SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.

REBUTTAL TESTIMONY OF DAVID A. NILSON

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET 00-1305

AUGUST 15, 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 ARE YOU THE SAME DAVID A. NILSON WHO FILED DIRECT TESTIMONY IN THIS DOCKET?

I am.

Q WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to address the issues identified in this proceeding. My testimony is filed in rebuttal to direct testimony filed in this proceeding by Mr. John Ruscilli, Mr. Jerry Kephart and Mr. Jerry Hendrix of BellSouth Telecommunications, Inc.

Specifically, I will rebut BellSouth's direct testimony in regard to issues 7, 8, 10, 12, 13, 14, 19, 21, 22, 23, 24, 25, 27, 28, 29, 31, 32, 33, 34, 40, 49, and 53.

Issue A. Has BellSouth or Supra violated the requirement to Commission Order PSC-01-1180-FOF-TI to negotiate in good faith pursuant to Section 252(b)(5) of the Act? If so, should BellSouth or Supra be fined $25,000 for each violation of Commission Order PSC-01-1180-FOF-TI, for each day of the period May 29, 2001 through June 6, 2001?

Q **DO YOU HAVE ANY GENERAL COMMENTS ON THE ISSUE OF BELLSOUTH'S BAD FAITH?**

A. Although Supra's CEO Olukayode Ramos has addressed this issue at length, I feel compelled to also mention a few things. BellSouth's bad faith is evident from the direct testimony filed by their witnesses. Whenever costs for a given service or feature are uncertain, for example in collocation space preparation for items priced on an Individual case Basis ("ICB"), new network elements or combinations, etc., BellSouth insists on an interim rate and a retroactive "true-up". Repeatedly in their testimony, and negotiations, BellSouth seeks to preserve this protection for itself, while denying it to Supra.

Q **HOW DOES BELLSOUTH'S PROPOSALS NEGATIVELY AFFECT SUPRA?**

A. In numerous cases, BellSouth witnesses seek to deny Supra this same protection that they insist upon for themselves. Over and over BellSouth "offers"

to defer certain contract issues to future FPSC orders without either adopting any interim rate, or making allowance for true-up if the final FPSC order differs from the interim rate. In effect, BellSouth seeks to deny Supra its legitimate revenue in its entirety at best, or until some future date at least. Either way, Supra is deprived of important working capital. Furthermore, BellSouth has established a solid record [1] of making use of its "legal right" to seek both regulatory and legal appeals that serve to further extend the implementation date of any order that goes against it.

Supra must be afforded the same protections that BellSouth seeks for itself. Rates that are implemented on day one of the Agreement, not a dangling promise of a solution in the distant future, after exhausting all possible regulatory and judicial appeals, followed by an enforcement action. In those cases where a permanent rate cannot be set at this time, an interim rate subject to true-up should be provided to Supra.

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

Q IN HIS DIRECT TESTIMONY, MR. RUSCILLI ARRIVES AT THE CONCLUSION THAT SUPRA SHOULD PAY END USER LINE

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[1] FPSC Dockets 98-0119-TP, 98-0800-TP, et al., [redacted]

("EUCL") CHARGES BASED ON FPSC ORDERS IN DOCKET 00-1097-TP. WHAT IS WRONG WITH HIS CONCLUSION.

A. In Docket 00-1097, the Commission dealt with EUCL charges on customer bills represented as being billed as resold lines only. This contract must deal also with lines provided both as UNE combinations and as UNE loops delivered to Supra's Class 5 switches (regardless of circuit type). For customer circuits billed as UNE Combinations or UNE loops, the ILEC has been fully compensated for all costs and overheads. The ILEC is not due further cost recovery.

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

Q **MR. RUSCILLI TESTIFIES THAT DAML "ALLOWS UP TO SIX LOOP EQUIVALENTS TO BE SERVED OVER A SINGLE COPPER PAIR". ARE DAML SERVED LOOPS EQUIVALENT TO BARE COPPER?**

A. No. DAML served loops do not provide all the features, capabilities and functions of a copper loop. In my direct testimony I explained the negative effects DAML on high speed modems in common use for Internet access. DAML electronics have higher failure rates than bare copper, high speed DSL services cannot be provisioned over customer lines served by DAML.

Mr. Ruscilli does not deal with the added support costs to Supra for complaints of static, total loss of dialtone caused by lightning, and the fact that BellSouth does not even identify to Supra when the technology has been deployed to a Supra customer, increasing troubleshooting costs.

In notifying Supra that a customer line is being served by DAML, BellSouth would have to admit that it disconnects ALEC circuits already in operation to supply this sub-standard loop in order to provide services to its own customers. It is not inconceivable that BellSouth would put ALEC customers on DAML to provide a clean line for their own customers. When a Supra employee added an additional line to their home, (305-693-9140), Supra technicians were on hand to install the new line and perform inside wiring. This line was initially placed in service on a standard copper loop. Within 4 days, this line was causing problems of heavy static, and the customer began learning that people calling their home were actually being routed to another person's home. When Supra technicians returned to the scene, it was immediately obvious that this line had been disconnected and re-provisioned over DAML facilities in violation of the Supreme Court order in *AT&T v. Iowa Utilities Bd.,* 525 U.S. 366, 119 S. Ct. 721 (Iowa Utilities Board II) at pg. Pg. 395. The customer continued to have problems with calls being routed to the other line served by DAML, and being randomly disconnected in the middle of a conversation.

This temporary solution remained in place for over half a year, and Supra's costs to service this customer were negatively impacted by BellSouth.

Q. DID THE RECENT FLORIDA GENERIC UNE DOCKET DEAL WITH LINE SHARING VIA DAML TECHNOLOGY?

A. No. Copper and DLC served loops were considered but not DAML. By Mr. Ruscelli's testimony, Supra could be charged six times for the one loop between the central office and the customer premise. This scheme provides BellSouth undue enrichment and must be eliminated.

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

Q MR. RUSCILLI MAKES AN ARGUMENT THAT SECTION 271 OF THE ACT PROHIBITS BELLSOUTH FROM PROVIDING THIS NETWORK ELEMENT TO SUPRA. WHAT IS WRONG WITH HIS ARGUMENT?

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, Supra is not. BellSouth dare not dispute that Interoffice transport is a UNE, leased to a ALEC who assumes exclusive rights to the use of that element. Once that network element is leased to Supra, it is Supra, not BellSouth that provides services across the UNE facility. This is consistent with the *First Report and Order on Local Competition* at ¶ 449 where the FCC declared it **"essential"** for a new entrant to obtain unbundled access to interoffice

facilities that carry interLATA traffic. It is not inconsistent with Section 271 of the Act, which prohibits BellSouth from providing services across LATA boundaries. Such service would be provided by Supra across unbundled facilities leased from BellSouth.

Q HAS BELLSOUTH DENIED THE EXISTENCE OF SUCH FACILITIES?

A. No they have not.

Q HAS BELLSOUTH CLAIMED THAT IT WOULD BE TECHNICALLY INFEASIBLE TO PROVIDE THIS NETWORK ELEMENT?

A. No they have not.

Issue 13: What should be the appropriate definition of "local traffic" for purposes of the parties' reciprocal compensation obligations under Section 251(b)(5) of the 1996 Act?

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

Q. HAS MR. RUSCILLI ACCURATELY REPRESENTED THIS ISSUE?

A. Not at all. Once again BellSouth's bad faith shows in this issue. BellSouth is expecting Supra to adopt language that would forgo the interim measures ordered by the FCC in favor of the language that represents where the FCC would like to be on this issue in the future. While we have guidance from the FCC on the future, we have clear and effective orders from the FCC that reciprocal compensation be paid for ISP-bound traffic in the interim. The interim rates for this compensation are tied to the rate of compensation for voice traffic, as ultimately arbitrated in this Follow-on agreement.

Q MR. RUSCILLI ARGUES THIS COMMISSION NO LONGER HAS THE AUTHORITY TO ADDRESS THIS ISSUE. IS HE CORRECT?

A. This is a ridiculous and disingenuous argument. Mr. Ruscilli is apparently confused by the FCC order. The FCC has exercised its right to set a national rate preventing state commissions from setting a different rate. The FCC has done nothing that prevents a state commission from ordering the FCC rates into specific interconnection agreements. The plain and unambiguous language of ¶ 82 of *Intercarrier Compensation for ISP-Bound Traffic,* CC Order 01-131 in Docket 99-68 that Mr. Ruscilli cites clearly applies to the very circumstances of this arbitration. It states:

> 82. **The interim compensation regime we establish here applies as carriers re-negotiate expired or expiring interconnection agreements.** It does not alter existing contractual obligations, except to the extent that parties are entitled to invoke contractual change-of-law provisions. This Order does not preempt any state commission decision regarding compensation for ISP-bound traffic for the period

> prior to the effective date of the interim regime we adopt here. Because we now exercise our authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic, however, state commissions will no longer have authority to address this issue. For this same reason, as of the date this Order is published in the Federal Register, carriers may no longer invoke section 252(i) to opt into an existing interconnection agreement with regard to the rates paid for the exchange of ISP-bound traffic.[2] Section 252(i) applies only to agreements arbitrated or approved by state commissions pursuant to section 252; it has no application in the context of an intercarrier compensation regime set by this Commission pursuant to section 201.[3] (Emphasis Added)

This commission does not have authority to set its own rates, but it certainly has the authority to order the FCC interim rates to be memorialized within the Follow-on agreement. Mr. Ruscilli's arguments should be ignored.

Q WHAT SPECIFIC RATES HAVE BEEN ORDERED BY THE FCC?

A. Again quoting from of *Intercarrier Compensation for ISP-Bound Traffic*, CC Order 01-131 in Docket 99-68 ¶ 98:

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[2] CC Order 01-131 footnote - 47 U.S.C. § 252(i) (requiring LECs to "make available any interconnection, service, or network element provided under an agreement approved under this section" to "any other requesting telecommunications carrier"). This Order will become effective 30 days after publication in the Federal Register. We find there is good cause under 5 U.S.C. § 553(d)(3), however, to prohibit carriers from invoking section 252(i) with respect to rates paid for the exchange of ISP-bound traffic upon publication of this Order in the Federal Register, in order to prevent carriers from exercising opt in rights during the thirty days after Federal Register publication. To permit a carrier to opt into a reciprocal compensation rate higher than the caps we impose here during that window would seriously undermine our effort to curtail regulatory arbitrage and to begin a transition from dependence on intercarrier compensation and toward greater reliance on end-user recovery.

[3] CC Order 01-131 footnote - In any event, our rule implementing section 252(i) requires incumbent LECs to make available "[i]ndividual interconnection, service, or network element arrangements" to requesting telecommunications carriers only "for a reasonable period of time." 47 C.F.R. § 51.809(c). We conclude that any "reasonable period of time" for making available rates applicable to the exchange of ISP-bound traffic expires upon the Commission's adoption in this Order of an intercarrier compensation mechanism for ISP-bound traffic.

