BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 001305-TP

In the Matter of

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

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VOLUME 4

Pages 445 through 589

PROCEEDINGS:	HEARING
BEFORE:	COMMISSIONER LILA A. JABER COMMISSIONER BRAULIO L. BAEZ COMMISSIONER MICHAEL A. PALECKI
DATE:	Thursday, September 27, 2001
TIME:	Commenced at 9:30 a.m.
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	TRICIA DeMARTE Official FPSC Reporter (850) 413-6736
APPEARANCES:	(As heretofore noted.)

I N D E X

WITNESSES

EXHIBITS

PROCEEDINGS

(Transcript follows in sequence from Volume 3.)

COMMISSIONER JABER: Good morning. We're here for day two of the BellSouth/Supra arbitration. And where we left off last night was, Mr. Kephart was going to take the stand and address some questions limited to an exhibit, but I did ask you all to get together last night and take care of some issues that were left between stipulation lingoland.

So update me, Ms. White. I hope you have good news.

MS. WHITE: Yes. We met this morning, and we have some more issues resolved. And one clarification we need to make on an issue that Staff had put down as resolved that's only partially resolved. The new resolved issues are: Number 9, Number 26, Number 27, Number 31, Number 41, and Number 48.

COMMISSIONER JABER: Okay. 9, 26, 27, 31, 41, 48.

MS. WHITE: Yes, ma'am.

COMMISSIONER JABER: Now, when you say "resolved," are they withdrawn or --

MS. WHITE: They should be because we have agreed to language, so they should be withdrawn. The clarification is on Issue Number 57. In the prehearing order, the Staff had said that this issue had been withdrawn. It's really only partially withdrawn. We've resolved the PSIMS and the PIC database issues, but the question of RSAG and LFACS is still open.

COMMISSIONER JABER: Does Staff have your positions

on that issue with respect to RSAG and LFACS? Can it easily be found?

MS. WHITE: I believe from the original prehearing statements, yes.

MR. KNIGHT: Right, if those positions are the same.

MS. WHITE: And I will tell you that Mr. Chaiken and Mr. Nilson and our people have, you know, agreed to continue talking on some of the other issues that are starred, but that's where we've gotten so far.

COMMISSIONER JABER: All right. Staff, let me get some clarification. On the issues that have been resolved, the parties have some language. Does that language need to get incorporated as a stipulation in here, or do we just reflect that the issues are withdrawn?

MR. KNIGHT: We only need to reflect that they have been withdrawn at this time.

COMMISSIONER JABER: Great. Mr. Chaiken, you agree with everything Ms. White just stated?

MR. CHAIKEN: I do.

COMMISSIONER JABER: Well, let me take an opportunity to commend the parties. I knew you could do it, and I appreciate that you've done it. And I would state that we're not done with this hearing, and there will be plenty of opportunity during the day for additional discussion. And if you need clarification or facilitation by our Staff, take

advantage of that, but again thank you.

Anything else, Ms. White?

MS. WHITE: No, ma'am.

COMMISSIONER PALECKI: I have a question for Ms. White.

MS. WHITE: Sure.

COMMISSIONER PALECKI: When you had your meeting to settle some of these issues that was facilitated by David Smith, we received word after that meeting that there were 20 issues that had been resolved. Of those 20, how many have actually been resolved as far as achieving final language?

MS. WHITE: Eleven.

COMMISSIONER PALECKI: Eleven. So --

MS. WHITE: Well, 11 and a half I would say.

COMMISSIONER PALECKI: Do you still have some hope on the other nine?

MS. WHITE: We still have some hope on the other nine. I think that -- we have supplied language to Supra on the other nine, and they are considering that language, and we have agreed to try to continue meeting, not only throughout the day, if possible today, but after the hearing is over. So I would say we still have hope. I can't give you a guarantee that they will be resolved, but we have hope.

COMMISSIONER PALECKI: Thank you.

COMMISSIONER JABER: All right. Now, with the issues

that have been resolved, does that affect anyone's testimony with respect to actually stipulating the witness's testimony into the record?

MS. WHITE: It would, but unless Mr. Chaiken objects, I would just -- instead of having to go through and try to figure out which should come out and which should stay in, that the Commission can just ignore the testimony on those issues that have been withdrawn.

COMMISSIONER JABER: All right. And it will just make for shorter cross examination.

MS. WHITE: Right.

COMMISSIONER JABER: All right. Mr. Chaiken, do you have any preliminary matters this morning?

MR. CHAIKEN: Just with regard to Exhibit Number 4. Yesterday you had asked us to make copies, and we had promised to do so. Unfortunately, we had some copying problems with our copier. We did make -- and it is a voluminous document -- we did make one copy that we could submit into the record, and we're still planning to make additional copies for the Staff and the Commissioners.

COMMISSIONER JABER: Ms. White, have you looked at that copy and have determined that it is the October 5th, '99 agreement?

MS. WHITE: I have not, but we will be happy to do that first thing this morning.

MR. CHAIKEN: I'll provide a --

COMMISSIONER JABER: Let's do that, Mr. Chaiken. Show it to Staff and then we'll admit it into the record. But, yes, it's critical to have the court reporter have a copy at least this morning.

All right. Mr. Chaiken, we have brought Mr. Kephart up for the limited purpose of asking cross examination on -- I need you to identify that exhibit.

MR. CHAIKEN: Sure. The exhibit is entitled, "Written Guidelines For Use Of DAML Equipment in the Network." And it is identified as being proprietary by BellSouth, and it is also Late-Filed Exhibit JK-2. Supra does not necessarily agree that this is proprietary, but that will be up to the Commission.

COMMISSIONER JABER: Now, you have filed, BellSouth, a notice of intent?

MS. WHITE: That's correct.

COMMISSIONER JABER: So until you actually file your request for confidential classification, it will be afforded temporary confidential classification. Did you actually need to have that identified for the record? Are you trying to admit it into the record?

MR. CHAIKEN: Yes, ma'am.

COMMISSIONER JABER: Okay. That will be Exhibit 16. We'll call it "JK-2 from Kephart deposition," and we'll

indicate that it's confidential.

Mr. Chaiken, remember to pick this up, please, when you're done.

(Exhibit 16 marked for identification.)

COMMISSIONER JABER: Mr. Kephart, you recall that you've been sworn?

THE WITNESS: Yes, ma'am.

COMMISSIONER JABER: Go ahead, Mr. Chaiken.

JERRY KEPHART

resumed the stand as a witness on behalf of BellSouth Telecommunications, Inc., and, having been previously sworn, testified as follows:

CONTINUED CROSS EXAMINATION

BY MR. CHAIKEN:

Q Mr. Morning, Mr. Kephart.

A Good morning.

Q Thanks for coming back this morning. I've given you Late-filed Exhibit JK-2. Are you familiar with that document?

A Yes.

Q Have you read this document prior to your deposition?

A Yes.

Q If you could, turn to I believe it is the fourth page, you will find a distribution list. Do you see the distribution list?

A Yes.

COMMISSIONER JABER: Mr. Chaiken, you and Mr. Kephart need to remember not to reveal any confidential information.

MR. CHAIKEN: Yes, ma'am.

BY MR. CHAIKEN:

Q Mr. Kephart, did you receive this document as a part of a distribution list?

A Yeah. My name is on it.

Q Okay. When did you first receive this document?

A I really don't recall. Actually, I first pulled this document down from one of our -- no, I'm sorry. I received this document via e-mail sometime ago. I don't really recall the exact date. I get a lot of technical documents, and this was just one of them.

Q If you could, turn the page back a page, you will see, I think, a page identifying a date.

A April 24th?

Q Correct. Would that be on or around the time you received this?

A Probably, yes.

Q And right below the date, you will see a category called "related letters." Are you familiar with those?

A Excuse me, what did you say?

Q I said right below the date, you will see a category stated "related letters."

A Yes.

Q Do you see that?
A Uh-huh.
Q Are you familiar with those?
A No.
Q Do you know what those documents may have had to do with this document?
A Well, usually they -- if they've had other correspondence pertaining to this subject, they will list that. That's probably what that means. But I don't necessarily get everything.
Q Is there a reason why those related letters were not included with this exhibit?
A Well, I think we just don't send -- that's the purpose of putting the related letters on the cover, so that if people are interested in reading other stuff, they can acquire it rather than sending out copies of everything at the same time.
Q Would it be possible to have those related letters included as a late-filed exhibit?
A I suppose it would be possible. I don't know. I haven't seen them.
MR. CHAIKEN: Commissioner, we request that this witness produce as a late-filed exhibit the three related letters identified on this page.
COMMISSIONER JABER: If they exist or if he has them?

MR. CHAIKEN: Yes, ma'am.

COMMISSIONER JABER: Okay. That will be Late-filed Exhibit 17, three related -- give me a better short title, Mr. Chaiken, so that when they look back, they have an understanding of what it is you are asking for.

MR. CHAIKEN: Sure. "Directives Related to Written Guidelines for Use of DAML Equipment."

COMMISSIONER JABER: Ms. White, if I call this "Directives Related to Written Guidelines," you'll understand what Mr. Chaiken is asking for?

MS. WHITE: Yes, ma'am, I think so.

COMMISSIONER JABER: Okay. That's Exhibit 17, Mr. Chaiken.

MR. CHAIKEN: Thank you.

(Late-Filed Exhibit 17 identified.)

BY MR. CHAIKEN:

Q Mr. Kephart, I would direct your attention to the second paragraph on that page, and I don't want you to read it into the record, but I do want you to take note of the first line of that second paragraph.

A Right.

Q Were you aware of this fact before your testimony, you filed testimony in this case?

A I think, in fact, I mentioned that in my testimony.

Q Now, are you aware as to whether or not there have

been any findings regarding modem performance for 4-to-1, 6-to-1, or 8-to-1 DAML?

A No, I'm not.

Q Are you aware as to whether or not there have been upgrades for DAML cards for 4-to-1, 6-to-1, or 8-to-1?

A No, I'm not. But they are newer systems, and they are less prevalent than the 2-to-1, because again, remember, what I said is that these are derived channels for -- that go into usually residential homes, and most people don't have four, six, or eight lines. They may go up to two lines. So these -- the 2-to-1 is more prevalent.

Q Do you have any idea as to the total deployment of 2-to-1 versus 4-to-1, 6-to-1, or 8-to-1?

A I don't have any numbers on that.

Q Does BellSouth keep track of numbers on that?

A Well, we have records of DAML deployment that would be associated with the physical plant that we attach it to, but whether or not we produce summary reports of all that, I don't know. I haven't seen any.

Q Would there be a division or a group of people responsible for that type of information?

A I don't think specifically. I think it's just another piece of equipment that we put into our plant, and we record it as being there. So it's all part of the network operations of our company, but I don't think there's anything

specific where we separately keep track of that all.

Q Are you familiar with the term "SLC-96," SLC-96?

A Yes.

Q Do you know what percentage of BellSouth's DLC deployment is via SLC-96?

A In Florida, no, I'm not sure.

Q Are you familiar with the term "SLC-5," or SLC-5?

A Uh-huh.

Q Do you know what percentage of BellSouth's DLC deployment is via SLC-5?

A No, I don't.

Q Do you know who would have that information?

A I don't know offhand.

Q Do you know if that information would be contained in the LFACS database?

A I doubt that. It'd probably be contained in carrier-related databases, but I don't know specifically where.

Q Do you know whether or not the LFACS loop makeup includes where DAML is used?

A You can do a loop makeup on an individual copper pair that a DAML is attached to and determine from that if there is a piece of DAML equipment on it, yes.

Q In response to your earlier answer, you said "carrier databases." What are those?

A I'm not really sure. I'm just saying that when we

deploy digital loop carrier equipment, we usually do it through an engineering work order, and we have a separate way to engineer and track that versus what would be in the assignment records, which are usually basic cable pairs.

Q Mr. Kephart, yesterday you testified to the fact that DAML was to the cost-effective compared to other approaches; correct?

A Yes. It's -- as stated in the first paragraph of this RL, it says, "DAMLs continue to be recommended as a last option in lieu of facility modifications or relief authorizations that provide a more economical solution based on total facility requirements."

COMMISSIONER JABER: Mr. Kephart, what are you reading from?

THE WITNESS: I'm reading from the first paragraph of the cover letter to the RL.

COMMISSIONER JABER: It's not from the exhibit, Mr. Chaiken, is it?

THE WITNESS: Yes, it's in the exhibit.

COMMISSIONER JABER: Don't read from the exhibit.

MR. CHAIKEN: Mr. Kephart, this has temporarily been deemed to be a proprietary document --

THE WITNESS: Oh, I'm sorry.

MR. CHAIKEN: -- and you can't read into the record anything that's contained --

COMMISSIONER JABER: But you can refer to the page, you can refer to the paragraph.

And let me ask BellSouth, does that part that he read matter?

MS. WHITE: He's read it. I don't think -- he made that statement yesterday anyway of his own knowledge, so I don't have a problem with that one statement being left on the record.

COMMISSIONER JABER: All right. Mr. Kephart, if you are not sure, ask me.

THE WITNESS: Okay.

COMMISSIONER JABER: I'm sorry for the interruption, Mr. Chaiken.

MR. CHAIKEN: No problem.

BY MR. CHAIKEN:

Q Mr. Kephart, if you could, turn to Page 3, and it's not the third page, but it's identified on the bottom right-hand corner as Page 3.

A Okay.

Q It's the sixth page in, sixth page in.

A Right.

Q And in that page, you will find Paragraph 2.1.1.

A Okay.

Q And I'd like you to read the first line under that.

MS. WHITE: To yourself; right?

MR. CHAIKEN: To yourself, exactly. Thank you, Ms. White.

A Yes.

Q Would you agree that DAML can be cost-effective?

A Yes. It's cost-effective in certain circumstances or we wouldn't be using it. But from a pure engineering standpoint, when you first design the plant, which is what our TELRIC costs are based on, DAML is not considered. However, after you've designed it and everything is there, if you run into a facility problem, DAML may be an alternative to resolve that problem, and it could be a more cost-effective alternative than, say, for example, placing a whole new piece of cable.

Q I'm going to ask you to turn to Page 5, and that's identified on the bottom right-hand corner as Page 5. And Paragraph 3.1.1, I'm going to ask you to read the first line under that.

A Right.

Q And you agree that DAML can be cost-effective in that circumstance; correct?

A In that particular circumstance, yes.

Q Ask you to turn to Page 7, identified in the bottom right-hand corner, and refer to Paragraph 3.3. And if you could, read the first three lines in that paragraph to yourself.

A Okay.

Q And you would agree under that situation DAML would be cost-effective as well; correct?

A In niche applications, that's true.

Q And if you could, turn to the following page, Page 8, and specifically Section 3.3.1. And if you could, read the entire first paragraph under that. Let me know when you're finished.

A Okay.

Q And under that situation it seems that DAML is cost-effective as well; correct?

A Yes. I don't dispute the fact that there are instances when DAMLs are cost-effective or else we would not be using them.

Q I want to turn your attention to Paragraph 3.3.2 on that same page --

A Uh-huh.

Q -- and particularly the second paragraph with the bullet points, and that goes all the way on to the next page. And if you could, just take a look at those sections, and let me know when you're finished.

A Okay.

Q Now, would you agree that the sections that I've pointed out contradict your testimony that DAML is more costly than copper loops?

A No, not at all. In fact, it reinforces what I said

yesterday, is that in slow growth areas where additional lines are needed and we're short of facilities, up to a certain point use of a DAML may be more economical than placing additional cable, and that's what this is really talking about.

Q So would you say that BellSouth's decision to use DAML lines has nothing to do with saving costs and increasing revenue?

A No. As I said earlier, there are particular opportunities to use DAMLs to save cost in lieu of placing additional facilities. However, there are a number of other things that we look at first before we make the decision to do that because they're more cost-effective. And given that we can't do those other things, then we will use a DAML in lieu of constructing a new cable to that location up to a certain point. If you use enough DAMLs, then it would just pay to go ahead and place a new cable. It's just another engineering option for us.

Q Would you agree that in slow growth areas BellSouth anticipates DAML deployment for periods of a year or more at a given location?

A I wouldn't be surprised, yes.

Q What's that?

A I wouldn't be surprised that we would use it as long as necessary as long as there was no growth in that area.

MR. CHAIKEN: Thank you, Mr. Kephart. I have no

further questions.

COMMISSIONER JABER: Thank you, Mr. Chaiken.

All right. Staff, you haven't had cross examination yet of Mr. Kephart; right?

MR. KNIGHT: Yes.

COMMISSIONER JABER: Do you have any questions?

MR. KNIGHT: No, we don't.

COMMISSIONER JABER: Commissioners?

COMMISSIONER PALECKI: No questions.

COMMISSIONER JABER: Redirect.

MS. WHITE: Yes, I just have two.

REDIRECT EXAMINATION

BY MS. WHITE:

Q Mr. Kephart, yesterday you stated what DAML stands for.

A Yes.

Q And can you repeat that again?

A Digital access main line.

Q Can I correct you? Isn't it digitally added main line?

A Oh, I've heard it referred to both ways, but, yeah, you're probably right.

Q Okay. Also, yesterday you were talking about -- with Mr. Chaiken, I believe, when converting resale to UNE-P, the error rate was less than 1 percent.

A Correct.
Q Do you recall that conversation?
A Yes, ma'am.
Q Do you know whether that was for individual conversions or bulk conversions?
A I'm not familiar with the details of those studies. So, no, I don't know.
MS. WHITE: Thank you. I have nothing further. And we would move Exhibit 14.
COMMISSIONER JABER: Okay. Mr. Kephart, thank you. You're excused.
(Witness excused.)
COMMISSIONER JABER: Exhibit 14, without objection --
MR. CHAIKEN: No objection.
COMMISSIONER JABER: Okay. Exhibit 14 is admitted into the record.
(Exhibit 14 admitted into the record.)
COMMISSIONER JABER: And, Supra, you have Exhibit 16.
MR. CHAIKEN: We move that into the record.
COMMISSIONER JABER: Without objection, Exhibit 16 is moved into the record.
(Exhibit 16 admitted into the record.)
COMMISSIONER JABER: Okay. That brings us to Mr. Follensbee.
MS. WHITE: Yes.

COMMISSIONER JABER: While counsel is talking, Mr. Follensbee, let me make sure that you get sworn.

(Witness sworn.)

COMMISSIONER JABER: Thank you.

MS. WHITE: Commissioner Jaber, before we start with Mr. Follensbee, I need to say that we have looked at the agreement that Supra has copied as Exhibit Number 4, and we do not agree that that is the current agreement between Supra and BellSouth Telecommunications.

COMMISSIONER JABER: During the next break, talk about Exhibit 4.

MR. CHAIKEN: Sure.

COMMISSIONER JABER: Mr. Follensbee, you have not prefiled testimony. You have been called for the sole purpose of testifying on -- Exhibit 9, Mr. Chaiken? Remind me.

MR. CHAIKEN: I believe it is Exhibit 9, yes.

COMMISSIONER JABER: All right. Let me tell you that I reviewed Exhibit 9. I know what's in Exhibit 9. I want you to stay within Exhibit 9. Staff will be able to cross examine on that same exhibit after you're done, and BellSouth will be able to redirect on that exhibit.

Mr. Follensbee, there would be will be no opening statements, obviously, since you're here for a limited purpose.

THE WITNESS: That is correct.

COMMISSIONER JABER: Okay. Go ahead, Mr. Chaiken.

MR. CHAIKEN: Actually, Mr. Turner will be handling this for Supra.

COMMISSIONER JABER: Great.

MS. WHITE: Would it be helpful for Mr. Follensbee to state his name and address for the record since he's in coming out of nowhere for this hearing?

COMMISSIONER JABER: That would be good. State your name and business address for the record, Mr. Follensbee.

THE WITNESS: It's Gregory R. Follensbee, address is 675 West Peachtree Street, Atlanta, Georgia.

GREGORY R. FOLLENSBEE

was called as a witness on behalf of BellSouth Telecommunications, Inc., and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TURNER:

Q Good morning, Mr. Follensbee, who is your current employer?

A BellSouth.

Q And what is your current position?

A I'm in charge of CLEC negotiations for all the carriers, both wireless and ALECs.

Q What would be your title?

A It's senior director of CLEC negotiations.

Q Is that your only position currently with BellSouth?

A Yes.

Q Are you familiar with USOCs?

A Yes, sir, generally.

Q Generally. Could you please provide a brief definition of a USOC.

A A USOC, as the term is defined, is a uniform service order code. And it is basically something that's used to render a billable record to either an end user or to a carrier.

Q In order for -- would you agree with me that in order for an ALEC to request or order service or product they must have a USOC?

A Not in all cases, no, sir.

Q What would be an example of a case where they will not?

A In cases where it is a usage or a query or a per message per call type of billable charge, since you don't order that ahead of time, that only gets incurred when the call is actually made. As an example, if you've bought a loop/port combination with switching and your customer makes a collect call, you don't preorder the collect call. It occurs when the customer makes it, and that then derives the billable charge, but there's no USOC applied to that. It's the same for the switching elements that make up some of the unbundled network elements like local switching, tandem switching, common transport. You don't ever preorder those.

Q Does BellSouth use USOCs?

A We use USOCs when we need them to be able to generate a bill to a customer, but again, there are not USOCs for some of the similar charges. For instance, in our tariffs, if you look on a directory assistance call or operator-assisted, there are no USOCs there because they aren't necessary.

Q Are USOCs for the same services and products, the actual USOC itself, the same for BellSouth retail as for ALEC?

MS. WHITE: I'm sorry, I'm going to have to object. I tried to give some leeway to set up this background of what USOCs are and when they're used and when they're not used, but the questions that Mr. Chaiken was asking had to do with this list of services in Exhibit 9 and the fact that some of them did not have USOCs.

And I assume the questions where why don't they have USOCs? Or are there USOCs in existence for these particular services? And I haven't heard any questions about that to Mr. Follensbee yet, and I thought that's what we're putting Mr. Follensbee up for, so I'm a little confused.

COMMISSIONER JABER: Okay. Mr. Turner, the objection appears to be that you're going beyond what this exhibit contemplates and also what Mr. Chaiken said he wanted to ask yesterday. What's your response?

MR. TURNER: My response is that I'm attempting -- just so you know, my next line of questioning is coming

directly from Exhibit Number 9. I'm just trying to lay the foundation of the witness's knowledge so that I am sure that he is qualified to discuss USOCs and the lack of USOCs in this exhibit.

COMMISSIONER JABER: Mr. Turner, I'm going to ask you to refine your questions to the exhibit we looked at yesterday, specifically the page. And as I recall the series of questions were, do you know why the USOCs were not specified within each block? And I think you've laid the appropriate foundation. I think this is the only witness you have to work with today, so let's refine the questions to exactly that page.

MR. TURNER: No problem.

BY MR. TURNER:

Q Mr. Follensbee, I'm going to direct your attention to Exhibit 9, which is BellSouth's responses to Supra's second set of production documents, Item Number 12, the attachment, I'm sorry, Item Number 4A attachment.

