

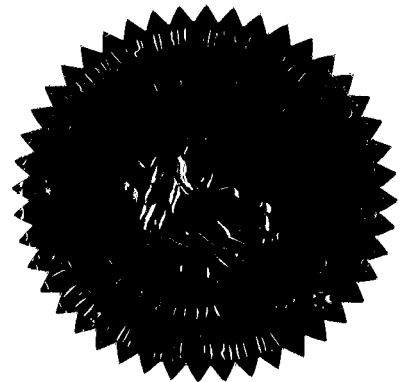
BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 001305-TP

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

In the Matter of

PETITION OF BELLSOUTH  
TELECOMMUNICATIONS, INC. FOR  
ARBITRATION OF CERTAIN ISSUES IN  
INTERCONNECTION AGREEMENT WITH  
SUPRA TELECOMMUNICATIONS AND  
INFORMATION SYSTEMS, INC.



ELECTRIC VERSIONS OF THIS TRANSCRIPT ARE  
A CONVENIENCE COPY ONLY AND ARE NOT  
THE OFFICIAL TRANSCRIPT OF THE HEARING,  
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

PROCEEDINGS:           PREHEARING CONFERENCE

BEFORE:                COMMISSIONER MICHAEL A. PALECKI  
                          Prehearing Officer

DATE:                   Monday, September 10, 2001

TIME:                   Commenced at 9:30 a.m.  
                          Concluded at 11:23 a.m.

PLACE:                  Betty Easley Conference Center  
                          Room 148  
                          4075 Esplanade Way  
                          Tallahassee, Florida

REPORTED BY:           KORETTA E. FLEMING, RPR  
                          Official Commission Reporter

FLORIDA PUBLIC SERVICE COMMISSION

DOCUMENT NUMBER-DATE

11351 SEP 12 01

FPSC-COMMISSION CLERK

## 1 APPEARANCES:

2 NANCY B. WHITE and MICHAEL TWOMEY, BellSouth  
3 Telecommunications, Inc., c/o Nancy Sims, 150 South Monroe  
4 Street, Suite 400, Tallahassee, Florida 32301, appearing on  
5 behalf of BellSouth Telecommunications, Inc.

6 BRIAN CHAIKEN, General Counsel, ADENET MEDACIER,  
7 Assistant General Counsel, and OLUKAYODE A. RAMOS, Chairman &  
8 CEO, 2620 S.W. 27th Avenue, Miami, Florida 33133, appearing on  
9 behalf of Supra Telecom.

10 WAYNE KNIGHT, Florida Public Service Commission,  
11 Division of Legal Services, 2540 Shumard Oak Boulevard,  
12 Tallahassee, Florida 32399-0870, appearing on behalf of the  
13 Commission Staff.

14 ALSO PRESENT: DAVID NILSON, Supra Telecom.

15

16

17

18

19

20

21

22

23

24

25

## P R O C E E D I N G S

1  
2 COMMISSIONER PALECKI: We'll call this prehearing to  
3 order. Counsel, please read the notice.

4 MR. KNIGHT: Notice was given on August 24th, 2001,  
5 in Docket Number 001305-TP, the petition for arbitration of the  
6 interconnection agreement between BellSouth Telecommunications  
7 and Supra Telecommunications and Information Systems,  
8 Incorporated, pursuant to Section 252-B of the  
9 Telecommunications Act of 1996, that a prehearing would be  
10 heard at this time and place for the purpose set forth in the  
11 notice.

12 COMMISSIONER PALECKI: At this time we'll take  
13 appearances starting with Supra.

14 MR. CHAIKEN: Good morning. Brian Chaiken, General  
15 Counsel on behalf of Supra Telecom. To my left is David  
16 Nilson, Technical Engineer; to my right is our CEO, Olukayode  
17 Ramos; and to my further right is Adenet Medacier, Assistant  
18 General Counsel.

19 COMMISSIONER PALECKI: Thank you.

20 MS. WHITE: Nancy White and Mike Twomey for BellSouth  
21 Telecommunications.

22 COMMISSIONER PALECKI: Thank you.

23 MR. KNIGHT: Wayne Knight for the Florida Public  
24 Service Commission.

25 COMMISSIONER PALECKI: At this time, I have a couple

1 of preliminary matters that I would like to take up. First of  
2 all, we have an order that will be issued this morning on  
3 Supra's motion regarding discovery and for continuance. We  
4 expect to have copies of that available within the next few  
5 minutes.

6 I have two other preliminary matters. First, I  
7 wanted to inform all the parties that I received a telephone  
8 call from Senator Daryl Jones last week concerning the status  
9 of Supra's motion for continuance. Senator Jones was aware  
10 that I could not discuss the merits of the case, and I shared  
11 with Senator Jones that I had not yet ruled on the motion, but  
12 I expected to issue an order on or before the date of this  
13 prehearing. I just wanted to share this with the parties. It  
14 was not an ex parte conversation, and there was no conversation  
15 regarding the merits of the case.

16 The second matter is that I have reviewed the draft  
17 prehearing order, and it appears to me that the parties are  
18 close to agreement on some of the issues. In the last several  
19 arbitration hearings I've attended, Commissioners were unhappy  
20 that parties were unable to reach agreement on a number of  
21 issues, which the Commission felt the parties should have  
22 reached agreement on. And I note in those cases the parties  
23 had narrowed the open issues to under ten issues. In this  
24 docket, obviously, we have almost 40 issues that still need to  
25 be resolved.

1           For this reason, I'm going to order the parties to  
2 get together and try to reach agreement on some of the issues  
3 before the end of our prehearing conference today. We'll take  
4 a break and see if the parties can arrive at a date when they  
5 would like to have this meeting. I would also like to invite  
6 the parties to use a member of the Commission Staff who is a  
7 certified mediator, David Smith. David has been very  
8 successful in helping parties reach agreements on these types  
9 of issues.

10           I cannot order you to use the Commission Staff  
11 mediator, but I would strongly encourage you to use Mr. Smith.  
12 He's very skillful at what he does, he's very well-respected,  
13 and I can assure the parties that Mr. Smith will not  
14 participate in the recommendation in this docket in any way so  
15 that whatever Mr. Smith might learn during the arbitration  
16 proceeding that he attends will not be used by the Staff in  
17 this docket.

18           With those two preliminary matters, Staff, are there  
19 any other further preliminary matters that you'd like to bring  
20 up at this time?

21           MR. KNIGHT: We have some pending motions. I didn't  
22 know if you wanted to deal with that.

23           COMMISSIONER PALECKI: Well, why don't we go through  
24 the pending motions at the time we go through the prehearing  
25 order since that is actually a section in the order. I think,

1 I prefer just going through the prehearing order in the order  
2 -- in the way it's set up.

3 MR. KNIGHT: Okay.

4 COMMISSIONER PALECKI: Do any of the parties have any  
5 preliminary matters that they'd like to bring up at this time?

6 With that, why don't we turn to the draft prehearing  
7 order. And does everyone have a copy of the draft prehearing  
8 order? If you do not, there are copies available right over in  
9 the front row of the hearing room. Let's take Sections 1  
10 through 5 together. Are there any corrections or changes that  
11 any of the parties would like to see made to Sections 1 through  
12 5, which are mostly procedural matters?

13 Hearing no objections to any of the matters within  
14 Sections 1 through 5, we'll move to Section 6, the Order of  
15 Witnesses. Are the witnesses reflected in the correct order in  
16 which you would like to see them appear?

17 MR. TWOMEY: Commissioner, I was trying to go through  
18 Sections 1 through 5 as quickly as I could --

19 COMMISSIONER PALECKI: Okay.

20 MR. TWOMEY: -- while you were doing it.

21 COMMISSIONER PALECKI: I'm sorry. And that is fairly  
22 voluminous. Why don't I give the parties an opportunity to --

23 MR. TWOMEY: The only issue I have with 1 through 5  
24 is in subsection 4. We will do the best we can to try to  
25 narrow the issues in this docket to be far fewer than they are.

1 but at this point we still have a large number of issues and I  
2 wonder whether the 40-page limit on the post-hearing brief will  
3 be adequate if we are still wrestling with nearly as many  
4 issues as we have today? And I would ask for perhaps another  
5 20 pages.

6 COMMISSIONER PALECKI: Why don't we do this, and I'll  
7 put this on the record, that the post-hearing procedural limits  
8 on brief size will be a preliminary ruling only. And I would  
9 invite you to, again, bring up this issue after the hearing and  
10 I can assure you that, of course, at that point it will be the  
11 prehearing -- not the prehearing officer, but the Chairman of  
12 the Commission that would make the ruling or the presiding  
13 officer in this hearing, but I will inform the presiding  
14 officer that I had invited you to bring this matter up again.

15 MR. TWOMEY: Thank you.

16 COMMISSIONER PALECKI: Hopefully, at that point you  
17 won't have to make the motion, but I understand that if we  
18 still do have this number of issues at the end of the hearing,  
19 that we might need to be flexible on the length of the briefs.

20 MR. TWOMEY: Thank you, Commissioner.

21 COMMISSIONER PALECKI: Okay. With that, can we move  
22 on to the Order of Witnesses? Do the parties have any changes  
23 they would like to see made on the order of the witnesses or  
24 the issues that their witnesses will be addressing?

25 MR. CHAIKEN: Yes, sir. With regard to the issues

1 for Supra witness Adnan Zejinilovic --

2 COMMISSIONER PALECKI: Yes.

3 MR. CHAIKEN: -- I hope I pronounced that right --  
4 we'd like to identify the issues that are not identified there.

5 COMMISSIONER PALECKI: All right.

6 MR. CHAIKEN: And the issues to be identified by  
7 Mr. Zejinilovic are 5, 38, 46, 47, 51, 55, 57, and 60 through  
8 62.

9 COMMISSIONER PALECKI: Thank you. Are there any  
10 other changes or additions?

11 MR. CHAIKEN: One more, an additional issue to be  
12 added under Mr. Ramos, Issue number 45.

13 COMMISSIONER PALECKI: Thank you. And do the parties  
14 have any other changes or modifications they would like to see  
15 made here?

16 MR. TWOMEY: I just have a question. Brian, is Issue  
17 45 an issue that Mr. Ramos submitted prefiled testimony on that  
18 simply the list didn't include the number?

19 MR. CHAIKEN: I'm not positive on that. Actually,  
20 I'm hoping to resolve that issue today with you, hopefully, but  
21 we can discuss that further.

22 MR. TWOMEY: I guess, my question if he has not  
23 addressed testimony on this, you're not planning on filing  
24 testimony at this point on the issue are you?

25 MR. CHAIKEN: No, we're not planning on filing



1 additional testimony.

2 MR. TWOMEY: Okay.

3 COMMISSIONER PALECKI: Let's move on to Section 7 and  
4 8, Positions of the Parties. Section 7, Basic Positions.

5 MS. WHITE: Commissioner Palecki -- excuse me, for  
6 going to back to the witnesses again.

7 COMMISSIONER PALECKI: All right.

8 MS. WHITE: The question usually arises at this point  
9 as to whether the witnesses are going to put on direct and  
10 rebuttal at the same time when the witnesses get on the stand.  
11 We have not spoken with Supra about that, so I don't know what  
12 their position is.

13 COMMISSIONER PALECKI: Does Supra have a preference?  
14 I know that the Commission generally prefers hearing direct and  
15 rebuttal at the same time because it's quicker, we save some  
16 time that way, but we're somewhat flexible. If the parties  
17 have a strong opinion that they would like to have them  
18 separated, we can do it either way.

19 MR. CHAIKEN: We'd like to see it done at the same  
20 time.

21 COMMISSIONER PALECKI: Done at the same time?

22 MS. WHITE: That's fine with BellSouth.

23 COMMISSIONER PALECKI: Well, I would prefer it done  
24 at the same time, and that way we might be able to complete the  
25 hearing in the time that we have allotted.

1           Have the parties had an opportunity to review the  
2 Basic Positions as set forth in the draft prehearing order?

3           MR. CHAIKEN: It is rather voluminous, if we could  
4 have a few minutes.

5           COMMISSIONER PALECKI: Yes. Why don't we just allow  
6 the parties to take a couple of minutes to review that.

7           (Brief pause in proceedings.)

8           COMMISSIONER PALECKI: All right. Have the parties  
9 had enough time to review just their statement of Basic  
10 Position?

11          MR. TWOMEY: BellSouth has had an adequate  
12 opportunity to do that, yes.

13          COMMISSIONER PALECKI: Does BellSouth have any  
14 changes or corrections they would like to see made to their  
15 basic position?

16          MR. TWOMEY: Not at this time, no.

17          COMMISSIONER PALECKI: Supra?

18          MR. CHAIKEN: Supra requests an additional five or  
19 ten minutes, please, sir.

20          COMMISSIONER PALECKI: Certainly.

21          MR. CHAIKEN: Thank you. Basic position has been  
22 reviewed by Supra and has no changes.

23          COMMISSIONER PALECKI: Excuse me?

24          MR. CHAIKEN: I said we have no changes to the basic  
25 position.

1 COMMISSIONER PALECKI: Thank you very much.

2 Now, let's move on to Section 8, Issues and  
3 Positions, and we'll take these one at a time. I understand  
4 that the parties have just received the draft prehearing order,  
5 so we will give you enough time to review your positions before  
6 answering, and we'll start off with Issue A.

7 MS. WHITE: Commissioner Palecki, in an attempt to  
8 try to -- we've got a long prehearing order.

9 COMMISSIONER PALECKI: Yes, we do.

10 MS. WHITE: So, in an attempt to move it along, as  
11 far as I'm aware, Staff has just reproduced what was in the  
12 prehearing statements of the parties. And if that's the case,  
13 then I probably wouldn't see any changes, but maybe if you  
14 would say parties have until, what, noon tomorrow or something  
15 like that to give the Staff any changes they may see, then we  
16 wouldn't have to --

17 COMMISSIONER PALECKI: I think, that's an excellent  
18 idea.

19 MS. WHITE: -- go through it.

20 COMMISSIONER PALECKI: We do have so many issues, and  
21 I think that would be a good time saver. So, is noon tomorrow  
22 satisfactory to Supra?

23 MR. CHAIKEN: Yes, sir.

24 COMMISSIONER PALECKI: And Staff, who should the  
25 parties contact if they have changes?

1 MR. KNIGHT: They can contact myself or Laura King.

2 COMMISSIONER PALECKI: All right. And that will be  
3 on or before 12:00 noon tomorrow to provide any changes in the  
4 language regarding your positions to the Staff.

5 MR. CHAIKEN: Can we also request an electronic copy  
6 of this document?

7 MR. KNIGHT: Certainly. Once I've made the changes,  
8 I'll get them to you.

9 MR. CHAIKEN: Actually, I'm requesting one in advance  
10 so that we can use that and make changes as --

11 MR. KNIGHT: Okay. Oh, I see. We can do that.

12 COMMISSIONER PALECKI: Good.

13 MS. WHITE: And I'd like to clarify that by changes I  
14 would mean anything that was incorrect -- that was in their  
15 prehearing statement that was incorrectly reproduced in the  
16 prehearing order, not substantive change.

17 COMMISSIONER PALECKI: Yes. This is not an  
18 opportunity to make wholesale changes to your positions. It's  
19 an opportunity to make corrections to make sure that there are  
20 no errors and to make sure your position is stated accurately.

21 MR. KNIGHT: If I could add a footnote, just going  
22 back to Witnesses for a moment. Witness Cynthia Cox, there  
23 should have been asterisks there noting below that Ms. Cox has  
24 adopted the Prefiled Direct Testimony of Mr. John Ruscilli, and  
25 that was left out.

1 COMMISSIONER PALECKI: I have a footnote on my draft  
2 prehearing order that contains that statement.

3 MR. KNIGHT: Right. There should have been asterisks  
4 next to her name above --

5 COMMISSIONER PALECKI: Oh, okay.

6 MR. KNIGHT: -- to alert folks to the footnote.

7 COMMISSIONER PALECKI: Thank you.

8 All right. With that we can proceed to Section 9,  
9 Exhibits, and I'll give you a few minutes to review Section 9.  
10 It's quite an extensive exhibit list.

11 MS. WHITE: Commissioner Palecki, again, in the  
12 interest of time, would it be appropriate to do the same thing  
13 with regard to the exhibit list by noon tomorrow?

14 COMMISSIONER PALECKI: Well, normally with an exhibit  
15 list I wouldn't have to do that, but on reviewing this and  
16 seeing the sheer length of the exhibit list, yes, why don't we  
17 do the same thing with the exhibit list. We'll allow until  
18 12:00 noon for the parties to provide any changes to the  
19 Commission Staff.

20 MS. WHITE: Thank you.

21 COMMISSIONER PALECKI: And that will allow us to move  
22 to Section 10, and is that satisfactory to Supra?

23 MR. CHAIKEN: Yes, sir.

24 COMMISSIONER PALECKI: Thank you.

25 We'll move on to Section 10, Stipulations. Of

1 course, I'm sure after your upcoming meeting you will have many  
2 stipulations, but are there any here today at this time?

3 MR. TWOMEY: We have none today, Commissioner.

4 COMMISSIONER PALECKI: On Pending Motions we have  
5 numerous motions, and I wanted to have the order on Supra's  
6 motion available before we discuss many of these, but there is  
7 one matter that I would like to discuss at this time and that  
8 is -- well, let's just move to Section 12, Confidentiality --  
9 Pending Confidentiality Matters.

10 First, we have Supra's response and request for  
11 confidential classification of Exhibit B to status of complaint  
12 filed July 19th and BellSouth request for confidential  
13 classification of docket number 09193-1 (Exhibit B to Supra's  
14 Status of Complaint), filed July 27th, 2001. And at this time,  
15 I will deny confidential status for both.

16 MR. TWOMEY: Commissioner --

17 COMMISSIONER PALECKI: Yes.

18 MR. TWOMEY: This is Mike Twomey for BellSouth. I've  
19 read the parenthetical, and I've actually read the memo that's  
20 present on the document events list on the web site that  
21 discusses the reason why the Staff believed that the particular  
22 document should not be granted confidential status. And the  
23 only request I would make of the Commission, I don't think it's  
24 anything I need to worry about in this docket at this time,  
25 because there are many more other issues for me to resolve than

1 to worry about this one issue, but I am a little concerned  
2 about the process by which a party can take my confidential  
3 information, file it without giving me any advance warning, and  
4 then the document can never be treated as confidential, because  
5 it's already been put into the public record.

6           And I don't know whether, as a part of your standard  
7 procedural order in dockets, in the future you could include a  
8 provision that required either party to give a party advance  
9 notice if they're going to file confidential information  
10 because, in this case, information that we believed was  
11 confidential was filed without any advance notice to us of that  
12 fact.

13           Once it became filed, as the Staff observed, it was  
14 in the public domain, and then at that point, I think we could  
15 have treated it as confidential and tried to provide some  
16 protection to it, but I admit that once it's in the public  
17 domain, somebody could have come by, looked at it, and it  
18 probably technically is not a strictly confidential document.

19           But I'm concerned about the prospect of people filing  
20 information that is confidential without giving the other side  
21 any advance notice whatsoever, because it effectively allows  
22 somebody to take my confidential information and make it public  
23 through an action that I cannot undo. So, I just ask the  
24 Commission to consider that in future dockets in the standard  
25 procedural order that such a procedure might be helpful.

1           COMMISSIONER PALECKI: I will discuss that with our  
2 Staff and see if perhaps that's an area we would like to  
3 include some language in our procedural orders. And I  
4 understand your concern and, I think, it's a legitimate one.

5           MR. TWOMEY: Thank you.

6           COMMISSIONER PALECKI: Now, Supra has filed claims  
7 for confidentiality for the direct testimony and exhibits of  
8 witnesses Ramos, Nilson, Bentley, Zejinilovic, and rebuttal  
9 testimony and exhibits of witnesses Ramos and Nilson. And  
10 Supra has also submitted a claim addressing its prehearing  
11 statement, which was filed on August 22nd, 2001.

12           At this time, I will require Supra to file requests  
13 for confidentiality addressing the information currently  
14 covered by these claims. And I would ask that Supra provide  
15 its request for confidentiality no later than Monday, September  
16 17th, 2001.

17           BellSouth is directed to provide its response in the  
18 shortest time possible that will allow us to reach a ruling  
19 prior to the hearing, and I'm not going to provide a specific  
20 date. I'll just ask that you do it as quickly as possible,  
21 because we're getting very tight up against the date of the  
22 hearing, even with the filing by Supra.

23           MR. TWOMEY: Commissioner Palecki, if I might  
24 suggest, I'm not sure if every piece of confidential  
25 information that Supra is seeking confidential treatment of is



1 mine, but nearly all of it is; and that is, they have included  
2 information in their testimony that is confidential to  
3 BellSouth or confidential to the parties mutually. And so,  
4 it's sort of a joint undertaking, if you will. In other words,  
5 I'm not objecting to any of their requests for confidential  
6 treatment. If it would be helpful to the Commission, what I'd  
7 like to do is file something also on the 17th --

8 COMMISSIONER PALECKI: Well --

9 MR. TWOMEY: -- in support of their request for  
10 confidential treatment, because it's mostly my information that  
11 is at issue.

12 COMMISSIONER PALECKI: Certainly, I will allow that.  
13 If it's possible that the parties could reach a stipulation on  
14 the confidentiality and could file a stipulation along with the  
15 request for confidentiality, I think, that would assist the  
16 Commission on reaching a decision on confidentiality.

17 MR. TWOMEY: Thank you.

18 COMMISSIONER PALECKI: But I do think it's necessary  
19 that we have a specific ruling on these matters prior to the  
20 hearing so that we're well aware at the hearing and at the time  
21 of the hearing as to exactly what is confidential and what is  
22 not and also so our Staff is aware as to how they have to treat  
23 each document.

24 MR. TWOMEY: Thank you.

25 COMMISSIONER PALECKI: With that, I'd like to take

1 about a ten-minute break before we get to the Motions section  
2 of the prehearing. And during the ten-minute break, I'd like  
3 the parties to see if they can come up with a time to get  
4 together to try to reach agreement on some of these issues.

5 In the meantime, I'll see if I can have David Smith  
6 come down with a copy of his calendar. As I stated earlier, it  
7 is very much my preference, although I cannot order you to, but  
8 it is very much my preference that you do use the Commission  
9 Staff's mediator to help you achieve agreement on some of these  
10 issues that are outstanding.

11 And with that, we'll take a break. It is now ten  
12 minutes after 10:00, and we'll take a break until 10:25.

13 (Recess taken.)

14 COMMISSIONER PALECKI: At this time, we'll reconvene  
15 the prehearing conference. An order on Supra Telecom's Motion  
16 to Compel request to overrule BellSouth's objections and for a  
17 continuance, we've provided you with a copy, a courtesy copy of  
18 the order. This is not an official copy. The official copy  
19 can be obtained from Records & Reporting, and you will be  
20 receiving the official copy through the normal course of  
21 business in the mail. But if you do need a copy today of the  
22 official order, which has been issued, you can get that at  
23 Records & Reporting.

24 We'll go right to the bottom line of the order is  
25 that we have required Supra -- or excuse me, we have required

1 BellSouth to provide approximately half of the items that they  
2 have requested. We have found that BellSouth did receive  
3 Supra's request on the date of August 8th and that BellSouth  
4 objections were untimely.

5 We have also found that Supra's request for  
6 production of documents was well within the limit of 150  
7 requests, because of the fact that the first request for  
8 production of documents that they issued was not answered by  
9 BellSouth and that many of the requests in the second round  
10 were either identical or very similar to those requested in the  
11 first motion.

12 Notwithstanding the lateness of BellSouth's  
13 objections, I reviewed the request for documents and narrowed  
14 it to issues that I felt were relevant, and I've indicated on  
15 Pages 3, 4, and 5 of the motion which documents are relevant  
16 and will be required to be produced by BellSouth. I have  
17 eliminated documents that I felt are irrelevant or which were  
18 overly burdensome for BellSouth to produce.

19 I have ordered that the documentation requested shall  
20 be provided by BellSouth to Supra within one week from today.  
21 I've also ordered that the current round of depositions that  
22 are currently scheduled will go forward. If the documents  
23 provided by BellSouth create information in a need for Supra to  
24 take additional depositions, I have ordered that BellSouth make  
25 the witnesses necessary to answer the questions, available to

1 be deposed on September 19th, 20th, or 21st.

2 I have denied Supra's motion for a continuance. The  
3 current hearing date stands. I would also point out that on  
4 Page 7 of the order is a notice of further proceedings or  
5 judicial review that either party has an opportunity to request  
6 reconsideration of this order. With that -- well, do the  
7 parties have any questions with regard to the Order?

8 With that, we'll turn to the Motions section of the  
9 draft prehearing order. Okay. We'll start off with Supra's  
10 motion for extension of time to serve response and add issues  
11 filed September 26th, 2000. This motion has been rendered moot  
12 by subsequent procedural orders that have already been issued  
13 by this Commission.

14 Supra's motion for extension of time to file response  
15 to BellSouth petition for arbitration, which was filed October  
16 20th, 2000, has also been rendered moot by the subsequent  
17 procedural orders.

18 Supra's motion for extension of time stated in  
19 current CASR dated December 20th, 2000, has been rendered moot  
20 by the subsequent procedural orders.

21 BellSouth's response to Supra's complaint in motion  
22 to dismiss filed July 9th, 2001. I believe that BellSouth  
23 requests to summarily dismiss the complaint Supra filed within  
24 one of its filings has now been rendered moot.

25 In the order I issued on July 13th, I added Issue A

1 to address both parties' bad faith claims. As for the  
2 remainder of Supra's complaint not addressed by Issue A, it is  
3 my determination that these issues are more appropriately  
4 handled in other dockets.

5           Supra's motion to stay arbitration pending resolution  
6 of Supra's complaint regarding BellSouth's bad faith  
7 negotiation tactics filed July 11th, 2001. I believe that this  
8 motion has also been rendered moot. In the July 13th order I  
9 added Issue A to address the bad faith claims. As I've stated  
10 earlier, it is my determination that the remainder of the  
11 issues not addressed in Issue A are more appropriately handled  
12 in other dockets.

13           Supra's motion for leave to file testimony one day  
14 late filed July 27th, 2001, this motion is granted.

15           Supra's Motion to Compel and overrule objections to  
16 Supra's first set of interrogatories filed August 23, 2001,  
17 this issue was filed -- or excuse me -- this motion was filed  
18 prematurely and is, therefore, denied. BellSouth's time to  
19 respond to the interrogatories had not yet expired at the time  
20 that motion was filed.

21           The next motion is Supra's Motion to Compel  
22 production of documents requested in second request for  
23 production of documents, BellSouth's objections, and for a  
24 continuance. This order was issued or was distributed to you  
25 and is the one that we've just discussed.

1           We have one final motion, that is Supra's Motion to  
2 Compel more responsive answers to first set of interrogatories  
3 filed September 6th, 2001. BellSouth time for response has not  
4 yet lapsed for this motion. We would ask if BellSouth would be  
5 willing to waive its response time and orally respond to that  
6 motion today.

7           MR. TWOMEY: We would.

8           COMMISSIONER PALECKI: I would at this time, then,  
9 grant oral argument. What I would like to do is for Supra to  
10 very briefly present their motion. And when I say very  
11 briefly, I want you to know that I have spent about 45 minutes  
12 just by myself familiarizing myself with this motion, and I  
13 spent approximately an hour and a half with the Commission  
14 Staff discussing the motion and analyzing the motion with the  
15 Commission Staff. So, in presenting your motion, I want you to  
16 be aware that we are very well familiar with it.

17           MR. CHAIKEN: Thank you, sir. I will be brief. In  
18 light of the fact that you are familiar with the motion, I  
19 would just like to point out that Supra Telecom is very  
20 familiar with the previous arbitrations that have taken place  
21 before this Commission, including that of AT&T and MCI with  
22 BellSouth. We're familiar with the fact that with regard to a  
23 number of issues and how they have been resolved, the Staff and  
24 the Commission has pointed to a lack of record evidence with  
25 regard to certain positions taken by MCI and AT&T.

1           Supra does not wish that to happen in this case.  
2 Supra wishes to fully support all of its positions in this case  
3 and has drafted its discovery so as to be able to get  
4 documentation and responses which will support its position.

5           We believe that with regard to our request and our  
6 interrogatories in this case, if anything, the Commission  
7 should err on the side of granting our discovery. Discovery is  
8 a tool that is to be used to obtain evidence. We believe that  
9 BellSouth's objections, in this case, are restricting our  
10 ability to fully present our case.

11           With that in mind, I would like to just focus  
12 particularly on one of the interrogatories and that would be  
13 Interrogatory number 5, and we think that's of tremendously  
14 great importance in this matter. It deals with the starting  
15 point of negotiations for a follow-on interconnection  
16 agreement.

17           The reason BellSouth has refused to begin  
18 negotiations with the party's current FPSC-approved  
19 AT&T/BellSouth agreement was set forth in their response to  
20 Supra's complaint and motion to dismiss, and Supra has sought a  
21 complete explanation with regard to that response, and we think  
22 it's imperative that we find exactly why it is that BellSouth  
23 has refused to negotiate from the party's current FPSC-approved  
24 agreement. Thank you.

25           COMMISSIONER PALECKI: Thank you, and I appreciate

FLORIDA PUBLIC SERVICE COMMISSION

1 the brevity of your argument.

2 BellSouth.

3 MR. TWOMEY: I'm trying to be as organized as I can,  
4 Commissioner. I'm trying to correlate the order that just came  
5 out and the request for production to the interrogatory  
6 responses, and I believe that -- let me go through those first,  
7 because there are interrogatories in his Motion to Compel. He  
8 seeks more information regarding Interrogatories 3, 4, 5, 6, 7,  
9 8, 9, 11, 12, I believe, 13 -- yes, 13, 16, 19, and 22.

10 And what I'd like to do is go through the ones that,  
11 I believe, have been handled by your objection -- the ruling  
12 that you just made on the request for production of documents  
13 first, and that is Interrogatory 6 and 7 concern statements  
14 that were included in BellSouth's responsive pleading relative  
15 to the allegations of bad faith negotiations.

16 That pleading concerned events which happened earlier  
17 in 2001 and late in 2000. The Commission, as you've just  
18 advised us, has taken the allegations in Supra's pleading and  
19 narrowed the issues that will be looked at in this docket and  
20 reserved for consideration in other dockets other issues. And  
21 as I read Issue A, it concerns the party's conduct on May 29th  
22 and each day through June 6th, 2001.

23 As you've just said, Commissioner, the other issues  
24 raised by Supra in its pleading are more appropriately the  
25 subject of other dockets. And the discovery that is sought in



1 issue -- in Interrogatory 6 and 7 relate to those allegations  
2 of other conduct that took place outside of the May 29th to  
3 June 6th, 2001 window. And on that basis, I'd ask that you  
4 would agree with us that for purposes of this docket  
5 allegations of bad faith, allegations of bad faith negotiation,  
6 discovery concerning what went on between the negotiations of  
7 the parties outside of that window and, in this case, several  
8 months prior to May 29th, are not appropriately within subject  
9 of this docket.

10           Now, in light of your ruling that they're not within  
11 the subject of the docket there, obviously, is no reason to  
12 have the discovery. And on that basis I would say that  
13 Interrogatory 6 and 7 ought to be -- ought to be -- my  
14 objection ought to be sustained.

15           Now, Interrogatory number 8 -- and I apologize for  
16 not going in order, but I'm trying to track along with what we  
17 did in the order this morning, because it makes sense to me to  
18 do it that way. Interrogatory number 8 is the general -- is  
19 the interrogatory about other allegations that may have been  
20 made against BellSouth by companies who believe that BellSouth  
21 has acted in bad faith.

22           That interrogatory seeks substantially the same  
23 information that was in request for production number 15; that  
24 is, which sought information about allegations that might be  
25 the subject of that docket on anticompetitive activity. And to

1 the extent it's not, it doesn't lie down exactly with it, it  
2 goes to the general point that to the extent they're looking  
3 for information about our conduct or allegations made by other  
4 companies about BellSouth alleged bad faith, that's not the  
5 subject of this docket. And for the same reasons that you  
6 sustained the objection on production number 15, I believe, you  
7 should sustain my objection on number 8. And I'm being  
8 shorthanded. I realize you haven't technically sustained my  
9 objection on 15, you've enforced a limitation on the discovery,  
10 but I'll try not to refer to it that way.

11 Similarly, Interrogatory number 9 is identical to  
12 request for production 17, which you've said is irrelevant to  
13 any issue in this proceeding, that's questions about a dispute  
14 between BellSouth and Covad at the FCC. And for the same  
15 reasons that you've not permitted discovery on request for  
16 production number 17, I believe, you should sustain my  
17 objection on Interrogatory number 9.

18 In the short time I was not able to pull the exact  
19 item, but Interrogatory number 19 concerns BSLD, BellSouth Long  
20 Distance -- arrangements between BellSouth Long Distance and  
21 BellSouth. And you have sustained or you have not permitted  
22 discovery on the request for production for that same question.

23 And if you'd give me just a second, Commissioner, I  
24 can give you the number. It's request for production number 8.  
25 And you have ruled that request for production number 8 is

1 irrelevant to any issue in this proceeding. And on that basis,  
2 I'd ask you to find that Interrogatory 19 is also irrelevant to  
3 any issue in this proceeding, because it seeks the same  
4 information.

5 Now, I believe that that takes care of all of the  
6 requests for production and interrogatories that were  
7 identical. I also believe that -- okay, that takes care of  
8 that. Now, I'm going to now go back to the beginning and  
9 discuss the individual interrogatories in order.

10 The first interrogatory that is at issue is  
11 Interrogatory number 3. And in Interrogatory number 3, Supra  
12 requested, as for the "Please state the specific nature and  
13 substance of the knowledge that you believe the persons  
14 identified in your response to Interrogatory number 1 may  
15 have." And Interrogatory number 1 had requested documents that  
16 evidence or support any and all claims and defenses raised by  
17 BellSouth at its petition for arbitration or in Supra's status  
18 and complaint regarding BellSouth's negotiation tactics,  
19 whether favorable to BellSouth or Supra's position with  
20 sufficient particularity, so they may be described in request  
21 for production.

22 Now, my objection to this was for a couple of  
23 reasons. First of all, the interrogatory which is submitted to  
24 us on August 10th asks for the name -- actually, if we're  
25 focusing on number 3, we're identifying all of the substance of

1 knowledge that people may have on any issue listed in the  
2 petition for arbitration and on any fact included in  
3 BellSouth's -- oh, excuse me, in Supra's status and complaint  
4 regarding BellSouth's negotiation tactics.

5 Now, obviously, the scope of the issues in the  
6 petition for arbitration and the scope of Supra's pleading do  
7 not correspond to the issues that are in this proceeding. So,  
8 on that basis I said it was overly broad and unduly burdensome,  
9 because you're asking me to identify people and to identify the  
10 information they have in order to talk about issues that are no  
11 longer in dispute.

12 Now, having read Supra's Motion to Compel, it appears  
13 that what they want is simply more information from us about --  
14 it's hard for me to understand what they want. First of all,  
15 it says, "Supra's position with Interrogatory number 3 is that  
16 BellSouth has failed to produce any documentation in response  
17 to Interrogatory number 3." And as I understand it, this is a  
18 Motion to Compel interrogatory responses, not documents, but it  
19 looks like what the purpose of this Motion to Compel is they  
20 want to know exactly what each person knows and the substance  
21 of their knowledge.

22 And, you know, quite frankly, I think that's an  
23 overly broad request. They're not asking whether there are  
24 additional people who could be identified, they're asking me to  
25 explain in detail what each person knows. And what I have done

1 is said, look, anybody who is a witness, the nature of what  
2 they know and the substance of their position is in the  
3 testimony. And I think, it would be nearly an impossible task  
4 for me to identify every piece of information that is in  
5 someone's head concerning the issues.

6 And so, we've made all of our witnesses available for  
7 deposition, and it's during the deposition that they can obtain  
8 the information that they want. And I will note, for example,  
9 that one of the people who participated in some of these  
10 discussions who's not a witness is Mr. Finland, and he's a good  
11 example of somebody that -- he didn't file testimony. So, to  
12 the extent they want the information from Mr. Finland, they can  
13 take his deposition.

14 And as a matter of fact, they scheduled his  
15 deposition, I made him available for deposition next week, and  
16 they called me last week and said they've decided not to take  
17 his deposition. I don't know why they don't want to take his  
18 deposition, but I think it's improper to put the burden on me  
19 to try to ferret out every piece of information that Finland  
20 and other people may have about this when it's clear that they  
21 have the right to take a deposition, if they want to, and we've  
22 had plenty of time for them to schedule depositions of these  
23 people, and they've simply not done it.

24 Now, Interrogatory number 4 concerns the product  
25 commercialization unit. And that's a unit within BellSouth

1 that -- the word is -- they'd take a new product that would be  
2 available to CLECs, for example, and make the decisions about  
3 how the thing's going to be rolled out. Now, the question they  
4 have is what is the unit and please provide names of all  
5 BellSouth employees that have worked and currently work at the  
6 PCU for the years '99, 2000, and up.

7           Now, there is no dispute in this case about the  
8 product commercialization unit. There is no language in  
9 dispute between the parties for the new contract concerning the  
10 product commercialization unit. The only response that Supra  
11 had to that observation was that they, quote, might want to  
12 include some language in the new follow-on agreement.

13           Well, the language that each party has proposed in  
14 this case is fixed, it's already been done, and we have issues  
15 in dispute. And so, to the extent that they just want this  
16 information because they want to have it, it's not relevant to  
17 any issue that you're arbitrating in this case; and, therefore,  
18 the objection should be sustained.

19           Interrogatory number 5 is a three-part question,  
20 really. And what they want to know is what are the changes in  
21 law that have happened since BellSouth signed its first  
22 agreement with AT&T? Well, quite frankly, Commissioner, I  
23 don't believe I'm under any obligation to recite for Supra  
24 changes in the law when they've got -- certainly got more  
25 lawyers over there than I do today, and they have -- it's

1 equally available to them to go through, follow the Telecom  
2 Act. I think, Supra's demonstrated throughout this proceeding  
3 that it is well capable of understanding what the legal  
4 principles are, and I shouldn't have to do that for them.

5           The next question was "What changes have been made to  
6 the terms and conditions that are in our filed agreements?  
7 Those agreements are all a matter of public record, they can be  
8 obtained from the Commission at any time. And furthermore, not  
9 every agreement contains a provision relative to every issue in  
10 this proceeding. And to the extent that Supra wants to go  
11 sifting through our existing interconnection agreements with  
12 parties, they're perfectly free to do that, but I shouldn't  
13 have to do that as part of discovery in this case.

14           Now, the last thing that was asked is what were the  
15 changes that have been made to our practices and procedures,  
16 and I answered that, and I said that all those changes can be  
17 reviewed on our web site. And in response to Supra's Motion to  
18 Compel and the request for production of documents, for  
19 example, on number 2, you resolved that dispute between the  
20 parties by obliging me to provide all the documentation out of  
21 my web site. And I will do that there, and that's the same  
22 information that's available to them for number 5.

23           6, 7, 8 and 9 we've discussed. Number 11 is a  
24 question about the number of access lines that we have. And in  
25 their Motion to Compel, really the only justification they gave

1 for wanting the information was so that they could use it to  
2 show BellSouth's general noncompliance with the Telecom Act.  
3 Well, that's not at issue in this case. This is not a  
4 complaint proceeding. I mean, we've got a very narrow issue  
5 between the parties about a time period between May 29th and  
6 June 6th, 2001, that I suppose could be considered, to some  
7 extent, an adjudication of complaints in either way.

8           But other than that, this is not a complaint  
9 proceeding, it's an arbitration for a new agreement over terms  
10 and conditions. It's not an opportunity for Supra to just try  
11 to construct an argument that BellSouth is blocking  
12 competition. You have a docket that has been opened,  
13 specifically, to look at allegations just like that. And for  
14 the same reasons that you referred some of the requests -- I'm  
15 sorry, for the same reason that you referred the issues of  
16 Supra's to the other dockets that were raised in the status and  
17 negotiations, you should refer them to that docket as well to  
18 conduct this kind of discovery.

19           Issue number 12 is win back information, and  
20 full-circle information. And I know that this Commission and  
21 perhaps many members of the Staff sitting over here are fully  
22 engaged in looking at issues regarding win back and full  
23 circle. I, thankfully, have been spared from direct  
24 involvement in that case because of the volume of work involved  
25 in this case, but that case is before this Commission, it's a



1 different issue than the ones we have, there are no allegations  
2 of win back and full circle in Supra's interconnection for a  
3 new agreement. There is no language in dispute between the  
4 parties that concerns full circle or win back. And this is not  
5 an opportunity for Supra to conduct discovery in this docket  
6 for use by them or perhaps for use by others in other dockets  
7 that are pending before this Commission.

