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SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.

DIRECT TESTIMONY OF DAVID A. NILSON

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET 00-1305

JULY 23, 2001

Q PLEASE STATE YOUR NAME AND ADDRESS

A. My name is David A. Nilson. My address is 2620 SW 27th Avenue, Miami, Florida 33133.

Q BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am the Chief Technology Officer of Supra Telecommunications and Information Systems, Inc. ("Supra").

Q PLEASE DESCRIBE YOUR BACKGROUND AND WORK EXPERIENCE.

A. I have been an electrical engineer for the past 27 years, with the last 23 years spent in management level positions in engineering, quality assurance, and regulatory departments. In 1976, I spent two years working in the microwave industry, producing next generation switching equipment for end customers such as AT&T Long Lines, ITT, and the U.S. Department of Defense. This job involved extensive work with various government agencies. I was part of a three-man design team that produced the world's first microwave integrated circuit. At

declassified 9/17/05 (Part 1 of 4)

that time, our design was considered the "Holy Grail" of the microwave industry and was placed in production for AT&T within 30 days of its creation. This job also involved communications equipment design work with various government entities covered by United States Department of Defense security restrictions. I spent several years in quality control management, monitoring and trouble-shooting manufacturing process deviations, and serving as liaison and auditor to our regulatory dealings with the government. I spent 14 years in the aviation industry designing communications systems, both airborne and land-based, for various airlines and airframe manufacturers worldwide. This included ASIC and Integrated Circuit design, custom designed hardware originally designed for the Pan American Airlines call centers, and the H.F. long range communications system controllers used on Air Force One and Two and other government aircraft. I was responsible for the re-design of the Communications and Navigation systems' controllers installed in the fleet of aircraft(s) used by the Royal Family in England. I have also designed special purpose systems used by both the FAA and the FCC in monitoring and compliance testing. I was also responsible for validation design testing and FAA system conformance testing. Since 1992 I have been performing network and system design consulting for various industry and government agencies, including the Argonne National Laboratories. I joined Supra Telecom in the summer of 1997.

I am the architect of Supra's ATM backbone network, designer of our central office deployments to provide products and services designed for the consumer market. This includes capacity and traffic analysis to define equipment capacity

from market projections for both voice services, Class 5 switch design and planning, data and Internet services, xDSL, voicemail and ILEC interconnection.

Q HAVE YOU EVER TESTIFIED BEFORE?

A. Yes, I testified before the Florida Public Service Commission (FPSC) in numerous generic dockets and in various disputes between Supra Telecom and BellSouth regarding central office space availability, rates, requirements, and specifications for Collocation, Unbundled Network Elements (UNEs), and UNE Combinations . I have participated in settlement procedures before the FPSC staff on matters relating to OSS and OSS performance against BellSouth. I have testified before the Texas Public Utilities Commission (TPUC) on matters of collocation regarding disputes with SWBT. I have made ex-parte presentations before the Federal Communications Commission (FCC) regarding the Bell Atlantic / GTE merger, and the Department of Agriculture (RUS) regarding Network Design and Expansion policies for CLECs. I have appeared before the FCC staff on several occasions in disputes against BellSouth regarding collocation. I have testified before regulatory arbitrators in Texas, and in Commercial arbitration against BellSouth. I have been deposed numerous times by BellSouth, and SWBT.

Q WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to address the issues identified in this proceeding. Specifically I will address issues 7, 8, 10, 12, 13, 14, 19, 21, 22, 23, 24, 25, 27, 28, 29, 31, 32, 33, 34, 40, 49, and 53.

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

Q WHAT IS THE FCC RECOGNIZED STATUS OF A COMPETITIVE LOCAL EXCHANGE CARRIER PROVIDING SERVICES VIA UNBUNDLED NETWORK ELEMENT COMBINATIONS?

A. The FCC recognizes an ALEC providing services via UNE Combinations to be a facilities-based provider. When purchasing a UNE alone or in combination, the ALEC becomes the owner of that circuit responsible for all costs, and entitled to exclusive use of the element including all features, functions, and revenues associated with that circuit. As this is repeated from various FCC orders, I cite from the *UNE Remand Order,* issued to be in compliance with the Supreme Court and Eighth Circuit rulings. First for the Loop, *UNE Remand Order CC Order 99-238 ¶ 167*

> **We modify the definition of the loop network element to include all features, functions, and capabilities of the transmission facilities, including dark fiber and attached electronics (except those used for the provision of advanced services, such as DSLAMs) owned by the incumbent LEC, between an incumbent LEC's central office and the loop**

> **demarcation point at the customer premises.**[1] In order to secure access to the loop's full functions and capabilities, we require incumbent LECs to condition loops. This broad approach accords with section 3(29) of the Act, which defines network elements to include their "features, functions and capabilities."[2] Our intention is to ensure that the loop definition will apply to new as well as current technologies, and to ensure that competitors will continue to be able to access loops as an unbundled network element as long as that access is required pursuant to section 251(d)(2) standards. (Emphasis added)

Second, for the Local Switching UNE, *UNE Remand Order CC Order 99-238* ¶ *244*

> 244. In the *Local Competition First Report and Order*, the Commission defined local circuit switching as including the basic function of connecting lines and trunks. [3] **In addition to line-side and trunk-side facilities, the definition of the local switching element encompasses all the features, functions and capabilities of the switch.**[4] With the exception of MCI

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[1] CC Order 99-238 *footnote* -- In other words, our revised definition retains the definition from the *Local Competition First Report and Order*, but replaces the phrase "network interface device" with "demarcation point," and makes explicit that dark fiber and loop conditioning are among the "features, functions and capabilities" of the loop. Issues regarding an incumbent LEC's obligation to afford access under section 251(c)(3) to facilities that it controls but does not own are being addressed in the *Competitive Networks Notice*.

[2] CC Order 99-238 footnote -- 47 U.S.C. 153(29).

[3] CC Order 99-238 footnote -- *See Local Competition First Report and Order*, 11 FCC Rcd. at 15706, para. 412. The line-side switch facilities include the connection between a loop termination at, for example, a main distribution frame (MDF), and a switch line card. Trunk-side facilities include the connection between trunk termination at a trunk-side cross-connect panel and a trunk card. The "features, functions, and capabilities" of the local switch include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines and trunks to trunks.

[4] CC Order 99-238 footnote -- *Id.* The local switching element includes all vertical features that the switch is capable of providing, including customized routing functions, CLASS features, Centrex and any technically feasible customized routing functions. Custom calling features, such as call waiting, three-way calling, and call forwarding, are switch-based calling functions. CLASS features, such as caller ID, are number translation services that are based on the availability of interoffice signaling.

> WorldCom, no commenter proposes that we modify the current definition of local switching. **We disagree with MCI WorldCom, and find no reason to alter our current definition of local circuit switching.** (Emphasis added)

Finally for the Transport element the Shared Transport UNE, *UNE Remand Order CC Order 99-238 ¶ 372*

> 372. We reject Ameritech's arguments. The Supreme Court upheld the Commission's interpretation that the phrase "on an unbundled basis" in section 251(c) does not refer to physically separated elements but rather to separately priced elements.[5] Shared transport is an "unbundled" element because it consists of separately priced switching and transport network elements. The fact it is technically infeasible for a competitor to use shared transport with self-provisioned switching is irrelevant to whether an element is "unbundled" pursuant to section 251(c)(3). **In addition, the Eighth Circuit, in affirming our decision in the *Local Competition Third Reconsideration Order*, rejected Ameritech's argument when it held that shared transport meets the definition of an unbundled network element because it is a "feature, function, [or] capability," that is provided by facilities and equipment used in the provision of a telecommunications service.[6]** Accordingly, we conclude that shared transport meets the definition of an unbundled network element. (Emphasis added)

By law the ALEC pays for all UNEs at the ILEC's *cost*, and is entitled to all associated cost recovery. As such PIC, TIC, CCLC, and SCL / EUCL charges

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[5] CC Order 99-238 footnote -- *Iowa Utils. Bd.*, 119 S. Ct. at 737.

[6] CC Order 99-238 footnote -- *Southwestern Bell Tel. Co. v. Federal Communications Commission*, 153 F.3d 597, 603 (8th Cir. 1998).

are all due to the ALEC. The ILEC is already considered to have been compensated for all its costs by the arbitrated cost of the specific UNE. Based upon proceedings establishing UNE rates in Florida[7], the ILEC has been fully compensated for all costs and overheads. The ILEC is not due further cost recovery.

Further the ALECs rights to exclusive use of the network element are represented by *The First Report and Order on Local Competition* CC Order 96-325 at ¶ 357:

> 357. We also confirm our conclusion in the NPRM that, for the reasons discussed below in section V.J, **carriers purchase rights to exclusive use of unbundled loop elements, and thus, as the Department of Justice and Sprint observe, such carriers, as a practical matter, will have to provide whatever services are requested by the customers to whom those loops are dedicated.** This means, for example, that, if there is a single loop dedicated to the premises of a particular customer and that customer requests both local and long distance service, then any interexchange carrier purchasing access to that customer's loop will have to offer both local and long distance services. That is, interexchange carriers purchasing unbundled loops will most often not be able to provide solely interexchange services over those loops. (Emphasis added)

A carrier purchasing **"exclusive use of unbundled loop elements"** purchased at cost from the ILEC can have no further payment obligations to the ILEC as will be proven in testimony for the remaining issues I testify to.

[7] Docket 99-0649, PSC-01-1181-FOF-TP

The FCC held in the *Intercarrier Compensation for ISP-Bound Traffic* CC Order 01-131 in Dockets 96-98[8] and 99-68[9]:

> Some CLECs take this argument one step further. Whatever the merits of bill and keep or other reforms to intercarrier compensation, they say, any such reform should be undertaken only in the context of a comprehensive review of *all* intercarrier compensation regimes, including the interstate access charge regime.[10] First, we reject the notion that it is inappropriate to remedy some troubling aspects of intercarrier compensation until we are ready to solve all such problems. In the most recent of our access charge reform orders, we recognized that it is "preferable and more reasonable to take several steps in the right direction, even if incomplete, than to remain frozen" pending "a perfect, ultimate solution."[11] **Moreover, it may make sense to begin reform by rationalizing intercarrier compensation between competing providers of telecommunications services, to encourage efficient entry and the development of robust competition, rather than waiting to complete reform of the interstate access charge regime that applies to incumbent LECs, which was created in a monopoly environment for quite different purposes.** Second, the interim compensation scheme we adopt here is fully consistent with the course the Commission has pursued with respect to access charge reform. **A primary feature of the *CALLS Order* is the phased elimination of the PICC and CCL, [12] two intercarrier payments we found to be inefficient, in favor of greater recovery from end-users through an increased SLC, an end-user charge.**[13] Finally, like the *CALLS Order*, the interim regime we adopt here "provides relative certainty in the marketplace" pending further Commission action, thereby allowing carriers to develop

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[8] *Implementation of Local Competition*

[9] *Intercarrier Compensation for ISP-Bound Traffic*

[10] CC order 01-131 footnote - *See, e.g.*, Letter from Karen L. Gulick, Harris, Wiltshire & Grannis, to Magalie Roman Salas, Secretary, FCC, at 1 (Dec. 22, 2000).

[11] CC order 01-131 footnote - *See CALLS Order*, 15 FCC Rcd at 12974.

[12] CC order 01-131 footnote - The PICC, or presubscribed interexchange carrier charge, and the CCLC, carrier common line charge, are charges levied by incumbent LECs upon IXCs to recover portions of the interstate-allocated cost of subscriber loops. *See* 47 C.F.R. §§ 69.153, 69.154.

[13] CC order 01-131 footnote - *CALLS Order*, 15 FCC Rcd at 12975 (permitting a greater proportion of the local loop costs of primary residential and single-line business customers to be recovered through the SLC).

business plans, attract capital, and make intelligent investments.[14],,[15] (Emphasis Added)

Q **WHAT SPECIFIC RELIEF IS SOUGHT BY SUPRA**

A. Supra merely requests that the parties' Follow-On Agreement follow the current state of the law in all matters, and specific to this issue, if Supra is operating as a facilities based provider, and Supra **is** operating as a facilities-based provider via UNEs, Supra, not BellSouth, is entitled to collect reciprocal compensation, CCLC, TIC, SLC, EUCLs and access charges from any circuit served by UNE or UNE combination(s)

Supra requests that the Commission ensure that the full measure of the *UNE Remand Order* CC Order 99-238 is included in the text of the follow on agreement, that BellSouth is enjoined from illegally collecting both monthly and usage based charges correctly due to Supra Telecom

Supra requests this Commission ensures that the follow-on agreement include a liquidated damages provision in the parties' Follow On Agreement to provide incentives for BellSouth's compliance with these rules and orders.

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[14] CC order 01-131 footnote - *CALLS Order*, 15 FCC Rcd at 12977 (The CALLS proposal is aimed to " bring lower rates and less confusion to consumers; and create a more rational interstate rate structure. This, in turn, will support more efficient competition, more certainty for the industry, and permit more rational investment decisions.").

[15] CC order 01-131 § 94

Supra requests that this Commission ensures that the Follow On Agreement include a liquidated damages provision to provide incentives for BellSouth's compliance with these rules and orders.

Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

Issue 10: Should the rate for a loop be reduced when the loop utilizes Digitally Added Main Line (DAML) equipment?

Q **WHAT ARE THE ISSUES TO THIS QUESTION?**

A. BellSouth uses DAML to provide additional loops in areas where they have "run out of loops". In making this explanation BellSouth fails to add that BellSouth often adds DAML to the first line of a CLEC customer, with two perfectly good working telephone circuits, in order to provide a CLEC customer *two* DAML provisioned lines. This then frees up a loop for a new BellSouth customer. BellSouth never announces these changes to ALECs, and continues charging the ALEC for two loops. In essence, BellSouth is getting the newly

derived loop for free. However, this also increases the ALECs support costs as will be explained below.

Q WHAT IS WRONG WITH THIS APPROACH?

A. DAML is a digital technology that synthesizes the normal operation of two loops by digitizing each telephone circuit and passing the digitized information over a single loop. The digitized signals are extracted by corresponding central office based electronics and placed on separate two wire copper circuits and fed to the Class 5 switch. Much like DSL data, the two digitized voice channels are transmitted over the copper loop in two different frequency bandwidth carrier frequencies, higher than the established analog voice bands. While the technical details of modulation can be different than those of xDSL due to the limited bandwidth required, on the whole, the architecture of the solution is virtually identical to that of xDSL services.

Q SO WHY WOULD SUPRA OR ITS CUSTOMERS CARE THAT THIS APPROACH IS USED TO PROVIDE SERVICE?

A. Ever since modem speeds increased above 28.8 BPS, it has become essential that the loop serving a customer have, at most, a single analog to digital conversion. The compression algorithms inherent in 56K modems will tolerate no more, and indeed require non-standard implementations of the GR-303 to achieve full rated speed. GR-303 is the standard communication protocol between Digital Loop Carrier (DLC) equipment and the Class 5 switch that serves it. With a

standard GR-303 interface a 56K modem can easily be limited to 28.8K or less. With DAML added in such a loop communications can fall as low as 4.8K!

Q **HOW DOES THIS AFFECT COST?**

A. Typically the scenario is that a BellSouth customer converts to Supra. At some point in time, either at conversion or sometime after, with no prior warning to Supra, the Customer line is converted to DAML. Immediately the customer begins complaining about the drop in modem speed. Supra's costs are increased until Supra can get the DAML removed, or ultimately, the customer returns to BellSouth where it **can** get the DAML removed and full modem speed restored. Throughout this process, Supra's customer support costs increase due to increased call volume and the costs to identify and correct this problem, caused by a lack of notification / authorization prior to a BellSouth action. BellSouth gets a free loop paid for by Supra, and potentially reclaims the customer due to Supra's "bad service."

This final issue is most insidious to Supra as it represents hidden, undocumented, and often denied violations of the Telecommunications Act[16], all FCC orders in

[16] Telecommunications Act of 1996, 47 U.S.C.A. § 251(c)(3).

this regard[17], including orders that have been sustained by the Supreme Court of the United States[18].

Lest BellSouth argues, based upon a misreading of 251(c)(3) that there is no requirement upon them not to disconnect or otherwise disturb a functioning telecommunications circuit, the Supreme Court, at *AT&T v. Iowa Utilities Bd.*, 525 U.S. 366, 119 S.Ct 721 (Iowa Utilities Board II) at pg. Pg. 395 held:

> "The reality is that § 251(c)(3) is ambiguous on whether leased network elements may or must be separated, and the rule the Commission has prescribed is entirely rational, finding its basis in § 251(c)(3)'s nondiscrimination requirement. As the Commission explains, it is aimed at preventing incumbent LECs from disconnect[ing] previously connected elements, over the objection of the requesting carrier, not for any productive reason, but just to impose wasteful reconnection costs on new entrants" ... It is well within the bounds of the reasonable for the Commission to opt in favor of ensuring against an anticompetitive practice."

BellSouth's deployment of DAML equipment on the lines of Supras customers when those customers were not provisioned via DAML a) as BellSouth customers, or b) when initially converted to Supra is a violation of Federal law intended as an anticompetitive practice against ALEC customers. If this issue is truly as benign and insignificant as BellSouth represents, then there should be no problem with limiting use of this technology to ALEC customers. The Commission should take BellSouth's promises to heart and enjoin ILECs from

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[17] 47 C.F.R. § 51.315(b).

deploying DAML on an ALEC customer circuit, and subject the ILEC to fines for so doing.

Q WHAT SPECIFIC RELIEF IS SOUGHT BY SUPRA?

A. Supra believes that BellSouth should be enjoined from deploying this technology on ALEC subscriber circuits. The potential for abuse and "bad acts" is just too high, because it is an anti-competitive tool for ILECs. Should an agreement be reached to deploy such equipment on specific ALEC lines, the ALEC should not be charged for two loops, when it is in fact utilizing just one, or in some cases, just one half of a loop. In addition, BellSouth should be required to periodically disclose the use of such equipment on ALEC lines.

Supra requests that this Commission ensures that the Follow On Agreement include a liquidated damages provision to provide incentives for BellSouth's compliance with these rules and orders.

Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

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[18] *AT&T v. Iowa Utilities Bd.* 525 U.S. 366, 119 S.Ct 721 (Iowa Utilities Board II) at pg. 368, and

Issue 12: Should BellSouth be required to provide transport to Supra Telecom if that transport crosses LATA boundaries?

Q **WHAT ARE THE ISSUES TO THIS QUESTION?**

A. BellSouth is very quick to quote from section 271 in denying Supra the its request for dedicated transport across LATA boundaries. However while Supra acknowledges that BellSouth is itself precluded from providing services to end users across LATA boundaries, that does not specifically preclude BellSouth from wholesaling such services to other carriers. The FCC, in its First Report and Order, addressed this issue as follows:

> We also disagree with MECA, GTE, and Ameritech that we should consider "pricing distortions" in adopting rules for unbundled interoffice facilities. Section, (sic) below, addresses the pricing of unbundled network elements identified pursuant to section 251(c)(3) as it relates to our current access charge rules. Nor are we are persuaded by MECA's argument that incumbent LECs not subject to the MFJ[19] should not be required to unbundle transport facilities because, according to MECA, such facilities are unnecessary for local competition. **As discussed above, the ability of a new entrant to obtain unbundled access to incumbent LECs' interoffice facilities, including those facilities that carry interLATA traffic, is essential to that competitor's ability to provide competing telephone service."**[20] (Emphasis Added)

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pg. 393-395

[19] MFJ -- Modified Final Judgement.

[20] CC Order 96-325 in Docket No. 96-98 -- Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 at ¶ 449.

Here, Congress and the FCC acknowledge what BellSouth already knows, that a competitor must have full access to both the local and long distance portions of an RBOC's network in order to be a successful competitor. Interoffice Transport was a hotly contested issue in the days after the Act was signed. However, a CLEC's right to unbundled interoffice transport has been fully upheld, and the intent of the Act is clearly explained to give a CLEC access to local, intraLATA and interLATA interoffice facilities. BellSouth has such facilities in place based on pre-divestiture information and as can be seen by the Agreement between BellSouth and its affiliate BellSouth Long Distance to test and trial just such a service.[21]

BellSouth terribly confuses its prohibition from offering interLATA services directly to end users, and leasing network facilities to another carrier. A BellSouth interLATA facility, once leased to Supra, is no longer BellSouth's property for the term of the lease. Any and all prohibitions regarding the use of the facility must now fall upon Supra, not BellSouth. Section 271 of the ACT does not prohibit Supra from offering long-distance service, as it does BellSouth. The FPSC, in CC Order 96-325 in Docket No. 96-98 -- Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 at ¶ 336, recognized this fact:

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[21] Supra Exhibit # DAN-2 -- BellSouth and BSLD agreement to "INTERLATA END TO END TEST AGREEMENT." Dated June 13, 2000.

> We note, moreover, that the 1996 Act does not prohibit all forms of joint marketing. For example, it does not prohibit carriers who own local exchange facilities from jointly marketing local and interexchange service. Nor does it prohibit joint marketing by carriers who provide local exchange service through a combination of local facilities which they own or possess, and unbundled elements. Because the 1996 Act does not prohibit all forms of joint marketing, we see no principled basis for reading into section 271(e)(1) a further limitation on the ability of carriers to jointly market local and long distance services without concluding that this section prohibits all forms of joint marketing. In other words, we see no basis upon which we could conclude that section 271(e)(1) restricts joint marketing of long distance services, and local services provided solely through the use of unbundled network elements, without also concluding that the section restricts the ability of carriers to jointly market long distance services and local services that are provided through a combination of a carriers' own facilities and unbundled network elements.[22] Moreover, we do not believe that we have the discretion to read into the 1996 Act a restriction on competition which is not required by the plain language of any of its sections. [23]

Thus, CLECs are not barred by 47 USC §271(e)(1) from providing local and long distance services, or, intraLATA and interLATA services. As such, BellSouth's reliance on Section 271 as a means to prevent Supra from being a long-distance carrier is nonsensical. Furthermore, 47 CFR §51.309 Use of unbundled network elements provides that:

> (b) A telecommunications carrier purchasing access to an unbundled network element may use such network element to provide exchange access services to itself in order to provide interexchange services to subscribers.

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[22] 96-325 Footnote -- *See also* AT&T reply at 14-15 (the added risk of unbundled elements also means that new entrants are not circumventing section 271's joint marketing restriction because the additional risk justifies allowing carriers more flexibility to jointly market services); LDDS reply at 28-30.

[23] CC Order 96-325 in Docket No. 96-98 -- Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 at ¶ 336

BellSouth argues that Section 271 of the Act prohibits BellSouth from providing interLATA service, be it retail or wholesale. However, should BellSouth provide interoffice transport across LATA boundaries via UNE(s), BellSouth would not be deemed to be providing the service. Furthermore, **BellSouth's only role would be providing wholesale elements to a carrier, not prohibited retail service to an end-user**. Supra, as the facilities-based provider, would be deemed to be the service provider, and the temporary owner of the facility, just as it is when Supra leases a switching port or local transport facility.

BellSouth may argue that an Order in favor of Supra on this point would be an Order creating new law. This is simply not the case. In paragraph 356 of the FCC's First Report and Order the FCC concluded that 47 USC §251(c)(3) permits all telecommunications carriers, including interexchange carriers, to purchase UNEs for the purpose of offering exchange access services or to provide exchange access services to themselves in order to provide interexchange services to consumers. In ¶ 440, the FCC concluded that ILECs must provide interoffice facilities between central offices, not limit facilities to which such interoffice facilities are connected, allow a competitor (ALEC) to use an interoffice facility to connect to an ILEC's switch, provide unbundled access to shared transmission facilities between end offices and the tandem switch, as well as transmission capabilities such as DS1. In ¶ 449, the FCC further added that the ability of a new entrant to obtain unbundled access to ILECs' interoffice facilities, **including those facilities that carry interLATA traffic**, is **essential** to that competitor's ability to

provide competing telephone service.

Interoffice transport is a UNE. Therefore, BellSouth's refusal to provide Supra with interoffice transport, is a refusal to provide Supra with the Services and Elements contained in the Agreement as well as required by the FCC's First Report and Order, ¶¶ 342 to 365. Yet, BellSouth has never sought any guidance from the FCC on this issue.

In BellSouth's view, BellSouth would provide the transport up to the LATA boundaries, then Supra must provide a link which actually takes it across the boundaries, whereinafter BellSouth would then provide another link on the other side. BellSouth would have this Commission believe that Supra must break up a single wire connection by inserting its own piece of wire, right where the two LATA boundaries meet, in order to provide long-distance service. Neither the ACT, nor any FCC order, supports BellSouth's position that Supra must provide this link which actually crosses the LATA boundary, particularly where Supra (as a facility-based provider) is already deemed to be the party responsible for taking the transport across the LATA boundary.

In fact, in *AT&T v. Iowa Utilities Bd.* 525 U.S. 366, 119 S.Ct 721 (Iowa Utilities Board II) the Supreme Court affirmed that facilities ownership **was not** a requirement that LECs may impose upon an ALEC for the use or combination of a UNE:

"But whether an requesting carrier can access the incumbents

network in whole or in part, we think that the Commission reasonably omitted a facilities ownership requirement. The 1996 Act imposes no such limitation; if anything it suggests the opposite, by requiring in § 251(c)(3) that incumbents provide access to "any" requesting carrier. We agree with the Court of Appeals that the Commissions refusal to impose a facilities-ownership requirement was proper." [24]

Yet that is exactly what BellSouth's "link -at-the-border" approach requires Supra owned facilities to join two lengths of Interoffice transport, and a Bona-Fide request process to even see if they will actually consider doing it at all, in violation of the Supreme Court ruling.

Q WHAT RELIEF IS BEING REQUESTED BY SUPRA:

A. Supra requests that following language be inserted in the Follow-On Agreement:

> BellSouth shall provision tandem switching, one or two-way trunk groups, inter-office transport, and all features, functions and capabilities therewith, across LATA boundaries, in the manner requested by Supra, where technically feasible.

Supra requests that this Commission ensures that the Follow On Agreement include a liquidated damages provision to provide incentives for BellSouth's compliance with these rules and orders.

Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete

[24] *AT&T v. Iowa Utilities Bd.* 525 U.S. 366, 119 S.Ct 721 (Iowa Utilities Board II) at pg. 392.

response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

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?

Q **IS THIS QUESTION STILL GERMANE TO THESE PROCEEDINGS?**

A. It should not be. On April 18, 2001 the FCC adopted order 01-131 in dockets 96-98[25] and 99-68[26]. This issue has become effectively moot since the filing of this arbitration. Supra would expect BellSouth to surrender its position and fall in line with current FCC rulings and Part 51, Subpart H of Title 47 of the Code of Federal Regulations (C.F.R.) as adopted on April 18, 2001. In that order the FCC amended the rules on reciprocal compensation to remove the word "local" and to provide for reciprocal compensation regulations in a clear and unambiguous fashion:

> "In this Order, we strive to balance the need to rationalize an intercarrier compensation scheme that has hindered the development of efficient competition in the local exchange and exchange access markets with the need to provide a fair and reasonable transition for CLECs that have come to depend on

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[25] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996
[26] Intercarrier Compensation for ISP-Bound Traffic

intercarrier compensation revenues. We believe that the interim compensation regime we adopt herein responds to both concerns. The regime should reduce carriers' reliance on carrier-to-carrier payments as they recover more of their costs from end-users, while avoiding a "flash cut" to bill and keep which might upset legitimate business expectations. The interim regime also provides certainty to the industry during the time that the Commission considers broader reform of intercarrier compensation mechanisms in the *NPRM* proceeding. **Finally, we hope this Order brings an end to the legal confusion resulting from the Commission's historical treatment of ISP-bound traffic, for purposes of jurisdiction and compensation, and the statutory obligations and classifications adopted by Congress in 1996 to promote the development of competition for all telecommunications services. We believe the analysis set forth above amply responds to the court's mandate that we explain how our conclusions regarding ISP-bound traffic fit within the governing statute.**[27,,28] (Emphasis added)

The FCC has amended the CFR in the following manner:

"Part 51, Subpart H, of Title 47 of the Code of Federal Regulations (C.F.R.) is amended as follows:

The title of part 51, Subpart H, is revised to read as follows:

Subpart H--Reciprocal Compensation for Transport and Termination of Telecommunications Traffic

2. Section 51.701(b) is revised to read as follows:

§ 51.701 Scope of transport and termination pricing rules.

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Telecommunications traffic. For purposes of this subpart, telecommunications traffic means:

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[27] CC order 01-131 footnote - *Bell Atlantic*, 206 F.3d at 8.

[28] CC order 01-131 § 95, Conclusion

Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access (*see* FCC 01-131, paras. 34, 36, 39, 42-43); or Telecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter.

Sections 51.701(a), 51.701(c) through (e), 51.703, 51.705, 51.707, 51.709, 51.711, 51.713, 51.715, and 51.717 are each amended by striking "local" before "telecommunications traffic" each place such word appears."[29]

Q WHAT SPECIFIC RELIEF IS REQUESTED BY SUPRA?

A. Supra merely requests that the parties' Follow-On Agreement follow the current state of the law in all matters, and specific to this issue in regard to reciprocal compensation for traffic to Internet Service providers be paid to Supra Telecom for all calls origination on BellSouth's network that terminate at ISP's on Supras network, and vice versa, regardless of the method used to provision service to the end user customer, as long as that method is not resale

Supra requests that this Commission ensure that the Follow On Agreement includes a liquidated damages provision to provide incentives for BellSouth's compliance with these rules and orders.

[29] CC order 01-131 – Appendix B – Final Rules.

Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

Issue 14: Should BellSouth pay reciprocal compensation to Supra Telecom where Supra Telecom is utilizing UNE's to provide local service (i.e. unbundled switching and the unbundled local loop) for the termination of local traffic to Supra's end users?

Q SHOULD BELLSOUTH PAY RECIPROCAL COMPENSATION TO SUPRA TELECOM WHERE SUPRA TELECOM IS UTILIZING UNE'S TO PROVIDE LOCAL SERVICE

A. Yes.

Q ARE YOU SUPRISED THAT BELLSOUTH HAS TAKEN A CONTRADICTORY POSITION ON THIS SUBJECT?

A. Yes and no. No because they opposed this issue when the FCC was considering the *First Report and Order*. Yes, because as I will show below, the FCC did not adopt BellSouth's position in 1996, and has not since. Why this is still an issue remains a mystery. I consider this a bad faith attempt by BellSouth

to collect revenues it knows it is not entitled to, because the FCC ruled against BellSouth's position in 1996.

In one case, BellSouth incredibly claimed that its economies were poorer than a startup ALEC in *First Report and Order* CC Order 96-325 at ¶ 1074:

> "BellSouth contends that, because the costs of an incumbent LEC and new entrant are likely to be quite different, the Commission does not have the authority to contravene the mutual and reciprocal recovery language of section 252(d)(2) and require symmetry.[30]"[31]

BellSouth argues against an "uncompensated taking", yet in this issue it would somehow have us believe that it is correct for BellSouth to do to an ALEC, what it is incorrect to do to BellSouth:

> BellSouth further asserts that bill and keep would lead to no compensation for use of incumbent LEC property and will therefore constitute an uncompensated taking in violation of the Constitution.[32] (Emphasis added)

Besides misusing the universally accepted definition of reciprocal compensation, this show BellSouth's lack of good faith. The position a corporation takes should not change to challenge each competitor that it faces unless said corporation stands ready to be accused of bad faith dealings.

[30] 96-325 footnote -- BellSouth comments at 72-73.

[31] *First Report and Order* CC Order 96-325 at ¶ 1074:

[32] 96-325 footnote -- BellSouth comments at 74-75.

Q WHY ARE THERE ANY CHARGES FOR TELEPHONE CIRCUITS OTHER THAN A STRAIGHT MONTHLY RECURRING CHARGE, A CHARGE BASED ON USAGE AND TAXES.

A. This problem finds its roots in the fact that for much of the 20th century there was one predominant telephone company, AT&T, which provided long distance and local services to most of, but not the entire United states over the same network facilities. The issues with properly accounting for costs due to the various division of AT&T, which later became separate telephone companies is explained well by the FCC in the CALLS order CC order 00-193 at ¶ 5 writes:

> 5. For much of this century, most telephone subscribers obtained both local and long-distance services from the same company, the pre-divestiture Bell System, owned and operated by AT&T. Its provision of local and intrastate long-distance services through its wholly-owned operating companies, the Bell Operating Companies (BOCs), was regulated by state commissions. The Commission regulated AT&T's provision of interstate long-distance service. **Much of the telephone plant that is used to provide local telephone service, such as the local loop,[33] is also needed to originate and terminate interstate long-distance calls. Consequently, a portion of the costs of this common plant historically was assigned to the interstate jurisdiction and recovered through the rates that AT&T charged for interstate long-distance calls.** *The balance of the costs of the common plant was assigned to the intrastate jurisdiction and recovered through the charges for intrastate services regulated by the state commissions.* **The system of allocating costs between the interstate and intrastate jurisdictions is known as the separations process.** The difficulties inherent in allocating the costs of facilities that

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[33] 96-325 footnote -- A local loop is the connection between the telephone company's central office building and the customer's premises.

are used for multiple services between the two jurisdictions are discussed below. (Emphasis added).