A I have that.

Q Okay. Looking at -- if you would, briefly look at Page 1 of 22. At the top it indicates the categories, I'm sorry, not the categories, but the heading of each column.

A Yes, sir.

Q And I want to point your attention to that because going forward on the subsequent pages, they don't have that at the top. We're looking at the USOC column, which is column

number seven from the left.

Could I please direct your attention to Page 14. UNE combinations begin with the two-wire voice grade loop with two-wire line port, residential. Do you see that?

A Yes, sir.

Q Okay. Could you please explain the reason why there is not a USOC in the UNE port/loop combination rates for Zone 1, 2 and 3 directly below that.

A The reason there aren't is because that's not what you'd need to order if you go below that. Basically when you're ordering a two-wire voice grade loop with a two-wire line port, that line port could be configured different ways, and so we could not end up with one USOC to cover all circumstances. So if you look at the loops, you'd look at a UEPLX; that is the loop you would order. On the port, you'd have to tell us which one of those five ports you want configured for that particular customer.

You know, if you look at the categories there, you have a simple unbundled port for residence. You've got a port for Caller ID. You've got an unbundled port outgoing only. You've got an unbundled Florida area calling with Caller ID, and then you also have a low usage line port with Caller ID.

Basically, the ALECs have indicated that certain ports have to be configured different ways, and we've had to derive USOCs to order it. The price is the same in every case,

though.

Q The same question regarding -- if you go down on the same page, Page 14, UNE port/loop combination rates under two-wire voice grade loop with two-wire line port, business.

A It would be the same answer again, sir. You've got four different ports you could order to configure to serve a particular customer, so you would have to indicate to us what port you would want configured to serve that customer.

Q For the USOCs that are on this page, are those functioning currently?

A Yes, sir.

Q Ask you to turn to Page 15 of 22. I have the same question for you for UNE port/loop combination rates under two-wire voice grade loop with two-wire line port, residential PBX.

A Same answer, sir. In this case, although there's only port, there's the potential for the future there could be more ports, so we've basically created the capability to add more ports in the future if that is what ALECs desire to have.

Q Staying on the same page, if you can, go down to additional NRCs. Below that, PBX subsequent activity, change/rearrange multiline hunt group.

A Yes, sir.

Q The same question to that.

A The USOC should have been copied down. It's the same

USAS2 that should have copied there. That's a nonrecurring charge that you will get assessed when you ask for that PBX to have changes or rearrangements made to a multiline hunt group.

Q The same page right below that, below additional NRCs, two-wire voice grade loop with two-wire line port, business PBX. The same question as to the Zone 1, 2, and 3 UNE port/loop combination rates.

A It's the same answer again, but in this case you have got, it looks like 12, some 12 different ports that can be configured, and you need to tell us which one of those ports you want configured to serve that customer.

Q Okay. I'd ask for you to turn to Page 16 of 22. Towards the top, two-wire voice grade loop with two-wire analog line coin port. The same question as to Zone 1, 2, 3 UNE port/loop combination rates.

A And it's the same answer, sir.

Q And if you could scroll down, two-wire voice grade loop, business only, with two-wire DID trunk port. The same question for Zone 1, 2, and 3 --

A Same answer, sir.

Q If you'd please turn to Page 17 of 22. Under two-wire ISDN digital grade loop with two-wire ISDN digital line side port, the same question for the UNE Zone 1, 2, and 3 under the UNE port/loop combination rates.

A And it is the same answer.

Q If you'd go down towards the bottom of the page, four-wire DS-1 digital loop with four-wire ISDN DS-1 digital trunk port, same question as to Zone 1, 2, and 3 for UNE port combination rates.

A Same answer, sir.

MR. TURNER: If I could have one minute, please.

COMMISSIONER JABER: Uh-huh.

BY MR. TURNER:

Q Mr. Follensbee, anywhere within this Exhibit Number 9, is there a USOC for DS-3 loop/port combo?

A DS-3 loop/port combo?

Q That's correct.

A No, sir. At this time there has been no ALEC that has requested it, so we have not yet designed that product. That's normally the course of action that would occur, that we don't automatically design a product if there's absolutely no demand for it.

Q With respect to this Exhibit Number 9, are you aware of any USOCs for items that are productionized that are not within this document?

A I am not aware of any.

Q Is everything on Exhibit 9 productionized?

A Yes, sir.

MR. TURNER: Okay. I have no further questions.

COMMISSIONER JABER: Okay. Thank you, Mr. Turner.

Staff.

MR. KNIGHT: We have no questions.

COMMISSIONER JABER: Commissioners?

Redirect.

MS. WHITE: No redirect.

COMMISSIONER JABER: Mr. Follensbee, thank you for testifying here today.

THE WITNESS: You're welcome.

(Witness excused.)

COMMISSIONER JABER: All right. Now, I wanted to take Mr. Pate up last. Are the parties in agreement with that approach?

MS. WHITE: We have no problem with that.

MR. TURNER: Supra has no problem with that.

COMMISSIONER JABER: All right. That brings us to Supra's case. Mr. Ramos.

MR. CHAIKEN: I've just been advised that Mr. Ramos is about three minutes away.

COMMISSIONER JABER: How many?

MR. CHAIKEN: Three minutes. He's in a car.

COMMISSIONER JABER: Okay. Any problem with going to -- is Mr. Nilson here?

MR. CHAIKEN: Mr. Nilson is present.

MS. WHITE: Or do you want us to take a break and talk about Exhibit 4?

COMMISSIONER JABER: All right. Let's take a 15-minute break. I want Staff to be part of the discussion on Exhibit 4. And let me give you all some guidance. I want the agreement in this record for Staff's convenience in writing this recommendation, so all of you need to get together and figure out what agreement that needs to be.

MS. WHITE: Yes, ma'am.

COMMISSIONER JABER: Okay. Thank you.

(Brief recess.)

COMMISSIONER JABER: Supra, call your witness.

MR. CHAIKEN: Supra calls Olukayode Ramos to the stand.

MR. TWOMEY: One point, Commissioner Jaber. I'm fairly certain that Mr. Ramos was not here yesterday when you swore the witnesses, and I'm also fairly certain that Mr. Nilson did not stand up during swearing. I think he thought you were just swearing in the BellSouth people. So I just wanted to make sure that that's on the record.

COMMISSIONER JABER: Thank you. Let's ask all the witnesses that did not stand yesterday to go ahead and stand and take the oath.

(Witnesses collectively sworn.)

COMMISSIONER JABER: Mr. Ramos, I know that you were not here yesterday, so let me just take an opportunity to repeat some things that I said yesterday to the witnesses. I

want you to begin your answers with a yes or no and then elaborate. I want your answers to stick to the questions that have been posed to you.

You will not interrupt the attorneys; you will not interrupt the Commissioners. And we will do our best not to interrupt you, because we do want to hear all the evidence presented to us in this case, but that really is our focus, to hear the evidence presented to us in this case. Okay?

THE WITNESS: Okay.

COMMISSIONER JABER: Go ahead, Mr. Chaiken.

MR. CHAIKEN: Thank you, Commissioner.

OLUKAYODE A. RAMOS

was called as a witness on behalf of Supra Telecommunications and Information Systems, Inc., and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CHAIKEN:

Q Good Morning, Mr. Ramos. Are you the same Olukayode Ramos who filed direct testimony in this matter consisting of 109 pages on July 27, 2001?

A Yes.

Q And if we asked you the same questions asked in that prefiled testimony, would your answers today be the same?

A That's correct.

Q And attached to that direct testimony, did you

include exhibits OAR-1 through 48?

A That's correct.

Q And would you make any changes or modifications to either your testimony or your exhibits?

A No.

MR. CHAIKEN: Supra moves the direct testimony and OAR Exhibits 1 through 48 into the record.

COMMISSIONER JABER: Okay. Let's insert his prefiled testimony. Now, Mr. Ramos filed rebuttal testimony too; right?

MR. CHAIKEN: I was going to get to that.

COMMISSIONER JABER: Okay. We're doing it separately. The prefiled direct testimony of Mr. Ramos shall be inserted into the record as though read. And we'll identify Exhibits OAR-1 through -- which number, Mr. Chaiken?

MR. CHAIKEN: Forty-eight.

COMMISSIONER JABER: -- through 48 as Exhibit 18.

(Exhibit 18 marked for identification.)

MR. CHAIKEN: Thank you.

MS. WHITE: Excuse me, I don't mean to interrupt, but I just want to remind the Commission that some of those exhibits are considered proprietary, and I believe the appropriate documents have been filed on that.

COMMISSIONER JABER: Yeah. Let's identify all the exhibits, Ms. White, and then I want to go back and tell me which ones are confidential.

All right, Mr. Chaiken? It helps me keep it straight.

MS. WHITE: I'm sorry, and one more thing, and some of his testimony is confidential as well.

COMMISSIONER JABER: Okay. I think it would help us all if we go through that exercise, though, so we're all on the same page on what's confidential and what's not.

MR. CHAIKEN: I believe we did file a joint stipulation identifying exactly those exhibits which are --

COMMISSIONER JABER: Well, since I don't have it --

MR. CHAIKEN: I'm sorry.

COMMISSIONER JABER: -- right in front of me, I think it would be a good exercise to go through it again.

MR. CHAIKEN: Okay.

COMMISSIONER JABER: All right. OAR-1 through OAR-48, Exhibit 18.

MR. CHAIKEN: Thank you.

(Testimony continues in sequence with Volume 5.)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NUMBER 001305-TP

DIRECT TESTIMONY OF OLUKAYODE A. RAMOS

ON BEHALF OF

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.

JULY 27, 2001

Q. PLEASE STATE YOUR NAME AND ADDRESS.

A. My name is Olukayode A. Ramos. My business address is 2620 SW 27th Avenue, Miami, Florida 33133.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT POSITION?

A. I am Founder, Chairman and CEO of Supra Telecommunications & Information Systems, Inc. ("Supra" or the "Corporation").

Q. WHAT ARE YOUR PRESENT RESPONSIBLITIES?

A. As CEO of Supra, I am responsible for all aspects of Supra's operations and financial performance. I am responsible for setting the strategic direction for Supra, including which expansion territories are priorities, what new and innovative products we should be striving to offer our customers, and how best to maximize Supra's resources. Managerial staffs under my direct supervision provide me with operational results, on a daily basis, of BellSouth's performance on all aspects of the Supra/BellSouth Interconnection Agreement ("Agreement"). In an effort to stay tuned to what Supra's customers are experiencing and to keep abreast of Order Processing and other key customer satisfaction issues, I often times work as a Customer Service

Representative ("CSR") at one of Supra's operational centers. It gives me great insight to be able to hear directly what our existing customers as well as potential customers have to say.

Q. PLEASE PROVIDE INFORMATION ON YOUR BACKGROUND AND EXPERIENCE.

A. I received a Bachelor of Science Degree, with Honors, in Accounting from the University of Lagos in 1981. In 1982, I became a Certified Public Accountant and a member of the Association of Chartered Certified Accountants (ACCA) in England and Wales. I attended the London School of Accountancy for post-graduate studies. I have attended extensive management training programs with Motorola, Lucent, Nortel, Telcordia (formally known as Bellcore), Alcatel, BellSouth, AT&T, Verizon (formally known as Bell Atlantic), Dialogic, Nokia, Xerox, and others.

I incorporated the Supra group of companies in 1983 while working for the Nigerian government at the Nigerian Sugar Company, Limited. The Nigerian Sugar Company employed over 30,000 employees. I served as the Chief Financial Officer of the Nigerian Sugar Company from 1982 to 1991, after which I resigned to pursue a career in the private sector. While working for the Nigerian Sugar Company, I obtained a great deal of experience working with the Nigerian government and multi-national corporations. I represented the Nigerian government on the boards of directors of the Nigerian National Petroleum Corporation (1986-1987), the National Insurance Corporation of Nigeria (1988-1990), and the Nigerian Telecommunications Corporation (1990-1993). I authored a report that established the basis of a national policy on sugar by the Nigerian government.

In 1994, I incorporated Supra in the State of Florida for the manufacture and sale of telecommunications equipment. Upon certification by the Florida Public Service Commission as an alternative local exchange carrier (ALEC) in April 1997, Supra embarked on the provision of alternative local exchange services.

Q. HAVE YOU TESTIFIED PREVIOUSLY ON TELECOMMUNICATIONS ISSUES BEFORE REGULATORY BODIES, FEDERAL JUDGES AND COMMERCIAL ARBITRATION PANELS? IF SO, BRIEFLY DESCRIBE THE PURPOSE OF YOUR TESTIMONIES.

A. Yes. I have testified on telecommunications issues before the Federal Communications Commission ("FCC"), state regulatory commissions of Florida, California, Georgia, Oklahoma, Illinois, Vermont, Connecticut, Texas and Nevada as well as Commercial Arbitration Panels regarding (i) implementation of the Telecommunications Act of 1996 (the "Act"); (ii) resolution of various interconnection issues between Supra and ILECs; (iii) differences between BellSouth's (a) Retail Department's Operation Support Systems ("OSS") and (b) CLECs' OSS; (iv) BellSouth's bad faith negotiation tactics (v) BellSouth/BIPCO trademark infringement lawsuit against Supra; (vi) "merger conditions" on the acquisition of Ameritech and GTE by Southwestern Bell Telephone Company ("SWBT") and Verizon (formerly known as Bell Atlantic), respectively; and (vii) OSS, Collocation, UNEs as well as other market entry barriers created by ILECs with particular emphasis on BellSouth. I have also made presentations at industry forums. I testified in Docket Numbers 980119 and 980800 before this Commission.

Q. WHAT IS YOUR UNDERSTANDING OF THE SIGNIFICANCE OF THIS PROCEEDING AS IT RELATES TO THE LOCAL TELEPHONE INDUSTRY?

A. This is another historic proceeding in the history of the telecommunications industry. In 1996, the Congress of the United States took steps to remove the statutory monopoly on local telephone service by passing the Act. The preamble to the Act states that this is:

> An Act To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.[1]

The Act contains detailed provisions governing the relationship between ILECs and their new competition. It gives the FCC and state commissions significant responsibilities for implementing the Act. On August 8, 1996, the FCC released its decision discussing and adopting significant regulations to implement the local competition provisions of the Act. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996. CC Docket No. 96-98, First Report and Order (adopted August 1, 1996) (FCC Competition Order). Thereafter, the FCC has released additional rules in its efforts to enforce those established in the First Report and Order and to curb further anti-competitive practices of the ILECs. On November 5, 1999 the FCC released its decision in response to the Supreme Court's January 1999 decision that directed the FCC to reevaluate the unbundling obligations of Section 251 of the Act. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996. CC Docket No. 96-98, Third Report and Order (adopted November 5, 1999) (UNE Remand Order).

According to the FCC at ¶2 of its UNE Remand Order:

> In passing the 1996 Act, Congress overhauled many aspects of federal regulation of telecommunications services by establishing a pro-competitive and deregulatory framework designed to benefit **"all Americans by opening all**

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[1] Preamble to the TA. Emphasis placed.

telecommunications markets to competition."[2] Two of the fundamental goals of the 1996 Act are to open the local exchange and exchange access markets to competition and to promote innovation and investment by all participants in the telecommunications marketplace.[3] Congress sought to foster this competition by fundamentally changing the conditions and incentives for market entry and by attempting to open any remaining local service bottlenecks.[4] As a result, the provisions of the 1996 Act set the stage for a new competitive paradigm in which carriers in previously segmented markets are able to compete in a dynamic and integrated telecommunications market that promises lower prices and more innovative services to consumers. [5]

The goal of both Florida and Federal laws are the same - to provide consumers with new choices, lower prices, and advanced technologies that fair competition will bring to the local telecommunications market. At the same time, they both recognize that the transition from monopoly to competition will not occur overnight, that the former monopolists will not willingly embrace the new competitive paradigm, and that dispute resolution is necessary to ensure that competition is given a fair chance to develop.

Supra brings a unique perspective to this emerging competitive market because Supra's business is focused on the consumer market. Supra understands that competition does not happen overnight. The development of competition requires oversight and intervention by regulators, courts and arbitrators, particularly when new entrants must rely upon entrenched monopolists possessing market dominance in order to obtain the facilities and services that are vital to their entry into the marketplace.

This proceeding, and others like it, will establish the terms and conditions under which competition will fully develop in the consumer market.

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[2] Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess., at 1 (1996) (*Joint Explanatory Statement*).
[3] *Joint Explanatory Statement* at 1.
[4] *See BellSouth Corp. v. FCC*, 144 F.3d 58, 61 (D.C. Cir. 1998) ("The 1996 Act rescinded the [Modified Final Judgment] . . . and changed the entire telecommunications landscape.").
[5] ¶2 UNE Remand Order released on November 5, 1999. Emphasis placed.

Q. TODAY, FIVE YEARS AFTER THE PASSAGE OF THE ACT, IS SUPRA ABLE TO COMPETE IN THE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES' MARKET? IF NO, WHY NOT?

A. No. Based on Supra's lower prices, Supra is able to attract customers that are prepared to wait 1-6 weeks to get their services provisioned and/or at times, get nothing at all. However, Supra is unable to truly compete, as it cannot offer a full range of services to customers, and cannot provide the services it can offer as timely as BellSouth does. The reason for Supra's inability to compete is because of BellSouth's willful and intentional breaches of the parties' current Interconnection Agreement ("Current Agreement") and violations of the Act as well as relevant federal and state rules and orders. BellSouth has chosen non-compliance, non-cooperation and litigation tactics over compliance with the parties' agreement and all applicable federal and state laws. **BellSouth has consistently maintained that the Current Agreement is not clear in many pertinent aspects, the resulting effect of which has been arbitration.** This problem is not unique to Supra. Aside from challenges to the Current Agreement, BellSouth has challenged and continues to challenge virtually every important, market-opening order promulgated by the FCC and this Commission as well as other State Commissions. For example, in the appeal of the FCC's landmark *Local Competition Order*[6], BellSouth asked the Eighth Circuit to vacate the **entire** order. (Brief for Petitioner Regional Bell Companies and GTE, No. 96-3221, at 80-81 (8th Cir. Filed Nov. 18, 1996)). Even after the United States Supreme Court upheld the jurisdiction of the FCC to issue UNE pricing and other pro-competitive rules, BellSouth continued to press the 8th Circuit to vacate those rules. (Brief for Petitioners Regional Bell Companies and

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[6] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, FCC No. 96-325 (Rel. August 8, 1996).

GTE, No. 96-3321 (and consolidated cases)(8th Cir. filed July 16, 1999)). Even now, nearly five years and several steps later in the appellate process, BellSouth still refuses to comply with the Current Agreement as well as numerous federal and state rules.

Q. WHAT HAS BEEN THE EFFECT OF BELLSOUTH'S LITIGATION AND NON-COMPLIANCE TACTICS ON COMPETITIVE PROVIDERS AND CONSUMERS?

A. BellSouth's tactics have made it nearly impossible for CLECs to successfully compete with BellSouth and thus many CLECs have either filed for bankruptcy or withdrawn from the market. See announcements of Covad, Bluestar, Telscape, Teligent, Winstar, Rhythms, ICG, etc. See report titled Annus horribilis? However you ay it, CLECs have had a bad year Published by CLEC.com., attached as **Supra Exhibit OAR 43**. These companies invested billions of dollars on mostly virtual collocation in BellSouth central offices and "CLEC Hotels" as well as on excessive interconnection charges. Between October 1997 and June 1998, BellSouth's sales organization tried to convince Supra to use virtual collocation instead of physical collocation. Marc Cathey, Mike Wilburn, Theresa Gentry and company (of BellSouth's Sales Interconnection Department) explained to Supra at meetings that virtual collocation would afford Supra speed to market. An ALEC that is virtually collocated must purchase BellSouth's Sonet Ring service for the interconnection of its network (i.e. the virtual collocation space and where the switch is physically located in the CLEC Hotel.) The Sonet Ring service costs at least $50,000 per month and by adding the cost of collocating a switch outside BellSouth's central office and virtual collocation arrangement as well as other operational costs, the cost jumps to about $80,000 per month. Whereas, the monthly recurring cost of physically collocating a switch in BellSouth's central office is less than $2,000. Yet at the same time, BellSouth continues to reap tremendous profits from its

local telephone companies and CLECs. BellSouth has effectively used these tactics to forestall and injure competitors in the local telephone market. As a result, if local telephone markets are not opened to competition soon, it may be too late for competition to ever develop. This will result in the continued monopolization of traditional local telephone services as well as the continued anti-competitive rates for same. As a result, a majority of Florida's consumers have not yet obtained the benefits of having the choices for local telephone services and competitive rates that they should have had in the five-plus years since the passage of the Act.

The relevant evidence confirms that BellSouth's anti-competitive tactics have succeeded in forestalling local competition. The most recent market share data from the FCC shows that, five years after the Act, CLECs serve only 6.7 percent of local telephone lines after having invested over $30 Billion in new competitive networks. See attached **Supra Exhibit OAR 1** Trends in Telephone Service released by the FCC on December 21, 2000. In Florida, competition lags behind the national average as CLECs have only 6.1 percent market share in the state. *Competition in Telecommunications Markets in Florida*, FPSC Report at 7 (December 2000).

In short, "[b]y any measure, competition in Florida's local phone market is virtually absent." *Florida Consumers Need Real Local Phone Competition, Fair Access to Monopoly Wires is the Key,* Mark Cooper, Director of Research, Consumer Federation of America, at 1 (Jan. 2001). In fact, earlier this year, the Consumer Federation of America concluded that the "local monopolies have managed to maintain their stranglehold on Florida's local telephone market by continually resisting any attempts to open the market up for new entrants." *Florida Consumers Losing Out Over Failure of*

Local Phone Competition, Press Release (Jan. 23, 2001). Although BellSouth publicly states its intent "to help CLECs" achieve competition, so as to allow BellSouth access into the long-distance market, the statistics and BellSouth's non-compliance, non-cooperation and litigation tactics tell a different story.

Q. IS BELLSOUTH REAPING TREMENDOUS BENEFITS FROM ITS WILLFUL AND INTENTIONAL BREACHES OF THE CURRENT AGREEMENT AS WELL AS VIOLATIONS OF THE ACT AND APPLICABLE FEDERAL AND STATE RULES?

A. Yes. BellSouth's tactics and the resulting lack of competition has a tremendous financial benefit for BellSouth. See attached **Supra Exhibit OAR 2,** BellSouth 2000 EPS Highlights Growth Areas. In that release, BellSouth reported earnings per share increase from 55 cents in the fourth quarter of 1999 to 59 cents in the fourth quarter of 2000. Additionally, BellSouth reported earnings per share in 2000 of $2.23, compared with $1.80 in 1999, and BellSouth continues to forecast earnings per share growth of 7-9 percent. BellSouth also grew its local service revenues in 2000 on a GAAP basis of 3.4 percent. While CLECs struggle to gain each customer, BellSouth increased its total equivalent access lines in service to 25.3 percent from 1999 to 2000. Its annual growth rate in access line equivalents since 1995 has been 14.9 percent. As a result of this windfall, BellSouth has invested heavily in wireless technology (including the acquisition of a 40% share in Verizon Wireless), and telecommunications ventures in Latin America. BellSouth has reaped tremendous benefits from its anti-competitive tactics and will continue to do so unless forced to adhere to its contractual obligations as well as its obligations under the Act, the FCC, and various State Commissions' Orders.

