State of Florida

Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: JUNE 28, 2001

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF COMPETITIVE SERVICES (LOGUE)
DIVISION OF LEGAL SERVICES (FORDHAM)

RE: DOCKET NO. 001097-TP - REQUEST FOR ARBITRATION CONCERNING COMPLAINT OF BELLSOUTH TELECOMMUNICATIONS, INC. AGAINST SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC. FOR RESOLUTION OF BILLING DISPUTES.

AGENDA: 07/10/01 - REGULAR AGENDA - POST-HEARING DECISION-PARTICIPATION LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\001097.RCM

CASE BACKGROUND

On August 9, 2000, BellSouth Telecommunications, Inc. ("BellSouth") filed a complaint against Supra Telecommunications and Information Systems, Inc. ("Supra") seeking resolution of billing disputes arising under interconnection and resale agreements entered into between BellSouth and Supra. BellSouth and Supra, hereafter also referred to as the "Parties," entered into a resale agreement effective June 1, 1997, as approved by the Florida Public Service Commission ("Commission" or "FPSC") in Docket No. 970783-TP, Order No. PSC-97-1213-FOF-TP, dated October 8, 1997 and hereafter referred to as the "1997 agreement."

Additionally, the parties entered into an interconnection and resale agreement on November 30, 1999, Docket No. 991696-TP, wherein Supra adopted an AT&T/BellSouth agreement, hereafter referred to as the "AT&T/BellSouth agreement." Further, BellSouth and Supra also entered into a separate collocation agreement

effective July 24, 1997, and an interconnection and unbundling agreement effective October 23, 1997. BellSouth bases its complaint in this instant matter around the billing of services provided to Supra for resale under the 1997 resale agreement. The 1997 agreement was in effect from June 1, 1997 until October 4, 1999. Supra's adoption of the AT&T/BellSouth agreement became effective on October 5, 1999.

In its complaint and referring to the adopted AT&T/BellSouth agreement, BellSouth alleges that Supra "has violated Attachment 6, Section 13 of the agreement by refusing to pay non-disputed sums." (Exh. 3, p.3, ¶7) BellSouth further alleges that Supra has "failed to pay its bills, including the undisputed sums," and owes BellSouth "hundreds of thousands of dollars for resale services ordered by Supra, properly rendered and billed by BellSouth, most of which is not disputed by Supra." (Exh.3, p.3, ¶8)

While BellSouth has continued to provide service to Supra, BellSouth is requesting the FPSC order Supra "to pay all outstanding balances on its account and pay BellSouth's bills in a timely manner on a going-forward basis" to include both disputed and undisputed amounts. (Exh. 3, p.3, ¶8) BellSouth further seeks a ruling regarding Supra's allegations that BellSouth owes it $305,560.04, plus interest in the amount of approximately $150,000, as reimbursement for charges Supra claims were unwarranted. (Exh. 3, p.4, ¶9)

BellSouth further claims in its complaint that the majority of issues raised by Supra as justification for its refusal to pay BellSouth occurred prior to October 5, 1999 and that as such, the 1997 agreement sets forth the provisions which are relevant for purposes of the Commission's decision.

On August 30, 2000, in response to BellSouth's complaint, Supra filed its Motion to Dismiss Complaint or, in the Alternative, Stay Proceedings and/or Compel Arbitration. Supra simultaneously filed on August 30, 2000, its Request for Oral Argument on its Motion to Dismiss.

On September 8, 2000, BellSouth filed its Response to Supra's Motion to Dismiss. BellSouth believes Supra has not, in its Motion to Dismiss, denied or disputed the amounts or situations under which BellSouth's complaint arises. In its Order Granting Oral Argument and Granting in Part and Denying in Part Supra's Motion to Dismiss, the Commission found that the portion of BellSouth's complaint alleging Supra's failure to pay for services received under the AT&T agreement was bound by its exclusive arbitration

clause. The Commission further found that Supra's Motion to Dismiss be denied in part because Section XI of its prior agreement with BellSouth (the 1997 resale agreement) provides that all disputes are to be resolved by petition to the FPSC. (Order No. PSC-00-2250-FOF-TP, issued November 28, 2000)

