceed on the basis of the best information available to it from whatever source derived." Supra's failure to bring up the alleged request and need for the information before the state commission casts doubt on its request.

Regardless of the facts, even if Supra had requested the information as it alleges, the request itself is clearly unreasonable. As Supra states, the templates were included in the

²⁸ A copy of the letter from Mr. Medacier to Ms. Jordan, dated April 4, 2001, is attached as Exhibit 20.

²⁹ See copy of letter from Ms. Jordan to Mr. Medacier, dated April 9, 2001, attached as Exhibit 21. In this letter Ms. Jordan disputes Supra's claim that she was provided a copy of the templates in Florida.

³⁰ See copies of letters from Mr. Medacier to Ms. Jordan dated April 11, 2001, May 1, 2001, and May 8, 2001 and copies of letters from Ms. Jordan to Mr. Medacier, dated April 13, 2001 and May 9, 2001, attached as Exhibit 22.

Increased Interconnection Task Group II Report prepared by the Network Reliability Council,³¹ the predecessor to Network Reliability and Interoperability Council ("NRIC"). The task group was formed to look at network reliability issues within the public switched telephone network ("PSTN") as a result of the increasing number of service providers, including wireless, cable, and local providers, requiring interconnected networks that are now forming the national telecommunications network infrastructure. The report was issued in January of 1996, a month before the Telecommunications Act of 1996 became law.³² The templates were intended to act as a guide to parties, for planning purposes that were contemplating establishing an interface between their networks. The introduction to the templates clearly states that the templates should be used as a guide for discussion of specific types of interfaces. It states, "The following worksheet should be used during the joint planning sessions between interconnecting service providers. This is an outline of the minimum set of topics that need to be addressed in bilateral agreements for critical interconnections." Thus, for these templates to have any rational meaning, Supra would have to first identify the types of interconnection interfaces that its plans on implementing in its network. Based on these types of interconnection interfaces the parties would use the templates as a guide for negotiating to ensure that they have covered all issues that might arise when actually implementing the agreed-to forms of interconnection. Provision of all possible information on all topics listed in the templates is impossible and Supra's request that BellSouth do so is an unreasonable request.³³

BellSouth has never ignored Supra's requests for information. Rather, Supra has ignored responses by BellSouth and BellSouth's requests for Supra to provide more specific explanations of information it seeks to obtain. Supra has no evidence of any violation on BellSouth's part of Section 252 of the Act, of the First Report and Order, or of 47 C.F.R. § 51.301(c)(8). Further, Supra's reference to 47 C.F.R. § 51.301(c)(8)(i) substantiates BellSouth's position. That rule states that the ILEC must furnish information about its network to the extent reasonably required by the CLEC to *identify the network elements the Competitive Local Exchange Carrier ("CLEC") needs to serve a particular customer*. The rule contemplates specificity and to date Supra has provided none.

2. Filing of the Petition for Arbitration

Supra also claims that BellSouth prematurely filed a petition for arbitration. Supra is mistaken. The right to file for arbitration is specifically established by statute. Moreover, the

³¹ A copy of the Task Group II Report is attached as Exhibit 23.

³² The task force was not created to develop a plan of implementation for the 1996 Act interconnection requirement. It was developed to address network reliability as a result of past network failures.

³³ The Bureau should consult with the Office of Engineering and Technology ("OET") on this matter. BellSouth believes that OET can confirm BellSouth's position on this matter. Also, BellSouth can provide affidavits of committee members if the Bureau so desires. Moreover, in every negotiation for interconnection that BellSouth has participated with CLECs, BellSouth has never had a similar request for information from any other CLEC.

AT&T Agreement, which Supra chose to adopt, provides for when negotiations for the new interconnection agreement should commence and when either party should file for arbitration.³⁴ BellSouth followed these time-lines and appropriately filed the arbitration petition. BellSouth admits that it overlooked the provision in Section 2.3 to conduct a formal Intercompany Review Board meeting prior to filing an arbitration petition. Supra, however, did not raise this issue during the negotiation meetings or in its response to the arbitration petition. In fact, in response to the petition, Supra filed additional issues that the parties had never discussed during the negotiations. In addition, on January 8 and January 23, 2001, BellSouth and Supra participated in issue identification with the FPSC Staff. At these meetings, Supra never mentioned that the parties had not held an Intercompany Review Board meeting pursuant to the Agreement. The first time Supra raised the issue that BellSouth failed to request the Intercompany Review Board meeting prior to filing the arbitration petition was in its motion to dismiss the arbitration filed on January 29, 2000. The FPSC has approved an order requiring the parties to meet but refused to dismiss BellSouth's arbitration petition.³⁵

Since Supra pointed out the parties' oversight regarding the Intercompany Review Board meeting, BellSouth has been attempting to schedule such a meeting. Supra has refused to participate in such a meeting until BellSouth provides the information set forth in the template.³⁶

Clearly, Supra is using this oversight to avoid entering into a new interconnection agreement with BellSouth. Supra had ample opportunity to raise the issue of the Intercompany Review Board meeting during negotiations, when it filed its response to BellSouth's petition or during subsequent meetings with the FPSC Staff, but failed to do so. Supra, in fact, added issues to the arbitration, issues. This incident in no way gives rise to a claim of bad faith on BellSouth's part.

³⁴ See § 2 of the General Terms and Conditions of the AT&T Agreement attached as part of Exhibit 1.

³⁵ See FPSC Staff Recommendation dated March 23, 2001. On April 17, 2001 the FPSC voted to accept the Staff recommendation. An order is forthcoming. A copy of the FPSC Staff recommendation along with the voting sheets signifying the Florida Commissioners' approval are attached as Exhibit 24. At the second issue identification meeting with the FPSC Staff, the Staff learned that Supra had raised 50 or so additional issues but had not proposed language to BellSouth or the FPSC. The Staff ordered both parties to file proposed language by January 31. Supra never filed language (nor did it file its version of the interconnection agreement that it said it represented to the FPSC Staff it would be proposing). Instead, it filed a motion to dismiss the arbitration on the grounds that BellSouth did not initiate an Intercompany Review Board meeting prior to filing the arbitration petition. The Staff denied Supra motion and ordered both sides to conduct an Intercompany Review Board meeting. BellSouth has been attempting to conduct this meeting, but Supra has refused.

³⁶ See discuss of templates, Section II C.1., *supra*. A copy of the letter from Ms. Jordan to Mr. Medacier dated April 5, 2001 is attached as Exhibit 25. *See also*, letters attached as Exhibit 22.

3. BellSouth's Alleged Intentional Obstruction of Negotiations

Supra submits no facts supporting its allegation that BellSouth has "intentionally obstructed negotiations" of the new interconnection agreement. In fact, the correspondence set forth in Exhibits 2 through 9 hereto clearly reflects that BellSouth has made every effort to negotiate with Supra while Supra devises obstacles to the negotiation process.

4. BellSouth's Alleged Filing of a Different Proposed Interconnection Agreement with its Arbitration Petition

Supra alleges that with the petition for arbitration of the new interconnection agreement, BellSouth "filed a never-before seen template agreement." This statement is absolutely false. When BellSouth commenced negotiations for the new interconnection agreement, it proposed its standard form interconnection agreement as a starting point for negotiations. Supra resisted entering into negotiations, stating that it wanted to keep the AT&T Agreement and that it would adopt the new agreement between BellSouth and AT&T upon execution of that agreement.³⁷ AT&T was in negotiations with BellSouth at that time for its new interconnection agreement. As a compromise, BellSouth agreed to commence negotiations with Supra using the new document being negotiated between BellSouth and AT&T. Of course, the document was not final but had been substantially negotiated by AT&T. Mr. Finlen forwarded the AT&T template to Supra on July 20, 2000.³⁸

When Mr. Finlen and Ms. Jordan flew to Miami in an effort to negotiate with Supra, the parties, both BellSouth and Supra, were working from the new AT&T template, the same document BellSouth filed with the arbitration petition. Although BellSouth would have preferred to file its own standard template with the arbitration petition, it agreed with Supra to use the new AT&T template instead. Whether Supra has ever read the proposed agreement is not within BellSouth's control. The document, however, has been in Supra's possession since approximately July 21, 2000.

In sum, the evidence is clear that BellSouth has made every effort to negotiate with Supra in good faith, despite Supra's efforts to thwart the negotiations process. Supra's claims to the contrary should be summarily dismissed.

III. COLLOCATION

This issue is not new to the Bureau. Supra's current letter to the Bureau, however, falls far short of presenting the facts related to this matter. A history of the facts fully demonstrates that BellSouth has acted in good faith in all its dealings with Supra regarding collocation and that Supra's claims are without merit.

³⁷ See correspondence in Exhibits 2 through 9.