Q. DOES BELLSOUTH HAVE ANY INCENTIVE TO CO-OPERATE WITH SUPRA IN NEGOTIATING A FOLLOW-ON AGREEMENT IN FULIFILLMENT OF ITS STATUTORY OBLIGATIONS UNDER SECTION 251 OF THE ACT AND APPLICABLE FEDERAL AND STATE RULES?

A. No. BellSouth has no incentive whatsoever to comply as it has a much stronger incentive to preserve its local monopoly and prevent its competitors from succeeding in capturing local market share. This is easy for BellSouth to achieve as BellSouth controls the facilities necessary for Supra and other CLECs to provide services. Thus, BellSouth has both the motive and the ability to discriminate in favor of its own retail services by charging anti-competitive rates for access to those facilities, providing those facilities in a nondiscriminatory fashion, and by flat-out refusing to abide by contractual and statutory terms, the Act and relevant Federal and State rules.

Not even the ability to provide long distance services pursuant to Section 271 of the Act can provide enough incentive to secure BellSouth's cooperation. **First**, the long distance market is highly competitive. **Second**, revenues in the long distance market are dropping. **Third**, as much as BellSouth would want this Commission and other regulators to believe, it does not make any business sense for BellSouth to give up any share of its local telephone monopoly market in order to secure approval to compete in the highly competitive long distance market. BellSouth would prefer to have it both ways – maintain its monopoly power on the local telephone market as well as secure approval to provide long distance service.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to provide information to this Commission with regard to this arbitration in order to substantiate Supra's claims enumerated in its Status

and Complaint Regarding BellSouth's Bad Faith Negotiation Tactics, as well as to provide support for Supra's positions regarding a number of the issues outlined in the Commission's Supplemental Order Establishing Procedure, issued July 13, 2001 in this docket.

My testimony is divided into the following areas:

Section I: General Overview of the Relationship Between the Parties and Examples of Tortious Intent, on the part of BellSouth, to Harm Supra.

Section II: BellSouth's Willful and Intentional Bad Faith Negotiation Tactics of a Follow-On Agreement: **(a)** BellSouth's Willful and Intentional Refusal to Provide Information About its Network; **(b)** BellSouth's Willful and Intentional Refusal to Negotiate from the Current Agreement, and **(c)** BellSouth's Willful and Intentional Refusal to Comply with the Procedural Requirements of the Parties' Current, FPSC-Approved Interconnection Agreement before Filing its' Petition for Arbitration so as to Harm Supra.

Section III: Unresolved Issues: a, 1, 4, 5, 9, 16, 17, 18, 26, 35, 38, 44, 46, 47, 51, 52, 55, 57, 59, 60, 61, 62, 65 and 66.

Section IV: Relief Sought By Supra.

I. GENERAL OVERVIEW OF THE RELATIONSHIP BETWEEN THE PARTIES

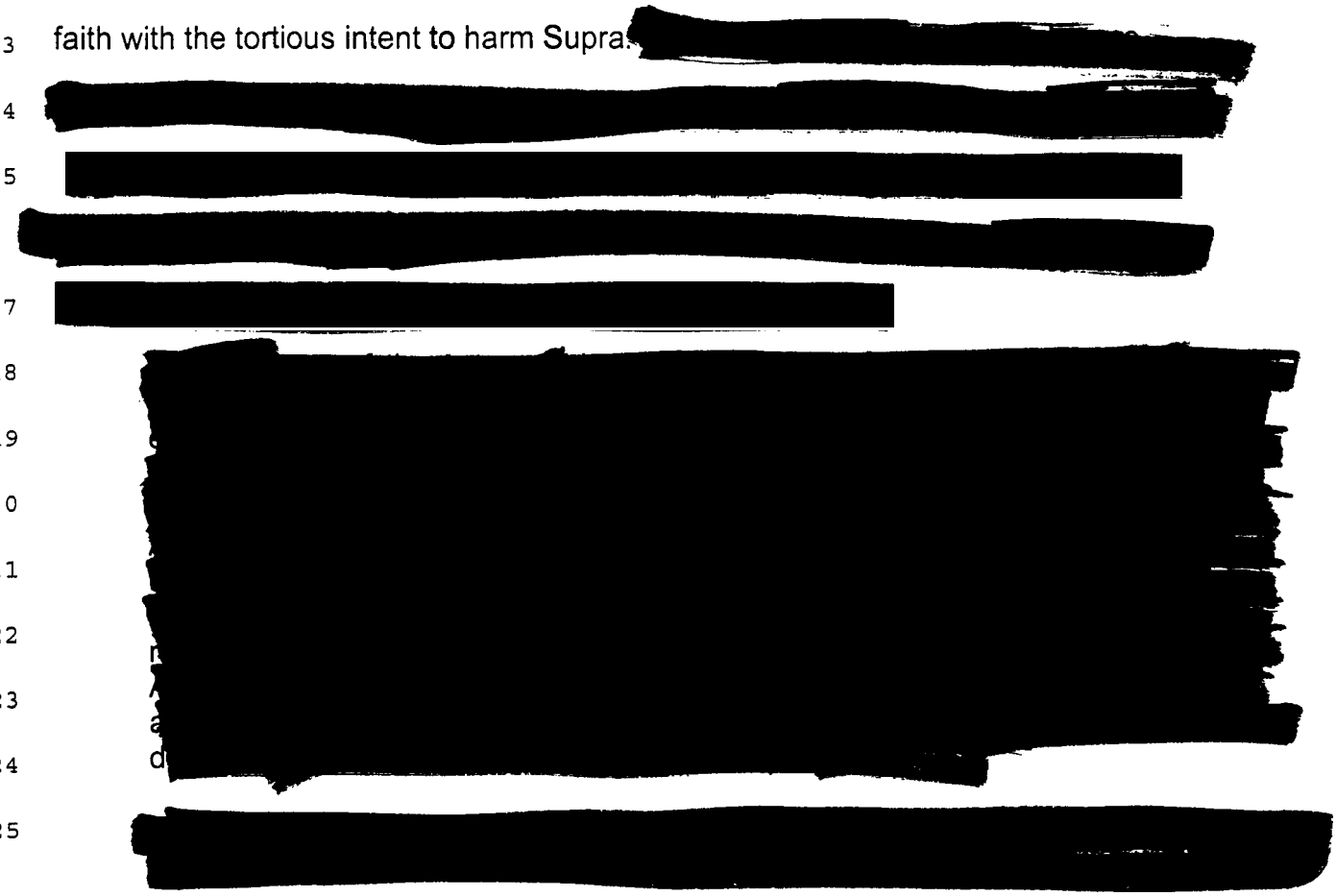
Q. WHY IS THE PAST RELATIONSHIP OF THE PARTIES RELEVANT TO THIS PROCEEDING?

A. The parties have established a course of dealings over the past 4 and ½ years which cannot simply be ignored when considering a Follow-On Agreement. Obviously, the parties wish to negotiate a new agreement, which will clearly and unambiguously identify each party's rights and obligations, so as to avoid future litigation. In order to

understand the parties' needs in avoiding future litigation, one must first understand the parties' past litigation, so that the Follow-On Agreement will not lead the parties back to issues which have previously been litigated. Furthermore, as Supra has been treated in less than a fair manner throughout its dealings with BellSouth, including the negotiation of this very Follow-On Agreement, Supra seeks affirmative relief from this Commission which will provide incentives for BellSouth's compliance with the Act, the FCC rules and orders, this Commission's rules and orders, as well as the terms of the parties' Follow-On Agreement.

Q. CAN YOU DESCRIBE FROM THE BEGINNING THE RELATIONSHIP BETWEEN THE TWO CORPORATIONS?

A. It has been a difficult relationship for Supra as BellSouth has often acted in bad faith with the tortious intent to harm Supra



[redacted]

Q. SINCE SUPRA'S ADOPTION OF THE AT&T/BELLSOUTH INTERCONNECTION AGREEMENT, WHAT HAS BEEN BELLSOUTH'S RESPONSE TO SUPRA'S REQUESTS TO IMPLEMENT THE AGREEMENT?

A. BellSouth has chosen non-compliance over compliance; [redacted]

- [redacted]
- [redacted]
- [redacted]

[redacted]

Q. [redacted]

A. [redacted] BellSouth is aware that [redacted] as BellSouth is a signatory to the Current Agreement (see Section 2.1 of Attachment 1), a CPR Sustaining Member Corporation **(see attached Supra Exhibit OAR 44 at page 3 of 13)**, and a signatory of CPR Corporate Policy Statement on Alternatives to Litigation **(see attached Supra Exhibit OAR 45 at page 3 of 20)**. [redacted]

II. BELLSOUTH'S WILLFUL AND INTENTIONAL BAD FAITH NEGOTIATION TACTICS OF A FOLLOW-ON AGREEMENT

Issue A: *Has BellSouth or Supra violated the requirement in 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?*

In this section, I will address the following subjects: **(a)** BellSouth's Willful and Intentional Refusal to Provide Information About its Network; **(b)** BellSouth's Willful and Intentional Refusal to Negotiate from the Current Agreement, and **(c)** BellSouth's Willful and Intentional Refusal to Comply with the Procedural Requirements of the Parties'

Current FPSC-Approved Interconnection Agreement before filing its Petition for Arbitration.

Q. CAN YOU SUMMARIZE SUPRA'S COMPLAINT REGARDING BELLSOUTH'S WILLFUL AND INTENTIONAL BAD FAITH NEGOTIATION TACTICS FILED ON JUNE 18, 2001, IN THIS ARBITRATION PROCEEDING?

A. Yes. Supra's complaint against BellSouth begins with BellSouth's refusal to comply with the unambiguous language of the Act and FCC's Orders regarding one of the obligations owed by BellSouth to Supra – namely, the duty to negotiate in good faith. Specifically, Section 251(c)(1) of the Act provides as follows:

> DUTY TO NEGOTIATE- The duty to negotiate in **good faith** in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements. (Emphasis added.)

Q. WHAT IS YOUR UNDERSTANDING OF THE MEANING OF GOOD FAITH AND BAD FAITH?

A. Section 4 of the General Terms and Conditions of the Current Agreement defines good faith as:

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

The FCC First Report and Order provides:

> The Uniform Commercial Code defines "good faith" as "honesty in fact in the conduct of the transaction concerned." When looking at good faith, the question "is a narrow one focused on the subjective intent with which the person in question has acted." Even where there is no specific duty to negotiate in good

> faith, certain principles or standards of conduct have been held to apply. For example, parties may not use duress or misrepresentation in negotiations. Thus, the duty to negotiate in good faith, at a minimum, prevents parties from intentionally misleading or coercing parties into reaching an agreement they would not otherwise have made. We conclude that intentionally obstructing negotiations also would constitute a failure to negotiate in good faith, because it reflects a party's unwillingness to reach agreement. (Emphasis added.)

(See ¶148 of the FCC First Report and Order (adopted August 1, 1996) on the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, (FCC Competition Order).)

According to Black's Law Dictionary, *Bad Faith* is defined as:

> The opposite of "good faith, " generally implying or involving **actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive. Term "bad faith" is not simply bad judgement or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with furtive design or will.** Stath v. Williams, Ind. App., 367 N.E.2d 1120, 1124 (1977). An intentional tort which results from breach of duty imposed as consequence of relationship established by contract. Davis v. Allstate Ins. Co., 101 Wis.2d 1, 303 N.W.2d 596, 599 (1981). (Emphasis added)

BellSouth has ignored Supra's requests for information, has prematurely filed a petition (knowing that it had not followed contractual and statutory procedures), has intentionally obstructed negotiations, and has filed a never-before seen template agreement as its proposed language in this proceeding, all in an attempt to rush Supra and this Commission into an arbitration for a Follow-On Agreement which will substantially favor BellSouth to the detriment of Supra and Florida telephone subscribers who have not benefited from the promotion of competition promised by the Act. BellSouth should not be allowed to benefit from this type of conduct. As will be

demonstrated by the evidence, BellSouth has acted in *bad faith* from the very beginning of the negotiations of the Follow-On Agreement.

(a) BellSouth's Willful and Intentional Refusal to Provide Information About its Network

Q. WHY MUST BELLSOUTH PROVIDE SUPRA INFORMATION ABOUT ITS NETWORK?

A. The Act, particularly Sections 202, 251 and 252, requires that an ILEC has a duty to provide interconnection of its network, to any requesting telecommunications carrier, on conditions that are reasonable and nondiscriminatory in accordance with the Act and the parties' agreement. Supra's complaint against BellSouth begins with BellSouth's refusal to comply with the plain unambiguous language of paragraph 155 of the FCC First Report and Order and 47 CFR §§51.301(c)(8), 51.305(g). Paragraph 155 of the FCC's First Report and Order provides that:

> We agree with incumbent LECs and new entrants that contend that the parties should be required to provide information necessary to reach agreement.[7] Parties should provide information that will speed the provisioning process, and incumbent LECs must prove to the state commission, or in some instances the Commission or a court, that delay is not a motive in their conduct. Review of such requests, however, must be made on a case-by-case basis to determine whether the information requested is reasonable and necessary to resolving the issues at stake. **It would be reasonable, for example, for a requesting carrier to seek and obtain cost data relevant to the negotiation, or information about the incumbent's network that is necessary to make a determination about which network elements to request to serve a particular customer.**[8] It

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[7] *See National Labor Relations Board v. Truitt Mfg Co.*, 351 U.S. 149, 153 (1956) (the trier of fact can reasonably conclude that a party lacks good faith if it raises assertions about inability to pay without making the slightest effort to substantiate that claim); *see also Microwave Facilities Operating in 1850-1990 MHz (2GHz) Band*, 61 F.R. 29679, 29689 (1996).

[8] *See* discussion of technical feasibility, *infra*, Section IV. In addition, the Commission's federal advisory committee, the Network Reliability Council, has developed templates that summarize and list activities that need to occur when service providers connect their networks pursuant to defined interconnection specifications or when they are attempting to define a new network interface specification. As consensus recommendations from the Council, we presume the elements defined in the templates are "good faith" issues for negotiation. Comments of the Secretariat of the Second Network Reliability Council at 4-5 (*citing Network Reliability: The Path Forward*, (1996), Section 2, pp. 51-56).

would not appear to be reasonable, however, for a carrier to demand proprietary information about the incumbent's network that is not necessary for such interconnection.[9] We conclude that an incumbent LEC may not deny a requesting carrier's reasonable request for cost data during the negotiation process, because we conclude that such information is necessary for the requesting carrier to determine whether the rates offered by the incumbent LEC are reasonable. We find that this is consistent with Congress's intention for parties to use the voluntary negotiation process, if possible, to reach agreements. On the other hand, the refusal of a new entrant to provide data about its own costs does not appear on its face to be unreasonable, because the negotiations are not about unbundling or leasing the new entrants' networks. (Emphasis added)

(See ¶155 FCC's First Report and Order (adopted August 1, 1996) on the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, (FCC Competition Order).)

Furthermore, 47 CFR §51.301(c)(8), provides:

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

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

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

Additionally, 47 CRR §51.305(g) provides that:

An incumbent LEC shall provide to a requesting telecommunications carrier technical information about the incumbent LEC's network facilities sufficient to allow the requesting carrier to achieve interconnection consistent with the requirements of this section.

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[9] This is consistent with previous FCC determinations. *See, e.g., Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, 4 FCC Rcd 468, 472 (1989) (good faith negotiations necessitate that, at a minimum, one party must approach the other with a specific request).

Q. HAS SUPRA REQUESTED THAT BELLSOUTH PROVIDE IT WITH INFORMATION ABOUT BELLSOUTH'S NETWORK?

A. Yes. Several times. Supra's initial request to BellSouth was made on or about June 22, 1998. See page 3 of attached **Supra Exhibit OAR 8.** On or about July 2, 1998, Marcus Cathey, Sales Assistant Vice President of BellSouth CLEC Interconnection Services, replied to Supra and completely ignored Supra's information request. See attached **Supra Exhibit OAR 9.** Due to its limited resources at that time, Supra was unable to pursue the request any further.

Again, on or about April 26, 2000, Supra sent a letter to BellSouth requesting that BellSouth provide Supra with information regarding its network which Supra reasonably required in order to negotiate a new agreement with BellSouth. A true copy of this letter is attached hereto as **Supra Exhibit OAR 10.** Furthermore, on or about August 8, 2000, Supra's Ms. Kelly Kester handed a copy of the same document request to BellSouth's Ms. Parkey Jordan, asking for the responsive documents. Again, BellSouth ignored the request. Thereafter, Supra persistently requested for the responsive documents from BellSouth as evidenced from the following:

- Supra's Motion to Dismiss dated January 26, 2001 filed in this Docket, which alleged among other things, BellSouth's bad faith negotiations tactics as evidenced in BellSouth's refusal to provide Supra information regarding its network. **See Supra Exhibit OAR 11.**

- BellSouth's Response to Supra's Motion to Dismiss, which again ignored Supra's request for information and stated that "if Supra actually had some basis for a claim

to this effect, then it could bring its claim before the FCC."[10] **See Supra Exhibit OAR 12.**

- Letter dated March 2, 2001 from Supra to the FCC regarding BellSouth's intentional and willful violations of Section 251(c)(1) of the Communications Act as amended by the 1996 Act, as well as Section 51.301 of the FCC rules. **See Supra Exhibit OAR 13.** It is Supra's belief that BellSouth has intended to harm Supra by making it impossible for Supra to negotiate a new interconnection agreement on equal footing with BellSouth, and thereby force Supra into an agreement which is one-sided in favor of BellSouth. Given the parties numerous disagreements during their relationship, many of which having ended up in litigation (before the FPSC, Federal District Court, and Commercial Arbitration) which resulted in favorable rulings for Supra, it is obvious now that BellSouth's strategy is to attempt to box Supra into a one-sided agreement, so as to prevent Supra from receiving the full benefits of the Act and its progeny.

- Letter dated April 4, 2001 from Supra to BellSouth demanding the requested information as well as BellSouth's cost studies. See attached **Supra Exhibit OAR 14.**

- Letter dated April 9, 2001 from BellSouth to Supra stating that BellSouth is "not certain what information [Supra is] asking BellSouth to provide." Regarding cost studies, the letter stated that "BellSouth will provide cost studies for the unbundled

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[10] See BellSouth's Response to Supra's Motion to Dismiss dated February 6, 2001 at ¶14.

network elements set forth in your agreement." See attached **Supra Exhibit OAR 15.** BellSouth has since provided some, but not all, of the requested cost studies.

- Letter dated April 11, 2001 from Supra to BellSouth demanding the requested information. See attached **Supra Exhibit OAR 16.**

- Letter dated April 13, 2001 from BellSouth to Supra directing Supra to BellSouth's Web site for the responsive information. See attached **Supra Exhibit OAR 17.**

- Conference call of April 24, 2001, between Supra, BellSouth and the FCC. On that call, Supra reiterated its demand for the responsive documents.

- Letter dated April 25, 2001 from Supra to the FCC regarding BellSouth's intentional and willful violations Section 251(c)(1) of the Communications Act as amended by the 1996 Act, as well as Paragraph 155 of the FCC First Report and Order and Section 51.301 of the FCC rules. **See Supra Exhibit OAR 18.**

- Letter dated May 1, 2001 from Supra to BellSouth demanding the requested information. **See Supra Exhibit OAR 19.**

- Letter dated May 8, 2001 from Supra to BellSouth demanding the requested information. **See Supra Exhibit OAR 20.**

- Letter dated May 18, 2001 from BellSouth to the FCC in response to Supra's letters dated March 15, 2001 and April 25, 2001. **See Supra Exhibit OAR 21.** At page 9 of that letter, BellSouth wrote that:

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

Supra brought this issue before this Commission in its Motion to Dismiss dated January 26, 2001 filed in this Docket. For BellSouth to have stated in a letter to the FCC that Supra never raised this issue before this Commission goes to confirm what most regulatory observers and followers of the Act have noted, that BellSouth will argue anything in any forum.

BellSouth continues to breach its obligations under the Act, as well as federal and state laws by its willful and intentional refusal to provide Supra with information about its network.

Q. WHY DO YOU STATE THAT BELLSOUTH HAS WILLFULLY AND INTENTIONALLY REFUSED TO PROVIDE INFORMATION ABOUT ITS NETWORK?

A. I say this because of the pattern of rejection of Supra's requests for information enumerated above as well as the *"stories"* that have been created by BellSouth to date. **First,** BellSouth's Response to Supra's Motion to Dismiss dated February 6, 2001

ignored Supra's request for information and stated that "if Supra actually had some basis for a claim to this effect, then it could bring its claim before the FCC." **See Supra Exhibit OAR 12. Second**, BellSouth's pattern of rejection and/or complete disregard for Supra's information request. **See Supra Exhibits OAR 8 to 21. Third,** in its response to Supra's Bad Faith Negotiation Tactics Complaint brought against BellSouth, it stated that:

> BellSouth does not believe that Supra requested these documents prior to the first week of April, 2001.
>
> (See paragraph 4, page 2 of BellSouth's Response to Supra's Complaint and Motion to Dismiss dated July 9, 2001.)

The above statement is not only an outright misstatement, it further confirms how BellSouth fears no repercussions for making factually untruthful statements to regulatory bodies. See **Supra Exhibits OAR 8 to 21.**

Fourth, at Section III, page 8 of its Opposition to Supra's Motion to Stay filed on July 18, 2001, BellSouth stated in part that:

> **Despite the fact that Supra formally requested these documents in January 2001** and BellSouth filed its objections in February 2001, Supra has not filed a motion to compel, which would have enabled the Commission to resolve this issue several months ago without delaying the hearing of this matter. (Emphasis placed.)

In one pleading, BellSouth claims that Supra did not request the information until April 2001, while in another pleading, it affirms that Supra requested the information in January 2001. The evidence in this Docket shows that Supra's initial request dates back to June 1998.

BellSouth's refusal to provide information is not only a discriminatory practice in violation of applicable federal and state laws, but also a calculated attempt to assure

that Supra and its customers cannot receive the same quality of services, elements and ancillary functions that BellSouth provides itself and its customers. Furthermore, it should be seen as another effort by BellSouth to assure that the Follow-On Agreement is devoid of **"clarity and parity."**

Q. WHY DO YOU STATE THAT BELLSOUTH'S WILLFUL AND INTENTIONAL REFUSAL TO PROVIDE INFORMATION IS A CALCULATED ATTEMPT TO ASSURE THAT SUPRA AND ITS CUSTOMERS CANNOT RECEIVE THE SAME SERVICES, ELEMENTS AND ANCILLARY FUCNTIONS THAT BELLSOUTH PROVIDES ITSELF AND ITS CUSTOMERS?