Thus it forms the basis for recovering portions of the cost associated with the local loop, the local switch port, Transport and Tandem costs from those who benefit from those services proportional to their use of the element. In no case can the recovery of this cost exceed 100%. This is emphasized over and over in the FCC order citations that follow.

Q **WHAT IS THE LEGAL BASIS FOR THIS POSITION?**

A. In the *First Report and Order* CC Order 96-325 the FCC defines reciprocal compensation at ¶ 1034:

> 1034. We conclude that section 251(b)(5) reciprocal compensation obligations should apply only to traffic that originates and terminates within a local area, as defined in the following paragraph. We disagree with Frontier's contention that section 251(b)(5) entitles an IXC to receive reciprocal compensation from a LEC when a long-distance call is passed from the LEC serving the caller to the IXC. Access charges were developed to address a situation in which three carriers -- typically, the originating LEC, the IXC, and the terminating LEC -- collaborate to complete a long-distance call. As a general matter, in the access charge regime, the long-distance caller pays long-distance charges to the IXC, and the IXC must pay both LECs for originating and terminating access service.[34] **By contrast, reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call. In this case, the local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier**

[34] 96-325 footnote -- In addition, both the caller and the party receiving the call pay a flat-rated interstate access charge -- the end-user common line charge -- to the respective incumbent LEC to whose network each of these parties is connected.

> **for completing the call. This reading of the statute is confirmed by section 252(d)(2)(A)(i), which establishes the pricing standards for section 251(b)(5). Section 251(d)(2)(A)(i) provides for "recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier."**[35] We note that our conclusion that long distance traffic is not subject to the transport and termination provisions of section 251 does not in any way disrupt the ability of IXCs to terminate their interstate long-distance traffic on LEC networks. Pursuant to section 251(g), LECs must continue to offer tariffed interstate access services just as they did prior to enactment of the 1996 Act. We find that the reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport or termination of interstate or intrastate interexchange traffic. (Emphasis added)

Further, while the FCC retained sole jurisdiction over the definitions of local exchange areas for wireless carriers, it ceded that jurisdiction over wireline carriers to the state commissions *First Report and Order* CC Order 96-325 the FCC defines reciprocal compensation at ¶ 1035:

> 1035. With the exception of traffic to or from a CMRS network, state commissions have the authority to determine what geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under section 251(b)(5), consistent with the state commissions' historical practice of defining local service areas for wireline LECs. Traffic originating or terminating outside of the applicable local area would be subject to interstate and intrastate access charges. We expect the states to determine whether intrastate transport and termination of traffic between competing LECs, where a portion of their local service areas are not the same, should be governed by section 251(b)(5)'s reciprocal compensation obligations or whether intrastate

[35] *96-325 footnote* -- 47 U.S.C. § 252(d)(2)(A)(i).

> access charges should apply to the portions of their local service areas that are different. This approach is consistent with a recently negotiated interconnection agreement between Ameritech and ICG that restricted reciprocal compensation arrangements to the local traffic area as defined by the state commission.36 Continental Cablevision, in an ex parte letter, states that many incumbent LECs offer optional expanded local area calling plans, in which customers may pay an additional flat rate charge for calls within a wider area than that deemed as local, but that terminating intrastate access charges typically apply to calls that originate from competing carriers in the same wider area.37 Continental Cablevision argues that local transport and termination rates should apply to these calls. We lack sufficient record information to address the issue of expanded local area calling plans; we expect that this issue will be considered, in the first instance, by state commissions. In addition, we expect the states to decide whether section 251(b)(5) reciprocal compensation provisions apply to the exchange of traffic between incumbent LECs that serve adjacent service areas. (Emphasis added)

In defining the responsibility of the ILEC to pay reciprocal compensation charges to offset the costs incurred by other carriers in completing calls to or from ILEC customers the commission wrote first about corporate responsibility between carriers, not about the methods the opposing carrier chose to implement its circuits:

> 358. Section 251(b)(5) obligates LECs to establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic. **Although section 252(b)(5) does not explicitly state to whom the LEC's obligation runs, we**

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[36] 96-325 footnote -- *See* letter from Albert H. Kramer, Dickstein, Shapiro, Morin & Oshinsky LLP to John Nakahata, Senior Legal Advisor to the Chairman, FCC, July 11, 1996.

[37] 96-325 footnote -- Letter from Brenda L. Fox, Vice President, Federal Relations, Continental Cablevision, to Robert Pepper, Chief, Office of Plans and Policy, FCC, July 22, 1996, attached to Letter from Donna N. Lampert, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., to William F. Caton, Acting Secretary, FCC, July 22, 1996.

> **find that LECs have a duty to establish reciprocal compensation arrangements with respect to local traffic originated by or terminating to any telecommunications carriers.** CMRS providers are telecommunications carriers and, thus, LECs' reciprocal compensation obligations under section 251(b)(5) apply to all local traffic transmitted between LECs and CMRS providers. (Emphasis added)
>
> 359. We conclude that, pursuant to section 251(b)(5), a LEC may not charge a CMRS provider **or other carrier for terminating LEC-originated traffic.** Section 251(b)(5) specifies that LECs and interconnecting carriers shall compensate one another for termination of traffic on a reciprocal basis. This section does not address charges payable to a carrier that originates traffic. We therefore conclude that section 251(b)(5) prohibits charges such as those some incumbent LECs currently impose on CMRS providers for LEC-originated traffic. As of the effective date of this order, a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without charge. (Emphasis added)

Within the Statutory Standard Section of the *First Report and order* (CC Order 96-325) the FCC deals with the payment of reciprocal compensation charges for UNE elements clearly in ¶ 4.

> 360. We conclude that the pricing standards established by section 252(d)(1) for interconnection and unbundled elements, and by section 252(d)(2) for transport and termination of traffic, are sufficiently similar to permit the use of the same general methodologies for establishing rates under both statutory provisions. *Section 252(d)(2) states that reciprocal compensation rates for transport and termination shall be based on "a reasonable approximation of the additional costs of terminating such calls."*[38] Moreover, there is some substitutability between the new entrant's use of unbundled network elements for transporting traffic and its use of transport under section 252(d)(2). Depending on the interconnection

[38] 96-325 footnote -- 47 U.S.C. § 252(d)(2)(A)(ii).

> arrangements, carriers may transport traffic to the competing carriers' end offices or hand traffic off to competing carriers at meet points for termination on the competing carriers' networks. Transport of traffic for termination on a competing carrier's network is, therefore, largely indistinguishable from transport for termination of calls on a carrier's own network. Thus, we conclude that transport of traffic should be priced based on the same cost-based standard, whether it is transport using unbundled elements or transport of traffic that originated on a competing carrier's network. We, therefore, find that the "additional cost" standard permits the use of the forward-looking, economic cost-based pricing standard that we are establishing for interconnection and unbundled elements.[39] (Emphasis added)

Here the FCC clearly represents the use of unbundled elements to deploy service as being every bit as entitled to cost recovery by collecting reciprocal compensation as the corresponding method or network buildout by the competitive LEC. Further the FCC clearly equates reciprocal compensation to be a cost recovery mechanism, and in the instant issue it is undisputed that all of the **costs** for the UNE circuit under consideration have been born by Supra Telecom. This mechanism is the method by which the FCC compensates Supra for performing work on behalf of BellSouth, since BellSouth has charged Supra for all costs incurred in providing service via loop and port, now BellSouth must pay some of that cost back to Supra to terminate calls on behalf of BellSouth .

Q **WHAT SPECIFIC RELIEF IS REQUESTED BY SUPRA?**

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[39] 96-325 footnote -- *See supra,* Section VII.B.

Supra merely requests that the parties' Follow-On Agreement follow the current state of the law in all matters, and specific to this issue, if Supra is operating as a facilities based provider, and Supra is operating as a facilities-based provider via UNEs, Supra, not BellSouth, is entitled to collect reciprocal compensation, CCLC, TIC, SLC, EUCLs and access charges from any circuit served by UNE or UNE combination(s)

Supra requests that this Commission ensures that the Follow On Agreement include a liquidated damages provision to provide incentives for BellSouth's compliance with these rules and orders.

Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

Issue 19: Should calls to Internet Service Providers be treated as local traffic for the purposes of reciprocal compensation?

Q **WHAT IS THE CURRENT STATE OF THE LAW ON THIS ISSUE?**

A. This issue has become effectively moot since the filing of this arbitration. I cannot understand why BellSouth has continued to make it an open issue since the FCC order on this matter, unless they are trying to shirk their responsibility for payment throughout a prolonged appeal. Delay only harms Supra. Supra would expect BellSouth to surrender its position and fall in line with current FCC rulings and Part 51, Subpart H of Title 47 of the Code of Federal Regulations (C.F.R.) as adopted on April 18, 2001. In that order the FCC amended the rules on reciprocal compensation to remove the word "local" and to provide for reciprocal compensation regulations in a clear and unambiguous fashion:

> "... Finally, we hope this Order brings an end to the legal confusion resulting from the Commission's historical treatment of ISP-bound traffic, for purposes of jurisdiction and compensation, and the statutory obligations and classifications adopted by Congress in 1996 to promote the development of competition for all telecommunications services. We believe the analysis set forth above amply responds to the court's mandate that we explain how our conclusions regarding ISP-bound traffic fit within the governing statute.[40,,41]

Q **WHAT SPECIFIC RELIEF IS REQUESTED BY SUPRA?**

Supra merely requests that the parties' Follow-On Agreement follow the current state of the law in all matters, and specific to this issue, if Supra terminates calls from Bellsouth customers to ISP's who are Supra customers, and to pay BellSouth if it is vice-versa.

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[40] CC order 01-131 footnote - *Bell Atlantic*, 206 F.3d at 8.
[41] CC order 01-131 § 95, Conclusion

Supra requests that this Commission ensures that the follow-on agreement include a liquidated damages provision in the parties' Follow On Agreement to provide incentives for BellSouth's compliance with these rules and orders.

Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

Issue 21: What does "currently combines" mean as that phrase is used in 57 C.F.R. § 51.315(b)(Network Elements and Combinations, Attachment 2, Section 2.7.1)?

Q **DOES BELLSOUTH ACHIEVE A COMPETITIVE ADVANTAGE OVER AN ALEC IF IT PREVAILS ON THIS ISSUE?**

A. Of course. It means that BellSouth gets first shot at any and all new telephone circuits installed in an area -- they cannot be provisioned by a UNE combination provider. It is not sufficient to merely say "Well the customer can be provisioned as resale." The simple fact is that not all telecommunications carriers possess the ability to order circuits both as UNE Combination, or as Resale.

Issues such as not having an agreement that covers both, employees training, and the complex and costly methods needed to achieve electronic bonding with BellSouth's CLEC OSS's. In this particular case I can affirmatively state that the products one must buy from OSS middleware vendors (at price tags exceeding 1 million dollars) support one regime or the other. Even in the rare occasions today where a vendor is finally able to offer both, the costs are doubled and may prove prohibitive to a startup like Supra. In the best of circumstances, BellSouth's own CLEC OSS - LENS, requires different procedures and training; there are limitations placed upon the ALEC related to existing customer xDSL services, and other issues.

Q **WHAT DOES "CURRENTLY COMBINES" MEAN?**

A. To start with, there is a world of difference between the term "Currently Combines" and "Currently Combined". In Florida docket 00-731, the recent arbitration between AT&T and BellSouth, much was written on this issue in an attempt to make a case that the two terms were identical. With all due respect, the English language does not allow for that leap of faith. "Currently Combined" uses the past tense of the verb "combine", and since currently does not modify that term in any way, it clearly indicates that two or more items are, at the very present time, already combined. "Currently Combines" is the uses the present and future tenses of "combine", a form of the word that covers in the recent context of "Currently" present and future activities. In other words, the ability and

likelihood that BellSouth will in the near future, combine these elements as they would for a tariffed product.

Had Congress intended to restrict the UNE entry strategy so that it could **not** accomplish circuits possible over resale and collocation, (i.e. the connection of new service at a customers premises), it could have done so by the simple expedient of using the past tense of the word "combine", i.e. "combine**d**." That Congress did not choose that form, and instead used "Currently Combines", implicitly gives broader meaning to the term than what BellSouth seeks to have ordered in this case.

Q **WHAT SPECIFIC RELIEF IS REQUESTED BY SUPRA?**

Supra merely requests that the parties' Follow-On Agreement follow the current state of the law in all matters, and specific to this issue, recognize the difference between "Currently Combines" and previous attempts to have the FPSC rule that it means "Currently Combined" . Supra requests a fining that "Currently Combines" is found to be representative of normal, expected, and possible future work done to establish a BellSouth tariffed telecommunications service and that Supra be granted full rights to effect the same via UNE combinations in such clear language that further litigation will not be necessary.

Supra requests that this Commission ensures that the Follow On Agreement include a liquidated damages provision to provide incentives for BellSouth's compliance with these rules and orders.

Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

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? If so, what charges, if any, should apply?

---------- And ----------

Issue 24: Should BellSouth be required to combine network elements that are not ordinarily combined in its network? If so, what charges, if any, should apply?

Q **ARE THERE ANY DIFFERENCES BETWEEN ISSUE 23 AND ISSUE 24?**

A. In seeking to escape its requirement to combine UNE(s) by arguing that BellSouth is only obligated to offer UNE combinations for circuits that are already combined, BellSouth has caused these two issues to be identical. Supra does not agree that BellSouth's position is sustainable given the current state of

the law, however in the interests of avoiding duplicative arguments, I will address these two issues simultaneously.

Q HAVE THE PARTIES ESTABLISHED ANY HISTORY REGARDING THE ORDERING OF UNE COMBINATIONS?

A. Yes. BellSouth, after having contracted with Supra Telecom to combine UNEs in not one, but two Interconnection Agreements, steadfastly refused to honor its contractual obligations. In fact, the first interconnection agreement between the parties contained provisions for cost based UNE combinations on the day it was signed by Supra Telecom. By the time it was filed with the FPSC, the Eighth Circuit Court made its ill-advised and subsequently overturned decision in *AT&T v. Iowa Utilities Bd.* (Iowa Utilities Board I). In commercial arbitration between Supra and BellSouth the arbitrators found that:

> "It is undisputed that, before the executed agreement was filed with the FPSC, Finlen compiled a different version with an Attachment 2 that deleted BellSouth's obligation to provide UNE Combos and a new signature page with mis-aligned paragraphs. It also cannot be disputed that the replaced Attachment 2 in Supra's agreement appeared only days after the Eighth Circuit Court of Appeals had ruled in *AT&T v. Iowa Utilities Board*, 124 F. 3d 934 (8th Cir. 1997) calling into question an ILEC's duty to provide UNE Combos to CLECs such as Supra."[42]

[42] Supra Exhibit # DAN-3 -- Commercial Arbitration Award Supra Telecommunications v. BellSouth Telecommunications at pg. 13

Despite Supra's repeated attempts to order UNE combinations from this agreement, despite the fact that the altered Agreement was subsequently replaced with the correct version in Florida and the other 8 states where BellSouth filed altered agreements, BellSouth never provided a single UNE combination, ordering instructions of any kind, or even an OSS that was capable of ordering UNE combinations under that agreement.

To overcome BellSouth's refusal, Supra adopted the already arbitrated AT&T/BellSouth Agreement in Florida on October 5, 1999. Despite this Commission's unambiguous order that BellSouth was obligated under the Agreement to combine UNE(s) for [Supra] at cost based rates, and combine any UNE to any other UNE(s)[43], BellSouth still refused to accept orders, or provide OSS and / or effective ordering instructions, or to modify Supra's OSS profile to allow ordering of UNE combinations until June 18, 2001.

For its own reasons, BellSouth is willing to violate contractual and FPSC orders requiring it to provide UNE combinations at cost based rates, despite the specter of potential legal and financial penalties. (Thus proving to this Commission that the inclusion of a limitation of liability provision or inclusion of same without Supra's suggested exceptions, is not a viable incentive for BellSouth to comply with the terms of the Agreement nor state or federal law.) This should be

[43] FPSC Order PSC-98-0810-FOF-TP

considered when listening to any BellSouth argument on this subject. In its June 5, 2001 Commercial Award, the CPR Tribunal ruled:

> The Tribunal finds that BellSouth failed for well over a year to provide Supra with the necessary instructions and information to order UNEs and UNE Combos using the Local Exchange Navigation System ("LENS") interface to BellSouth's ordering systems. In late 1999 and early 2000, BellSouth considered the UNEs and UNE Combos available to Supra to be "obsolete" because the Interconnection Agreement was due to expire at the end of its three-year term in June 2000. Arb. II, Tr., at 967, lines 18-25. AT&T had negotiated a separate so-called "UNE-P" agreement covering different UNEs and UNE combinations and different prices and BellSouth was focusing its marketing and service resources on the UNE-P marketplace. Arb. II, Tr., p. 968, lines 2-23.
>
> BellSouth's ordering "profile" for Supra did not recognize a UNE-provider order for UNEs and UNE Combos under the Interconnection Agreement. There were no BellSouth written procedures in early 2000 for Supra to submit UNEs and UNE Combo orders through LENS. Arb. II, Tr., at p. 963, lines 13-19. After repeated requests from Supra, BellSouth processed four "test" orders for UNEs that were typed by BellSouth "directly into the system. There was no mechanical way we could determine for them to do that." Arb. II, Tr., p. 964, lines 21-23. Even the BellSouth team worked 5-6 days to complete the test orders. Arb. II, Tr., p. 983, lines 15-17."[44] (Emphasis added)

In an illustration of BellSouth's bad faith towards Supra in this regard the Arbitrators wrote:

> "Apropos of a dispute on a separate, but related, TAG interface issue, BellSouth was evasive and uncooperative because for "[t]his customer of all customers to communicate this lack of resource issue to [us] is very inopportune. Supra is so litigious, we endeavor to keep the ball in their court as much as possible." Arb. II, Supra Ex. 51. In the view of the Tribunal, BellSouth

[44] Supra Exhibit # DAN-3 -- -- Commercial Arbitration Award Supra Telecommunications v. BellSouth Telecommunications at pg. 15

> attempted to give the impression of responding to Supra in a substantive manner, without actually doing so, until just before the hearing in the second arbitration in April 2001."[45]

In its conclusion of the Arbitration Award, the Tribunal found:

> "The evidence shows that BellSouth breached the Interconnection Agreement in material ways and did so with the tortious intent to harm Supra, an upstart and litigious competitor. The evidence of such tortious intent was extensive, including BellSouth's deliberate delay and lack of cooperation regarding UNE Combos, switching Attachment 2 to the Interconnection Agreement before it was filed with the FPSC, denying access to BellSouth's OSS and related databases, refusals to collocate any Supra equipment, and deliberately cutting-off LENS for three days in May 2000."[46]

In considering any of BellSouth's claims regarding UNE combinations, it is imperative to at all times view such claims in the light of BellSouth's proven record of refusal to comply with this Commission's orders, its contractual obligations, its "tortious intent to harm". It is BellSouth's policy to avoid providing cost based UNE combinations to competitors that forms the basis of their position on this issue. That policy is anti-competitive and designed to appear to regulatory bodies as " to give the impression of responding to Supra in a substantive manner, without actually doing so."

Q SHOULD BELLSOUTH BE DIRECTED TO PERFORM, UPON REQUEST, THE FUNCTIONS NECESSARY TO COMBINE

[45] Id, pg. 16.
[46] Id, pg. 40.

UNBUNDLED NETWORK ELEMENTS THAT ARE ORDINARILY COMBINED IN ITS NETWORK?

A. Yes.

Q **WHAT IS THE LEGAL BASIS FOR THIS POSITION?**

A. Despite the fact that BellSouth and Supra have had in continuous effect, since June of 1997, an agreement requiring that BellSouth provision recombined Network Elements for Supra at Cost based rates, Supra's current agreement expired without Supra ever being allowed to enjoy the benefits of ordering and receiving UNE combinations. It would not be improper to require BellSouth provide UNE combinations for no other reason than to compensate Supra for the deceitful denial of the contracted services since 1997.

Beyond that, the law is very clear on this issue despite the RBOCs attempts to avoid their responsibility by arguing otherwise for the past 5 years. C.F.R. 47 §51.309 states that BellSouth must provide without

> "limitations, restrictions, or requirements on request for, or the use of, unbundled network elements that that would impair the ability of a requesting telecommunications carrier to offer a telecommunications **service in the manner the requesting telecommunications carrier intends**." (Emphasis added)

The law clearly states **"in the manner the requesting telecommunications carrier intends."**[47] It does NOT state in the manner that BellSouth intends, nor does the Act make any provision for the ILEC to determine, limit, coerce, or

[47] Id.

mandate an ALEC to limit the uses it has for a UNE to anything other than **"a telecommunications service"**[48]. The definition of a Telecommunications Service is as set forth in the Communications Act of 1934, as amended, by the Telecommunications Act of 1996:

> (46) TELECOMMUNICATIONS SERVICE. – The term telecommunications service means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.[49]

So as long as Supra is providing a telecommunications service, and not interfering with other users, BellSouth cannot dictate uses of UNEs, and they cannot require collocation as a method to combine the UNEs into services.

> "But whether an requesting carrier can access the incumbents network in whole or in part, we think that the Commission reasonably omitted a facilities ownership requirement. The 1996 Act imposes no such limitation; if anything it suggests the opposite, by requiring in § 251(c)(3) that incumbents provide access to "any" requesting carrier. **We agree with the Court of Appeals that the Commissions refusal to impose a facilities-ownership requirement was proper."** [50] (Emphasis added)

Yet BellSouth offers no information as to HOW such UNEs might be combined by an ALEC, given that the Supreme Court has ruled there can be no collocation requirement placed upon an ALEC for this purpose.

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[48] Id.
[49] The Communications Act of 1934, as amended, SEC 3(46) [47 U.S.C. 153] Definitions,
[50] **Error! Reference source not found.** *AT&T v. Iowa Utilities Bd.* 525 U.S. 366, 119 S.Ct 721 (Iowa Utilities Board II) at pg. 392.

Nor does BellSouth address how its arguments true up with the three prongs of the entry strategy as defined by the Act.

> 12. The Act contemplates three paths of entry into the local market -- the **construction of new networks, the use of unbundled elements of the incumbent's network, and resale.** The 1996 Act requires us to implement rules that eliminate statutory and regulatory barriers and remove economic impediments to each. We anticipate that some new entrants will follow multiple paths of entry as market conditions and access to capital permit. **Some may enter by relying at first entirely on resale of the incumbent's services and then gradually deploying their own facilities.** This strategy was employed successfully by MCI and Sprint in the interexchange market during the 1970's and 1980's. **Others may use a combination of entry strategies simultaneously -- whether in the same geographic market or in different ones. Some competitors may use unbundled network elements in combination with their own facilities to serve densely populated sections of an incumbent LEC's service territory, while using resold services to reach customers in less densely populated areas. Still other new entrants may pursue a single entry strategy that does not vary by geographic region or over time.** *Section 251 neither explicitly nor implicitly expresses a preference for one particular entry strategy. Moreover, given the likelihood that entrants will combine or alter entry strategies over time, an attempt to indicate such a preference in our section 251 rules may have unintended and undesirable results.* Rather, our obligation in this proceeding is to establish rules that will ensure that all pro-competitive entry strategies may be explored. **As to success or failure, we look to the market, not to regulation, for the answer** [51] (Emphasis Added)

BellSouth would have us believe that there is legal basis that allows UNE Combinations to be less effective, less pervasive, to offer fewer circuit variations,

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[51] 96-325 para 12 where the FCC defines the three pronged entry strategy provided for competitors under the Act. The FCC goes to great lengths to identify that the three prongs were equal and that they steadfastly avoided any distortions between the three prongs.

or to be provided to a smaller group of customers than resale or an ALECs own network. To subscribe to this would violate one of the most important tenant of the Act, so important it is documented in ¶ 12 of an order containing 1441 paragraphs. BellSouth cannot prevail on this issue without violating this section of the *First Report and Order.*

Q **WHAT IS THE PREVAILING LAW ON THIS ISSUE?**

A. UNE Combinations as an equal and effective means of providing Telecommunications services (in lieu of Resale or Collocation) is an issue that RBOCs in general and BellSouth in particular has vigorously fought since the Telecom Act was promulgated. After reviewing dozens of citations to prove this point, I feel nothing can illustrate this point as simply as the FCC's own words in *The UNE Remand Order* CC Order 99-238 at ¶ 12:

> **12. Only recently have incumbent LECs provided access to combinations of unbundled loops, switches, and transport elements,** often referred to as "the platform." Since these combinations of unbundled network elements have become available in certain areas, competitive LECs have started offering service in the residential mass market in those areas. For example, in January of this year, Bell Atlantic, as part of an agreement with the New York Public Service Commission, began offering the unbundled network element platform out of particular end offices in New York City. As a result, MCI WorldCom had acquired upwards of 60,000 new local residential customers in New York as of June 1999.[52] AT&T

[52] CC Order 99-238 Footnote -- *Id.* at para. 17.

also plans to serve local residential customers over the platform in Texas.[53] (Emphasis Added)

Here the FCC Acknowledges that ALECs have been denied UNE combinations nationwide from the creation of the Act until limited deployment began in 1999. Supras own access to order UNE combinations is today extremely poor and was non-existent before June 18, 2001.[54]

As part of its grudging acceptance of its statutory obligation to provide UNE Combinations to ALECs in general and Supra in particular, BellSouth is still trying to limit its exposure by trying to limit the telecommunications circuits that can be provisioned by UNE combinations. Why? They know as we all do, that , only because the margins on Resale are so thin as to be non profitable for ALECs, and the startup costs for a collocated facilities based provider are so high (and the recent failure rate so obvious to us all), that if BellSouth can prevail on limiting the types of circuits that can be provided as UNE Combinations or UNE-P, then in effect, BellSouth will win the battle for local competition. Let us be very clear on this fact.

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[53] CC Order 99-238 Footnote -- Letter from Frank S. Simone, Government Affairs Director, AT&T, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, Attachment at 4-5 (filed June 25, 1999).

[54] Supra Exhibit # DAN-3 -- -- Commercial Arbitration Award Supra Telecommunications v. BellSouth Telecommunications at pg. 15
"Apropos of a dispute on a separate, but related, TAG interface issue, BellSouth was evasive and uncooperative because for "[t]his customer of all customers to communicate this lack of resource issue to [us] is very inopportune. Supra is so litigious, we endeavor to keep the ball in their court as much as possible." Arb. II, Supra Ex. 51. In the view of the Tribunal, BellSouth attempted to give the impression of responding to Supra in a substantive manner, without actually doing so, until just before the hearing in the second arbitration in April 2001."

To be perfectly clear, 47 CFR § 51.311 imposes a duty upon ILECs to provide unbundled network elements, as well as the quality of the access to such, at least at the level of quality equal or superior to that the ILEC provides to itself. At issue is who should be responsible for combining such network elements. Should the Commission impose the obligation upon Supra to combine such, Supra requests some guidance as to how the Commission proposes to allow Supra access to the requested network elements so as to be able to combine them.

1. There are two unanswered questions in BellSouth's view of this issue: Must an ALEC be allowed to combine UNE(s) without restriction.
2. If BellSouth is allowed to be relieved of its obligation to combine UNE(s) on behalf of the ALEC, how exactly will that be handled without violating other provisions of law.

Frankly this issue is so heavily intertwined with other law, that BellSouth's position is unsustainable.

First regarding the availability of network elements and combinations to ALECs, C.F.R. 47 §51.309 states that BellSouth must provide without

> "limitations, restrictions, or requirements on request for, or the use of, unbundled network elements that that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service **in the manner the requesting telecommunications carrier intends.**" (Emphasis added)

Combinations of UNEs were upheld by the Supreme Court in *AT&T v. Iowa Utilities Bd.* 525 U.S. 366, 368(1999)(Iowa Utilities Board II):

> (d) Rule 315(b), which forbids incumbents to separate already-combined network elements before leasing them to competitors, reasonably interprets § 251(c)(3), which establishes the duty to provide access to network elements on **nondiscriminatory rates, terms, and conditions and in a manner that allows requesting carriers to combine such elements that** *are* **provided in discrete pieces, but it does not say, or even remotely imply, that elements** *must* **be provided in that fashion**. Pp 736-738. (Bold emphasis added, Italics by the Supreme Court)

Here it could not be clearer -- UNE(s) Sold by the ILEC must be provided in a form that allows them to be combined at the ALECs request. It does not necessarily say that the ALEC must perform the work themselves. In fact, the final thought is that ILEC may provide the combinations themselves to avoid having to allow the ALEC to effect the combination. It also deals with "nondiscriminatory ... terms". If the ILEC is providing a tariffed telecommunications service, the ALEC must have the right to duplicate that service using UNEs. Said UNEs must be provided combined as requested or in a manner that allows recombination. No BFR process or other anti-competitive barrier must be allowed to bar an ALEC's ability to compete with the ILEC for business on tariffed communications services. Here again we look to *AT&T v. Iowa Utilities Bd.* 525 U.S. 366, 736 (1999) for guidance:

> TELRIC allows an entrant to lease network elements based on forward looking costs, Rule 319 subjects virtually all network elements to the unbundling requirement, and the all-elements rule allows requesting carriers to rely only on the incumbents network in provising service. When rule 315(b) is added to these, a competitor can lease a complete, preassembled network at (allegedly very low) cost based rates. (Emphasis added)

The Supreme Court reaffirms that all network elements, up to and including the **entire** BellSouth network may be leased from BellSouth at cost based rates. Such language defies any attempt to limit the scope of these issues.

The final Agreement language presented must be very clear in terms that all UNE equivalents of all tariffed communications are covered in the base agreement and that the ALEC may combine any UNE with any other UNE(s) at their request.

Second on the issue of who will combine UNE(s), the Supreme Court has already ruled that collocation cannot be a requirement placed upon an ALEC for this purpose. In fact, in *AT&T v. Iowa Utilities Bd.* 525 U.S. 366, 392 (1999), the Supreme Court held that facilities ownership **was not** a requirement that LECs may impose upon an ALEC for the use or combination of a UNE:

> "But whether an requesting carrier can access the incumbents network in whole or in part, we think that the Commission reasonably omitted a facilities ownership requirement. The 1996 Act imposes no such limitation; if anything it suggests the opposite, by requiring in § 251(c)(3) that incumbents provide access to "any" requesting carrier. **We agree with the Court of Appeals that the Commissions refusal to impose a facilities-ownership requirement was proper."** [55] (Emphasis added)

So if BellSouth is not allowed to require Supra to collocate in order to effect recombination of UNE(s), how then will the combination be effected? BellSouth

seeks an anti-competitive advantage in shirking its responsibility to combine network elements while simultaneously seeking to avoid providing a means for competitive LECs to do so for themselves. The **only** way BellSouth's positions could be sustained on this issue is if **all** competitors had the unbridled right to enter any and all BellSouth central offices for the purpose of effecting their own crossconnects, facilities assignments and switch translations. Such ALECs would need to be provided full access to all BellSouth OSS's including PREDICTOR, LFACS, COSMOS, ERMA and all other facilities and provisioning interface that are currently restricted from ALEC access. This is not a revolutionary idea. In 1996, AT&T got BellSouth to agree to this access by AT&T personnel if BellSouth refused to combine any UNE to any other UNE at AT&T's request. Since we are negotiating a follow-on agreement to that very agreement, this language is necessary to protect Supra and other ALECs from BellSouth's anti-competitive tactics. Short of providing that relief to all ALECs, BellSouth must not be allowed to prevail on this issue.

Q **IS THERE ANY OTHER TESTIMONY YOU WISH TO OFFER?**

A. Yes. I wish to adopt the Direct Testimony of Gregory R. Follensbee, formerly of AT&T now the lead contract negotiator at BellSouth for Supra's Interconnection agreement with BellSouth. This testimony was filed in Florida

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[55] -- *AT&T v. Iowa Utilities Bd.* 525 U.S. 366, 119 S.Ct 721 (Iowa Utilities Board II) at pg. 392.

Docket 00-731, AT&T's Interconnection Agreement arbitration against BellSouth.[56]

In this context I will be adopting his testimony in regard to AT&T issue numbers 23 and 24 as related to the cost issues Mr. Follensbee testified to in AT&T issue 6, which resides on pages 5-9 of his testimony. The only exception I take to Mr. Follensbee is that Supra is not requesting this Commission to make a finding on the cancellation charges for tariffed services. Supra does request that this Commission order language allowing combination of network elements as ordered by Supra, regardless of whether or not they re-create Tariffed services.

Q **ARE THERE ANY OTHER ISSUES REGARDING THIS QUESTION?**

A. In the recent AT&T v. BellSouth arbitration (Docket 00-731-TP) the staff recommendation contains the following quotation:

> Though framed in a different manner, this issue is similar to an issue in the recent arbitration in Docket No. 000828-TP, the Sprint/BellSouth arbitration. In **this** case, however, the specific issue considers whether the aggregation **of** lines provided to multiple locations **of** a single customer is allowable in determining whether BellSouth must offer unbundled local switching as a UNE.

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[56] Supra Exhibit # DAN-5-- Direct Testimony of Gregory R. Follensbee, formerly of AT&T now the lead contract negotiator at BellSouth for Supra's Interconnection agreement with BellSouth. This testimony was filed in Florida Docket 00-731, AT&T's Interconnection Agreement arbitration against BellSouth.

> As in the Sprint/BellSouth arbitration, an underlying assumption is that alternative switching providers are likely to be located in the Density Zone 1 areas in Florida, which include the Miami, Orlando, and Ft. Lauderdale Metropolitan Statistical Areas (MSAs) .

It is not merely enough to **assume** that there is local switching available to meet the FCC requirement, because there really isn't such a supply. Look at the record. Bot AT&T and Sprint, arguably the 1st and 3rd largest CLEC organizations in the country **both** petitioned the FPSC to require BellSouth to sell Unbundled Local Switching. If these two behemoths cant

1. Supply their own switching in the top 50 MSA's
2. Have enough clout in the industry to identify suppliers of unbundled switching that can provide same to customers of BellSouth's UNEs,

then frankly, the supply doesn't actually exist. Supra maintains that the availability of Unbundled Local Switching in the Top 50 MSA's is an illusory issue. It should exist, but it doesn't.

BellSouth bears the burden of proof in this case and should be required to prove to this Commission that a supply of Unbundled Local Switching exists to allow customers of its EEL UNE to obtain local switching without the need for facilities ownership by the ALEC, which would be prohibited by *AT&T v. Iowa Utilities Bd.* (Iowa Utilities Board II).

This Commission should order BellSouth to prove that a discontinuation of the unbundled Local Switching Product will not affect the telephone subscribers of Florida. Supra has over 70,000 customer lines served by UNE combinations. Is the Commission clear on what will happen to these customers is BellSouth is allowed to discontinue Local Switching UNE, or raise its rate from $1.62 to $14.00 (or more) per port? The potential for BellSouth to exercise anti-competitive behavior is too great for the FPSC not to regulate this issue further.

Q **WHAT SPECIFIC RELIEF IS SOUGHT BY SUPRA?**

A. Supra merely requests that the parties' Follow-On Agreement follow the current state of the law in all matters, and specific to this issue, BellSouth should be directed to perform, upon request, the functions necessary to combine unbundled network elements that are ordinarily combined in its network. Further BellSouth should be required to combine network elements that are not ordinarily combined in its network.

In the abundance of caution, should this Commission rule against this specific relief, Supra would request that BellSouth be ordered to provide all UNEs to Supra Telecom in a manner that allows Supra Telecom to effect their own crossconnects, facilities assignments and switch translations and any other tasks required to combine UNE(s). Such ALECs would need to be provided full access to all BellSouth OSS functions supported by an BellSouth's databases and information, including PREDICTOR, LFACS, COSMOS, ERMA and all other

facilities and provisioning interfaces and OSS functions that are currently restricted from ALEC access. This language should be inserted in the language as a contract defined alternate requirement on BellSouth if for **any** reason (manpower shortage, strike, Act of God, anti-competitive behavior on BellSouth's part, etc.) This provision should be invoked automatically anytime BellSouth refuses to perform combination of one or more Unbundled Network Elements where the equivalent circuit could and would be provisioned by BellSouth as a Retail or other tariffed service.

The labor to effect such combinations should be performed by BellSouth at TELRIC cost. This should be reflected as a one time, non recurring cost, constant with the manner in which it is performed and the number of carriers that will benefit (Supra alone).

There shall be no monthly recurring costs charged for elements that do not have a physical representation (i.e. they don't exist). All elements shall be charged to Supra at TELRIC cost.

Supra shall have rights to exclusive use of unbundled loop elements, regardless if the UNE is used alone, or in combination with other network elements provided by BellSouth or any other carrier.

This Commission should order BellSouth to prove that a discontinuation of the unbundled Local Switching Product will not affect the telephone subscribers of Florida.

Supra requests that this Commission ensures that the Follow On Agreement include a liquidated damages provision to provide incentives for BellSouth's compliance with these rules and orders.

Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

Issue 25 B: Should UNEs ordered and used by Supra Telecom be considered part of its network for reciprocal compensation, switched access charges and inter/intra LATA services?

Q **SHOULD UNES ORDERED AND USED BY SUPRA TELECOM BE CONSIDERED PART OF ITS NETWORK FOR RECIPROCAL COMPENSATION, SWITCHED ACCESS CHARGES INTER/INTRA**

LATA SERVICE, COMMON CARRIER IN TRANSPORT / TANDEM CHARGES AND SUBSCRIBER LINE CHARGES (EUCL).

A. Yes.

Q CAN YOU EXPLAIN THE ISSUES REGARDING THE MONTHLY *RECURRING CHARGES COLLECTED FROM OTHER CARRIERS* AS IT PERTAINS TO THIS QUESTION?

A. Certainly. I explained the issues related to reciprocal compensation in my answer to issue 14 and will adopt that answer fully in partial answer to this question. Specifically the cite I presented there to the FCC CALLS order (00-193) at ¶ 5 bears repeating:

> 5. For much of this century, most telephone subscribers obtained both local and long-distance services from the same company, the pre-divestiture Bell System, owned and operated by AT&T. Its provision of local and intrastate long-distance services through its wholly-owned operating companies, the Bell Operating Companies (BOCs), was regulated by state commissions. The Commission regulated AT&T's provision of interstate long-distance service. **Much of the telephone plant that is used to provide local telephone service, such as the local loop,[57] is also needed to originate and terminate interstate long-distance calls. Consequently, a portion of the costs of this common plant historically was assigned to the interstate jurisdiction and recovered through the rates that AT&T charged for interstate long-distance calls.** *The balance of the costs of the common plant was assigned to the intrastate jurisdiction and recovered through the charges for intrastate services regulated by the state commissions.* **The system of allocating costs between the interstate and intrastate jurisdictions is known as the separations process.**

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[57] 96-325 footnote -- A local loop is the connection between the telephone company's central office building and the customer's premises.

> The difficulties inherent in allocating the costs of facilities that are used for multiple services between the two jurisdictions are discussed below. (Emphasis added).

This issue, like issue 14, is related to the recovery of costs for services provided under one jurisdiction where some or all of the circuit facilities are provided by a service provider providing services under another jurisdiction. In this rather than the carrier to carrier cost recovery exclusively discussed in issue 14, where are here also discussing the recovery of costs that must be properly and separately allocated to intraLATA, intrastate, and interstate jurisdictions. Again a reminder that cost recovery cannot exceed 100% of cost. To better understand these charges I refer to the FCC's *First Report and Order* at ¶ 718 for the cost recovery a LEC (ILEC or ALEC) is entitled to recover from other telecommunications carriers:

> 718. The access charge system includes non-cost-based components and elements that at least in part may represent subsidies, such as the carrier common line charge (CCLC) and the transport interconnection charge (TIC). **The CCLC recovers part of the allocated interstate costs for incumbent LECs to provide local loops to end users.** In the universal service NPRM, we observed that the CCLC may result in higher-volume toll users paying rates that exceed cost, and some customers paying rates that are below cost. We sought comment on whether that subsidy should be continued, and on whether and how it should be restructured.[58] **The nature of most of the revenues recovered through the TIC is unclear and subject to dispute, although a portion of the TIC is associated with certain costs related to particular transport facilities. Although the TIC was not created to subsidize local rates, some parties have argued in the *Transport***

[58] 96-325 footnote -- *Universal Service* NPRM at paras. 113-14.

> **proceeding and elsewhere that some portion of the revenues now recovered through the TIC may be misallocated local loop or intrastate costs that operate to support universal service.**[59] In the forthcoming access reform proceeding, we intend to consider the appropriate disposition of the TIC, including the development of cost-based transport rates as directed by the United States Court of Appeals for the District of Columbia Circuit in *Competitive Telecommunications Association v. FCC* (*CompTel v. FCC*).[60] (Emphasis added)

Such is the nature of the cost recovery from other telecommunications in support of the costs of supplying local service utilized by long distance carriers on a monthly recurring basis. I would note that as citations are presented from 96-325 the TIC charge is alternately referred to as Transport and/or Tandem Interconnection charge. This is one combined charge.

Q PLEASE EXPLAIN THE MONTHLY RECURRING CHARGES COLLECTED FROM END USER SUBSCRIBERS IN SUPPORT OF UNIVERSAL SERVICE.

A. The Subscriber Line Charge (SLC) has many names. It is often known as EUCL (End User Common Line Charge or even the FCC charge for network

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[59] 96-325 footnote -- *Transport Rate Structure and Pricing*, CC Docket No. 91-213, Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd 7006, 7065-7066 (1992) (*First Transport Order*). *Cf.* Letter from Bruce K. Cox, Government Affairs Director, AT&T, to William F. Caton, Acting Secretary, FCC, September 7, 1995 (filed in CC Docket No. 91-213) (suggesting that TIC revenues not allocable to specific transport facilities may represent misallocated common line costs).

[60] 96-325 footnote -- *Competitive Telecommunications Association v. FCC*, No. 96-1168 (D.C. Cir. July 5, 1996).

access on BellSouth's retail bills.) The FCC provides a definition of this charge in the *First Report and Order* at ¶ 364:

> 364. We further conclude that when a carrier purchases a local loop for the purpose of providing interexchange services or exchange access services,[61] **incumbent LECs may not recover the subscriber line charge (SLC) now paid by end users. The SLC recovers the portion of loop costs allocated to the interstate jurisdiction,** but as discussed in Section II.C, *supra*, **we conclude that the 1996 Act creates a new jurisdictional regime outside of the current separations process.** The **unbundled loop charges paid by new entrants under section 251(c)(3) will therefore recover the unseparated cost of the loop, including the interstate component now recovered through the SLC. If end users or carriers purchasing access to local loops were required to pay the SLC in this situation, LECs would enjoy double recovery, and the effective price of unbundled loops would exceed the cost-based levels required under section 251(d)(1).** (Emphasis added)

This section quite shows that if BellSouth were to collect SLC (a.k.a. EUCL) from Supra Telecom, BellSouth would inherently enjoy double recovery of this money, which of course is improper. SLC being a pass through charge is rightfully collected by Supra from the end user and retained, as Supra has already paid BellSouth its portion of this subsidy through the purchase of the specific unbundled elements under which BellSouth is entitled to such subsidy.

Q ARE THERE ADDITIONAL CHARGES INVOLVED?

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[61] 96-325 footnote -- As discussed at *infra*, Section VIII, a different result will occur when interconnecting carriers purchase LEC retail services at wholesale rates under section 251(c)(4).

A. Absolutely, CCLC and SLC are fixed monthly recurring charges in support of universal service. Reciprocal compensation is cost recovery that any LEC is entitled to recover for termination **local** calls originated on another carrier network. By the same token, the same LEC is responsible for paying the equivalent reciprocal compensations charges for calls originated on his network.

Access charges recover the same costs for originating an terminating Long Distance calls on a carriers network. Since there is both a local long distance provider (intraLATA LPIC) in addition to an intra/interstate provider (PIC) these charges are further separated into intraLATA and intra/interstate separations

In the background section of the Access charges section of *First Report and Order* at ¶ 344 the FCC documented:

> 344. Finally, in the NPRM, we tentatively concluded that, if carriers purchase unbundled elements to provide exchange access services to themselves, irrespective of whether they provide such services alone or in connection with local exchange services, **incumbent LECs cannot assess Part 69 access charges in addition to charges for the cost of the unbundled elements.** We based this tentative conclusion on the view that the imposition of access charges in addition to cost-based charges for unbundled elements would depart from the statutory mandate of cost-based pricing of elements.[62] (Emphasis added)

[62] 96-325 footnote -- NPRM at para. 165.

Lest there be any argument that this finding was tentative at the point it was made, the FCC re-affirmed its position on access charges once again in its conclusion *First Report and Order* at ¶ 356

> 356. **We confirm our tentative conclusion in the NPRM** that section 251(c)(3) permits interexchange carriers and all other requesting telecommunications carriers, to purchase unbundled elements for the purpose of offering exchange access services, or for the purpose of providing exchange access services to themselves in order to provide interexchange services to consumers.[63] Although we conclude below that we have discretion under the 1934 Act, as amended by the 1996 Act, to adopt a limited, transitional plan to address public policy concerns raised by the bypass of access charges via unbundled elements, **we believe that our interpretation of section 251(c)(3) in the NPRM is compelled by the plain language of the 1996 Act. As we observed in the NPRM, section 251(c)(3) provides that requesting telecommunications carriers may seek access to unbundled elements to provide a "telecommunications service," and exchange access and interexchange services are telecommunications services. Moreover, section 251(c)(3) does not impose restrictions on the ability of requesting carriers "to combine such elements in order to provide such telecommunications service[s]."[64] Thus, we find that there is no statutory basis upon which we could reach a different conclusion for the long term.** (Emphasis added).
>
> 357. We also confirm our conclusion in the NPRM that, for the reasons discussed below in section V.J, **carriers purchase rights to exclusive use of unbundled loop elements,** and thus, as the Department of Justice and Sprint observe, such carriers, as a practical matter, will have to provide whatever services are requested by the customers to whom those loops are dedicated. **This means, for example, that, if there is a single loop dedicated to the premises of a particular customer and that**

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[63] 96-325 footnote -- *See* NPRM at paras. 159-65.

[64] 96-325 footnote -- 47 U.S.C. § 251(c)(3).

customer requests both local and long distance service, then any interexchange carrier purchasing access to that customer's loop will have to offer both local and long distance services. That is, interexchange carriers purchasing unbundled loops will most often not be able to provide solely interexchange services over those loops.

358. We reject the argument advanced by a number of incumbent LECs that section 251(i) demonstrates that requesting carriers using unbundled elements must continue to pay access charges. Section 251(i) provides that nothing in section 251 "shall be construed to limit or otherwise affect the Commission's authority under section 201."[65] We conclude, however, that our authority to set rates for these services is not limited or affected by the ability of carriers to obtain unbundled elements for the purpose of providing interexchange services. Our authority to regulate interstate access charges remains unchanged by the 1996 Act. What has potentially changed is the volume of access services, in contrast to the number of unbundled elements, interexchange carriers are likely to demand and incumbent LECs are likely to provide. When interexchange carriers purchase unbundled elements from incumbents, they are not purchasing exchange access "services." They are purchasing a different product, and that product is the right to exclusive access or use of an entire element. Along this same line of reasoning, we reject the argument that our conclusion would place the administration of interstate access charges under the authority of the states. When states set prices for unbundled elements, they will be setting prices for a different product than "interstate exchange access services." Our exchange access rules remain in effect and will still apply where incumbent LECs retain local customers and continue to offer exchange access services to interexchange carriers who do not purchase unbundled elements, and also where new entrants resell local service.[66] (Emphasis added)

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[65] 96-325 footnote -- 47 U.S.C. § 251(i).

[66] 96-325 footnote -- The application of our exchange access rules in the circumstances described will continue beyond the transition period described at *infra*, Section VII.

Here the FCC clearly rejects BellSouth's position that they are entitled to collect usage based access charges for traffic exchanged over unbundled loops sold to ALECs by BellSouth. The FCC limits BellSouth's ability to collect Part 69 access charges to **"interexchange carriers who do not purchase unbundled elements, and also where new entrants resell local service."** Thus is a carrier purchase tariffed access products, rather than UNE(s), or for an ALEC under resale are the only tow conditions where BellSouth *is entitled to this revenue.*

Lest there be any further disagreement, the FCC is quite clear on this issue in the *First Report and Order* at ¶ 717:

> 359. Specifically, as we conclude above, the 1996 Act permits telecommunications carriers that purchase access to unbundled network elements from incumbent LECs to use those elements to provide telecommunications services, including the origination and termination of interstate calls. **Without further action on our part, section 251 would allow entrants to use those unbundled network facilities to provide access services to customers they win from incumbent LECs, without having to pay access charges to the incumbent LECs.** This result would be consistent with the long term outcome in a competitive market. In the short term, however, while other aspects of our regulatory regime are in the process of being reformed, such a change may have detrimental consequences. (Emphasis added)

Q **DOES BELLSOUTH'S POSITION SUPRISE YOU?**

A. Not at all. BellSouth has consistently and repeatedly violated this rule by exercising its monopoly powers. BellSouth controls the billing records for all calls generated on its switch(es). Despite arbitration before the Florida Public Service Commission, the original Interconnection agreement between AT&T and

BellSouth only specified a limited set of billing records to be submitted to AT&T. Despite arbitration orders PSC-98-0604-FOF-TP and PSC-98-0810-FOF-TP, BellSouth continues to keep billing records it contracted to provide, that it was ordered to provide by the FPSC, and that which would be necessary to fulfill its legal obligations to Supra as defined above. Lacking a serious penalty for failure in this matter, Supra believes that BellSouth will continue to defy the Florida and Federal Commissions in this regard.

Q **WHY IS THAT?**

A. There is a lot of money involved. Take for example a long distance provider providing service for a telephone call between a BellSouth customer in Jacksonville and a BellSouth customer in Miami. Assume that the long distance company is charging its customer five (5) cents per minute. BellSouth collects an origination fee from the long distance company of 2.1[67] cents per minute for its originating customers. BellSouth also collects another 2.1 cents per minute for its terminating customers. So out of the long distance companies 5 cent per minute rate, 4.2 cents flows directly to BellSouth **without BellSouth ever getting 271 approval!** The long distance company must suffer competition with the remaining 0.8 cents per minute as its only revenue. Because in this example they are keeping 84% of every dollar spent on long distance between two BellSouth

[67] Data based upon MCI/ Worldcom database of LEC origination and termination charges nationwide. BellSouth's rates in this regard are among the highest ILEC in the nation.

customers, and 42% of every other long distance dollar spent calling to or from a BellSouth customer in Florida, BellSouth is collecting more revenue than most IXC operating in Florida without ever having to obtain 271 approval. Since that is the one issue that is most often quoted as the reason regulators expect BellSouth's compliance with their laws and orders, I submit that BellSouth has no motivation whatsoever for compliance with any regulatory order that is not backed up with sufficiently large financial penalties that can be brought to bear on the ILEC immediately without significant legal recourse for the ILEC to effect a delay. Substantial dollars flow into BellSouth's war chest for every day they illegally collect revenue due other carriers. Only a fraction is ever collected back from BellSouth by ALECs.

BellSouth is financially motivated to ignore laws, orders and regulations on this matter and only when there are binding penalties will ALECs in the BellSouth region achieve what Congress intended in passing the Act.

Q **WHAT SPECIFIC RELIEF DOES SUPRA SEEK?**

A. Supra merely requests that the parties' Follow-On Agreement follow the current state of the law in all matters, and specific to this issue. The law allows supra to collect CCLC, TIC, SLC, reciprocal compensation, and access charges as proscribed by law. Supra has a responsibility to turn none of this revenue to BellSouth. BellSouth is prohibited from collecting CCLC, TIC, SLC, and access charges from any circuit served by UNE or UNE combination(s). BellSouth is

entitled to collect reciprocal compensation for calls originated by Supra customer terminated to a BellSouth customer.

BellSouth must be ordered to provide **all** detail records, not a filtered subset thereof. BellSouth must be enjoined from attempting to collect CCLC, TIC, SLC, and access charges for any line served by a UNE or UNE Combinations. This restriction MUST be supported by sufficient financial penalties immediately collectable as to discourage BellSouth willful and intentional violations of the law.

Supra shall have rights to exclusive use of unbundled loop elements, regardless if the UNE is used alone, or in combination with other network elements provided by BellSouth or any other carrier. Supra requests that this Commission ensure that the Follow On Agreement include a liquidated damages provision to provide incentives for BellSouth's compliance with these rules and orders.

Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

Issue 27: Should there be a single point of entry within each LATA for the mutual exchange of traffic? If so, how should the single point be established determined?

Q **WHAT IS THIS ISSUE ABOUT?**

A. Supra wishes to designate a technically feasible single point of interconnection (POI) in each LATA of its choosing for the interconnection of its network with BellSouth's network. Many LATAs in the BellSouth region are served by more than one, physically separated tandem switch. Of particular example in Florida alone the South Florida (Miami, Ft Lauderdale, West Palm) market is served by three tandem switches, Orlando and Jacksonville by two. Supra believes that traffic brought to BellSouth or from BellSouth at one point in the LATA is all that should be required for interconnection. This is exactly what BellSouth promised Supra at our first network planning meeting held on June 4, 1998, and at the inter company meeting held in Birmingham on March 28 2000. I was never notified that BellSouth held a different position until this arbitration.

Frankly, I don't understand why BellSouth has changed its mind. Supra understands that the law requires each carrier to maintain its own costs of transportation to the interconnection point. Thus, under BellSouth's proposal, Supra would be responsible for carrying the traffic of BellSouth customers calling Supra customers in West Palm, and then **also** be required to carry the traffic of Supra customers calling BellSouth customers. This is inherently unfair, and it

would place a larger percent of the burden on Supra rather than an arrangement that is equal.

Since BellSouth is Supra's transport vendor of choice in the LATA, they would also be reaping the benefit of supplying the transport! Clearly BellSouth cannot be allowed to prevail on this issue.

Q WHAT IS SUPRA'S POSITION?

A. The FCC's Local Competition Order is unambiguous when it states at paragraph 172 that "The interconnection obligation of section 251(c)(2), discussed in this section, allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' cost of, among other things, transport and termination of traffic." Subsequently, at paragraph 176 of the Local Competition Order, FCC 96-325, the FCC states that "we conclude the term "interconnection" under section 251 (c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic." As such, it is Supra, not BellSouth, who is entitled to select the POIs for the mutual exchange of traffic.

Q WHAT SPECIFIC RELIEF DOES SUPRA SEEK?

A. Supra merely requests that the parties' Follow-On Agreement follow the current state of the law in all matters, and specific to this issue, Supra requests

that this Commission include language that BellSouth **shall not require** Supra to effect interconnection with more than one point of interconnection per LATA.

Both parties shall bear their own respective costs for transport of traffic to the Point of Interconnection.

Nothing in this issue relieves BellSouth of its responsibility to provide interconnection at more than one technically feasible Point of Interconnection if so requested by Supra.

Supra requests that this Commission ensure that the Follow On Agreement include a liquidated damages provision to provide incentives for BellSouth's compliance with these rules and orders.

Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

Issue 28: What terms and conditions and what separate rates if any should apply for Supra Telecom to gain access to and use BellSouth facilities to serve multitenant environments?

Q **WHAT ARE THE ISSUES SURROUNDING THIS QUESTION?**

A. This issue of access to facilities to serve multitenant environments is largely an issue surrounding recent law regarding subloop unbundling. If not, it should be. Why it remains an issue in this docket is beyond my understanding. In the *UNE Remand Order* (CC order 99-238), the FCC addressed this issue head-on. First the FCC defines the nature of the problem and assigns a portion of the responsibility to state commissions to resolve specific technical issues regarding the location of the demarc point that vary by state due to differences in the outside plant design:

> 224. Our approach to subloop unbundling permits evaluation of the technical feasibility of subloop unbundling on a case-by-case basis, and takes into account the different loop plant that has been deployed in different states. We find that the questions of technical feasibility, including the question of whether or not sufficient space exists to make interconnection feasible at assorted huts, vaults, and terminals, and whether such interconnection would pose a significant threat to the operation of the network, are fact specific. **Such issues of technical feasibility are best determined by state commissions, because state commissions can examine the incumbent's specific architecture and the particular technology used over the loop, and thus determine whether, in reality, it is technically feasible to unbundle the subloop where a competing carrier requests.** [68] We also note we are

[68] CC order 99-238 Footnote --*See, e.g.*, Florida PSC Comments at 8; Iowa Comments at 9; Ohio PUC Comments at 18. *See also* Kentucky PSC Comments at para. 1; New York DPS Comments at 6.

considering legal issues regarding access to premises in the *Access to Competitive Networks* proceeding.[69] (Emphasis added)

The FCC goes on to deal with issues that could arise when an ever increasing number of carriers all want access to a specific premises for the purposes of providing service. Supra endorses the approach offered by SBC that was ultimately documented as law in § 51.319(a)(2)(E) -- the single point of interconnection shared by all carriers and established by the ILEC. *UNE Remand Order* (CC order 99-238) ¶ 225:

225. We further note that SBC proposes to avoid difficulties associated with competing carriers serving multi-unit premises by eliminating multiple demarcation points in favor of a single demarcation point, which, according to SBC, would remedy competitive LECs' concerns.[70] OpTel similarly suggests that the incumbent should provide a single point of interconnection at or near the property line of multi-unit premises.[71] OpTel further maintains that the cost of any network reconfiguration required to create a point of interconnection that would be accessible to multiple carriers should be shared by all the carriers concerned.[72] (Emphasis added)

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69 CC order 99-238 Footnote --See Competitive Networks Notice at para. 28 et seq.

70 CC order 99-238 Footnote --SBC Reply Comments at 9 (citing OpTel Comments at 10; Teligent Comments at 3).

71 CC order 99-238 Footnote --OpTel Comments at 10.

72 CC order 99-238 Footnote --*Id.*

Then the FCC states its own conclusion after hearing testimony and reading comments of those who responded to the NPRM *UNE Remand Order* (CC order 99-238) ¶ 226:

> 226. Although we do not amend our rules governing the demarcation point in the context of this proceeding, **we agree that the availability of a single point of interconnection will promote competition.**[73] To the extent there is not currently a single point of interconnection that can be feasibly accessed by a requesting carrier, we encourage parties to cooperate in any reconfiguration of the network necessary to create one. If parties are unable to negotiate a reconfigured single point of interconnection at multi-unit premises, we require the incumbent to construct a single point of interconnection that will be fully accessible and suitable for use by multiple carriers.[74] Any disputes regarding the implementation of this requirement, including the provision of compensation to the incumbent LEC under forward-looking pricing principles, shall be subject to the usual dispute resolution process under section 252.[75] We emphasize that this principle in no way diminishes a carrier's right to access the loop at any technically feasible point, including other points at or near the customer premises. We also note that unbundling inside wire, and access to premises facilities in general, present specific technical issues, and that we have sought additional comment on these issues in our *Access to Competitive Networks* proceeding.[76] If the record developed in that proceeding demonstrates the need for additional federal guidance on legal or technical feasibility issues related to subloop unbundling, we will provide such additional guidance, consistent with the policies established in this Order.[77] (Emphasis added)

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[73] CC order 99-238 Footnote --*See* 47 C.F.R. § 68.3.

[74] CC order 99-238 Footnote --The incumbent is obligated to construct the single point of interconnection whether or not it controls the wiring on the customer premises.

[75] CC order 99-238 Footnote --*See* 47 U.S.C. § 252

[76] CC order 99-238 Footnote --*See generally Competitive Networks Notice* at paras. 49-51 and 65-67.

[77] CC Order 99-238 in Docket No. 96-98 -- Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 at ¶ 224-226.

The FCC goes on in CC Order 99-238 to document the changes to 47 C.F.R. §51.317, 51.319 and 51.5 in Appendix C. There, §51.319(a)(1 and 2) define the demarcation point for loop and subloop regardless of whether they serve multitenant or not, and defines Inside Wire as network element and specifies its demarc subject to further examination in the *Network Access* docket. It then goes on to define the specific requirements for multi-unit premises in 51.319(a)(2)(E), discussed above. The version of Rule 319 as modified by CC Order 99-238 appears below. Supra expects only that its rights as represented by this rule be ordered by this Commission in answer to this issue and all others in this arbitration: *UNE Remand Order* (CC order 99-238) Appendix C:

§ 51.319 Specific unbundling requirements.

(a) *Local Loop and Subloop.* An incumbent LEC shall provide nondiscriminatory access, in accordance with § 51.311 and section 251(c)(3) of the Act, to the local loop and subloop, including inside wiring owned by the incumbent LEC, on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service.

(1) *Local Loop.* **The local loop network element is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises, including inside wire owned by the incumbent LEC.** The local loop network element includes all features, functions, and capabilities of such transmission facility. Those features, functions, and capabilities include, but are not limited to, **dark fiber, attached electronics (except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers), and line conditioning. The local loop includes, but is not limited to, DS1, DS3, fiber, and other high capacity loops.**

(2) *Subloop.* The subloop network element is defined as **any portion of the loop that is technically feasible to access at terminals in the incumbent LEC's outside plant, including inside wire.** An accessible terminal is any point on the loop

where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within. **Such points may include, but are not limited to, the pole or pedestal, the network interface device, the minimum point of entry, the single point of interconnection, the main distribution frame, the remote terminal, and the feeder/distribution interface.**

(A) *Inside Wire.* Inside wire is defined as all loop plant owned by the incumbent LEC on end-user customer premises as far as the point of demarcation as defined in § 68.3, including the loop plant near the end-user customer premises. **Carriers may access the inside wire subloop at any technically feasible point including, but not limited to, the network interface device, the minimum point of entry, the single point of interconnection, the pedestal, or the pole.**

(B) *Technical feasibility.* If parties are unable to reach agreement, pursuant to voluntary negotiations, as to whether it is technically feasible, or whether sufficient space is available, to unbundle the subloop at the point where a carrier requests, **the incumbent LEC shall have the burden of demonstrating to the state, pursuant to state arbitration proceedings under section 252 of the Act, that there is not sufficient space available, or that it is not technically feasible, to unbundle the subloop at the point requested.**

(C) *Best practices.* **Once one state has determined that it is technically feasible to unbundle subloops at a designated point, an incumbent LEC in any state shall have the burden of demonstrating, pursuant to state arbitration proceedings under section 252 of the Act, that it is not technically feasible, or that sufficient space is not available, to unbundle its own loops at such a point.**

(D) *Rules for collocation.* Access to the subloop is subject to the Commission's collocation rules at §§ 51.321-323.

(E) *Single point of interconnection.* **The incumbent LEC shall provide a single point of interconnection at multi-unit premises that is suitable for use by multiple carriers. This obligation is in addition to the incumbent LEC's obligation to provide nondiscriminatory access to subloops at any technically feasible point.** If parties are unable to negotiate terms and conditions regarding a single point of interconnection, issues in dispute, including compensation of the incumbent LEC under forward-looking pricing principles, shall be resolved under the dispute resolution processes in section 252 of the Act.

(3) Line conditioning. **The incumbent LEC shall condition lines required to be unbundled under this section wherever a competitor requests, whether or not the incumbent LEC offers advanced services to the end-user customer on that loop.**

(A) Line conditioning is defined as the removal from the loop of any devices that may diminish the capability of the loop to deliver high-speed switched wireline telecommunications capability, including xDSL service. Such devices include, but are not limited to, bridge taps, low pass filters, and range extenders.

(B) Incumbent LECs shall recover the cost of line conditioning from the requesting telecommunications carrier in accordance with the Commission's forward-looking pricing principles promulgated pursuant to section 252(d)(1) of the Act.

(C) Incumbent LECs shall recover the cost of line conditioning from the requesting telecommunications carrier in compliance with rules governing nonrecurring costs in § 51.507(e).

(D) In so far as it is technically feasible, the incumbent LEC shall test and report trouble for all the features, functions, and capabilities of conditioned lines, and may not restrict testing to voice-transmission only.

(b) *Network Interface Device.* An incumbent LEC shall provide nondiscriminatory access, in accordance with § 51.311 and section 251(c)(3) of the Act, to the network interface device on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service. **The network interface device network element is defined as any means of interconnection of end-user customer premises wiring to the incumbent LEC's distribution plant, such as a cross connect device used for that purpose. An incumbent LEC shall permit a requesting telecommunications carrier to connect its own loop facilities to on-premises wiring through the incumbent LEC's network interface device, or at any other technically feasible point.**

(c) *Switching Capability.* **An incumbent LEC shall provide nondiscriminatory access, in accordance with § 51.311 and section 251(c)(3) of the Act, to local circuit switching capability and local tandem switching capability on an unbundled basis, except as set forth in § 51.319(c)(1)(B), to any requesting telecommunications carrier for the provision of a telecommunications service. An incumbent LEC shall be required to provide nondiscriminatory access in accordance with § 51.311 and section 251(c)(3) of the Act to packet switching capability on an unbundled basis to any**

requesting telecommunications carrier for the provision of a telecommunications service only in the limited circumstance described in § 51.319(c)(3)(B).