³⁸ See letter attached as Exhibit 9.

The genesis of Supra's claim is the request for collocation in BellSouth's central offices in Florida. The terms and conditions of Supra's collocation agreement required Supra to submit proper information regarding the equipment to be collocated so that BellSouth could determine the amount of floor space and engineering requirements, such as space preparation, which are necessary for collocation. Pursuant to its collocation agreement, Supra pays the actual costs necessary to prepare the space. Further, when Supra wants to obtain collocation space in a central office, it must submit an application to BellSouth that provides specific data regarding its collocation needs. BellSouth analyzes the application to determine if space is available in the central office and, if so, works to provide an initial cost estimate for the space preparation work that will be necessary to ready the site for Supra's collocated equipment.

The initial estimate is prepared using all available information at the time of the estimate; however, many factors can impact this estimate. For example, unexpected construction costs, changes in the amount, type or configuration of Supra's equipment, and the number of other CLEC's that also are seeking collocation in the same central office,³⁹ are all factors that are not usually known at the time of the initial estimate. These factors can cause the cost estimate to increase or decrease. Accordingly, Supra was informed in its collocation agreement that the initial estimate is in fact merely an estimate that is subject to true-up once all costs are incurred. After completing the initial estimate, BellSouth tenders this initial cost estimate to Supra. If the Supra wishes to proceed, it must then submit a "firm order" to BellSouth along with money in the amount of fifty percent (50%) of the initial cost estimate.⁴⁰ Upon receiving the firm order, BellSouth begins the space preparation work required for the central office. Between a period of May 19, 1998 and September 18, 1998, Supra submitted applications for collocation in 24

³⁹ Pursuant to BellSouth's process and procedures in place at the time Supra filed its collocation applications, BellSouth performs site readiness work based on the number of firm orders it has when it begins work. Some of the readiness costs, within a relevant range of space prepared for collocation, remain constant. Thus, if additional CLECs place firm orders each CLECs share of those costs is reduced.

⁴⁰ BellSouth's current practices and procedures for obtaining collocation from the Florida tariff are significantly different than those established for obtaining collocation on an ICB basis as set forth in Supra's collocation agreement.

central offices in Florida.⁴¹ BellSouth prepared and submitted estimates to Supra pursuant to its collocation agreement then in effect.⁴²

During 1999, Supra i.e. filed applications for collocation in four central offices– (1) Daytona Beach Port Orange, (2) Miami Palmetto, (3) West Palm Beach Gardens, and (4) North Dade Golden Glades. Pursuant to its standard processes and procedures in effect at that time, BellSouth provided Supra a price quote and asked that Supra confirm its acceptance by submitting 50% of the cost estimate. Supra disagreed with BellSouth's cost estimate and on September 20, 1999, Supra filed a letter with the Bureau alleging that the price that BellSouth had quoted to Supra to collocate in the four Florida central offices was unreasonable and in violation 47 U.S.C. § 251(c)(6).⁴³ In response to Supra's claims, BellSouth provided the Bureau a breakdown of the cost estimate that it had provided to Supra for the four collocation sites.⁴⁴ The Bureau requested a meeting between Supra and BellSouth to discuss the issues and the parties met with the Bureau on October 25, 1999.

Apparently realizing that its original claims had no merit, Supra spent much of the meeting making allegations outside the scope of its original letter. The Bureau required Supra to file a supplemental letter to encompass all allegations that it had regarding its collocations claims. On November 13, 1999, Supra filed a supplemental letter asserting numerous new allegations.⁴⁵ BellSouth filed its response to this letter on November 24, 1999.⁴⁶ Subsequent to BellSouth filing its response to Supra's November 13, 1999 Letter, the Bureau called another meeting with BellSouth, Supra, and the Bureau. This meeting took place on January 26, 2000. At this meeting the Bureau asked the parties to attempt to settle the issues themselves. Based on this directive from the Bureau, the parties began negotiations to try to settle the dispute.

Supra alleges that settlement of the collocation issue could not be obtained because "BellSouth's settlement proposal was contingent on Supra executing a Full Release in favor of BellSouth for all matters relating to the collocation issue, including but not limited to, all

⁴¹ Subsequent to submitting these applications, Supra requested significant changes. Even though these changes rendered the application incomplete, thus leaving BellSouth unable to process the applications until Supra provided the correct information, BellSouth continues to hold space in the central offices in which space was originally available when Supra filed its initial applications. BellSouth has requested Supra to file applications with the required correct information for these collocation sites. To this date Supra has yet to provide the necessary updated applications. BellSouth continues to hold space in these central offices for Supra even though Supra has not paid any money to BellSouth to hold this space.

⁴² Supra filed its collocation applications with BellSouth under its then existing collocation agreement. Supra is currently under the AT&T Agreement, which contains rates, terms and conditions for collocation in Attachment 3.

⁴³ A copy of Supra's September 20, 1999 Letter is attached as Exhibit 26.

⁴⁴ A copy of BellSouth's October 8, 1999 letter is attached as Exhibit 27.

⁴⁵ A copy of Supra's November 13, 1999 Letter is attached as Exhibit 28.

⁴⁶ A copy of BellSouth's November 24, 1999 Letter is attached as Exhibit 29.

unknown and unanticipated damages.”⁴⁷ Supra supports its claim by attaching the first settlement proposal sent to Supra from BellSouth. Such an allegation trivializes the long and detailed negotiation process. Contrary to Supra’s suggestion, the reasonableness of the release language of the initial proposal is not the reason Supra abandoned settlement discussions. The discussions broke down long after BellSouth submitted its initial proposal and the proposal, including the release language, had gone through revisions on both sides.

On February 17, 2000, BellSouth submitted a settlement offer to Supra that it believed to address all of the issues and concerns Supra had raised in its meetings and letters before the Bureau.⁴⁸ The release language contained within that proposal stated:

In consideration of the recitals and conditions set forth below and agreed to by BellSouth TELECOMMUNICATIONS, INC. (“BELLSOUTH”), SUPRA TELECOMMUNICATIONS, INC., (“SUPRA”), for itself, its successors and assigns and on behalf of any affiliated companies claiming through SUPRA and their successors and assigns and any other party claiming by or through SUPRA, and on behalf of all other entities leased, operated, or controlled by or allied with SUPRA does forever release BELLSOUTH, and all other entities leased, operated, or controlled by, or allied with it, together with its successors and assigns, and all other persons or entities, and settle the claims set forth by SUPRA in its letters to the FCC regarding collocation arrangements in BellSouth’s region including but not limited to September 20, 1999, November 13, 1999 and the conversations SUPRA has had with the FCC concerning the subject matter of said letters (“FCC Letters”) and from any and all claims, actions, causes of action, costs, known or unknown damages to SUPRA which SUPRA may have or may claim to have arising from whatever cause, occurrence or non-occurrence, associated with the claims set forth in the above mentioned FCC Letters.

BellSouth does not believe that the language in this first proposal is unreasonable for a settlement document. Most settlements include similar language requiring the claimant to release all claims for damages, including unknown and unanticipated, that can arise from the specific actions giving rise to the claim. In fact, even if such damages language was not included, it is presumably implied. Moreover, it was the first proposal for settlement and BellSouth was open to suggested changes. Indeed, Supra proposed significant changes to the language, which BellSouth either accepted or offered counter language.

On February 18, 2000, Mr. Buechele, acknowledged receipt of the settlement proposal and suggested a walk through of some of the central offices in Florida.⁴⁹ BellSouth agreed to the

⁴⁷ *Id.* at page 4.

⁴⁸ This is the proposal Supra attached to its March 15, 2001, letter to the Bureau. A copy of that proposed settlement agreement along with the transmittal memo is attached as Exhibit 30.

meeting and the walk through of the Florida central offices. The walk through took place on March 1, 2000, with several BellSouth and Supra representatives, including Supra's vendors, attending. In all of this correspondence both parties expressed an optimism that settlement would be obtained.