A. I say this because BellSouth has acted to create and fortify barriers between Supra and BellSouth's network, thereby making it impossible for Supra to have access to the same services, elements and ancillary functions that BellSouth provides itself and its customers. Supra never truly appreciated the breadth of BellSouth's OSS until it received information on BellSouth's OSS. See attached **Supra Exhibit OAR 22.** [redacted] As Supra uses BellSouth's network to provision services to its end-users, Supra must know what this network's capabilities are in order to design products and packages for its end-users. Supra leases UNEs from BellSouth and entitled to know what those UNEs are currently capable of providing as well as what new-innovative services those UNEs are capable of providing.

Q. DO YOU HAVE AN IDEA OF WHAT BELLSOUTH IS CAPABLE OF PROVIDING ITSELF AND ITS CUSTOMERS FROM THE BELLSOUTH NETWORK?

A. Yes. Although BellSouth has refused to provide Supra with the pertinent information regarding its network, Supra has reviewed BellSouth's Florida Intrastate Tariff as well as its FCC Tariff. These voluminous documents evidence what BellSouth currently makes available to consumers, and Supra believes that even this is not a complete picture as to what BellSouth's network may be capable of.

Q. IS SUPRA ABLE TO PROVIDE THE SAME SERVICES THAT BELLSOUTH IS ABLE TO PROVIDE ITSELF AND ITS CUSTOMERS AS EVIDENCED IN THE BELLSOUTH TARIFFS?

A. Absolutely not. Though the parties agreement, the Act and federal and state rules provide that Supra must have nondiscriminatory access to BellSouth's network, the reality of the situation is that Supra has been limited by BellSouth to very restricted access to BellSouth's network. Attached as **Supra Exhibit OAR 23** is a copy of Supra's Florida tariff. While Supra is only able to provide some form of limited services to certain residential and small business customers, BellSouth is able to provide an array of services to all telecommunications subscribers. In fact, as Section 271 of the Act prohibits BellSouth, but not Supra, from providing interLATA services, Supra should be able to provide even more services than BellSouth. Unfortunately, BellSouth has prevented this from happening.

Q. HAS SUPRA PROVIDED BELLSOUTH WITH ADDITIONAL EXPLANATIONS AS TO THE INFORMATION THAT IT IS SEEKING FROM THE NETWORK RELIABILITY TEMPLATE TO BELLSOUTH?

A. Yes, on several occasions, Supra has provided BellSouth with additional explanations as to the information that it is seeking from the Increased Interconnection Task Group II Report of the Network Reliability Council to BellSouth. See attached **Supra Exhibit OAR 24.** After sending the letter to BellSouth in April 2000, I have had at least six follow-up calls with BellSouth's Pat Finlen and Marcus Cathey. Pat Finlen used to be BellSouth's lead negotiator for Supra and Marcus Cathey is the designated head of BellSouth's account team for Supra. On two of those calls, I went into great details to explain Supra's request. Mr. Finlen directed Supra to BellSouth's Web site for the responsive information. All the items listed on pages 47 to 52 have been explained to BellSouth's Pat Finlen, Marcus Cathey and Parkey Jordan. If it is true that Supra never explained its requirements to BellSouth, then why did BellSouth inform Supra that the responsive information could be obtained off of BellSouth's Web site? Only BellSouth can answer this question. Of course, BellSouth's Web site does not provide the requested information, as it only provides information regarding the CLEC portion of the network which BellSouth makes available. It does not speak to the functions and capabilities of BellSouth's own network.

Supra explained the information it is seeking regarding Interconnection Provisioning information and guidelines, as follows:

- Tariff Identification: Supra requested BellSouth to identify its entire public and private tariff filed at the federal and state levels as well as any and all other rates that are not available publicly. So far, BellSouth has provided some of its cost studies, which are incomplete.
- NOF References: Supra requested BellSouth to identify its references to the Network Operations Forum ("NOF") principles and procedures.

- Interface Specifications: Supra requested BellSouth to identify all the OSS that it uses for the provisioning of services at its central offices as well as to its end-users.
- Network Design: Supra requested BellSouth to provide information regarding design, interconnection and configuration of its network from the end-office level to the LATA and state.

To date, BellSouth has refused to provide Supra with any of this requested information.

Q. WHY DOES SUPRA SEEK CLARITY AND PARITY IN THE FOLLOW-ON AGREEMENT?

A. Supra seeks clarity and parity in the Follow-On Agreement for two reasons. **First**, is the need to avoid litigation regarding the obligations and rights of the parties under the agreement. **Second**, to promote competition and rapid deployment of technology. If Supra cannot offer the same quality and timely services as BellSouth, or if Supra must expend more in order to provide the same quality and timely services, Supra will never be able to successfully compete with BellSouth.

Q. IT IS BELLSOUTH'S POSITION THAT SUPRA'S INFORMATION REQUEST IS A DELAY TACTIC EMPLOYED IN ORDER TO AVOID ENTERING INTO A FOLLOW-ON AGREEMENT. HOW DO YOU RESPOND?

A. This allegation is baseless when one considers that the terms, rates and conditions of the Follow-On Agreement will apply retroactively to the expiration date of the Current Agreement. See Section 2.3, General Terms and Conditions of the Current Agreement. Regardless of when the Follow-On Agreement is executed, the parties will have to true-up their respective obligations to reflect the Follow-On Agreement's terms,

rates and conditions. Supra will not "gain" anything by a delay. Conversely, BellSouth is not prejudiced and loses nothing by a delay, other than the ability to arbitrate an agreement against a party that has less than complete information from which to support its arguments. BellSouth has failed to state why it considers Supra's information request a delay tactic, except to just take a passing shot at Supra for demanding its statutory entitlement and preservation of rights. BellSouth must comply with its statutory and contractual obligations and must make the requested disclosures.

Q. DID BELLSOUTH EVER DENY HAVING THE NETWORK INFORMATION REQUESTED BY SUPRA?

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

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

what the Increased Reliability Task Force document was intended to eliminate in the first place.

Q. HAS BELLSOUTH PROMISED TO PROVIDE THE REQUESTED INFORMATION TO SUPRA?

A. Yes. On or about June 4, 2001, at an Inter-Company Review Board meeting, BellSouth's Patrick Finlen, reluctantly promised to contact its SMEs for the same information that Supra requested almost three years ago. Certainly, BellSouth must not be allowed to discourage facilities-based competition via use of BellSouth's property.

Q. WHY DO YOU STATE BELLSOUTH MUST NOT BE ALLOWED TO DISCOURAGE FACILITIES-BASED COMPETITION VIA USE OF BELLSOUTH'S PROPERTY?

A. I say this because it is BellSouth's avowed position that the use of "BellSouth's property" by ALECs will "discourage facilities-based competition."

Between August 23 and 30, 1996, several BellSouth witnesses filed their Supplemental Direct and Rebuttal Testimonies in Docket No. 960833-TP; the AT&T/BellSouth arbitration proceeding which resulted in the Current Agreement. Notably, BellSouth's witness, Mr. Robert C. Scheye as Senior Director of Strategic Management, asked himself the following questions and provided the following responses:

> Q. DOES BELLSOUTH PLAN TO APPEAL THE ORDER?
>
> A. Yes. The Company is particularly concerned that the FCC Order usurps the intent of Congress, takes away the power of the states to establish prices, and that the *Order establishes prices for the use of BellSouth's network which will discourage facilities-based competition and possibly result in a taking of BellSouth's property*. BellSouth recommends that, until all challenges to the FCC's Order have been exhausted, the Commission carefully evaluate whether

provisions of the FCC's Order are consistent with Act, and whether the Order requires immediate adoption and implementation by state commissions.

Mr. Scheye continued with the following:

UNBUNDLED NETWORK ELEMENTS

Q. AT&T WITNESS TAMPLIN STATES ON PAGE 17 OF HIS TESTIMONY THAT BELLSOUTH SHOULD NOT BE PERMITTED TO PLACE ANY RESTRICTION ON AT&T OR ANY OTHER CARRIER'S USE OF UNBUNDLED NETWORK ELEMENTS LEASED FROM BELLSOUTH. ARE ANY RESTRICTIONS APPROPRIATE?

A. Yes. While AT&T and other new entrants should be able to combine unbundled network elements purchased from BellSouth with their own capabilities to create unique services, they should not be permitted to purchase only BellSouth's unbundled elements and recombine those elements to create the same functionality and/or service as BellSouth's existing retail service.

Q. PLEASE EXPLAIN WHY THIS RESTRICTION IS NECESSARY

A. If AT&T is permitted to simply order unbundled elements of a BellSouth service (which in reality would not be unbundled) and recreate that service with those elements, and If AT&T prevails in convincing this commission that such unbundled elements should be priced at cost (an issue discussed in more detail later), AT&T will be in a no-lose situation. Such a policy would provide AT&T with the following:

1. The ability to resell BellSouth's retail services, but avoid the Act's pricing standard for resale (assuming the wholesale discount for resale is not established high enough for AT&T's liking);

2. The ability for AT&T (and MCI and Sprint) to avoid the joint marketing restriction specified in the Act, as well as any use and user restriction contained in BellSouth's tariffs:

3. The ability to argue for the retention of access charges by AT&T even though the actual service arrangement is "disguised resale";

4. Assuming a wholesale discount acceptable to AT&T, the ability to maximize its market position by targeting the most profitable form of resale to particular customers; and

> 5. The ability to foreclose, to a large extent, facilities-based competition and competitors.
>
> *AT&T could achieve all of this without investing the first dollar in new facilities or new capabilities.*

(See Rebuttal Testimony of Robert C. Scheye in CC Docket No. 960833-TP filed on August 30, 1996 at pages 3, 19-21. Emphasis added. Copy attached as **Supra Exhibit OAR 25.**

It is apparent from Mr. Scheye's testimony above that BellSouth was against the CLECs' purchase of UNEs as it would undermine BellSouth's retail operations. Ironically, one of the core issues in this Arbitration Proceeding is the purchase of UNEs and services in combination and pricing of elements and services.

Q. DOES SUPRA POSSESS BARGAINING POWER TO NEGOTIATE WITH BELLSOUTH ON EQUAL FOOTING?

A. Absolutely not. Perhaps, one of the reasons for BellSouth's willful and intentional refusal to provide Supra with information regarding its network is Supra's lack of bargaining power, as **Supra has nothing that BellSouth desires**. According to the FCC in its First Report and Order (Local Competition Order):

> Congress recognized that, because of the incumbent LEC's incentives and superior bargaining power, its negotiations with new entrants over the terms of such agreements would be quite different from typical commercial negotiations. **As distinct from bilateral commercial negotiation, the new entrant comes to the table with little or nothing the incumbent LEC needs or wants**. The statute addresses this problem by creating an arbitration proceeding in which the new entrant may assert certain rights, including that the incumbent's prices for unbundled network elements must be "just, reasonable and

> nondiscriminatory."[11] We adopt rules herein to implement these requirements of section 251(c)(3). ¶15 Emphasis added.
>
> We find that incumbent LECs have no economic incentive, independent of the incentives set forth in sections 271 and 274 of the 1996 Act, to provide potential competitors with opportunities to interconnect with and make use of the incumbent LEC's network and services. **Negotiations between incumbent LECs and new entrants are not analogous to traditional commercial negotiations in which each party owns or controls something the other party desires. Under section 251, monopoly providers are required to make available their facilities and services to requesting carriers that intend to compete directly with the incumbent LEC for its customers and its control of the local market. Therefore, although the 1996 Act requires incumbent LECs, for example, to provide** interconnection and access to unbundled elements on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, incumbent LECs have strong incentives to resist such obligations. The inequality of bargaining power between incumbents and new entrants militates in favor of rules that have the effect of equalizing bargaining power in part because many new entrants seek to enter national or regional markets. National (as opposed to state) rules more directly address these competitive circumstances. ¶55. Emphasis added.

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

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[11] *See* 47 U.S.C.§ 251(c)(3)

Q. WHAT HAS THE FCC CONCLUDED WITH RESPECT TO BELLSOUTH'S BAD FAITH NEGOTITION TACTICS?

A. On or about November 2, 2000, BellSouth was fined $750,000 by the FCC for the very act it has committed against Supra. See In the Matter of BellSouth Corporation, File No. EB-900-IH-0134 Acct. No. X32080035 (Adopted October 27, 2000). Copy attached as **Supra Exhibit OAR 26.** According to the FCC:

> In this Order, we terminate an informal investigation into potential violations by BellSouth Corporation (BellSouth) of section 251(c)(1) of the Communications Act of 1934, as amended, and section 51.301 of the Commission's rules, in connection with BellSouth's alleged failure to negotiate in good faith the terms and conditions of an amendment to an interconnection agreement with Covad Communications Company (Covad) relating to BellSouth's provision of unbundled copper loops in nine states. ¶1

In the Matter of BellSouth Corporation, File No. EB-900-IH-0134 Acct. No. X32080035 Order (Adopted October 27, 2000).

Q. WHAT ISSUES OUTLINED IN THE COMMISSION'S SUPPLEMENTAL ORDER ESTABLISHING PROCEDURE, ISSUED JULY 13, 2001 IN THIS DOCKET IS SUPRA NOT ABLE TO ADDRESS AS A RESULT OF BELLSOUTH'S WILLFUL AND INTENTIONAL REFUSAL TO PROVIDE INFORMATION ABOUT ITS' NETWORK?

A. Issue numbers 5, 10, 12, 14, 15, 18, 19, 20, 25, 26, 27, 28, 29, 31, 32, 33, 34, 38, 40, 44, 46, 47, 48, 49, 51, 53, 55, 57, 59, 60, 61 and 62.

(b) BellSouth's Willful and Intentional Refusal to Negotiate from the Current Agreement

Q. WHAT IS THE BASIS FOR SUPRA'S CLAIM THAT IT IS ENTITLED TO BEGIN NEGOTIATIONS FROM THE CURRENT AGREEMENT?

A. Several reasons. **First**, the relationship between Supra and BellSouth started in 1997 when BellSouth finally "allowed" Supra to adopt the Current Agreement in October 1999; any follow-on agreement must reflect what has happened to date. **Second**, the parties have been through several commercial arbitration proceedings for the interpretation of the Current Agreement and to know what their specific rights and obligations are based on the agreement in conjunction with applicable federal and state laws. [redacted] **Fourth**, Supra has commenced the implementation of its Business Plan based on the Current Agreement, and should be entitled to some continuity, particularly where the majority of the terms and conditions remain unchanged by any subsequent order or rule. **Fifth**, the Follow-On Agreement should provide Supra's customers with continuity in the both the types of service and the costs of such service. **Sixth,** the Current Agreement has already "passed muster" with the Commission and has been the subject of various Commission and commercial arbitration rulings that clarify various provisions and memorialize current Florida law on the various subjects. **Seventh,** incorporating the terms of the Current Agreement into a Follow-On Agreement, will make the negotiation process quick and simple, as the parties are already familiar with the terms contained therein (there is simply no need to reinvent the wheel); thereby creating a "win-win" situation for everyone. The Commission will spend less time and public funds on arbitrating an entirely new agreement between the parties. **Eighth**, BellSouth had already agreed to this request with MCI. In Docket No. 000649-TP, MCI and BellSouth began their negotiations of a follow-on agreement using their current agreement as the starting point. Supra

requests that this Commission take judicial notice of this fact, as the MCI and BellSouth arbitration proceedings, and the relevant documents, are already in possession of the Commission. In attempting to begin negotiations from an entirely new agreement, rather than the Current Agreement, BellSouth has unfairly sought to place Supra in an unfavorable bargaining position.

BellSouth's stated purpose for beginning negotiations from a completely new agreement is that, because of changes in the law subsequent to the acceptance of the Current Agreement, the Current Agreement is out of date. This flawed, and disingenuous, reasoning fails because the Current Agreement had been amended on numerous occasions to reflect changes in the law, and because it would be simply a matter of inserting or deleting provisions in that agreement to make it reflect the current state of the industry.

Q. HAS SUPRA REQUESTED THAT THE PARTIES BEGIN NEGOTIATIONS FROM THE CURRENT AGREEMENT?

A. Yes. Several times. Despite repeated requests, BellSouth has willfully and intentionally ignored Supra's request to negotiate from the Current Agreement, and instead, has unreasonably insisted on commencing negotiations from its generic template. On or about June 7, 2000, Supra requested for the execution of an agreement, which would retain the exact same terms and conditions as the Current Agreement. In that letter, Supra's counsel stated that:

> As stated above, Supra Telecom wishes to execute an agreement which, except for expiration date, would retain the exact same terms as our current Interconnection Agreement. The time period for this new agreement can be three years. However, after negotiations between AT&T and BellSouth have concluded, Supra Telecom may then choose to opt into that agreement. We do not see why this request should create any problems for BellSouth since the

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

See attached **Supra Exhibit OAR 27.**

On or about June 8, 2000, BellSouth responded that it had proposed the agreement that it would like to execute[12] and never responded to Supra's specific request to begin negotiations from the Current Agreement. See attached **Supra Exhibit OAR 28.** On or about June 9, 2000, Supra again requested that the parties commence negotiations of the Follow-On Agreement from the Current Agreement. **Supra Exhibit OAR 29.**

Q. WHICH ALECS HAS BELLSOUTH ALLOWED TO EXTEND THE TERM OF ITS AGREEMENT OR TO NEGOTIATE FROM A CURRENT AGREEMENT?

A. It is on record that BellSouth extended the term of its interconnection agreements with the following ALECs: IDS, MCI, COVAD, and Intermedia, to mention a few. BellSouth's willful and intentional refusal of Supra's reasonable request, while providing

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

same to Supra's competitors, is a violation of the Act, particularly Section 202(a) which provides that:

> It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.
>
> Additionally, see 47CFR §51.313.

Q. AT PAGE 5 OF BELLSOUTH'S REPSONSE TO SUPRA'S COMPLAINT AND MOTION TO DISMISS FILED BY BELLSOUTH ON JULY 9, 2001, BELLSOUTH STATED THAT:

> **SINCE THE OLD AGREEMENT WAS NEGOTIATED WITH AT&T FIVE YEARS AGO, BELLSOUTH'S PRACTICES HAVE CHANGED, THE CONTROLLING LAW HAS CHANGED, AND THE INTERCONNECTION OFFERINGS, TERMS AND CONDITIONS THAT ARE AVAILABLE HAVE CHANGED. ACCORDINGLY, WHAT BELLSOUTH OFFERS IN THE CURRENT STANDARD INTERCONNECTION AGREEMENT AS A STARTING POINT FOR NEGOTIATION IS DIFFERENT THAN WHAT BELLSOUTH OFFERED AS A STARTING POINT WHEN THE OLD AT&T AGREEMENT WAS DRAFTED.**

PLEASE COMMENT.

A. First, BellSouth's argument that its "practices have changed, the controlling law has changed, and the interconnection offerings, terms and conditions that are available have changed" is without merit. The Act, which is the controlling law in this instance, has neither been changed nor amended since its passage in 1996. What has happened so far is that regulators have broadened the scope of their interpretation of the Act. Supra is not, however, aware of any positive changes that have affected BellSouth's practices and its interconnection offerings, terms and conditions. What Supra is aware of is that the length and breadth of BellSouth's anti-competitive behavior has worsened.

See generally Petitions of ALECs against BellSouth filed before this Commission and in particular:

- Petition by AT&T Communications of the Southern States, Inc., TCG South Florida, and MediaOne Florida Telecommunications, Inc. for structural separation of BellSouth Telecommunications, Inc. into two distinct wholesale and retail corporate subsidiaries. CC Docket No. 010345-TP; and
- Request for arbitration concerning complaint of IDS Telecom, LLC against BellSouth Telecommunications, Inc. regarding breach of interconnection agreement. CC Docket No. 010740-TP.

Additionally, BellSouth's self-serving statement that "what BellSouth offers in the current standard interconnection agreement as a starting point for negotiation is different than what BellSouth offered as a starting point when the old AT&T agreement was drafted" is ridiculous. **AT&T, and not BellSouth** drafted the 1997, Commission approved, AT&T/BellSouth interconnection agreement. Please see **AT&T's Documents Submitted Under the Telecommunications Act of 1996, Volume X, Tabs 259 dated July 17, 1996 in CC Docket 960833-TP.** MCI proposed the draft of the MCI/BellSouth interconnection agreement in CC Docket No. 960846-TP as well as the MCI/BellSouth follow-on agreement in CC Docket No. 000649. This Commission must not sanction this type of discriminatory practice by BellSouth.

BellSouth has failed to state why it does not want to negotiate from the Current Agreement except that its "practices have changed". In any event, to the extent that BellSouth's practices have actually changed in order for BellSouth to comply with its

statutory obligations, BellSouth must make these changes known to Supra so that those practices can be incorporated in the Follow-On Agreement.

(c) BellSouth's Willful and Intentional Refusal to Comply with the Procedural Requirements of the Parties' Current FPSC-Approved Interconnection Agreement before Filing its' Petition for Arbitration so as to Harm Supra.

Q. WHY DO YOU STATE THAT BELLSOUTH WILLFULLY AND INTENTIONALLY REFUSED TO COMPLY WITH CONTRACTUAL REQUIREMENTS BEFORE FILING ITS PETITION FOR ARBITRATION?

A. Section 2.3 of the General Terms and Conditions of the Current Agreement provides, in pertinent part:

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

Section 3 of Attachment 1 provides that:

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

Section 4 of the General Terms and Conditions provides that:

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

BellSouth failed to request that the Follow-On Agreement be submitted to an Inter-Company Review Board prior to it filing the present Petition on or about September 1, 2000.

Q. HOW HAS BELLSOUTH EXPLAINED ITS HARMFUL CONDUCT OF FAILING TO CALL AN INTER-COMPANY REVIEW BOARD MEETING BEFORE FILING ITS PETITION?

A. BellSouth characterized the Inter-Company Review Board meeting as an extreme example of form over substance. This, says BellSouth, is because negotiations were held, and they were attended by the same persons who would have constituted an Inter-Company Review Board. See BellSouth's Response in Opposition to Supra's Motion to Dismiss at paragraph 7, page 4. BellSouth, again, misstates the facts. In fact, the negotiations that were held were not attended by the same persons who would have constituted an Inter-Company Review Board.

Q. WHAT DID THE COMMISSION CONCLUDE ABOUT BELLSOUTH'S FAILURE TO CONVENE AN INTER-COMPANY REVIEW BOARD MEETING BEFORE FILING ITS PETITION?

A. The Commission held that:

> We do not believe that this requirement of the agreement is simply form over substance as alluded to by BellSouth. BellSouth's blanket statement that the negotiations which were held would have been attended by the same representatives who would have attended an Inter-Company Review Board meeting, presupposes Supra's decision as to whom it would have sent to said meeting. Further, a meeting clearly designated as an Inter-Company Review Board meeting would entertain all issues in dispute, giving the greatest opportunity to reach agreement on the issues, or in the alternative, clearly delineate what issues would proceed to arbitration.