(1)(A) *Local Circuit Switching Capability, including Tandem Switching Capability.* The local circuit switching capability network element is defined as:

(i) Line-side facilities, which include, but are not limited to, the connection between a loop termination at a main distribution frame and a switch line card;

(ii) Trunk-side facilities, which include, but are not limited to, the connection between trunk termination at a trunk-side cross-connect panel and a switch trunk card; and

(iii) All features, functions and capabilities of the switch, which include, but are not limited to:

(1) The basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, as well as the same basic capabilities made available to the incumbent LEC's customers, such as a telephone number, white page listing and dial tone, and

(2) **All other features that the switch is capable of providing, including but not limited to, customer calling, customer local area signaling service features, and Centrex, as well as any technically feasible customized routing functions provided by the switch.**

(B) Notwithstanding the incumbent LEC's general duty to unbundle local circuit switching, an incumbent LEC shall not be required to unbundle local circuit switching for requesting telecommunications carriers when the requesting telecommunications carrier serves end-users with four or more voice grade (DS0) equivalents or lines, and the incumbent LEC's local circuit switches are located in:

(i) The top 50 Metropolitan Statistical Areas as set forth in Appendix B of the *Third Report and Order and Fourth Further Notice of Proposed Rulemaking* in CC Docket No. 96-98, and

(ii) In Density Zone 1, as defined in § 69.123 on January 1, 1999.

(2) *Local Tandem Switching Capability.* The tandem switching capability network element is defined as:

(A) **Trunk-connect facilities, which include, but are not limited to, the connection between trunk termination at a cross connect panel and switch trunk card;**

(B) The basic switch trunk function of connecting trunks to trunks; and

(C) The functions that are centralized in tandem switches (as distinguished from separate end office switches), including but not limited, to call recording, the routing of calls to operator services, and signaling conversion features.

(3) *Packet Switching Capability.* (A) The packet switching capability network element is defined as **the basic packet switching function of routing or forwarding packets, frames, cells or other data units based on address or other routing information contained in the packets, frames, cells or other data units, and the functions that are performed by Digital Subscriber Line Access Multiplexers, including but not limited to:**

(i) The ability to terminate copper customer loops (which includes both a low band voice channel and a high-band data channel, or solely a data channel);

(ii) The ability to forward the voice channels, if present, to a circuit switch or multiple circuit switches;

(iii) The ability to extract data units from the data channels on the loops, and

(iv) The ability to combine data units from multiple loops onto one or more trunks connecting to a packet switch or packet switches.

(B) An incumbent LEC shall be required to provide nondiscriminatory access to unbundled packet switching capability only where each of the following conditions are satisfied:

(i) **The incumbent LEC has deployed digital loop carrier systems, *including but not limited to*, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (*e.g.*, end office to remote terminal, pedestal or environmentally controlled vault);**

(ii) **There are no spare copper loops capable of supporting the xDSL services the requesting carrier seeks to offer;**

(iii) The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access Multiplexer at the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by § 51.319(b); and

(iv) The incumbent LEC has deployed packet switching capability for its own use.

(d) *Interoffice Transmission Facilities.* An incumbent LEC shall provide nondiscriminatory access, in accordance with § 51.311 and section 251(c)(3) of the Act, to interoffice transmission facilities on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service.

(1) Interoffice transmission facility network elements include:

(A) Dedicated transport, defined as incumbent LEC transmission facilities, including all technically feasible capacity-related services including, but not limited to, DS1, DS3 and OCn levels, dedicated to a particular customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers;

(B) **Dark fiber transport, defined as incumbent LEC optical transmission facilities without attached multiplexing, aggregation or other electronics;**

(C) Shared transport, defined as transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the incumbent LEC network.

(2) The incumbent LEC shall:

(A) Provide a requesting telecommunications carrier exclusive use of interoffice transmission facilities dedicated to a particular customer or carrier, or use the features, functions, and capabilities of interoffice transmission facilities shared by more than one customer or carrier.

(B) **Provide all technically feasible transmission facilities, features, functions, and capabilities that the requesting telecommunications carrier could use to provide telecommunications services;**

(C) Permit, to the extent technically feasible, a requesting telecommunications carrier to connect such interoffice facilities to equipment designated by the requesting telecommunications carrier, including but not limited to, the requesting telecommunications carrier's collocated facilities; and

(D) **Permit, to the extent technically feasible, a requesting telecommunications carrier to obtain the functionality provided by the incumbent LEC's digital cross-connect systems in the same manner that the incumbent LEC provides such functionality to interexchange carriers.**

(e) *Signaling Networks and Call-Related Databases.* An incumbent LEC shall provide nondiscriminatory access, in accordance with § 51.311 and section 251(c)(3) of the Act, to signaling networks, call-related databases, and service

management systems on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service.

(1) *Signaling Networks*: Signaling networks include, but are not limited to, signaling links and signaling transfer points.

(A) When a requesting telecommunications carrier purchases unbundled switching capability from an incumbent LEC, the incumbent LEC shall provide access from that switch in the same manner in which it obtains such access itself.

(B) An incumbent LEC shall provide a requesting telecommunications carrier with its own switching facilities access to the incumbent LEC's signaling network for each of the requesting telecommunications carrier's switches. This connection shall be made in the same manner as an incumbent LEC connects one of its own switches to a signaling transfer point.

(2) *Call-Related Databases*: Call-related databases are defined as databases, other than operations support systems, that are used in signaling networks for billing and collection, or the transmission, routing, or other provision of a telecommunications service.

(A) For purposes of switch query and database response through a signaling network, an incumbent LEC shall provide access to its call-related databases, including but not limited to, the Calling Name Database, 911 Database, E911 Database, Line Information Database, Toll Free Calling Database, Advanced Intelligent Network Databases, and downstream number portability databases by means of physical access at the signaling transfer point linked to the unbundled databases.

(B) Notwithstanding the incumbent LEC's general duty to unbundle call-related databases, an incumbent LEC shall not be required to unbundle the services created in the AIN platform and architecture that qualify for proprietary treatment.

(C) An incumbent LEC shall allow a requesting telecommunications carrier that has purchased an incumbent LEC's local switching capability to use the incumbent LEC's service control point element in the same manner, and via the same signaling links, as the incumbent LEC itself.

(D) An incumbent LEC shall allow a requesting telecommunications carrier that has deployed its own switch, and has linked that switch to an incumbent LEC's signaling system, to gain access to the incumbent LEC's service control point in a manner that allows the requesting carrier to provide any call-related database-supported services to customers served by the requesting telecommunications carrier's switch.

(E) An incumbent LEC shall provide a requesting telecommunications carrier with access to call-related databases in a manner that complies with section 222 of the Act.

(3) *Service Management Systems*:

(A) A service management system is defined as a computer database or system not part of the public switched network that, among other things:

(1) Interconnects to the service control point and sends to that service control point the information and call processing instructions needed for a network switch to process and complete a telephone call; and

(2) Provides telecommunications carriers with the capability of entering and storing data regarding the processing and completing of a telephone call.

(B) An incumbent LEC shall provide a requesting telecommunications carrier with the information necessary to enter correctly, or format for entry, the information relevant for input into the incumbent LEC's service management system.

(C) An incumbent LEC shall provide a requesting telecommunications carrier the same access to design, create, test, and deploy Advanced Intelligent Network-based services at the service management system, through a service creation environment, that the incumbent LEC provides to itself.

(D) An incumbent LEC shall provide a requesting telecommunications carrier access to service management systems in a manner that complies with section 222 of the Act.

(f) *Operator Services and Directory Assistance.* An incumbent LEC shall provide nondiscriminatory access in accordance with § 51.311 and section 251(c)(3) of the Act to operator services and directory assistance on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service only where the incumbent LEC does not provide the requesting telecommunications carrier with customized routing or a compatible signaling protocol. Operator services are any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call. Directory assistance is a service that allows subscribers to retrieve telephone numbers of other subscribers.

(g) *Operations Support Systems*: **An incumbent LEC shall provide nondiscriminatory access in accordance with § 51.311 and section 251(c)(3) of the Act to operations support systems on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service. Operations support system functions consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information. An incumbent LEC, as part of its duty to provide access to the pre-ordering**

function, must provide the requesting carrier with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent LEC. (Emphasis Added)

Q **WHAT SPECIFIC RELIEF IS SUPRA REQUESTING?**

A. Supra merely requests that the parties' Follow-On Agreement follow the current state of the law in all matters, and specific to this issue, Supra would request that this commission pay particular attention to the implementation of all issues emphasized above in bold. These sections of the newly re-constituted Rule 319 represent issues that were either:

1. Poorly represented or missing from the previous Interconnection Agreement with BellSouth.
2. Subject of arbitration hearings between AT&T and BellSouth regarding the Previous agreement.
3. Issues disputed by BellSouth since Supra adopted the Interconnection agreement between AT&T and BellSouth.
4. Issues which were resolved against BellSouth, for which BellSouth received an effective order from the Florida Public Service Commission to implement, which it steadfastly refused to do.
5. Were the subject of commercial arbitration between Supra and BellSouth during the Spring of 2001.

Supra seeks the inclusion of specific language in the Follow On Agreement that BellSouth will comply with all sections of Rule 319. Supra requests this

Commission to include a liquidated damages provision in the parties' Follow On Agreement to provide incentives for BellSouth's compliance with these rules and orders.

Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

Issue 29: Is BellSouth obligated to provide local circuit switching at UNE rates to allow Supra Telecom to serve (a) the first three lines provided to a customer located in Density Zone 1 as defined and / or determined in the UNE docket and (b) 4 lines or more?

Q **FIRST, HAS BELLSOUTH MET THE REQUIREMENT FOR PROVIDING THE EEL UNE AT TELRIC RATES IN THE TOP 50 MSA'S WITHIN ITS SERVING AREA.**

A. No. There is nothing in the record, and I am aware of no evidence to support any other conclusion. As shown in the recent Supra / BellSouth commercial arbitration, BellSouth's word, particularly in issues of UNEs and UNE Combinations is worthless:

> "The evidence shows that BellSouth breached the Interconnection Agreement in material ways and did so with the tortious intent to harm Supra, an upstart and litigious competitor. The evidence of such tortious intent was extensive, including BellSouth's deliberate delay and lack of cooperation regarding UNE Combos, switching Attachment 2 to the Interconnection Agreement before it was filed with the FPSC, denying access to BellSouth's OSS and related databases, refusals to collocate any Supra equipment, and deliberately cutting-off LENS for three days in May 2000."[78]

BellSouth has a proven track record of lying to Supra, ignoring its obligations under the Interconnection Agreement between the parties, and ignoring FPSC orders[79].

BellSouth has the burden of proof on this issue. This Commission should establish whether BellSouth has **really** complied with the FCC's order to make EELs UNE available at TELRIC rates before BellSouth is allowed to limit Supra from purchasing unbundled Local Switching.

Q **ARE THERE ANY OTHER ISSUES REGARDING THIS QUESTION?**

A. In the recent AT&T v. BellSouth arbitration (Docket 00-731-TP) the staff recommendation contains the following quotation:

> Though framed in a different manner, this issue is

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[78] Id, pg. 40.

[79] As one example, the final order in Docket 98-0800 (PSC-99-0060-FOF-TP) remains unimplemented by BellSouth to this date. Only the Award in the recent commercial arbitration between Supra and BellSouth has gotten BellSouth moving on this project since 1999, despite these offices having been part of the infamous *Florida Exemption Docket* where BellSouth actually attempted to obtain FPSC collocation exemptions for the two offices involved. The Dockets were all closed by the FPSC when BellSouth agreed to provide collocation in all offices to all existing applicants in July of 1999. Supra has yet to be allowed to collocate despite these Dockets.

similar to an issue in the recent arbitration in Docket No. 000828-TP, the Sprint/BellSouth arbitration. In **this** case, however, the specific issue considers whether the aggregation **of** lines provided to multiple locations **of** a single customer is allowable in determining whether BellSouth must offer unbundled local switching as a UNE.

As in the Sprint/BellSouth arbitration, an underlying assumption is that alternative switching providers are likely to be located in the Density Zone **1** areas in Florida, which include the Miami, Orlando, and Ft. Lauderdale Metropolitan Statistical Areas (MSAs) .

It is not merely enough to **assume** that there is local switching available to meet the FCC requirement, because there really isn't such a supply. Look at the record. Bot AT&T and Sprint, arguably the 1st and 3rd largest CLEC organizations in the country **both** petitioned the FPSC to require BellSouth to sell Unbundled Local Switching. If these two behemoths are unable to (1) supply their own switching in the top 50 MSA's, and (2) have enough clout in the industry to identify suppliers of unbundled switching that can provide same to customers of BellSouth's UNEs, then frankly, the supply doesn't actually exist. Supra maintains that the availability of Unbundled Local Switching in the Top 50 MSA's is an illusory issue. It should exist, but it doesn't.

BellSouth bears the burden of proof in this case and should be required to prove to this Commission that a supply of Unbundled Local Switching exists to allow customers of its EEL UNE to obtain local switching without the need for facilities ownership by the ALEC, which would be prohibited by *AT&T v. Iowa Utilities Bd.* (Iowa Utilities Board II).

This Commission should order BellSouth to prove that a discontinuation of the unbundled Local Switching Product will not affect the telephone subscribers of Florida. Supra has tens of thousands of customer lines served by UNE combinations. Is the Commission clear on what will happen to these customers is BellSouth is allowed to discontinue Local Switching UNE, or raise its rate from $1.62 to $14.00 (or more) per port? The potential for BellSouth to exercise anti-competitive behavior is too great for the FPSC not to regulate this issue further.

Q **WHAT SPECIFIC RELIEF IS SUPRA REQUESTING?**

A. Supra merely requests that the parties' Follow-On Agreement follow the current state of the law in all matters, and specific to this issue, Supra would request that BellSouth be first ordered to prove to this Commission that a supply of Unbundled Local Switching exists to allow customers of its EEL UNE to obtain local switching, before relieving BellSouth of its obligation to provide Unbundled Local Switching at UNE rates. To do otherwise would allow BellSouth to damage the peace and livelihood of the telephone subscribers of Florida as BellSouth embarks upon a giant winback campaign empowered by this very provision.

This Commission should order BellSouth to prove that a discontinuation of the unbundled Local Switching Product will not adversely affect the telephone subscribers of Florida.

Supra requests this Commission to include a liquidated damages provision in the parties' Follow On Agreement to provide incentives for BellSouth's compliance with these rules and orders.

Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

Issue 31: Should BellSouth be allowed to aggregate lines provided to multiple locations of a single customer to restrict Supra Telecom's ability to purchase local circuit switching at UNE rates to serve any of the lines of that customer?

Q **WHAT IS THE ISSUE HERE?**

BellSouth has taken the position that once it aggregates billing for a customer's convenience, such aggregated billing, covering multiple addresses, can be used to evade its requirement to sell Unbundled Local Switching in the top 50 MSA's. Such regulatory arbitrage was not envisioned by the FCC in its discussion of the reasoning behind exclusion of the requirement to sell local switching in the top 50 MSA's. BellSouth can evade their requirement to provide Unbundled Local Switching by combining the bills for just four residences together, each having a

single line. This is not what the FCC ordered. Indeed the FCC's exclusion is coupled with the obligation to provide the EEL (Enhanced Extended Loop) FIRST. The purpose of this is to transport that customer traffic to another central office location where it may be switched.

BellSouth's attempt here would be to create a situation where that customer's traffic could NEVER be switched by BellSouth, retaining the customer for BellSouth. This is most assuredly not what the FCC ordered.

Q IS THERE ANY OTHER TESTIMONY YOU WISH TO OFFER ON THIS ISSUE?

A. Yes. I wish to adopt the Direct Testimony of Gregory R. Follensbee, formerly of AT&T now the lead contract negotiator at BellSouth for Supra's Interconnection agreement with BellSouth. This testimony was filed in Florida Docket 00-731, AT&T's Interconnection Agreement arbitration against BellSouth.[80]

In this context I will be adopting his testimony in regard to AT&T issue number 11 which directly corresponds to Supra issue 31. The adopted testimony resides on pages 9-13 of his testimony. The only exception I take to Mr. Follensbee is

[80] Supra Exhibit # DAN-5-- Direct Testimony of Gregory R. Follensbee, formerly of AT&T now the lead contract negotiator at BellSouth for Supra's Interconnection agreement with BellSouth.

that I do not agree with his or AT&T's position that the FCC erred in setting the economic cut-off for a customer at two lines rather than the FCC's 4 lines. Supra understands that for most carriers without AT&T's economies of scale, the FCC's figure of 4 is correct, or even a bit low so that usage charges for switching and transport are also factored into the equation. Supra is not seeking a change in the FCC four line limitation and agrees to that for the additional purposes of this arbitration.

Q **WHAT SPECIFIC RELIEF DOES SUPRA SEEK?**

A. Supra merely requests that the parties' Follow-On Agreement follow the current state of the law in all matters, and specific to this issue, Supra asks that this Commission order that any local line limitation that applies to the use of local switching in the three specific MSA's in Florida apply to **each** physical location where Supra orders local switching from BellSouth, and not to a specific customer with multiple locations on the same bill.

BellSouth has a poor record for signing Interconnection agreements, then refusing to comply. Supra maintains it is impossible to take BellSouth's word that they can and will ("Currently Combines") combine elements to form the EEL UNE and offer it at TELRIC rates. BellSouth must demonstrate to the FPSC a proliferation of EELS without ordering problems for **all** ALECs in Florida. It is not enough for

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BellSouth to simply say it is true. The Commission should order language placed into the Follow On Agreement that requires BellSouth to continue to provide Unbundled Local Switching to Supra at UNE rates until such time that the FPSC renders an effective order based upon a generic hearing, that BellSouth is actually supplying the EEL UNE ubiquitously throughout its region in Florida.

At the point which the FPSC order is released, all customers provisioned over UNE combination circuits should be grandfathered in place. Changes in features should still be allowed, but once the service is cancelled, it should not be re-instated.

Supra requests that this Commission ensure that the Follow On Agreement include a liquidated damages provision in the parties' Follow On Agreement to provide incentives for BellSouth's compliance with these rules and orders.

Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

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arbitration against BellSouth.

Issue 32 A: Under what circumstances may Supra charge for Tandem rate switching?

Q **WHAT IS SUPRA'S POSITION?**

A. Supra must show only that its switches serve geographic areas comparable to those served by BellSouth in order to charge tandem rates. Supra is currently in the process of collocating a number of switches in BellSouth central offices throughout the State of Florida. Specific to this issue, Supra has been granted collocation of host or remote switches in each of the BellSouth Tandem offices in the state of Florida.

Issue 32 B : Does Supra meet the criteria based on Supras network of June 1, 2001?

Q **WHAT EVIDENCE DOES SUPRA HAVE TO SUPPORT THAT ITS SWITCHES SERVE GEOGRAPHIC AREAS COMPARABLE TO THOSE SERVED BY BELLSOUTH?**

A. Supra has been attempting to collocate its switches in BellSouth's central offices since as early as June, 1998. Only after receiving an Award in its commercial arbitration proceeding wherein BellSouth was ordered to provide

collocation, previously ordered by the FPSC in order PSC-99-0060-FOF-TP[81], has Supra received any hope that it may actually collocate its switches. Once Supra is able to achieve this collocation, its switches will be in the same location as BellSouth's switches. It is logical to assume that Supra's switches will serve geographic areas comparable to those served by BellSouth. In fact, this commission is already aware that Supras switches will cover the same geographic area as BellSouth in LATA 460 (Southeast Florida), as this commission ordered BellSouth to provide Supra space to collocate class 5 switches in the North Dade Golden Glades (NDADFLGG) and Palm Beach Gardens (WPBHFLGR) central offices. As these are the only two offices housing the three BellSouth tandem switches in LATA 460, ipso facto, Supra has the same geographic coverage in LATA 460 as does BellSouth. No limitation on this finding can be heard because Supra has access to every network element in these two office that BellSouth does. No refusal to provision the element can be heard because BellSouth has provisioned the element to itself, ipso facto, BellSouth can and must provision the same element to Supra.

Unfortunately, as Supra has been unduly delayed in collocating such switches, it is unable to provide any further evidence. However, once Supra's switches are collocated in BellSouth's central offices, Supra would then be in a position to present further evidence, if required, to show the geographic coverage to be

[81] in docket 99-0800-TP

identical to BellSouth's own. Supra believes no other CLEC is able to make such a precise claim, because no other CLEC has attempted to collocate a switch in a BellSouth Tandem office, much less all of BellSouth Tandem offices in Florida.

Given the fact that the term of this Follow On Agreement is to be three years, should the Commission find that the fact that Supra's switches are located in the same location as BellSouth's switches to be unpersuasive as to the geographic area which Supra serves, Supra seeks some clarification as to what additional evidence the Commission may require in order for Supra to receive tandem switching rates.

Q WHAT SPECIFIC RELIEF DOES SUPRA SEEK?

A. Supra merely requests that the parties' Follow-On Agreement follow the current state of the law in all matters, and specific to this issue, that when Supra collocates in a BellSouth Tandem Office, Supra is deemed to have satisfied the requirement to prove its geographic coverage requirement to entitle Supra to charge Tandem switching.

If necessary, Supra shall be deemed to have satisfied the requirement to demonstrate that the switch performs functions similar to BellSouth's tandem switch (typically a Nortel DMS 100, sometimes a Lucent 5ESS), by the collocation of a Lucent 5ESS, Nortel DMS 100, 250, or 500, or Siemens EWSD

Class 5 switches, or their associate remote switch module subtended off of one of the aforementioned hosts.

Supra requests that this Commission ensure that the Follow On agreement include a liquidated damages provision in the parties' Follow On Agreement to provide incentives for BellSouth's compliance with these rules and orders.

Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

Issue 33: What are the appropriate means for BellSouth to provide unbundled local loops for provision of DSL service when such loops are provisioned on digital loop carrier facilities?

Q **IS THIS STILL AN ISSUE IN THIS PROCEEDING?**

A. It shouldn't be, since the release of *The UNE Remand Order* CC Order 99-238 created changes to 47 C.F.R. § 51.319. Specifically from 51.319

> (B) An incumbent LEC shall be required to provide nondiscriminatory access to unbundled packet switching

capability only where each of the following conditions are satisfied:

(i) The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (*e.g.*, end office to remote terminal, pedestal or environmentally controlled vault);

(ii) There are no spare copper loops capable of supporting the xDSL services the requesting carrier seeks to offer;

(iii) The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access Multiplexer at the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by § 51.319(b); and

(iv) The incumbent LEC has deployed packet switching capability for its own use.

While this section answers most of the questions surrounding this issue, the FCC did not adequately address the needs of carriers who, based upon *The First Report and Order* CC Order 96-325 at ¶ 12 chose their entrance strategy to be solely UNE Combination based. This configuration is supported by the *First Report and Order,* but falls afoul of the *Third Report and Order* CC Order 99-0238 in subsection (iii) in the previous citation.

A carrier seeking to deploy ONLY UNE combinations is allowed to do so by the three pronged entry strategy defined in *The First Report and Order* CC Order 96-325 at ¶ 12. So how can the FCC then impose a collocation requirement upon the ALEC in order to be able to order the packet switching UNE?

Supra requests this Commission to clarify a set of rules by which a carrier who chooses to enter via UNE Combinations is not precluded from purchasing the packet switching UNE in this section.

Q **WHAT SPECIFIC RELIEF DOES SUPRA SEEK?**

A. Supra merely requests that the parties' Follow-On Agreement follow the current state of the law in all matters, and specific to this issue, Supra is asks that this Commission order BellSouth provide Supra the ability to order DSLAM and packet switching as a UNE at TELRIC cost, wherever BellSouth deploys local switching over DLC facilities.

Supra request that this Commission ensure that the follow on agreement is in full compliance with Rule 319 in every way.

Supra requests that this Commission ensure that the Follow On Agreement include a liquidated damages provision in the parties' Follow On Agreement to provide incentives for BellSouth's compliance with these rules and orders.

Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

Issue 34: What coordinated cut-over process should be implemented to ensure accurate, reliable and timely cut-overs when a customer changes local service from BellSouth to Supra Telecom

Q **IS THIS STILL AN ISSUE IN THIS PROCEEDING**

A. Based upon the final order in /Docket 99-0649 (PSC-01-1181-FOF-TP) it appears that once BellSouth proves itself capable of implementing pre-ordering, ordering, provisioning and repair functions to comply with the Commission's orders and other applicable law, this issue will have been satisfied.

That BellSouth has yet to be able to prove this, despite the availability of SL1 and SL2 for at least three years, is shocking.

Q **ARE THERE ANY OTHER ISSUES THAT NEED RESOLUTION HERE?**

A. Yes. The continuing issue whether BellSouth, in violation of federal and state law, should be permitted to continue its practice of submitting an "N" and a "D" (New and Disconnect) instead of a single "C" (Change) order. The effect of this is that a customer's service is actually disconnected during the conversion process, despite the Supreme Court's finding that such should not happen. BellSouth will tell you that the "D" order and the "N" order are, in most cases, provisioned at the same time, and therefore consumers rarely go without service

for any length of time. What is wrong with this philosophy is that **no consumer should ever go without service as a result of a conversion, ever.** Remember, the conversion is only a **billing change**. Service should remain unaffected. The fact that BellSouth has created its own billing system in a manner which requires a disconnection of service in this process is violative of state and federal law, and is harmful to Florida consumers.

What makes matters worse is that, when customers go without service as a result of this process, the customer will blame Supra, not BellSouth, for the problem. Supra can speak ONLY to the BellSouth LCSC in order to resolve problems in provisioning service. A customer, whether of BellSouth, of Supra, or in the transitional phase, cannot even locate the number for the LCSC, and it is only under the most extreme situations a three way call can be setup between Supra, LCSC and the customer. If the customer wants to complain to BellSouth, even if it is on behalf of Supra, the only number the public can see is for the BellSouth retail sales center.

And BellSouth's retail sales center will invariably tell the customer that the Disconnect order was issued by Supra, and "... I'm so sorry that I can't help you, you are not our customer any more." This is a formula designed for efficient conversion of winback customers.

Supra is not the only ALEC to encounter these anti-competitive tactics. As stated in the recent IDS complaint (*Complaint of IDS* in Docket 01-0740-TP at ¶ 31), BellSouth has a glaring tendency to allow ALEC LSRs submitted as "C" Change

orders to slip through the LEO/LESOG/ Human Intervention cycle in a manner that sometimes generates both a "D" Disconnect and "N" New service order, from the ALEC LSR. However as Supra found, as long ago as June / July 2000, there are issues that can cause the "N" order to subsequently fail in SOCS, while the "D" Disconnect order is completed normally.

The customer is left without dialtone, and a call to the only BellSouth ordering telephone number, or the repair department elicits a comment of "Supra ordered your line disconnected", when Supra did nothing of the kind. A fault in LEO/LESOG, or workarounds used by LCSC representatives ("Just erase it and start over") have caused hundreds of cases of lost dialtone, BellSouth winback, and Public Service Commission and Better Business Bureau complaints again Supra.

Yet, BellSouth does not see this as problematic for Supra, and would request Supra to bring the issue up before the Change Control Process.

Q CAN ANYTHING ELSE POSSIBLY GONE WRONG ASSOCIATED WITH THIS ISSUE?

A. Unfortunately, yes. BellSouth is, for some unfathomable reason, disconnecting service to ALEC customers in Florida within 1-3 days of the time their service is converted to the ALEC. It is happening to IDS, we hear stories of it happening at MCI, and attached as Supra Exhibit # DAN-7. Supra has released

some of these numbers to BellSouth, and the preliminary analysis (which is all BellSouth has completed to date) indicates that half of the disconnections / loss of dialtone were as a result of "BellSouth Error, oops sorry. It shouldn't have happened."

Q **WHAT SPECIFIC RELIEF DOES SUPRA SEEK?**

A. Supra merely requests that the parties' Follow-On Agreement follow the current state of the law in all matters, and specific to this issue, Supra would request that this Commission order BellSouth to prove that it has 1) implemented effective ordering procedures for SL1 and SL2 loops used individually or in combinations (which doesn't exist today).

Supra requests this Commission include language in the Follow On Agreement that BellSouth shall not issue "N" and "D" orders in lieu of a single "C" order. In the meantime BellSouth shall not be allowed to extend or delay its commitments to deploy services in a timely fashion.

Supra requests this Commission include language in the Follow On Agreement that BellSouth will be required to identify the true cause of customer loss of dialtone shortly after conversion, to report same to Supra and to this Commission, to offer a proposed corrective action, and to conclude the project so that this type of problem never occurs again, according to a time table ordered by this Commission.

Supra requests that this Commission ensure that the Follow On Agreement include a liquidated damages provision in the parties' Follow On Agreement to provide incentives for BellSouth's compliance with these rules and orders.

Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

Issue 40: Should Standard Message Desk Interface-Enhanced ("SMDI-E") and Inter-Switch Voice Messaging Service ("IVMS"), and any other corresponding signaling associated with voice mail messaging be included within the cost of the UNE switching port? If not, what are the appropriate charges, if any?

A. Yes. Unbundled Local switching requires that the ALEC who leases a switching port be given all features and functionality of the port. One such feature is the ability of the port to produce stutter dialtone, or activate a light on the telephone set of a subscriber in response to a signal from a voicemail system or provider to let the telephone subscriber know there is a message waiting. Traditionally this task has been done via the System Message Desk Interface

(SMDI) and enhancements to it such as Inter Switch Voice Messaging (ISVM) which allows one switch to pass messaging requests across the SS7 network to other switches without the use of a dedicated network.[82]

While this is clearly a function of the switch port, and functionality of it comes with the switch port, in Florida there is no unbundled access to this fundamentally important signaling network / switch port functionality. Therefore an ALEC is not in parity with the ILEC for the Local Switching UNE.

BellSouth does not provide unbundled access to this signaling network, but in its FFC #1 Access Tariff lists SMDI and something called ISMDI. The description of ISMDI is an SS7 / TCAP based network that through a convoluted conversion of conversion between SMDI, ISDN and SS7 / TCAP messages provides a single connection to a signaling connection that is supposed to be able to activate a Message Waiting Indicator (MWI) on a Latawide basis. This is clearly not as cost effective as the ISVM approach. The alternative an ALEC has would be to establish an SMDI connection to each and every BellSouth switch in Florida, a total of 206 individual connections at last count. This is not cost effective compared to ISVM and presents a substantial barrier to entry.

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[82] Lucent Document 235-190-104 5ESS 2000 switch ISDN Feature Descriptions, Section 13.4 Message Service System Features, Issue 3 pages 13-67 through 13-126

Nowhere is there any mention of direct access to the ISVM signaling, or unbundled access to any signaling required to activate MWI on a leased Local Switching port. These omissions are creating an unusually high barrier to entry for an ALEC like Supra Telecom who is expected by telephone subscribers to provide the same services as the ILEC as seamlessly as the ILEC provides those services.

As shown in Figure 13-11 , and 13-13[83] there is no separate signaling network required to transmit messages switch to switch. It is included in the basic switch port functionality, and network wide signaling across the SS7 network according to meetings Supra Telecom has held with Bell Labs personnel on this issue. Additionally the Bell Labs Engineers confirmed that this ISVM has been adopted as an industry standard for many years now (approx. 7 years). This industry standard is also supported by Nortel and Siemens, so that all switches in BellSouth's network are compliant. Figure 13-14 along with section 13.4.1.2[84] shows that the required software is part of the base generic software since, at least, the 5E8 generic. Since the current software release from Lucent is 5E15, and since Lucent does not support switches with software loads beyond two prior revisions, it is obvious that the required software is already loaded on BellSouth's switches.

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[83] Supra Exhibit # DAN-1

[84] Id.

ALEC's access to the ISVM signaling "network" should be defined as a fundamental component of Local Switching line and trunk ports and ALEC access to this network required of and provided by all Florida ILECs as it is elsewhere in the country. The various message-signaling networks are necessary to an ALEC to compete with the ILEC, and failure to have access to such signaling impairs Supra Telecom's ability to acquire new customers who view such a limitation as the mark of an inferior carrier.

Q WHAT SPECIFIC RELIEF DOES SUPRA SEEK?

A. Supra merely requests that the parties' Follow-On Agreement follow the current state of the law in all matters, and specific to this issue, Supra asks that this Commission order that *SMDI, the so called ESMDI, ISVM are all* components of the local switch port and associated SS7 signaling, and are provided at no cost when Supra orders Unbundled Local Switching.

BellSouth will provide interconnection for SMDI at any technically feasible point as specified by Supra. Both parties will bear their respective costs of transporting traffic to the Point of Interconnection.

Supra requests that this Commission ensure that the Follow On Agreement include a liquidated damages provision in the parties' Follow On Agreement to provide incentives for BellSouth's compliance with these rules and orders.

Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

Issue 49 : Should Supra Telecom be allowed to share, with a third party, the spectrum on a local loop for voice and data when Supra Telecom purchases a loop/port combination and if so, under what rates, terms and conditions?

Q **IS THERE ANY OTHER TESTIMONY YOU WISH TO OFFER ON THIS ISSUE?**

A. Yes. I wish to adopt the Direct Testimony of Gregory R. Follensbee, formerly of AT&T now the lead contract negotiator at BellSouth for Supra's Interconnection agreement with BellSouth. This testimony was filed in Florida

Docket 00-731, AT&T's Interconnection Agreement arbitration against BellSouth.[85]

In this context I will be adopting his testimony in regard to AT&T issue number 33 which directly corresponds to Supra issue 49. The adopted testimony resides on pages 23-31 of his testimony. I take no exception to Mr. Follensbee's testimony in this regard. The abuses that are being heaped upon Supra are even more horrific than those Mr. Follensbee reported just last November. Since that time, BellSouth has begun using its tariffed xDSL transport service, sold to Bellsouth.net and other Internet Service Providers to provision DSL service, as a battering ram to hold onto customers that want to change to Supra and other ALECs, as a reason to clarify (reject) Supra's otherwise legitimate orders for residential and business POTS service, with no apparent way to ever clear the clarification (rejection).

Q HAS ANYTHING HAPPENED RECENTLY TO MAKE THE SITUATION EVEN WORSE?

A. Yes. BellSouth has stated in Inter Company review board meetings that because of the final order in docket 00-0731-TP, BellSouth will no longer be providing xDSL transport service to customers served by UNE combinations in

[85] Supra Exhibit # DAN-5-- Direct Testimony of Gregory R. Follensbee, formerly of AT&T now the lead contract negotiator at BellSouth for Supra's Interconnection agreement with BellSouth.

Florida. This came about as Supra was attempting to negotiate language to set rates and conditions for line sharing in the Follow On Agreement. A BellSouth attorney announced that:

> "We can choose to pay Supra 1/2 the loop cost and share the line. **However we may just decide not to offer the customer service.**" (Natural Emphasis.)

I began to worry about the import of this latest BellSouth bombshell. I didn't have long to wait.

On July 11, 2001 BellSouth sent out a letter[86] to Supra Business Systems, Inc. announcing the unilateral disconnection of all xDSL services provided over UNE Combinations. It doesn't matter whether the customer has xDSL service from BellSouth.net or any other ISP, BellSouth is going to disconnect the customer on 20 days notice.

BellSouth's Greg Follensbee (the author of the July 11) has told me this is a direct result of the FPSC order in 00-0731 where this commission ordered that BellSouth was not required to provide the splitter.

This testimony was filed in Florida Docket 00-731, AT&T's Interconnection Agreement arbitration against BellSouth.

[86] Supra Exhibit # DAN-6 -- July 11, 2001 letter from G. R. Follensbee to O.A.Ramos of Supra Business Systems announcing that any customers of Supra Business Systems provisioned as UNE Combinations will have any and all existing DSL circuits disconnected in 20 days without further notice.

I doubt this Commission realized the magnitude of BellSouth's desire to stifle its emerging competition when it issued that order. BellSouth cannot be allowed to continue this anti-competitive tactic any longer.

Q IS THERE ANY NEW INFORMATION FOR THE FPSC TO CONSIDER REGARDING THIS ISSUE?

A. Yes. Certainly BellSouth's recent "dirty Tricks" campaign against ALECs, and against Florida telephone subscribers who also are DSL subscribers is but one.

The issue of the line splitter needs to be investigated.

It may be possible that the Commission viewed line splitters as a colocatable piece of equipment married to a specific loop. In other words the splitter is brought to the loop.

This is not the case.

In each central office, BellSouth has undedicated line splitters installed. When a voice customer orders xDSL, BellSouth breaks the loop at the frame, brings the outside plant side of the loop to the splitter via a crossconnect, and returns the circuit back to the equipment side of the broken loop via a second set of crossconnect jumpers. At that point the voice circuit is in operational, and the

third set of connection on the line splitter are taken to the collocated DSLAM owned by BellSouth. BellSouth will not take the xDSL portion of the loop to a third party DSLAM, so effectively line sharing between ALECs doesn't exist in Florida at all. It only exists between BellSouth and a voice ALEC who has their own switch, or for ALEC resale customers (although this has not been allowed by BellSouth until Supra complained about it during Intra Company Review Board Meetings in this arbitration. Support is still a bit random). Line sharing exists in no other manner.

By not realizing that the loop is brought to the BellSouth splitter and not the other way around, this commission may have erred in 00-731-TP by setting a precedent that will force ALECs in Florida to collocate line splitters in each and every central office in Florida **just to support the provision of BellSouth's tariffed xDSL transport service, when BellSouth already has equipment installed that can be used.** That's right. 00-731 held that **Supra** must install the linesplitter for BellSouth Telecommunications to provide xDSL transport service to BellSouth.net or other ISP. If Supra does not, BellSouth is in a position, and they have already begun, telling customers that their xDSL service will be discontinued because Supra does not support it.

Certainly this Commission did not envision this type of arbitrage.

Q WHAT IS AT STAKE IN THIS ISSUE?

A. Supra's concerns are twofold: Originally, Supra Telecom was concerned with protecting its right to split its line so as to be able to provide both voice and data services, either by itself or with a third party. Via line splitting, Supra expected to share the cost of the loop element with a third party provider of DSL, including BellSouth.net. This is still a concern. However, since approximately May 3, 2001, Supra Telecom has been faced with a new concern. Since that time, BellSouth has been telling customers that if the customer presently has both BellSouth voice and data services (i.e. ADSL), the customer would lose the data services if he or she switched their voice services to Supra Telecom. Attached hereto as Supra Exhibit DAN - 6 is a copy of a letter from BellSouth wherein it indicated it would take this exact action. The harm caused Supra Telecom, as well as customers, by this unilateral action is significant. Not only is BellSouth's action anti-competitive, but it constitutes illegal tying of services in violation of the antidiscrimination clause of 251(c)(3), the separate affiliate requirements of Section 272 of the Act, and the Supreme court ruling in *AT&T v. Iowa Utilities Bd.* 525 U.S. 366, 119 S.Ct 721 (199) at 368 (et al). I personally have had to deal with a number of customers who claimed they would have switched to Supra Telecom but for the fact that BellSouth threatened to disconnect their ADSL services. Attached hereto as Supra Exhibit # DAN-4 is a spreadsheet showing a list of potential Supra customers who had called regarding this very issue.

Q LET'S DEAL WITH THE FIRST CONCERN. WHAT DOES SUPRA WANT?

A. Supra requests that BellSouth be required to allow Supra access to the spectrums on a local loop for voice and data when Supra purchases a loop/port combination. BellSouth must cross-connect the voice loop to line splitters already in the office for this purpose. To facilitate line splitting, BellSouth should be obligated to provide an unbundled xDSL-capable loop terminated to a collocated or already existing and in-place splitter and DSLAM equipment, and unbundled circuit switching combined with shared transport at TELRIC rates. BellSouth should not be allowed to disconnect any already combined facilities, as such would result in a disconnection of a customer's service, and be in violation of the Act[87], all FCC orders in this regard[88], orders that have been sustained by the Supreme Court of the United States[89]. The Supreme Court opinion, often remembered solely for the re-institution of Unbundled Network Elements Combinations taken away by the Eight Circuit Court[90] has much broader impact. The High Court wrote:

> "Rule 315(b) forbids an incumbent to separate already combined network elements before leasing them to a competitor"[91]

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[87] Telecommunications Act of 1996, 47 U.S.C.A. § 251(c)(3).
[88] 47 C.F.R. § 51.315(b).
[89] **Error! Reference source not found.***AT&T v. Iowa Utilities Bd.* 525 U.S. 366, 119 S.Ct 721 (Iowa Utilities Board II) at pg. 368, and pg. 393-395
[90] **Error! Reference source not found.***AT&T v. Iowa Utilities Bd.* 120 F.3d 753 (Iowa Utilities Board I)
[91] Id pg. 393.

Lest BellSouth argue, based upon a misreading of 251(c)(3) that this addresses the provisioning of combinations and not an actual requirement upon them to not disconnect or otherwise disturb a functioning telecommunications circuit, the Court went on to say:

> The reality is that § 251(c)(3) is ambiguous on whether leased network elements may or must be separated, and the rule the Commission has prescribed is entirely rational, finding its basis in § 251(c)(3)'s nondiscrimination requirement. As the Commission explains, it is aimed at preventing incumbent LECs from disconnect[ing] previously connected elements, over the objection of the requesting carrier, not for any productive reason, but just to impose wasteful reconnection costs on new entrants" ... It is well within the bounds of the reasonable for the Commission to opt in favor of ensuring against an anticompetitive practice."[92] (Emphasis added)

Thus the Supreme Court has already addressed any ambiguity in the Act and upheld the FCC's rules in this regard. In addition to LEC charges for reconnection, other wasteful reconnection costs can involve the customers loss of dialtone during conversion, the increased cost an ALEC bears in re-establishing a circuit that should never have been interrupted, customer support costs of communicating with the customer, and the potential for customer dissatisfaction with the ALEC's service, which can lead to the customer reverting back to the LEC. Lest it be argued that these are not all "wasteful reconnection costs" one must only look to the last line: "to opt in favor of ensuring against an

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[92] Id. Pg. 395.

anticompetitive practice." These acts, committed for whatever reason, are anticompetitive.

Q WHAT DOES SUPRA WANT WITH REGARD TO ITS SECOND CONCERN?

A. Supra requests that BellSouth be required to continue to provide data services to customers who currently have such services, after such customers decide to switch to Supra's voice services. To allow BellSouth to disconnect such customers' data services would be anti-competitive, discriminatory and a violation of 251(c)(3).

That this Commission review its order in 00-731 and determine if the weight of evidence that caused the Commission to order that BellSouth not be required to install linesplitters is not overcome by BellSouth's current program to use this order as an anti-competitive tool.

Supra requests that this Commission ensure that the Follow On Agreement include a liquidated damages provision to provide incentives for BellSouth's compliance with these rules and orders.

Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete

response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

Issue 53 : How should the demarcation points for access to UNEs be determined?

Q **WHAT IS SUPRAS POSITION.**

A. BellSouth must provide UNEs and UNE combinations to Supra at any Technically feasible point of Interconnection specified by Supra. From *The First Report and Order* CC Order 96-325 ¶26

> 360. **Section 251(c)(2) requires incumbent LECs to provide interconnection to any requesting telecommunications carrier at any technically feasible point.** The interconnection must be at least equal in quality to that provided by the incumbent LEC to itself or its affiliates, and must be provided on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. The Commission concludes that the term "interconnection" under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic. The Commission identifies a minimum set of five "technically feasible" points at which incumbent LECs must provide interconnection: (1) the line side of a local switch (for example, at the main distribution frame); (2) the trunk side of a local switch; (3) the trunk interconnection points for a tandem switch; (4) central office cross-connect points; and (5) out-of-band signalling facilities, such as signalling transfer points, necessary to exchange traffic and access call-related databases. In addition, the points of access to unbundled elements (discussed below) are also technically feasible points of interconnection. The Commission finds that telecommunications carriers may request interconnection under

section 251(c)(2) to provide telephone exchange or exchange access service, or both. If the request is for such purpose, the incumbent LEC must provide interconnection in accordance with section 251(c)(2) and the Commission's rules thereunder to any telecommunications carrier, including interexchange carriers and commercial mobile radio service (CMRS) providers. (Emphasis added)

361. **Section 251(c)(3) requires incumbent LECs to provide requesting telecommunications carriers nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.** In the Report and Order, the Commission identifies a minimum set of network elements that incumbent LECs must provide under this section. States may require incumbent LECs to provide additional network elements on an unbundled basis. The minimum set of network elements the Commission identifies are: local loops, local and tandem switches (including all vertical switching features provided by such switches), interoffice transmission facilities, network interface devices, signalling and call-related database facilities, operations support systems functions, and operator and directory assistance facilities. The Commission concludes that incumbent LECs must provide nondiscriminatory access to operations support systems functions by January 1, 1997. The Commission concludes that access to such operations support systems is critical to affording new entrants a meaningful opportunity to compete with incumbent LECs. The Commission also concludes that incumbent LECs are required to provide access to network elements in a manner that allows requesting carriers to combine such elements as they choose, and that incumbent LECs may not impose restrictions upon the uses to which requesting carriers put such network elements. (Emphasis added)

362. In addition to specifying the purposes for which carriers may request interconnection, section 251(c)(2) obligates incumbent LECs to provide interconnection within their networks at any "technically feasible point."[93] **Similarly,**

[93] 47 U.S.C. § 251(c)(2)(B).

> **section 251(c)(3) obligates incumbent LECs to provide access to unbundled elements at any "technically feasible point."** Thus our interpretation of the term "technically feasible" applies to both sections.

Here the FCC defines "technically feasible" as a technical concern only, and places the burden of proof on the ILEC to prove that a specific arrangement specified by an ALEC is not "technically feasible" to the state Commission before BellSouth can refuse to provision it. Certainly BellSouth's position in this case is not supported by the law.

> 198. **We conclude that the term "technically feasible" refers solely to technical or operational concerns, rather than economic, space, or site considerations.** We further conclude that the obligations imposed by sections 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements. Specific, significant, and demonstrable network reliability concerns associated with providing interconnection or access at a particular point, however, will be regarded as relevant evidence that interconnection or access at that point is technically infeasible. We also conclude that preexisting interconnection or access at a particular point evidences the technical feasibility of interconnection or access at substantially similar points. **Finally, we conclude that incumbent LECs must prove to the appropriate state commission that a particular interconnection or access point is not technically feasible.**

Q **WHAT SPECIFIC RELIEF DOES SUPRA SEEK?**

A. Supra merely requests that the parties' Follow-On Agreement follow the current state of the law in all matters, and specific to this issue, Supra asks that

this Commission order that BellSouth be required to provide access to Unbundled Network Elements to Supra at any technically feasible point specified by Supra.

BellSouth shall immediately provision any circuits for which it has not already received an effective order from this Commission stating that the specified Point of Interconnection is not technically feasible.

BellSouth shall not be allowed to delay provisioning while it seeks an order from this Commission to prove that the Point of Interconnection is not technically feasible.

BellSouth will be penalized for any instances where it refuses to provision a circuit where the Point of Interconnection has not already been ruled as not "technically feasible".

Supra requests that this Commission ensure that the Follow On Agreement include a liquidated damages provision to provide incentives for BellSouth's compliance with these rules and orders.

Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to

additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

Q **DOES THIS CONCLUDE YOUR TESTIMONY?**

A. Yes, this concludes my testimony.

David Nilson

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The execution of the foregoing instrument was acknowledged before me this 27th day of July, 2001, by David Nilson, who [✓] is personally known to me or who [] produced _____ as identification and who did take an oath.

My Commission Expires:

ESTHER A. SUNDAY
Notary Public - State of Florida
My Commission Expires Jun 6, 2004
Commission # CC943235

NOTARY PUBLIC
State of Florida at Large

Print Name:

Exhibits

Supra Exhibit # DAN-1 Lucent Document 235-190-104 5ESS 2000 switch ISDN Feature Descriptions, Section 13.4 Message Service System Features, Issue 3 pages 13-67 through 13-126

Supra Exhibit # DAN-2 BellSouth and BSLD agreement to "INTERLATA END TO END TEST AGREEMENT." Dated June 13, 2000.

Supra Exhibit # DAN-3 6/5/2001 Arbitration Award MIL2347 in Supra Telecom v. BellSouth.

Supra Exhibit # DAN-4 Spreadsheet documenting customers subjected to "dirty tricks' campaign of BellSouth whereby customers were given false information regarding their options for continuing DSL service after switching to Supra, including disconnection, or rate increases, and other bad faith tactics.

Supra Exhibit # DAN-5 Direct Testimony of Gregory R. Follensbee, formerly of AT&T now the lead contract negotiator at BellSouth for Supra's Interconnection agreement with BellSouth. This testimony was filed in Florida Docket 00-731, AT&T's Interconnection Agreement arbitration against BellSouth.

Supra Exhibit # DAN-6 July 11, 2001 letter from G. R. Follensbee to O.A.Ramos of Supra Business Systems announcing that any customers of Supra Business Systems provisioned as UNE Combinations will have any and all existing DSL circuits disconnected in 20 days without further notice.

Supra Exhibit # DAN-7 Report of Supra customers that have lost dialtone shortly after converting to Supra. Shows the dramatic increase in the incidence of this issue since the April 26, 2001 special feature on Supra Telecom aired on WSIX, Miami TV channel 6.

Supra Exhibit # DAN-8 June 4, 2001 Letter from D. Nilson to P. Jordan - Minutes of he InterCompany review Board Meeting held May 29, 2001.

Supra Exhibit # DAN-9 June 5, 2001 Letter from D. Nilson to P. Jordan - Minutes of he InterCompany review Board Meeting held June 4, 2001.

SUPRA

CONFIDENTIAL

DECLASSIFIED

9.12.05

EXHIBIT DAN-2

BellSouth

INTERLATA
END TO END TEST AGREEMENT

This Agreement made and entered into this 13 day of June, 2000, by and among BellSouth Telecommunications, Inc., a Georgia corporation (hereinafter "BST"), and BellSouth Long Distance, Inc., a Delaware corporation (hereinafter "BSLD").

WHEREAS, BST provides interexchange access service pursuant to its various tariffs;

and

WHEREAS, BSLD intends to obtain from BST such access service to trial InterLata transport service which it provides or will provide for sale to end users.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and obligations set forth below, the parties hereby agree as follows:

I. PURPOSE OF THIS TEST

The purpose of this test is to enable the parties to this Agreement to test various electronic and manual interfaces and systems which are necessary to the parties' provision of the services which they offer to each other and/or to telecommunications end users.

II. TEST PERIOD

The Test shall begin on or about June 1, 2000, and shall end on or about December 31, 2000(the "Test Period"). The Test Period may be extended if mutually agreed to by the parties in writing.

III. TEST LOCATIONS

Test locations shall be BST tandems in Norcross, Georgia (NRCRGAMA01T), and Atlanta, Georgia – Buckhead (ATLNGABU01T). Georgia end offices to be used in the test will be DNWDGAMA67A, GRFNGAMA22C, ATLNGACS33A, and JCSNGAMARS1.

Additional tandem and end office selections will be determined at a later date upon mutual agreement of the parties.

IV. FINANCIAL RESPONSIBILITIES

BST's normal access tariff charges shall apply for the Test. Such charges shall be billed to BSLD. BSLD shall pay BST, as appropriate, residence, business, and operator services rates as established in BST's Federal and State Access Tariffs, except as specifically provided in this article IV, each party shall bear its own expense in order to participate in this trial.

V. BST'S DUTIES

A. BST shall establish internal procedures to ensure that the only lines that will be presubsribed to CIC 377 during the Test Period are lines associated with the numbers on the Approved ANI List to be provided by BSLD and that calls originating from any number not on the Approved ANI List will not be completed during the Test Period.

B. BST will activate CIC 377 as a valid code in the Equal Access Service Center ("EASC") at the offices set forth in the Section III off this Agreement.

C. BST will process PIC change orders to CIC 377 not to exceed 200 lines.

VI. BSLD'S DUTIES

A. BSLD shall provide to BST an Approved ANI List consisting of no more than 200 ANIs. This number may be increased upon mutual agreement of the parties.

B. BSLD shall submit PIC change orders to BST.

C. BSLD shall be responsible for establishing any necessary special test lines and shall be responsible for placing any test calls from such lines established pursuant to this Agreement.

VII. SHARED DUTIES

The parties shall participate in joint planning prior to beginning of the actual test. such party shall bear its own administrative costs of participating in such planning.

VIII. CONFIDENTIAL/PROPRIETARY INFORMATION

A. ***Confidential Information***

(1) Information furnished or disclosed by one party or its agent or representative (the "Originating Party) to the other party or its agent or representative (the "Receiving Party") in connection with or in contemplation of this Agreement (including but not limited to proposals, contracts, tariff and contract drafts, specifications, drawings, network designs and design proposals, pricing information, strategic plans, computer programs, software and documentation, and other technical or business information related to current and anticipated BST or BSLD products and services), shall be "Confidential Information."

(2) If such information is in written or other tangible form (including, without limitation, information incorporated in computer software or held in electronic storage media) when disclosed to the Receiving Party, it shall be Confidential Information only if it is identified by clear and conspicuous markings to be confidential and/or proprietary information of the Originating Party; provided, however, that all written or oral proposals exchanged between the parties regarding pricing of the Services shall be Confidential Information, whether or not expressly indicated by markings or statements to be confidential or proprietary.

(3) If such information is not in writing or other tangible form when to the Receiving Party, it shall be Confidential Information only if (1) the original disclosure of the information is accompanied by a statement that the information is confidential and/or proprietary, and (2) the Originating Party provides a written description of the information so disclosed, in detail reasonably sufficient to identify such information, to the Receiving Party within thirty (30) days after such original disclosure.

(4) The terms and conditions of this Agreement shall be deemed Confidential Information as to which each party shall be both an Originating Party and a Receiving Party.

(5) Confidential Information shall be deemed the property of the Originating Party.

(6) The following categories of information shall not be Confidential Information:

(a) known to the Receiving Party without restriction when

received, or thereafter developed independently by the Receiving Party; or

(b) obtained from a source other than the Originating Party through no breach of confidence by the Receiving Party; or

(c) in the public domain when received, or thereafter enters the public domain through no fault of the Receiving Party; or

(d) disclosed by the Originating Party to a third party without restriction;

(e) lawfully in the possession of the Receiving Party at the time of receipt from the Originating Party.

(7) Rights and obligations provided by this Section shall take precedence over specific legends or statements associated with information when received .

B. Protection of Confidentiality

A Receiving Party shall hold all Confidential Information in confidence during the Term and for a period of three (3) years following the end of the Term or such other period as the parties may agree. During that period, the Receiving Party:

(1) shall use such Confidential Information solely in furtherance of the matters contemplated by this Agreement and related to either party's performance of this Agreement;

(2) shall reproduce such Confidential Information only to the extent necessary for such purposes;

(3) shall restrict disclosure of such Confidential Information to such of

its employees or its affiliate's employees as have a need to know such information for such purposes only.

(4) shall advise any employees to whom such Confidential Information is disclosed of the obligations assumed in this Agreement;

(5) shall not disclose any Confidential Information to any third party (not including disclosure to a BellSouth subsidiary) without prior written approval of the Originating Party except as expressly provided in this Agreement; and

(6) shall take such other reasonable measures as are necessary to prevent the disclosure, unauthorized use or publication of Confidential Information as a prudent business person would take to protect its own similar confidential information, including, at a minimum, the same measures it uses to prevent the disclosure, unauthorized use or publication of its own similar proprietary or confidential information.

C. Disclosure to or by Affiliates or Subcontractors

In the absence of a contrary instruction by a party, such party's affiliates and its subcontractors performing work in connection with this Agreement shall be deemed agents of such party for purposes of receipt or disclosure of Confidential Information. Accordingly, any receipt or disclosure of Confidential Information by a party's affiliate, or its subcontractor performing work in connection with this Agreement, shall be deemed a receipt or disclosure by the party.

D. Return or Destruction of Confidential Information

(1) Upon termination of this Agreement, or at an earlier time if the information is no longer needed for the purposes described in this Section VIII each party shall cease use of Confidential Information received fromthe other party and shall

use its best efforts to destroy all such Confidential Information, including copies thereof, then in its possession or control. Alternatively, or at the request of the originating party, the Receiving Party shall use its best efforts to return all such Confidential Information and copies to the Originating Party.

(2) Any Confidential Information that is contained in data bases and/or mechanized systems in such a manner that is reasonably cannot be isolated for destruction or return, shall continue to be held in confidence subject to the provisions of the Agreement.

(3) The rights and obligations of the parties under this Agreement with respect to any Confidential Information returned to the Originating Party shall survive the return of the Confidential Information.

E. Disclosure to Consultants

A Receiving Party may disclose Confidential Information to a person or entity (other than a direct competitor of the Originating Party) retained by the Receiving Party to provide advice, consultation, analysis, legal counsel or any other similar services ("Consulting Services") in connection with this Agreement or the Services (such person or entity hereinafter referred to as "Consultant") only with the Originating Party's prior permission (which shall not be unreasonably withheld) and only after the Disclosing Party provides to the Originating Party a copy of a written agreement by such Consultant (in a form reasonably satisfactory to the Originating Party):

(a) to use such Confidential Information only for the purpose of providing Consulting Services to the Receiving Party; and

(b) to be bound by the obligations of a Receiving Party under this Agreement with respect to such Confidential Information.

F. Required Disclosure

(a) A Receiving Party may disclose Confidential Information if such disclosure is in response to an order or request from a court, the FCC, or other regulatory body; provided, however, that before making such disclosure, the Receiving Party shall first give the Originating Party reasonable notice and opportunity to object to the order or request, and/or to obtain a protective order covering the Confidential Information to be disclosed.

(b) If the Federal Communications Commission ("Commission") or a state regulatory entity with applicable jurisdiction orders either party to file this Agreement with the Commission or such state regulatory entity pursuant to authority granted by law or regulation, the party charged with such filing shall provide notice to the other party as provided in Section IX and file the Agreement to the extent required. each party shall request confidential treatment in connection with such filing.

G. Injunctive Remedy

In the event of a breach or threatened breach by a Receiving Party or its agent or representative of the terms of this Section VIII, the Originating Party shall be entitled to an injunction prohibiting such breach in addition to such other legal and equitable remedies as may be available to it in connection with such breach. Each party acknowledges that the Confidential Information of the other party is valuable and unique and that the use or disclosure of such Confidential Information in breach of this

Agreement will result in irreparable injury to the other party.

NOTICES

Notices given pursuant to this Agreement shall be sent by U.S. Mail, first class, postage prepaid, or by facsimile, to the following address:

A. **BST**

Joe Romano

Suite 200

3355 Northeast Expressway

Chamblee, Georgia 30341

Facsimile Number 770-936-3789

B. **BSLD**

Renee Imbesi

32 Perimeter Center East

Atlanta, Georgia 30346

Facsimile Number770-351-6061

IX. PUBLICITY AND PROMOTION

Each party agrees that there will not be any publicity or promotions relating to this Test.

X. LIABILITY

Neither the parties (nor their respective affiliates) will be liable to each other for any direct, incidental, special or consequential damages, including lost profits, sustained or incurred

in connection with the performance or non-performance of this Test, whether in tort, contract, strict liability, or otherwise, and whether or not such damages were foreseen or unforeseen, except for the obligation to pay charges for services provided.

XI. TERMINATION

Either party, in its sole discretion, may terminate this Agreement upon ten (10) days written notice to the other parties.

XII. MODIFICATION

This Agreement can be changed or modified only by written amendment signed by each of the parties.

XIII. COMPLETE AGREEMENT

This Agreement constitutes the entire agreement between the parties and supersedes any prior understandings.

This Agreement is effective this 13 day of June, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

By: _____
(signature)

By: Joe Romano
(printed name)

Title: Sales Director

Date: June 13, 2000

BELLSOUTH LONG DISTANCE, INC.

By: _____
(signature)
By: Joseph M. Gilman
(printed name)
Title: Authorized Agent

Date: 6/9/00

Amendment No. 1

This Amendment No. 1 to the En to End Test Agreement ("Agreement") between BellSouth Telecommunications, Inc. (hereinafter "BST"), and BellSouth Long Distance, Inc (hereinafter "BSLD") is made and entered into this 22 nd day of September, 2000.

The above parties agree that the following change shall be made to the Agreement:

Section II, "TEST PERIOD" is amended by deleting the termination date and replacing it with "June 1, 2001."

Section III, "TEST LOCATIONS" is amended by adding the following test locations at the end of the Section:

END OFFICE	TYPE	TANDEM	CLLI
Charlotte-Lake Wylie	RS1	CHRLNCCA05T	LKWYSCRSRS1
Greenville-Woodruff Rd.	D100	GNVLSCDT60T	GNVLSCWR28F
- Greer	5ESS	GNVLSCDT60T	GRERSCMA87E
Columbia-Senate St.	D100	CLMASCSN60T	CLMASCSN79F
- Swift	5ESS	CLMASCSA60T	CLMASCSW79E
- Camden Ma.	5ESS	CLMASCSA60T	CMDNSCMA43F
Charleston-Charleston D/T	D100	CHTNSCDT60T	CHTNSCDT72E
Charleston-West Ashley	1AESS	CHTNSCDT60T	CHTNSCWA55E
Florence-Hartsville	5ESS	FLRNSCMA60T	HTVLSCMA33E
Augusta-Aiken	5ESS	AGSTGAMT03T	AIKNSCMA64E
Dunwoody	5ESS-Host	NC	DNWDGAMA76A
Baxley	5ESS-Host	SV	BXLYGAES36A
Lumber City	5ESS-Host	SV	LMCYGAMA36C
Marietta East	5ESS-RSM	BU	MRTTGAEA97F
Breman	1A	BU	BRMNGAES53A
Tallapoosa	DMS100-Host	BU	TLLPGAES57F
Bowden	DMS100-Host	BU	BWDNGAMARS1

Pine Mountain	DMS-RSC	CB	PNMTGAMARS1
Columbus Meadowood	DMS-RSC	CB	CLMBAMW56C
Sandy Springs	5ESS-RSM	BU	ATLNGASS25f
Griffin Main	5ESS-RSM	BU	GRFNGAMA22C
Norcross	5ESS-Host	NC	NRCRGAMA01T
Buckhead	4ESS	NC	ATLNGABU01T
Savannah	DMS	SV	SVNHGABS03T
Columbus	DMS	CB	CLMBGAMT01T

Louisiana End Offices

NWORLAMAOGT	DMS200 Tandem
SLIDLAMADS0	SLIDELL HOST 5ESS
BGLSLAMARSI	BOGALOSSA REMOTE EXM-LA504-732;MS601-722
NWORLAMTDS0	METARIE (JEFFERSON PARISH) 5ESS
LLNGLAHVDS0	LULING HANVILLE DCO HOST
LFTTLAMADS0	LAFITTE DCO HOST
JSBNLAMADSO	JESUIT BEND RNS REMOVE
LCMBLAMADS0	LAMCOMBE DMS10 HOST
NWORLAMUDS0	MICHOUD DMS10 HOST
LKTCLAMARS1	LAKE CATHERINE RSC REMOTE
HMNDLAMADS0	HAMMOND 5ESS HOST – N.O. LATA
ALBYLAMARS1	ALBANY RSM – BATON ROUGE LATA
MRCYLAINDSO	MORGAN CITY INGLEWOOD DMS100 N.O. LATA
BLDWLAMARS1	BALDWIN RSC-LAFAYETTE LATA-ST MARY PARISH

WHEREFORE the parties have caused their duly authorized representatives to execute this agreement.

BELLSOUTH TELECOMMUNICATIONS, INC

BY_____
(signature)

BY: Jose Romano
(printed name)

TITLE: Sales Director

DATE: September 19, 2000

BELLSOUTH LONG DISTANCE, INC.

BY: _____
(signature)

BY: Janet A. Kibler
(printed name)

TITLE: President

DATE: 9-22-00

BELLSOUTH

BSLD Billing Investigation Request

DATE: _____ **BSLD TRACKING #** _____

TO: **Atlanta LCSC**
5147 Peachtree Industrial Blvd
D20
Atlanta, Ga 30341 **BST TRACKING #** _____

FAX: 800 872-7059

****

We believe that a billing error appears on the following account:

BSLD Q Account Number : _____

Billing Date of Bill: _____

Billing Item Number on Bill: _____

Amount Disputed: _____

Reason Amount is in question:

_____
_____
_____
_____
_____
_____

If you have any questions or need clarification, you may contact:

Name: _____ **Telephone:** _____
Fax: _____

Work Center Interface Agreement
Between
BellSouth Long Distance, Inc.
And
BellSouth Telecommunications, Inc.

SECTION

APPENDICES

1. INTRODUCTION

This Work Center Interface Agreement (herein referred to as "Agreement") is between BellSouth Telecommunications, Inc.(BST) and BellSouth Long Distance, Inc. (BSLD). This Document provides an Operational Understanding, and has been mutually accepted pursuant to the parameters of the IntraLATA Toll Resale Agreement and Contract Provisions for BSLD Daily Usage File.

BSLD desires to avail itself of the services of BST for the time, in the manner, and as set forth in this Operational Understanding, subject to the rates, charges and provisions of the IntraLATA Toll Resale Agreement and Contract Provisions for BSLD Daily Usage File. Any conflict between the Agreement shall be resolved via the IntraLATA Toll Resale Agreement and Contract Provisions for BSLD Daily Usage File.

BSLD acknowledges that BellSouth will utilize this Agreement as a standard with other IntraLATA Toll Resellers.

2. PURPOSE

The purpose of this Agreement is to establish a foundation for a working relationship between the Local Carrier Service Center (LCSC) and BST in support of IntraLATA Toll Resale Agreement and Contract Provisions for BSLD Daily Usage File. This document seeks to establish the roles and responsibilities for each work center, define the operational requirements needed to perform the assigned responsibilities, and to ensure and facilitate a mutual understanding for the interactive support during its implementation and production phases.

The intent of this document is to concentrate only on those roles and responsibilities that cause each work center to interact with the other. This Agreement will define interface tasks and the guidelines to complete those tasks. In addition, it will define what information will be delivered to which organization, when it will be delivered, and how it will be delivered. To that end, it will:

1. Provide a high level center description of the BellSouth provided LCSC located in the BellSouth service area. (Section 6)

2. Describe the responsibilities of the LCSC associated with the items to be addressed by the Agreement.

3. Explain the LCSC contact to BSLD.

3. DOCUMENT CHANGE CONTROL

This document will be updated as necessary as the LCSC continues to grow and new services are introduced. The changes that are included in the new issue will be highlighted in this section. Such proposed change(s) will take effect in not less than thirty (30) days or more than sixty (60) days or another unless another time period is agreed to by BST and BSLD.