Supra responded to BellSouth's initial proposal on April 7, 2000 with its own proposal.⁵⁰ In its proposal, Supra made significant changes to the BellSouth proposal including changes to the release language. The release language proposed by Supra stated:

Release. Supra Telecom hereby releases and discharges BellSouth, their subsidiary companies and their predecessors, successors and assigns and any and all of their past, present and future officers, directors, heirs, executors and administrators, agents, attorneys and employees, and their respective successors, assigns, heirs, executors and administrators, from any and all claims, demands, damages and causes of action, whether known or unknown, arising from BellSouth's August 31, 1999 collocation responses for the BellSouth central offices of DYBHFLPO, WPBHFLGR, NDADFLGG and MIAMIFLPL and for any practices complained about in Supra Telecom's September 20, 1999 and November 13, 1999 letters to the FCC as they relate to those four central offices and any other collocation response which may have been sent by BellSouth thereafter through to the date of this Settlement Agreement. This release and discharge specifically does not apply to any claims or causes of action arising before August 31, 1999, or which do not relate or arise from the four August 31, 1999 BellSouth collocation responses.⁵¹

Upon receiving Supra's response, BellSouth offered redline changes to Supra's proposal on May 1, 2000⁵². BellSouth's redline changes to the above offered Supra release language stated:

⁴⁹ A copy of the letter from Mr. Buechele to Ms. Mary Jo Peed, Senior Operations Counsel, ("Ms. Peed") dated February 18, 2000 and a copy of the letter from Ms. Peed to Mr. Buechele dated February 18, 2000 are attached as Exhibit 31. In his letter, Mr. Buechele also asked for a walk through of central offices in Georgia. Supra did not have any collocation applications filed BellSouth in Georgia. A copy of letters from Mr. Buechele to Ms. Peed dated February 19 and March 3, 2000 and letters from Ms. Peed to Mr. Buechele dated February 21, February 28, March 6, and March 13, 2000 are attached as Exhibit 32.

⁵⁰ A copy of Supra counter proposal is attached as Exhibit 33. This response came only after BellSouth wrote Supra and requested a response. See copy of the letter from Ms. Peed to Mr. Buechele dated March 31, 2000 attached as Exhibit 34.

⁵¹ Supra's counsel did not provide a redline version of the proposed changes.

⁵² A copy of BellSouth's counter-proposal and a copy of the letter from Ms. Peed to Mr. Buechele dated April 25, 2000 are attached as Exhibit 35.

1. Release. Supra Telecom, for itself, its subsidiary and affiliated companies and their predecessors, successors and assigns and any and all of their past, present and future officers, directors, heirs, executors and administrators, agents, attorneys and employees, and their respective successors, assigns, heirs, executors and administrators hereby releases and discharges BellSouth, ~~their~~ its subsidiary and affiliated companies and their predecessors, successors and assigns and any and all of their past, present and future officers, directors, heirs, executors and administrators, agents, attorneys and employees, and their respective successors, assigns, heirs, executors and administrators, from any and all claims, demands, damages, and causes of action, whether known or unknown, including but not limited to those claims set forth in Supra Telecom's September 20, 1999 and November 13, 1999 letters to the FCC, arising from BellSouth's August 31, 1999 collocation responses for the BellSouth central offices of DYBHFLPO, WPBHFLGR, NDADFLGG and MIAMIFLPL and for any practices complained about in Supra Telecom's September 20, 1999 and November 13, 1999 letters to the FCC as they relate to those four central offices and any other collocation response which may have been sent by BellSouth thereafter through to the date of this Settlement Agreement. This release and discharge specifically does not apply to any claims or causes of action ~~arising before August 31, 1999, or~~ which do not relate or arise from the costs to Supra for physical collocation within a BellSouth premises from the four August 31, 1999 BellSouth collocation responses.⁵³

The purpose of BellSouth's changes was to insure that the release was a full release for all parties. The clause includes reciprocal language to cover all of BellSouth's corporate entities. Also, BellSouth wanted to insure that the release would cover all claims that were the subject of Supra's dispute before the Bureau; the very claims that the Bureau had instructed the parties to try to settle. Further, because Supra's proposal to BellSouth's settlement offer contained provisions that would apply to future collocation requests, it was BellSouth's desire to finally resolve how the parties would interact on a going forward basis.

On July 20, 2000, Supra sent another non-redline proposal that changed many of the items that BellSouth assumed to have been agreed to by the parties.⁵⁴ One example of these changes is the release language. Supra's response completely changed the release clause from a release to a covenant not to sue BellSouth before the FCC. That clause stated:

⁵³ The underlined language is language that Bellsouth proposed to add, while the strikeout language is language that BellSouth proposed be removed.

⁵⁴ A copy of Supra's proposal is attached as Exhibit 36. Once again, this response came only after BellSouth's urging. See letter from Ms. Peed to Mr. Buechele dated May 24, 2000 attached as Exhibit 37 requesting that Supra respond to BellSouth's latest proposal.

2. **Covenant Not To Sue Before The FCC.** Supra Telecom, for itself, its subsidiary and affiliated companies and their predecessors, successors and assigns and any and all of their past, present and future officers, directors, heirs, executors and administrators, agents, attorneys and employees, and their respective successors, assigns, heirs, executors and administrators hereby covenants not to sue or otherwise bring any claim before the FCC against BellSouth, its subsidiaries and affiliated companies and their predecessors, successors and assigns and any and all of their past, present and future officers, directors, heirs, executors and administrators, agents, attorneys and employees, and their respective successors, assigns, heirs, executors and administrators, from any and all claims, demands and causes of action arising from those claims set forth in Supra Telecom's September 20, 1999 and November 13, 1999 letters to the FCC. This covenant not to sue before the FCC specifically does not apply to any claims or causes of action which do not relate or arise from the costs to Supra Telecom for physical collocation within a BellSouth premises. This covenant not to sue before the FCC is limited to actions before the FCC and does not effect or impact the right to bring or raise before any other forum, any claim for legal, equitable or declaratory relief; including any claims, setoffs or recoupments which may arise under any law or any other agreements between the parties. This covenant not to sue does not preclude an action before the FCC to enforce the terms and conditions of this Settlement Agreement.

Of course, BellSouth disputed the language change because it added new language that Supra had not previously mentioned and because it merely limited the forum in which Supra could bring a claim, but did not provide a final settlement of the claim. As with any offer of compromise and settlement, the parties must agree to settle the matter completely or the settlement is merely illusory. This change to the release language is but one example of the many changes Supra proposed for the first time in its July 20, 2000 proposal. The Bureau can compare the BellSouth May 1, 2000 redline version to the Supra July 20, 2000 proposal to see the changes made by Supra, many for the first time, even though the parties had been negotiating for six months on the matter.

The above discussion fully demonstrates Supra's lack of candor with the Bureau on this matter. Supra cites only the initial settlement proposal and does not present how the settlement discussions truly transpired. Moreover, Supra's claim that the settlement negotiations did not work out because BellSouth wanted a full release of damages is equally misleading. BellSouth opposed the final proposal offered by Supra for many of the new changes it added, one of which was the release language. It should be pointed out, however, that BellSouth's reason for disputing the language was not simply because of a failure by Supra to release all damages, but because Supra wanted to preserve issues for another forum. Contrary to Supra's claims, the release language was not the only reason negotiation stalled. There was many other issues in



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April 25, 2001

VIA OVERNIGHT MAIL

ALEX P. STARR, ESQ.
FRANK G. LAMANCUSA, ESQ.
DAVID STRICKLAND, ESQ.
Federal Communications Commission
Market Disputes Resolution Division
Enforcement Bureau
445 12th Street, S.W.
Suite 5-A848
Washington, D.C. 20554

**Re: Supra Telecom adv. BellSouth; Request for
Accelerated Docket & Pre-filing Mediation**

Gentlemen:

This letter is a follow-up to the April 24, 2001 conference call amongst your office, BellSouth and Supra. The purpose of this letter is to further characterize Supra's second issue from its March 15, 2001 correspondence to your office. This issue originates from BellSouth's violations of Sections 251 and 252 of the Communications Act as amended by the Telecommunications Act of 1996 (the "Act"), Paragraph 155 of the FCC First Report and Order, as well as Section 51.301 of the FCC rules, with respect to BellSouth's failure to negotiate, in good faith, the terms and conditions of a follow-on agreement.

Supra hopes that by further identifying specific harmful practices and showing the absence of any material factual dispute, that the FCC will consider the issues in this and Supra's March 15, 2001 correspondences appropriate for summary disposition and resolution on the accelerated docket procedure. The following are more detailed examples of practices through which BellSouth purposely avoids compliance with the requirements and intent of the Act and FCC rules.

EXHIBIT k

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David Strickland, Esq.
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Issue No. 2: BellSouth's failure to negotiate, in good faith, the terms and conditions of a follow-on agreement.

This issue involves Supra's attempts to obtain information necessary to negotiate the terms of a follow-on agreement between BellSouth and Supra, as well as the bad faith actions and inactions of BellSouth with respect to same. Information necessary to negotiate such an agreement includes, but is not limited to, BellSouth's own network's capabilities and functions.

BellSouth's bad faith actions and inactions are evident in the following two examples, BellSouth's refusal to respond and provide the necessary, requested information pursuant to the Network Reliability Council's template provided to BellSouth, and, BellSouth's premature filing of a petition to arbitrate the follow-on agreement before the Florida Public Service Commission ("FPSC").