> This Order on Remand and Report and Order addresses the concerns of various parties to this proceeding and responds to the court's remand. The Commission exercises jurisdiction over ISP-bound traffic pursuant to section 201, and establishes a three-year interim intercarrier compensation mechanism for the exchange of ISP-bound traffic that applies if incumbent LECs offer to exchange section 251(b)(5) traffic at the same rates. During this interim period, intercarrier compensation for ISP-bound traffic is subject to a rate cap that declines over the three-year period, from $.0015/mou to $.0007/mou. The Commission also imposes a cap on the total ISP-bound minutes for which a LEC may receive this compensation under a particular interconnection agreement equal to, on an annualized basis, the number of ISP-bound minutes for which that LEC was entitled to receive compensation during the first quarter of 2001, increased by ten percent in each of the first two years of the transition. If an incumbent LEC does not offer to exchange all section 251(b)(5) traffic subject to the rate caps set forth herein, the exchange of ISP-bound traffic will be governed by the reciprocal compensation rates approved or arbitrated by state commissions.

Q ARE YOU SUPRISED MR. RUSCILLI ATTEMPTS TO MISLEAD THIS COMMISSION ON THIS ISSUE?

A. Mr. Ruscilli puts forth the same policy that BellSouth fought to have adopted by the FCC in this Docket. BellSouth lost its argument and must be compelled to drop this bad-faith tactic and agree to pay the interim rates ordered by the FCC.

Again, BellSouth makes its misleading argument without fear of any consequences. Supra is at a loss as to how this could be considered to be proceeding in anything other than bad faith.

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

Issue 25A: Should BellSouth charge Supra Telecom only for UNEs that it orders and uses?

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 HAS BELLSOUTH CITED A SINGLE LEGAL AUTHORITY IN DEFENSE OF ITS POSITION ON THESE ISSUES?

A. No they have not. All Mr. Ruscilli quotes is "BellSouth's position" in defense of the position they have taken. This position is identical to the one taken in its comments to the FCC in regard to the *First Report and Order* CC order 96-325, in 1996. Yet lacking a single legal authority, BellSouth, in bad faith, attempts to force Supra to adopt contract language representing "BellSouth's position", a position not supported by any legal authorities.

Q ARE YOU SUPRISED BY BELLSOUTH'S UNSUPPORTABLE "POSITION"?

A. Not any longer. Supra has had to endure countless situations of "BellSouth's policy" for everything from advanced services to collocation to UNE combinations that represent positions BellSouth failed to prevail upon before the

FCC and FPSC[4]. Apparently if BellSouth can get a ALEC to agree to "BellSouth's position", even if that position is not supported by law, they will attempt to do so. Even if that position has already been defeated and there is legal authority against it.

Caveat Emptor.

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)?

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?

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 HAS MR. RUSCILLI TESTIMONY ADDRESSED ANY OF THESE QUESTIONS?

[redacted]

A. Only within the narrow context of the proceedings of the recently concluded BellSouth / AT&T arbitration (Order No PSC-01-1402-FOF-TP in Docket No. 00-0731).

Q IS SUPRA CURRENTLY SUBJECT TO THE RULING PRESENTED IN ORDER PSC-01-1402-FOF-TP?

A. No we are not.

Q IS THERE ANY BASIS FOR THIS COMMISSION TO RE-CONSIDER ITS RULING IN DOCKET 00-0731-TP?

A. Yes. Unfortunately this case is subject to numerous technical and procedural errors committed by the parties subject to this order. The Commission can only rule on evidence place before it, consistent with prevailing law. It would truly be a travesty if Supra was forced to accept language developed in an arbitration where one or more of the parties committed errors.

Q CAN YOU PROVIDE EXAMPLES OF THESE ERRORS?

A. Certainly. Issue 27 shows just such an error that caused BellSouth to prevail simply because AT&T failed to provide a defense of its position.

> **ISSUE 27:** Should the Commission or a third party commercial arbitrator resolve disputes under the Interconnection Agreement?
> **RECOMMENDATION:** The Commission should resolve disputes under the Interconnection Agreement. (FUDGE)
> **POSITIONS OF THE PARTIES:**

> **AT&T:** AT&T **did not file** a post-hearing statement addressing this issue.
> **BELLSOUTH:** BellSouth cannot be required to use commercial arbitrators. The Commission must resolve disputes brought before it and cannot unilaterally delegate that responsibility. Furthermore, BellSouth's experience with commercial arbitration in the resolution of disputes under the 1996 Act has been expensive and unduly lengthy in nature.
> **STAFF ANALYSIS:** AT&T raised this issue in its initial Petition for Arbitration. However, AT&T did not present any evidence on this issue at hearing or in its brief. Therefore, in accordance with Prehearing Order No. PSC-01-0324-PHO-TP, **staff believes AT&T waives its position on this issue.** (Emphasis Added)

Based on its own experience with commercial arbitration against BellSouth, Supra knows it has sufficient evidence to provide a credible defense of this issue and that Supra can prevail over BellSouth on this issue.

For BellSouth to even suggest that Supra be bound to the result of a BellSouth / AT&T docket in which AT&T failed to offer a defense is ridiculous.

Q WERE THERE SPECIFIC ERRORS IN DOCKET 00-0731 (AT&T ISSUE #4) THAT SHOULD LEAD THIS COMMISSION TO RECONSIDER AND / OR REVERSE ITS ORDER IN DOCKET 00-0731.

A. Absolutely.

Q CAN YOU OFFER AN EXAMPLE OF WHERE AT&T FAILED TO PROPERLY DEFEND ITS POSITION?

A. Yes. Quoting from the Staff recommendation (at page 24-25) approved by the Commission illustrates the following problem with AT&T defense:

> While BellSouth's testimony focuses on the legal requirement imposed by FCC Rule 51.315(b) (that is, whether BellSouth is legally required to perform the functions necessary to combine UNEs that are typically combined in its network f o r AT&T), AT&T's testimony looks past this debate. Instead AT&T witness Gillan focuses on why this Commission should require BellSouth to do so in the state of Florida.
>
> > To begin, it would seem that the central legal issue concerns the limits of the Commission's discretion - that is, may the Commission evaluate BellSouth's obligation onits merits, or must the Commission sanction BellSouth's proposal, without regard f o r the consequences to Florida consumers. . .I believe the Commission has the authority to judge the issue on the merits. (Gillan TR 223) (emphasis in original)

Here the staff points to AT&T's failure to properly address BellSouth's arguments regarding FCC Rule 51.315(b). Instead AT&T argues that the Commission has the authority to judge the issue on the merits, without properly presenting the merits of the case to the Commission. In my direct testimony, Supra presents legal authority in defense of our position, something staff feels AT&T failed to do.

Q ARE THERE ANY OTHER AREAS THAT SUPPORT RECONSIDERATION ON THIS MATTER?

A. Yes. Staff offered a recommendation to the Commission not consistent with prevailing law. Specifically at page 25:

> Staff does not believe this Commission's obligations under the

> law can accommodate the urging of AT&T in this regard. While the Commission may impose additional requirements consistent with federal law, the Commission should not impose requirements that conflict with federal law. Though staff recognizes that a higher level of efficiency may result from BellSouth combining UNEs, it is clearly not consistent with prevailing law to order such combining, absent agreement between the parties.

As well intentioned as it may be, staff does **not** cite specific federal law that would be violated if AT&T were to prevail. They cannot, because it does not exist. The FCC has specifically declined to offer definitions of "currently combines" as stated in the staff analysis. Indeed this area is fraught with undefined terms and vacated provisions. Should this Commission seek to accommodate Supra's urging in this matter, it would be doing so in areas **where there is no prevailing law, definition, or Rule subsections that are currently vacated.** The FCC empowered the state commissions in ¶ 22 of *The First Report and Order on Local Competition* CC Order 96-325.

> 22. In this regard, this Order sets minimum, uniform, national rules, but also relies heavily on states to apply these rules and to exercise their own discretion in implementing a pro-competitive regime in their local telephone markets.

In its recommendation staff erred in stating "the Commission should not impose requirements that conflict with federal law." The FCC has recognized that state commissions "share a common commitment to creating opportunities for efficient new entry into the local telephone market." And provide for state commissions to "ensure that states can impose varying requirements."

42. The decisions in this Report and Order, and in this Section in particular, benefit from valuable insights provided by states based on their experiences in establishing rules and taking other actions intended to foster local competition. Through formal comments, *ex parte* meetings, and open forums,[5] state commissioners and their staffs provided extensive, detailed information to us regarding difficult or complex issues that they have encountered, and the various approaches they have adopted to address those issues. Information from the states highlighted both differences among communities within states, as well as similarities among states. Recent state rules and orders that take into account the local competition provisions of the 1996 Act have been particularly helpful to our deliberations about the types of national rules that will best further the statute's goal of encouraging local telephone competition.[6] **These state decisions also offered useful insights in determining the extent to which the Commission should set forth uniform national rules, and the extent to which we should ensure that states can impose varying requirements.** Our contact with state commissioners and their staffs, as well as recent state actions, make clear that **states and the FCC share a common commitment to creating opportunities for efficient new entry into the local telephone market.** Our experience in working with state commissions since passage of the 1996 Act confirms that we will achieve that goal most effectively and quickly by working cooperatively with one another now and in the future as the country's emerging competition policy presents new difficulties and opportunities.

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[5] CC Order 96-325 Footnote -- Public forum held on March 15, 1996, by FCC's Office of General Counsel to discuss interpretation of sections 251 and 252 of the Telecommunications Act of 1996; public forum held on July 9, 1996, by FCC's Common Carrier Bureau and Office of General Counsel to discuss implementation of section 271 of the Telecommunications Act of 1996.

[6] CC Order 96-325 Footnote -- *See, e.g.*, Petition of AT&T for the Commission to Establish Resale Rules, Rates, Terms and Condition and the Initial Unbundling of Services, Docket No. 6352-U (Georgia Commission May 29, 1996); AT&T Communications of Illinois, Inc. *et al.*, Petition for a Total Local Exchange Wholesale Service Tariff from Illinois Bell Telephone Company, Nos. 95-0458 and 95-0531 (consol.) (Illinois Commission June 26, 1996); Hawaii Administrative Rules, Ch. 6-80, "Competition in Telecommunications Services," (Hawaii Commission May 17, 1996); Public Utilities Commission of Ohio Case No. 95-845-TP-COI (Local Competition) (Ohio Commission June 12, 1996) and Implementation of the Mediation and Arbitration Provisions of the Federal Telecommunications Act of 1996, Case No. 96-463-TP-UNC (Ohio Commission May 30, 1996); Proposed Rules regarding Implementation of §§ 40-15-101 *et seq.* Requirements relating to Interconnection and Unbundling, Docket No. 95R-556T (Colorado Commission April 25, 1996) (one of a series of Orders adopted by the Colorado Commission in response to the local competition provisions of the 1996 Act); Washington Utilities and Transportation Commission, Fifteenth Supplemental Order, Decision and Order Rejecting Tariff Revisions, Requiring Refiling, Docket No. UT-950200 (Washington Commission April 1996).