On November 17, 2000, Supra filed its Motion for Reconsideration or Clarification of the Commission's decision on its Motion to Dismiss, although the Commission's Order had not been issued. On November 28, 2000, the Commission issued Order No. PSC-00-2250-FOF-TP, disposing of Supra's Motion to Dismiss. Subsequently, on November 29, 2000, BellSouth timely filed its response to Supra's Motion for Reconsideration or Clarification, alleging, primarily, that Supra's Motion was untimely. By Order No. PSC-01-0493-FOF-TP, issued February 27, 2001, the Commission found that it need not reach the merits of Supra's Motion for Reconsideration or Clarification because not only had Supra erred in proceeding under an incorrect rule, but Supra's Motion was untimely. Furthermore, the Commission found that even

> if the Motion were timely filed, we would have denied it for the following reasons. Supra alleges in its Motion for Reconsideration or Clarification that the two basis for its Motion are: (1) the Commission overlooked the complications which arise by allowing BellSouth to raise Supra's defense/affirmative causes of action, including a determination of proof and the order of the presentation of evidence, and (2) the Commission did not properly apply or consider the Federal Arbitration Act in determining the cut-off date for those claims which it did not dismiss. We find, however, that Supra has not identified in those two claims "a point of fact of law which was overlooked or which the Commission failed to consider in rendering its Order." (Order No. PSC-01-0493-FOF-TP)

The Commission's order further states,

> As to the first claim, the fact that complications may result from following the law does not meet the criteria for reconsideration. In addition, we fail to understand how our order has impacted on burden of proof and order of presentation of evidence. Either party, under the 1997 Agreement, can raise billing disputes. As to the second claim, we specifically acknowledge and considered the Federal Arbitration Act, 9 USCA §3, in determining the cut-off date for those claims which we did not

> dismiss. The challenged Order dismissed any and all claims arising under the 1999 Agreement because of the arbitration clause. It did not dismiss any claims arising under the 1997 agreement because that agreement had no arbitrating clause and we have exclusive jurisdiction over claims arising under that agreement. (Order No. PSC-01-0493-FOF-TP, p.4)

On March 6, 2001, Supra filed its Motion to Reschedule Hearing Date. In the body of the Motion, however, Supra addressed only the date of the prehearing conference. Supra alleged that it had scheduling conflicts beginning on April 9, 2001, which would prohibit it from appearing at the prehearing until after May 1, 2001. On March 12, 2001, BellSouth filed its Opposition to Supra's Motion. BellSouth noted that each of the dates cited by Supra as conflicting with the prehearing conference in this Docket were set after the issuance by the Commission of the Case Assignment and Scheduling Record on November 21, 2000. BellSouth also observed that a prehearing conference after May 1, 2001 would also necessitate continuing the hearing, which it opposed. On March 20, 2001, in Order No. PSC-01-0699-PCO-TP, the prehearing officer granted in part and denied in part Supra's Motion to Reschedule Hearing Date. The prehearing officer rescheduled the prehearing date and left intact the remainder of the schedule in this instant matter.

To resolve its complaint, BellSouth is requesting that the Commission order Supra to pay, in full, all delinquent bills and to pay all future bills in a prompt and timely manner. In the alternative, BellSouth seeks concurrence from the Commission for "disconnection of Supra's access to the ordering interfaces and service to its end users." (Exh. 3, p.6)

DISCUSSION OF ISSUES

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

RECOMMENDATION: No. The rates and charges contained in the 1997 AT&T/BellSouth Agreement do not apply to the BellSouth bills at issue in this Docket. The relevant underlying agreement in this instant matter is the 1997 BellSouth/Supra resale agreement, effective June 1, 1997 and approved by the Commission on October 8, 1997, by Order No. PSC-97-1213-FOF-TP in Docket No. 970783-TP. **(LOGUE)**

POSITION OF THE PARTIES:

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

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

STAFF ANALYSIS: BellSouth witness Finlen has testified that the agreement applicable in this instant matter is the 1997 resale agreement between BellSouth and Supra.(TR 49) It has been and remains BellSouth's position that the resale agreement, effective June 1997 through October 1999, is the agreement in effect during the time frame of the bills in dispute. (Finlen TR 21). BellSouth takes the position that, because the AT&T/BellSouth agreement was not adopted by Supra until October 5, 1999, it is not possible for the AT&T/BellSouth agreement to be applicable to this dispute. (Finlen TR 31)

Supra contends that the controlling agreement between the parties is the AT&T/BellSouth agreement adopted by Supra effective

October 5, 1999. (Bentley TR 212). Supra's witness Bentley testified that Supra "accepted BellSouth's offer and adopted the same agreement that AT&T and BellSouth entered into. It is Supra Telecom's position then, that the effective date of the new agreement between Supra Telecom and BellSouth is June 10, 1997." (Bentley TR 212)