A. The Network Reliability Council's Template.

On or about April 26, 2000, Supra sent correspondence to BellSouth requesting that BellSouth provide Supra with information regarding BellSouth's network which Supra reasonably required in order to negotiate with BellSouth. A true copy of this letter is attached hereto as **Exhibit A**. Furthermore, on or about August 8, 2000, Supra handed a copy of the same correspondence to BellSouth's attorney, Ms. Parkey Jordan, again asking for the responsive documents. This correspondence contained a copy of the *Network Interconnection Bilateral Template* prepared by the *Increased Interconnection Task Group II Report - Network Reliability Council*. Please note that a representative of BellSouth signed this report and that this report was designed by and for the use of ILECs. Any notion that BellSouth is unfamiliar with this template is disingenuous.

In Paragraph 155 of the FCC's First Report and Order, the FCC found that it would be reasonable for a requesting carrier to seek and obtain cost data relevant to the negotiation or information about the ILEC's network that is necessary to make a determination about which network elements to request to serve a particular customer. In Footnote 293 to Paragraph 155, the FCC noted that its federal advisory committee, the Network Reliability Council, had developed templates that summarize and list activities that need to occur when service providers connect their networks pursuant to defined interconnection specifications, or when they are attempting to define a new network interface specification, and, that as consensus recommendations from the Council, the FCC presumed the elements defined in the templates were "good faith" issues for negotiation.

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BellSouth has either ignored Supra's requests or has stated that it does not understand the template. Supra's CEO has had at least six follow-up calls with BellSouth's Pat Finlen and Marcus Cathey. Pat Finlen is BellSouth's lead negotiator and Marcus Cathey is the designated head of BellSouth's account team for Supra. On two of those calls, after Supra went into great details to explain Supra's request, Mr. Finlen directed Supra to BellSouth's web site for the responsive information. If it is true that Supra never explained its requirements to BellSouth, why then did BellSouth inform Supra that the responsive information could be obtained off of BellSouth's web site? Only BellSouth can answer this question. BellSouth has ignored or refused to respond to these requests, in violation of Section 251(c)(1) of the Act, as amended, and 47 C.F.R. § 51.301. As a result, Supra has been severely disadvantaged in that it does not have the necessary, and required, information from which to even begin negotiations. BellSouth has made it impossible for Supra to negotiate on equal footing with BellSouth.

BellSouth's lack of response is a violation of: (a) Section 252 of the Act; (b) Paragraph 155 of the FCC First Report and Order; and (c) 47 CFR §51.301(c)(8). Section 51.301(c)(8) of the FCC rules provides:

If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following practices, among others, violate the duty to negotiate in good faith:

(8) Refusing to provide information necessary to reach an agreement. Such refusal includes, but is not limited to:

(i) Refusal by an incumbent LEC to furnish information about **its** network that a requesting telecommunications carrier reasonably requires to identify the network elements that it needs in order to serve a particular customer; (Emphasis added).

B. The Petition for Arbitration.

On or about October 5, 1999, Supra adopted the June 10, 1997, BellSouth and AT&T Interconnection Agreement (the "Agreement"). The Agreement provides for its term, a termination date, and a time frame for the negotiations of a follow-on agreement. Most importantly, the Agreement provides for a procedure to be followed before either party files a petition with the FPSC for arbitration of such. BellSouth failed to follow this

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procedure and prematurely filed a petition to arbitrate a follow-on agreement with the FPSC. See PSC Docket No. 00-1305-TP.

First, BellSouth failed to adhere to the procedural requirements of the Agreement. Section 2.3 of the General Terms and Conditions of the Agreement, provides, in pertinent part:

Prior to filing a Petition [with the FPSC for a follow-on agreement] pursuant to this Section 2.3, the Parties agree to utilize the informal dispute resolution process provided in Section 3 of Attachment 1.

Section 3 of Attachment 1 provides:

The Parties to this Agreement shall submit any and all disputes between BellSouth and [Supra] for resolution to an Inter-Company Review Board consisting of one representative from [Supra] at the Director-or-above level and one representative from BellSouth at the Vice-President-or-above level (or at such lower level as each Party may designate).

BellSouth failed to even request that this matter be submitted to an Inter-Company Review Board prior to filing its petition with the FPSC.

Second, BellSouth filed a never-before seen template agreement as its proposed language in the FPSC proceeding, all in an attempt to rush Supra and the FPSC into an arbitration for an agreement which will substantially favor BellSouth.

BellSouth has ignored Supra's request for information, has prematurely filed a petition (knowing that it had not followed contractual procedures) with the FPSC, filed a never-before seen template agreement with the FPSC, and has intentionally obstructed negotiations, all in an attempt to rush Supra into a follow-on agreement which will substantially favor BellSouth to the detriment of Supra and Florida telephone subscribers who have not benefited from the promotion of competition promised by the Act. BellSouth should not be allowed to benefit from this type of bad faith conduct.

As a result of BellSouth's bad faith actions, inactions and violations of the Act and FCC rules, Supra seeks FCC intervention.

Alex P. Starr, Esq.
Frank G. Lamancusa, Esq.
David Strickland, Esq.
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If you have any questions or comments, please feel free to contact me at my office at (305) 476-4247.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping, fluid strokes that form the name Paul D. Turner.

Paul D. Turner
Assistant General Counsel

PT/bs
Attachments

cc: J. Phillip Carver, Esq. (BellSouth)
Nancy B. White, Esq. (BellSouth)
Brian W. Chaiken, Esq. (Supra Telecom)
Mr. Olukayode Ramos (Chairman & CEO, Supra Telecom)



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May 1, 2001

VIA FACSIMILE (404) 658-9022 and FEDERAL EXPRESS

Parkey D. Jordan, Esq.
General Attorney
BellSouth Telecommunications, Inc.
Legal Department – Suite 4300
675 W. Peachtree St.
Atlanta, Georgia 30375

Re: Inter-Company Review Board Meeting Regarding Follow-On Agreement

Dear Ms. Jordan:

This is in response to your letter dated April 13, 2001. First, your allegation that Supra has refused to participate at inter-company review board meetings with BellSouth is completely false. You are aware of Supra's position regarding this matter – Supra cannot engage in fruitful meetings regarding the follow-on agreement until Supra is in receipt of the responsive documents to its letter of **April 26, 2000**. That position was articulated to all the BellSouth representatives present at the inter-company review board meeting conference call of April 11, 2001 conducted as a result of BellSouth's refusal to provide SMDI and Megalink services to Supra in order for Supra to provide its branded voice mail service. On the conference call held on April 24, 2001 between BellSouth, FCC and Supra, you stated Supra's position correctly. Your blatant mischaracterization of Supra's position in your letter dated April 13, 2001 is disingenuous and an obvious attempt at legal positioning. BellSouth is yet to provide any information (including cost studies) to Supra necessary for the parties to begin negotiations of a follow-on agreement.

Second, your claim that the "Increased Interconnection Task Group II" report "is not something with which BellSouth is familiar, nor was BellSouth a party to the task force" is disingenuous to say the least. BellSouth's Neale Hightower was a member of the 15-member task force. The information Supra is seeking is about BellSouth's network capabilities and functions. Supra uses UNE combinations provided from BellSouth's network that must be interconnected with BellSouth's network. The follow-on agreement is between interconnecting carriers: Supra and BellSouth. Supra needs information regarding BellSouth's network, in order for Supra to be able to negotiate on equal footing with BellSouth. Absent that information, Supra will not be able to negotiate with BellSouth. If you can point to a specific website/page wherein BellSouth provides information regarding its own network, such

EXHIBIT L

dispute. BellSouth's actions in this matter clearly are neither unreasonable nor in bad faith. The same, however, cannot be said of Supra's conduct.

Supra's claims that BellSouth has not provided cost data for the collocation sites is equally without merit. As explained above, pursuant to the terms of Supra's collocation agreement in Florida, BellSouth provided Supra costs estimates for all of the central offices for which Supra filed completed applications for collocation.⁵⁵ Additionally, of the four central offices on which Supra asked BellSouth to focus for its initial phase of collocation, BellSouth has provided extensive data, cost data as well as other information about the central offices, well beyond what is necessary or required. From the time BellSouth and Supra had their first meeting for negotiation as directed by the Bureau at the January 26, 2000 meeting and throughout the entire negotiation process, not once did Supra request additional data about other central offices. Significantly, it was BellSouth that attempted to implement a plan that would allow Supra to work towards collocation in the other central offices.⁵⁶

Thus Supra's allegation that BellSouth "has either refused to provide the necessary cost support of has provided cost support in such generic format that it is impossible to breakdown and allocate the cost associated with each of the requested collocation" is not true. As for Supra's claim that "BellSouth's explanation for a \$123,000 quotation was simply 'Lucent Charges,'" Supra is well aware these charges were not subject to any mark-up by BellSouth but were the actual charges that Lucent, the equipment manufacturer and installation vendor, would have charged to perform the work. Additionally, BellSouth would have trued-up the estimate to Lucent's actual cost had the amount been different.