Indeed, in 1996 the Florida Public Service Commission filed comments quite contrary to staff's recommendation in 00-0731: (First Report and Order at ¶ 65:

> 65. Some state commissions recommend that, if the FCC does establish explicit requirements, states should be allowed to impose different requirements. For example, the Illinois Commission urges the FCC to adopt a process by which states may seek a waiver from the national regulations, upon a showing of need.[7] **The Ohio and Florida Commissions recommend that the FCC adopt explicit requirements that states could choose to adopt, but that states would have the option of developing their own requirements.**[8] Under the proposal recommended by the Ohio Commission, existing state regulations that are consistent with the 1996 Act would be "grandfathered."[9] In addition, if a state failed to adopt any rules regarding competitive entry into local markets within a specified time, the FCC rules would be binding.[10] (Emphasis Added)

In this light the Commission has the authority to set policy as defined by *United States* v. *Jones*, 109 U.S. 513 (1883), Supra urges this Commission to reconsider its prior position regarding these three crucial issues, in light of Supra's factual and legal arguments.

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[7] CC Order 96-325 Footnote -- Illinois Commission comments at 13; *accord* AT&T comments at 11; ACTA comments at 2-4.

[8] CC Order 96-325 Footnote -- Florida Commission comments at 2-3; Ohio Commission comments at 4-5; *accord* NYNEX reply at 4.

[9] CC Order 96-325 Footnote -- Ohio Commission comments at 4-5; *accord* NARUC comments at 6-7.

[10] CC Order 96-325 Footnote -- Ohio Commission comments at 4-5.

Finally the strongest arguments against the staff recommendation that this Commission **not** make findings that contradict or apply Federal law is found in Justice Thomas footnote 10 in *AT&T v. Iowa Utilities Bd.*, 525 U.S. 366, 119 S. Ct. 721 (Iowa Utilities Board II). While the FCC has failed to specifically address the issue, it falls upon the state commissions to set specific rulemaking on it. Specifically, footnote 10 provides:

> Justice Thomas notes that it is **well settled that state officers may interpret and apply federal law,** see, *e.g., United States* v. *Jones*, 109 U.S. 513 (1883), **which leads him to conclude that there is no constitutional impediment to the interpretation that would give the States general authority, uncontrolled by the FCC's general rulemaking authority, over the matters specified in the particular sections we have just discussed.** *Post*, at 12—13. But constitutional impediments aside, **we are aware of no similar instances in which federal policymaking has been turned over to state administrative agencies. The arguments we have been addressing in the last three paragraphs of our text assume a scheme in which Congress has broadly extended its law into the field of intrastate telecommunications, but in a few specified areas (ratemaking, interconnection agreements, etc.) has left the policy implications of that extension to be determined by state commissions,** which–within the broad range of lawful policymaking left open to administrative agencies–are beyond federal control. **Such a scheme is decidedly novel, and the attendant legal questions, such as whether federal courts must defer to state agency interpretations of federal law, are novel as well.**[11] (Emphasis Added)

The Supreme Court has recognized no constitutional impediments to the States' rights to interpret and apply Federal law "...uncontrolled by the

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[11] CC Order 96-325 Footnote -- Note 10 of *AT&T v. Iowa Utilities Bd.* 525 US. 366 (1999).

FCC's general rulemaking authority," thereby allowing this Commission to rule, under the interconnection agreement, in the absence of federal rules.

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 **DOES BELLSOUTH'S POSITION ON THIS ISSUE REPRESENT GOOD FAITH OR BAD FAITH?**

A. Bad Faith. BellSouth's primary position is that no decision on this matter be made until the conclusion is reached in Docket 00-0075. This is a blatantly anti-competitive tactic designed to delay Supra's collocation efforts once again. Supra is currently moving forward with collocation in 24 BellSouth central offices in LATA 460 (Southeast Florida). This LATA is currently served by three tandem switches located in two central offices.

Supra's position is that BellSouth, not Supra, should bear the costs caused by BellSouth's network design. Supra will bear its own costs on its own side of the point of interconnection.

Mr. Ruscilli, I assume, is arguing that parity is established by Supra bearing its own cost of transporting BellSouth customer traffic to Supra end offices **and** to carry BellSouth customer traffic from BellSouth end offices to the point(s) of

Interconnection. Such a travesty was never envisioned by the Act, which requires each carrier to "bear its own costs to the point of interconnection."

Q HAS MR. RUSCILLI EXPRESSED HIS COMPANY'S POSITION WITH SUFFICIENT PRECISION TO UNDERSTAND HIS POSITION?

A. Frankly, no. Although my previous answer reflects what I assume his position to be.

The specific question is whether or not there should be a single point of interconnection per Local Access Transport Area ("LATA"). Newton's Telecom Dictionary 15th Edition, defines LATA as "Local Access Transport Area, also called Service areas by some Bell Operating Companies. One of 196 local geographical areas in the US within which a local telephone company may offer telecommunications services."

Newton's does **not** offer a definition for Mr. Ruscilli's term "local calling area", and that leaves one to be rather confused as to BellSouth's position on this issue. Does Mr. Ruscilli mean a LATA, or an exchange (i.e. Rate Center)? Since there is no support in the Act for requiring a ALEC to interconnect Rate Center (Exchange) by Rate Center, we look to Newton's for the definition of "Local Call" which is "Any call within the local service area of the calling phone. Individual local calls may or may not cost money." So it would appear that Mr. Ruscilli means LATA when he uses the non-standard term. Even so his arguments make

no sense whatsoever, no does he cite to a single legal authority to substantiate his position.

On the one hand, Mr. Ruscilli states that "Supra should be required to bear the cost of facilities that BellSouth may be required to install, on Supra's behalf, in order to carry BellSouth's traffic that originates in a BellSouth central office located in a BellSouth local calling area and is destined for Supra's customer located in that same calling area to the point of Interconnection located outside of that local calling area. What this statement has to do with the question being answered is beyond me.

The question deals with whether there should be one, or more, points of interconnection within a LATA. As such, and relying on Newton, the BellSouth origination, Supra terminating customers and the point of interconnection would all be within a single LATA, there is no discussion of the point of interconnection being outside the serving LATA. Mr. Ruscilli makes no sense whatsoever.

Q IN HIS DIRECT TESTIMONY, MR. RUSCILLI ASKS THE QUESTION "DOES BELLSOUTH'S POSITION MEAN THAT SUPRA WOULD HAVE TO BUILD A NETWORK TO EACH BELLSOUTH LOCAL CALLING AREA, OR OTHERWISE HAVE A POINT OF INTERCONNECTION WITH BELLSOUTH'S LOCAL NETWORK IN EVERY LOCAL CALLING AREA?" WHAT IS WRONG WITH HIS ANSWER.

A. He answers the question "No", and then describes a process by which "Supra can lease facilities from BellSouth or any other provider to bridge the gap between its network (that is, where it designates its Point of Interconnection) and each BellSouth local calling area."

Where I come from, that's called building a network, and thus the answer Mr. Ruscilli gives in his text is in direct contradiction with his answer "No." He should have said "Yes".

He then goes on to state "BellSouth will be financially responsible for transporting its originating traffic to a single point in each local calling area." Eureka! That **is** actually responsive to the question asked. From that one sentence alone, if it were not for all of the other conflicts in his testimony, I would assume that Supra and BellSouth are in agreement on this issue.

Then Mr. Ruscilli drops the other shoe again and writes "However BellSouth is not obligated to haul its local traffic to a distant point dictated by Supra without appropriate compensation from Supra." Where did THAT come from? Once again BellSouth is totally non-responsive to the question.

Q WHAT CAN YOU INFER FROM MR. RUSCILLI'S TESTIMONY ON THIS SUBJECT?

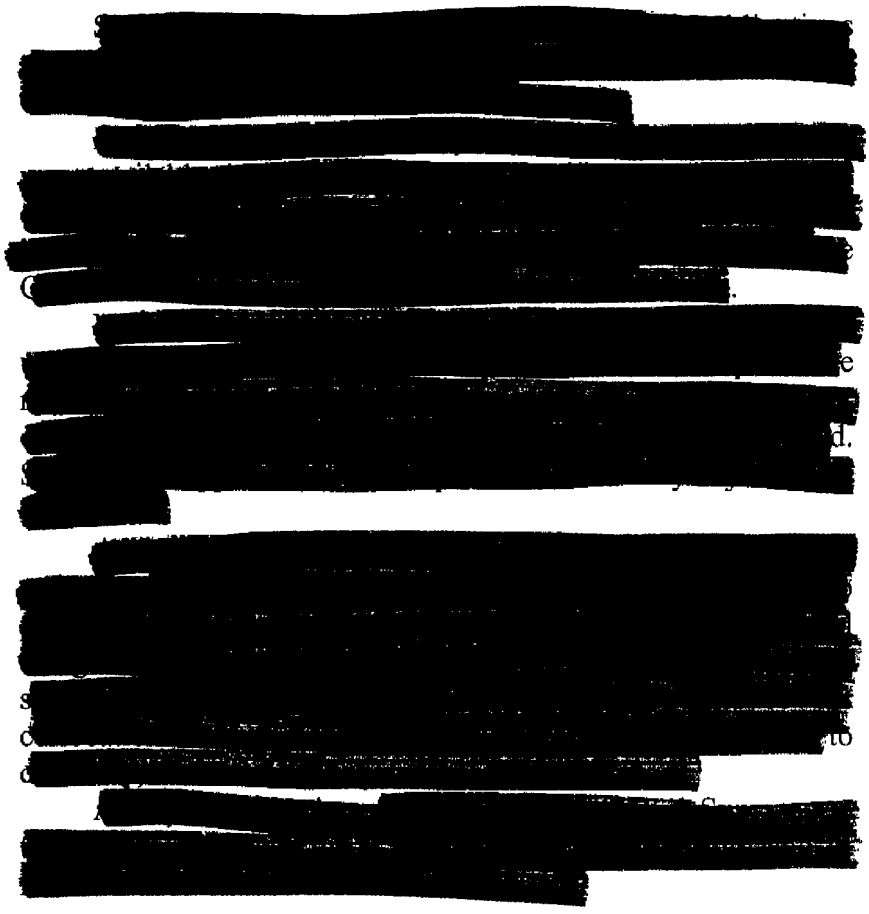
A. BellSouth is not serious. Obfuscation, confusion, clarification all equate to the same thing -- delay. And each day BellSouth can delay a ALEC like Supra from collocating represents another pile of dollars with which to arm the war chest against Supra and all other ALECs.