The version number will be increased incrementally by one whole digit for standard updates. Periodically there may be a need to re-issue this document due to a significant change in the LCSC elements and environment. A re-issue of this type will increase incrementally the version number by one decimal number.

4. ASSUMPTIONS OR RESPONSIBILITIES

Daily Usage File

The Customer Daily Records (CDR's) transmitted in the Daily Usage File (DUF) should not be used to reconcile the CRIS bill. The billing period cutoffs change every month, and therefore it is difficult to know when to start/stop the DUF inputs/outputs to the bill.

5. COMMUNICATION INTERFACES

The methods of communication between BST and BSLD to support the operational needs, as stated in the IntraLATA Toll Resale Agreement and Contract Provisions for BSLD Daily Usage File may include but are not limited to; phone, fax, electronic data interface, electronic mail, and overnight delivery. When data needs to be sent from one company to the other, this data will be provided via one of the above stated methods.

A Toll Free number will be used for calling into the LCSC for all telephony needs. It is the LCSC's responsibility to administer and maintain the Toll Free number. For all billing inquiries, the following numbers are universally available:

LCSC Contact Numbers

LCSC call-in number 1-800-872-3116
LCSC Fax number 1-800-872-7059

6. BST RESPONSIBILITIES AND PROCEDURES

Interconnection Services (Account Team)

- Be the Primary Point of Contact between BST and BSLD on the Work Center Interface Agreement.
- Responsible for updates and/or changes to this document. Such updates and/or changes will take effect in not less than thirty (30) days nor more than sixty (60) days unless another time period is agreed to by BST and BSLD.
- Receive Billing Services Problem/Issues for submission to BellSouth Billing Inc. (BBI).

Local Carrier Service Center (LCSC)

- Collect all required documentation to assure that compliance has been met prior to establishing Master Billing Accounts for BSLD.
- Establish Master Billing Accounts for BSLD, one for Residence and for Business in each RAO in which BSLD will resell IntraLATA Tolls. (Outstanding issue on exactly how many accounts will be established per RAO-hopefully will resolve in next meeting)
- LCSC will answer bill inquiries from BSLD regarding the establishment and maintenance of the Master Billing Account.
- LCSC will begin Collection process on Master Billing Account if appropriate.

7. BSLD RESPONSIBILITIES AND PROCEDURES

- Provide a Single Point of Contact/Reach number on all reports,

available seven days per week, 24 hours per day.

- Issuing the Customer Billing Services Problem/Issue form shown on Appendix B number 2. On a Daily Usage File Problem.
- Issuing the Billing Investigation Request shown on Appendix C on questions that concern the Q Billing Account.

8. POINT OF CONTACT FOR THE INTERFACE AGREEMENT

BellSouth Telecommunications, Inc.	**BSLD**
Joe Romano Sales Director Telephone number: 770-936-3744 Pager: 800-329-5518 Fax: 770-936-3789	John Irwin Assistant Vice President Telephone number: 678-443-3437 Pager: 888-534-6037 Fax: 770-351-6061
Linda Walker Systems Designer II Telephone number: 770-592-3452 Pager: 800-743-5889 Fax: 770-936-3453	Gary Nicholson Senior Manager Telephone number: 770-352-3129 Pager: 888-958-2283 Fax: 770-351-6061
Bill Theriot Carrier Services Coordinator Telephone number: 770-936-3746 Pager: 888-544-3916 Fax: 770-936-3789	Kenny Barhanovich Manager Telephone number: 770-352-3038 Pager: 888-958-2370 Fax: 770-351-6061

9. PROTECTING INFORMATION

Information furnished or disclosed in connection with this Agreement provided by BSLD and BST to one another will be deemed "Confidential Information" by BST and BSLD pursuant to the IntraLATA Toll Resale Agreement and Contract Provisions for BSLD Daily Usage File, and not made available to personnel or contractors outside the LCSC without BST and/or BSLD permission.

BSLD and BST will adopt and adhere to this mutually agreed to standards contained in this Work Center Interface Agreement regarding maintenance and installation of service. This Agreement sets forth the entire understanding and supersedes prior agreements between BSLD and BST relating to the subject contained herein. This Agreement may be amended from time to time upon written agreement of the parties.

Executed this _____day of _____, 1998.

BELLSOUTH LONG DISTANCE, INC.	BELLSOUTH TELECOMMUNICATIONS, INC.
By:_____ (Signature)	By:_____ (Signature)
Name:_____ (Print Name)	Name:_____ (Print Name)
Title: _____	Title: _____
Date: _____	Date: _____

APPENDIX A

WORKCENTER ESCALATION PROCEDURES

Interconnection Services (ICS)

Should BSLD disagree with any part of the IntraLATA Toll Resale Agreement and Contract Provisions for BSLD Daily file:

Bill Theriot
Carrier Services Coordinator
Telephone number: 770-936-3746
Pager: 888-544-3916
Fax: 770-936-3789

Linda Walker
Systems Designer II
Telephone number: 770- 592-3452
Pager: 800-743-5889
Fax: 770-592-3453

Joe Romano
Sales Director
Telephone number: 770-936-3744
Pager: 800-329-5518
Fax: 770-936-3789

Terrie Hudson
AVP - Sales Corporate Accounts
Telephone number: 770-936-3740
Pager : 800-946-4646, PIN 1120809
Fax: 770-936-3789

Local Carrier Service Center (LCSC):

Should BSLD disagree with the LCSC resolution of a dispute or inquiry on the establishment, maintenance, or collection process of a

master billing account, following are the escalation contacts:

LCSC Service Representative	1-800-872-3116
LCSC Fax Number	1-800-872-7059
LCSC Mail Addresses	5147 Peachtree St., Suite D70 Atlanta, Georgia 30341
LCSC Manager-Billing	770-986-2141
Operations Director-Billing	205-714-0012
Operations Assistant Vice President Billing & Collections	205-714-0010

APPENDIX B

(Please note that the documents below are in pdf format and require the Adobe Acrobat Reader for viewing. Please access www.adobe.com to download the latest Acrobat Reader.)

Customer Billing Services - Data Delivery
BSLD Test Request/Problem/Issue/Resend Fax Cover Sheet

Customer Billing Services - Data Delivery
BSLD Problem/Issue Form

Customer Billing Services - Data Delivery
BSLD Resend Request Form

Customer Billing Services - Data Delivery
BSLD Generic Test Request Form

ODUF/ADUF/DUF SETUP AND TESTING

Procedures in setting up BSLD for participation in Optional Daily Usage Feed (ODUF),Access Daily Usage Feed (ADUF),or Daily Usage File (DUF) are as follows:

Establishing service

- BSLD is required to be under Contractual Agreement with BellSouth which describes the requirements of data to be sent to BSLD.
- The process flow is as follows: Contractual Agreement, Establish Service, Conduct Test(s), Review Test and then Transfer Process to production.
- Involvement of BellSouth departments, ISC-AE, ITB-Andersen, BBI (BellSouth Billing, Inc.) and the BSLD representative.
- BSLD should notify the Account Executive in the ICS

- that there is an interest is participating in the ODUF,ADUF,or DUF processes.
- The Account Executive should set-up a conference call with BBI and BSLD representative after contractual agreement is verified.
- BBI will present an overview of the process(s) and answer any questions that may arise.
- If BSLD is interested in participation and request test data, the Account Executive should prepare the bsldtsrq.doc form and send to BBI. See Section under Test Data.
- Document can be attached to Open Mail and accepted as electronic signature.
- Subject on Open Mail *****
- A Fax copy can be sent but would require signature of the AE on the bsldtsrq.doc.
- Adhering to "Timely information for today's BST Leader", Vol. 6, No.46, 03/03/1998.

Process	Name	Telephone#	Fax#	Open Mail - ID
ODUF/DUF	Andy Plummer	(205)321-4321	(205) 321-3753	ANDY PLUMMER/AL,BRHM08
ADUF/DUF	Ed Skinner	(205)321-4224	(205) 321-3753	ED R SKINNER/AL,BRHM04

BBI will edit request and forward on to ITB-Andersen for processing.

Process	Name	Telephone#	Fax#	Backup Name
ADUF/ODUF/DUF	Karen Moses	(205)733-5359	(205) 988-1628	Mike Pfaff

- BBI will inform the Account Executive on the scheduled date and time.
- ITB-Andersen is measured on completion of the test process within 10 work days.
- BBI will inform the Account Executive on the completion of the file being sent.
- BSLD, upon receipt, can arrange another conference call with BBI through the Account Executive to discuss any issues that may arise.

Or, the account executive can prepare a bsldprob.doc form to be sent to BBI for addressing.

- The Account Executive will notify BBI within 5 work days the status of the test file sent to BSLD.
- BSLD wishing to go to live production, should communicate request to the Account Executive.
- The Account Executive will notify BBI in writing of BSLD requesting live production.
- BBI will make arrangements with ITB-Andersen for BSLD live processing and inform the Account Executive of the effective date.

ODUF/ADUF/DUF TESTING AND SETUP

Test Data

- BSLD can request test data through a generic file created by ITB-Andersen.
- Any questions from the test data can be answered through the AE setting up a conference call with BSLD and BBI personnel.
- Issues created by BSLD regarding test data should be communicated through the Account Executive.
- The Account Executive should prepare a bsldprob.doc form and communicate this form to BBI-SME.

Setup

Measurements

- The BBI-SME has one working day to communicate Test data requirements to ITB-Andersen upon receipt of a completed and accurate bsldtsrq.doc form.
- ITB-Andersen has 10 work days to complete the test process including distributing test results through media requested by the Account Executive/BSLD.
- Account Executive has 5 work days to update BBI-SME on the status of the test results.
- BBI-SME will communicate this status upon receipt to ITB-Andersen personnel.

Bsldtsrq.doc Form.

Fields	Bsldtsrq.doc	Responsibility
Request Date	Date BSLD requested test data. mm/dd/yyyy format.	Account Exec
Received Date	Date received in BBI. BBI will update this field.	BBI-SME
Process Date	Date Job executed in ITB-Andersen.	BBI-SME
BSLD Response Date	Date BSLD responded to AE with test results. mm/dd/yyyy format	Account Exec
BBI Use	BBI-SME will create tracking number	BBI-SME
Account Exec	Account Exec Name.	Account Exec
Telephone #	Account Exec Telephone number.	Account Exec
Fax#	Account Exec Fax Telephone number.	Account Exec
Open Mail Id.	Open Mail Id.	Account Exec
Name	BSLD name as listed on CSR.	Account Exec
AECN/OCN	Operating Company Number assigned by NECCA.	Account Exec
ODUF/ADUF/DUF	Indicate Daily Usage File Type. ODUF for ODUF test: ADUF for ADUF test:DUF for DUF test.	Account Exec
Send to RAO	Revenue Account Office code CLEC wants in Header Record.	Account Exec
Rated/Un-Rated	Type of message feed listed in contract	Account Exec
Reseller-Yes/No	Is BSLD a reseller?	Account Exec
Operator Services - Yes/No	Operator Handled calls involved?	Account Exec
Number Portability - Yes/No	Interim Number Portability involved?	Account Exec
Operating in Sites	Generic data will be sent. But indicate what sites BSLD will operate in.	Account Exec
Type of Test Media		Account Exec
Connect Direct (NDM)	Arrangements with NDM coordinator should be made (Betsy King) if this option is chosen. DSN (Data Sent Name) should be provided to BBI-SME	Account Exec
Magnetic Tape	Two options exist for customer.	Account Exec
T6250	Round Reel selection.	Account Exec

CTAPE (Cartridge)	Cartridge Tape Selection.	Account Exec
Comments	General comments from Account Exec.	Account Exec
AE Signature	Required if form sent via fax.	Account Exec

Bsldprob.doc Form.

Fields	Bsldprob.doc	Responsibility
Request Date	Date BSLD requested investigation. mm/dd/yyyy format.	Account Exec
Received Date	Date received in BBI. BBI will update this field.	BBI-SME
Process Date	Date of Resolution/Response.	BBI-SME
BSLD Response Date	Date BSLD responded to AE with resolution results. mm/dd/yyyy format	Account Exec
BBI Use	BBI-SME will create tracking number	BBI-SME
Account Exec	Account Exec Name.	Account Exec
Telephone #	Account Exec Telephone number.	Account Exec
Fax#	Account Exec Fax Telephone number.	Account Exec
Open Mail Id.	Open Mail Id.	Account Exec
Name	BSLD name as listed on CSR.	Account Exec
AECN/OCN	Operating Company Number assigned by NECCA.	Account Exec
ODUF/ADUF/DUF	Indicate Daily Usage File Type. ODUF for ODUF: ADUF for ADUF:DUF for DUF.	Account Exec
Send to RAO	Revenue Account Office Code of BSLD	Account Exec
Rated/Un-Rated	Type of message feed listed in contract	Account Exec
Reseller-Yes/No	Is BSLD a reseller?	Account Exec
UNE - Yes/No	Does BSLD have UNE accounts?	Account Exec
Facilities Based - Yes/No	Is BSLD a Facilities Based provider?	Account Exec
Operator Services - Yes/No	Operator Handled calls involved?	Account Exec
Number Portability - Yes/No	Interim Number Portability involved?	Account Exec

Operating in Sites	Indicate Yes where OCN is active and problem is present.	Account Exec
Problem/Issue#	Start with number "1" if multiple problem/issues submitted.	Account Exec
Problem/Issue Description(s)	Include the Header record information if the ODUF, ADUF, or DUF file is in question. Include the EMIrecord types involved: charge number: Call dates and times from the pack information. Explain why the records sent are unbillable by BSLD.	Account Exec
AE Signature	Required if form sent via fax.	Account Exec

Bsldresd.doc Form.

Fields	Bsldresd.doc	Responsibility
Request Date	Date BSLD requested investigation. mm/dd/yyyy format.	Account Exec
Received Date	Date received in BBI. BBI will update this field.	BBI-SME
Process Date	Date of Resolution/Response.	BBI-SME
BSLD Response Date	Date BSLD responded to AE with resolution results. mm/dd/yyyy format	Account Exec
BBI Use	BBI-SME will create tracking number	BBI-SME
Account Exec	Account Exec Name.	Account Exec
Telephone #	Account Exec Telephone number.	Account Exec
Fax#	Account Exec Fax Telephone number.	Account Exec
Open Mail Id.	Open Mail Id.	Account Exec
Name	BSLD name as listed on CSR.	Account Exec
AECN/OCN	Operating Company Number assigned by NECCA.	Account Exec
ODUF/ADUF/DUF	Indicate Daily Usage File Type. ODUF for ODUF: ADUF for ADUF: DUF for DUF test.	Account Exec
EM Header Record	Record Category and date of Header Record for RE-send	Account Exec
Rated/Un-Rated	Type of message feed listed in contract	Account Exec
Reseller-Yes/No	Is BSLD a reseller?	Account Exec

Facilities Based - Yes/No	Is BSLD a Facilities Based provider?	Account Exec
Operator Services - Yes/No	Operator Handled calls involved?	Account Exec
Number Portability - Yes/No	Interim Number Portability involved?	Account Exec
Operating in Sites	Indicate Yes where OCN is active and problem is present.	Account Exec
Type of Test Media		Account Exec
Connect Direct (NDM)	Arrangements with NDM coordinator should be made (Betsy King) if this option is chosen. DSN (Data Sent Name) should be provided to BBI-SME	Account Exec
Magnetic Tape	Two options exist for customer.	Account Exec
T6250	Round Reel selection.	Account Exec
CTAPE (Cartridge)	Cartridge Tape Selection.	Account Exec
RE-send Reason	Explain why file needs recreating. Did Not Receive? Cannon Read?, etc.	Account Exec
AE Signature	Required if form sent via fax.	Account Exec

APPENDIX C

BSLD Billing Investigation Request Form

Subject to the Confidentiality and Proprietary agreement of the General Terms and Conditions of the IntraLATA Toll Resale Agreement and Contract Provisions for BSLD Daily Usage file. Dated April 16, 1998, Between BSLD and BST

CONFIDENTIAL

DECLASSIFIED 9.17.05

BEFORE THE CPR INSTITUTE FOR
DISPUTE RESOLUTION ARBITRAL TRIBUNAL

SUPRA TELECOMMUNICATIONS
& INFORMATION SYSTEMS, INC.,

Claimant,

v. Arbitration I

BELLSOUTH
TELECOMMUNICATIONS INC.,

Respondent.

****

BELLSOUTH
TELECOMMUNICATIONS INC.,

Claimant and
Counterclaim Respondent,

v. Arbitration II

SUPRA TELECOMMUNICATIONS
& INFORMATION SYSTEMS, INC.,

Respondent and
Counterclaimant.

AWARD OF THE TRIBUNAL IN CONSOLIDATED ARBITRATIONS

ARBITRAL TRIBUNAL

M. SCOTT DONAHEY
JOHN L. ESTES
CAMPBELL KILLEFER

SUPRA

(Part 3 of 4)
DN 09252-05

EXHIBIT: DAN-3

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AWARD OF THE TRIBUNAL IN CONSOLIDATED ARBITRATIONS

I. Introduction

This Award resolves two arbitration proceedings arising out of and relating to the Interconnection Agreement between Supra Telecommunications & Information Systems, Inc. ("Supra") and BellSouth Telecommunications, Inc. ("BellSouth") effective on October 5, 1999. In accordance with the dispute resolution provisions of the Interconnection Agreement, Supra and BellSouth appointed three neutral arbitrators to decide various disputes: M. Scott Donahey of the law firm Tomlinson Zisko Morosoli & Maser LLP; John L. Estes of the law firm Locke Liddell & Sapp; and Campbell Killefer of the law firm Venable, Baetjer, Howard & Civiletti, LLP. The three arbitrators designated Mr. Donahey to serve as chairman.

This award begins with a summary of the procedural history of the two arbitration proceedings. The award then provides a description of the legal authorities that govern the arbitration proceedings, including the Telecommunications Act of 1996, relevant federal court decisions, and rulings by the Federal Communications Commission ("FCC") and Florida Public Service Commission ("FPSC"). A short description of the relationship between Supra and BellSouth before the effective date of the Interconnection Agreement is provided to give context to the discussion of the arbitration issues. The majority of this award covers the many claims and counterclaims between Supra and BellSouth in the two arbitrations and then concludes with a discussion of damages and other relief.

II. Procedural History

This section summarizes the procedural history of the two arbitrations, including descriptions of rulings by the Tribunal that governed both arbitrations. Some rulings also may govern possible future disputes between Supra and BellSouth (e.g., whether

consequential damages may be recovered under the Interconnection Agreement). Both Supra and BellSouth vigorously litigated the many issues between them, which led to many discovery rulings by the Tribunal as well as legal rulings on various provisions of the Interconnection Agreement. The arbitrations were conducted under the Rules for Non-Administered Arbitration of the CPR Institute for Dispute Resolution.

A. Arbitration I

Supra initiated the first arbitration with its Notice of Arbitration and Complaint served on October 25, 2000. Supra's Complaint argued that the disputes between the parties were "disputes affecting service" within the meaning of Section 9.1 of Attachment 1 – Alternative Dispute Resolution – to the Interconnection Agreement and therefore must be resolved on an even more expedited basis than a "normal" dispute, which must be decided within 90 days of the filing of the Complaint. After the parties served legal memoranda and a conference call for oral argument was conducted, the Tribunal unanimously ruled by Order dated November 16, 2000 (attached hereto as Annex A and incorporated herein by reference), that Supra had failed to carry its burden to show that its claims were "disputes affecting service" and the arbitration would therefore proceed on a normal schedule. Then BellSouth timely filed its Answer to Supra's Complaint.

The Tribunal set a schedule for written discovery, depositions and the filing of direct and rebuttal testimony in advance of the arbitration hearing. The hearing in Arbitration I was originally scheduled to occur on January 18-20 and 22-23, 2001. By agreement of both parties to waive the 90-day decision requirement under the Interconnection Agreement (*see,* Revised Memorandum Re: Scheduling dated January 17, 2001, at 2, ¶1, attached hereto as Annex B and incorporated herein by reference), the dates for the hearing were extended several times. The first extension of the hearing schedule was in connection with Supra's motion for leave to file an amended complaint

to add a claim expressly asserting a contractual breach concerning BellSouth's providing nondiscriminatory access to its Operational Support Systems ("OSS") for Supra's pre-ordering and ordering of telecommunications services from BellSouth. Supra's motion was granted and Supra duly served its Amended Complaint and BellSouth served its Answer.

The parties presented many discovery disputes to the Tribunal, which were briefed by the parties and ruled upon after conference calls for oral argument. One major discovery dispute related to Supra's request to conduct a videotape deposition of knowledgeable BellSouth witnesses while operating the OSS and related databases. A simulated demonstration was conducted at the suggestion of the Tribunal to settle the discovery dispute without intruding in the BellSouth OSS and databases operating in a production environment. The Tribunal understands that the demonstration by BellSouth and for the benefit of Supra included the OSS, various electronic interfaces to databases, and related functionality.

A major legal issue decided before the hearing in Arbitration I was whether Supra could recover consequential damages, including alleged future lost profits, under the Interconnection Agreement. BellSouth served a motion to strike Supra's demand for consequential damages. The parties were directed to serve simultaneous opening and reply memoranda on the issue. In preparation for a conference call on the damages issue, Arbitrator Killefer prepared and served a four-page legal memorandum on the damages issues on February 14 to help focus the paries' arguments. The conference call was conducted as scheduled on February 19, 2001.

The Tribunal unanimously ruled on February 21, 2001, that consequential damages are recoverable under the Interconnection Agreement if a party can prove that a contractual breach is "willful or intentional misconduct," i.e., with tortious intent to harm

the other party (the Order Re: Damages, dated February 21, 2001, is attached hereto as Annex C and is incorporated herein by reference). BellSouth served a Motion for Reconsideration and for Preservation of Error on March 2 , 2001. The parties were directed to file simultaneous briefs on the issue and a conference call for oral argument was conducted on March 13, 2001. The Tribunal unanimously issued a "Clarification of Order re: Damages" on March 15, 2001, that held as follows:

> The Panel concludes that "willful or intentional misconduct" is broad terminology which embraces willful or intentional breach of contract to the extent that it is done with the tortious intent to inflict harm on the other party to the contract. The panel's interpretation of this phrase is supported by judicial authority, including *Metropolitan Life Insurance Co. v. Noble Lowndes Int'l, Inc.*, 643 N.E.2d 504, 506-508 (N.Y. 1994) and *Wright v. Southern Bell Tel. & Tel. Col., Inc.*, 313 S.E.2d 150 (Ga. App 1984).
>
> Accordingly the Tribunal unanimously finds that **to the extent that Supra can prove that BellSouth intentionally or willfully breached the Agreement at issue in this case with the tortious intent to inflict harm on Supra, at least in part through the means of such breach of contract**, and that as a direct and foreseeable consequence of that breach Supra suffered damages in an amount subject to proof, Supra can recover consequential damages in this action.

March 15 Order at ¶¶ 1-2 (emphasis added). (The Clarification of Order Re: Damages is attached hereto as Annex D and is incorporated herein by reference).

The parties timely filed their respective direct and rebuttal testimony with exhibits as well as Prehearing Statements. Page and line designations of deposition testimony were also served by Supra and BellSouth.

The hearing in Arbitration I was scheduled for six days, but was concluded in four days on April 16-19, 2001, at the Westin Peachtree Plaza Hotel in Atlanta, Georgia. Post-hearing briefs were served by the parties on May 14, 2001.

B. Arbitration II

On January 31, 2001, BellSouth initiated a second arbitration regarding billing and payment disputes under the parties' Interconnection Agreement. On February 20, 2001, Supra timely filed its Notice of Defense and Counterclaim.

On March 12, 2001, BellSouth filed a motion to dismiss Supra's Counterclaim. Supra filed its opposition on March 19, 2001, and BellSouth filed its reply in support of the motion on March 26, 2001. On March 29, 2001, a conference call was held to discuss various issues in Arbitration II, including BellSouth's motion to dismiss Supra's counterclaim.

During the March 29 conference call, the Tribunal ordered that Supra and BellSouth submit legal memoranda on the issue of the Tribunal's jurisdiction to decide certain disputes relating to the parties' Interconnection Agreement in light of ongoing proceedings between Supra and BellSouth in (1) federal district court in Miami, Florida in Case No. 99-1706-CIV-SEITZ, and (2) before the Florida Public Service Commission. Supra and BellSouth timely filed their legal memoranda on April 2, 2001.

On April 5, 2001, the Tribunal unanimously ruled in a seven-page Order that the Tribunal has jurisdiction to decide issues only as expressly authorized by the terms of the Interconnection Agreement and well settled case law under the Federal Arbitration Act, 9 U.S.C. §1, *et seq*. The Tribunal was very concerned that Supra and BellSouth notify the Tribunal of any legal proceedings that conflict or overlap with the jurisdiction being exercised by the Tribunal:

> This tribunal is not aware of any such FPSC proceeding relating to post-October 5, 1999 billing disputes, but the parties are ordered immediately to notify this tribunal in writing of such FPSC proceedings if any exist presently or arise in the future. This tribunal will scrupulously avoid exercising jurisdiction that would conflict or overlap with FPSC, federal district court, or other legal proceedings.

April 5 Order, at 5. Accordingly, the Tribunal granted in part and denied in part BellSouth's Motion to Strike Supra's counterclaim in Arbitration II:

> (1) No recovery may be awarded for pre-October 5, 1999 acts or omissions;
> (2) No recovery may be awarded for claims over which the FPSC or any federal district court retains jurisdiction;
> (3) No recovery may be awarded in Arbitration II for those Supra claims that are presented for the Arbitration I hearing on April 16-21, 2001; and
> (4) The parties agree, and the tribunal orders, that lost profits might be recoverable as consequential damages, but "lost revenues" is an improper measure of damages.

April 5 Order, at 6. The Tribunal also ruled that, as the Tribunal had forewarned the parties, "[b]asic fairness suggests that the tribunal's award in Arbitration I either be issued before Arbitration II or be set off against the Arbitration II award if warranted by the evidence." *Id.* (The Order Regarding BellSouth's Motion to Dismiss Supra's Counterclaims and Related Issues, dated April 5, 2001, is attached hereto as Annex E and incorporated herein by reference). In a conference call held on April 10, 2001, the parties agreed to waive the provision in the Interconnection Agreement that requires an award to be issued within 90 days of filing, and agreed that the award in Arbitration II would be issued no later than June 5, 2001. (A copy of a letter dated April 11, 2001, confirming the new agreed schedule is attached hereto as Annex F and incorporated herein by reference).

In advance of the hearing in Arbitration II, the Tribunal ruled on various discovery disputes. Less than a week before the scheduled start of the Arbitration II hearing, on April 26, 2001, the Tribunal conducted a conference call regarding various issues. The Tribunal issued an unanimous order that same day. That order denied Supra's motion to strike the rebuttal damages testimony of BellSouth expert witness Freeman and allowed Supra to file sur-rebuttal damages testimony of Supra expert

witness Wood under specified conditions. The April 26, 2001 Order also ruled that a "reasoned award" as opposed to a "naked award" would be issued in both arbitrations pursuant to the Rules for Non-Administered Arbitrations of the CPR Institute for Dispute Resolution. (A copy of the Order Regarding Supra's Motion to Strike Rebuttal Testimony of Professor Freeman and Other Matters Discussed During April 26 Conference Call is attached hereto as Annex G and is incorporated herein by reference).

The hearing in Arbitration II was scheduled to be conducted over six days. In fact, the hearing concluded in only four days beginning Sunday, April 29, 2001, and finishing Wednesday, May 2, 2001, at the Georgian Terrace Hotel in Atlanta, Georgia. The parties served simultaneous post-hearing memoranda on May 14, 2001. The Tribunal committed to a June 5, 2001 deadline for issuance of an award in both arbitrations.

III. The Radical Revision of Telecommunications Law

In 1996, the United States Congress passed the Telecommunications Act of 1996 (the "1996 Act"), a statute which was intended to revolutionize the telecommunications industry. In its First Report and Order, released August 8, 1996, FCC 96-325, the Federal Communications Commission ("FCC") characterized the sweeping changes heralded by the Act in the following language:

> The Telecommunications Act of 1996 fundamentally changes telecommunications regulation. In the old regulatory regime government encouraged monopolies. In the new regulatory regime, we and the states remove the outdated barriers that protect monopolies from competition and affirmatively promote efficient competition using tools forged by congress. Historically, regulation of this industry has been premised on the belief that service could be provided at the lowest cost to the maximum number of consumers through a regulated monopoly network. State and federal regulators devoted their efforts over many decades to regulating the prices and practices of these monopolies and protecting them against competitive entry. The 1996 Act adopts precisely the opposite approach. Rather than shielding telephone

> companies from competition, the 1996 Act requires telephone companies to open their networks to competition.

Id., at 7.

The effect of this legislation was to require the existing monopolistic regional telecommunications providers, now known as Incumbent Local Exchange Carriers ("ILECs") to assist would-be competitors to compete against them in the telecommunications marketplace, in part by providing potential competitors with access to the monopolists' equipment and services. The 1996 Act has three principal goals:

> (1) Opening the local exchange and exchange access markets to competitive entry; (2) promoting increased competition in telecommunications markets that are already open to competition, including the long distance services market; and (3) reforming our system of universal service so that universal service is preserved and advanced as the local exchange and exchange access markets move from monopoly to competition.

Id.

In its first Report and Order the FCC established numerous rules to promote entry and competition in the telecommunications marketplace. This order was promptly challenged by ILECs and state utility commissions on the grounds that the FCC had exceeded its jurisdiction. These actions were consolidated in the United States Court of Appeals for the Eighth Circuit. That appellate court agreed with those who argued that the primary authority to implement the 1996 Act resided in the individual state commissions, and it vacated the FCC's order. *Iowa Utilities Board v. FCC*, 120 F. 3d 753, 800, 804, 805-806 (8th Cir. 1997). The case was thereafter appealed to the Supreme Court.

In *AT&T Corp., et al. v. Iowa Utilities Board, et al.*, 525 U.S. 366, 119 S. Ct. 721, 142 L. Ed. 834 (1999), the United States Supreme Court largely reversed the appellate court and remanded the case. While the Supreme Court generally upheld the FCC's rule-

making powers and the rules that the FCC had established in its First Report and Order, the Court was not satisfied that the FCC had properly applied the "necessary and impair" standards in its promulgation of Rule 319.

Section 251(a)(2) of the 1996 Act provides:

> In determining what network elements should be made available for purposes of subsection (c)(3) of this section, the [FCC] shall consider, at a minimum, whether --
>
> (A) Access to such network elements as are proprietary in nature is **necessary**; and
>
> (B) The failure to provide access to such network elements would **impair** the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.

Emphasis added. The statutory provision and Rule 319 deal with the obligation of the ILEC to make network elements available to Competitive Local Exchange Carriers ("CLECs").

Ultimately, the FCC set out to comply with the instructions of the United States Supreme Court in the Federal Communications Commission Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, Released November 5, 1999 ("Third Report and Order"). The FCC determined that "without access to unbundled network elements, a [CLEC] may choose not to enter a particular market because the cost and delays associated with deploying its own facilities would be too high given the revenues obtainable from the market and the relative attractiveness of other potential new markets." Third Report and Order, §13 at 8. The FCC defined a "necessary element" as "if, taking into consideration the availability of alternative elements outside the incumbent's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element would, as a practical, economic, and operational matter, **preclude** a requesting

carrier from providing the services it seeks to offer." *Id.*, at 9 (emphasis added). The FCC defined "impairs" as "if, taking into consideration the availability of alternative elements outside the [ILEC's] network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of that element **materially diminishes** a requesting carrier's ability to provide the service it seeks to offer. *Id.*, at 9-10 (emphasis in original).

Applying those definitions, the FCC determined that ILECs must unbundle and make available the following network elements: 1) Loops, including high-capacity, xDSL-capable loops, dark fiber, and inside wire owned by [ILECs]; 2) subloops, or portions thereof; 3) Network Interface Devices ("NIDs"); 4) local circuit switching, except for local circuit switching used to serve end users with 4 or more lines in access density zone 1 in the top 50 Metropolitan Statistical Areas ("MSAs"), provided that ILECs provide non-discriminatory, cost-based access to the enhanced extended link throughout zone 1; 5) Packet Switching, only in the limited circumstances in which ILECs have placed digital loop carrier systems in the feeder section of the loop or have DSLAM in a remote terminal; 6) dedicated interoffice transmission facilities, or transport; 7) signaling links and signaling transfer points; and 8) Operations Support Systems ("OSS"). Id., at 11-13.

Focusing on one key unbundled network element, the ILEC's OSS, the FCC found that "[ILECs] must offer unbundled access to their operations support systems. OSS consists of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an [ILEC's] databases and information. The OSS element includes access to all loop qualification information contained in any of the [ILEC's] databases or other records, including information on whether a particular loop is capable of providing advanced services." *Id.*, at 13. *See, also, id.*, §425 at 189. The FCC

determined that OSS is not proprietary, and therefore it did not have to be analyzed under the "necessary" standard. In performing the "impair" analysis required by the Supreme Court, the FCC concluded that "lack of access to the [ILEC's] OSS impairs the ability of requesting carriers to provide the services they seek to offer." Id., §433 at 192.