(See ORDER NO. PSC-01-1180-FOF-TI Issued May 23, 2001 in CC Docket No. 001305-TP)

Parity Provisions

Q. ARE THERE ANY GENERAL OBLIGATIONS WHICH SUPRA WISHES TO BE INCLUDED IN THE FOLLOW-ON AGREEMENT?

A. Yes. The Supreme Court, the Current Agreement, the Act, and FCC rules and orders contain a number of provisions designed to ensure that BellSouth provides CLECs, like Supra, nondiscriminatory access to its OSS at parity with what BellSouth provides itself. These decisional, statutory and contractual provisions are relevant to several of the issues that I will discuss in this proceeding, including, but not limited to, issues 5, 38, 46, 47, 51, 55, 57, 59, 60, 61 and 62.

To avoid duplicating the discussion of these provisions, they will be set out one time in this section, and thereafter referred to as to as the "Parity Provisions."

The relevant Parity Provisions of the Current Agreement are as follows:

> BellSouth shall accept orders for Service and Elements in accordance with the Federal Communications Commission Rules or State Commission Rules. Section 7.2 of the GTC.
>
> In providing Services and Elements, BellSouth will provide [Supra] with the quality of service BellSouth provides itself and its end-users. BellSouth's performance under this Agreement shall provide [Supra] with the capability to meet standards or other measurements that are at least equal to the level that BellSouth provides or is required to provide by law or its own internal procedures. BellSouth shall satisfy all service standard, measurement, and performance requirements as set forth in the Agreement and the measurements specified in Attachment 12 of this Agreement. Any conflict between the standards, measurements and performance requirement set forth in Attachment 12 shall be resolved in favor of the higher standard, measurement and performance. Section 12.1 of the GTC.
>
> **BellSouth will provide [Supra] with at least the capability to provide an [Supra] Customer the same experience as BellSouth provides its own Customers with respect to all Local Services.** The capability provided to

[Supra] by BellSouth shall be in accordance with standards or other measurements that are at least equal to the level that BellSouth provides or is required to provide by law and its own internal procedures. Section 23.3 of the GTC. (Emphasis added.)

BellSouth will provide [Supra] with the capability to provide [Supra] Customers the same ordering, provisioning intervals, and level of service experiences as BellSouth provides to its own Customers, in accordance with standards or other measurements that are at least equal to the level that BellSouth provides or is required to provide by law and its own internal procedures. Section 28.6.12 of the GTC. (Emphasis added.)

The functionalities identified above shall be tested by BellSouth in order to determine whether BellSouth performance meets the applicable service parity requirements, quality measures and other performance standards set forth in this Agreement. BellSouth shall make available sufficient technical staff to perform such testing. BellSouth technical staff shall be available to meet with [Supra] as necessary to facilitate testing. BellSouth and [Supra] shall mutually agree on the schedule for such testing. Section 28.9.2 of the GTC.

BellSouth shall offer Network Elements to [Supra] on an unbundled basis on rates, terms and conditions that are just, reasonable, and non-discriminatory in accordance with the terms and conditions of this Agreement. Section 30.1 of the GTC.

BellSouth will permit [Supra] to interconnect [Supra]'s facilities or facilities provided by [Supra] or by third Parties with each of BellSouth's unbundled Network Elements at any point designated by [Supra] that is technically feasible. Section 30.2 of the GTC.

BellSouth will deliver to [Supra]'s Served Premises any interface that is technically feasible. [Supra], at its option, may designate other interfaces through the Bona Fide Request process delineated in Attachment 14. Section 30.3 of the GTC.

BellSouth shall offer each Network Element individually and in combination with any other Network Element or Network Elements in order to permit [Supra] to provide Telecommunications Services to its Customers subject to the provisions of Section 1A of the General Terms and Conditions of this Agreement. Section 30.5 of the GTC. (Emphasis added.)

Each Network Element provided by BellSouth to [Supra] shall be at least equal in the quality of design, performance, features, functions and other characteristics, including but not limited to levels and types of redundant equipment and facilities for power, diversity and security, that BellSouth provides in the BellSouth network to itself, BellSouth's own Customers, to

a BellSouth affiliate or to any other entity for the same Network Element. Section 30.10.3 of the GTC. (Emphasis added.)

Unless otherwise designated by [Supra], each Network Element and the interconnections between Network Elements provided by BellSouth to [Supra] shall be made available to [Supra] on a priority basis that is equal to or better than the priorities that BellSouth provides to itself, BellSouth's own Customers, to a BellSouth affiliate or to any other entity for the same Network Element. Section 30.10.4 of the GTC.

Until such time as a gateway addressing Pre-Ordering and Provisioning interfaces is established, BellSouth shall provide [Supra] Customers with the same quality of service BellSouth provides itself, a subsidiary, an Affiliate or any other customer. Attachment 2, Section 16.8, in part.

Throughout the term of this Agreement, the quality of the technology, equipment, facilities, processes, and techniques (including, without limitation, such new architecture, equipment, facilities, and interfaces as BellSouth may deploy) that BellSouth provides to [Supra] under this Agreement shall be in accordance with standards or other measurements that are at least equal to the highest level that BellSouth provides or is required to provide by law and its own internal procedures. Attachment 4, Section 1.2.

For all Local Services, Network Elements and Combinations ordered under this Agreement, BellSouth will provide [Supra] and its customers ordering and provisioning, maintenance, and repair and pre-ordering services within the same level and quality of service available to BellSouth, its Affiliates, and its customers. Attachment 15, Section 1.2.

(See also Section 251(c)(2), (3), (4), (5) and (6) of the Act, and 47 CFR §§51.307, 51.309, 51.311, 51.313, 51.315, 51.319, 51.321 and 51.603.) Additionally, BellSouth's Hendrix admitted that:

.....the legal standard for parity set forth by the Federal Communications Commission and the parity requirements agreed to by BellSouth and [Supra] are, in practical effect, identical.

Parity Provisions Continued

Q. WHAT ISSUES PERTAIN, IN WHOLE OR IN PART, TO THE PARITY PROVISIONS IDENTIFIED ABOVE?

A. *Issue 5: Should BellSouth be required to provide to Supra a download of all BellSouth's Customer Service Records ("CSRs")?*

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

Issue 15: What Performance Measurements should be included in the Interconnection Agreement?

Issue 16: Under what conditions, if any, may BellSouth refuse to provide service under the terms of the interconnection agreement?

Issue 18: What are the appropriate rates for the following services, items or element forth in the proposed Interconnection Agreement?

(A) Resale

(B) *Network Elements*

(C) *Interconnection*

(D) *Collocation*

(E) *LNP/INP*

(F) *Billing Records*

(G) *Other*

Issue 21: What does "currently combines" means as that phrase is used in 47 C.F.R. §51.315(B)?

Issue 22: Under what conditions, if any, may BellSouth charge Supra Telecom a "non-recurring charge" for combining network elements on behalf of Supra Telecom?

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?

Issues 25A, 25B, 26, 27, 28, 29, 31, 32A, 32B, 33, 34, 35, 40, 41, 44, 45, 48, 49, 52, 53 and 66.

Issue 38: Is BellSouth required to provide Supra with nondiscriminatory access to the same databases BellSouth uses to provision its customers?

Issue 46: *Is BellSouth required to provide Supra the capability to submit orders electronically for all wholesale services and elements?*

Issue 47: *When, if at all, should there be manual intervention on electronically submitted orders?*

Issue 51: *Should BellSouth be allowed to impose a manual ordering charge when it fails to provide an electronic interface?*

Issue 55: *For purposes of the Follow-On Agreement, should BellSouth be required to provide an application-to-application access service order inquiry process?*

Issue 57: *Should BellSouth be required to provide downloads of RSAG, LFACS, PSIMS and PIC databases without license agreements and without charge?*

Issue 59: *Should Supra be required to pay for expedited service when BellSouth provides services after the offered expedited date, but prior to BellSouth's standard interval?*

Issue 60: *When BellSouth rejects or clarifies a Supra LSR or order, should BellSouth be required to identify all errors in the LSR or order that would cause it to be rejected or clarified?*

Issue 61: *Should BellSouth be allowed to drop or purge a Supra LSR or order? If so, under what circumstances and what notice should be given, if any?*

Issue 62: *For purposes of the Follow-On Agreement, should BellSouth be required to provide completion notices for manual LSRs or orders?*

Q. WHAT IS SUPRA'S POSITION ON THESE ISSUES WITH RESPECT TO THE PARITY PROVISIONS AND NONDISCRIMINATORY ACCESS TO BELLSOUTH'S OSS?

A. Under the Current Agreement, as well as both Federal and State law, Supra is entitled to nondiscriminatory, direct access to BellSouth's OSS. On or around September, 2000, Supra and BellSouth, in accordance with the Alternative Dispute Resolution clause contained within the Current Agreement, commenced separate, binding, arbitration proceedings before the CPR Institute for Dispute Resolution Arbitral Tribunal. [redacted]

[redacted]

Q. HAS BELLSOUTH PROVIDED SUPRA WITH NONDISCRIMINARY ACCESS TO ITS OSS?

A. No. BellSouth has intentionally and willfully breached the Current Agreement, the Act, and federal and state rules and orders by failing to provide Supra and its customers with an already-combined OSS, thereby ensuring that Supra and its customers do not receive the same quality of service as BellSouth provides itself and its customers. BellSouth has willfully refused to provide Supra with access to the same pre-ordering and ordering systems used by BellSouth, including RNS and ROS. This alone constitutes a violation of the UNEs, UNE combo and parity provisions. What BellSouth has done with its OSS is to separate already-combined network elements before leasing such elements to Supra. **Supra Exhibits OAR 30 and 31,** (including the video titled "**This Ol' Service Order**"). Instead of providing Supra with the already-combined OSS as requested by Supra, BellSouth has provided Supra with a degraded OSS, which could not possibly allow Supra and Supra's end-users to have the same

pre-ordering and ordering experience as that of BellSouth and BellSouth's end-users.[13] See **Supra Exhibit OAR 32** for a matrix of the ordering experience of a Supra customer compared with that of a similarly situated BellSouth customer.

The FCC defines "nondiscriminatory access" to mean:

> Accordingly, we conclude that the phrase "nondiscriminatory access" in section 251(c)(3) means at least two things: first, the quality of an unbundled network element that an incumbent LEC provides, as well as the access provided to that element, must be equal between all carriers requesting access to that element; second, where technically feasible, **the access and unbundled network element provided by an incumbent LEC must be at least equal-in-quality to that which the incumbent LEC provides to itself.**[14] (Emphasis added.)

(See FCC's First Report and Order, ¶312.)

BellSouth contends that it does not have to provide Supra with access to BellSouth's OSS, but instead, only to the same OSS functions which would allow Supra to provide Supra's service to its end users.

The FCC, in the Third Report and Order at ¶¶ 433, 434 and 523 held otherwise:

> We conclude that the lack of access to the incumbent LEC's OSS impairs the ability of requesting carriers to provide access to key information that is unavailable outside the incumbents' networks and is critical to the ability of other carriers to provide local exchange and exchange access service. **We therefore require incumbent LECs to offer unbundled access to <u>their</u> OSS nationwide.** ¶ 433. (Emphasis added.)

> Commentators overwhelmingly agree that the unbundling of OSS satisfies the impair standard of Section 251 (d)(2). OSS is a precondition to accessing other unbundled network elements and resold services, because competitors must utilize the incumbent LEC's OSS to order all network elements and resold services. **Thus, the success of local competition depends on the availability of access to <u>the incumbent LEC's OSS</u>. Without unbundled access to the incumbent LEC's OSS, competitors would not be able to provide**

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[13] It is interesting to note that, although BellSouth does not physically change other unbundled network elements that it claims to make available to CLECs, such as loops and ports, BellSouth readily admits to physically changing the UNE known as OSS.

[14] We note that providing access or elements of lesser quality than that enjoyed by the incumbent LEC would also constitute an "unjust" or "unreasonable" term or condition.

customers comparable competitive service, and hence would have to operate at a material disadvantage. While we acknowledge that a competitive market is developing for OSS systems, these alternative providers do not provide substitutable alternatives to the incumbent LEC's OSS functionality. Alternative OSS vendors provide requesting carriers with an electronic interface that allow competitive LECs to access the incumbent LEC's OSS and internal customer care systems. These vendors cannot provide a sufficient substitute for the incumbent LEC's underlying OSS, because incumbent LECs have access to exclusive information and functionalities needed to provide service. ¶ 434. (Emphasis added.)

We thus conclude that an incumbent LEC must provide nondiscriminatory access to their operations support systems functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing available to the LEC itself.[15] Such nondiscriminatory access necessarily includes access to the functionality of any internal gateway systems[16] the incumbent employs in performing the above functions for its own customers. For example, to the extent that customer service representatives of the incumbent have access to available telephone numbers or service interval information during customer contacts, the incumbent must provide the same access to competing providers. Obviously, an incumbent that provisions network resources electronically does not discharge its obligation under section 251(c)(3) by offering competing providers access that involves human intervention, such as facsimile-based ordering.[17] ¶ 523.

Thus, the FCC has ordered ILECs to allow CLECs to use the same OSS as used by the ILECs. It is more than simply nondiscriminatory access to OSS functions, as BellSouth would have this Commission believe.

The various CLEC OSS made available by BellSouth to Supra do not give Supra nondiscriminatory access to any of the five OSS functions. For preordering, BellSouth

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[15] We adopt the definition of these terms as set forth in the *AT&T-Bell Atlantic Joint Ex Parte* as the minimum necessary for our requirements. We note, however, that individual incumbent LEC's OSS may not clearly mirror these definitions. Nevertheless, incumbent LECs must provide nondiscriminatory access to the full range of functions within pre-ordering, ordering, provisioning, maintenance and repair, and billing enjoyed by the incumbent LEC.

[16] A gateway system refers to any electronic interface the incumbent LEC has created for its own use in accessing support systems for providing pre-ordering, ordering, provisioning, repair and maintenance, and billing.

[17] Such access was all that Rochester Telephone provided to AT&T, when AT&T attempted to compete as a reseller of Rochester Telephone service. *See* Letter from Bruce Cox, Government Affairs Director, AT&T to William Caton, Acting Secretary, FCC, July 10, 1996 (AT&T July 10 *Ex Parte*).

uses the following interfaces/databases: IMAT, ZTRK, SOLAR, OASIS[18], CRIS, RNS, ROS, DOE, SONGS, ORBIT, RSAG, ORION, WOLF, CRIS, ATLAS, GIMI, AAND, SWISH, CLUE, DSAP, LIST, QUANTUM, CBI, AMOS, ORBIT, OLD, and CDIA. For Ordering, BellSouth uses OPI, RNS, ROS, DOE, SONGS, SOCS and BOCRIS. BellSouth has provided Supra access to LENS for Pre-Ordering and Ordering.

Although Supra disputes that BellSouth has made any OSS other than LENS available to it, even considering the other interfaces (TAG, RoboTAG and EDI), Supra's LSRs must go through more steps than a BellSouth order. Additionally, LENS, TAG, RoboTAG and EDI were all interim solutions, pursuant to the Current Agreement. (See Sections 28.1, 28.5.3, 28.6.7 and 28.6.10.3 of the GTC; Section 16.8 of Attachment 2, Section 5.1 of Attachment 4, Sections 4.6, 5.2 and 5.3 of Attachment 15.)

Supra's access to the various databases and the information contained therein, is different than BellSouth's access. Oftentimes, Supra does not have any access to those databases/interfaces, either because they are down or because BellSouth intentionally refused to provide Supra with access. This is inherently unequal and discriminatory. As a direct and proximate result, Supra cannot issue service orders (it issues local service requests ("LSRs")) and provision service at a level equal to or better than BellSouth.

Q. HAS BELLSOUTH PROVIDED NONDISCRIMINATORY ACCESS TO ITS OSS IN A MANNER WHICH ALLOWS SUPRA TO PERFORM PRE-ORDERING AND ORDERING IN PARITY WITH BELLSOUTH?

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[18] OASIS is linked to COFFI, ATLAS, CRIS & FUEL.

A. No. BellSouth's Pate admitted, with respect to the differences between a CLEC LSR and a BellSouth retail operations service order flowing through the OSS made available to each, the following:

> . . . the only difference between the process flows is that the CLEC LSR must be processed by the Local Exchange Ordering ("LEO") system and the Local Exchange Service Order Generator ("LESOG"). These two steps are necessary in order to provide edit formatting and translation of the industry standard LSR format into that of a service order format that can be accepted by the Service Order Communications Systems ("SOCS") for further downstream provisioning by the BellSouth legacy OSS. This is not required of the BellSouth retail interfaces as they were designed to submit the service request in a SOCS compatible format at its initiation.

While Pate erroneously declares that the *only* difference is the flow through of CLEC LSRs (via LENS, TAG, RoboTAG or EDI) to LEO and LESOG, his admission of these discriminatory practices is very significant. What Pate fails to explain is why it is "necessary[19]" for a CLEC to submit a LSR and not a service order as well as the fact that the LSR is submitted in a format which is different than the format which is needed for the order to be provisioned. Supra submits that it is not "necessary" at all. Furthermore, it is evident that BellSouth orders do not require additional systems in order to be edited and formatted. Yet, CLEC LSRs, whether they are placed via LENS, EDI, TAG or RoboTAG do require these additional systems. While LENS, TAG, RoboTAG and EDI are Web-based, BellSouth's systems are based on ANSI-C protocol. While ANSI-C protocol is a robust, stable and reliable language, HTML language is not. It is common knowledge that the Web is unreliable. This is part of the reason for the

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[19] The FCC has defined "Necessary" to mean a prerequisite for competition. See ¶282, FCC's First Report and Order (adopted August 1, 1996) on the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, (FCC Competition Order).

incessant downtimes of CLEC OSS. Moreover, DOE and SONGS, the systems provided to the LCSC for the reformatting of CLEC LSRs into BellSouth service orders, as admitted by Pate, "are old, very archaic, more of a DOS format systems and more difficult to use than RNS and ROS."

The FCC, in its First Report and Order, paragraph 224, emphasizes the point:

> We conclude that the equal in quality standard of section 251(c)(2)(C) requires an incumbent LEC to provide interconnection between its network and that of a requesting carrier at a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate, or any other party. We agree with MFS that this duty requires incumbent LECs to design interconnection facilities to meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, that are used within their own networks. **Contrary to the view of some commenters, we further conclude that the equal in quality obligation imposed by section 251(c)(2) is not limited to the quality perceived by end users. The statutory language contains no such limitation, and creating such a limitation may allow incumbent LECs to discriminate against competitors in a manner imperceptible to end users, but which still provides incumbent LECs with advantages in the marketplace** (*e.g.*, the imposition of disparate conditions between carriers on the pricing and ordering of services). (Emphasis added.)

In that same Order, the FCC, at paragraph 312, went on to state:

> We conclude that the obligation to provide "nondiscriminatory access to network elements on an unbundled basis"[20] refers to both the physical or logical connection to the element and the element itself. In considering how to implement this obligation in a manner that would achieve the 1996 Act's goal of promoting local exchange competition, we recognize that new entrants, including small entities, would be denied a meaningful opportunity to compete if the quality of the access to unbundled elements provided by incumbent LECs, as well as the quality of the elements themselves, were lower than what the incumbent LECs provide to themselves. Thus, we conclude it would be insufficient to define the obligation of incumbent LECs to provide "nondiscriminatory access" to mean that the quality of the access and unbundled elements incumbent LECs provide to all requesting carriers is the same. As discussed above with respect to interconnection,[21] **an incumbent LEC could potentially act in a**

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[20] 47 U.S.C. § 251(c)(3).

[21] See supra, Sections IV.G, IV.H.

nondiscriminatory manner in providing access or elements to all requesting carriers, while providing preferential access or elements to itself. Accordingly, we conclude that the phrase "nondiscriminatory access" in section 251(c)(3) means at least two things: first, the quality of an unbundled network element that an incumbent LEC provides, as well as the access provided to that element, must be equal between all carriers requesting access to that element; second, where technically feasible, the access and unbundled network element provided by an incumbent LEC must be at least equal-in-quality to that which the incumbent LEC provides to itself. (Emphasis added.)

BellSouth has never argued that access to RNS and ROS is not technically feasible. However, BellSouth does argue that it has made various OSS available to Supra (LENS, TAG, RoboTAG and EDI), and that Supra has chosen to use an inferior system (LENS) which is the root of Supra's problems. BellSouth admits that CLEC LSRs flowing through any of its CLEC OSS all go through the same BellSouth legacy systems, LEO and LESOG. Finally, BellSouth admits that BellSouth's own orders do not go through these legacy systems, and are not reformatted, as all CLEC LSRs are. Given the language quoted from the FCC's First Report and Order, it is obvious that BellSouth has done exactly what the FCC ordered it not do – provide preferential access to a network element to itself.

BellSouth, instead of providing nondiscriminatory access to its own OSS, has intentionally created ordering systems which could not possibly allow a CLEC to provision services to customers as quickly and easily as BellSouth can, *supra*. This is not simply a case of a party violating a statute or an agreement; this is a case where BellSouth, realizing that it would be more costly to actually comply with the Act and honor its Current Agreement, willfully and intentionally created a system which places its competitors at a severe disadvantage. In fact, LEO and LESOG, as well as the

whole LCSC, were created specifically for CLECs. These systems were never even in existence, much less in use, by anyone prior to the enactment of the Act. Furthermore, these systems, including the LCSC, were meant to be interim solutions under the Current Agreement. Attachment 4, Section 2.5.3; Attachment 15, Section 4.2, 4.5.1; Section 28.6.10.3 of the GTC. It has been 4 years since the Current Agreement was originally entered into, yet these interim solutions still are the only means provided by BellSouth for the submission of LSRs, as opposed to service orders, despite the unambiguous language contained in the Current Agreement and paragraph 525 of the FCC Local Competition Order. Section 28.5.3 of the GTC provides in pertinent part that:

> BellSouth shall provide [Supra] with interactive direct order entry no later than March 31, 1997.

Moreover, the evidence shows that, as stated by Supra, LENS is the least terrible of the CLEC OSS. **Supra Exhibit OAR 33.** BellSouth's "Report: Percent Flow Through Service Requests (Detail) for the period 11/01/00-11/30/00," shows (1) that more LSRs are submitted via LENS than any other interface (by a substantial margin) and (2) that more LSRs flow through LENS, on a percentage basis, than through any of the other CLEC OSS. Of course, when one compares this to the percentage flow through of service orders through BellSouth's retail systems, which is in the high 90s percentile, there truly is no comparison.

Notwithstanding these facts, Supra has attempted to use EDI and TAG, and has spent hundreds of thousands of dollars in an attempt to make these systems work. In October of 1997, Supra established a dial up EDI connection, but Supra's LSRs were not timely or correctly provisioned. In fact, BellSouth's EDI training instructor later confirmed that BellSouth's EDI deployment was not operationally ready at that time.

Supra also attempted to establish a TAG interface. In response to Supra's request, BellSouth claimed it did not have the resources to help Supra establish such, and instead engaged in a strategy to "keep the ball in Supra's court" so as to give the appearance of being helpful, while in reality, doing nothing to help Supra. It is this strategy which Supra has seen BellSouth practice time and again.

Although the data required for both is the same, BellSouth admits that CLECs submit LSRs in a different format than that of BellSouth's service orders. BellSouth admits that CLECs' LSRs must go through additional edit-checking systems and must then be re-formatted, either by a machine or by a human. BellSouth's service orders do not go through this process. BellSouth CSRs perform pre-ordering and ordering at the same time, while a CLEC has to perform these functions separately. The differences and inequalities between the CLEC pre-ordering and ordering experience and the BellSouth pre-ordering and ordering experience do not stop there. When Bellsouth's RNS and ROS are not working, BellSouth orders are submitted via the electronic interfaces DOE and SONGS, and sometimes directly into SOCS. When CLEC OSS, including LEO or LESOG, are not working, a CLEC must submit lengthy manual orders via facsimile.

Furthermore, when a Supra CSR has a problem with an order, its recourse is to call BellSouth's LCSC. When BellSouth has a problem with an order, it may contact a SME (subject matter expert), with direct knowledge in order to solve such. Again, BellSouth's access to personnel with necessary information is different than that of a CLEC. Supra does not have access to BellSouth's SMEs or operational departments,

but instead, to a group of sales people whose job is to increase BellSouth's revenues, while earning commissions in the process.

Moreover, the evidence reflects tremendous differences in the parties' abilities to calculate due dates for the provision of services. According to the RNS training manual, CV517: THE NEW ORDER, Lesson 13-5, dated November 1997, **Supra Exhibit OAR 34,** due dates are calculated in the following manner:

> RNS gives a standard due date; if the customer does not want the standard due date, then the BellSouth rep can negotiate a due date as set forth in (b);
>
> "Service When You Want It": The CSR contacts an electronic database known as CTCF (Due Date Appointment Plan) service when you want it and uses that database to provide the customer a customer desired due date. QuickService orders placed before 3 P.M. will be working before 5 P.M. and orders placed after 3 P.M. will be working by 10 A.M. the next business day.

Additionally, BellSouth's admission as to what "Due Date Appointment Plan/CTCF" is or provides, was:

> The Due Date Appointment Plan/Connect Through Company Facility (CTCF) is a guideline for negotiating due dates to *provide customer service as efficiently and quickly as possible.* (Emphasis added).

Because BellSouth's OSS performs pre-ordering, ordering and provisioning in one simple step, the due date calculation will not change, so the due date can be confidently quoted to the customer on the initial call. See video **"This Ol' Service Order."**

Conversely, Supra CSRs cannot confidently provide due dates to Supra end users. BellSouth has indicated that LENS accesses DOE Support Applications ("DSAP") to calculate due dates. The system has the following embedded problems: inability to allow for a customer desired due date; and where the LSRs contain 15 features or more, LENS does not provide a due date whereas BellSouth's retail systems do not

have any such limitations. Additionally, according to the training manual used by BellSouth to train its LCSC CSRs, Desired Due Date of CLECs orders "can not be sooner than the following day." **Supra Exhibit OAR 35.**

Because there is a gap between Supra's use of pre-ordering functions and submission of a Supra LSR into SOCS, the dates calculated in LENS might no longer be available. As a result, Supra cannot reliably quote a due date to its customers. The FCC agreed that BellSouth does not offer nondiscriminatory access to due dates. See In re Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, December 24, 1997, ¶ 167 (FCC South Carolina Order). See also In re Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Louisiana, CC Docket No. 97-231, February 3, 1998, ¶ 56 (FCC Louisiana Order).

As the FCC stated:

> New entrants do not obtain actual due dates from LENS during the pre-ordering stage. Instead, the actual, firm date is assigned once BellSouth processes the order through SOCS. A new entrant therefore will not be informed of the actual due date until it receives a firm order confirmation (FOC) from BellSouth.
>
> FCC South Carolina Order ¶ 168. See also Louisiana Order ¶ 56. The FCC went on to note in the South Carolina case that even though BellSouth representatives do not receive actual due dates, they can be confident of the due dates they quoted customers because their orders are processed without the same delays that ALECs experience. Because of these delays, ALECs cannot give dates to customers with the same confidence. FCC South Carolina Order ¶ 168; FCC Louisiana Order ¶ 57.

Furthermore, BellSouth's Operations Director in charge of CLEC electronic interfaces, Gloria Burr, admitted that BellSouth's retail OSS could handle electronic

orders for complex services such as megalink (including T1s), frame relay, and litegate (type of DS3). She further admitted that CLEC OSS was not capable of handling such complex orders. It is interesting to note that SOCS, the system where all CLEC LSRs and BellSouth retail orders go for provisioning, is designed to handle every type of order. In fact, all orders must go to SOCS, "or it doesn't get provisioned" as admitted by Pate.

When one takes into account BellSouth's ability to provide answers to customers within seconds of taking an order, to electronically order complex services, to easily pick and change due dates, and to perform complex edit checks before submitting orders, it is obvious that Supra's customers do not enjoy a similar ordering experience. Despite BellSouth's statements to the contrary, other CLECs, such as AT&T, also are complaining of BellSouth's intentional degradation of OSS. See Complaint of AT&T against BellSouth, filed March 21, 2001, **Supra Exhibit OAR 36, pg. 11-13** and Complaint of IDS against BellSouth, filed May 11, 2001, **Supra Exhibit OAR 37**.

The FCC, in its First Report and Order, foresaw the problems which would arise should an ILEC provide itself with better quality elements than it provides to CLECs. Therefore, at paragraphs 315 and 316, the FCC ordered:

> The duty to provide unbundled network elements on "terms, and conditions that are just, reasonable, and nondiscriminatory" means, at a minimum, that whatever those terms and conditions are, they must be offered equally to all requesting carriers, and where applicable, they must be equal to the terms and conditions under which the incumbent LEC provisions such elements to itself.[22] We also conclude that, because section 251(c)(3) includes the terms "just" and "reasonable," this duty encompasses more than the obligation to treat carriers equally. Interpreting these terms in light of the 1996 Act's goal of promoting local

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[22] *See supra*, Sections IV.G, IV.H.

> exchange competition, and the benefits inherent in such competition, we conclude that these terms require incumbent LECs to provide unbundled elements under terms and conditions that would provide an efficient competitor with a meaningful opportunity to compete. Such terms and conditions should serve to promote fair and efficient competition. This means, for example, that incumbent LECs may not provision unbundled elements that are inferior in quality to what the incumbent provides itself because this would likely deny an efficient competitor a meaningful opportunity to compete. We reach this conclusion because providing new entrants, including small entities, with a meaningful opportunity to compete is a necessary precondition to obtaining the benefits that the opening of local exchange markets to competition is designed to achieve.

As is more fully discussed below,[23] to enable new entrants, including small entities, to share the economies of scale, scope, and density within the incumbent LECs' networks, we conclude that incumbent LECs must provide carriers purchasing access to unbundled network elements with the pre-ordering, ordering, provisioning,[24] maintenance and repair, and billing functions of the incumbent LECs operations support systems. Moreover, the incumbent must provide access to these functions under the same terms and conditions that they provide these services to themselves or their customers.

When one considers the total degradation of the OSS and personnel support made available to CLECs, the evidence shows that BellSouth never intended to provide CLECs with the same ordering experience that BellSouth provides itself.

I will further address each OSS related issue, on an individual basis, later in my testimony.

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[23] *See infra*, Section V.J.

[24] The term "provisioning" includes installation.

Issue 1: *What is the appropriate format for the submission of disputes under the Follow-On Agreement? Should the parties be required to submit disputes under this Agreement to an Alternative Dispute Resolution Process (Commercial Arbitration) or alternatively should the parties be allowed to resolve disputes before any Court of competent jurisdiction and should, at least, mandatory mediation (informal dispute resolution) be required prior to bringing a petition?*

Q. WHAT IS THE PURPOSE OF THE TERMS AND CONDITIONS CONTAINED IN THE CURRENT AGREEMENT REGARDING DISPUTE RESOLUTION?

A. Pursuant to the Current Agreement:

Purpose

> Attachment 1 provides for the expeditious, economical, and equitable resolution of disputes between BellSouth and AT&T arising under this Agreement. Section 1, Attachment 1. Emphasis added.

As will be demonstrated later in my Testimony, Supra and BellSouth as well as taxpayers have benefited immensely from the dispute resolution process in the Current Agreement.

Q. WHAT IS THE FORMAT PROVIDED FOR THE SUBMISSION OF DISPUTES UNDER THE CURRENT AGREEMENT?

A. Section 16.1 of the General Terms and Conditions provides that:

> All disputes, claims or disagreements (collectively "Disputes") arising under or related to this Agreement or the breach hereof shall be resolved in accordance with the procedures set forth in Attachment 1, except: (i) disputes arising pursuant to Attachment 6, Connectivity Billing; and (ii) disputes or matters for which the Telecommunications Act of 1996 specifies a particular remedy or procedure. Disputes involving matters subject to the Connectivity Billing provisions contained in Attachment 6, shall be resolved in accordance with the Billing Disputes section of Attachment 6. In no event shall the Parties permit the pendency of a Dispute to disrupt service to any AT&T Customer contemplated by this Agreement. The foregoing notwithstanding, neither this Section nor Attachment 1 shall be construed to prevent either Party from seeking and

obtaining temporary equitable remedies, including temporary restraining orders. A request by a Party to a court or a regulatory authority for interim measures or equitable relief shall not be deemed a waiver of the obligation to comply with Attachment 1. Emphasis added.

Additionally, Attachment 1 provides that:

1.1.1.1.1 Exclusive Remedy

Negotiation and arbitration under the procedures provided herein shall be the exclusive remedy for all disputes between BellSouth and AT&T arising under or related to this Agreement including its breach, except for: (i) disputes arising pursuant to Attachment 6, Connectivity Billing; and (ii) disputes or matters for which the Telecommunications Act of 1996 specifies a particular remedy or procedure. **Except as provided herein, BellSouth and AT&T hereby renounce all recourse to litigation and agree that the award of the arbitrators shall be final and subject to no judicial review, except on one or more of those grounds specified in the Federal Arbitration Act (9 USC §§ 1 et seq.), as amended, or any successor provision thereto**. Section 2.1. Emphasis added.

If, for any reason, certain claims or disputes are deemed to be non-arbitrable, the non-arbitrability of those claims or disputes shall in no way affect the arbitrability of any other claims or disputes. Section 2.1.1

If, for any reason, the Federal Communications Commission or any other federal or state regulatory agency exercises jurisdiction over and decides any dispute related to this Agreement or to any BellSouth tariff and, as a result, a claim is adjudicated in both an agency proceeding and an arbitration proceeding under this Attachment 1, the following provisions shall apply: Section 2.1.2.

To the extent required by law, the agency ruling shall be binding upon the Parties for the limited **purposes of regulation within the jurisdiction and authority of such agency.** Section 2.1.2.1.

The arbitration ruling rendered pursuant to this Attachment 1 shall be binding upon the Parties for purposes of establishing their respective contractual rights and obligations under this Agreement, and for all other purposes not expressly precluded by such agency ruling. Section 2.1.2.2.

The Current Agreement provides for the jurisdiction of the FCC, FPSC and private arbitration. The Current Agreement also renounces all recourse to litigation, as the award of the arbitrators shall be final.

Q. WHAT ARE THE DISPUTE RESOLUTION PROCEDURES CONTAINED IN THE CURRENT AGREEMENT?

A. **First,** there is informal dispute resolution.

1.1.1.1.2 Informal Resolution of Disputes

> The Parties to this Agreement shall submit any and all disputes between BellSouth and AT&T for resolution to an Inter-Company Review Board consisting of one representative from AT&T at the Director-or-above level and one representative from BellSouth at the Vice-President-or-above level (or at such lower level as each Party may designate). Section 3.1, Attachment 1.
>
> The Parties may enter into a settlement of any dispute at any time. Section 3.2

Second, all disputes affecting service must be resolved within 30 days of the initiation of arbitration proceeding.

> **Resolution of Disputes Affecting Service**
>
> **Purpose**
>
> This Section 9 describes the procedures for an expedited resolution of disputes between BellSouth and AT&T arising under this Agreement which directly affect the ability of a Party to provide uninterrupted, high quality services to its customers at the time of the dispute and which cannot be resolved using the procedures for informal resolution of disputes contained in this attachment of the Agreement. Section 9.1.

Additionally, see Sections 9.3 to 9.8 of Attachment 1.

Third, all other disputes must be resolved within 90 days of the initiation of arbitration proceeding. Section 12, Attachment 1 provides in pertinent part that:

> Except for Disputes Affecting Service, the Arbitrators shall make their decision within ninety (90) days of the initiation of proceedings pursuant to Section 4 of this Attachment, unless the Parties mutually agree otherwise

Q. WHAT ARE THE GOVERNING RULES FOR ARBITRATION CONTAINED IN THE CURRENT AGREEMENT?

A. Section 5.1 provides that:

Governing Rules for Arbitration

The rules set forth below and the CPR Rules shall govern all arbitration proceedings initiated pursuant to this Attachment; however, such arbitration proceedings shall not be conducted under the auspices of the CPR Rules unless the Parties mutually agree. Where any of the rules set forth herein conflict with the rules of the CPR Rules, the rules set forth in this Attachment shall prevail. Section 5.1.

A copy of the CPR Rules for Non-Administered Arbitration is attached as **Supra Exhibit OAR 38.**

Q. WHAT DOES THE AGREEMENT PROVIDE FOR THE APPOINTMENT, REMOVAL AND EXPERIENCE OF ARBITRATORS?

A. Section 6.1, Attachment 1 provides that:

Appointment and Removal of Arbitrators for the Disputes other than the Disputes Affecting Service Process

Each arbitration conducted pursuant to this Section shall be conducted before a panel of three Arbitrators, each of whom shall meet the qualifications set forth herein. **Each Arbitrator shall be impartial, shall not have been employed by or affiliated with any of the Parties hereto or any of their respective Affiliates and shall possess substantial legal, accounting, telecommunications, business or other professional experience relevant to the issues in dispute in the arbitration as stated in the notice initiating such proceeding.** The panel of arbitrators shall be selected as provided in the CPR Rules. Section 6.1. Emphasis added.

It is on record that the parties' current Arbitral Tribunal, consisting of three members, were jointly agreed upon by Supra and BellSouth from a list of qualified candidates as provided by the CPR Institute. See CPR Specialized Panels attached as **Supra Exhibit OAR 39** and Why 250 Global Corporations Are Members of CPR attached as **Supra Exhibit OAR 40,** particularly, **page 4 of 4.**

Q. ARE ARBITRATORS DECISION AND AWARD FINAL AND BINDING ON THE PARTIES?

A. Absolutely. According to Section 12 of Attachment 1:

> **Decision**
> **The Arbitrator(s) decision and award shall be final and binding,** and shall be in writing unless the Parties mutually agree to waive the requirement of a written opinion. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. Either Party may apply to the United States District Court for the district in which the hearing occurred for an order enforcing the decision. Except for Disputes Affecting Service, the Arbitrators shall make their decision within ninety (90) days of the initiation of proceedings pursuant to Section 4 of this Attachment, unless the Parties mutually agree otherwise. Section 12. Emphasis added.

Additionally, Section 14.6 of the CPR Rules for Non-Administered Arbitration provides that:

> The award shall be final and binding on the parties, and the parties will undertake to carry out the award without delay. If an interpretation, correction or additional award is requested by a party, or a correction or additional award is made by the Tribunal on its own initiative as provided in Rule 14.5, the award shall be final and binding on the parties when such interpretation, correction or additional award is made by the Tribunal or upon the expiration of the time periods provided in Rule 14.5 for such interpretation, correction or additional award to be made, whichever is earlier.

See **page 11 of 13, Supra Exhibit OAR 38.**

The significance of above cannot be overemphasized. The finality of the award is a very useful tool that could be used by this Commission for the development of competition in the telecommunications industry.

Q. HOW DOES THE CURRENT AGREEMENT PROVIDE FOR THE COST OF ARBITRATION PROCEEDINGS?

A. The losing party pays the cost of the proceeding. Attachment 1 provides that:

> **Fees**

> The Arbitrator(s) fees and expenses that are directly related to a particular proceeding shall be paid by the losing Party. In cases where the Arbitrator(s) determines that neither Party has, in some material respect, completely prevailed or lost in a proceeding, the Arbitrator(s) shall, in his or her discretion, apportion expenses to reflect the relative success of each Party. Those fees and expenses not directly related to a particular proceeding shall be shared equally. In the event that the Parties settle a dispute before the Arbitrator(s) reaches a decision with respect to that dispute, the Settlement Agreement must specify how the Arbitrator(s') fees for the particular proceeding will be apportioned. Section 13.1.
>
> In an action to enforce or confirm a decision of the Arbitrator(s), the prevailing Party shall be entitled to its reasonable attorneys' fees, expert fees, costs, and expenses. Section 13.2.

Again, the importance of the above provisions is significant. Taxpayers are saved from paying for the losing party's anti-competitive behavior and breaches of contractual obligations while the award ensures the development of competition.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth claims that disputes should not be heard by commercial arbitrators, but should instead be heard by this Commission. BellSouth claims that, in its experience, commercial arbitration is not time effective, and is more costly than resolving disputes before the Commission. Furthermore, BellSouth claims that the members of the Commission are in a better position to understand the issues in dispute, as they deal with such on a regular basis.

Q. HOW DO YOU RESPOND?

A. With all due respect to the Commission, Supra's experience with commercial arbitrations has been that the parties were able to find very qualified, telecommunications-knowledgeable persons to serve as arbitrators. Furthermore, Supra has found the commercial arbitration process to be a much more expedient process. To the extent that either party is not in violation of the Agreement, the

commercial arbitration process should be **less** expensive, as the prevailing party shall recover its attorney's fees and costs.

Perhaps as important, is the fact that commercial arbitrators have the ability to assess damages, whereas the Commission does not. If the parties are required to bring all disputes arising under the Follow-On Agreement to the Commission, neither party will be entitled to recover damages, if such are deemed recoverable. In fact, BellSouth has used this very argument in proceedings before the Commission. **See CC Docket No. 981832-TP and 981833-TP.** Supra would be unfairly prejudiced if it were unable to even pursue damages in the event of BellSouth's breach of the Follow-On Agreement. Again, BellSouth would have very little incentive to comply with the terms of the Follow-On Agreement if it knew it would not be subject to claims for damages. Additionally, Supra believes that commercial arbitration in conjunction with no limitation of liability provision or such a provision with the exceptions identified in Issue 65 as well as a punitive damages clause as identified in the Added Issue, will provide a sufficient incentive for BellSouth's compliance.

Issue 4: *Should the Follow-On Agreement contain language to the effect that it will not be filed with the Commission for approval prior to an ALEC obtaining ALEC certification from the Commission?*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. The Follow-On Agreement between Supra and BellSouth need not contain any provision that requires prior certification by an ALEC prior to filing the Interconnection Agreement with the Commission. Since Supra is already certificated in Florida by the Commission, such language is superfluous. However, Supra has reason to believe

that BellSouth may be using its proposed provision to delay the entrance of new carriers into its service territory.

Q. DOES THE COMMISSION IMPOSE A DUTY UPON BELLSOUTH OR ANY ILEC TO REQUIRE CERTIFICATION PRIOR TO THE ADOPTION OF AN INTERCONNECTION AGREEMENT?

A. No. The Commission imposes no such duty upon BellSouth or any ILEC. The Commission only mandates that an ALEC be certificated before it begins providing Telecommunications Services in Florida. FPSC rule 25-4.004 states that:

> Except as provided in Chapter 364, Florida Statute, no person shall begin the construction or operation of telephone lines, plant or systems or extension thereof, or acquire ownership or control thereof, either directly or indirectly, without first obtaining from the Florida Public Service Commission, a certificate that the present or future public convenience and necessity require or will require such construction, operation or acquisition.

If an ALEC violates this rule, it will suffer the consequences according to law. The inclusion of this provision will only serve to delay an ALEC's attempt to provide Telecommunications Services in BellSouth's territory. Moreover, any ALEC, whether certificated or not, has the right to legally conduct test orders in Florida, so long as the ALEC is not selling telecommunications services to consumers. This is consistent with Florida Statutes § 364.33[25]. There are no laws or decisions that support this BellSouth's position.

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[25] F.S. 364.33 states as follows: A person may not begin the construction or operation of any telecommunications facility, or any extension thereof for the purpose of providing telecommunications services to the public, or acquire ownership or control thereof, in whatever manner, including the acquisition, transfer, or assignment of majority organizational control or controlling stock ownership, without prior approval. This section does not require approval by the commission prior to the construction, operation, or

Q. IS SUPRA PROPOSING AN ALTERNATIVE POSITION THAT WILL SATISFY BELLSOUTH'S CONCERN?

A. Yes. BellSouth is taking the position that if a non-certificated ALEC has an interconnection agreement, it may provide service without first being certificated, thus exposing BellSouth to being penalized by the Commission. Supra does not believe that this is accurate; however, Supra proposes a provision requiring BellSouth to provide service to an ALEC, whether certificated or not in Florida, so long as the ALEC is not providing telecommunications services to the public. Supra's proposed language coupled with the indemnification provisions contained in the Follow-On Agreement afford BellSouth adequate protection with respect to its concerns.

Issue 5: *Should BellSouth be required to provide to Supra a download of all BellSouth's Customer Service Records ("CSRs")?*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

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

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extension of a facility by a certificated company within its certificated area nor in any way limit the commission's ability to review the prudency of such construction programs for ratemaking as provided under this chapter.

Issue 9: *What should be the definition of "ALEC"?*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. Supra wishes to keep the listing and definition of ALEC in the Follow-On Agreement as set forth in the Current Agreement. See Attachment 11, wherein the parties agreed that LEC would be as defined by the Act. Supra is at a loss to understand why BellSouth would not want to clearly define the term ALEC. Supra is willing to also include the FCC's definition of ILEC and/or RBOC. Supra is not disputing the definition of ALEC found in Florida Statute 364.02. However, BellSouth should not be allowed to refuse to comply with an interconnection agreement simply because the carrier is not certificated. Consistent with both federal law and Fla. Stat. § 364.33, a non-certificated carrier should be allowed to engage in a test implementation of an interconnection agreement so long as the carrier is not providing telecommunications services to the public.

Issue 16: *Under what conditions, if any, may BellSouth refuse to provide service under the terms of an interconnection agreement?*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. Under no circumstances should BellSouth refuse to provide any service under the terms of an interconnection agreement. Under the parties' various agreements, BellSouth would often refuse to provide Supra with requested services, claiming that the agreements did not provide for a certain rate, and therefore, until the parties agreed to a rate or the parties reached an arbitrated rate, BellSouth would continue to deny the

requested services. Supra had offered to retroactively apply the negotiated or arbitrated rate, to the time when BellSouth first supplied the service, but BellSouth refused, claiming it had no obligation to do so. Supra seeks language in the Follow-On Agreement which would obligate BellSouth to immediately provision requested services for which the Agreement did not specify a rate, such rate, once determined, to be applied retroactively.