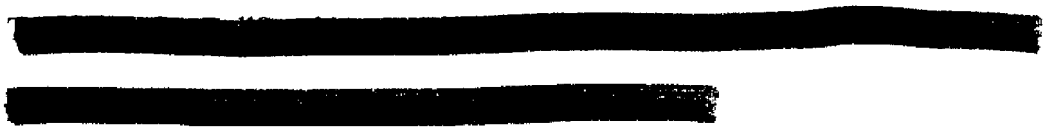
This Commission has already sat in judgment over BellSouth's illegal attempts to deny Supra Collocation space (Docket 98-0800-TP), it has yet to deal with the horrors BellSouth appears to be readying to delay Supra due to interconnection "issues." On January 5, 1999 this commission found BellSouth had improperly refused Supra Collocation space and awarded Supra the right to collocate Class 5 switches in the contested offices.

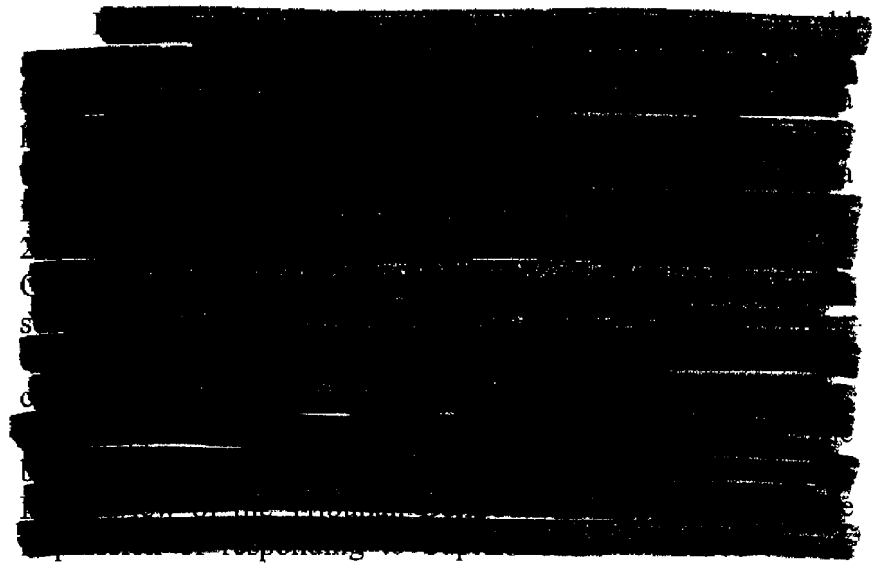
Despite the fact BellSouth exhausted all of their appeals, Supra has still not been able to collocate in those two offices **to this date.**

After delaying until July, 1999 because it was seeking collocation exemptions that would not have applied to Supra because of this Commissions order, BellSouth cancelled 6 Docket requests for collocation exemption before this commission (the so called Florida Exemption Docket) and represented to this Commission that all applicants would be granted collocation. Supra's received a bona fide collocation application response, and a price tag of approx. $350,000 per office, half up front, balance subject to true-up which is a willful and blatant overcharges per our Interconnection agreement. BellSouth refused in August 2000 to comply with the FCC's *Order on Reconsideration and Second Further Notice of Proposed Rulemaking in the Matter of Deployment of Advanced Wireline Services* (CC order 98-147) and begin collocation space preparation in the presence of a billing dispute between the parties.

[redacted]







[redacted]

Further to BellSouth's means, motives, and opportunity to create barriers to entry where none should exist:

[redacted]

[redacted]

Q HOW IS THIS GERMANE TO THIS ISSUE?

A. BellSouth has a proven track record of dealing with Supra in bad faith. . As early as April 26, 2000, Supra requested from BellSouth information about BellSouth's network (Not BellSouth's unilateral rules for interconnection which was what was supplied), in an honest effort to make sure the weak, undocumented and vague requirements for interconnection were memorialized properly, for the first time, in this Supra's third Interconnection agreement with BellSouth. The documents that were requested were from the Telcordia (formerly BellCore) Increased Network Reliability Task Force Template. BellSouth refused Supra this information until two weeks ago, and then sent Supra information relevant to a ALEC's network, not the information requested by Supra.

Throughout this entire process BellSouth has offered to provide Supra with sufficient information to negotiate the interconnection portion of the agreement by "allowing" Supra to talk to Ms. Parkey Jordan, Esq., Legal Counsel, Mr. Patrick Finlen, Chief Contract Negotiator, and Now Mr. Ruscilli who appears to be one of BellSouth's Chief Regulatory Witnesses.

It is prima facie evidence of BellSouth bad faith dealings with Supra that **not once** has BellSouth provided requested documents, provided a real live engineer to talk through the issues in "joint network planning" as required by the Act.

To now present Mr. Ruscilli as BellSouth's witness for POI interconnection when it is obvious that Mr. Ruscilli refuses to take a solid position is simply, for lack of a better phrase, bad faith.

At this point I doubt that a true solution to this issue can be resolved, as we **still** have no clue as to what BellSouth's position is on these issues. I can only assume it is opposite that of Supra's. Mr. Ruscilli is a practiced witness, the record shows he testifies in all high profile regulatory cases, he is an accomplished debater, and yet he cannot determine whether we agree or disagree on this issue.

As a result, neither can I. This is an incredible waste of time and resources, deliberately calculated to win BellSouth and additional, valuable delay at Supra's expense.

Q IS THERE ANYTHING ELSE YOU WISH TO COMMENT ON THIS ISSUE?

A. Unfortunately, yes. Despite Mr. Ruscilli's regulatory experience, despite his familiarity with FCC orders, his blatant misunderstanding of telecommunications practices and procedures shows through. In addition to his rambling and confused argument regarding the POI, Mr. Ruscilli testifies to how the FCC addressed the additional costs caused by the form of interconnection an ALEC chooses. He then tries to apply 251(d)(1) and 251(c)(2) to his confusion

regarding cost of transport to the POI. Somehow he tries to equate transport out of the LATA (which is **not** an issue in this arbitration, and something he testified BellSouth is precluded by section 271 from providing anyway) with the requirements of 252(d)(1).

To set the record straight, here is what the FCC held on technically feasible methods of interconnection in the First Report and Order at ¶ 550.

> **Physical and virtual collocation are the only methods of interconnection or access specifically addressed in section 251.** Under section 251(c)(6), incumbent LECs are under a duty to provide physical collocation of equipment necessary for interconnection unless the LEC can demonstrate that physical collocation is not practical for technical reasons or because of space limitations. In that event, the incumbent LEC is still obligated to provide virtual collocation of interconnection equipment. Under section 251, the only limitation on an incumbent LEC's duty to provide interconnection or access to unbundled elements at any technically feasible point is addressed in section 251(c)(6) regarding physical collocation. Unless a LEC can establish that the specific technical or space limitations in subsection (c)(6) are met with respect to physical collocation, we conclude that incumbent LECs must provide for any technically feasible method of interconnection or access requested by a competing carrier, including physical collocation.[12] If, for example, we interpreted section 251(c)(6) to limit the means of interconnection available to requesting carriers to physical and virtual collocation, **the requirement in section 251(c)(2) that interconnection be made available "at any technically feasible point" would be narrowed dramatically to mean that interconnection was required only at points where it was technically feasible to collocate equipment.** We are not pursuaded that Congress intended to limit interconnection points to locations only where collocation is possible. (Emphasis Added)

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[12] CC Order 96-325 Footnote -- Because we require incumbent LECs to offer virtual collocation in addition to physical collocation, we reject the suggestion of ACTA that the cost of converting from virtual to physical collocation be borne by the incumbent LEC. *See* ACTA comments at 16.

BellSouth, by selecting Mr. Ruscilli to testify on this issue is most assuredly guilty of bad faith tactics, once again, intended to delay and commit tortious harm upon Supra Telecom.

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?

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 **HOW DO YOU RESPOND TO MR. RUSCILLI'S TESTIMONY ON THESE ISSUES?**

A. Once again Mr. Ruscilli spouts BellSouth "policy" as if it were an effective FCC order. He states:

> When a particular customer has four or more lines **within a specific geographic area, even if those lines are spread over multiple locations,** BellSouth is not required to provide unbundled local circuit switching to ALECs, so long as the other criteria for FCC Rule 51.319(c)(2) are met. (Emphasis Added.)

Despite Mr. Ruscilli's vast regulatory experience as a professional witness for BellSouth, he fails to cite a single legal authority to support his allegations highlighted in the passage above.

He cannot.

No such legal authority exists.

Q MR. RUSCILLI ONCE AGAIN CITES THE FPSC ORDER PSC-01-1402-FOF-TP IN DOCKET 00-0731 (AT&T / BELLSOUTH ARBITRATION) AS LEGAL AUTHORITY TO DENY SUPRA'S POSITION. IS THIS ORDER BINDING UPON SUPRA?

A. No, it is not. And I once again object to BellSouth's bad faith attempt to refusal to provide Supra with necessary network information and cost studies so as to allow Supra to fully support its position on this issue. Furthermore, Supra should not be bound to the arguments raised by AT&T on this issue in Docket 00-0731. In that proceeding, as in this one, BellSouth can find no legal authority, save the FPSC ruling in that proceeding, to support its position. Mr. Ruscilli offers no evidence that "ALECs are not impaired without access to unbundled local circuit switching when serving customers with four lines or less in Density Zone 1 in the top 50 MSAs." Mr. Ruscilli offers no evidence whatsoever that there is one single, much less several providers of unbundled local switching, other than BellSouth, in the Orlando, Ft Lauderdale, and Miami MSA's (or **anywhere** else in Florida for that matter).

Mr. Ruscilli misrepresents the current state of law by surreptitiously slipping in "the relevant geographic area" in conjunction with the FCC's "four or more lines", and misrepresenting "as long as BellSouth **will** provide the ALECs with EELs at UNE rates." When the remanded Rule 319 **clearly** states "the incumbent LEC

provides non-discriminatory access to combinations of unbundled loops and transport (also known as the "Enhanced Extended Link")"

Mr. Ruscilli has presented no evidence that BellSouth actually **does** provide non-discriminatory access to EELS at UNE rates, and it is Supra's contention that he cannot provide this evidence because BellSouth is not, and will not for the foreseeable future, provide such non-discriminatory access. Once BellSouth provides proof that it is, in fact, providing non-discriminatory access to EELs at UNE rates, BellSouth still should not be able to combine a single customers lines at multiple locations in order to deny a ALEC the right to local circuit switching at UNE rates. To hold otherwise is to allow BellSouth to impede competition, and will only serve to hurt consumers.

Mr. Ruscilli incorrectly quotes FCC Rule 51.319. In at least four places his version[13] of Rule 319 differs from the actual text as published in Appendix C of *The UNE Remand Order* 99-238. Intentional or careless, he misquotes the Rule in his testimony.

Q ON PAGE 33 OF HIS DIRECT TESTIMONY MR. RUSCILLI WRITES "BELLSOUTH REQUESTS THIS COMMISSION REJECT SUPRA'S ATTEMPT TO VIOLATE THE FCC'S RULES. " WHAT ARE YOUR COMMENTS ON HIS PLEA?