BellSouth and Supra entered into a resale agreement for a period of two years beginning June 1, 1997, with the proviso that the contract would be automatically renewed for two additional one year periods unless either party indicated its intent not to renew the Agreement. The BellSouth/Supra agreement further stipulated that such intent to not renew the June 1997 contract was to be provided, in writing, to the other party no later than 60 days prior to the end of the then-existing contract period. (Exh. 3, Exh. 1 to BellSouth's complaint, p.1) The contract, which Supra voluntarily agreed to enter into with BellSouth, further states that the rates at which Supra is purchasing BellSouth's services are discounted resale rates. (Exh. 3, Exh. 1 to BellSouth's complaint, p. 1) Nowhere in the June 1997 resale agreement entered into between BellSouth and Supra does there appear any reference to an AT&T/BellSouth agreement.

In Order No. PSC-00-2250-FOF-TP, issued November 28, 2000, this Commission determined that the relevant agreement in this instant matter is the resale agreement entered into between BellSouth and Supra effective June 1, 1997, and approved by the FPSC on October 8, 1997. For ease of clarification, the Commission found that those issues in dispute arising on or after October 5, 1999, (the effective date of Supra's adoption of the AT&T/BellSouth agreement) were to be addressed by the sole and exclusive remedy available, pursuant to the terms of the adopted agreement, which is private arbitration. The Commission also ordered that it had exclusive jurisdiction to consider disputes arising under the BellSouth/Supra resale agreement, pursuant to Section XI of said agreement.(Order No. PSC-01-0493-FOF-TP, pp.3-4)

Furthermore, Supra's position that Section XVI, subsections B and F, of the BellSouth/Supra resale agreement supports its claim that successive agreements containing more favorable provisions shall apply from the effective date of said successive agreement is without merit. In fact, Section XVI.B of the resale agreement entered into by Supra on June 26, 1997 states, in part,

> In the event that BellSouth, either before or after the effective date of this Agreement enters into an agreement with any other telecommunications carrier (an "Other

> Resale Agreement") which provides for the provision within the state of . . . Florida . . . of any of the arrangements covered by this Agreement upon rates, terms or conditions that differ in any material respect from the rates, terms and conditions for such arrangements set forth in this agreement ("Other Terms"), BellSouth shall be deemed thereby to have offered such other Resale Agreement to Reseller in its entirety. In the event that Reseller accepts such offer, such Other Terms shall be effective between BellSouth and Reseller as of the date on which Reseller accepts such offer. (Exh. 3, Exh. 1 to BellSouth's complaint, p.13)(emphasis added)

Staff believes that Supra should have known that it was misinterpreting both the terms and intent of Section XVI.B of its resale agreement with BellSouth, specifically in light of the language referenced above.

Staff believes that Supra may also have misinterpreted the provisions of Section XVI.F of its resale agreement with BellSouth. Section XVI.F is entitled "Corrective Payment" and provides as follows:

> In the event that (1) BellSouth and Reseller revise this agreement pursuant to Section XVI.A, or (2) Reseller accepts a deemed offer of an Other Resale Agreement or Other Terms, then BellSouth or Reseller, as applicable, shall make a corrective payment to the other party to correct for the difference between the rates set forth herein and the rates in such revised agreement or Other Terms until the date that the parties execute such revised agreement or reseller accepts such Other Terms, plus simple interest at a rate equal to the thirty (30) day commercial paper rate for high-grade, unsecured notes sold through dealers by major corporations in multiples of $1,000.00, as regularly published in *The Wall Street Journal*. (Exh. 3, Exh.1, p.13)

Staff believes that Supra appears to have a mistaken belief that by its subsequent adoption of the AT&T/BellSouth agreement, it was due a "corrective payment" retroactive to the date it initially entered into a resale agreement with BellSouth. (Bentley TR 211-212) Furthermore, while previously determined by Commission Order, and earlier identified in staff's analysis that the AT&T/BellSouth agreement would not be relevant to this instant matter, Supra explicitly relies on Section 22.10 of the General Terms and Conditions of the AT&T/BellSouth Agreement as an active

defense in this issue; consequently, staff believes it must address said defense in its position analysis.