8           Now, Interrogatory number 13, I believe that you have  
9 resolved a request for production of document request that asks  
10 substantially the same information by directing us to provide  
11 the information. If you give me just a second, I can tell you  
12 which one it corresponds to, but one of their requests for  
13 production of documents asked for a flow-through of an order,  
14 and you have ordered me to provide that information. And on  
15 that basis, I don't expect you to reach a different result on  
16 Interrogatory number 13. So, presuming you're going to order  
17 me to do that, I will provide the information in number 13.

18           On number 16, the question on number 16 is "What  
19 electronic provisioning interfaces have been made available to  
20 ALECs for provisioning of the function, service, and products?"  
21 And we provided a response that is complete. What Supra is  
22 saying here is that there are three BellSouth OSS systems  
23 between the ALEC and SOCS, currently EDI or TAG, LEO, and LESOG  
24 and that they want a more complete and truthful answer.

25           Well, the question they asked was perhaps poorly

1 worded. What they asked for was what provisioning OSS, okay?  
2 The provisioning OSS is everything from SOCS on down, the  
3 Service Order -- I'm not sure, I can't remember what the "C"  
4 stands for in SOCS. It's Service Order Communication System.  
5 That's the provisioning OSS. That's what is behind SOCS and  
6 down, and it's the same for the ALECs and the CLECs, and that's  
7 what we've said.

8 Now, we don't need to argue the point, but their  
9 Motion to Compel says, well, you should have given me  
10 information about these other interfaces which are pre-ordering  
11 and ordering interfaces. They didn't ask about pre-ordering  
12 and ordering interfaces. They asked about provisioning OSS,  
13 and that's what I gave them. So, our answer is not incomplete,  
14 it is not untruthful. And to the extent that we have answered  
15 the specific question they've asked and they now realize that  
16 they really meant to ask a different question, that's not an  
17 appropriate subject of a Motion to Compel.

18 I believe, there's still some time before the  
19 discovery period runs out, although I don't think so given that  
20 the discovery is supposed to be completed on the 19th, but they  
21 have Mr. Pate scheduled for a deposition next week on the 18th.  
22 And if they have some questions for him, I'll be happy to have  
23 him answer them. But, you know, I shouldn't have to go through  
24 their request and mind read what they really want. All I can  
25 do is answer what they've actually asked me.

1           Now, number 19 and 20 -- 19 we've already talked  
2 about, and number 22 is a little puzzling, quite frankly. We  
3 gave a very fulsome response to number 22. In fact, it was so  
4 comprehensive that Supra didn't reproduce it in their Motion to  
5 Compel; in fact, they said the answer was extensive.

6           The best I can tell you, as I read their Motion to  
7 Compel, it seems to me that they're suggesting that the answer  
8 we've given in this response is different from some other  
9 information they've gotten. Well, we don't think it's  
10 different. We think it's a complete and accurate response. If  
11 they believe we've said something different, that's a great  
12 question for cross examination at the hearing. It's not an  
13 appropriate subject of a Motion to Compel to make me go back  
14 and answer a question again. I've given the answer. There's  
15 no dispute between the parties that I've given an answer.

16           Supra is now suggesting that, well, this answer  
17 doesn't seem to be the same as the answer in another case.  
18 Well, they can ask the question on cross examination of my  
19 witnesses and find out what the answer is, but to the extent  
20 they're suggesting we haven't been complete or truthful, I  
21 disagree as strongly as I can about that.

22           So, I think that deals with each of the interrogatory  
23 responses and, I think, where we are is that I have agreed that  
24 to the extent number 13 is the same as one of the requests for  
25 production that you've asked us I will, obviously, abide by

1 your answer, your ruling in that, because I don't expect you to  
2 reach a different conclusion. At the same time, I would hope  
3 that you don't reach a different conclusion on the items 6, 7,  
4 8, 9, 19 that lie down with the other issues. And on the rest  
5 of the interrogatory responses that we've discussed here, I'd  
6 ask you to sustain the objections and overrule Supra's Motion  
7 to Compel. Sorry for the length of going through that, but  
8 there were quite a number of issues.

9 COMMISSIONER PALECKI: Thank you.

10 I'm going to reserve ruling on this motion. I expect  
11 to issue my order on this motion tomorrow morning. I will  
12 instruct Staff to fax the order as soon as it is issued to both  
13 of the parties. And with that, are there any other matters  
14 that the parties would like to bring up at this time? Hearing  
15 nothing, this prehearing conference is now adjourned.

16 MR. TWOMEY: Thank you.

17 COMMISSIONER PALECKI: Thank you.

18 (Prehearing Conference concluded at 11:23 a.m.)

19

- - - - -

20

21

22

23

24

25

1 STATE OF FLORIDA )  
2 : CERTIFICATE OF REPORTER  
3 COUNTY OF LEON )  
4

5 I, KORETTA E. FLEMING, RPR, Official Commission  
6 Reporter, do hereby certify that a Prehearing Conference was  
7 heard at the time and place herein stated in Docket Number  
8 001305-TP.

9 IT IS FURTHER CERTIFIED that I stenographically  
10 reported the said proceedings; that the same has been  
11 transcribed under my direct supervision; and that this  
12 transcript constitutes a true transcription of my notes of said  
13 proceedings.

14 I FURTHER CERTIFY that I am not a relative, employee,  
15 attorney or counsel of any of the parties, nor am I a relative  
16 or employee of any of the parties' attorneys or counsel  
17 connected with the action, nor am I financially interested in  
18 the action.

19 DATED this Wednesday, September 12, 2001.

20  
21  
22  
23  
24  
25  
  
KORETTA E. FLEMING, RPR  
FPSC Official Commissioner Reporter  
(850) 413-6734