[13] DT Ruscilli, pg 32.

A. Mr. Ruscilli references no such specific rule or law anywhere in his testimony. Even his bastardized version of Rule 319 contains no such language. Mr. Ruscilli is unable to reference a single legal authority to support his plea.

He cannot.

None exist.

Supra would request this Commission look past Mr. Ruscilli's patently disingenuous attempts to manipulate the outcome of this arbitration with false statements and misrepresentations of the state of the law, and instead look to Supra's position as documented in my direct testimony.

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

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

Q **IN HIS DIRECT TESTIMONY ON PAGE 34, MR. RUSCILLI ONCE AGAIN TAKES THE POSITION THAT SUPRA SHOULD BE MADE TO WAIT, WITHOUT COMPENSATION OF ANY SORT, UNTIL THE CONCLUSION OF DOCKET 00-0075-TP, ALREADY IN PROCESS NEARLY ONE AND A HALF YEARS. WHAT IS YOUR COMMENT?**

A. Again, here is another example of BellSouth's bad faith tactics against ALECs. BellSouth seeks to exercise its monopoly powers in the State of Florida

to provide itself financial protection in the form of interim rates and retroactive true-ups, while "offering" Supra nothing, except more delays, and uncertain outcomes, coupled with certain regulatory and judicial appeals certain to further delay, all the while obtaining services from Supra for FREE because of its refusal to negotiate interim rates and provide a proper true-up for Supra. The tactic of delay without compensation is so prevalent, and so widespread as to be, again, bad faith.

Q ON PAGE 34 OF MR. RUSCILLI STATES "FURTHERMORE, SUPRA DOES NOT UTILIZE ITS OWN SWITCH IN FLORIDA. THE FACT THAT SUPRA DOES NOT UTILIZE ITS OWN SWITCH TO SERVE ITS OWN CUSTOMERS, CLEARLY DEMONSTRATES THAT SUPRA IS UNABLE TO SATISFY THE CRITERIA THAT ITS SWITCH COVERS A GEOGRAPHIC AREA COMPARABLE TO THAT OF BELLSOUTH'S TANDEM SWITCH." HOW DO YOU RESPOND TO THIS?

A. Disingenuous is far to mild a term to describe the multitude of misrepresentations Mr. Ruscilli makes in this one paragraph.

First, Supra has well over 70,000 customers in Florida served via UNE combinations, a fact Mr. Ruscilli could, should and probably does know. As Senior Director for State Regulatory (SIC), Mr. Ruscilli should and probably does know that when Supra or any other ALEC leases UNE Switch Ports, it leases the

"**exclusive access or use of an entire element**" as reaffirmed by the FCC in its conclusion to the *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.[14] 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]."[15] 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 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**

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[14] 96-325 footnote -- *See* NPRM at paras. 159-65.

[15] 96-325 footnote -- 47 U.S.C. § 251(c)(3).

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."[16] 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.[17] (Emphasis added)

Even Mr. Ruscilli should have known and must admit, that Supra "owns" 70,000 unbundled switch ports in BellSouth territory.

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[16] 96-325 footnote -- 47 U.S.C. § 251(i).

[17] 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.

Q **WHAT ELSE IS FALSE ABOUT MR. RUSCILLI'S TESTIMONY?**

A. Given his position, and access within BellSouth, Mr. Ruscilli should know that his company has been found guilty of illegally impeding Supra's collocation attempts before the FPSC in 1998, in an aborted settlement before the FCC in 1999, [redacted] and now in a second case pending before the FCC enforcement division. Mr. Ruscilli does not mention these things while misrepresenting the true reason BellSouth has not raised a finger to provision Supra collocation: it is afraid of what will happen to its business if Supra is allowed to execute its collocation plan.

Q **WHY IS THAT?**

A. Despite the history of BellSouth's actions in intending to harm Supra, Supra has been able to market itself and grow by 70,000 new customers in a year that has seen ALEC after ALEC fold or file bankruptcy.

They know Supra's deployment plans, and if Mr. Ruscilli did proper research he would have been forced to admit the following:

1. BellSouth operates a total of 9 tandem offices in the State of Florida.
2. These Tandem offices form the core point of interconnection for all ALECs and IXC's operating in BellSouth's Florida Region.
3. That an ALEC who were to collocate a telephone switch such as the Lucent 5ESS or Nortel DMS 500 in each of those 9 BellSouth Tandem offices would not only cover a comparable geographic area to BellSouth,

but it would cover an area IDENTICAL to BellSouth, serve all customer over the **SAME** trunk facilities and end user loops as BellSouth.

4. Supra has been granted collocation of either a Lucent 5ESS or Nortel DMS 500 switch in each of the BellSouth Tandem offices in the state of Florida, and the Miami Red Road and Fort Lauderdale Plantation Local Tandems as well.

I find it incredible that BellSouth would make the statement regarding Supra's lack of a switch in light of Florida Docket 98-0800-TP [redacted] I further find it impossible to believe that Mr. Ruscilli not only is aware of these issues, but I would not be surprised if he doesn't receive daily briefings on the status of the legal proceedings initiated against BellSouth by Supra.

This then, is yet another bad faith attempt to deny Supra what it is entitled to, to appear to hide its evil intent, practices and policies from this Commission, and outright misrepresent the truth to further its anti-competitive programs against Supra.

Once again, disingenuous is far too mild a term for the misrepresentations in Mr. Ruscilli's direct testimony.

Q DOES THIS END YOUR REBUTTAL OF MR. RUSCILLI'S DIRECT TESTIMONY?

A. It should, but unfortunately it does not.

Mr. Ruscilli states on page (2) of his direct testimony which issues his testimony covers. In this list he claims he will address issue 8 and 28. I can find nothing in testimony on Issue 8, and no new argument for issue 28 other than to push for adoption of the rates set forth in the Commission's May 25, 2001 Order in Docket No. 990649-TP.

In the abundance of caution, Supra would keep its rebuttal testimony open on these issues in case it turns out that the testimony BellSouth transmitted to Supra is in anyway different from the officially filed copies of Mr. Ruscilli's testimony. Otherwise Supra would expect that the Staff recommendation reflect that Bell South has abandoned its defense of these two issues by its showing.

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 multi-unit installations?

Q IN HIS DIRECT TESTIMONY, MR. JERRY KEPHART STATES THAT SUPRA REFUSED TO DISCUSS ISSUES 28, 33, 34, 40, AND 53. WERE YOU PRESENT IN ANY OF THE INTRA COMPANY REVIEW BOARDS WERE THESE ISSUES WERE TO BE DISCUSSED AND SUPRAS POSITION ON THIS ISSUE WAS PRESENTED TO BELLSOUTH?

A. I was, in fact I attended all of Supra's planning meetings, drafted and published the meeting minutes.

Q WAS MR. KEPHART PRESENT AT ANY OF THESE MEETINGS?

A. No he was not and therefore has no independent knowledge of what was said.

Q SHOULD MR. KEPHART HAVE BEEN PRESENT AT THE ICRB MEETINGS?

A. I cannot answer authoritatively for BellSouth, but in my opinion, yes he should have.

Q WHY IS THAT?

We have been dealing with a certain BellSouth position on this issue that has just flip-flopped with Mr. Kephart's testimony. The Final order in Docket 99-0649 (ORDER NO. PSC-01-1181-FOF-TP, Investigation into pricing of unbundled network elements.) was issued May 25, 2001. The proposal outlined in Mr. Kephart's testimony could have been supplied anytime since then, potentially allowing this issue to close before bringing to this Commission. This is yet another example of BellSouth's bad faith dealings with Supra -- they had a solution to the problem and held that through the meetings, conference calls, and ("ICRB") meetings held in late May and June.

Q **WHAT IS INCORRECT ABOUT MR. KEPART'S STATEMENTS OF SUPRA POSITION?**

Supra has never refused to discuss any issues. However, as is covered more fully in Mr. Ramos' testimony, it has been well over a year since Supra began requesting information necessary for **Supra** to learn enough about BellSouth's network in order to propose language regarding various aspects of interconnection, a subject that has been covered poorly, virtually non-existent in the past two Supra / BellSouth Interconnection agreements. BellSouth has steadfastly refused to provide such information using a variety of indirect ploys such as "Why don't you look on our website?", "Supra you don't need this information", "Here is what you **must** do", "that information is proprietary and we are not going to give it to you." The most insidious thing is that after Pat Finlen verbally replied that he would provide Supra with the requested information, he now no longer remembers the request or his answers in response to it. His boss, Jerry Hendrix, testifies on page 12 of his direct testimony "However, BellSouth was unaware of Supra's position that it could not negotiate the new interconnection agreement until BellSouth provided it with certain network information until BellSouth received a letter dated April 4, 2001(JDH-11).

This is just not true.

While Supra has become accustomed to this behavior on issues jointly handled between Pat Finlen and Jerry Hendrix, it is time for someone to call into question

the veracity of what Jerry Hendrix testifies to or else the effectiveness with which he communicates with his subordinates. I personally sat in on at least two telephone calls where Pat Finlen made all of the quotes above. To now claim that they knew nothing of this requirement is a total falsehood.

The only logical conclusion one must assume from this is that BellSouth does not want to give Supra this information. Its employees responsible for the negotiation of a Follow On Agreement ignored the request, and planned to get away with it because they expected Supra to adopt the recently arbitrated AT&T BellSouth ICA. Now that it has become obvious that BellSouth has not supplied the information, they are trying to shift blame onto Supra, by claiming Supra's sole intent is to delay these proceedings. Of course, BellSouth fails to point out that a delay in these proceedings only harms Supra, as the terms of the Follow On Agreement will apply retroactively to the expiration date of the parties' current agreement. Supra is still being billed at the over-inflated rates in its current agreement, thereby causing its financial statements to overstate its current liabilities.

The bottom line is that Supra refused to negotiate at a disadvantage to BellSouth, when Supra was legally entitled to the information we requested. Supra merely expressed its intention to defer discussion on these issues until after BellSouth provided the information, if ever. Supra **never** made the statements Mr. Kephart attributes to it, and he has no independent knowledge of what was said.

Q **THAT SAID, HOW DOES BELLSOUTH'S PROPOSAL STAND UP?**

A. The problem with it is that it does not comply with CC Order 99-238, the *UNE Remand Order* at pg. 5:

> • Subloops. Incumbent LECs must offer unbundled access to subloops, or portions of the loop, at any accessible point. Such points include, for example, a pole or pedestal, the network interface device, the minimum point of entry to the customer premises, and the feeder distribution interface located in, for example, a utility room, a remote terminal, or a controlled environment vault. The Order establishes a rebuttable presumption that incumbent LECs must offer unbundled access to subloops at any accessible terminal in their outside loop plant.
>
> • **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. (Emphasis Added)

What BellSouth has proposed are a series of **two or more** points of interconnection, one reserved for BellSouth and another for the entire ALEC community. Mr. Kephart attempts to justify this position by claiming security and reliability issues will all ALECs having access to the BellSouth terminal. Surprisingly so, he fails to discuss how all his concerns aren't embodied in the second (ALEC) terminal as the rule is now proposed.