Of course, the Follow-On Agreement should be a substantially complete agreement, subject only to amendments negotiated by the parties or mandated by law and regulatory authorities. Supra will apply its best efforts to identify all services and elements for which no rate has been established, and urge BellSouth to do the same. However, to the extent that some rates are left out or not determined at the time the Follow-On Agreement is implemented, Supra's request is not unreasonable, and would be in the best interests of Florida's consumers, as they would not have to wait for the parties to arbitrate additional rates before being provided with a competitive service.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth does not believe that the Current Agreement is a complete agreement. Such is articulated by BellSouth's position that if a rate for service or an element is not specifically identified in the Agreement, then it has no obligation to provide it. BellSouth believes that the Agreement must be amended upon its request if its internal procedure requires that a rate or a condition is necessary for the provision of telecommunication services.

Q. WHAT IS THE EFFECT OF SUCH A POSITION ON SUPRA?

A. BellSouth's position is unreasonable and hinders real competition because of the ever-changing nature of the telecommunications environment. Moreover, this position will unreasonably delay the implementation of the Follow-On Agreement and the provision of Telecommunications Services to consumers.

Q. WHAT SHOULD BE THE PROCEDURE FOR RATES, ITEMS OR ELEMENTS NOT IDENTIFIED IN THE FOLLOW-ON AGREEMENT PRIOR TO EXECUTION?

A. If a rate is not provided in the Follow-On Agreement for a service, item or element, and that service, item or element could not reasonably be identified prior to execution, then BellSouth must provide that service, item or element without additional compensation. This includes components of any service, item or element for which there are cost studies or for which it can be reasonably concluded that BellSouth is compensated for the component within the cost of the entire service, item or element.

If the Follow-On Agreement does not directly address a service, item or element, but that service, item or element is necessary to provide a service, item or element directly addressed by the Follow-On Agreement, then BellSouth must provide that service, item or element without additional compensation if cost studies show or one could reasonable conclude that the cost of the service, item or element not addressed is included in the cost of the service, item or element addressed in the Follow-On Agreement.

Finally, if the Follow-On Agreement does not address a new service, item or element and new contract terms are necessary, then BellSouth must still provide that service, item or element; but, if the parties cannot expediently negotiate a new amendment, and must proceed according to the dispute resolution process in the Follow-On Agreement to resolve the terms of the new amendment. However, absent a Commission order, BellSouth should not be able to refuse to provide the service, item or element while the parties are resolving the new amendment. The new amendment should be applied retroactively to the date the service is first provisioned.

Issue 17: *Should Supra be allowed to engage in truthful, legal comparative advertising using BellSouth's name and marks?*

Q. ARE THERE ANY LAWS THAT RESTRICT THE USE OF BELLSOUTH'S NAME AND MARKS IN COMPARATIVE ADVERTISING?

A. No. The federal trademark law and its progeny do not impose any restrictions on the use of marks in truthful comparative advertising. Under federal law, Supra can, and is, allowed to use BellSouth's name and marks (i.e. trademarks, tradename, service marks and service names) in comparative advertising, which is truthful. The purpose of such law is to promote education of the consumers and foster competition, purposes in line with those contemplated in the Act.

Q. HAVE THERE BEEN ANY PROCEEDINGS BETWEEN SUPRA AND BELLSOUTH REGARDING THE USE OF BELLSOUTH'S MARKS?

A. BellSouth has sought to enjoin Supra from using its name and marks in all of Supra's advertisement[26]. Although these proceeding have not been fully adjudicated, the United States District Court of the Southern District of Florida has conclusively stated that Supra is allowed to use the BellSouth's names and marks in truthful and comparative advertising.

Q. WHAT DOES SUPRA WISH TO DO BY SEEKING THE RIGHT TO ENGAGE IN TRUTHFUL, COMPARATIVE ADVERTISING?

A. Supra seeks to inform consumers that they now have a choice in a local telephone service provider, and that Supra can offer similar services at competitive prices.

Q. HAS BELLSOUTH GIVEN OTHER ALECS THE RIGHT TO USE THE BELLSOUTH'S NAMES AND MARKS IN ADVERTISING?

A. Yes. On or about June 21, 2000, BellSouth entered into an Interconnection Agreement with MGC Communications d/b/a Mpower Communications Corporation ("Mpower.") The Mpower Interconnection Agreement, in paragraph 9.1 of the General Terms and Conditions - Part A, a true copy of which is attached hereto as **Supra Exhibit OAR 46**, provides:

> No License. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. Unless otherwise mutually agreed upon, neither Party shall publish or use the other Party's logo, trademark, service mark, name, language, pictures, or symbols or words from which the Party's name may reasonably be inferred or implied in any product,

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[26] The case is ongoing in the Southern District of Florida, Miami, Florida. Case No. 00-4205-CIV-Graham/Turnoff

service, advertisement, promotion, or any other publicity matter, except that nothing in this paragraph shall prohibit a Party from engaging in valid comparative advertising. . . . (Emphasis added)

Q. DID SUPRA SEEK TO ADOPT THIS PORTION OF THE MPOWER AGREEMENT?

A. Yes. Supra requested the right to adopt that provision in a letter dated October 6, 2000, under the non-discriminatory provision of the Act, attached herein **as Supra Exhibit OAR 41.**

Q. HAS BELLSOUTH AGREED TO THE ADOPTION?

A. No. BellSouth never responded and has ignored Supra's request. Instead, BellSouth used its sister company, BellSouth Intellectual Property Corporation, to file a lawsuit against Supra.

Supra has yet to be given a valid reason why it may not adopt the referenced provision from the Mpower Agreement, nor has Supra been provided with a valid reason why it should not have the same right of virtually every other business in the United States to engage in truthful, comparative advertising. Specifically, 15 U.S.C.A. § 1125(c)(4) provides, in pertinent part:

The following shall not be actionable under this section:

(A) Fair use of a famous mark by another person in comparative commercial advertising or promotion to identify the competing goods or services of the owner of the famous mark. (Emphasis added.)

Furthermore, the Federal Trade Commission's policy encourages comparative advertising, and "to make the comparison vivid, the Commission 'encourages the

naming of, or reference to competitors.' " *August Storck K.G. v. Nabisco, Inc.*, 59 F.3d 616, 618 (7th Cir.1995) (quoting 16 C.F.R. § 14.15(b))(Emphasis added). The Follow-on Agreement should provide that Supra has the unfettered right to engage in truthful, comparative advertising.

Issue 18: *What are the appropriate rates for the following services, items or element forth in the proposed Interconnection Agreement?*

(H) Resale

(I) *Network Elements*

(J) *Interconnection*

(K) *Collocation*

(L) *LNP/INP*

(M)*Billing Records*

(N) *Other*

Q. SHOULD BELLSOUTH BE ALLOWED TO UNILATERALLY SET THE RATES FOR SERVICES AND ELEMENTS IN THE FOLLOW-ON AGREEMENT?

A. No. BellSouth cannot set the rates for services and elements it provides to Supra under any circumstances. Otherwise, BellSouth will establish exorbitant rates for services, items and elements as it has in its UNE-P Agreement. Supra agrees to incorporate the rates as set forth in FPSC Docket Number 990649 TP.

Q. HOW SHOULD THE RATES FOR SERVICES AND ELEMENTS BE ESTABLISHED?

A. The rates set forth in the Follow-On Agreement should be those already established by the FCC and the Commission in current and/or prior proceedings. To the extent neither the FCC nor the Commission has established such rates, the rates should be those set forth in the Current Agreement.

Q. WHAT SERVICES, NETWORK ELEMENTS, INTERCONNECTION, COLLOCATION, LNP/INP, BILLING RECORDS AND OTHER IS SUPRA SEEKING RATES TO BE INCLUDED IN THE INTERCONNECTION AGREEMENT?

A. See attached **Supra Exhibit OAR 42.**

Issue 26: *Under what rates, terms and conditions may Supra purchase network elements or combinations to replace services currently purchased from BellSouth tariffs?*

Q. HAS THIS ISSUE BEEN NARROWED?

A. Yes. This issue has been narrowed to the following: *Should the TELRIC cost to do a record change in BellSouth's OSS, plus the recurring price of the appropriate network elements or combinations, be the non-recurring price to purchase network elements and combinations in such situations.*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. The TELRIC cost to do a record change in BellSouth's OSS, plus the recurring price of the appropriate network elements or combinations, should be the non-recurring price to purchase network elements and combinations in such situations.

Q. HAS THE COMMISION RULED ON THIS MATTER?

A. Yes. The Commission ruled on this matter in docket PSC-FOF-98-0810-TP in which it equated the labor required to effect this change to be no different than that required to effect a change of a customer's long distance carrier (PIC change). The Commission stated:

> We also find that in cases not involving designed services, where fallout does not occur, and when electronic recent change translation is available, the time to migrate an existing BellSouth customer to an ALEC, that is to say, changing the presubscribed local carrier (PLC) code, is equal to the time it takes BellSouth to migrate a customer to an IXC by changing the PIC code. Upon review of the evidence in this record, we approve the non-recurring work times and direct labor rates shown in Table 1 for each loop and port combination in issue in this proceeding for the migration of an existing BellSouth customer to AT&T or MCIm without unbundling. We furthermore approve the resultant NRCs shown in Table II.

Table II

Commission-Approved Non-recurring Charges for Loop and Port Combinations

Network Element Combination	First Installation	Additional Installations
2-wire analog loop and port	$1.4596	$0.9335
2-wire ISDN loop and port	$3.0167	$2.4906
4-wire analog loop and port	$1.4596	$0.9335
4-wire DS1 loop and port	$1.9995	$1.2210

As such, the rates set forth in the Commission's Table II, *supra*, are the rates which should be included in the Follow-On Agreement.

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

Issue 35: *Is conducting a statewide investigation of criminal history records for each Supra employee or agent being considered to work on a BellSouth premises a security measure that BellSouth may impose on Supra?*

Q. WHAT RESTRICTIONS HAS BELLSOUTH PROPOSED ON SUPRA'S ABILITY TO ALLOW ITS EMPLOYEES AMD AGENTS TO ACCESS ITS COLLOCATION SPACE?

A. BellSouth demands that Supra certify that criminal background checks have been conducted on each person who accesses the collocation space. Apparently, any person with a criminal conviction (felony or misdemeanor) would either be precluded from entry and/or Supra would be required to obtain permission to allow said person to work in the collocation space.

Q. IS THIS A REASONABLE REQUEST?

A. No. This requirement is unreasonable, excessive and discriminatory. Essentially, BellSouth would require all of Supra's field technicians to undergo a criminal background check, since any such technician may be called upon to work in our collocation space at any time. It is unreasonable and unnecessary because for each and every Supra employee, Supra already conducts an open-ended, county-by-county

criminal background search that encompasses the entire state of Florida. Anyone found to have been convicted of a felony or non-traffic related misdemeanor is terminated from or not offered employment. In fact, Supra's security measures are much more stringent than those BellSouth has in place for its own employees, vendors and agents. BellSouth requires only a seven (7) year criminal background check for all of its employees prior to hiring, and a five (5) year criminal background check for vendors and agents, while Supra's criminal background check is open-ended.

There have been no reported incidents of a Supra employee intentionally damaging any part of the BellSouth network. BellSouth has not and cannot show that the existing security arrangement is inadequate, or why the proposed security scheme is needed.

Q. WHY IS THE REQUIREMENT EXCESSIVE?

A. It increases Supra's expenses without any concomitant increase in the security purported to be sought by BellSouth. Supra has no reason to believe that its employees are criminals. Supra's current hiring and security practices seek to protect customers, employees and vendors and are more stringent that what BellSouth has in place. These security practices of Supra are intended to provide a safe and healthy work environment for all employees and contractors. There is no indication that a person convicted of a felony or misdemeanor has any more of an incentive to damage BellSouth's property as opposed to Supra's property.

Q. WOULD BELLSOUTH'S PROPOSED CRIMINAL BACKGROUND CHECK PROVIDE ANY ADDITIONAL SECURITY GUARANTEES?

A. No. The criminal background check proposed by BellSouth does nothing to limit or restrict a worker from harming or damaging property. Thus, it adds nothing to the current security arrangements. BellSouth has not provided any data demonstrating the usefulness of the proposed security restrictions in mitigating harm and damage to its network from Supra's employees and agents. If BellSouth's concern is about the destruction of network property, this can be alleviated through monitoring via cameras, electronic security locks, special identification badges and other preventative means, some of which have already been implemented. Moreover, Supra is willing to provide indemnification for loss or damage that occurs to BellSouth's property at a BellSouth premise as a result of the activities of a Supra employee. BellSouth's onerous proposal is nothing more than a tactic to stall competition and increase Supra's costs of and slow Supra's collocation efforts.

Q. IS BELLSOUTH'S PROPOSAL CONSISTENT WITH THE FCC'S RULES?

A. No. While the FCC stated In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, issued on March 31, 1999 (FCC 99-48 in CC Docket No. 98-147), that incumbent LECS "may impose reasonable security arrangements to protect their equipment and ensure network security and reliability," additional security and background checks are not "reasonable security arrangements" as envisioned by the FCC. BellSouth's proposed criminal background check, necessarily importing increased expenses, is a bar for Supra collocation, is violative of the Act's allowance for non-discriminatory competition, and flies in the face of the FCC rule. In paragraph 48 of FCC 99-48, the FCC determined that:

> Incumbent LECs may establish certain reasonable security measures that will assist in protecting their networks and equipment from harm...We permit incumbent LECs to install, for example, security cameras or other monitoring systems, or to require competitive LEC personnel to use badges with computerized tracking systems...We further permit incumbent LECs to require competitors"employees to undergo the same level of security training, or its equivalent, that the incumbent's own employees, or third party contractors providing similar functions, must undergo. (FCC 99-48, paragraph 48)

Based upon the FCC ruling, it is apparent that an ILEC's security arrangement that includes electronic monitoring systems and computerized badges is adequate and provides "reasonable security measures" that would protect the ILEC's "networks and equipment from harm." Accordingly, the FCC warned that "the incumbent LEC may not impose discriminatory security requirements that result in increased collocation costs without the concomitant benefit of providing necessary protection of the incumbent LEC's equipment," and found that "alternative security measures, like those outlined above, adequately protect incumbent LEC networks..."(FCC 99-48, paragraphs 47, 49)

Issue 38: *Is BellSouth required to provide Supra with nondiscriminatory access to the same databases, so that Supra performs the same functions as BellSouth?*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. Please see the discussion regarding Parity Provisions *supra*. Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should

Supra discover relevant information as a result, Supra requests the right to supplement the record on this issue.

Issue 44. A. *What are the appropriate criteria under which rates, terms and conditions may be adopted from other filed and approved Interconnection Agreements?*

B. *What should be the effective date of such an adoption?*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. Supra should be entitled to adopt any single rate, term or condition from other filed and approved interconnection agreements. Under the Current Agreement, Supra has made numerous requests to adopt single rates, terms or conditions from other filed and approved interconnection agreements. In virtually every circumstance, BellSouth has refused such an adoption without incorporating additional rates, terms or conditions in a proposed amendment. Often times, BellSouth will propose such additional rates, terms or conditions which have nothing to do with the adopted language which Supra originally sought. In other circumstances, BellSouth has refused such an adoption unless Supra adopted the entire attachment from which the single rate, term or condition was pulled. These BellSouth practices have served to make the FCC's "pick and choose" rule meaningless. AT&T v. Iowa Utilities Board, 525 U.S. 366 (1999). According to the Supreme Court of the United States, Supra can pick and choose which terms it wishes to adopt, and need not adopt an entire agreement in order to get the terms it wishes.

Q. SHOULD THE FOLLOW-ON AGREEMENT REFLECT THE SUPREME COURT'S "PICK AND CHOOSE" RULING IN AT&T V. IOWA UTILITIES BOARD?

A. Yes. Currently this is the law of the land. A provision must be inserted in the Follow-On Agreement to reflect the ruling of the Supreme Court to permit Supra to substitute more favorable rates, terms and conditions effective as of the date of Supra's request.

Q. WHAT SHOULD BE THE EFFECTIVE DATE OF SUCH AN ADOPTION OR SUBSTITUTION?

A. The date of Adoption should be retroactive to the date Supra first requested the affected service, items, elements, conditions, or obligations. As the rate, term or condition has already been filed and approved by the Commission, there is no reason to delay the effective date of the adoption. Supra understands that the Commission must approve all adoptions to an interconnection agreement. However, any delay in the effective date of the adoption will serve to benefit only one party – BellSouth. If the Commission sets a time frame for BellSouth to refuse or accept a request for adoption, BellSouth assuredly will use the full time allotted before taking action. If the Commission makes the effective date retroactive to the date of the request, BellSouth will no longer have an incentive to delay the process. As the Award indicates, BellSouth will abuse its former monopoly status. If there is one thing that must be taken from this Award, it is that an ILEC must have an incentive to comply with the Act, federal and state rules and orders, and its agreements.

Issue 46: *Is BellSouth required to provide Supra with the capability to submit orders electronically for all wholesale services and elements?*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

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

Issue 47: *When, if at all, should BellSouth be allowed to manually intervene with an electronically submitted order?*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

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

Issue 51: *Should BellSouth be allowed to impose a manual ordering charge when it fails to provide an electronic interface?*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

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

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. Manual ordering charges apply when Supra places an order manually, either for its own business reasons or because BellSouth does not have an electronic interface that will allow Supra to place orders electronically. BellSouth is not required to provide electronic ordering for all UNE's. BellSouth has proposed cost-based rates to recover the manual labor costs associated with both manual and electronic ordering in Docket No. 990649-TP. Recovery of costs associated with the development and ongoing maintenance of BellSouth's electronic interfaces is being addressed in a generic OSS interface cost docket. BellSouth proposes that the rates the Commission establishes in these dockets be incorporated into the Agreement. BellSouth has agreed to charge Supra electronic ordering charges for complete and accurate LSRs that Supra must submit manually when BellSouth's existing electronic interfaces utilized by Supra are unavailable for reasons other than scheduled maintenance, provided the down time does not occur outside the scheduled maintenance window or for other reasonable scheduled activities for which reasonable advance notification is provided by Bell South, and provided the activities do not occur outside the schedule window.

Q. WHAT IS SUPRA'S RESPONSE TO BELLSOUTH'S POSITION?

A. As BellSouth's own retail systems are automated BellSouth should not be allowed to impose a manual ordering charge where BellSouth does not provide an electronic means for ordering the product or service. If BellSouth were to provide Supra with non-discriminatory, direct access to the same OSS used by BellSouth's retail side, this issue would moot..

Q. SHOULD BELLSOUTH BE PERMITTED TO CHARGE SUPRA FOR MANUAL OSS PROCEESSING, WHEN BELLSOUTH'S OWN RETAIL SYSTEMS ARE AUTOMATED, AND WHEN BELLSOUTH DOES NOT MAKE ELECTRONIC OSS INTERFACES AVAILABLE TO ITS COMPETITORS?

A. No. This is, by definition, not based on forward-looking economic principles, and is unreasonable and discriminatory and thus violates the Act. If BellSouth uses electronic processes for its own OSS and does not provide electronic processes to its competitors to obtain what amounts to substantially the same elements or services, it is not providing parity. In its *First Report and Order,* FCC 96-325, In the matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Released August 8, 1996 (the "Local Competition Order"), the FCC stated, at paragraph 523, that "(o)bviously, an incumbent that provisions network resources electronically does not discharge its obligations under section 251(c)(3) by offering competing providers access that involves human intervention." Certainly that access must be provided within the same time frames enjoyed by the incumbent. Additionally, Section 10.1 of Attachment 15 of the Current Agreement is a reservation of rights with respect to Supra's right to nondiscriminatory, access to BellSouth's OSS.

In fact, where BellSouth has an electronic means to place an order for a specific service or element, and where BellSouth does not make an electronic means available for Supra, Supra should not be charged anything, either an electronic or a manual charge. Furthermore, BellSouth should have to issue a credit to Supra for every manual LSR submitted by Supra as a result of BellSouth's failure to provide an electronic means to order the applicable service and/or element. This would provide BellSouth with plenty of incentive to make the electronic ordering system available as well as to comply with its contractual and parity obligations. Please see the discussion regarding Parity Provisions *supra*.

Q. ARE THERE PUBLIC POLICY REASONS WHY BELLSOUTH SHOULD NOT BE ABLE TO CHARGE SUPRA FOR MANUAL OSS WHEN IT PROVIDES ELECTRONIC OSS TO ITSELF?

A. Yes. BellSouth should not be encouraged to use inefficient, costly systems to serve Supra when it provides substantially the same elements or services to its own customers using electronic processes. Indeed, BellSouth should be strongly encouraged to do just the opposite.

Q. CURRENTLY, ARE THERE CERTAIN SERVICES FOR WHICH SUPRA MUST SUBMIT MANUAL ORDERS?

A. Yes. The following are examples of services for which Supra must submit manual LSRs: (1) Off Premise Extensions; (2) T-1; (3) PR1; (4) BR1; (5) Megalink; (6)

Frame Relay; (7); Trunks; (8) Essex; (9) Foreign Exchange; (10) Foreign Central Office; (11) PBX; (12) Centrex; and, (13) virtually all other complex services.

Q. WHERE BELLSOUTH HAS PROVIDED SUPRA WITH ELECTRONIC INTERFACES, AND THE INTERFACES ARE NOT FUNCTIONING, SHOULD AN ELECTRONIC OR MANUAL ORDERING CHARGE APPLY?

A. If, at the time the LSR is submitted, the electronic interfaces provided by BellSouth are not functioning through no fault of Supra, then no charge should apply, as Supra would be forced to use the slower, more costly (to Supra) manual ordering process. In fact, BellSouth should have to provide Supra a credit as compensation for Supra's waste of additional time.

Q. WHERE BELLSOUTH HAS PROVIDED, AND SUPRA HAS IN PLACE ELECTRONIC INTERFACES, AND THE INTERFACES ARE NOT FUNCTIONING THROUGH NO FAULT OF SUPRA, SHOULD SUPRA RECEIVE SOME TYPE OF COMPENSATION AS A RESULT OF THIS DOWNTIME?

A. Yes. I believe Supra should receive some type of credit that should be established by the Commission. After all, Supra incurs an additional cost in manpower as a result of BellSouth's non-compliance. Please see the discussion regarding Parity Provisions *supra*.