The above discussion fully demonstrates that BellSouth has provided Supra with more than sufficient cost data for the central offices that it has requested collocation. Accordingly, Supra's assertion that BellSouth's failure to provide adequate cost support to justify its price quote has resulted in BellSouth's failure to comply with the 90-day time limit set forth in Paragraph 27 of the FCC Order on Reconsideration and the Second Further Notice of Proposed

⁵⁵ In some of Supra's earlier applications, Supra did not provide enough information for BellSouth to submit an estimate. BellSouth requested Supra to provide the information necessary for the cost estimate. In every instance where Supra submitted the necessary information, BellSouth provided Supra a cost estimate. Because of the time elapsed since the filing of the applications and the changes expressed by Supra, all of the applications submitted by Supra are incomplete and in most cases contain inaccurate information. Before collocation could proceed in any central office, Supra would have to submit accurate and updated applications. Included, in a good faith offer to try to keep the collocation negotiations moving forward in a timely manner, BellSouth requested that a section be added to the settlement document that would establish a schedule to complete the other central office collocations. If Supra had continued with the settlement discussions, collocation could in all likelihood be complete today.

⁵⁶ BellSouth admits that this implementation plan was not totally altruistic. BellSouth continues to hold space for Supra in these offices and would like for Supra to use it or release it.

Rulemaking..." is without merit.⁵⁷ BellSouth provided Supra all the information necessary for Supra to obtain collocation in BellSouth's central offices. Additionally, when negotiations broke down between the parties, BellSouth's attorney contacted Mr. Buechele and suggested, that in lieu of settling the specific collocation claims, and in the interest of getting Supra collocated, Supra utilize the pricing contained within BellSouth's tariff for collocation in Florida. That pricing structure does not contain upfront payments for space preparation but rather contains a recurring per square foot charge. BellSouth even prepared collocation applications for Supra and sent them to Supra asking only that it confirm the information as correct. BellSouth offered to begin processing as soon as Supra confirmed as correct. Supra never responded to the collocation group who prepared the applications.

Supra attempts to bolster its claims by alleging that "in an attempt to have BellSouth comply with its duty to comply with the time limits set out in the FCC Order on Reconsideration and the Second Further Notice of Proposed Rulemaking, Supra remitted payment of fifty percent (50%) of the non disputed, estimated costs to BellSouth in light of the matter pending before the FCC at that time." Supra's allegations must fail for at least two reasons. First, the rule Supra alleges that BellSouth violated by refusing the offer was non-existent when the offer was made. These offers were set out in two separate letters, one dated December 6, 1999 and the other dated December 30, 1999. The fallacy of Supra's claim is apparent by the dates of the letters. The Commission's Order to which Supra alleges it was seeking BellSouth's compliance was not released by the Commission until August 10, 2000, a full eight months after Supra wrote the letters allegedly to have BellSouth comply with the Order. Clearly, this was not Supra's intent.

Second, the offer was not a good faith offer. Supra references letters that ostensibly offer to settle the collocation dispute between BellSouth and Supra then currently before the Bureau. The offer of settlement, however, was for fifty percent of the non-disputed charges. Of course, Supra disputed almost all of the charges. Thus, while the estimates for collocation for the central offices offered for settlement were in excess on \$1,131,000, Supra offered to pay only approximately \$127,000, roughly 11%. Supra disputed virtually every charge and then offered a small percentage of what was due. The Commission could not have intended to allow a CLEC to game the system that way. If that were the case, a CLEC could always dispute all the charges

⁵⁷ BellSouth has provided Supra with the cost data and therefore is not in violation of any Commission or FPSC rule. BellSouth points out, however, that the 90-day rule in the Commission order cited in Supra's letter applies only if the state commission has not set its own interval. The FPSC established intervals in the Florida generic collocation docket. *In re: Petition of Competitive Carriers for Commission action to support local competition in BellSouth Telecommunications, Inc.'s service territory*, Docket No. 981-834-TP, and *In Re Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for generic investigation to ensure that BellSouth Telecommunications, Inc. Sprint-Florida, Incorporated and GTE Florida Incorporated comply with obligation to provide alternative local exchange carriers with flexible, timely, and cost-efficient physical collocation*, Docket No. 990321-TP, *Final Order on Collocation Guidelines*, Order No. PSC-00-0941-FOF-TP, dated May 11, 2000. Accordingly, the FPSC interval, not the Commission interval would apply.

but have the Incumbent Local Exchange Carrier ("ILEC") proceed with space preparation nonetheless. Two outcomes are then possible. First, the charges are proved valid but the CLEC does not have the finances sufficient to pay. Second, the CLEC could merely decide that it did not want the space at that price and then refuse to pay anything at all, leaving the ILEC no means of recovering the costs it incurred on behalf of the requesting CLEC. In either case the ILEC would suffer the loss. Supra's claim that its offer was in good faith is disingenuous and BellSouth clearly was not acting in bad faith when it rejected it.⁵⁸

The price estimates for collocation that BellSouth offered to Supra were based on Supra's contract rates and were based on conditions in those central offices at the time of Supra's request, which was in mid 1999. Since then, BellSouth has continued to provide collocation to CLECs in those central offices. Moreover, BellSouth participated in the FPSC's generic collocation docket in Florida and has instituted tariffed pricing for collocation. This tariff shifts much of the non-recurring rates that are present in Supra's contract to recurring rates. The result is a significant reduction in non-recurring rates, with some increase in the recurring rates. BellSouth offered Supra the tariff rates, which would significantly reduce Supra's non-recurring rate.⁵⁹ Supra rejected this offer and continues to insist on its contract rates. In fact, on the conference call with the Bureau on April 24, 2001, Supra reiterated its position that its did not want BellSouth's tariff rates. Although Supra has made its position regarding tariff rates versus contract rates clear, BellSouth has provided a comparison of Supra's contract rates to the tariff rates.⁶⁰ The comparison is based on information contained in Supra's collocation applications as filed in 1999. Thus, while Supra's information is no longer accurate, the comparison provides an idea of the difference tariff rates would have over the contract rates. BellSouth stands ready to offer Supra these tariff rates and will begin collocation in the four central offices immediately upon receiving updated applications from Supra.

IV. JURISDICTION

In deciding whether to accept a proceeding on the accelerated docket, the Commission specifically recognized that because of the expedited nature of the proceedings, issues of jurisdiction should be raised by the potential defendant in the pre-filing phase. The Commission stated, "If it appears that such objections may have merit, the staff may decline on that basis to

⁵⁸ The disingenuousness of Supra's claims is further illustrated by the fact that Supra has not paid BellSouth for services it has received from BellSouth since November of 1999. This amounts to over seven million dollars.

⁵⁹ As previously stated, BellSouth even prepared collocation applications for Supra and sent them to Supra asking only that it confirm the information as correct or to make any necessary corrections. If Supra had notified BellSouth that the applications were correct, or corrected any errors, BellSouth would have provided Supra price quotes, based on tariff rates, within 15 days of receiving the verification, or the corrected information. Supra initially agreed to utilize the tariff but later withdrew its consent.

⁶⁰ The comparison is attached as Exhibit 38.

accept a proceeding onto the Accelerated Docket.” Section 207 of the Telecommunications Act states “

Any person claiming to be damaged by any common carrier subject to the provisions of this chapter may either make complaint to the Commission as hereinafter provided for, *or* may bring suit for the recovery of the damages for which such common carrier may be liable under the provisions of this chapter, in any district court of the United States of competent jurisdiction; *but such person shall not have the right to pursue both such remedies.*

Supra currently has a lawsuit pending in federal district court that seeks damages for the same or similar facts alleged in its letters to the Bureau.⁶¹ The causes of action listed in the complaint are federal and Florida Antitrust claims, a fraud claim, a claim under Section 206 of the 1996 Act, a breach of contract claim and a tortious interference claim. Accordingly, Supra is statutorily barred from bringing claims before the Commission that already exists in federal court.

Moreover, the parties are involved in a commercial arbitration pursuant to Supra's Interconnection Agreement. All aspects of the arbitration are subject to strict confidentiality requirements and cannot be discussed in this letter. Should the Bureau believe that Supra's claims have merit for the accelerated docket, it should determine the scope of the arbitration proceeding, pursuant to confidentiality standards, to determine the appropriateness of allowing Supra to pursue its claim in this forum.