As Supra was able to prove in its recent commercial arbitrations with BellSouth, BellSouth will stop at nothing to deliberately harm Supra. Allowing BellSouth to

maintain two sets of terminals, and then requiring the ALEC to install their own, third terminal is not in compliance with the *UNE Remand Order*, and raises the potential for anti-competitive behavior. ¶ 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.**18 OpTel similarly suggests that the incumbent should provide a single point of interconnection at or near the property line of multi-unit premises.19 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.20 (Emphasis Added)
>
> 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.**[21] **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**

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18 CC Order 99-238 footnote -- SBC Reply Comments at 9 (citing OpTel Comments at 10; Teligent Comments at 3).

19 CC Order 99-238 footnote -- OpTel Comments at 10.

20 CC Order 99-238 footnote -- *Id.*

21 CC Order 99-238 footnote -- *See* 47 C.F.R. § 68.3.

> **suitable for use by multiple carriers.**[22] 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.[23] 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.[24] 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. (Emphasis Added)

BellSouth's position is not in compliance with the FCC recommendation. Supra stands ready to participate in the reconfiguration of the network to effect this. If BellSouth does not wish to negotiate on this issue, the FCC has offered up an effective order "**we require the incumbent to construct a single point of interconnection that will be fully accessible and suitable for use by multiple carriers.**" So either BellSouth negotiates this issue with Supra to come to a mutually agreeable solution, or BellSouth should build the SPOI ("Single Point of Interconnection") as **required** by the FCC.

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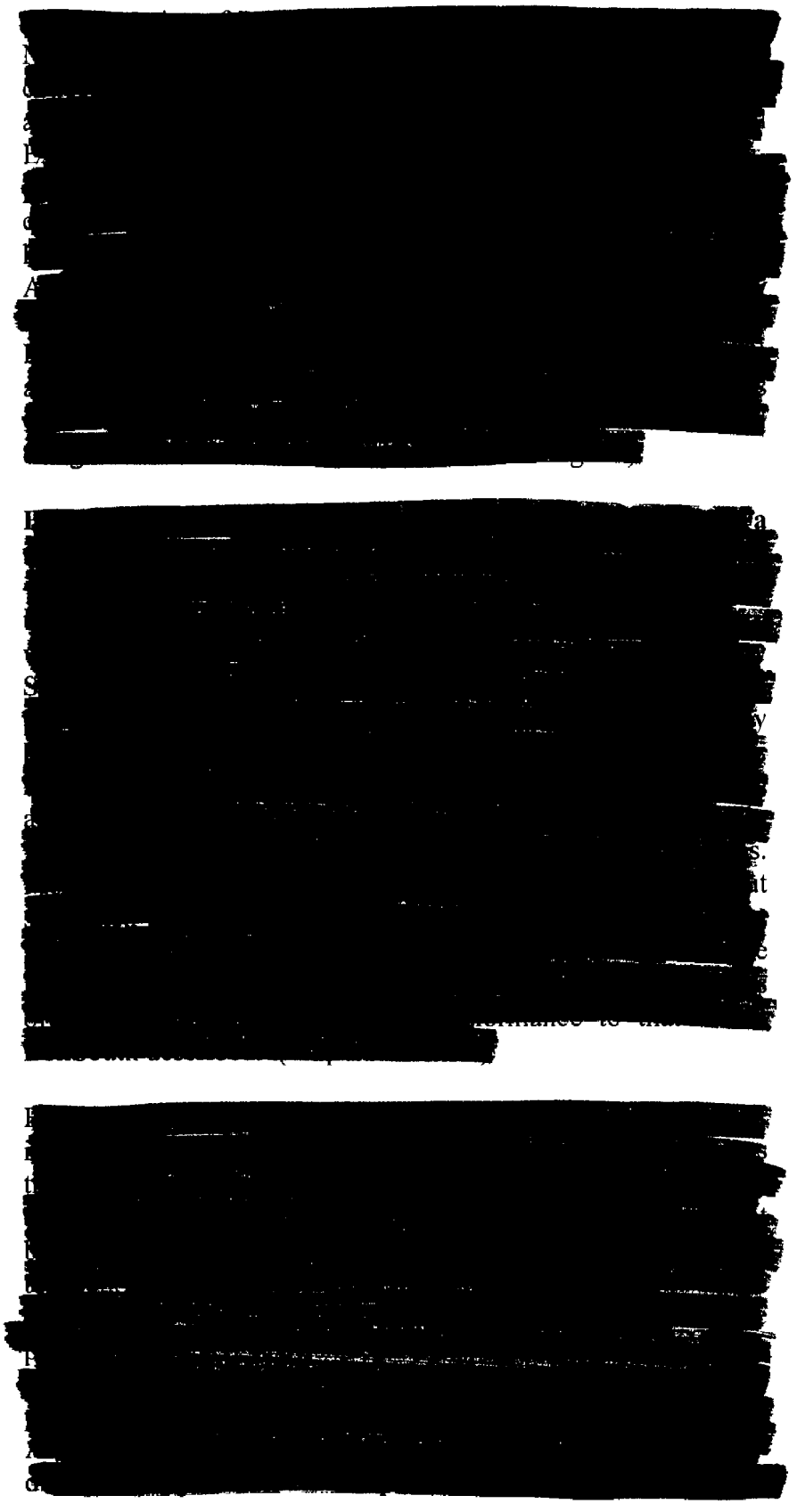
[22] CC Order 99-238 footnote -- The incumbent is obligated to construct the single point of interconnection whether or not it controls the wiring on the customer premises.

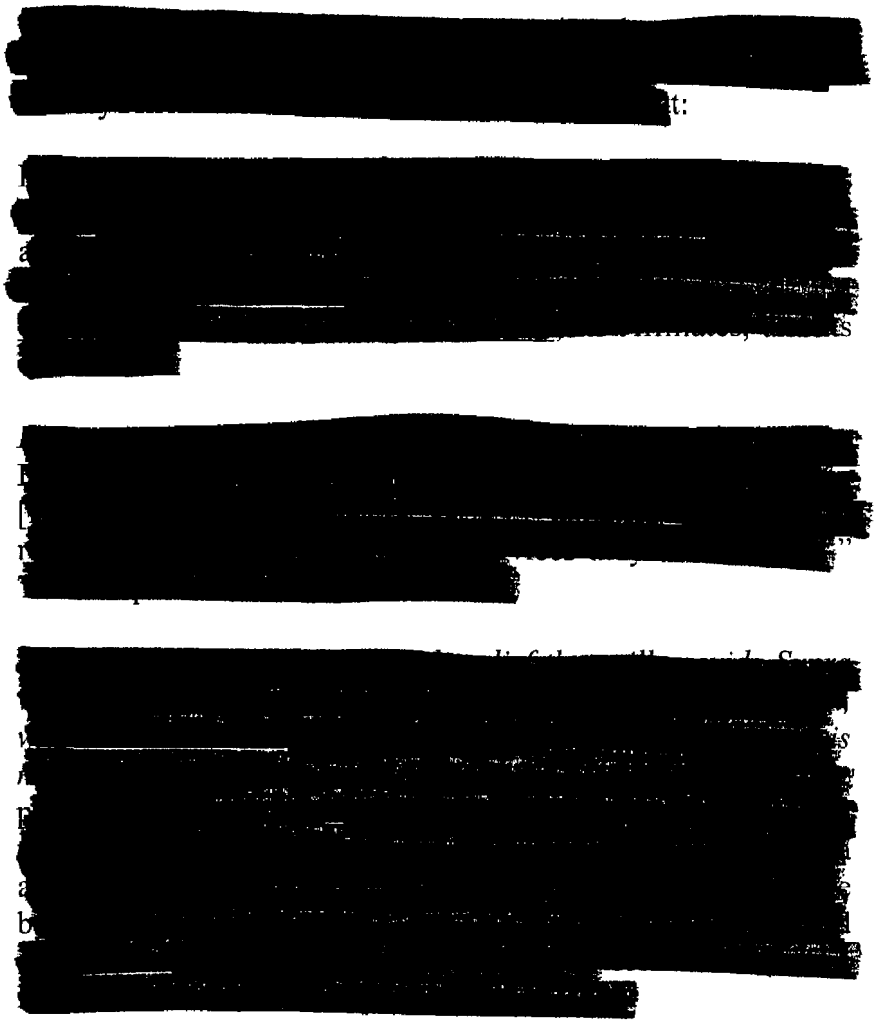
[23] CC Order 99-238 footnote -- *See* 47 U.S.C. § 252

[24] CC Order 99-238 footnote -- *See generally Competitive Networks Notice* at paras. 49-51 and 65-67.

Q IN HIS DIRECT TETIMONY ON PAGES 9-12 MR. KEPHART PAINTS A DISASTER PRONE PICTURE. WHAT IS THE TRUE AND CORRECT SOLUTION TO THIS PROBLEM?

A. BellSouth already has a mandate to unbundle its OSS and supply it to competitors. BellSouth managers such as Mr. Ronald Pate still seem to mistakenly believe OSS unbundling merely means supplying access to the underlying data, not the **functions** contained within BellSouth's OSS interfaces. BellSouth continues to maintain that its ALEC OSS provides ALECs with the same functionality in the same time and manner as BellSouth's retail OSS, despite overwhelming evidence to the contrary. I wonder how BellSouth can continue to justify the cost of maintaining, updating and testing these ALEC OSS systems, including the costs of staffing its LCSC to deal with problems associated therewith, when all that is necessary is to allow ALECs to access the very same OSS that BellSouth's retail departments use. I can only guess that the costs of keeping these dual systems is justified by the fact that the degraded OSS provided to ALECs prevents them from being able to deliver the same quality, timely service that BellSouth retail can, and thereby allows BellSouth to maintain its revenue base. –The bottom line is that BellSouth MUST unbundle **its own OSS** and supply it to ALECs. [redacted]





Q MR. KEPHART PAINT A BLEAK DISMAL PICTURE WHERE "TECHNICIANS FROM ANY AND EVERY ALEC IN FLORIDA WALK INTO AN EQUIPMENT ROOM IN A HIGH RISE BUILDING AND START APPROPRIATING PAIRS AND FACILITIES FOR ITS OWN USE, WITHOUT CONSULTING WITH ANYONE AND WITHOUT ANY OBLIGATION TO KEEP APPROPRIATE RECORDS SO THAT THE NEXT PERSON IN THE ROOM KNOWS WHAT BELONGS TO WHOM." IS THIS ANYTHING MORE THAN

INFLAMMATORY TALK INTENDED TO PETRIFY THIS COMMISSION INTO TAKING NO ACTION?