Staff believes that Supra should have known that the terms of Section 22.10 were specific to the parties of the original agreement, i.e., AT&T and BellSouth, at the time the original agreement was executed. Further, staff believes that adoption of agreement terms two years after becoming effective between the original parties does not mean that said terms and conditions apply to an adopting entity retroactively. Supra should have known that the language "this Agreement . . . constitutes the entire Agreement...and supersedes any prior agreements . . . " (Exh. 12, pp.25-26, §22.10) referred solely to the original parties. This language did not apply to Supra and BellSouth, as subsequent parties, until the day Supra signed its contract with BellSouth adopting the AT&T/BellSouth agreement, October 5, 1999. Supra is incorrect in assuming it can apply to itself that which may be more favorable before it has entered into a binding contract for such arrangements. In other words, as a matter of simple contract law and common sense, a party adopting the terms of another party's agreement may not unilaterally apply the terms of the adopted agreement retroactively to a time period preceding the adoption date of said agreement. Staff further points out that, even after the Commission's specific ruling in Order No. PSC-00-2250-FOF-TP, Supra continued to use as its affirmative defense during the hearing in this matter that the BellSouth/AT&T agreement controls even though it had earlier been ruled as not applicable to this docket.

The bottom line remains, however, that the BellSouth/AT&T agreement is not applicable in this Docket and may not, therefore, be used as an active defense for this or any other issue as set forth in Order No. PSC-00-2250-FOF-TP, issued November 28, 2000. As set forth in Order No. PSC-00-2250-FOF-TP, issued November 28, 2000, the relevant agreement in this instant matter is the resale agreement entered into between the parties effective June 1, 1997.

Therefore, staff believes that the Commission should maintain its position as initially stated in Order PSC-00-2250-FOF-TP, issued November 28, 2000. Accordingly, staff recommends that the rates and charges contained in the 1997 AT&T/BellSouth Agreement do not apply to the BellSouth bills at issue in this Docket. The relevant underlying agreement in this instant matter is the 1997 BellSouth/Supra resale agreement, entered into on June 26, 1997 between the parties and approved by the Commission on October 8, 1997, by Order No. PSC-97-1213-FOF-TP in Docket No. 970783-TP.

ISSUE 2: Did BellSouth bill Supra appropriately for End-User Common Line ("EUCL") charges pursuant to the BellSouth/Supra interconnection and resale agreement?

RECOMMENDATION: Yes. Pursuant to Section VII(L) of the BellSouth/Supra resale agreement, entered into by Supra on May 19, 1997 (date of signature) and effective June 1, 1997, BellSouth acted appropriately in billing Supra for EUCLs. **(LOGUE)**

POSITION OF THE PARTIES:

BELLSOUTH: Yes. BellSouth billed Supra appropriately for End User Common line charges pursuant to Section VII(L) of the BellSouth/Supra resale agreement, FCC Tariffs, and FCC Rules.

SUPRA: No. As the AT&T/BellSouth Agreement that Supra opted into on October 5, 1999, had an effective date of June 10, 1997, the above-referenced section of the BellSouth/Supra resale agreement requires that the terms and rates of the 1997 AT&T/BellSouth Agreement apply to this dispute for the period from June 10, 1997 through October 5, 1999. Furthermore, pursuant to 47 C.F.R. 51.617(b), when BellSouth provided telephone exchange service to Supra at wholesale rates for resale, BellSouth was barred from assessing End User Common Line Charges ("EUCLs"). Finally, there is no language in the controlling agreement, the 1997 AT&T/BellSouth Agreement, or in the BellSouth/Supra interconnection agreement that authorizes BellSouth to charge Supra for EUCLs; however, the BellSouth/Supra resale agreement does speak to the disputed charges.

STAFF ANALYSIS: BellSouth's first dispute with Supra involves Supra's allegation that it should not have been billed End User Common Line charges ("EUCL") from the period June 1, 1997 through and including December 1999. The amount Supra claims it was improperly billed, pursuant to BellSouth's complaint, is $224,287.79. (Exh. 3, p.5, ¶12) BellSouth alleges that Supra was correctly billed EUCLs, consistent not only with the terms of its 1997 agreement with Supra, but also pursuant to 47 C.F.R. §51.617 (1999). (Id.) 47 C.F.R. §51.617 states,

> (a) Notwithstanding the provision in §69.104(a) of this chapter that the EUCL shall be assessed upon end users,