IV. Supra's and BellSouth's Relationship Before the October 5, 1999 Effective Date of the Interconnection Agreement

Supra and BellSouth had experienced over two years of dealing with one another by the time they entered into their Agreement effective October 5, 1999, which adopted and incorporated by reference the Agreement between BellSouth and AT&T Communications of the Southern States, Inc. effective on June 10, 1997 ("Interconnection Agreement"). The Tribunal already has ruled that "[n]o recovery may be awarded for pre-October 5, 1999 acts or omissions" in these arbitrations (April 5, 2001 Order, at 6), but a summary of the parties' relationship leading up to the Interconnection Agreement will provide helpful context for the discussion of both liability and damages issues.

As set forth in greater detail in the preceding Section III regarding the "Radical Revision of Telecommunications Law," Supra and BellSouth may have been pre-ordained to suffer an inherently adversarial relationship. In accordance with the 1996 Act and implementing orders of the FCC, BellSouth was forced to allow Supra and other CLECs to lease equipment, facilities and services owned by BellSouth and use those very telecommunications elements to compete against BellSouth. At least in the early stages of the parties' relationship, essentially every new Supra telephone customer was won away from BellSouth, with a resulting decrease in BellSouth's revenues.

BellSouth and other ILECs exercised their legal rights and challenged the 1996 Act and implementing FCC orders. BellSouth won some litigation fights and lost others, most notably being compelled against its wishes to lease unbundled network elements ("UNEs") and UNE combinations ("UNE Combos") by the FCC First Report and Order, the United States Supreme Court's decision in *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366 (1999), and the ensuing FCC Third Report and Order.

Supra's 1997 business plan (Arb. II, Supra Ex. 90) and hearing testimony show that Supra's competitive strategy involved beginning its telecommunications services as a reseller of BellSouth services, which enabled Supra to lease equipment with discounts off BellSouth's retail prices. After establishing a market presence, Supra planned to become what is known as a facilities-based UNE provider, which would enable Supra to lease UNEs and UNE Combos from BellSouth and to collect long distance telephone access and other charges not available to Supra while operating as a reseller of BellSouth services. Supra planned eventually to collocate Supra's own switches in BellSouth central offices and other facilities and offer Digital Subscriber Line ("DSL") and other advanced services. The final competitive stage, once Supra had gained sufficient residential and business customers and perhaps become a "carrier's carrier" -- providing services to other CLECs -- would be for Supra to build its own telecommunications network and expand operations into other states beyond Florida.

Testimony and exhibits in the two arbitration hearings show that Supra's and BellSouth's business relationship started on the wrong foot from the outset. Supra entered into a Resale Agreement with BellSouth effective May 19, 1997, that was executed on a take-it-or-leave-it basis. Mr. Olukayode Ramos, CEO of Supra, became aware of the Interconnection Agreement between AT&T and BellSouth during the summer of 1997. Ramos requested that BellSouth send a copy of the AT&T/BellSouth

Interconnection Agreement for Supra to opt into that agreement. Through miscommunication or by design, Mr. Patrick Finlen of BellSouth sent Ramos a "generic" Interconnection Agreement that did not reflect the terms negotiated by AT&T. Ramos promptly executed the "generic" agreement without the benefit of expert review by a telecommunications lawyer or consultant or of even checking the public files of the FPSC to ensure that Supra actually had the AT&T/BellSouth Agreement.

It is undisputed that, before the executed agreement was filed with the FPSC, Finlen compiled a different version with an Attachment 2 that deleted BellSouth's obligation to provide UNE Combos and a new signature page with mis-aligned paragraphs. It also cannot be disputed that the replaced Attachment 2 in Supra's agreement appeared only days after the Eighth Circuit Court of Appeals had ruled in *AT&T v. Iowa Utilities Board*, 124 F. 3d 934 (8th Cir. 1997) calling into question an ILEC's duty to provide UNE Combos to CLECs such as Supra.

Finlen of BellSouth testified that the replaced pages were an honest mistake and immaterial. Ramos of Supra testified that the switch was deliberate and intended to deprive Supra of the benefits of the "true" AT&T/BellSouth agreement.

In any event, the "switched" agreement episode led to an atmosphere of distrust and adversarial relations that is reflected in the contemporaneous documents submitted as exhibits and in the personal *animus* that was apparent during testimony of some witnesses at the hearings in these two arbitrations. Cathey of BellSouth described the relationship with Supra as "always tempered with suspicion and fear of reprisal." Arb. II, Tr., at 958, lines 16-17. "Of all the relationships, while none [were] completely perfect with the CLECs, not one approaches the awkwardness of the BellSouth/Supra relationship." *Id.* at lines 18-20.

Supra's and BellSouth's adversarial business relationship led to extensive battles in almost every conceivable forum even before these two arbitrations. Supra has pursued enforcement proceedings before the FCC, a variety of proceedings before the FPSC and one before the Georgia Public Service Commission, and antitrust and other claims against BellSouth in federal district court. *Supra Telecommunications & Information Services, Inc. v. BellSouth Telecommunications, Inc.*, No. 99-1706-CIV-SEITZ (S.D. Fla.).

While neither company can be faulted for zealously pursuing its available legal rights, the long running legal battles have contributed to a poisonous business relationship. That unfortunate relationship has contributed to poor communications between the companies and to both companies' adopting some extreme, unreasonable positions in these arbitrations.

V. Liability Issues

A. UNE Provider

Among the many claims between the parties, the most important may be whether Supra requested and BellSouth impeded Supra's operation as a facilities-based provider of UNEs and UNE Combos. Supra clearly stated its intent to order UNEs and UNE Combos as early as September 1997 and continuing to the present. Arb. II, Supra Ex. 96, 29, 32. Based on the 8th Circuit's 1997 decision in *Iowa Utilities Board,* BellSouth initially took the position that Supra was not entitled to order UNE Combos (Arb. II, BellSouth Ex. 30, 31, 34) despite the clear provisions to the contrary in General Terms and Conditions ("GTC") Sections 1, 1A, 1.1, 1.2, 29, and 30, and Attachment 2 to the Interconnection Agreement.

The United States Supreme Court reversed the Eighth Circuit, making clear as an FCC regulatory matter that CLECs such as Supra could order UNEs and UNE Combos. BellSouth then changed its position to argue that, although Supra **could** order UNEs and

UNE Combos, Supra had failed properly to request UNEs and UNE Combos. BellSouth maintained that position through testimony of its employees Finlen and Cathey at the second arbitration hearing.

The Tribunal finds that BellSouth failed for well over a year to provide Supra with the necessary instructions and information to order UNEs and UNE Combos using the Local Exchange Navigation System ("LENS") interface to BellSouth's ordering systems. In late 1999 and early 2000, BellSouth considered the UNEs and UNE Combos available to Supra to be "obsolete" because the Interconnection Agreement was due to expire at the end of its three-year term in June 2000. Arb. II, Tr., at 967, lines 18-25. AT&T had negotiated a separate so-called "UNE-P" agreement covering different UNEs and UNE combinations and different prices and BellSouth was focusing its marketing and service resources on the UNE-P marketplace. Arb. II, Tr., p. 968, lines 2-23.

BellSouth's ordering "profile" for Supra did not recognize a UNE-provider order for UNEs and UNE Combos under the Interconnection Agreement. There were no BellSouth written procedures in early 2000 for Supra to submit UNEs and UNE Combo orders through LENS. Arb. II, Tr., at p. 963, lines 13-19. After repeated requests from Supra, BellSouth processed four "test" orders for UNEs that were typed by BellSouth "directly into the system. There was no mechanical way we could determine for them to do that." Arb. II, Tr., p. 964, lines 21-23. Even the BellSouth team worked 5-6 days to complete the test orders. Arb. II, Tr., p. 983, lines 15-17.

Neither Cathey nor other BellSouth witnesses could satisfactorily answer the Tribunal's inquiry "[w]hy is it that when the AT&T interconnection agreement had an effective date of 1997, procedures had not been written by early 2000 to allow the ordering of UNE Combos?" Arb. II, Tr., p. 966, lines 3-6. In addition, BellSouth dragged its feet in providing Universal Service Ordering Code ("USOC") numbers for

ordering UNEs and UNE Combos. Arb. II, Supra Ex. 49 and 50. In fact, it took until October 2000 for Supra to be able to order a UNE successfully, and that was essentially by accident. An order to switch a customer "as is" to Supra was successfully processed electronically rather than manually because the customer was switched from IDS, another CLEC. Arb. II, Tr., p. 987, lines 6-19.

Cathey of BellSouth conceded at the second arbitration hearing, as he must, that "[j]ust because we don't have a particular procedure doesn't mean we don't have an obligation to help and assist a customer getting an order placed." Arb. II, Tr., p. 969, lines 11-13. Supra was far from perfect in the documentation of its inability to submit Local Service Requests ("LSRs") to order UNEs and UNE Combos electronically. But BellSouth took too long in responding to Supra's requests for assistance, rarely provided critical information or practical assistance, and repeatedly fell back on advice that would **not** work -- to wit, that Supra must submit a LSR.

BellSouth knew internally that a LSR from Supra would **not** work in summer 2000 because BellSouth "had no idea of how long it would take to get the USOC codes and I had no idea how long it would take to modify the LENS programming so that the LSRs could be submitted electronically." Arb. II, Supra Ex. 49. Yet BellSouth advised Supra in writing on July 14, 2000, that Supra must submit a LSR to convert the UNE Combos. Arb. II, Supra Ex. 50. Apropos of a dispute on a separate, but related, TAG interface issue, BellSouth was evasive and uncooperative because for "[t]his customer of all customers to communicate this lack of resource issue to [us] is very inopportune. Supra is so litigious, we endeavor to keep the ball in their court as much as possible." Arb. II, Supra Ex. 51. In the view of the Tribunal, BellSouth attempted to give the impression of responding to Supra in a substantive manner, without actually doing so, until just before the hearing in the second arbitration in April 2001.

In summary, the Tribunal finds that BellSouth breached the Interconnection Agreement in not cooperating with and facilitating Supra's ordering of UNEs and UNE Combos.

B. Collocation

Supra contends that BellSouth has breached its obligations to allow Supra to collocate its equipment and unbundled elements to BellSouth's own network elements.

BellSouth initially took the position that insufficient space was available in BellSouth's central offices to provide for collocation. Nilson DT, Arb. II, at 28, line 1; Tr., Arb. II, 584, lines 3-13; Ex. S0234 Arb. II. The Florida Public Service Commission ultimately required BellSouth to collocate.

Next BellSouth took the position that Supra had been unable over a period of a year and a half to complete the necessary forms accurately, this despite the fact that a number of Supra's applications had been previously approved. Subsequent applications by Supra were routinely rejected by BellSouth.

Among other equipment, Supra wishes to collocate class 5 switches. BellSouth takes the position that Supra is required to produce evidence that Supra **owns** such switches. The Tribunal disagrees. Supra has presented evidence that it leases the switch. In any event, if BellSouth provides space for collocation of a switch, and Supra cannot produce a switch to collocate, BellSouth's obligation would be fulfilled.

A dispute has arisen between BellSouth and Supra as to the pricing of "make-ready" construction by BellSouth and of BellSouth services attendant to collocation.

Finally, BellSouth again objects to the Tribunal's jurisdiction over the collocation claims, despite two prior rulings by the Tribunal that it had jurisdiction of such claims that were based on events on or after October 5, 1999, the effective date of the Interconnection Agreement. The gravamen of BellSouth's objection is that since Supra

first raised this issue pursuant to the 1997 Collocation Agreement, which agreement has expired and been entirely replaced by the Interconnection Agreement, that the Tribunal is divested of jurisdiction to resolve claims concerning collocation for which applications were submitted prior to the effective date of the Interconnection Agreement.[1] Once again, the Tribunal disagrees and reasserts its proper jurisdiction over the collocation claims.

Attachment 3 of the Interconnection Agreement deals with collocation. It provides in pertinent part that

> BellSouth **shall** provide space, as requested by [Supra] to meet [Supra's] needs for placement of equipment, interconnection, or provision of service.

Interconnection Agreement, Attach. 3, §2.3.1 (emphasis added).

> 2) BellSouth **shall** provide interoffice facilities . . . as requested by [Supra] to meet [Supra's] need for placement of equipment, interconnection or provision of service.

Id., at §2.22 (emphasis added).

> 3) [Supra] may collocate the amount and type of equipment **[Supra] deems necessary** in its collocated space . . . . BellSouth shall not restrict the types of equipment or vendor of equipment to be installed. . . .

Id., at §2.2.4 (emphasis added).

The Interconnection Agreement grants to this Tribunal very broad jurisdiction:

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[1] The Tribunal believes BellSouth's objection to be disingenuous. By BellSouth's own logic, since Supra had objected to BellSouth's billing procedures prior to the effective date of the Interconnection Agreement, the Tribunal should be barred from deciding such disputes, which should proceed under one of the prior agreements that does not contain an arbitration provision. However, BellSouth aggressively pursues its billing claims before this tribunal. Moreover, in January 2000, when rejecting Supra firm orders for collocation, BellSouth stated: "[T]he Interconnection Agreement under which Supra operates does not contain an expedited dispute resolution process for space preparation charges assessed for physical collocation. The billing procedures for physical collocation are found in Attachment 6, Section 4 of the Interconnection Agreement." Ex. S0075, Arb. II.

Supra would have the Tribunal sanction BellSouth for their repetition of the same jurisdictional objections overruled twice previously, especially in light of BellSouth's admission that the Interconnection Agreement governs the dispute. While the Tribunal acknowledges that Section 7 of Attachment 1 empowers the Tribunal to issue such sanctions, the Tribunal declines to do so.

> Negotiation and arbitration under the procedures provided herein shall be the exclusive remedy for all disputes between BellSouth and [Supra] arising under or related to this Agreement including its breach, except for: (i) 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. Except as provided herein, BellSouth and [Supra] hereby renounce all recourse to litigation and agree that the award of the arbitrators shall be final and subject to no judicial review, except on one or more of those grounds specified in the Federal Arbitration Act (9 USC §§1, et seq.), as amended, or any successor provision thereto.

Interconnection Agreement, Attach. 1, §2.1.

> If, for any reason, the Federal Communications Commission or any other federal or state regulatory agency exercises jurisdiction over and decides any dispute related to this Agreement or to any BellSouth tariff and, as a result, a claim is adjudicated in both an agency proceeding and an arbitration proceeding under this Attachment 1, the following provisions shall apply:
>
> To the extent required by law, the agency ruling shall be binding upon the Parties for the limited purposes of regulation within the jurisdiction and authority of such agency.
>
> The arbitration ruling rendered pursuant to this Attachment 1 shall be binding upon the Parties for purposes of establishing their respective contractual rights and obligations under this Agreement, and for all other purposes not expressly precluded by such agency ruling.

Id., at §§2.1.2, 2.1.2.1, and 2.1.2.2.

> The Arbitrators shall receive complaints and other permitted pleadings, oversee discovery, administer oaths and subpoena witnesses pursuant to the United States Arbitration Act, hold hearings, issue decisions, and maintain a record of proceedings. The Arbitrators shall have the power to award any remedy or relief that a court with jurisdiction over this Agreement could order or grant, including, without limitation, the awarding of damages, pre-judgment interest, specific performance of any obligation created under the Agreement, issuance of an injunction, or imposition of sanctions for abuse or frustration of the arbitration process, except that the Arbitrators may not: (i) award punitive damages; (ii) or any remedy rendered unavailable to the Parties pursuant to Section 10.3 of the General Terms and Conditions of the Agreement; or (iii) limit, expand, or otherwise modify the terms of this Agreement.

Id., at §7.

The contractual obligations concerning collocation are broad and far reaching. The disputes raised by Supra regarding denial of collocation arise under or are related to the Interconnection Agreement. Accordingly, this Tribunal properly takes jurisdiction of these claims.

BellSouth next interposes an objection to the Tribunal's jurisdiction over pricing of collocation to Supra.[2] Supra argues BellSouth could have taken the collocation rate dispute to the Florida Public Service Commission (the "FPSC"). However, BellSouth fails to argue or to demonstrate that Supra was obligated to take such disputes to the FPSC or that the FPSC has exclusive jurisdiction over such disputes. The Interconnection Agreement indicates that the Tribunal's jurisdiction may be concurrent with that of the FPSC. Interconnection Agreement, Attach. 1, §2.1.2.

Rates for certain collocations are set out in Table 2, pages 60 and 61, attached to the letter amendment of July 24, 1998, which AT&T and BellSouth incorporated into the Interconnection Agreement that Supra later adopted. To the extent that Supra objects to rates for "make-ready" work that are not covered by Table 2, the Interconnection Agreement provides that Supra may retain a contractor on BellSouth's certified list to perform such work at Supra's expense. Interconnection Agreement, Attach. 3, §7.4.4.

The Tribunal orders that BellSouth collocate forthwith all such equipment as Supra has included in all prior applications to BellSouth at the rates indicated in Table 2 attached to the July 24, 1998, letter incorporated into the Interconnection Agreement. To

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[2] In making this second jurisdictional objection, BellSouth states: "There is no dispute that Supra is entitled to collocation. There is also no dispute that BellSouth has offered collocation to Supra. The only dispute between the parties is Supra's allegation that the rates that BellSouth proposes to charge for collocation space were unreasonable." In light of BellSouth's repeated rejection of Supra's collocation applications and the fact that Supra has been unable to collocate a single piece of equipment in any BellSouth facility over a period of some four years, BellSouth's statement is nothing short of breathtaking.

the extent that the collocation involves "make-ready" work that may not be covered by Table 2, Supra may retain a contractor of its choosing from BellSouth's approved contractor list to perform such work at Supra's expense. To the extent that work or services by BellSouth are necessary to collocation and that such work or services are not covered by the rates set out in Table 2, the Tribunal instructs the parties to consult the Interconnection Agreement for guidance and to meet and confer regarding the applicable rates for such work or services. To the extent that the parties are unable to agree on such rates, the parties are to submit their differences over such rates to the Tribunal for resolution.

C. Access to OSS

Supra contends that it is entitled to direct access to BellSouth's OSS, because the FCC has mandated such access in its First Report and Order and in its Third Report and Order, because BellSouth's LENS was unable to perform the ordering function in real time and is inherently unreliable, suffering numerous malfunctions and excessive downtime, and because the contract effectively requires access to BellSouth's OSS.

In contrast, BellSouth argues that Supra, by adopting the Interconnection Agreement, effectively negotiated away the rights and interests it may have been entitled to under the 1996 Act. *See,* 1996 Act, §252(a)(1). BellSouth argues that Supra's rights under the 1999 agreement are not as broad as the rights granted under federal law. The Tribunal disagrees.

The evidence presented shows that Supra must submit local service requests through LENS, an electronic interface supplied by BellSouth. LENS cannot submit local service orders in real time. A local service request is processed through several interfaces (including manual introduction) before the local service request can be processed as an order and provisioned. Ramos DT, Arb. I, at 23, lines 1-15. The orders are subject to

"edit checks" which generate "clarification requests" which delay the process even further. Id., at lines 20-22; at 25, lines 16-18. LENS does not provide Supra with the capability to perform pre-ordering, ordering, provisioning, maintenance and repair and billing functions in real time or in a manner consonant with BellSouth's performance of the process. Arb. I, Exhibit 531; BellSouth Videotape, "This Ol' Service Order."

BellSouth witness Pate admitted that Supra could not place orders in the same manner as BellSouth. Testimony of Ronald Pate, Arb. I, Tr., at 570, line 10, to 573, line 8; at 577, line 24, to 578, line 9; at 578, lines 10-17; at 579, line 2, to 580, line 13; at 586, lines 11-19.

To establish a new account through LENS, Supra is required to first view the Firm Order Menu Screen and obtain the information from the customer and from various BellSouth databases to enable Supra to complete the screen. Supra must validate the customer's service address. If for any reason, Supra is unable to validate the address, Supra cannot complete the pre-ordering process. Supra thereafter selects a telephonic number for the customer. Because of the delay which ensues between the time Supra begins the pre-ordering process and the provisioning of the order (usually several days), Supra must wait to notify the customer of the telephone number assigned.

Next, Supra identifies the features and services the customer wants. However, LENS is frequently inaccurate in the feature selection process. Because of LENS system errors and system failures, the identification of class and services will fall out, resulting in the need to "clarify" the order causing additional delay. A "clarified" order is put on hold, and it must be resubmitted manually.

Following successful completion of identification of services, Supra must identify the type of directory listing selected by the customer. This requires accessing a separate database. In BellSouth's OSS, the database is integrated into the ordering process.

After all pre-ordering information has been entered, LENS will automatically calculate a due date. Supra has no ability to negotiate a due date. Frequently BellSouth overrides the due date provided, and returns the order at a later date with a different due date acceptable to BellSouth. Therefore, Supra has no ability to communicate to a customer a definite due date for the provisioning of service.

Once complete, the order enters BellSouth's Local Exchange Ordering System, a system which serves to edit the LENS generated orders. If errors are found, the order will be sent back to Supra. If the order is error free, it will be sent to be reformatted into a format acceptable to BellSouth's systems. If errors are found, the order is again sent back to Supra. If the orders are error-free, BellSouth representatives re-enter the information into the order entry system for provisioning. Ramos DT, Arb. I, at 26-34.

The time required and the number of possible interventions in this process are profoundly different from the BellSouth ordering process, where all information is entered into one system by the representative taking the call, where due date and telephone number can be provided on line, and where service can be provisioned the **same day**. It is literally impossible for Supra to provision service the same day an order is received, due to the unreliable systems made available to Supra by BellSouth.

The evidence is overwhelming that BellSouth has not provided Supra with Operations Support Systems that are equal to or better than those which BellSouth provides itself. Interconnection Agreement, GTC §30.10.4 ("[E]ach Network Element . . . provided by BellSouth to [Supra] shall be made available to Supra on a priority basis . . . that is equal to or better than the priorities that BellSouth provides to itself . . . .") The Interconnection Agreement provides that "BellSouth shall provide **real time** electronic interfaces for transferring and receiving service orders and provisioning data . . . ." Interconnection Agreement, Attach. 4, §5.1 (emphasis added). The evidence is

clear that LENS does not provide real time service order capability. The Interconnection Agreement provides that "BellSouth shall provide **real time** ability (i) to obtain information on all features and services available, in end-office where customer is provisioned; (ii) to establish if a service call is needed to install the line or service; (iii) to determine the due date and provide information regarding service dispatch/installation schedule, if applicable; (iv) . . . to provide an assigned telephone number; and (v) . . . to obtain a customer profile, including customer name, billing and residence address, billed telephone numbers, and identification of features and services subscribed to by customer." Id., §5.2 (emphasis added). The evidence is overwhelming that LENS does not provide all these capabilities in real time.

The Interconnection Agreement further provides that

> BellSouth shall provide the ability to enter a service order via Electronic Interface as described in Subsection 5.1 of this Section. The service order shall provide [Supra] the ability to: (i) establish service and order desired features; (ii) establish the appropriate directory listing; and (iii) order intraLATA toll and interLATA toll when applicable in a single, unified order.

Id., at §5.3. The evidence is clear beyond cavil that neither LENS, nor any of the other electronic interfaces offered by BellSouth has such ability. Only BellSouth's OSS has the capabilities set out above.

Because BellSouth has failed to meet its contractual obligations regarding electronic interfaces, and because BellSouth is obligated to provide Supra "network elements equal to or better than BellSouth provides to itself or its customers" (BellSouth's Post-Hearing Memorandum, at 15), the Tribunal finds that BellSouth is obligated to provide Supra nondiscriminatory direct access to BellSouth's OSS and orders that such access be provided by BellSouth to Supra no later than June 15, 2001.

D. LENS

1. LENS Downtime

The electronic interface chosen by Supra from those offered by BellSouth in order to perform the pre-ordering and ordering functions, among others, was the LENS. In the Interconnection Agreement, BellSouth undertakes an obligation to provide Supra with the same quality of services and elements as BellSouth provides itself and its end-users. Interconnection Agreement, GTC §12.1. Regarding the capability to input orders, the Interconnection Agreement provides:

> BellSouth shall provide [Supra] with the capability to have [Supra'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.

GTC, §28.6.10.1.

BellSouth witness Hendrix testified that BellSouth cannot place orders on a twenty-four hours a day, seven days a week basis, but he failed to testify as to how much downtime, if any, is scheduled for BellSouth's OSS. Arb. I, Hendrix DT, at 24. BellSouth's witnesses testified that LENS was down for scheduled maintenance three hours a day, Monday through Saturday from 1:00 a.m. to 4:00 a.m. and six hours on Sunday from 12:00 a.m. to 6:00 a.m. Arb. I, Pate DT, at 32; Arb. I, Pate Testimony, Tr., at 558. Thus, the scheduled downtime for the LENS system is twenty-four hours per week, an amount the Tribunal considers to be more than excessive.

In addition to the twenty-four hours each week for scheduled maintenance in which LENS is unavailable, LENS was down additional time due to malfunctions and failures. Arb. I, Mariki Testimony, Tr., at 154, lines 8 - 21; Arb. I, Pate Testimony, Tr., at 649, line 22, to 650, line 5; Arb. I, Supra Ex. 90.

It is clear that the LENS electronic interface is unstable and unreliable. The provision of such a system for pre-ordering and ordering of services is a breach of BellSouth's obligations under the Interconnection Agreement. The Tribunal believes that its order giving Supra direct access to BellSouth's OSS should render this issue moot in the future.

2. Cut Off of Supra's Access to LENS

On May 16, 2000, BellSouth disconnected Supra's access to LENS because Supra had failed to pay disputed billings. It is undisputed that Section 1.2 of the General Terms and Conditions prohibits BellSouth from "discontinu[ing] any Network Element, Ancillary Function, or Combination provided hereunder without the express prior written consent of Supra." Moreover, Section 16.1 of the General Terms and Conditions provides in pertinent par that "[i]n no event shall the Parties permit the pendency of a Dispute to disrupt service to any [Supra] Customer contemplated by this Agreement." BellSouth later acknowledged that "the Interconnection Agreement between BellSouth and Supra does not permit BellSouth to refuse Supra's orders for non-payment of undisputed charges." Arb. II, Ex. S0098. BellSouth's contention that it believed it was proceeding under a prior agreement which had long since expired and which had been entirely superceded by the Interconnection Agreement is not credible. Accordingly, the Tribunal regards BellSouth's act of cutting off Supra's access to LENS a deliberate breach done with the intent to harm Supra.

E. Dedicated Transport and Tandem Switching

Supra argues that BellSouth has breached various sections of the Interconnection Agreement in failing to provision dedicated transport lines between BellSouth tandem switches both between Local Access Transport Areas ("LATA") and within individual

LATAs. These two issues are related – inter-LATA and intra-LATA transport – but require different analysis and can best be discussed separately.

1. Inter-LATA Transport

BellSouth argues that it may not lease UNEs to Supra that would enable Supra to provide inter-LATA (i.e., long distance) telephone service to Supra's customers when section 271(a) of the 1996 Act bars BellSouth from providing inter-LATA service. BellSouth also argues that, if Supra wishes to provide certain specified DSI Interoffice Transport facilities that are in fact available under the Interconnection Agreement in a manner which would cross LATA boundaries, then Supra will need to order intra-LATA trunking from BellSouth and also order inter-LATA trunking from an IXC (long distance provider).

Supra argues at considerable length that, regardless of the fact that BellSouth cannot itself provide inter-LATA service, Supra can lease the UNEs and dedicated transport from BellSouth and then Supra, as a certificated IXC, would be deemed to provide the inter-LATA service rather than BellSouth. The major problem with Supra's argument is that Supra cites no convincing FCC or federal court authority in support of Supra's argument that Supra can lease UNE Combos and tariffed services from BellSouth which BellSouth cannot provide directly to its customers. The Tribunal therefore finds that Supra has failed to carry its burden of proof on the issue of inter-LATA service.

2. Intra-LATA Transport Between Tandem Switches

Supra devoted nine pages to the issue of "Feature Group-D Switched Access Service Between BellSouth Access Tandems" as described by Supra at pages 62-71 of its Post-Hearing Brief. BellSouth claims that Supra mis-describes both the service Supra seems to be seeking and the issues presented by its requests, which have not been submitted to BellSouth via a LSR. Unfortunately, the parties' testimony at the arbitration

hearing and their respective Post-Hearing Briefs provided scant assistance to the Tribunal's assessment of this issue.

The Tribunal finds that "Feature Group-D" is a switched access service provided by BellSouth to interexchange carriers ("IXCs") that can be ordered from the BellSouth Access Services tariffs filed with the FCC and the FPSC. BellSouth argues that "Feature Group D" is inherently a long-distance service, not local service available to Supra under the Interconnection Agreement.

To the extent Supra may be requesting interoffice trunking between BellSouth switches, Supra has failed to show that it owns and operates a local switch connected to BellSouth's network. BellSouth made the better arguments on this issue, including citations to relevant provisions of the Interconnection Agreement referring to the need for switches. The Tribunal therefore finds that Supra failed to carry its burden of proof.

F. Regional Street Address Guide ("RSAG") Download

Supra contends that BellSouth is contractually obligated to provide it with a download of RSAG, citing Attachment 15, Sections 7.2.1 and 7.2.2. Because of the incessant downtimes of LENS (*see*, Section V.D.1, above), Supra argues that without a download it does not have the same access to information as does BellSouth, which violates the Interconnection Agreement's "parity" provisions. *See, e.g.*, Interconnection Agreement, GTC, §30.10.4. Supra argues that BellSouth's Hendrix admitted that AT&T was entitled to receive a batch feed of the RSAG database as part of a unique interface that was to be created. Supra seeks an initial download of the RSAG database, followed by daily updates.

There is no dispute that the "unique interface" contemplated by the Interconnection Agreement was never developed. The burden for the development of the electronic interface falls equally on Supra and BellSouth. (*See,* Attach. 15, §§7.1.1 and

7.1.2) ("BellSouth and [Supra] agree to develop an interface . . ."; "[Supra] and BellSouth will establish a transaction-based electronic communications interface. . . ."). The provision of batch feeds was dependent on the unique interface which had not been developed. ("**When the interface is operational**, BellSouth will transmit the initial batch feed of the data . . . ." Interconnection Agreement, Attach. 15, §7.2.2 (emphasis added).)

The Tribunal finds that the obligation to develop the unique interface fell jointly on Supra and BellSouth. Supra produced no evidence which would suggest that the failure to develop the unique interface was entirely due to BellSouth's actions or inactions. Since the joint development of the unique electronic interface was a condition precedent to the obligation to provide the initial batch feed of RSAG, and since the condition precedent never occurred, the Tribunal finds that BellSouth had no contractual obligation to provide Supra with a download of RSAG. In any event, since the Tribunal has ordered BellSouth to provide nondiscriminatory direct access to the BellSouth OSS, Supra should have real time access to RSAG, including all updates.

G. 100 Number Blocks of Telephone Numbers

Supra argues that the Interconnection Agreement requires BellSouth to reserve up to 100 telephone numbers per NPA-NXX for Supra's exclusive use. Interconnection Agreement, GTC, §28.1.1.4. BellSouth does not dispute this. BellSouth contends that since LENS enables Supra to reserve up to 25 numbers in a single session, Supra can reserve 100 numbers in four such sessions. BellSouth contends that this satisfies the contractual requirement.

Supra argues that this sequential ordering is inadequate in that Supra is unable to use the 25 numbers in any manner of Supra's choosing. However, Supra also states that "[s]hould BellSouth be ordered to provide Supra with access to BellSouth's retail OSS

this issue becomes moot." Supra's Post-Hearing Brief, at 62. As the Tribunal has found that Supra is entitled to nondiscriminatory direct access to BellSouth's OSS (*see*, Section V.C, above), this issue is now moot.

H. QuickServe

QuickServe is the BellSouth name for the provision of expedited service in situations where the phone line at the customer's location is already connected for service (*i.e.*, has "soft dial tone") and only requires electronic intervention, as opposed to having to dispatch a service technician to the location. Pate DT, Arb. I, at 27.

BellSouth acknowledges that LENS could not in the past provide same-day service at QuickServe locations, but that a work around, executed at some unstated time, had been put in place. Pate, DT, Arb. I, at 29. Now, BellSouth asserts that LENS has been "recently updated" to provide QuickServe capability. Pate, Reb.T., Arb. I, 53-54.

The Tribunal finds that its order requiring BellSouth to provide Supra with nondiscriminatory direct access to BellSouth's OSS provides Supra with the same ability to provide QuickServe as has BellSouth. Thus, this issue is effectively moot.

I. Branding

General Terms and Conditions, Section 19, sets out BellSouth's obligations to brand services offered by Supra that incorporate services and elements made available under the Interconnection Agreement.