A. That's exactly what it is. Talk. BellSouth has already solved this issue two years ago with the 709 order. Currently ALECs in Florida do all of their own work directly on the main distribution frame, policies have been worked out, access granted, standards published.

This has not yet caused any network to "fall apart." BellSouth requires the installation crews to be BellSouth certified , and all work is inspected.

Q **WHAT DOES SUPRA REQUEST OF THIS COMMISSION?**

A. Supra requests that this commission ignore Mr. Kephart's position and take its guidance from Supra's position as set forth in my direct testimony.

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 **HOW DOES MR. KEPHART'S TESTIMONY AFFECT THE NEGOTIATION BETWEEN THE PARTIES?**

A. We have been dealing with a certain BellSouth position on this issue that has just flip-flopped with Mr. Kephart testimony. The Final order in the *UNE*

Remand order CC order 99-0238 was issued January 12, 2000. The proposal outlined in Mr. Kephart's testimony could have been supplied anytime since then, potentially allowing this issue to close before bringing to this Commission. This is yet another example of BellSouth's bad faith dealings with Supra -- they had a solution to the problem and held that through the meetings, conference calls, and ("ICRB") meetings held in late May and June.

Q IS SUPRA SATISFIED WITH MR. KEPHART'S ANSWER?

A. Only as far as it goes. BellSouth has omitted one of the three facets - Unbundled Access to the packet switching UNE in cases where an xDSL compatible loop cannot be provisioned over existing copper facilities. BellSouth has chosen language that effectively enables them to escape their requirement to unbundle packet switching for Supra in all cases without providing Supra any guarantees that its customers will receive xDSL service on the same terms and conditions that BellSouth provides itself and its affiliates.

The FCC recognized the precarious position that the LEC could choose to exercise anti-competitive behavior by using its monopoly position against an ALEC like Supra " **the incumbent LEC can effectively deny competitors entry into the packet switching market."** BellSouth, by its proposed contract language has flocked directly to language intended to deny Supra access to the packet switching UNE while placing no limits upon its requirement to provide xDSL loop capability on the same terms it supplies itself and its affiliates.

In CC Order 99-238 at ¶ 313 the FCC held:

313. **We do find, however, one limited exception to our decision to decline to unbundle packet switching.** Access to packetized services to provide xDSL service requires "clean" copper loops without bridge taps or other impediments. [25] Furthermore, xDSL services generally may not be provisioned over fiber facilities. In locations where the incumbent has deployed digital loop carrier (DLC) systems, an uninterrupted copper loop is replaced with a fiber segment or shared copper in the distribution section of the loop. **In this situation, and where no spare copper facilities are available, competitors are effectively precluded altogether from offering xDSL service if they do not have access to unbundled packet switching.[26] Moreover, if there are spare copper facilities available, these facilities may not meet the necessary technical requirements for the provision of certain advanced services.** For example, if the loop length exceeds 18,000 feet, the provision of ADSL service is technically infeasible. **When an incumbent has deployed DLC systems, requesting carriers must install DSLAMs at the remote terminal instead of at the central office in order to provide advanced services.** We agree that, if a requesting carrier is unable to install its DSLAM at the remote terminal or obtain spare copper loops necessary to offer the same level of quality for advanced services, **the incumbent LEC can effectively deny competitors entry into the packet switching market. We find that in this limited situation, requesting carriers are impaired without access to unbundled packet switching. Accordingly, incumbent LECs must provide requesting carriers with access to unbundled packet switching in situations in which the incumbent has placed its DSLAM in a remote terminal.** This obligation exists as of the effective date of the rules adopted in this Order. The incumbent will be relieved of this unbundling obligation only if it permits a requesting carrier to collocate its DSLAM in the incumbent's remote terminal, on the same terms and conditions that apply to its own DSLAM. Incumbents may not unreasonably limit the

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[25] CC Order 99-238 footnote -- *See* Ohio PUC Comments at 14-15; Covad Comments at 40; Northpoint Comments at 19; Rhythms Comments at 15-16.

[26] CC Order 99-238 footnote -- Level 3 Comments at 23; NorthPoint Comments at 18-19; Rhythms Comments at 27.

deployment of alternative technologies when requesting carriers seek to collocate their own DSLAMs in the remote terminal. (Emphasis Added.)

Accordingly, (and recognizing BellSouth has refused to provide technical information responsive to Supras requests in this matter **for well over a year**), Supra requests that this Commission order BellSouth to include language such that BellSouth **must** provide Supra with unbundled access to BellSouth packet switching (and collocated DSLAM, a.k.a. BellSouth's tariffed xDSL transport product) **at Supra's option,** whenever Supra's requests for unbundled xDSL loops cannot be provided within the standard interval and BellSouth has collocated its own DSLAMs in the serving remote terminal.

Simply saying Supra may collocate its own DSLAM "...even if that means that room inside the remote terminal must be augmented or that the remote terminal itself must be expanded or replaced to make room for Supra's or another ALEC's DSLAM.

Supra has had an effective order from this Commission granting it collocation in the North Dade Golden Glades, and West Palm Beach Gardens central offices since December 1998. BellSouth has effectively denied Supra this collocating by regulatory and Judicial appeals, contract rate violations, ignoring effective orders from commercial arbitrators to provide collocation in these offices by June 15, 2001. These are the two tandem offices for LATA 460, arguably the most profitable and desirable LATA in the nine state region. This is prima facie

evidence that BellSouth, when properly motivated to deny entrance to a competitor can and will use any and all means to exercise its monopoly powers to **" effectively deny competitors entry into the packet switching market."** Supra seeks to avoid following BellSouth into the trap it is attempting to set in this case by providing unbundled packet switching to Supra **at Supras option,** not BellSouth's, whenever the end user is served via DLC and BellSouth has deployed its own DSLAMs in a given remote terminal.

BellSouth is in a position to delay nearly forever collocation in a remote terminal for reasons associated with budget shortages, lack of sufficient setback or right of way to effect expansion, local zoning and permitting issues, in addition to outright refusal to implement effective Commission orders. By proving contractual support for the FCC's third prong on this issue, the FPSC assures Supra of Judicial support in the implementation of the interconnection agreement in areas where the FPSC itself lacks that authority to effectively compel BellSouth to honor its responsibilities.

This authority is within the authority granted to the state commissions by the FCC. In the *First Report and Order* at ¶ 135-136:

> 135. Under the statutory scheme in sections 251 and 252, **state commissions may be asked by parties to define specific terms and conditions governing access to unbundled elements, interconnection, and resale of services beyond the rules the Commission establishes in this Report and Order.** Moreover, **the state commissions are responsible for setting**

specific rates in arbitrated proceedings. For example, state commissions in an arbitration would likely designate the terms and conditions by which the competing carrier receives access to the incumbent's loops. The state commission might arbitrate a description or definition of the loop, the term for which the carrier commits to the purchase of rights to exclusive use of a specific network element, and the provisions under which the competing carrier will order loops from the incumbent and the incumbent will provision an order. The state commission may establish procedures that govern should the incumbent refurbish or replace the element during the agreement period, and the procedures that apply should an end user customer decide to switch from the competing carrier back to the incumbent or a different provider. In addition, the state commission will establish the rates an incumbent charges for loops, perhaps with volume and term discounts specified, as well as rates that carriers may charge to end users.

136. State commissions will have similar responsibilities with respect to other unbundled network elements such as the switch, interoffice transport, signalling and databases. **State commissions may identify network elements to be unbundled, in addition to those elements identified by the Commission, and may identify additional points at which incumbent LECs must provide interconnection, where technically feasible.** State commissions are responsible for determining when virtual collocation may be provided instead of physical collocation, pursuant to section 251(c)(6). States also will determine, in accordance with section 251(f)(1), whether and to what extent a rural incumbent LEC is entitled to continued exemption from the requirements of section 251(c) after a telecommunications carrier has made a bona fide request under section 251. Under section 251(f)(2), states will determine whether to grant petitions that may be filed by certain LECs for suspension or modification of the requirements in sections 251(b) or (c). (Emphasis Added.)

Supra hopes this Commission will exercise its rights to foster local competition and grant Supra this protection from BellSouth's obvious and shameful attempts to **"effectively deny [Supra] entry into the packet switching market"** by its

proposed language on this issue and its failure to be responsive to Supra's request for production of documents (the Interconnection template) that would have led to proper discovery in this matter.

The FCC empowers state commissions with this responsibility in the *first Report and Order* at ¶ 137:

> 137. The foregoing is a representative sampling of the role that states will have in steering the course of local competition. **State commissions will make critical decisions concerning a host of issues involving rates, terms, and conditions of interconnection and unbundling arrangements, and exemption, suspension, or modification of the requirements in section 251. The actions taken by a state will significantly affect the development of local competition in that state.** Moreover, actions in one state are likely to influence other states, and to have a substantial impact on steps the FCC takes in developing a pro-competitive national policy framework. (Empahasis Added)

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 **HAS BELLSOUTH EVER PROPOSED THE COORDINATED HOT CUT PROCESS TO SUPRA AT ANY TIME IN THE PAST?**

A. Certainly not in terms of proposed language for this follow-on interconnection agreement. However it was denied and described by the UNE

loop product manager, Jerry Latham, to me and to Supra in general prior to our adoption of the AT&T / BellSouth interconnection agreement on October 5, 1999.

Q ARE THERE ANY DIFFERENCES OR OMISSIONS IN MR. LATHAM'S AND MR. KEPHART'S PROPOSALS REGARDING THE COORDINATED HOT CUT?

A. Absolutely. Mr. Kephart's proposal leaves serious omissions in the process. Contrary to Mr. Kephart's testimony, I believe those omissions, can, will, and likely have been the source of the countless times "BellSouth exhibited a pattern of failure that has resulted in the level of service outage alleged to have been experienced by Supra end users."[27] I can personally testify that the loss of dialtone is not alleged, it is quite real and I have experienced the phenomonum at the homes of my own family members. I can clearly see where Mr. Kephart's proposed language allows and encourages such service outages by failing to actually maintain any coordination at all. I repeat, Mr. Kephart's proposed languages effects coordination between **no one.** It is this fundamental issue we seek the support of this Commission in altering.

First, according to face to face meetings and documents supplied by Mr. Latham, BellSouth's initial proposal to Supra on this matter involved the link up of the ALEC (which could then include various departments as necessary), the

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[27] DT Kephart pg. 20.

BellSouth frame technician and the BellSouth personnel effecting local switch translations and Local number portability translations.

Mr. Kephart's beautifully documented procedure starts with the BellSouth frame technician receiving a call from person or persons unknown (I can assure you its NOT the ALEC in his example), **and then hanging up the phone!!!!!** I fail to see the coordination when the parties controlling the transfer are not in communications with each other.