> an incumbent LEC shall assess this charge, and the charge for changing the primary interexchange carrier, upon requesting carriers that purchase telephone exchange service for resale. The specific EUCL to be assessed will depend upon the identity of the end user served by the requesting carrier. (emphasis added)
> (b) When an incumbent LEC provides telephone exchange service to a requesting carrier at wholesale rates for resale, the incumbent LEC shall continue to assess the interstate access charges provided in Part 69 of this chapter, other than the EUCL, upon IXCs that use the incumbent LEC's facilities to provide interstate or international telecommunications services to the IXC's subscribers. (emphasis added)

BellSouth further alleges that "interstate access and related services are governed by the tariffs on file with the Federal Communications Commission, not the interconnection and resale agreements." (Exh. 3, p.5, ¶12)

Section VII(L) of the applicable agreement, the 1997 BellSouth/ Supra resale agreement, states,

> L. Pursuant to 47 C.F.R. Section 51.617, the Company will bill the charges shown below which are identical to the EUCL rates billed by BST to its end users.

	Monthly Rate
1. Residential	
(a) Each Individual Line or Trunk	$3.50
2. Single Line Business	
(b) Each Individual Line or Trunk	$3.50
3. Multi-Line Business	
(c) Each Individual Line or Trunk	$6.00

Additionally, the rates provided by BellSouth and agreed to by Supra, are in accordance with, at a minimum, 47 C.F.R. §69.104(d)through(f).

As previously stated within this recommendation and pursuant to the aforementioned Commission Order No. PSC-00-2250-FOF-TP, the AT&T/BellSouth agreement, which Supra continues to rely upon, is not applicable in this Docket. Supra has previously attempted to use the fact that it is an IXC as its defense for not paying EUCL charges. (Exh. 3, Exhibit 3 to BellSouth's complaint, Supra letter

dated March 11, 2000) However, Supra entered into a resale agreement with BellSouth as a reseller of local exchange service. To represent itself as anything other than a reseller of local exchange service in this context could be perceived as a mischaracterization. Staff believes that Supra is mistaken that the effective date of its adoption of the AT&T/BellSouth agreement was June 10, 1997. Supra's adoption of the AT&T/BellSouth agreement was effective October 5, 1999. (Order No. PSC-99-2304-FOF-TP, issued November 30, 1999) Only for purposes of determining the termination date of the AT&T/BellSouth agreement, and thus Supra's adoption thereof, does the June 10, 1997 date come into play. The termination date for the original parties and all parties later adopting an agreement, is calculated from the effective date agreed to by the original parties.

Staff also wishes to point out that while Supra may dispute the basis for the calculations of amounts due, it does not dispute the calculations themselves. Supra witness Bentley states that, "the new agreement has no provision for service order charges, no provision for unauthorized service change charges and no provision for Network Access Charges. The previous agreement specifically calls out the terms for these charges." (TR 212) Witness Bentley's reference to the "new agreement" attempts to speak to the AT&T/BellSouth agreement, which the Commission earlier determined was not applicable to this docket. Witness Bentley does, however, correctly identify that the "previous agreement" specifically identifies when and how the charges in dispute are to be assessed. Such a statement appears to clearly identify Supra's knowledge that the BellSouth/Supra resale agreement states the basis, conditions and calculation of EUCLS and the other charges in question.

Therefore, staff recommends that BellSouth appropriately billed Supra for EUCLs pursuant to Section VII(L) of the BellSouth/Supra resale agreement, entered into by Supra and effective June 1, 1997.

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

RECOMMENDATION: Yes. BellSouth billed Supra appropriately for changes in services, unauthorized local service changes and reconnections pursuant to the parties' resale agreement. **(LOGUE)**

POSITION OF THE PARTIES:

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

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

STAFF ANALYSIS: The second dispute relates to "charges for processing changes in services and unauthorized local service changes and reconnections." These types of charges are "other charges and credits ("OCC")." BellSouth alleges it properly billed Supra the amount of $48,917.60 in OCC. (Exh. 3, p.6, ¶16) The dispute covers the period September 1997 through December 1999. BellSouth claims that Section VI(F) of the 1997 agreement provides for the assessment of OCCs should an unauthorized change in local service occur. The amount charged per unauthorized change is $19.41, pursuant to Section VI(F) of the 1997 agreement. The billing of the charges in question is in accordance with Section VI(F) of the controlling agreement, the BellSouth/Supra resale agreement of June 1997. Section VI(F) states,

> F. If the Company determines that an unauthorized change in local service to Reseller has occurred, the Company will reestablish service with the appropriate local service providers and will assess Reseller as the OLEC initiating the unauthorized change, an unauthorized change charge, similar to that described in F.C.C. Tariff No. 1, Section 13.3.3. Appropriate nonrecurring charges, as set forth in Section A4 of the General Subscriber

Service Tariff, will also be assessed to Reseller. These charges can be adjusted if Reseller provides satisfactory proof of authorization.