> The Parties agree that the services offered by [Supra] that incorporate Services and Elements made available to [Supra] pursuant to this Agreement shall be branded as [Supra] services, unless BellSouth determines to unbrand such Services and Elements for itself, in which event BellSouth may provide unbranded Services and Elements. [Supra] shall provide the exclusive interface to [Supra] Customers, except as [Supra] shall otherwise specify. In those instances where [Supra] requires BellSouth personnel or systems to interface with [Supra] Customers, such personnel shall identify themselves as representing [Supra], and shall not identify themselves are representing BellSouth. Except for

> material provided by [Supra], all forms, business cards or other business materials furnished by BellSouth to [Supra] Customers shall be subject to [Supra's] prior review and approval. In no event shall BellSouth, acting on behalf of [Supra] pursuant to this Agreement, provide information to [Supra] local service Customers about BellSouth products or services. BellSouth agrees to provide in sufficient time for [Supra] to review and provide comments the methods and procedures, training and approaches to be used by BellSouth to assure that BellSouth meets [Supra's] branding equipment. For installation and repair services, [Supra] agrees to provide BellSouth with branded material at no charge for use by BellSouth ("Leave Behind Material"). [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 notify [Supra] of material supply exhaust in sufficient time that material will always be available. BellSouth may leave a generic card if BellSouth does not have [a Supra] specific card available. 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 distribute [Supra's] Leave Behind Material.

Supra produced evidence that it raised the branding issue with BellSouth concerning the Memory Call service (Arb. II, Ex. S0117) and in a more general context (Arb. II, Ex. S0119). There is no evidence that BellSouth ever concretely responded to these concerns. *See, e.g.*, Cathey Testimony, Arb. II, Tr., at 992, line 23, to 995, line 6.

The Tribunal finds that BellSouth breached it obligation to brand the services and elements provided under the Interconnection Agreement, and that such breach was willful and is continuous. Accordingly, the Tribunal orders that BellSouth shall provide by June 15, 2001, branding of services and elements provided to Supra under the Interconnection Agreement, including, but not limited to voice mail, operator services, and directory assistance, under the terms and conditions of and as required by General Terms and Conditions Section 19 of the Interconnection Agreement. The Tribunal further orders that such branding by BellSouth is to continue until such time as Supra is able to reproduce such elements and services with unbundled network elements and combinations thereof. To the extent that Supra seeks damages for such breaches, Supra

has failed to offer any proof as to the damages that resulted from these breaches by BellSouth. Accordingly, Supra's claim for damages is denied.

J. TAG Interface Development

Supra alleges that it suffered damages in attempting to establish an interface to the TAG electronic interface provided by BellSouth. However, outside of bare assertions by Mariki in his rebuttal testimony, Supra produces no convincing evidence that BellSouth is responsible for Supra's failure to complete the interface. The exhibits cited by Supra wholly fail to establish that BellSouth is responsible for the failure of this project. Accordingly, Supra fails to carry its burden of proof on this issue.

K. Toll Free Number Database

Supra claims that BellSouth has failed to provide access to the BellSouth Toll Free Number Database as required under Section 13.5 of Attachment 2 to the Interconnection Agreement. BellSouth responds that it would be willing to provide access to Supra, but Supra does not own and operate a local switch that meets the interface technical requirements of § 13.5.1.2 and § 13.5.1.2 of Attachment 2 to the Interconnection Agreement. While there was conflicting evidence at the arbitration hearings on whether Supra has leased a local switch, there is no dispute that Supra does not presently operate its own local switch connected to BellSouth's network.

The Tribunal finds that Supra has failed to carry its burden of proof that it meets the contractual interface requirements for gaining access to the BellSouth Toll Free Number Database. In light of the Tribunal's order that BellSouth collocate Supra's equipment, including switches in BellSouth central offices (see Section V.B, above) and Supra's testimony that it has leased at least one switch, Supra's claim regarding the Toll Free Number Database may well become moot.

L. Same Services as BellSouth

Supra claims that BellSouth has failed to provide the same features, functions, and capabilities that BellSouth provides itself through its local switches in breach of Section 7 of Attachment 2 to the Interconnection Agreement. BellSouth responds that Supra failed to order the services properly as required under the Interconnection Agreement. The contested services are the following:

- Centrex
- ACD
- Data switching
- Frame relay services
- Basic and primary rate ISDN
- Dialing parity
- Voice service
- Fax transmissions
- Operator Services
- Switched and non-switched digital data services
- Video Services
- Coin (pay phone) services
- Frame relay and ATM
- Private line services

The only service listed above that Supra clearly requested from BellSouth was Centrex. Arb. II, Supra Ex. 113; BellSouth Ex. PCF-18. BellSouth faults Supra for not requesting Centrex or other services via a LSR, but as made clear in the section of this Award regarding UNE Provider (*see,* Section V.A, above), BellSouth impeded and

frustrated Supra's ability to order services via a LSR submitted through LENS. Regarding the Centrex service, however, Supra failed to prove any damages resulting from BellSouth's failure to lease Centrex services. As to all the other services listed above, Supra failed to carry its burden of proof that it had unequivocally requested the services. In any event, this claim should become moot in light of the Tribunal's order that BellSouth provide direct access to its OSS and that Supra be permitted to lease UNE and UNE Combos as required under the Interconnection Agreement.

M. Alleged Breach of 1996 Act

Supra seeks from the Tribunal a determination that BellSouth's conduct constitutes a breach of the Telecommunications Act of 1996. Supra contends that Paragraph 7 of Attachment 1 to the Interconnection Agreement creates the Tribunal's jurisdiction and constitutes the Tribunal's authority to make such a determination. That section provides:

> Duties and Powers of the Arbitrators
>
> The Arbitrators shall receive complaints and other permitted pleadings, oversee discovery, administer oaths and subpoena witnesses pursuant to the United States Arbitration Act, hold hearings, issue decisions, and maintain a record of proceedings. The Arbitrators shall have the power to award any remedy or relief that a court with jurisdiction over this Agreement could order or grant, including, without limitation, the awarding of damages, pre-judgment interest, specific performance of any obligation created under the Agreement, issuance of an injunction, or imposition of sanctions for abuse or frustration of the arbitration process, except that the Arbitrators may not: (i) award punitive damages; (ii) or any remedy rendered unavailable to the Parties pursuant to Section 10.3 of the General Terms and Conditions of the Agreement; or (iii) limit, expand, or otherwise modify the terms of this Agreement.

Nothing in this section expressly grants to the Tribunal the authority to determine breaches of the 1996 Act.

BellSouth contends that this Tribunal has no jurisdiction to determine that BellSouth has violated any provision of the 1996 Act, and states that such determinations might lead to inconsistent outcomes, citing Sections 2.1.2, 2.1.2.1, and 2.1.2.2 of Attachment 1. These sections provide:

> If, for any reason, the Federal Communications Commission or any other federal or state regulatory agency exercises jurisdiction over and decides any dispute related to this Agreement or to any BellSouth tariff and, as a result, a claim is adjudicated in both an agency proceeding and an arbitration proceeding under this Attachment 1, the following provisions shall apply:
>
> To the extent required by law, the agency ruling shall be binding upon the Parties for the limited purposes of regulation within the jurisdiction and authority of such agency.
>
> The arbitration ruling rendered pursuant to this Attachment 1 shall be binding upon the Parties for purposes of establishing their respective contractual rights and obligations under this Agreement, and for all other purposes not expressly precluded by such agency ruling.

It is clear from these sections that the parties anticipated that the Tribunal's jurisdiction could be co-extensive with that of regulatory agencies, and that the Tribunal's ruling would bind the parties with respect to their respective contractual obligations under the Interconnection Agreement. However, these sections neither establish nor preclude arbitral jurisdiction to determine breaches of the 1996 Act.

Neither party addresses section 2.1 of Attachment 1 which provides, in pertinent part:

> Negotiation and arbitration under the procedures provided herein shall be the exclusive remedy for all disputes between BellSouth and [Supra] arising under or related to this Agreement including its breach, **except for: . . (ii) disputes or matters for which the Telecommunications Act of 1996 specifies a particular remedy or procedure**.

Emphasis added. Clearly, if a provision of the 1996 Act specifies a particular remedy or procedure, the Tribunal has no jurisdiction.

The Tribunal has grave doubts as to whether it has jurisdiction to determine that BellSouth has violated the 1996 Act. However, it need not determine that issue. Supra has not cited any particular provision that it alleges BellSouth has violated, nor what conduct by BellSouth violated the terms of such provision. The Tribunal cannot and will not proceed in a vacuum. Even assuming, *arguendo*, that the Tribunal has jurisdiction to determine particular violations of the 1996 Act, no violations have been alleged with sufficient specificity to permit the Tribunal to do so.

N. BellSouth Invoices

With respect to the claim of BellSouth on its unpaid invoices, BellSouth submitted evidence that the sum of $6,374,369.58 has been invoiced by BellSouth to Supra, and that Supra has failed to pay this amount.

The Tribunal finds that BellSouth presented a *prima facie* case as to this claim and this amount, subject to various offset claims and further subject to the results of the audit requested by Supra and ordered by the Tribunal elsewhere herein.

Accordingly, the Tribunal awards BellSouth the amount of $6,374,369.58, subject to offset in the amounts awarded Supra elsewhere in this Award and further subject to the results of the Audit ordered elsewhere herein (including the elimination of late charges).

O. Supra's Audit Request

Supra's claim that it be permitted to audit BellSouth's invoices, which was presented in Arbitration I, is closely tied to BellSouth's claim for unpaid invoices, which was presented in Arbitration II. In short, Supra has consistently challenged BellSouth's invoices since October 1999 and has refused payment since that time. Supra has demanded both Bill Accuracy Certification from BellSouth in accordance with section 12 of Attachment 6 of the Interconnection Agreement and an "audit" of BellSouth's billings

in accordance with Sections 11.1.1 and 11.1.3 of the General Terms and Conditions of the Interconnection Agreement.

The billing audit dispute boils down to the proper scope of documents and information reasonably necessary to assess the accuracy of BellSouth's invoices. Two sections of the General Terms and Conditions of the Interconnection Agreement provide clear guidance:

> Subject to BellSouth's reasonable security requirements and except as may be otherwise specifically provided in this Agreement, **[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.** [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.

Section 11.1.1 (emphasis added). The breadth of material subject to an audit is further explained:

> 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.**

Section 11.1.3 (emphasis added).

BellSouth argues that its detailed monthly invoices transmitted both on paper and electronically in a Disk Analyzer Billing ("DAB") format are more than sufficient to allow Supra to audit BellSouth's billings. The Tribunal disagrees and finds BellSouth's position that Supra can "audit" BellSouth's invoices by intensively reviewing the bills themselves to be patently unconvincing.

The language quoted above from the parties' Interconnection Agreement contemplates access to "any and all appropriate BellSouth employees and books, records and other documents reasonably necessary to assess the accuracy of BellSouth's bills," which is a very broad audit provision. This conclusion is supported by the expert

testimony of Supra's certified public accountant, Stuart Rosenberg. He testified convincingly at the Arbitration I hearing that Supra must be permitted to conduct its requested audit in accordance with Generally Accepted Auditing Standards ("GAAS"). BellSouth utterly failed to rebut his testimony or Supra's commonsense position that Supra must be permitted to review sufficient records and information, including access to knowledgeable BellSouth employees, to evaluate the facts that give rise to BellSouth's billing (*e.g.*, verify that BellSouth's bill correctly starts on the date service actually began for each Supra customer, which cannot be determined by Supra from its local service requests).

Accordingly, the Tribunal orders BellSouth to fully cooperate with and to facilitate Supra's audit of BellSouth's invoices from October 1999 to the present under GAAS. The audit shall begin within ten (10) calendar days of this award (*i.e.*, no later than June 15, 2001) and be completed by July 31, 2001, which date may only be extended for good cause shown. Failure of BellSouth to timely cooperate in the audit process may be considered good cause. Supra will bear its own costs of the audit, unless the audit identifies adjustments greater than the two percent (2%) threshold set forth in Section 11.1.5 of the General Terms and Conditions of the Interconnection Agreement, in which case BellSouth will reimburse Supra's expenses of the audit.

Once the audit is completed and the necessary adjustments to BellSouth's invoices are identified (both reductions and increases), then the resulting adjustments will be offset against the amount to be recovered by BellSouth on its claim for unpaid invoices in Arbitration II. Copies of the audit report and calculations will be served on BellSouth and on the Tribunal.

VI. Damages

A. Introduction

This introduction to the Tribunal's assessment of damages makes three necessary points about the parties' approaches to alleged damages.

First, both parties pursued risky strategies on damages through their respective expert witnesses – Wood for Supra and Freeman for BellSouth. On the one hand, Supra's damages expert relied on unverified factual underpinnings (*e.g.*, a list of "lost customers" that was repudiated by Supra's fact witness), explained his damages assumptions and methodology only cryptically, and calculated extraordinarily high and speculative lost future profits of Supra through 2004 and in many states beyond Supra's existing service area of south Florida. BellSouth's expert witness Freeman correctly characterized Supra's alleged damages as "breathtaking."

On the other hand, BellSouth adopted an equally high-risk damages strategy of attacking Supra's methodology and numbers, but not providing any alternative calculations to the Tribunal. That damages approach was made infamous in the *Pennzoil v. Texaco* state court litigation in Texas regarding the takeover of Getty Oil to the tune of a $7 billion judgment against Texaco. Although BellSouth's expert effectively attacked large elements of Supra's damages, BellSouth's failure to provide alternative damages figures in the areas in which Supra prevailed on liability left the Tribunal with little choice but to grant Supra's requested damages in some areas.

Second, Supra failed to tie any damages to certain liability claims. For example, as described in Section V.L above, Supra **could** have recovered damages for BellSouth's failure to lease Centrex services, but Supra did not tie any damages specifically to that claim and therefore failed to carry its burden of proof.

Third, as discussed above in Section II regarding procedural history, the Tribunal ruled that consequential damages, including lost profits, could be recovered upon a particular showing:

> The Panel concludes that "willful or intentional misconduct" is broad terminology which embraces willful or intentional breach of contract to the extent that it is done with the tortious intent to inflict harm on the other party to the contract. The panel's interpretation of this phrase is supported by judicial authority, including *Metropolitan Life Insurance Co. v. Noble Lowndes Int'l, Inc.*, 643 N.E.2d 504, 506-508 (N.Y. 1994) and *Wright v. Southern Bell Tel. & Tel. Col., Inc.* 313 S.E. 2d 150 (Ga. App. 1984).
>
> Accordingly the Tribunal unanimously finds that **to the extent that Supra can prove that BellSouth intentionally or willfully breached the Agreement at issue in this case with the tortious intent to inflict harm on Supra, at least in part through the means of such breach of contract,** and as a direct and foreseeable consequence of that breach Supra suffered damages in an amount subject to proof, Supra can recover consequential damages in this action.

March 15 Order, at ¶¶ 1-2 (emphasis added). (The Clarification of Order Re: Damages is attached hereto as Annex D and is incorporated herein by reference).

In the course of these two arbitrations, the Tribunal has reviewed hundreds of pages of pre-filed direct and rebuttal testimony and thousands of pages of exhibits. The Tribunal also has judged the demeanor of witnesses during a total of eight days of live testimony in the hearings and has reviewed the transcripts of that testimony. The evidence shows that BellSouth breached the Interconnection Agreement in material ways and did so with the tortious intent to harm Supra, an upstart and litigious competitor. The evidence of such tortious intent was extensive, including BellSouth's deliberate delay and lack of cooperation regarding UNE Combos, switching Attachment 2 to the Interconnection Agreement before it was filed with the FPSC, denying access to BellSouth's OSS and related databases, refusals to collocate any Supra equipment, and deliberately cutting-off LENS for three days in May 2000.

The Tribunal does not make this finding of "tortious intent" lightly, but the full record belies BellSouth witnesses' mantra-like testimony that BellSouth's aim was to profit from Supra's success. BellSouth attempted to give the appearance of cooperating with Supra, while deliberately delaying, obfuscating, and impeding Supra's efforts to compete.

The major elements of Supra's damages are discussed in the following sections.

B. Supra's Damages

1. Incremental Net Income Operating As UNE Provider

As discussed in Section V.A, above, the Tribunal finds that BellSouth breached the Interconnection Agreement in not cooperating with and facilitating Supra's ordering of UNEs and UNE Combos. Supra's damages tied to this breach are set forth in two exhibits in Arbitration II of Supra damages expert Wood -- DJW-5 and DJW-6. Those exhibits show incremental net income to Supra for its residential and business customers, but must reflect the following necessary revisions: (1) the calculations of monthly damages for October 1997 through September, 1999 must be **deleted** to reflect the Tribunal's prior ruling that no recovery may be awarded for acts or omissions before the October 5, 1999 effective date of the Interconnection Agreement; and (2) the damages for October 1999 must be pro-rated to remove any October 1-4, 1999 recovery, which damages occurred prior to the effective date of the Interconnection Agreement. With those necessary revisions, Supra's damages for residential customers is $1,586,840.27 and for business customers is $517,066.26, for a sub-total of $2,103,906.40 of incremental net income if Supra had been permitted to operate as a UNE provider. No prejudgment interest is appropriate because Wood already included a present value calculation in the damages figure.

As part of the audit process, the auditor is directed to determine the number of Supra customers in April, 2001, and the number of the Supra customers in May, 2001, and to report those numbers to the parties and to the Tribunal. The Tribunal will thereafter calculate a revised damages calculation that includes April and May 2001 damages.

2. Supra's Alleged Lost Profits

There are two major areas of alleged lost profits that Supra seeks: (1) lost profits on allegedly "lost customers" who purportedly would have ordered advanced services such as DSL from Supra (described by Supra as Arbitration 2, Category 1 Damages); and (2) lost profits as far out as 2004 for BellSouth's impeding Supra's operations as a facilities based UNE provider by expanding throughout the remaining counties in Florida and using a "cookie cutter" approach into 17 additional states (described by Supra as Arbitration II, Categories 3, 4 and 6 Damages). For the following reasons, none of these alleged damages are awarded to Supra because they have insufficient factual support, are too speculative, and would lead to an unwarranted windfall to Supra.

Considerable fact and expert testimony focused on Supra's original list of allegedly "lost customers" (Supra Ex. 87A) produced in Arbitration I and then the updated list (Supra Ex. 87B) produced in Arbitration II. Supra's damages tied to "lost customers" rely on Supra Ex. 87A, which was repudiated by Supra witness Bentley. Supra expert witness Wood disclaimed any reliance on Supra Ex. 87B, which had almost as many infirmities as the initial "lost customer" list. For all of the reasons set forth at pages 88-93 of BellSouth's Post-Hearing Brief and the total lack of credibility surrounding Supra's Ex. 87A, no damages are awarded based on the Supra alleged "lost customers."

An appreciation of the "breathtaking" nature of Supra's alleged lost profits totaling over $510 million and running through the year 2004 should start with the fact that Supra has enjoyed only modest success as a CLEC operating in south Florida. Its financial survival may well have been due to the fact that Supra has not been paying its bills from BellSouth since October 1999. Based on its 1997 Business Plan and its proffered evidence of many BellSouth breaches of the Interconnection Agreement, Supra would have the Tribunal believe that, if BellSouth had only cooperated, then Supra would have become a telecommunications juggernaut, operating as a facilities-based UNE provider with its own switches, with an expanding network and facilities, and with increasingly profitable operations in 18 states. But nothing in Supra's actual track record suggests such meteoric success and the alleged $510 million in lost profits.

The Tribunal will not award damages based on wishful speculation. The Tribunal cannot grant hundreds of millions of dollars in damages tied to BellSouth's behavior from June 2001 until the end of 2004, when the reasonable assumption should be that BellSouth will forthwith comply with the Interconnection Agreement and this Tribunal's award. In addition, a new agreement that will govern the parties' future relationship is being arbitrated before the FPSC. The Tribunal cannot credibly accept Wood's speculative and unrealistically high "lost profit" dollar numbers for the reasons set forth above, and those set forth in the testimony of BellSouth expert witness Freeman and summarized at pages 95-108 of BellSouth's Post-Hearing Brief.

3. LENS Damages

a. LENS Downtime

Supra damages expert Wood testified to and calculated the damages suffered by Supra as a result of the excessive down time experienced by LENS. Wood's damages

calculation was based on the costs incurred by Supra to maintain its customer support staff in place during those times in which LENS was unavailable.

While this approach was criticized by BellSouth expert witness Freeman, he furnished no alternative damages calculation. Because the Tribunal is certain that Supra suffered damage and because no alternative damages calculation was offered by BellSouth, the Tribunal accepts the calculation offered by Wood (DJW-2) and awards Supra $669,153 in damages directly resulting from this breach by BellSouth.

b. Cut Off of Supra's Access

The Tribunal believes that the calculations of Supra's damages expert as to this issue was reasonable. *See,* DJW-24, and DJW-3, 2 of 2. Accordingly, the Tribunal awards Supra $55,488 as a direct result of the deliberate Cut Off of Supra's access to LENS, which the Tribunal finds was done with the intent to harm Supra.

C. BellSouth Invoices

BellSouth is awarded $6,374,369.58, less any sum awarded Supra herein and subject to the results of the Audit ordered herein.

VII. Other Relief

A. Supra's Request for Audit

As discussed in Section V.O above, the Tribunal orders BellSouth to fully cooperate with and facilitate Supra's audit of BellSouth's billings since October 1999. The audit will be conducted in accordance with GAAS, commence no later than June 15, 2001, and be completed by July 31, 2001, which may only be extended for good cause shown. The results of the audit (reductions or increases) will be offset against the amount of $6,374,369.58 to be recovered by BellSouth after offsets for Supra's damages awarded herein.

The auditor is also directed to determine the number of Supra customers in the month of April, 2001, and in the month of May, 2001, and report those figures to the parties and to the Tribunal. *See*, Section VI.B.1, above.

Finally, the Auditor is directed to remove all late charges assessed by BellSouth in its invoices. *See*, Section VII. E., below.

B. BellSouth's Request for an Injunction for Future Supra Non-Payment

Even with the Supra damages awarded herein and awaiting the results of the audit of BellSouth's billings, it appears likely that Supra will end up owing some net amount to BellSouth. In anticipation of that possible result, BellSouth has requested that the Tribunal order that BellSouth may terminate service provided to Supra if the net amount is not paid by Supra within 30 days of the net amount being calculated.

The Tribunal declines to issue such an injunction for several reasons. First, BellSouth's request has the flavor of an advisory opinion to be issued now about some future unknown scenario. Second, although the Tribunal may have the **authority** to issue an injunction, it is premature. Third, once this award is final and the net amount due to BellSouth is calculated with precision, should Supra fail to pay, then the proper enforcement mechanism is for BellSouth to file an action in a court of competent jurisdiction to enforce the Tribunal's award. The Tribunal therefore denies BellSouth's requested injunction.

C. Liquidated Damages

With respect to Supra's request that the Tribunal assess liquidated damages against BellSouth in the event BellSouth fails to comply with any order of the Tribunal, the Tribunal finds no authority in the Interconnection Agreement or in law to assess liquidated damages.

Liquidated damages are those agreed to by the parties where it is difficult, if not impossible, to assess actual damages. The Tribunal does not find any potential damages that may result from BellSouth's non-compliance with this Award to be impossible or difficult to assess.

Furthermore, Supra is essentially requesting the Tribunal to re-write or add to the Interconnection Agreement which the Tribunal is prohibited from doing by Section 7 of Attachment 1 of the Interconnection Agreement. Supra's request for liquidated damages is denied.

D. Pre- and Post-Judgment Interest

1. Pre-Judgment Interest

No pre-judgment interest is awarded to BellSouth because the gross amount awarded herein already includes interest. Furthermore, all setoffs awarded Supra herein already include interest.

2. Post-Judgment Interest

The ultimate net award shall bear interest at the post-judgment interest rate as provided under Florida law.

E. Late Charges

Pursuant to §14.2 of Attachment 6 of the Interconnection Agreement, late charges are not to be assessed in the event that a Party disputes charges and such dispute is resolved in favor of such Party. One of the disputes concerned Supra's claim that it was entitled to lease UNEs and UNE Combos and to be billed at those rates, rather than at resale rates. As Supra prevailed on that claim, late charges are inappropriate.

The Tribunal orders the Auditor (as ordered elsewhere herein) to remove such charges in the process of the Audit.

F. Special Master

Supra's request for the appointment of a Special Master is denied, as the Tribunal sees no necessity for such an appointment at this time.

G. Arbitration Costs and Expenses

Section 13.1 of Attachment 1 provides in pertinent part:

> The Arbitrator(s) fees and expenses that are directly related to a particular proceeding shall be paid by the losing Party. In cases where the Arbitrator(s) determines that neither Party has, in some material respect, completely prevailed or lost in a proceeding, the Arbitrator(s) shall, in his or her discretion, apportion expenses to reflect the relative success of each Party. Those fees and expenses not directly related to a particular proceeding shall be shared equally.

Moreover, the parties have agreed on the application of the CPR Institute for Dispute Resolution Rules for Non-Administered Arbitration. Interconnection Agreement, Attach. 1, §4. Rule 16.2 requires the Tribunal to fix in its award the costs of the arbitration, including the fees and expenses of the arbitrators, travel and expenses of witnesses, legal fees and costs, charges paid to CPR, and the costs of the transcript and any meeting and hearing facilities.

The Tribunal has determined that in a case such as this, where each side has prevailed on particular issues and where the value of the declaratory and injunctive relief granted is impossible to determine, the Tribunal cannot determine a "prevailing" party or a "losing" party, or even determine "the relative success" of each party. Accordingly, the Tribunal determines that each side shall bear the costs that each incurred in conjunction with this arbitration, including the specific categories of costs set out above.

H. All Other Relief Denied

To the extent that the parties have made additional claims and/or requested other relief than that which the Tribunal has expressly addressed in other portions of this Award, all such claims and requests for relief are hereby expressly denied.

I. Retention of Jurisdiction

The Tribunal expressly retains jurisdiction to insure completion of the audit ordered by the Tribunal, to calculate the final damages to be awarded based on the results of the audit, and to issue its Final Award on Damages.

VIII. Summary of Award

This final section summarizes the injunctive relief and damages that the Tribunal orders in these two consolidated arbitrations.

The Tribunal orders that **no later than June 15, 2001,** BellSouth shall:

- Facilitate and provision Supra's requests to provide UNEs and UNE Combos to Supra's customers at the contractually agreed prices in the Interconnection Agreement.
- Collocate all equipment as Supra has included in prior applications to BellSouth at the rates indicated in Table 2 attached to the July 24, 1998 letter incorporated into the Interconnection Agreement, and cooperate with and facilitate any new Supra applications for collocation, including but not limited to collocating any Class 5 or other switches in BellSouth central offices.
- Provide Supra nondiscriminatory direct access to BellSouth's OSS and cooperate with and facilitate Supra's ordering of services.
- Provide branded services and elements requested by Supra under the Interconnection Agreement, including but not limited to voice mail, operator

services and directory assistance, under the terms and conditions of section 19 of the General Terms and Conditions of the Interconnection Agreement.

- Fully cooperate with and facilitate Supra's audit of BellSouth's billings since October 1999 to the present in accordance with GAAS.

The Tribunal awards the following damages:

- BellSouth Invoices. Supra shall pay BellSouth $6,374, 369.58 on BellSouth's unpaid invoices, subject to the adjustments listed below;
- Audit Adjustments. Any adjustments in BellSouth's invoices found necessary by Supra's audit of BellSouth's billings, including the elimination of late charges, shall be reflected as necessary reductions or increases in those invoices to be paid by Supra; and
- Supra Damages Set-off. The following damages due to Supra will be adjusted according to the amount Supra will be required to pay on BellSouth's invoices **after** the audit adjustments and by the amount that the Tribunal calculates Supra is due in incremental net income operating as a UNE provider for the months of April and May, 2001, based on the number of Supra customers in those months as determined by the audit:

* Incremental net income operating as a UNE provider --	$ 2,103,906.40
* LENS-related lost productivity --	$ 669,153
* LENS cut-off	$ 55,488
Subtotals of Supra's Damages Set-off	$2,828,547.40

To the extent that either Supra or BellSouth has requested any other relief, all such relief is hereby denied.

DATED: June 5, 2001

John L. Estes	M. Scott Donahey	Campbell Killefer

DECLASSIFIED 9.17.05

CustomerId	EarningNumber	ItemNumber	NoteText	CSR	Date of Incident
F18708	F18708	9	CUST WANTS 9544423076 DISCONNECT, HE WANTS THAT NUMBER TO STAY WITH BS BECUZ OF DSL	csruser	6/13/01
F27419	9543469411	9	CUSTOMER CALLED TO CHECK IF WE HAVE DSL	mdelvalle	1/31/01
F29027	9549177423	6	CCI TO INQUIRE ABOUT ADSL	csruser	6/18/01
F31200	5617503121	4	I CANCELED STICVR17175 BECAUSE THE CUSTOMER HAS A PENDING ORDER WITH HIS CURRENT CARRIER TO ADD ADSL	alobo	11/22/00
F32274	5619898945	5	CUSTOMER CALLED TO CHECK IF WE HAVE THE DSL	mdelvalle	12/7/00
F32489	3053832049	17	CUSTOMER REQUEST THIS PHONE NUMBER 305-383-2049 WITH B/S BECOUSE SHE HAS DSL	zabad	4/24/01
F34556	3056650814	3	NEVER PROPERLY SWITCHED TO SUPRA, BELLSOUTH BLOCKED BECAUSE OF ADSL	cbentley	5/14/01
F39087	3054062264	1	CC AGAIN FOR STAUS ADVS W/WRITE UP STATUS ORDER FORM FOR ACCTS TO BE EXPEDITED #305-406-2264 & 406-2268, 406-2261 HAS DSL W/BELLSO, IF IS A PROBLEM DO NOT CONVERT LINE W/DSL	dsantana	1/24/01
F44126	3058618758	8	RECEIVED ORDER STATUS FORM AND THE REASON WHY CUSTOMER IS NOT WITH SUPRA YET IS BEACAUSE THEY HAVE ADSL ON THE CSR AND IT NEEDS TO BE REMOVED. WE WILL NOT BE ABLE TO CONVERT OVER WITH ADSL	tadams	3/27/01
F45240	9547186808	2	UNABLE TO HANDLE REQUEST ENDUSER ACCOIUNT FROZEN CUSTOMER ACCOUNTS STILL FROZEN ALSO NEEDS TO CALL ADL11 DSL LOCAL PROVIDER TO CANCEL DSL	emejia	3/2/01
F47441	9549645900	3	CUSTOMER CALLED IN REGARDS TO ADSL.I ADVISED HIM THAT HE WILL NOT BE ABLE TO HAVE ADSL WITH US UNLESS IT IS ON A SEPARATE LINE. BECAUSE BELLSOUTH WILL HAVE TO BILL HIM SEPARATELY FOR THAT LINE BECAUSE WE DO NOT HAVE ADSL	tadams	3/23/01
F55875	3055566042	1	PON-STICVR75644 WAS CAN. BECAUSE OF ADSL	hgarcia	5/2/01

(Part 4 of 4) DN 09252-05

SUPRA

EXHIBIT: DAN-4

CustomerId	EarningNumber	ItemNumber	NoteText	CSR	Date of Incident
F56884	9547493144	0	UNABLE TO HANDLE REQUEST CUSTOMER NEEDS TO CALL LOCAL PROVIDER TO REMOVED ADL11 SAME AS DSL	emejia	4/20/01
F57348	3056674607	0	UNABLE TO HANDLE REQUEST CANNOT REMOVED ADL11 CUSTOMER NEEDS TO CALL LOCAL PROVIDER TO REMOVE DSL	emejia	4/23/01
F72441	3054120415	3	HE WAS OKAY WITH THAT BUT B/S WILL CHRGE FULL RATE FOR DSL...I OFFERED HOM OUR INTERENET SERVICE BUT HE REJECTED...HELL BE CALLING B/S TO SET UP ACCT FOR DSL	csruser	6/20/01
F74553	7862681380	3	CUST INFORMED THAT SHE HAS A FREEZE ON ACCT AND ALSO NEEDS TO CALL BS TO GET A SEPERATE ACCT FOR ADSL	sexum	6/29/01
F77990	9544850655	0	CUST HAS ADSL ON THE LINE ADV CUST TO GET SEPARATE BILLING FOR ADSL	athomen	5/31/01
F85805	9547854747	0	CUST CALL ABT STATUS ON ACCT / UNDER CLARIFICATION / CST ALREADY SET UP A SEPARATE ACCT FOR HIS ADSL	gmaria	6/18/01
F88311	3056219349	2	CUSTOMER IS GOING BACK TO BS BECAUSE BS TOLD HIM THAT HE CAN NOT HAVE A MISC ACCT WITH DSL	kcollier	6/12/01
F90470	3059407952	0	ADVISE CUST TO CALL BS TO SEPARATE ADSL	mmolina	6/7/01
F97694	9549780067	0	ADDED PACKAGE AND ACTIVATED ACCT. CUST NEEDS TO KNOW WE DON;T HAVE ADSL	aroberts2	7/4/01