V. CONCLUSION

BellSouth has demonstrated in this letter that it has acted in good faith in all of its dealings with Supra. The facts actually reveal that if any party in the BellSouth-Supra relationship has acted in bad faith, it is Supra. Supra's claims should therefore not be the subject of any complaint proceeding.

Even if the Bureau believed Supra's claims to have some merit, however, an accelerated docket would not be proper. There is a strong and fundamental disagreement of many of the key facts, therefore requiring each party to conduct extensive discovery. Additionally, BellSouth contends that Supra has raised these claims in a lawsuit in United States District Court. Pursuant to Section 207 of the 1996 Act, this lawsuit bars Supra from bringing the claims set forth in its letters to the Bureau in a complaint before the Commission. Before accepting matters on the accelerated docket, the Bureau must evaluate matters of jurisdiction. If the jurisdictional issues

⁶¹ See *Supra Telecommunications & Information Systems, Inc. v. BellSouth Telecommunications, Inc.*, Civil Action No. 99-1706 (S.D. Fla. filed June 17, 1999).

Frank G. Lamancusa, Esq.
David Strickland, Esq.
Page 23
May 18, 2001

have merit, the Bureau must consider declining acceptance of the dispute. Based on these factors, BellSouth requests that the Bureau reject Supra's request for inclusion on the accelerated docket.

With Kindest Regards,



W. W. Jordan

Vice President – Federal Regulatory

Enclosures

cc: Paul D. Turner, Esq.
2620 SW 27th Avenue
Miami, FL 33135-3001

**LIST OF EXHIBITS
TO
BELLSOUTH'S LETTER
IN RESPONSE TO
SUPRA'S APRIL 27, 2001 LETTER**

| <u>Exhibit No.</u> | <u>Document Name</u> |
|--------------------|--|
| 1 | Sections 2.2, 2.3, and 22.7 from AT&T Agreement and the Supra Agreement, dated October 5, 1999 |
| 2 | Letter from Mr. Finlen to Mr. Ramos, dated March 29, 2000 |
| 3 | Letter from Mr. Ramos to Mr. Finlen, dated April 26, 2000 |
| 4 | Letter from Mr. Finlen to Mr. Ramos, dated May 3, 2000 |
| 5 | Letter from Mr. Finlen to Mr. Ramos, dated June 5, 2000 |
| 6 | Letter from Mr. Buechele to Mr. Finlen, dated June 7, 2000 |
| 7 | Letter from Ms. Jordan to Mr. Buechele, dated June 8, 2000 |
| 8 | Letters from Mr. Buechele to Ms. Jordan, dated June 9, June 12, and June 19, 2000 and letters from Ms. Jordan to Mr. Buechele, dated June 13, and July 3, 2000 |
| 9 | Letter from Mr. Finlen to Mr. Ramos, dated July 20, 2000 |
| 10 | Supra Brochure Mailed to Residents in Florida |
| 11 | Letter from Ms. Cooper to Mr. Ramos, dated June 19, 2000 |
| 12 | Letter from Mr. Buechele to Ms. Cooper, dated July 3, 2000 |
| 13 | Pictures of Supra's Advertisements on Billboards in Florida |
| 14 | Letter from Ms. Cooper to Mr. Buechele, dated July 11, 2000 |
| 15 | Letter from Ms. Cooper to Mr. Buechele, dated August 22, 2000 |
| 16 | Letter from Ms. Cooper to Mr. Buechele, dated September 19, 2000 |
| 17 | Supra's Opposition Brief to Motion for Preliminary Injunction |
| 18 | BIPCO's Reply Brief to Opposition |
| 19 | Court Order Granting Preliminary Injunction Issued by the United States District Court for the Southern District of Florida (Miami Division) |
| 20 | Letter from Mr. Medacier to Ms. Jordan, dated April 4, 2001 |
| 21 | Letter from Ms. Jordan to Mr. Medacier, dated April 9, 2001 |
| 22 | Correspondence between Mr. Medacier and Ms. Jordan, dated April 11, April 13, May 1, May 8, and May 9, 2001 |
| 23 | Increased Interconnection Task Group II Report, by the Network Reliability Council, dated January 14, 1996 |
| 24 | FPSC Vote Sheet adopting FPSC Staff Recommendation that Supra's Motion to Dismiss be denied |
| 25 | Letter from Ms. Jordan to Mr. Medacier, dated April 5, 2001 |
| 26 | Supra's September 20, 1999 Letter to Bureau |
| 27 | BellSouth's Response Letter to the Bureau, dated October 8, 1999 |
| 28 | Supra's Supplemental Letter to the Bureau, dated November 13, 1999 |
| 29 | BellSouth's Supplemental Response Letter to the Bureau, dated November 24, 1999 |
| 30 | BellSouth's Proposed Settlement Agreement with Transmittal Memorandum to Mr. Buechele from Ms. Peed, dated February 17, 2000 |
| 31 | Letter from Mr. Buechele to Ms. Peed, dated February 18, 2000, acknowledging receipt of Settlement Agreement and a letter from Ms. Peed to Mr. Buechele, dated February 18, 2000 |
| 32 | Correspondence between Mr. Buechele and Ms. Peed regarding collocation applications in Georgia, dated February 19, February 21, February 28, March 3, March 6, and March 13 |
| 33 | Supra's Revised Proposed Settlement Agreement, from Mr. Buechele to Ms. Peed, dated April 7, 2000 |
| 34 | Letter from Ms. Peed to Mr. Buechele, dated March 31, 2000 |
| 35 | Memorandum from Ms. Peed to Mr. Buechele, dated April 25, 2000 and BellSouth's Revised Proposed Settlement Agreement sent to Mr. Buechele on May 1, 2000 |
| 36 | Supra's Revised Proposed Settlement Agreement, draft dated July 20, 2000 |
| 37 | Memorandum from Ms. Peed to Mr. Buechele, dated May 24, 2000 |

Exhibit No.
38

Document Name
Comparison of Collocation Rates

Many of the recommendations contained in this report are directed toward developing standards, defining and approving industry specifications and actually interconnecting different service provider networks. Two templates are offered in this section that summarize and list activities to accomplish these goals. The first, titled "Network Interconnection Bilateral Agreement Template," is for use whenever two service providers are implementing a specification and will actually interconnect their networks. The second is titled "Network Interface Specification Template" and is proposed for use in developing standards and in defining and approving industry interconnection specifications. When used in standards, it is expected that some of the items may have options or ranges, but the important point is that a standard not be developed without consciously addressing the entire list. When used by industry fora to define and approve detailed interconnection specifications, the possible options would be narrowed to ensure reliability and network integrity of the specific interconnection type.

Custodial responsibilities are indicated on each template page to define ongoing ownership, although other industry groups may want to adopt them also.

5.6.1 NETWORK INTERCONNECTION BILATERAL AGREEMENT TEMPLATE

The following worksheet should be used during the joint planning sessions between interconnecting service providers. This is an outline of the minimum set of topics that need to be addressed in bilateral agreements for critical interconnections. These worksheets should be used as follows:

- The types of interconnections to be established are agreed upon.
- Each Service Provider develops a version of this worksheet for each interconnection type.
- Specific references, including citations, relating to industry documentation, standards and references are identified.
- Individual company practices, policies and procedures are also identified and provided to the other party.
- All significant differences in practices, policies or procedures should be reviewed and resolved in joint planning sessions. Changes in individual practices, policies or procedures may or may not be required. Procedural symmetry is not required if differing policies produce a compatible, agreed-to outcome.

The Network Operations Forum is the recommended custodian of this template. Other organizations may also find the processes that evolve from this template useful and are encouraged to make use of and enhance it.

| RELIABILITY CRITERIA | CHECK OFF |
|--|-----------|
| Interconnection Provisioning information and guidelines | |
| - Tariff Identification | ✓ |
| - NOF References | ✓ |
| - Interface Specifications | ✓ |
| - Network Design | ✓ |
| - Service Interworking Requirements | ✓ |
| SS7 and Other Critical Interface Inter-network Compatibility Testing | ✓ |
| - Service Protocols/ Message Sets | ✓ |
| - Testing Plans | ✓ |
| - CCS Interconnection Questionnaires | ✓ |
| Protocol implementation Agreements | |
| - Timer Values | ✓ |

| | |
|--|---|
| - Route set congestion messages | ✓ |
| - Optional Parameters | ✓ |
| - Switch parameters | ✓ |
| - TR246, T1.114, T1.116, GR 317, GR 394 | ✓ |
| - Gateway screening | ✓ |
| Diversity Requirements | |
| - Route identifications | ✓ |
| - Diversity definition | ✓ |
| - SS7 Diversity Verification and Validation | ✓ |
| - Committee T1 Report No. 24 on Network Survivability Performance | ✓ |
| Installation, provisioning, maintenance guidelines and responsibilities | |
| - NOF Reference Document | ✓ |
| Network Admin/Ops Security requirements | |
| - Access methodology | ✓ |
| - Functional partitioning | ✓ |
| - Applicable tariffs on confidential information | ✓ |
| - Password and encryption control | ✓ |
| Performance service level agreements | |
| - Interface specifications | ✓ |
| - MTBF/MTTR | ✓ |
| - Contact / Escalation procedures | ✓ |
| - Performance Thresholds | ✓ |
| Specific versions of protocol and/or interface specifications | |
| - Network interface standards, version control, mandatory and optional categorizations | ✓ |
| Maintenance procedures, including trouble and status reporting, etc. | |
| - NOF Reference Document | ✓ |
| - Contact lists | ✓ |
| Inter-network trouble resolution and escalation procedures | |
| - NOF Reference Document | ✓ |
| - Contact lists | ✓ |
| In-depth root cause analysis of significant failures | |
| - Failure analysis procedures | ✓ |
| - FCC Outage Reporting Criteria | ✓ |
| - Service configuration | ✓ |
| - Protocol tests | ✓ |
| - Compatibility testing | ✓ |
| Network Traffic Management | |
| - NOF Reference Document, Section VI | ✓ |
| Synchronization Design and Company-wide coordination contacts | |
| - Establish conformance | ✓ |
| - Identify contacts | ✓ |

| | |
|--|---|
| - T1.101 Digital Facility Standard | ✓ |
| - BOC Notes on the LEC Network, SR-TSY-002275 | ✓ |
| Performance Requirements | |
| - Interface Specifications | ✓ |
| Information sharing for analysis and problem identification | |
| - NOF Reference Document | ✓ |
| Network Rearrangement Management | |
| - NOF Reference Document - notification procedures | ✓ |
| Traffic engineering design criteria and capacity management | |
| - Alternate routing designs | ✓ |
| - Call Blocking criteria | ✓ |
| Mutual Aid agreements | |
| - NOF Reference Document | ✓ |
| - National Security/Emergency Preparedness | ✓ |
| Emergency Communications plan | |
| - Emergency Preparedness and Response Program | ✓ |
| - NOF Reference Document - Emergency Communications | ✓ |
| - Equipment Supplier participation | ✓ |
| Equipment manufacturer responsibilities | |
| - Written requirements | ✓ |
| - Software validation | ✓ |
| - Optional requirements | ✓ |
| - Testing | ✓ |
| - Emergency equipment availability | ✓ |
| RELATED ISSUES | |
| Explicit forecasting information | |
| - Direct traffic | ✓ |
| - Subtending/transiting traffic | ✓ |
| Network transition | |
| - growth/consolidation of network elements | ✓ |
| - NPA splits | ✓ |
| - Major rehomeing, rearrangement plans | ✓ |
| - NOF Reference Document | ✓ |
| Routing and screening administration | |
| - Network call routing administration and management | ✓ |
| Responsibility assignments | |
| - Facility assignment | ✓ |
| - Network control | ✓ |
| - Automatic testing | ✓ |

| | |
|--|---|
| Calling Party Number Privacy management | ✓ |
| Tones and Announcements for unsuccessful call attempts | |
| - Network interface specification | ✓ |
| - NOF Reference Document | ✓ |
| Billing Records Data Exchange | |
| - EMR standards | ✓ |
| - Ordering and Billing Forum documentation | ✓ |
| Pre-cutover Inter-network Connectivity testing | |
| - Network Interface specification | ✓ |
| - NOF Reference Document | ✓ |
| Documentation Requirements | |
| - Network configuration | ✓ |
| - Contact numbers | ✓ |
| - Service Level Agreements | ✓ |
| - Implementation plan/milestones | ✓ |
| - Interoperability test results | ✓ |

###

5.6.2 NETWORK INTERFACE SPECIFICATION TEMPLATE

The following template is a generic model for the development of network interface standards or specifications. It identifies the minimum list of items that must be effectively addressed by the affected service providers to establish and maintain each point of network interface. The ATIS-sponsored ICCF is the suggested custodian of this template. Other organizations may also find the processes that evolve from this template useful and are encouraged to make use of and enhance it.

| INTERFACE SPECIFICATION CRITERIA | CHECK OFF |
|---|-----------|
| Define the physical/software interfaces in terms of existing tariffs and technical standards and government regulation. | ✓ |
| Establish a clear point of demarcation that allows for non-intrusive test access. | ✓ |
| Define the environmental operating requirements according to security and reliability needs. | ✓ |
| Develop power and grounding requirements in accordance with safety and protection regulations, codes and standards. | ✓ |
| Define diversity requirements and survivability capabilities needed. | ✓ |
| Define interference generation protection levels relative to radiated and conductive electromagnetic properties. | ✓ |
| (Radio interfaces only) Define frequencies channelization, bandwidth, power level frequencies, tolerances and adjacent channel interference levels. | ✓ |
| Identify protocol elements in terms of the seven layer model OSI protocol stack. | ✓ |
| Define the message set that will be transmitted across the interface. | ✓ |
| Develop gateway screening functional requirements to block accidental or intentional intrusion of unwanted/inappropriate messages. | ✓ |
| Build for robustness by defining error correction, re-transmission overload controls and fault migration mitigation criteria. | ✓ |
| Develop message sets to facilitate fault detection, identification, diagnosis and correction. | ✓ |
| Develop network interface performance design objectives in terms of signal transport time (delay) availability (downtime) lost message probability and transmission criteria (BER, loss, noise, phase jitter) | ✓ |
| Define synchronization and timing requirements and establish monitoring and back-up capabilities. | ✓ |

| | |
|---|---|
| Ensure that forward and backward compatibility of the protocol is addressed for transition management. | ✓ |
| Provide local and remote network management notification and control capabilities. | ✓ |
| Develop a network impact statement to predict/specify the backward compatibility and purpose of the standard. | ✓ |
| Develop demonstrable performance criteria at agreed stages of specification development. | ✓ |
| Define and conduct acceptance testing to validate the defined stages of specification development. | ✓ |

###

To Whom it may Concern

The following requested information was prepared to assist the production of documents required to satisfy the Increased Interconnection Task Group II recommendations on negotiating a bilateral interconnection agreement between carriers.

While it may be noticed that certain documentation steps were omitted, the intent is to define the most reliable and efficient network interconnection between the parties. As such additional elements may be added to the final production of the Interconnection agreement. The data set defined below, and the documentation of that data within the Interconnection agreement should be considered a minimum requirement.

Reliability Criteria

1. The following Interconnection Provisioning information and guidelines:
 - a. Interface Specifications - For CLEC Switch over traditional narrowband circuits, and ATM Tandem interfaces.
 - b. Network Design - BellSouth network design criteria for reliability issues, diversity, direct end-office trunking for CLECs, Multi Tandem per LATA vs. single Tandem per LATA interconnections and routing, use of BellSouth network for routing intraLATA traffic
 - c. Service Interworking Requirements and Suggestions - Standards and requirements to ensure proper interworking of telephone and data switches employed in the interconnection.
2. The following SS7 and Other Critical Interface Inter-network Compatibility. For CLEC Class 4 and Class 5 switches, and SS7 STP and SCP's.

EXHIBIT P

- a. Service Protocols/Message Sets. Standards adhered to. Deviations from documented standards. Effects of SS7 messaging between Supra and BellSouth, extent of mutual compliance with TCAP, and ISUP messages. Specific information on messages used by Supra Voicemail systems to announce Message waiting indicator on Supra customers provisioned via either BellSouth resale or UNE Combinations.
 - b. Testing Plans for all SS7 interconnected systems, Toll Free database, LIDB, CNAM, and all other Unbundled databases.
3. Protocol Implementation Agreements - To effect a more reliable
 - a. Route set congestion messages.
 - b. Timer Values - Interconnection equipment.
 - c. Switch Parameters
 - d. BellSouth Compliance with TR246, T1.114, T1.116, GR 317, GR 394
 - e. Gateway Screening Information for network planning.
4. Diversity Requirements - BellSouth Interoffice Transport
 - a. Route identifications - Tandem to End Office Dedicated and Common transport routing.
 - b. Diversity definition
 - c. SS7 Diversity Verification and Validation - Test Plan
 - d. BellSouth adherence to Committee T1 Report No. 24 on Network Survivability Performance
5. Installation, Provisioning, Maintenance Guidelines and Responsibilities
 - a. Reference Documents