Q. HAS SUPRA PROPOSED ANY LANGUAGE IN CONNECTION WITH THIS ISSUE?

A. Yes. Supra has proposed the following language, assuming Supra does not have the ability to submit orders as does BellSouth's retail departments:

> LSRs submitted by means of an electronic interface will incur the per LSR nonrecurring OSS electronic ordering charge associated with electronically ordered facilities as specified in _____. Provided that the electronic interface which performs the submission of the LSR is functioning. LSRs submitted by means other than the electronic interface which performs the submission of the LSR (mail, fax, courier, etc.), while said interface is functioning, will incur a nonrecurring manual ordering charges associated with manually ordered facilities as specified in _____. An individual LSR will be identified for billing purposes by its Purchase Order Number (PON). If the applicable electronic interface is not available or not functioning at the time when the LSR is submitted, the manual ordering nonrecurring charge does not apply. In such cases, BellSouth will provide Supra with a credit of $___ per manually submitted LSR. Each LSR and all its supplements or clarifications issued, regardless of their number, will count as a single LSR for nonrecurring charge billing purposes. Nonrecurring charges will not be refunded for LSRs that are canceled by Supra Telecom.

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

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth is only obligated by Section 251 (c)(4) of the 1996 Act and the FCC's Rule 51.605 (a) to offer a resale discount on telecommunications service that BellSouth

provides at retail to subscribers who are not telecommunications carriers. Exchange access services are generally not offered at retail to subscribers who are not telecommunications carriers. Consequently, the resale discount does not apply to services in the access tariffs.

Q. HAS THE COMMISSION ADDRESSED AND ISSUED AN ORDER ON THIS ISSUE?

A. Yes. The Commission on page 29 of its Order dated March 30, 2001, (Order No. PSC-01-0824-FOF-TP)(Docket No. 000649-TP) concerning the follow-on interconnection agreement between BellSouth and MCI, held that "...BellSouth shall offer Worldcom a resale discount on all retail telecommunications services BellSouth provides to end-user customers, regardless of the tariff in which the service is contained." Notwithstanding that this issue has been resolved, I would like to address this issue in greater detail.

Q. WHAT CONTRACT LANGUAGE HAS SUPRA PROPOSED CONCERNING THE SERVICES BELLSOUTH MUST PROVIDE ON A RESALE BASIS?

A. Supra has proposed the following language :

> Local Resale shall include all Telecommunications Services offered by BellSouth to parties other than telecommunications carriers, regardless of the particular tariff or other method by which such Telecommunications Services are offered. For example, Local Resale shall include Telecommunications Services offered in BellSouth's access tariffs and made available to parties other than telecommunications carriers, regardless of whether or not such Telecommunications Services are offered in other tariffs, too. Local Resale shall be subject only to the limitations and restrictions set forth in this Agreement.

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. Offering a retail service under a tariff other than the private line or GSST tariffs does not preclude a company from the wholesale discount.

Q. WHAT DOES THE ACT AND FCC RULES REQUIRE CONCERNING SERVICES THAT MUST BE PROVIDED ON A RESALE BASIS?

A. The Act requires BellSouth "not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services." 47 USC Section 251 (b)(1). BellSouth is required to "offer to any requesting telecommunications carrier any telecommunications service that [BellSouth] offers on a retail basis to subscribers that are not telecommunications carriers for resale at wholesale rates." 47 C.F.R. Section 51.605 (a).

Q. DOES BELLSOUTH'S POSITION COMPLY WITH THOSE PROVISIONS?

A. No. BellSouth seeks to discriminate against Supra by denying it the right to resell services included in BellSouth's Federal and State Access Tariffs, even when BellSouth offers those services to end users. Thus, under BellSouth's position it would be free to include retail services in its access tariffs and offer such services to its end users, while prohibiting Supra from reselling those services at prices that would enable it to compete with BellSouth. Such a result would not be consistent with the requirements of the Act.

Issue 55: *Should BellSouth be required to provide an application-to-application access service order inquiry process?*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

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

Q. WHAT DO YOU UNDERSTAND BELLSOUTH'S POSITION TO BE IN REGARD TO THIS ISSUE?

A. Supra's claim that it needs the Access Service Request ("ASR") interface to obtain pre-order information electronically for UNEs ordered via access service request is wrong. The national standard for ordering UNEs is the Local Service Request ("LSR"), not the ASR. BellSouth contends that it provides electronic pre-ordering functionality for UNEs and resale services via the Local Exchange Navigation System ("LENS"), Robo TAG, and TAG interfaces. Thus, the electronic pre-ordering functionality that Supra seeks is available through the LSR process.

Q. WHAT IS SUPRA'S RESPONSE TO BELLSOUTH'S POSITION?

A. BellSouth should provide Supra with nondiscriminatory, direct access to the same OSS that BellSouth's retail divisions use to obtain pre-order information

electronically for UNEs or services ordered via ASR. In the alternative, BellSouth should develop an application-to-application electronic interface to process service inquiries (pre-ordering) for its ASR. Such a process is required to obtain pre-order information electronically for UNEs ordered via an ASR.

Q. WHAT LANGUAGE HAS SUPRA PROPOSED CONCERNING AN APPLICATION-TO-APPLICATION ACCESS SERVICE ORDER INQUIRY INTERFACE?

A. Assuming Supra does not have direct access to the same OSS that BellSouth retail has, Supra has proposed the following language:

> In addition, at Supra's request, BellSouth shall design, develop, implement, test, and maintain an Application-to-Application access service order inquiry interface.
>
> BellSouth shall provide the following transaction sets for access order inquiry:
>
> Service Address Validation - - G1.0. This function allows Supra to query BellSouth's systems for address validation using CUST PREM, working ECCKT, CLLI code. BellSouth shall respond with found, not found, alternatives, or restricted. BellSouth shall provide SWC/LSO and/or address, when appropriate. If ATIS/OBF adopts the US Postal Publication 28 Standard for Service Address, BellSouth and Supra will base their Access Inquiry implementation on that standard.
>
> Service Availability - - G2.0: This function allows Supra to determine service availability or validate the earliest date of product service availability requested between two (2) SWC locations.
>
> CFA (Channel Facility Assignment) Inquiry – G3.0. This function allows Supra to query the current status of facility channels or slots.

Issue 57: *Should BellSouth be required to provide downloads of RSAG, LFACS, PSIMS and PIC databases without license agreements and without charge?*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

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

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth provides Supra access to the RSAG database on a per transaction basis, through the LENS, TAG, and Robo TAG pre-ordering interfaces. Since the RSAG is updated nightly, Supra has real-time access to this database. A download of RSAG is unnecessary for Supra to provide local service to its end users and BellSouth should not be required to provide downloads of RSAG without a charge and without a license agreement since Supra has real-time access to RSAG through BellSouth's robust electronic interfaces. BellSouth will, upon request, provide a flat file extraction of the P/SIMS, which also includes PIC information, for all nine states on a monthly basis and Supra should submit the request for these downloads via its BellSouth account team. Moreover, if Supra is referring to BellSouth's plat records that are stored electronically for its eastern states which includes Florida, BellSouth will not provide a download of PLAT information as this information is considered to be proprietary, with no legitimate business reason for obtaining this download.

Q. WHAT IS SUPRA'S RESPONSE TO BELLSOUTH'S POSITION?

A. First, Supra should be provided with nondiscriminatory, direct access to these databases that BellSouth's retail departments enjoy. Anything less is discriminatory. There is no legitimate business reason why Supra should be provided with a different access. When the CLEC pre-ordering interfaces are malfunctioning, Supra presently has no way to access any of the relevant databases. When BellSouth's internal OSS is malfunctioning, BellSouth retail departments have direct access to these databases. Supra should have the same. BellSouth is failing to provide parity in accordance with the Act and should be required to provide downloads of the relevant databases as this would allow Supra to operate, albeit in a limited fashion, when the interfaces are down. Additionally, BellSouth's substitution of PLATS for LFACS is an attempt to mislead the Commission as to the actual substance of this issue.

Issue 59: *Should Supra be required to pay for expedited service when Bellsouth provides services after the offered expedited date, but prior to Bellsouth's standard interval?*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

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

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth asserts that it is under no obligation to expedite service for Supra or any other ALEC. If BellSouth does so, however, Supra should be required to pay expedite charges when BellSouth expedites a service request and completes the order before the standard interval expires.

Q. WHAT IS SUPRA'S RESPONSE TO BELLSOUTH'S POSITION?

A. There is nothing which leads Supra to believe that its requests for expedited service are any different than BellSouth's requests. If BellSouth is able to expedite orders for its customers, it must also do so for Supra's customers, when requested and where reasonable. There is nothing which suggests that BellSouth's expedited orders cost any more than BellSouth's "standard" orders. As such, BellSouth is merely trying to increase Supra's cost of competing with BellSouth. BellSouth should not receive additional payment when it fails to perform in accordance with the specified expedited time frame. In fact, BellSouth should have to give Supra a credit in the instances where it fails to comply with its obligations.

Issue 60: *When BellSouth rejects or clarifies a Supra LSR or order, should BellSouth be required to identify all errors in the LSR or order that would cause it to be rejected or clarified?*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. Please see the discussion regarding Parity Provisions *supra*. Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its

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

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth contends that it is the responsibility of Supra to submit complete and accurate LSRs such that rejections and/or clarifications are not necessary. Additionally, the type and severity of certain errors may prevent some LSRs from being processed further once the error is discovered by BellSouth's system. Without first correcting the error in question and then resubmitting for further processing, other errors on the LSR cannot be identified.

Q. WHAT IS SUPRA'S RESPONSE TO BELLSOUTH'S POSITION?

A. Identifying all errors in the LSR or order will prevent the need for submitting the LSR or order multiple times. For example, there is a field on some LSRs or orders that contains four alphanumeric characters. Each character means something different to the circuit configuration and although the characters could have been setup as four separate fields, they were not. If there is an error in this four-character field, BellSouth refuses to identify which field contains the error. As BellSouth's OSS notifies itself of ordering errors, through its real-time, edit-checking capabilities, its failure to provide Supra with similar notification fails to achieve parity in accordance with the Act and the Current Agreement.

Additionally, if any LSR or order has been clarified, BellSouth should be required to immediately notify Supra of this fact. There have been numerous instances where

Supra has had to track LSRs or orders in order to obtain clarifications. Although the clarifications are resulting from BellSouth's internal errors, BellSouth nevertheless fails to notify Supra of the clarifications and if not for Supra's repeated efforts to obtain this information, BellSouth will allow the LSR or order to sit until purged by its system, thus denying Florida consumers from converting their service to Supra and enjoying dramatic savings over BellSouth's service. Another example of BellSouth's hinderance of competition and its resulting impact on Florida consumers.

Q. WHAT LANGUAGE HAS SUPRA PROPOSED CONCERNING THIS ISSUE?

A. Assuming Supra does not have direct access to BellSouth's retail OSS, Supra has proposed the following language:

> BellSouth shall reject and return to Supra any service request or service order that BellSouth cannot provision, due to technical reasons, or for missing, inaccurate or illegible information. When a LSR or order is rejected, BellSouth shall, in its reject notification, specifically describe all of the reasons for which the LSR or order was rejected. BellSouth shall review the entire LSR or order, and shall identify all reasons for rejection in a single review of the current version (e.g., ver 00, 01, etc.) of the LSR.

The foregoing language is similar to the language that was incorporated in the Interconnection Agreement entered into between BellSouth and MCI and is similar to the language agreed upon by BellSouth and MCI in their follow-up Interconnection Agreement, which is currently being negotiated.

Issue 61: *Should BellSouth be allowed to drop a LSR or order after ten days (or any other time period), when the LSR or order has been accepted by the front-end ordering system (such as LENS) but sent back into clarification by BellSouth?*

Alternatively, if BellSouth drops any LSR or order, should it be required to notify Supra the same day of the drop?

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

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

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth will return any LSR to Supra when incomplete, incorrect or conflicting information results in BellSouth's inability to issue the orders as requested on the LSR. According to BellSouth, "BellSouth Business Rules" have established a maximum of ten (10) business days to respond to the request for clarification by submitting a supplemental LSR. Ten days is ample time for an efficient ALEC operation to resolve clarifications returned by BellSouth. Orders unresolved beyond ten business days, that are canceled by BellSouth's system, may be resubmitted as a new service request and the provisioning time will essentially be the same as having supplemented the original LSR with correct information. In the event Supra does not respond to a request for clarification within ten business days of notification, BellSouth will not provide additional notification to Supra prior to canceling the LSR. Pursuant to BellSouth, Supra has the primary responsibility to its end-user and is therefore responsible for the overall ordering and tracking of its service requests.

Q. WHAT IS SUPRA'S RESPONSE TO BELLSOUTH'S POSITION?

A. BellSouth should not be allowed to purge LSRs or orders when the LSR or order passes through the front-end ordering interface (such as LENS). Once a LSR or order has been accepted, BellSouth should not be allowed to skirt its responsibility to complete the LSRs or orders simply by letting them sit until purged. Upon acceptance, completion of the LSR or order is the responsibility of BellSouth and such LSRs or orders should remain on BellSouth's system until their personnel resolve the clarification problems. Alternatively, if any LSRs or orders are dropped, BellSouth should be under an obligation to affirmatively notify Supra (electronically or in writing) within twenty-four (24) hours of the LSR or order being dropped.

Of course, if Supra were provide with nondiscriminatory, direct access to BellSouth's retail OSS, this would be a moot issue. BellSouth does not purge its own retail orders after 10 days. To purge Supra's LSRs or orders after 10 days is discriminatory, and should not be allowed.

Issue 62. *For purposes of the Follow-On Agreement between Supra and BellSouth, should BellSouth be required to provide completion notices for manual LSRs or orders?*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. Please see the discussion regarding Parity Provisions *supra*. Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its

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

Q. WHAT LANGUAGE HAS SUPRA PROPOSED CONCERNING BELLSOUTH'S PROVISION OF COMPLETION NOTICES FOR MANUAL LSRS OR ORDERS?

A. Supra has developed the following language:

> Completion Notification. Upon completion of a local service request or service order submitted electronically, BellSouth shall submit to Supra via the same electronic interface used to submit the LSR or order, a LSR or order completion notification that complies with the OBF/LSOG business rules and ATIS models, as modified by the CCP. For manual LSRs or orders, the completion notification shall be sent manually to the Supra ordering center designated on the LSR or order.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. While BellSouth cannot provide the same kind of completion notification to Supra as when the order is submitted electronically, BellSouth does provide information regarding the status of an order, including completion of the order, through its CLEC Service Order Tracking System ("CSOTS").

Q. WHAT IS SUPRA'S RESPONSE TO BELLSOUTH'S POSITION?

A. A completion notice notifies Supra that BellSouth has provisioned a LSR or order and that the customer has been switched over from BellSouth to Supra. Without a completion notice, Supra cannot accurately and efficiently know whether or when BellSouth has switched over service for a Supra customer. Supra must have knowledge of the date that it begins providing service to the customer so Supra can bill

the customer correctly and provide maintenance and repair services. Providing Supra with a FOC (Firm Order Commitment) and failing to provide service on the date requested coupled with a lack of notice, can only lead to a number of billing issues, including the potential of double-billing customers. Additionally, as Supra's prices to its customers are dramatically lower than BellSouth's, any delay in the conversion is to the detriment of the Florida consumer. The result of this double billing is to harm Supra's reputation and its ability to generate revenue. Moreover, since BellSouth service technicians report all completions to BellSouth for correct billing purposes, BellSouth is clearly failing to provide Supra with OSS parity on this issue. Similarly, since Supra is forced to submit manual LSRs or orders, BellSouth should be required to submit completion notices when Supra does so.

Q. DOES BELLSOUTH'S CLEC SERVICE ORDER TRACKING SYSTEM ("CSOTS") PROVIDE A SATISFACTORY ALTERNATIVE TO ACTUAL COMPLETION NOTICES?

A. No. Although providing completion notification via CSOTS might be convenient for BellSouth, it is costly and inefficient for Supra. Supra's representatives would be required to monitor CSOTs on a regular basis for completion indications (with the attendant errors that would flow from using such a process). A process in which BellSouth provides an electronic or manual completion notice as directed on Supra's LSR or order would be simpler and result in few errors and therefore fewer problems for Florida consumers and both parties. BellSouth should therefore be required to provide completion notices for manual LSRs or orders.

Issue 65: *For purposes of the Follow-On Agreement between Supra and BellSouth, should the parties be liable in damages, without a liability cap, to one another for their failure to honor one or more material respects of one or more of the material provisions of the Follow-On Agreement?*

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

Added Issue: *Should the Follow-On Agreement provide for punitive damages where the parties are found to have acted in a grossly negligent, malicious or otherwise willful manner?*

Q. WHICH OF THE DISPUTED ISSUES ADDRESSES THE REMEDIES AVAILABLE TO A PARTY IN THE EVENT OF A PARTY'S NON-COMPLIANCE WITH THE PROVISIONS CONTAINED IN THE FOLLOW-ON AGREEMENT?

A. Issues sixty-five (65), sixty-six (66) and the added issue set forth above, address remedies available to a party in the event of a party's non-compliance with the provisions contained in the Follow-On Agreement.

Q. WHAT IS SUPRA'S POSITION REGARDING REMEDIES AND LIMITATIONS OF LIABLITY?

A. Supra believes that the Follow-On Agreement should not contain any limitation of liability, unless the limitation contains specific, unambiguous exceptions. Basically, Supra's position is one of all or nothing – either there is a limitation of liability section with exceptions as set forth by Supra, or there should be no limitation of liability section.

Furthermore, as Supra has been confronted with specific instances of BellSouth's bad faith intent to harm Supra, Supra believes that, absent significant penalties for intentional and willful non-compliance, or gross negligence, BellSouth will find it financially beneficial not to comply with the Act as well as its many contractual terms. Therefore, Supra seeks provisions which would allow it to recover punitive damages, or, in the alternative, that Supra be entitled to liquidated damages should BellSouth refuse to comply with its obligations.

Q. HAS SUPRA PROPOSED ANY LANGUAGE IN REFERENCE TO ISSUES SIXTY-FIVE (65), SIXTY-SIX (66) AND THE ADDED ISSUE?

A. Yes. Supra has proposed the following language for issues sixty-five (65), sixty-six (66), and the added issue, respectively:

10.4 **Consequential Damages.**

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PROVISION OF SERVICE HEREUNDER. **NOTWITHSTANDING THE FOREGOING LIMITATION, A PARTY'S LIABILITY SHALL NOT BE LIMITED BY THE PROVISIONS OF THIS SECTION 10 OR ANY OTHER PROVISIONS OF THIS AGREEMENT IN THE EVENT OF ITS WILLFUL OR INTENTIONAL MISCONDUCT, INCLUDING GROSS NEGLIGENCE, OR CLAIMS FOR DAMAGES BY ANY PARTY RESULTING FROM THE FAILURE OF EITHER PARTY TO HONOR IN ONE OR MORE MATERIAL RESPECTS ANY ONE OR MORE OF THE MATERIAL PROVISIONS OF THIS AGREEMENT.** A PARTY'S LIABILITY SHALL NOT BE LIMITED TO ITS INDEMNIFICATION OBLIGATIONS.

10.4.1 **Specific Performance.**

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

10.4.2 **Punitive Damages.**

Should either party be found to have acted in a grossly negligent, malicious or otherwise willful manner, the other party may recover punitive damages.

Q. WHAT IS SUPRA'S POSITION ON THESE ISSUES?

A. The language Supra has proposed is not only reciprocal and commercially reasonable, it provides proper incentive for BellSouth to comply with the provisions of the Agreement and should be adopted. In connection with issue sixty-five (65), the Current Agreement contained language similar to Supra's proposed language with the noted exception of Supra's desired addition of an exception to the limitation of liability section for material breach. Without an exception to the liability cap for material breaches, BellSouth would have an incentive to breach the contract when the benefit to BellSouth exceeded its possible liability. This same logic applies to the inclusion of the "specific performance" and "punitive damages" provisions referenced herein as these serve as a deterrent to BellSouth from failing to abide by the terms of the Follow-On Agreement or otherwise from committing egregious acts when the benefit to BellSouth exceeds its potential liability.

Q. WHAT DO YOU BELIEVE IS THE POSITION TAKEN BY BELLSOUTH IN CONNECTION WITH THESE ISSUES?

A. My understanding is that BellSouth believes that the limitation of liability and specific performance provisions are not an appropriate subject for arbitration under Sections 251 and/or 252 of the Act. Moreover, it is BellSouth's position that each party's liability arising from any breach of contract should be limited to a credit for the actual cost of the services or functions not performed or performed improperly.

Q. DO YOU AGREE WITH BELLSOUTH'S POSITION?

A. No. The Commission (acting as an arbitrator under the Act) is the appropriate forum for the resolution of these unresolved issues. In fact, in his recent order, Judge Hinkle in WORLDCOM TELECOMMUNICATION CORP. v. BELLSOUTH TELECOMMUNICATIONS, INC., Order On the Merits, issued June 6th, 2000 in case no. 4:97cb141-RH, ruled that the Commission is required to address every "open issue" presented to it for arbitration. The Commission in its Order No. PSC-01-0824-FOF-TP in regards to the Arbitration of a follow-on agreement between MCI and BellSouth dated March 30, 2001, (Docket No. 000649-TP at pages 173-174 and 178) specifically found that the liability and specific performance provisions at issue here were such "open issues" thus imposing upon the Commission the authority and obligation to arbitrate these pending matters.

Q. HAS THE COMMISSION ADDRESSED THE ISSUE OF INCLUDING A LIMITATION OF LIABILITY AND/OR SPECIFIC PERFORMANCE PROVISION IN DOCKET No. 000649-TP?

A. Yes. In that case, the Commission found that pursuant to Section 252 (c) of the Act, a state commission in resolving any open issue and imposing conditions upon the parties to the agreement, shall ensure that the resolution and conditions meet the requirements of Section 251.

Although the Commission therein found, based upon record evidence, that the "specific performance" and "liquidated provisions" were not necessary to implement the requirements of Sections 251 or 252 of the Act, based upon the analysis set forth herein

as well as the findings in the Award, the language proposed by Supra should be included in the Follow-On Agreement.

If the Commission were to find that such provisions do not meet the requirements of Section 251 or 252 of the Act, then Supra requests that there be no mention of a limitation of liability or any limitation of remedies.

Q WHAT SPECIFIC RELIEF IS SOUGHT BY SUPRA?

A: Supra requests the following relief:

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

(b) Ordering BellSouth to immediately tender information responsive to Supra's requests;

(c) Finding that BellSouth acted in Bad Faith with the intent to inflict harm on Supra;

(d) Finding that the parties' should begin the negotiations of the follow-on agreement from the parties' current agreement;

(e) Finding that the follow-on agreement should include the Award and Orders of the Arbitral Tribunal;

(f) Finding that Supra is entitled to supplement the record after receipt of information regarding BellSouth's network

(g) For all such further relief as is deemed equitable and just.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does at this time.

Olukayode A. Ramos

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

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

My Commission Expires:

ESTHER A. SUNDAY
Notary Public - State of Florida
My Commission Expires Jun 6, 2004
Commission # CC943255

NOTARY PUBLIC
State of Florida at Large

Print Name:

(Transcript continues in sequence in Volume 2.)

STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, TRICIA DeMARTE, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 3RD DAY OF OCTOBER, 2001.

Tricia DeMarte

TRICIA DeMARTE
FPSC Official Commission Reporter
(850) 413-6736