	Nonrecurring Charge
(a) each Residence or Business Line	$19.41

Supra again attempts to apply, and does so incorrectly, the AT&T/BellSouth agreement to this instant matter. As stated in the previous issues, staff believes the AT&T/BellSouth agreement is inapplicable. Staff again would draw the Commission's attention to the fact that Supra's witness Bentley correctly identifies that the "previous agreement" specifically concludes when and how the charges in dispute are to be assessed. (TR 212)

Therefore, staff recommends that BellSouth billed Supra appropriately for changes in services, unauthorized local service changes and reconnections pursuant to the parties' resale agreement.

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

RECOMMENDATION: Yes. BellSouth appropriately billed Supra for secondary service charges pursuant to the parties' resale agreement. **(LOGUE)**

POSITION OF THE PARTIES:

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

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

STAFF ANALYSIS: BellSouth alleges it properly billed Supra $33,352.94 for secondary service charges for authorized changes in customers' service. (Exh. 3, p.6, ¶17) BellSouth alleges such services are correctly assessed, pursuant to the 1997 agreement and Section A4.2.4 of BellSouth's General Subscriber Service Tariff. (Id.) In Section IV(B) of the BellSouth/Supra resale agreement, BellSouth's Provision of Services to Reseller states,

> (B) Resold services can only be used in the same manner as specified in the Company's Tariff. Resold services are subject to the same terms and conditions as are specified for such services when furnished to an individual end user of the Company in the appropriate section of the Company's Tariffs. Specific tariff features, e.g. a usage allowance per month, shall not be aggregated across multiple resold services. Resold services cannot be used to aggregate traffic from more than one end user customer except as specified in Section A23 of the Company's Tariff referring to Shared Tenant Service. (Exh. 3, Exh. 1 to BellSouth's's complaint, p.5)

Supra takes the position that the AT&T/BellSouth agreement is the "controlling" or "new" agreement and that, pursuant to said agreement, no provisions exist for the charges in dispute in this issue. (TR 212, TR 219). Supra further states, in support of its

position that the charges in question are not accurately billed, that the effective date of the AT&T/BellSouth agreement is June 10, 1997 and Supra later adopted said agreement. Accordingly, Supra believes the "effective date of the new agreement between Supra Telecom and BellSouth is June 10, 1997" and therefore, "BellSouth must make a corrective payment to Supra Telecom for charges billed that no longer apply." (Bentley TR 212)

Staff believes, contrary to Supra's position, that only the BellSouth/Supra resale agreement is applicable in this instant matter, and therefore, Supra's position that the adopted AT&T/BellSouth agreement dictates the terms for the period June 1997 through October 1999 is without merit. Additionally, the very same charges Supra disputes are those it agreed to pay when it entered into a resale agreement with BellSouth in June 1997.

Furthermore, staff believes that BellSouth would be fully within its right, pursuant to its contract with Supra, to terminate Supra's service for non-payment. Specifically, Section VI, Establishment of Service states, "K. In the event that Reseller defaults on its account, service to Reseller will be terminated and any deposits held will be applied to its account." (Exh. 3, Exh 1 to BellSouth's Complaint, p.7) Additionally, Section VII, Payment and Billing Arrangements states, "C. Payment of all charges will be the responsibility of Reseller. Reseller shall make payment to the Company for all services billed." (Id.) Section VII(F) stipulates, "the payment will be due by the next bill date (i.e., same date in the following month as the bill date) and is payable in immediately available funds. Payment is considered to have been made when received by the Company." (Id., p.8)

With regard to the termination by BellSouth of Supra's access and service, Section VII, Discontinuance of Service would apply. Staff believes that BellSouth would certainly be within its rights, pursuant to its contract, and all applicable tariffs, to discontinue service to Supra.

Staff recommends that BellSouth appropriately billed Supra for secondary service charges pursuant to the parties' resale agreement as approved in Order No. PSC-97-1213-FOF-TP, dated October 8, 1997.

ISSUE 5: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendations, this docket should be closed. **(FORDHAM)**

STAFF ANALYSIS: This docket should be closed if the Commission approves staff's recommendations.