6. Network Admin/Ops Security Requirements - Between Supra Telecom and BellSouth systems.
 - a. Access Methodology Documentation
 - b. Functional Partitioning - Network and database issues
 - c. Applicable tariffs on confidential information - Documented and complied with
 - d. Password and encryption control - agreements on security methods employed to effect the above section.
7. Performance Service Level Agreements (PSLA)
 - a. Interface specifications all UNE services, and resale shall contain PSLA guarantees.
 - b. Performance Thresholds for all other products offered for sale.
8. In-depth Root Cause Analysis of Significant Failures
 - a. Failure analysis procedures
 - b. Service configuration
 - c. FCC Outage Reporting Criteria defined.
9. Synchronization Design and Company - wide coordination contacts.
 - a. Synchronization responsibilities (This issue seems to have reversed itself re: BellSouth policy in the past 4 years)
 - b. Conformance Requirements.
 - c. Contact Identifications
 - d. Compliance with T1.101 Digital Facility Standard
10. Performance Requirements
 - a. Standards included with each UNE / Interface defined

- c. Standards for Interconnection Arrangement with CLEC owned Class 4 and 5 switches.
 - d. Performance Service Level Agreements (PSLA)
- 11. Network Rearrangement Management
 - a. Notification Procedures
- 12. Traffic Engineering Design Criteria and Capacity Management
 - a. Alternate routing designs - Document routing alternatives to collocated CLEC, to CLEC in offsite premises, UNE CLEC Provider.
 - b. Maximum acceptable Call blocking criteria
- 13. Explicit Forecasting Information - Supplied to CLEC for specific LATAs on a per LATA basis.
 - a. Direct Traffic
 - b. Subtending/transiting traffic
 - c. Performance Service Level Agreements (PSLA)
- 14. Network Transition Plans - Data of current status and inter company Policies for dealing with each of the below.
 - a. Growth/consolidation of network elements
 - b. NPA splits
 - c. Major rehomeing, rearrangement plans
- 15. Responsibility Assignments - Policy and Procedures
 - a. Facility assignment
 - b. Network control
 - c. Automatic testing
 - d. Calling Party Number Privacy management
 - e. Performance Service Level Agreements (PSLA)

16. Tones and Announcements for Unsuccessful Call Attempts
 - a. Network interface specifications
 - b. Applicable Standards
 - c. Reference Documents detailing each applicable tone and announcement.

17. Billing Records Data Exchange
 - a. Compliance with ^{EMI}EMR standards - Documentation on any deviations
 - b. Compliance with OBF Documentation - Documentation on any deviations.

18. Documentation Requirements
 - a. Network configuration
 - b. Contact numbers
 - c. Service level agreements
 - d. Implementation plan/milestones
 - e. Interoperability test results

19. Pre-Cutover Inter-network Connectivity testing
 - a. Specific Interconnection requirements for both parties
 - b. Interconnection specification defined - Document required specification documentation.
 - c. Test plan defined

Thank You

David A. Nilson
CTO
Supra Telecom

MARK E. BUECHELE

ATTORNEY AT LAW
P.O. BOX 398555
MIAMI BEACH, FLORIDA
33239-8555

June 7, 2000

TELEPHONE
(305) 531-5286
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(305) 531-5287

VIA U.S. MAIL AND FACSIMILE

[(404) 614-4054 & (404) 658-9022]

PARKEY JORDAN

General Attorney

BellSouth Telecommunications, Inc.

BellSouth Center, Suite 4300

675 West Peachtree Street, N.E.

Atlanta, GA 30375

Re: Supra-BellSouth Interconnection Agreement

Dear Parkey:

I am in receipt of your letter of yesterday afternoon. Although I intend to respond to your letter in considerable detail, this letter is intended to address the current status of the interconnection agreement between our companies. Additionally, this letter follows-up on Pat Finlen's letter of June 5, 2000 (which was signed by Julia Hand).

First, I wish to memorialize the status of our contract negotiations as understood by Supra Telecom. On March 29, 2000, Pat Finlen apparently sent Mr. Ramos a letter regarding the impending expiration of the current AT&T\BellSouth Agreement which had been adopted by Supra Telecom. After receipt of that letter Mr. Ramos spoke to Mr. Finlen and advised him that it was the intention of Supra Telecom to keep the terms of the current agreement until such time as the current re-negotiations between BellSouth and AT&T were concluded. At that point, Supra Telecom would opt into the new AT&T\BellSouth Agreement. At that time, Pat Finlen advised Mr. Ramos that this request would be fine. Therefore the letter of June 5th (signed by Ms. Hand) was somewhat of a surprise since we were expecting documentation that would memorialize the discussion between Mr. Ramos and Mr. Finlen.

As stated above, Supra Telecom wishes to execute an agreement which, except for expiration date, would retain the exact same terms as our current Interconnection Agreement. The time period for this new agreement can be three years. However, after negotiations between AT&T and BellSouth have concluded, Supra Telecom may then choose to opt into that agreement. We do not see why this request should create any problems for BellSouth since the current agreement was obviously acceptable to BellSouth when originally negotiated with AT&T. Moreover, the current Agreement has already "passed muster" with the Florida Public Service

EXHIBIT a

PARKEY JORDAN
General Attorney
BellSouth Telecommunications, Inc.
June 7, 2000
Page 2 of 2

Commission ("FPSC") and has been the subject of various FPSC rulings that clarify various provisions and memorialize current Florida law on the various subject. Moreover, incorporating the terms of the prior agreement into a new agreement, will make negotiation of a new agreement quick and simple; thereby creating a "win-win" situation for everyone. Although Supra Telecom would prefer entering into the same agreement again, if you believe that there are some terms in the current agreement which require modification or updating to bring the agreement in line with recent regulatory and industry changes, we would be happy to consider any proposed revisions. In any event, to avoid any delay, we can agree to negotiate such revisions by way of an amendment at a later date.

I have addressed this letter to you because you are the attorney handling Supra Telecom's contractual matters. Since drafting the proposal agreed to by Mr. Ramos and Mr. Finlen should be a simple, I will be happy to deal directly with Ms. Hand if you provide me written permission to do the same. Otherwise we can handle this matter directly between ourselves. Moreover, if you wish, I will be happy to draft a proposed agreement which adopts in full the current agreement, but which only changes the relevant dates. Please let me know as soon as possible how you wish to handle this matter so that we can have a new agreement in place by June 9th.

Thank you in advance for your prompt attention to this matter. If you have any questions or comments, please feel free to contact me at your convenience at (305) 531-5286. I look forward to hearing from you soon regarding this matter.

Sincerely,



Mark E. Buechele

cc: Supra Telecom

MARK E. BUECHELE
ATTORNEY AT LAW

Parkey D. Jordan
General Attorney

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675 West Peachtree Street
Atlanta, Georgia 30375-0001
Telephone: 404-335-0794
Facsimile: 404-658-9022

June 8, 2000

VIA FACSIMILE and FEDERAL EXPRESS

Mark E. Buechele, Esq.
Attorney at Law
P.O. Box 398555
2620 SW 27th Avenue
Miami, FL 33133

Re: Supra Telecommunications & Information Systems, Inc. ("Supra") Interconnection Agreement

Dear Mr. Buechele:

This is in response to your letter of June 7, 2000. You are incorrect in your understanding of the status of contract negotiations between Supra and BellSouth. Pat Finlen has not agreed to extend the current interconnection agreement between the parties. Supra is certainly entitled to adopt the new BellSouth/AT&T interconnection agreement when it is filed and approved by the Florida Public Service Commission (the "Commission"). However, until that agreement becomes available for adoption, Supra must either negotiate a new agreement with BellSouth, sign BellSouth's standard interconnection agreement, or adopt an agreement which has already been filed and approved by the Commission and which has a remaining term of six months or more.

The agreement under which Supra is operating was originally negotiated more than three (3) years ago. Many changes have taken place during the term of the agreement, and BellSouth does not wish to continue to operate under that agreement. Every telecommunications carrier has a legal obligation to negotiate in good faith, and pursuant to the current interconnection agreement, BellSouth has properly requested negotiations via Mr. Finlen's letter of March 29, 2000. BellSouth has proposed the agreement that it would like to execute and expects Supra to meet its obligation to negotiate with BellSouth.

Please have Mr. Ramos contact Mr. Finlen as soon as possible to schedule a meeting to begin negotiations, as 70 days of the 160 day negotiation period have already passed.

Sincerely,

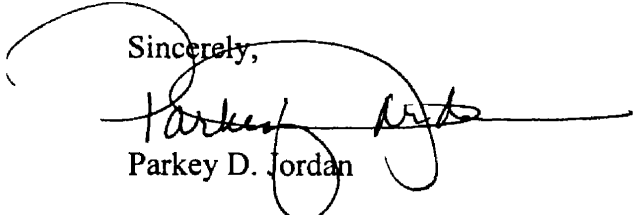

Parkey D. Jordan

EXHIBIT R