Let's face it, most of the time a BellSouth retail customer converts to an ALEC, they want to keep their existing number. Therefore the number must be "ported" to the ALEC. This is effected through Global Title Translations at a national level such that **after** the conversion, the nationwide, multicarrier SS7 signaling network ubiquitously **knows** that the number no longer resides on the BellSouth switch with SS7 point code abcd, but that it reside on the ALEC switch with point code zxyw. Once that change is made, and it propagates through the SS7 network, the number is ported to the new switch.

Based on my description above, it should be obvious the importance of coordinating this aspect of the cutover. Imagine if this step is done 8 hours, 24 hours, 48 hours early or later.

If done early, the ALEC switch translation may not be in place to handle it and calls will, effectively, drop off into a black hole. If done early and the ALEC translation are in place, the switch will respond as it should and switch the call .... into thin air.

If done late, other strange things occur. If done late, and the BellSouth switch translations are not yet backed out (After all if the loop is moved no calls will be coming in...) the **BellSouth** switch will improperly and incorrectly handle the call and switch the call ... into thin air. If done late and the BellSouth switch translation has already been backed out the call will be routed to a **BellSouth** that has no clue what to do with it and the caller ends up in a black hole.

The timing and propagation of LNP translations, if initiated at the same time as BellSouth and ALEC switch translations are changed, will result in undefined response for some period of time as perhaps both switches are correct, but there will be some uncertainty as to witch switch the incoming call will be routed to depending upon where the call originates from and LNP propagation delays to the SS7 STP/SCP serving that switch.

My testimony on this subject assumes a perfect world. But translations repeated over and over for a customer base of 70,000 customers and growing daily results in even small fractional percentage of failures affecting hundreds of customers. Supra's customer base is now so large that it is no longer a hit or (hopefully) miss

question. Even tiny percentages of errors affect large numbers of Florida telephone subscribers.

In the case where any **one** of the three translations is done partially wrong, the permutations of possible responses rises astronomically. To put forth a policy on coordinated hot cut, without live coordination, and live testing of LNP translation, not just an ANAC test is absolutely essential when the RBOC is performing LNP translations as part of the loop cutover.

Q WHAT DOES SUPRA WANT THIS COMMISSION TO DO?

A. Supra expects this Commission to recognize Mr. Kephart's proposal for what it is. A good starting point, only. This procedure needs the additional refinements and assurances originally promised by BellSouth and illustrated by my testimony above to provide the superior and seamless service to Florida customers that will lead to dramatically reduced numbers of customer support, complaint calls and FPSC complaints against Supra because of BellSouth's actions.

This Commission should recognize that BellSouth is not properly motivated to achieve this superior level of service because of its proven tendency to engage in anti-competitive behavior against ALECs. As I testified to in my direct testimony, the holy grail, 271approval bears less weight than one would think simply because BellSouth is **already** collecting the lion's share of every long

distance penny in the State of Florida, without 271 approval, via its access charge mechanism. Supra looks to this Commission for support in this matter.

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?

Q **MR. KEPHART MAKES CERTAIN REPRESENTATION ABOUT SMDI IN HIS TESTIMONY. IS MR. KEPHART A CREDIBLE WITNESS IN THIS CASE.**

A. Not in my opinion.

Mr. Kephart begins his testimony on SMDI by making a huge mistake. He testifies that SMDI-E and SMDI are the same thing. This is horribly wrong and I would doubt every other word Mr. Kephart writes on this subject.

A simple reading of BellSouth's own Access Tariff (unfortunately and incorrectly the **only** place to research these products due to BellSouth's failure to incorporate them in various ICA's including Supras.)

Q WHAT IS THE DIFFERENCE BETWEEN SMDI AND SMDI-E (ENHANCED) AND WHAT IS INCORRECT IN MR. KEPHART'S TESTIMONY ON T HIS MATTER?

A. SMDI is essentially Called party / calling party ID service. Intended to support voicemail services that have calls forwarded to them, it provides calling party number and name ("CNAM") information in a digital format. Since calls are forwarded into a hunt group at he voicemail system, that system needs to know, on whose behalf to record the incoming message. So SMDI also supplies the number of the called party and the CNAM information as well. This enables the voicemail system to immediately determine for who the call was intended and transfer the recorded message into that subscribers voicemail box. It is this very requirement to know the called party that makes SMDI essential. Caller ID is just not enough to operate voicemail systems today.

SMDI provides the reason the call was forwarded to voicemail (line busy, no answer, etc.) and can provide other information to the voicemail system, but these five items are the primary ones needed.

Additionally SMDI is a two way protocol. Once the voice mail system records a message, it sends its own signal **back** to the switch to allow the switch to enable an audible or visible Message waiting Indicator ("MWI")

Q OK, IF THAT IS SMDI, WHAT IS SMDI-ENHANCED ("SMDI-E")

A. I believe what Mr.,. Kephart wanted to say in the first line of his testimony is that SMDI-E is BellSouth's term for the industry standard Inter-Switch Voice Messaging Service ("ISVM") protocol jointly supported by Lucent Technologies, Nortel Networks, and Siemens Systems.

ISVM / SMDI-E uses the facilities and message sets of the SS7 network to transmit SMDI from one switch to another connected to the voicemail platform. This allows distributed networks to be built without having to tie a voicemail system to each and every switch.

Q **MR. KEPHART TESTIFIES THAT SMDI AND SMDI-E / ISVM ARE USED TO PROVIDE AN INFORMATION SERVICE, NOT A TELECOMMUNICATIONS SERVICE. HOW DO YOU RESPOND TO THAT.**

A. First of all I'm not clear what this has to do with anything in this docket. I see it as another BellSouth attempt to obfuscate what should be a crystal clear issue.

However I will agree with Mr. Kephart that voicemail meets the statutory definition for an information (or advanced / enhanced) service as defined by the Act. However there is not explicit rule that would support the fact that it can **only** be an information service.

I also agree with the Florida Commission's ruling in order PSC-97-0294-FOF-TP in Docket 96-1230-TP that voicemail is a telecommunications service based on the same reasoning that led to this commissions ruling.

I also feel the North Florida district court ruling that overturned this Commissions ruling was flawed by an assumption that something had to be either a telecommunications or information service exclusively. That assumption has no basis in reality, and I believe that had MCI not struck a private deal with Sprint, and appealed, this Commissions original order could have been upheld on appeal.

The FCC recognized this in its *Fifth Report and Order on the Deployment of advanced wireline Services* previously cited in both my testimony and that of Mr. Ramos. In that order the y FCC found that Advanced Services were also Telecommunications services.

So Mr. Kephart appears to but taking a notable, but incorrect black or white stance on what has clearly turned out to be a grey issue.

Q WHAT IS MR. KEPHART MISSING TOTALLY IN HIS TESTIMONY.

A. Mr. Kephart paints SMDI as a special services access product. Supra maintains, as set forth in my direct testimony, that SMDI is one of the "features, functions and capabilities" of the unbundled local switching port. The software to

support SMDI and ISVM (SMDI-E) is part of the base generic software load of Lucent, Nortel and Siemens switches. SMDI-E uses the SS7 signaling network which is also considered part of the UNE switch port. It is apparent from a plain reading of the previous interconnection agreement between the parties that at the time the ICA was drafted, both BellSouth and AT&T agreed with my position because they documented BellSouth's requirement to supply same to AT&T ubiquitously regardless of whether resale, UNE combinations etc, were used to provision the service. BellSouth also knows the importance to Supra's business plan (and the exact number of voice mailboxes that Supra will close on BellSouth's VMS platforms) should this issue be resolved in Supra 's favor. That is why they are fighting this issue. Not because they are right, but because Supra needs it and is entitled to it.

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 **MR. RUSCILLI ONCE AGAIN CITES TO FPSC ORDER PSC-01-0824-FOF-TP IN HIS SOLE SUPPORT ON THIS ISSUE. IS THIS ORDER BINDING UPON SUPRA?**

A. No it is not, Mr. Ruscilli should know that. This is yet another example of BellSouth's bad faith treatment of Supra in this issue.

Since he fails to make a single substantive defense of BellSouth's position I would request the staff to find that BellSouth failed to make a defense of its position and recommend resolution in favor Supra per my direct testimony.

Further Supra request this Commission take further steps against BellSouth for its anti-competitive behavior against Supra, all other ALECs and Network Service Providers and the people of Florida on this issues. BellSouth's robber baron tactics must be punished so as to prevent further re-occurrences of these abusive tactics.

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

Q **MR. KEPHART TESTIFIES THAT IT IS "BELLSOUTH'S POSITION" THAT BELLSOUTH BELIEVE IT HAS THE RIGHT TO DESIGNATE THE POINT OF DEMARCATION FOR ACCESS TO UNES. HOW DO YOU RESPOND.**

A. Once again, this issue shows BellSouth bad faith approach in its negotiation with Supra. Mr. Kephart is either incompetent, or is intentionally misrepresenting the plain and unambiguous language of the Act and the *First Report and Order* in this matter.

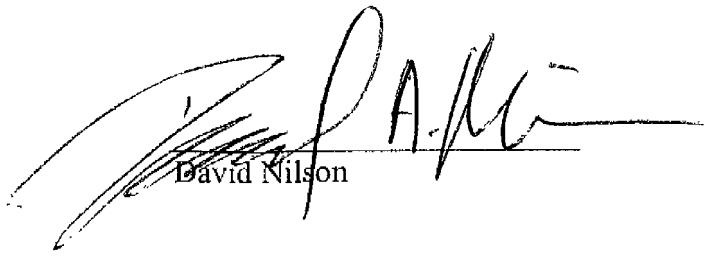
Mr. Kephart cites not one single legal authority to support his position. His opinions and theories just do not warrant further discussion. My direct testimony cites to the prevailing law on this issue.

Q IS THERE ANY OTHER ISSUE NOTEWORTHY IN MR. KEPHART'S TESTIMONY?

A. Yes. I found it remarkable that the one thing I agreed with in Mr. Kephart's testimony is his contradiction of Witness Ruscilli's wild theories as to Supra having to compensate BellSouth for network facilities on the BellSouth side of the point of interconnection / demarc when he states "Each party should be responsible for maintenance and operation [and cost] of all equipment / facilities on its side of the demarcation point."

Q **DOES THIS CONCLUDE YOUR TESTIMONY?**

A. Yes, this concludes my testimony.

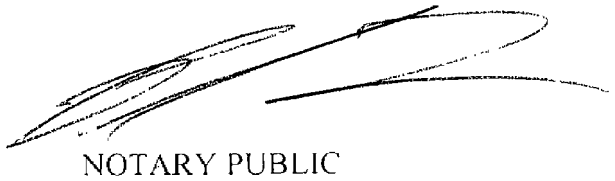


David Nilson

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

The execution of the foregoing instrument was acknowledged before me this 15th day of August, 2001, by David Nilson, who [] is personally known to me or who [] produced _____ as identification and who did take an oath.

My Commission Expires:



NOTARY PUBLIC
State of Florida at Large

Paul Turner
My Commission CC792326
Expires November 22, 2002

Print Name: