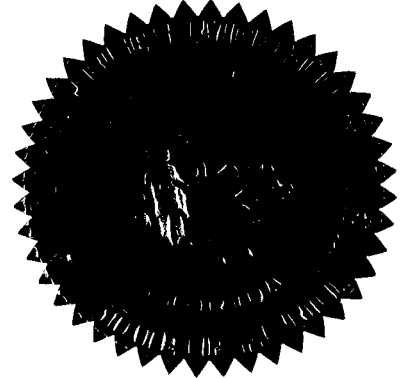


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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 5

Pages 590 through 783

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.)

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION

12595 OCT-4-01

FPSC-COMMISSION CLERK

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NAME:

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(Transcript continues in sequence from Volume 4.)

OLUKAYODE R. RAMOS

continues his testimony under oath from Volume 4:

CONTINUED DIRECT EXAMINATION

BY MR. CHAIKEN:

Q Mr. Ramos, are you the same person who filed rebuttal testimony in this matter on August 15, 2001, consisting of 72 pages?

A Yes.

Q And if the same questions were put to you today that were answered in that testimony, would your responses be the same?

A Yes.

Q And did you also file Exhibits OAR-49 through 104 which are attached to that rebuttal testimony?

A Yes.

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

A No.

MR. CHAIKEN: Supra moves the rebuttal testimony of Olukayode Ramos and the Exhibits OAR-49 through 104 into the record.

COMMISSIONER JABER: Okay. The prefiled rebuttal testimony of Mr. Ramos shall be inserted into the record as

1 though read.

2 Exhibit 19 will be OAR-49 through OAR-104.

3 (Exhibit 19 marked for identification.)

4 MR. CHAIKEN: Thank you.

5 BY MR. CHAIKEN:

6 Q Now, Mr. Ramos, you also have adopted the direct
7 testimony of Carol Bentley which was prefiled on July 27, 2001,
8 which consists of 15 pages; is that correct?

9 A That's correct.

10 Q And would you make any changes to that testimony?

11 A No.

12 Q And if the same questions were put to you today that
13 were answered at that time, would your responses be the same?

14 A Yes.

15 Q And attached to that direct testimony, I believe, are
16 two exhibits?

17 A Yes.

18 Q Are you familiar with those?

19 A Absolutely.

20 Q And would you make any changes to those exhibits?

21 A No.

22 MR. CHAIKEN: Supra moves to insert the direct
23 testimony of Carol Bentley as adopted by Olukayode Ramos into
24 the record as well as Exhibits CB-1 and 2.

25 COMMISSIONER JABER: Hang on one second. Okay. The

1 prefiled direct testimony of Carol Bentley as adopted by
2 Mr. Ramos shall be inserted into the record as though read.

3 And what were the exhibit numbers again, Mr. Chaiken?

4 MR. CHAIKEN: CB-1 and CB-2.

5 COMMISSIONER JABER: CB-1 and CB-2 are identified as
6 Exhibit 20.

7 (Exhibit 20 marked for identification.)

8 MR. KNIGHT: Commissioner?

9 COMMISSIONER JABER: Yes.

10 MR. KNIGHT: It may be a little bit easier for Staff
11 if we were to have a Composite Exhibit 1 identifying the
12 confidential material and one not.

13 COMMISSIONER JABER: Separate them all out as
14 confidential?

15 MR. KNIGHT: Right.

16 COMMISSIONER JABER: That's why I'd like to go back,
17 though, because I don't recall which ones were.

18 MR. KNIGHT: Okay.

19 COMMISSIONER JABER: So we'll go back.

20 MR. KNIGHT: Okay. Thanks.

21 COMMISSIONER JABER: Are you done, Mr. Chaiken?

22 MR. CHAIKEN: Just one more, rebuttal testimony.

23 BY MR. CHAIKEN:

24 Q Mr. Ramos, you have also adopted the rebuttal
25 testimony of Carol Bentley filed on August 15, 2001, consisting

1 of six pages; is that correct?

2 A That's correct.

3 Q And if those questions were put to you today, would
4 your responses be the same?

5 A That's correct.

6 Q And I don't believe there are any exhibits to that
7 testimony; is that correct?

8 A That's correct.

9 MR. CHAIKEN: Supra moves to insert the rebuttal
10 testimony of Carol Bentley as adopted by Olukayode Ramos into

11 COMMISSIONER JABER: The prefilled rebuttal testimony
12 of Carol Bentley as adopted by Mr. Ramos shall be inserted into
13 the record as though read.

14

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1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

2 DOCKET NUMBER 001305-TP

3 REBUTTAL TESTIMONY OF OLUKAYODE A. RAMOS

4 ON BEHALF OF

5 SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.

6 AUGUST 15, 2001

7

8

9 **Q. PLEASE STATE YOUR NAME AND ADDRESS.**

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

12

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

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

16

17 **Q. ARE YOU THE SAME OLUKAYODE A. RAMOS THAT FILED DIRECT**
18 **TESTIMONY IN THIS PROCEEDING ON JULY 27, 2001?**

19 **A.** Yes.

20

21 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

22 **A.** The purpose of my Rebuttal Testimony is to rebut the Direct Testimony filed by
23 BellSouth's witnesses. I will not attempt to respond to every allegation made by those
24 witnesses because much of their testimony has been addressed adequately in my
25 Direct Testimony.

1 **Q. DID JOHN RUSCILLI, RONALD PATE, JERRY KEPHART, AND/OR JERRY**
2 **HENDRIX PARTICIPATE IN ANY OF THE RELEVANT INTER-COMPANY REVIEW**
3 **BOARD MEETINGS?**

4 **A.** No. Not one of BellSouth's witnesses participated in any of the relevant Inter-
5 Company Review Board ("ICRB") meetings regarding the parties' negotiation/arbitration
6 of a Follow-On Agreement. Other than perhaps reading correspondence between the
7 parties, these witnesses are testifying on hearsay statements and matters of which they
8 have no direct knowledge.

9
10 Of the BellSouth participants in said meetings; Patrick Finlen, Marcus Cathey,
11 Charlotte Donlon and Parkey Jordan were the only BellSouth employees that actively
12 participated on numerous occasions. As such, Supra can only wonder as to why
13 BellSouth has not offered any testimony from its employees with first hand knowledge of
14 the negotiations between the parties.

15 Supra does find it interesting that, before this Commission, BellSouth is able to
16 produce witnesses that have offered testimony on the issues between the parties.
17 However, during the parties' negotiations, not one of these witnesses participated. If
18 BellSouth was serious about negotiating a Follow-On Agreement, why has it only now
19 brought forth these subject matter experts ("SMEs")?

20
21 It seems that BellSouth, through its refusal to provide Supra with necessary
22 information regarding BellSouth's own network as well as its failure to bring forth its
23 SMEs, has unnecessarily delayed the parties' negotiation of a Follow-On Agreement.
24 These SMEs have filed testimony that generally advocate arguments that BellSouth
25 never made during the parties' negotiation sessions. If BellSouth had brought these
SMEs to the negotiation sessions, Supra would have adequately questioned them and

1 would have been provided an opportunity to obtain information from these SMEs. Of
2 course, this was likely BellSouth's intention all along.

3

4 **Q. HAVE YOU REVIEWED THE DIRECT TESTIMONY OF WITNESS HENDRIX?**

5 **A.** Yes.

6

7 **Q. IN HIS DIRECT TESTIMONY, MR. HENDRIX ADDRESSES ISSUE "A." MR.**
8 **HENDRIX THEN DESCRIBES THE NEGOTIATIONS BETWEEN SUPRA AND**
9 **BELLSOUTH TO DATE AND CONCLUDES THAT SUPRA HAS ACTED IN BAD**
10 **FAITH REGARDING THE NEGOTIATIONS OF THE PARTIES' FOLLOW-ON**
11 **AGREEMENT. WHAT IS YOUR GENERAL RESPONSE TO THE DIRECT**
12 **TESTIMONY OF MR. HENDRIX AS WELL AS HIS CONCLUSION THAT SUPRA HAS**
13 **ACTED IN BAD FAITH?**

14 **A.** Mr. Hendrix did not participate in any of the three ICRB meetings, held on May
15 29, 2001; June 4, 2001; and June 6, 2001, where the parties discussed the Follow-On
16 Agreement. Neither did Hendrix participate in any of the meetings prior to BellSouth's
17 Arbitration Petition dated September 1, 2000. The only ICRB meeting that Mr. Hendrix
18 participated in was the meeting held on April 11, 2001 at Supra's request to discuss
19 BellSouth's willful and intentional refusal to provide Supra with SMDI, Channelized
20 Megalink and trunks as well as design layout record. See attached **Supra Exhibit OAR**
21 **49**. At the ICRB meeting of April 11, 2001, Supra reminded BellSouth of its statutory
22 obligations, pursuant to Section 251(c)(1) of the Telecommunications Act of 1996 (the
23 "Act") as well as the FCC Rules, to provide Supra with the requested network
24 information. It is interesting to note that none of BellSouth's witnesses that have pre-
25 filed Direct Testimonies in this proceeding participated in these negotiations with Supra.

1 The BellSouth employees that participated in these negotiation sessions with Supra
2 were Parkey Jordan, Patrick Finlen, Charlotte Donlon and Marcus Cathey. As stated
3 earlier, I wonder why BellSouth has chosen not to present any of those employees that
4 negotiated with Supra as witnesses in this proceeding. It is only BellSouth that can
5 answer that question, a question that this Commission should demand be answered.
6 Mr. Hendrix was not even copied on any of the correspondence between the parties.
7 See attached as **Supra Exhibit OAR 50**, an email dated May 17, 2001 from BellSouth's
8 Parkey Jordan to Supra's Adenet Medacier confirming the ICRB meeting of May 29,
9 2001 as well as conveying the names of BellSouth's representatives at the meeting.
10 Mr. Hendrix' name was not never even mentioned in these negotiations as a participant.
11 Witness Hendrix is testifying on matters of which he has no direct knowledge.

12

13 **Q. DID YOU PARTICIPATE IN ALL OF THE NEGOTIATION MEETINGS?**

14 **A.** Yes, I personally participated in all said meetings and conferences.

15

16 **Q. ON PAGE 4, LINES 6-10 OF HIS DIRECT TESTIMONY, MR. HENDRIX**
17 **STATED:**

18 HOWEVER, IN LIGHT OF SUPRA'S MERITLESS ALLEGATIONS,
19 WHICH CLEARLY ARE INTENDED TO DO NOTHING MORE THAN
20 DELAY THIS ARBITRATION PROCESS EVEN FURTHER, BELLSOUTH
21 HAS NO CHOICE BUT TO DESCRIBE SUPRA'S DELIBERATE
22 ATTEMPTS TO AVOID NEGOTIATIONS AND EXECUTION OF A NEW
23 AGREEMENT. AS I WILL SET FORTH FURTHER IN MY TESTIMONY,
24 IT HAS BEEN SUPRA THAT HAS ACTED IN BAD FAITH IN ITS
25 DEALINGS WITH BELLSOUTH.

23

24 **DO YOU AGREE WITH MR. HENDRIX?**

24

25 **A.** Absolutely not. First, Supra's allegations that BellSouth has willfully and
intentionally refused to provide information about its network were extensively

1 discussed at pages 18-34 of my Direct Testimony. Second, BellSouth's willful and
2 intentional refusal to negotiate from the parties' current agreement was extensively
3 discussed at pages 34-40 of my Direct Testimony. Third, BellSouth's willful and
4 intentional refusal to comply with procedural requirements of the parties' agreement was
5 extensively discussed at pages 40-41 of my Direct Testimony. For BellSouth's Hendrix
6 to now argue that Supra's efforts, to make BellSouth comply with the parties' agreement
7 as well as applicable federal and state rules, were efforts to delay this proceeding is
8 ridiculous.

9 Worse still, Hendrix' accusation that "it has been Supra that has acted in bad
10 faith in its dealings with BellSouth" is a blatant attempt by BellSouth to shift the blame
11 and attention to Supra for BellSouth's willful and intentional bad faith negotiation tactics.
12 It is interesting to note that in BellSouth's Response to Supra's Complaint and Motion to
13 Dismiss filed on July 9, 2001, BellSouth never accused Supra of bad faith. Supra
14 surmises that not until after the Commission issued its Supplemental Order Establishing
15 Procedure on July 13, 2001, adding Issue A to the list of issues to be addressed by the
16 parties, did BellSouth realize that it must actually defend its actions and inactions
17 regarding Issue A. Instead of BellSouth apologizing to Supra and this Commission for
18 its actions and inactions, BellSouth has decided to, as usual, "keep the ball in Supra's
19 court." [REDACTED]

20 [REDACTED]

21

22 **Q. WHY SHOULD THE COMMISSION FIND THAT BELL SOUTH HAS**
23 **WILLFULLY AND INTENTIONALLY NEGOTIATED WITH SUPRA IN BAD FAITH?**

24 **A.** First, senior management of BellSouth was fully aware of Supra's request for
25 information regarding BellSouth's network since June 1998 when Supra forwarded its

1 first request to Mr. Cathey, Vice President - BellSouth Interconnection Services.
2 Second, senior management of BellSouth was fully aware of Supra's request to
3 negotiate from the parties' current agreement since June 2000. Third, senior
4 management of BellSouth was fully aware of the procedural requirements of the parties'
5 current agreement and as a matter of fact, the entire agreement. BellSouth's senior
6 management has always maintained that Supra is "unfamiliar" with the parties'
7 agreement. Fourth, management of BellSouth has chosen to discriminate against
8 Supra. An example of such discriminatory practices as it relates to this issue was for
9 BellSouth to allow MCI to commence the negotiations of the MCI/BellSouth follow-on
10 agreement from the parties' current agreement while denying Supra's request for same.
11 Fifth, BellSouth's management's willful and intentional refusal to bring its SMEs to the
12 negotiation sessions, preferring instead, that the SMEs file testimony that generally
13 advocate never-heard before arguments from BellSouth.

14 On the one hand BellSouth claims that it is only BellSouth that is familiar with the
15 parties' agreement and that Supra is "*unfamiliar*" with parties' agreement, on the other
16 hand BellSouth claims that BellSouth realized its mistake after Supra pointed out the
17 parties' oversight regarding the ICRB meeting in its Motion to Dismiss (see **page 11,**
18 **lines 18-19 of witness Hendrix Direct Testimony**) as well as characterized the ICRB
19 meeting as an extreme example of form over substance (see **BellSouth's Response in**
20 **Opposition to Supra's Motion to Dismiss at paragraph 7, page 4**). It is obvious that
21 BellSouth will flip-flop its arguments to suit its momentary needs. This must not be
22 tolerated.

23
24 **Q. HAS SUPRA ACTED IN BAD FAITH?**

25

1 **A.** Absolutely not. First, contrary to what BellSouth would want this Commission to
2 believe, Supra has never refused to participate in any ICRB meeting, except to insist
3 that BellSouth provide it with the pertinent information regarding BellSouth's network in
4 other for the parties' to achieve **clarity and parity** in their Follow-On Agreement. See
5 **page 28, lines 9-16** of my Direct Testimony dated July 27, 2001. Supra is rightfully
6 entitled to this requested information. Second, Supra has not refused to provide any
7 information or documents to BellSouth in negotiating the Follow-On Agreement. The
8 Agreement that BellSouth intended to force upon Supra is BellSouth's one-sided
9 Standard Agreement that it uses in Florida. Pursuant to §251(c)(1) of the Act, Supra
10 could not have acted in bad faith when it has never refused to provide information
11 necessary and important to the negotiation process, or refused to participate at ICRB
12 meetings with BellSouth.

13 Section 215(c) of the Act states that:

14 (c) **ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE**
15 **CARRIERS-** In addition to the duties contained in subsection (b) of this
16 section, each incumbent local exchange carrier has the following duties:
17 (1) **DUTY TO NEGOTIATE** - The duty to negotiate in good faith in
18 accordance with section 252 of this title the particular terms and conditions
19 of agreements to fulfill the duties described in paragraphs (1) through (5)
20 of subsection (b) of this section and this subsection. The requesting
21 telecommunications carrier also has the duty to negotiate in good faith the
22 terms and conditions of such agreements.

23 47 CFR § 51.301 provides that:

24 (a) An incumbent LEC shall negotiate in good faith the terms and
25 conditions of agreements to fulfill the duties established by sections 251
(b) and (c) of the Act.

(b) A requesting telecommunications carrier shall negotiate in good faith
the terms and conditions of agreements described in paragraph (a) of this
section.

1 (c) If proven to the Commission, an appropriate state commission, or a
2 court of competent jurisdiction, the following actions or practices, among
3 others, violate the duty to negotiate in good faith:

4 (8) Refusing to provide information necessary to reach agreement. Such
5 refusal includes, but is not limited to: (i) **Refusal by an incumbent LEC to**
6 **furnish information about its network that a requesting**
7 **telecommunications carrier reasonably requires to identify the**
8 **network elements that it needs in order to serve a particular**
9 **customer; and**

10 (ii) Refusal by a requesting telecommunications carrier to furnish cost data
11 that would be relevant to setting rates if the parties were in arbitration.
12 Emphasis added.

13 BellSouth has violated its statutory obligations as well as the FCC's rule by
14 refusing to provide Supra with information about BellSouth's network. It is true that
15 Supra has been unwilling to discuss a number of issues with BellSouth; however, Supra
16 has always maintained that as soon as BellSouth provides Supra with the requested
17 information, Supra would discuss the remaining issues on an expedited basis. To date,
18 BellSouth has not provided Supra with a single document responsive to its requests.
19 Perhaps, one of the reasons that BellSouth has willfully and intentionally refused to
20 provide information and or has not requested any information from Supra is because
21 Supra has nothing that BellSouth's desires. Please see **page 32, line 14 to page 33,**
22 **line 23,** of my Direct Testimony. Perhaps, another reason is that BellSouth expected
23 Supra to accept its "standard one-sided boiler plate agreement" and BellSouth's
24 management was unwilling to deal with Supra's rejection of same and assertion of its
25 right to negotiate from the parties' current agreement.

26 **Q. WHAT RELEVANCE DOES THE PARTIES' PREVIOUS DEALINGS HAVE ON**
27 **THE NEGOTIATIONS FOR A FOLLOW ON AGREEMENT?**

1 **A.** As stated in my Direct Testimony, the parties have established a course of
2 dealings over the past 4 and ½ years which cannot simply be ignored when considering
3 a Follow-On Agreement. Obviously, the parties wish to negotiate a new agreement,
4 which will clearly and unambiguously identify each party's rights and obligations, so as
5 to avoid future litigation. In order to understand the parties' needs in avoiding future
6 litigation, one must first understand the parties' past litigation, so that the Follow-On
7 Agreement will not lead the parties back to issues which have previously been litigated.
8 Furthermore, Supra's end users should not be adversely affected by any unnecessary
9 differences between the current agreement and the Follow-On Agreement. Finally, as
10 Supra has already proven that BellSouth has acted with intent to harm Supra in the
11 past, Supra requires additional protection so as to insure that it and its end users are
12 not treated in a similar manner in the future.

13

14 **Q. DOES BELLSOUTH BELIEVE THE PARTIES' PREVIOUS DEALINGS AND**
15 **THE AWARD TO HAVE ANY BEARING UPON THIS NEGOTIATION PROCESS?**

16 **A.** No. If it were up to BellSouth, BellSouth's past actions would have no bearing on
17 the Follow-On Agreement. BellSouth is apparently of the opinion that Supra should
18 simply forget that BellSouth threatened to put Supra out of business, and simply allow
19 for terms in the Follow-On Agreement which would allow BellSouth to conduct business
20 in an even more egregious manner without fear of any consequences.

21

22 **Q. HAS BELLSOUTH EVER BEEN FOUND TO ACT IN BAD FAITH WITH OTHER**
23 **CLECS?**

24 **A.** Yes. The FCC has found BellSouth in violation of 251(c) of the Act for bad faith
25 negotiations with Covad. **Supra Exhibit OAR 26.**

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Q. HAS BELLSOUTH EVER DEALT OR BEEN FOUND TO ACT IN BAD FAITH WITH SUPRA?

A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. [REDACTED]

A. [REDACTED] for the issuance of the Award

[REDACTED]

[REDACTED]

[REDACTED]

- a. BellSouth refused to provide Supra with DLR. Supra Exhibit OAR 55.
- b. BellSouth refused to provide Supra with SMDI. Supra Exhibit OAR 56.

- 1 c. BellSouth refused to provide Supra with BAN. **Supra Exhibit OAR 57.**
- 2 d. BellSouth created new clarification codes to reject Supra's LSRs. **Supra**
- 3 **Exhibit OAR 58.**
- 4 e. BellSouth threatened to disconnect ADSL services of Supra customers
- 5 who purchase ADSL services from BellSouth, its resellers or its affiliates.
- 6 **Supra Exhibit OAR 59.**

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12

13 **Q. IS SUPRA EAGER TO ENTER INTO A FOLLOW-ON AGREEMENT WITH**

14 **BELLSOUTH?**

15 **A.** Yes. Supra has never acted in bad faith toward BellSouth. On the contrary

16 Supra is eager to enter into a Follow-On Agreement and incorporate the terms of the

17 Award therein. The reasons are simple. Supra does not wish to continue operating

18 under an agreement that has been the subject of a number of disputes between Supra

19 and BellSouth, [REDACTED], two complaints before

20 the FCC, one disconnection of service, and countless disagreements between the

21 parties. Supra is not in the business of litigating with BellSouth and wants to

22 concentrate on rolling out its expansion plans.

23

24

25

1 **Q. MR. HENDRIX SURMISES THAT SUPRA IS SEEKING TO DELAY THE**
2 **ARBITRATION OF THE FOLLOW-ON AGREEMENT. WHAT IS YOUR RESPONSE?**

3 **A.** Mr. Hendrix' assumption is deceptive. First, Mr. Hendrix fails to realize that the
4 parties' current agreement contains a provision whereby the Follow-On Agreement shall
5 apply retroactively to the date of the expiration of the current agreement. As a result,
6 neither party is prejudiced by a full and fair negotiation/arbitration process.¹ However,
7 Supra would be extremely prejudiced should it be forced to negotiate/arbitrate a Follow-
8 On Agreement without information necessary to support its positions.
9

10 Second, Supra has as much incentive as BellSouth to negotiate a Follow-On
11 Agreement. BellSouth wants this Commission to believe that Supra is comfortable
12 operating under an agreement that had caused so many disputes over the past five (5)
13 years. Supra is negotiating a Follow-On Agreement that protects it from the
14 PREDATORY and the unlawful practices of BellSouth, and an agreement that is clear
15 and conforms with the state of current FCC and FPSC rules and orders.

16 The agreement that BellSouth seeks to force is one-sided and a departure from
17 the parties' current procedures. It is more equitable for the parties to begin
18 negotiation/arbitrating their Follow-On Agreement from their current agreement. As a
19 matter of fact, BellSouth recently redlined that agreement and provided a copy to Supra.
20

21 **Supra Exhibit OAR 61.**

22
23 **Q. HAS BELLSOUTH EXPRESSED ITS INTENT TO ENGAGE IN FURTHER**
24 **PREDATORY, ANTI-COMPETITIVE PRACTICES?**

1 A. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED] If I have this incorrect, please let me know what your award said, which is a significant part of the order.

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

¹ Interestingly, BellSouth's proposed agreement in this proceeding deletes this retroactive provision, without any explanation as to why.

1 There is no doubt that if BellSouth has a provision that allows it to shut down
2 Supra's access to BellSouth's network without following escalation procedures, and
3 without a ruling by a neutral third party, BellSouth will do so at will.
4

5 **Q. AT PAGES 5, LINE 22 TO PAGE 6, LINE 3 OF HIS TESTIMONY, MR.**
6 **HENDRIX STATED THAT:**

7 IN ITS APRIL 26, 2000 LETTER MR. OLUKAYODE A. RAMOS,
8 CHAIRMAN AND CEO OF SUPRA, STATED THAT BELL SOUTH
9 SHOULD PERMIT SUPRA TO UTILIZE THE AT&T AGREEMENT,
10 WHICH WAS A FLORIDA AGREEMENT WITH LESS THAN TWO
11 MONTHS REMAININ ON THE TERM, FOR ALL NINE STATES. OF
12 COURSE, SUPRA WAS NOT CERTIFIED IN ALL SUCH STATES, NOR
13 WAS THE AT&T AGREEMENT FILED IN ANY STATE OTHER THAN
14 FLORIDA AS BELL SOUTH POINTED OUT IN MR. FINLEN'S
15 RESPONSE OF MAY 3, 2000. (JDH-3)

16 **IS THIS CORRECT?**

17 **A.** Absolutely not, as witness Hendrix has completely twisted Supra's request. One
18 of Supra's letters dated April 26, 2000, attached to witness Hendrix testimony as JDH-2
19 is titled "Re-Adoption of Interconnection Agreement." That letter started with the
20 following:

21 In reviewing the interconnection agreement between our two companies, I
22 have discovered that your refusal to allow Supra Telecom to utilize and
23 adopt the interconnection agreement between BellSouth and AT&T for the
24 entire BellSouth service area is in error. Section 1 of the General Terms
25 and Conditions states in part that:

Unless otherwise provided in this Agreement, BellSouth will perform all of
its obligations hereunder throughout its entire service area.

As could be seen from Mr. Finlen's response dated May 3, 2000, attached to
witness Hendix' testimony as JDH-3, BellSouth knew it was Supra's intention "to simply

1 adopt each state specific BellSouth/AT&T Interconnection Agreement" as there has
2 been prior discussions amongst the parties before Supra's letter and before BellSouth
3 responds to Supra's letter. See **paragraph 3 of page 1 to page 2 of JDH-3**. As could
4 be seen from JDH-3, the BellSouth/AT&T Interconnection Agreement was approved by
5 eight state Commissions. Witness Hendrix' claim that "nor was the AT&T Agreement
6 filed and approved in any state other than Florida as BellSouth pointed out in Mr. Finlen'
7 response of May 3, 2000" (Hendrix testimony, **page 6, lines 1-3**) is **false**.

8
9 Furthermore, BellSouth never inquired from Supra to show proof of certification in
10 any state as evidenced from JDH-3. Consequently, Hendrix' testimony that "Supra was
11 not certified in all such states" is baseless. As of April 26, 2000, in addition to Florida,
12 Supra was authorized to do business in all of BellSouth's states. Additionally, Supra
13 was certificated in the following BellSouth territories: (i) Georgia; (ii) Kentucky; and (iii)
14 Mississippi. Supra has an application for certification pending in the state of Louisiana.
15 BellSouth's management's position as clearly articulated in witness Hendrix' testimony
16 is a violation of 47CFR §51.301(c)(4).

17
18 BellSouth's management's position is one of the reasons why Supra still remains
19 a service provider only in the state of Florida, as opposed to the entire BellSouth nine-
20 state region. BellSouth forces to Supra to litigate every issue and, as Supra has limited
21 resources, on several occasions, Supra has been forced to halt its business plan.

22
23 Additionally, the 1997 BellSouth/AT&T Interconnection Agreement contains the
24 same language in all the states where the agreement was filed except for changes
25 made regarding state specific jurisdictional issues as well as discounts that apply to
resale and pricing of network elements, as BellSouth and AT&T had agreed to use the

1 Florida agreement as a template for the entire BellSouth service area. See attached as
2 **Supra Exhibit OAR 63**, Minutes of the AT&T/BellSouth Core Committee Meetings.
3 Additionally, see **Supra Exhibit OAR 65**, BellSouth/AT&T Interconnection Agreement
4 for the state of Georgia.

5 Supra and BellSouth have agreed to use the Florida agreement for the states of
6 Georgia and Louisiana. See attached **Supra Exhibits OAR 66 and 67**.

8
9 **Q. DID SUPRA WRITE ANOTHER LETTER DATED APRIL 26, 2000 TO**
10 **BELLSOUTH?**

11 **A.** Yes. Please see **Supra Exhibit OAR 10** that states that:

12 "re: **Request for Information Regarding Negotiations of**
13 **Interconnection Agreement.**

14 Dear Mr. Finlen:

15 Pursuant to our telephone conversation and the FCC's First Report and
16 Order, §155, Supra Telecom hereby requests for all the information
17 attached as Exhibit "A" to this letter. **The information so provided must**
18 **cover the entire BellSouth territory.** I am counting on your promise to
19 provide the information requested in a speedy manner."

20 Witness Hendrix conveniently failed to mention Supra's second letter dated April
21 26, 2000 as BellSouth's management has made a conscious effort to ignore Supra's
22 information requests. Perhaps, because, Supra has nothing that BellSouth needs.

23 **Q. AT PAGE 6, LINES 17-19, WITNESS HENDRIX STATED THAT:**

24 ON JUNE 7, 2000, MR. MARK BUECHELE, SUPRA'S COUNSEL,
25 CLAIMED THAT BELLSOUTH HAD VERBALLY AGREED TO ALLOW
SUPRA TO MAINTAIN THE AT&T AGREEMENT. (JDH-5). THIS IS
SIMPLY NOT TRUE.

1 **DO YOU AGREE WITH MR. HENDRIX' CONCLUSION? IF NO, WHY NOT.**

2 **A.** Absolutely not. I spoke to Mr. Finlen several times in the month of April 2000
3 after receipt of BellSouth's letter dated March 29, 2000 to request for an extension of
4 the parties' current agreement, as BellSouth had accepted such requests from other
5 ALECs. **Supra Exhibits OAR 68 and 69.** Mr. Finlen confirmed to me that the
6 management of BellSouth had no objection to the extension request and that BellSouth
7 was going to propose an amendment to extend the current agreement for a year. Only
8 on June 8, 2000 did BellSouth first take the position that it would refuse to extend the
9 parties' current agreement. The very next day, Supra notified BellSouth of its request for
10 renegotiations.
11

12 BellSouth's willful and intentional refusal of Supra's reasonable request, while providing
13 same to Supra's competitors, is a violation of the Act, particularly Section 202(a). Only
14 BellSouth could provide an explanation for its willful and intentional discriminatory
15 practices against Supra.

16 Additionally, I am at a loss as to why BellSouth did not allow Mr. Finlen to proffer
17 testimony on this matter, as it was he that I negotiated the request. Witness Hendrix has
18 no direct knowledge of my conversations with Mr. Finlen.
19

20
21 **Q. AT PAGE 7, LINES 9 - 13, MR. HENDRIX STATED THAT:**

22 ON JULY 3, 2000 BELLSOUTH ADVISED SUPRA THAT IN LIGHT OF
23 THE SUBSTANTIAL CHANGES IN THE TELECOMMUNICATIONS
24 INDUSTRY THAT HAD TAKEN PLACE SINCE THE NEGOTIATION OF
25 THE ORIGINAL AT&T AGREEMENT IN 1996, BELLSOUTH BELIEVED
THAT USING THE AT&T AGREEMENT AS THE BASE AGREEMENT
OR TEMPLATE WOULD BE DIFFICULT AT BEST. (JDH-8)

1 **DID JDH-8 CONTAIN THIS “ADVISEMENT”?**

2 **A.** Absolutely not. BellSouth’s letter of July 3, 2000 did not contain the “advisement”
3 purported by witness Hendrix at **page 7, lines 9-13** of his testimony. In fact, this
4 “change in law” argument was first heard by Supra after Supra had complained to the
5 FPSC that BellSouth refused to negotiate from the parties’ current agreement. Please
6 see **pages 38-40 of my direct testimony** on this matter. The Act has not been
7 changed or amended since it was enacted in 1996. What Mr. Hendrix alluded to is that
8 BellSouth might have changed its practices and attitudes toward CLECs since
9 negotiating the 1996 Agreement. Most of the changes that occurred between 1996 and
10 today have been reflected in the various amendments and separate agreements
11 between the parties. For BellSouth to state that many changes have occurred since
12 1996, which made negotiation from the current agreement difficult, is disingenuous and
13 does not accurately reflect the progression of the law.
14

15
16 **Q.** **AT PAGE 7, LINE 20 TO PAGE 9, LINE 16, MR. HENDRIX DESCRIBES THE**
17 **“NEGOTIATIONS” THAT TOOK PLACE BETWEEN THE PARTIES REGARDING**
18 **THE FOLLOW-ON AGREEMENT. WHAT IS YOUR RESPONSE TO HIS**
19 **DESCRIPTION?**
20

21 **A.** Hendrix’ testimony is incorrect and based on hearsay, as he was not a party to
22 any of the negotiations he described in that testimony. It has always been Supra’s
23 position that it would not negotiate from BellSouth’s standard one-sided template
24 agreement. Therefore, Supra maintained to BellSouth during the August 2000 meetings
25 that the parties must begin the negotiation of the Follow-On Agreement from the current

1 agreement. See **Supra Exhibits OAR 27-29**. Interestingly, BellSouth simply ignored
 2 Supra's request the same way it has ignored Supra's information requests.

3
 4 **Q. IS ANYTHING ELSE MISSING FROM MR. HENDRIX' ACCOUNT OF THE**
 5 **EVENTS LEADING UP TO BELLSOUTH'S PETITION?**

6 **A.** Mr. Hendrix conveniently omitted Supra's repeated requests for BellSouth's
 7 network information in order to proceed with the negotiations. As stated in my Direct
 8 Testimony at pages 15 - 42, knowledge of BellSouth's network configuration and
 9 information is crucial to facilitate interconnection, including collocation as awarded by
 10 [REDACTED] and the FPSC, and the provision of telecommunication
 11 services to Supra's customers.
 12

13 Mr. Hendrix is very much aware that Supra requested the network information in
 14 an effort to negotiate the Follow-On Agreement. Supra made repeated requests as set
 15 forth in greater detail hereinbelow:
 16
 17

18 19 20 21 22 23 24	After a telephone conference with BellSouth's Finlen regarding negotiation of the Follow-On Agreement, I sent a follow-up letter to BellSouth requesting information regarding BellSouth's network for use in the negotiations of said Agreement. Supra Exhibit OAR 10.
25	During a face-to-face negotiation meeting at Supra's Miami office, Supra's attorney, Ms. Kester, handed BellSouth a

1		request for the same network information
2	January 26, 2001	Supra filed a Motion to Dismiss, citing BellSouth's bad faith
3		negotiation tactics and BellSouth's failure to provide
4		information regarding its network
5	March 2, 2001	Supra filed a claim with the FCC, citing, inter alia, BellSouth's
6		failure to provide information about its network in the
7		negotiation of an Interconnection Agreement.
8		
9	April 4, 2001	Letter from Supra requesting the network information
10	April 11, 2001	Letter from Supra requesting the network information
11	April 24, 2001	Supra reiterated its request for the network information on a
12		conference call with the FCC, attended by BellSouth
13	April 25, 2001	Letter from Supra to the FCC regarding BellSouth's failure to
14		provide the network information
15	May 1, 2001	Letter from Supra to BellSouth requesting the network
16		information
17	May 8, 2001	Letter from Supra to BellSouth requesting the network
18		Information
19		

20

21 **Q. WAS SUPRA PREPARED TO NEGOTIATE THE INTERCONNECTION**
 22 **AGREEMENT DURING THE MEETINGS OF AUGUST 7 AND 8, 2000?**

23 **A.** Yes. I was present for these meetings as well as Supra's attorneys and other
 24 officers. Mr. Hendrix, on the other hand, was not. From what I recall, BellSouth was
 25 represented by Parkey Jordan and Patrick Finlen, and at times, a few different

1 BellSouth employees, including Marcus Cathey. The parties discussed various issues
2 including the use of the current agreement as the basis for the Follow-On Agreement.
3 In fact, Supra's attorney, Ms. Kester, modified language from the current agreement,
4 and proposed same to BellSouth for the Follow-on Agreement.

5 Mr. Hendrix contradicted himself by stating on one hand that Supra negotiated
6 for two consecutive days and two conference calls in August 2000 with the BellSouth
7 negotiating team, and on the other hand claiming that Supra wants to delay negotiation.
8

9
10 **Q. MR. HENDRIX STATED ON PAGE 9, LINE 12 THAT SUPRA NEVER**
11 **OFFERED ANY CONTRACT LANGUAGE FOR THE NEW AGREEMENT. IS THIS**
12 **STATEMENT TRUE?**

13 **A.** No. At the face-to-face meetings of August 7 and 8, Supra not only discussed,
14 but also proposed alternative languages for the Follow-On Agreement. However,
15 BellSouth was never interested in any of Supra's proposed language, unless it was
16 made from the unfamiliar BellSouth boilerplate agreement. Supra did provide BellSouth
17 with proposed language on June 15, 2001. Supra attached such to its June 18, 2001
18 Complaint against BellSouth regarding BellSouth's Bad Faith Negotiation Tactics.

19 As Supra is still waiting for information from BellSouth regarding its network,
20 Supra has been unable to provide additional contractual language on certain issues.
21

22
23 **Q. ON PAGE 9 AND 10 OF HIS DIRECT TESTIMONY, MR. HENDRIX INFERS**
24 **THAT SUPRA HAS NO BUSINESS RAISING ISSUES THAT AT&T RAISED WITH**
25 **BELLSOUTH IN THEIR NEGOTIATIONS. WHAT IS YOUR POSITION?**

1 **A.** There are no laws or rules that prevent Supra from framing an issue for
2 negotiating an Interconnection Agreement, in a fashion similar to another CLEC. The
3 FPSC does not bar such practice. Ironically, BellSouth is always quick to point to other
4 CLECs' practices when such conveniently supports its position. For example,
5 BellSouth's Ruscilli advocated that a similar dispute arising under different agreements
6 must be handled in a similar fashion. However, here, BellSouth's Hendrix infers at
7 pages 9 and 10 that Supra should not have the right to raise certain issues raised in the
8 AT&T and MCI arbitration proceedings with this Commission.
9

10 Moreover, because of the tactics employed by BellSouth in this negotiation,
11 including its unwavering refusal to provide the information necessary to negotiate on an
12 equal footing with BellSouth, Supra was left with no recourse but to quickly "pick-and-
13 choose" issues already framed by other CLECs, but applicable to its own
14 circumstances.

15 For BellSouth to infer some inappropriateness from Supra's tactic is petty and
16 inconsequential, as well as a red herring.
17

18 **Q. MR. HENDRIX STATED AT PAGE 12 OF HIS DIRECT TESTIMONY THAT**
19 **BELLSOUTH WAS NEVER AWARE OF SUPRA'S REQUEST FOR THE NETWORK**
20 **INFORMATION UNTIL APRIL 2, 2001. WHAT IS YOUR RESPONSE TO THIS**
21 **STATEMENT?**
22

23 **A.** Mr. Hendrix' excuse does not make any sense and contradicts BellSouth's prior
24 inconsistent statement. Section III, page 8 of its Opposition to Supra's Motion to Stay
25 filed on July 18, 2001, BellSouth stated in part that:

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

6 In one pleading, BellSouth claims that Supra did not request the information until
7 April 2001, while in another pleading, it affirms that Supra requested the information in
8 January 2001.

9 Supra gave BellSouth more than sufficient notice of its request for BellSouth's
10 network information as set forth above. For BellSouth to state that it was not aware of
11 Supra's request until April 2001 is by now overplayed and without merit. BellSouth had
12 more than sufficient time to have produced the information requested by Supra. As
13 discussed in greater detail hereinbelow, Supra made more than eight formal requests
14 for the information from BellSouth. Mr. Hendrix' reasoning does not excuse BellSouth
15 for failing to provide the information, as of August of 2001. What is even more troubling
16 is the fact that BellSouth still has not provided responsive information.

17
18 **Q. MR. HENDRIX ASSERTED THAT SUPRA'S MOTION TO DISMISS**
19 **BELLSOUTH'S PETITION WAS GROUNDED ON THE FACT THAT "BELLSOUTH**
20 **HAS NO RIGHT TO FILE FOR ARBITRATION OF THE AGREEMENT WITH THE**
21 **COMMISSION." IS HE CORRECT?**

22 **A.** No. I don't believe that Mr. Hendrix took the time to read Supra's Motion to
23 Dismiss. Supra argued to the Commission that the Commission lacks subject matter
24 jurisdiction to hear the matter, pursuant to Florida Rules of Civil Procedure. 47 U.S.C.
25 47.251(b)(1) only allows the parties to file for negotiation of the current agreement

1 between 135th and 160th day after the ILEC receives a request for negotiation from the
2 CLEC. Not only did BellSouth fail to file the Petition for Arbitration within the applicable
3 time period, but BellSouth also failed to request an ICRB meeting prior to filing its
4 Petition in its quest to rush Supra into its standard agreement.

5 While the Commission did not grant Supra's motion to dismiss claiming that it
6 has jurisdiction to hear the matter, it did, however, find that BellSouth failed to convene
7 the required ICRB meeting. As a result, the Commission ordered the parties to
8 schedule an ICRB meeting.
9

10
11 **Q. MR. HENDRIX STATED AT PAGE 21, LINE 9 THAT BELLSOUTH ADMITS**
12 **THAT IT OVERLOOKED THE PROVISION IN THE AT&T AGREEMENT REQUIRING**
13 **THAT SUCH A MEETING BE HELD. WHAT IS YOUR RESPONSE TO THIS**
14 **STATEMENT?**

15 **A.** This is my first time reading such a statement. BellSouth could have saved
16 substantial time and money, including Commission resources, had BellSouth simply
17 admitted such in January 2001. This is further proof of BellSouth's unconscionable
18 tactics and bad faith. In fact, this is BellSouth's modus operandi – (a) take hard-line
19 positions hoping to intimidate and pressure smaller, less financially secure, and less
20 knowledgeable competitors, (b) argue and litigate, forcing such companies to expend
21 their limited resources on litigation instead of on operations, and (c) when the
22 competitor prevails, claim that BellSouth has made an unintentional mistake and should
23 not bear any consequences as a result.
24
25

1 **Q. DID BELLSOUTH REQUEST AN INTER-COMPANY REVIEW BOARD AFTER**
2 **SUPRA POINTED OUT BELLSOUTH'S FAILURE TO REQUEST ONE PRIOR TO**
3 **FILING ITS PETITION FOR NEGOTIATION?**

4 **A.** This is the type of misleading statement that the commercial arbitrators qualified
5 as "mantra-like" (Award, page 41). BellSouth only requested a ICRB meeting because
6 of the Commission's Order. In a letter to Supra of April 9, 2001, attached in Mr.
7 Hendrix' Direct Testimony at Exhibit JHD 12, BellSouth stated that "the Florida staff has
8 specifically asked that we hold an Inter-Company Review Board meeting to discuss the
9 issues that are currently in arbitration." Mr. Hendrix' statement hopes to give the
10 impression that BellSouth requested the board meeting without the FPSC's order.
11

12
13 **Q. DID SUPRA EVER REFUSE TO PARTICIPATE IN THE INTER-COMPANY**
14 **REVIEW BOARD MEETING ORDERED BY THE COMMISSION?**

15 **A.** No. Supra was always willing and had every intention to comply with the
16 Commission's Order. However, BellSouth wanted Supra to convene for the meeting
17 without the benefit of providing Supra with the information regarding BellSouth's own
18 network. In Supra's response to BellSouth's letter of April 4, 2001, Supra specifically
19 stated that: "Be reassured that Supra will be able to proceed with negotiations as soon
20 as it receives the necessary [network] documents." For BellSouth to claim that Supra
21 refused to participate in the ICRB meeting is simply incorrect.
22
23
24
25

1 **Q. MR. HENDRIX STATED AT PAGE 11, LINE 21 THAT SUPRA REFUSED TO**
2 **PARTICIPATE IN AN INTER-COMPANY REVIEW BOARD MEETING ON APRIL 13,**
3 **2001. IS HE CORRECT?**

4 **A.** No. Supra's letter of April 5, 2001 merely reiterated Supra's request for
5 information regarding BellSouth's network and BellSouth's cost studies. Supra
6 understands that the parties will operate under the Follow-On Agreement for the next
7 three years. Supra also knows from its past dealings with BellSouth that BellSouth is a
8 very unforgiving competitor, looking forward to putting Supra out of business at every
9 opportunity. Supra refuses to engage blindly in any negotiation with BellSouth at the
10 risk of negotiating against its own best interests. BellSouth is the same company that
11 switched pages of an Interconnection Agreement, after Supra signed it; BellSouth is the
12 same company which was found to have acted with the intent to harm Supra; BellSouth
13 is the same company that has helped force hundreds of CLECs in South Florida and
14 around the nation out of business.
15

16
17 **Q. WHY DO YOU STATE THAT BELLSOUTH REFUSED TO PROVIDE THE**
18 **NECESSARY NETWORK INFORMATION?**

19 **A.** The chronology of event speaks for itself.
20

- 21 1. First Request. BellSouth completely ignored Supra's requests of April 26,
22 2000. BellSouth claims it never received it.
- 23 2. Second Request. The letter of April 26, with the attachment, was again
24 handed to BellSouth's Jordan on August 8, 2000. BellSouth claims that it
25 never received said request.

- 1 3. Third Request. Supra again requested the documents in response to
2 BellSouth's request for the ICRB meeting on April 5, 2001, with the
3 proviso that Supra will convene for the meeting as soon as it receives the
4 network documents. In response, an attorney for BellSouth, Parkey
5 Jordan, wrote "I cannot ascertain what information you are asking
6 BellSouth to provide." BellSouth made no effort to have the request
7 reviewed by its network or engineering departments.
8
- 9 4. Fourth Request. Supra again requested the document in its letter of April
10 11, 2001. BellSouth responded stating that it was not a party to the Task
11 Force that prepared the documents, knowing full well that BellSouth was a
12 signatory party of a 15-member task force group that prepared the
13 document. BellSouth's only response was to point Supra to its Web site.
14 The Web site did not contain the information requested.
- 15 5. Fifth Request. Supra responded to BellSouth's accusation that Supra
16 refused to meet for the ICRB meeting and again requested the information
17 from BellSouth. (JDH – 14). BellSouth now changed its tune and
18 claimed that the information requested is not relevant to the
19 interconnection agreement: **"there is nothing in the parties' current**
20 **interconnection agreement that requires either party to provide**
21 **information to the other prior to such a meeting....further BellSouth**
22 **is not opposed to providing Supra with information about its network**
23 **to the extent such information is relevant to the interconnection**
24 **agreement."**
25

1 6. Sixth and Seventh Requests. Supra again requested the information at
2 the two board meetings of May 29, 2001 and June 4, 2001.

3 7. Eighth Request. In an attempt to negotiate, Supra even provided details
4 and clarification to the documents that BellSouth prepared. (See letter of
5 May 29, 2001 – JDH – 17)
6

7
8 **Q. MR. HENDRIX STATED THAT THE PARTIES DID NOT DISCUSS THE**
9 **FOLLOW-ON AGREEMENT AT THE MAY 29, 2001 MEETING. IS HE CORRECT?**

10 **A.** Absolutely not. The parties met for approximately four hours, as Supra had only
11 reserved the conference bridge for that duration. Supra did reiterate its request for the
12 network information after the parties engaged in discussing the related issues. Upon
13 BellSouth's insistence that it does not have the slightest idea as to what the template
14 represented, Supra promised to furnish more details on the template, and to fax it to Mr.
15 Finlen.
16

17 **Q. MR. HENDRIX STATED THAT AT FIRST BELLSOUTH WAS UNFAMILIAR**
18 **WITH THE DOCUMENTS THAT SUPRA REQUESTED. IS HE BEING TRUTHFUL?**

19 **A.** No. It is interesting that BellSouth is now claiming that it "learned that the
20 Increased Interconnection Task Group II was formed to look at network reliability
21 issues." This is a complete change from its statement of April 13, 2001 when it claimed
22 that "**this report, which you provided in full to me yesterday via overnight courier,**
23 **is not something with which BellSouth is familiar, nor was BellSouth a party to**
24 **the task force.**" As stated above, BellSouth was a member of the Interconnection Task
25

1 Force that prepared this document. BellSouth's Hightower signed on behalf of
2 BellSouth. (Exhibit JDH-16 of Hendrix' DT) The FCC specifically stated that the
3 documents requested by Supra are a type of reasonable request for the negotiation of
4 an Interconnection Agreement. (See Ramos' Direct Testimony at pages 18 and 19 and
5 FCC's ¶ 155, First Report and Order) For BellSouth to claim lack of knowledge is
6 disingenuous. BellSouth never once bothered to bring the information to its SMEs or
7 attempt to call its people involved in the task force.
8

9
10 **Q. MR. HENDRIX STATED ON PAGE 14, LINE 15 OF HIS DIRECT TESTIMONY**
11 **THAT THE INFORMATION IN THE TEMPLATE IS ONLY A GUIDE FOR**
12 **INTERCONNECTION. IS HE CORRECT?**

13 **A.** Yes. This is exactly the point. The template is specifically recommended by the
14 FCC to serve as a basis for the exchange of information in negotiating an
15 Interconnection Agreement. In its First Report and Order the FCC addressed this very
16 matter:

17 We agree with incumbent LECs and new entrants that contend that the
18 parties should be required to provide information necessary to reach
19 agreement.² Parties should provide information that will speed the
20 provisioning process, and incumbent LECs must prove to the state
21 commission, or in some instances the Commission or a court, that delay is
22 not a motive in their conduct. Review of such requests, however, must be
23 made on a case-by-case basis to determine whether the information
24 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**

25 ² 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).

1 **customer.**³ It would not appear to be reasonable, however, for a carrier
 2 to demand proprietary information about the incumbent's network that is
 3 not necessary for such interconnection.⁴ We conclude that an incumbent
 4 LEC may not deny a requesting carrier's reasonable request for cost data
 5 during the negotiation process, because we conclude that such
 6 information is necessary for the requesting carrier to determine whether
 7 the rates offered by the incumbent LEC are reasonable. We find that this
 8 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) ¶ 155, FCC's First Report and Order.

9 **Q. DID SUPRA ASK BELLSOUTH FOR ANY INFORMATION THAT IS**
 10 **UNREASONABLE?**

11 **A.** No. Reading from the FCC's First Report and Order, Supra could not have
 12 requested any unreasonable information by requesting from BellSouth the information
 13 contained in the Increased Interconnection Task Group Report. BellSouth has yet to
 14 state that it does not have the information requested by Supra. BellSouth is simply
 15 refusing to provide the information in violation of the FCC rules and orders.
 16

17
 18 **Q. DID SUPRA FURNISH BELLSOUTH WITH A DETAILED REQUEST FOR THE**
 19 **SAME INFORMATION AS REQUESTED IN THE TEMPLATE?**

20
 21
 22 ³ See discussion of technical feasibility, *infra*, Section IV. In addition, the Commission's federal
 23 advisory committee, the Network Reliability Council, has developed templates that summarize and
 24 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
 25 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)(Emphasis added).

⁴ 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).

1 **A.** Yes. At the next meeting of June 4, 2001, BellSouth's Finlen related that he
2 understands many of Supra's requests, and even angrily lambasted Supra's
3 representatives for their ignorance regarding network operations. He also stated that he
4 had a "stack of documents" on his desk, and that he will forward the request to his
5 SMEs. Supra still does not know why BellSouth did not present the template to its
6 SMEs after receiving its request on April 26, 2000.
7

8
9 **Q. HENDRIX STATED AT PAGE 16, LINE 14 THAT BELLSOUTH IS WILLING TO**
10 **PROVIDE REASONABLE AND NECESSARY NETWORK INFORMATION. HE ALSO**
11 **STATED AT PAGE 18, LINE 22 THAT BELLSOUTH RESPONDED TO SUPRA ON**
12 **JULY 9, 2001. WHAT IS YOUR RESPONSE?**

13 **A.** As stated earlier, BellSouth sent Supra a small amount of documents unrelated
14 to Supra's requests. In a letter dated July 9, 2001, after the negotiation window allowed
15 by the Commission had closed, BellSouth's Follensbee sent some documents to Supra,
16 purporting to respond to some of Supra's requested documents (see JDH-18). In
17 reality, none of them is responsive to the information requested by Supra. In fact,
18 BellSouth had even changed Supra's request for BellSouth's network information to a
19 request for ALEC network information.
20

21 Obviously BellSouth is attempting to mislead Supra and avoid producing the
22 documents. The Commission should take note that after BellSouth's Finlen promised to
23 forward to Supra the "stack of documents" on his desk responsive to Supra's demands,
24 he was replaced by Gregg Follensbee. Mr. Follensbee has exchanged correspondence
25 with Supra's Nilson, however, he has not produced any documents that satisfy Supra's

1 request. The Commission should rest assured that had BellSouth produced the
2 requested documents, Supra would have fully discussed all the related issues with
3 BellSouth.

4
5 **Q. DID SUPRA RESPOND TO BELLSOUTH REGARDING THE INFORMATION**
6 **PROVIDED BY BELLSOUTH?**

7
8 **A.** Yes. In response to these documents, on August 1, 2001, Supra's Nilson replied
9 to BellSouth's Follensbee with the attached letter **Supra Exhibit OAR 70**, stating his
10 displeasure with BellSouth's ignoble tactics and outright refusal to provide the network
11 information.

12
13 **Q. AT PAGE 23, LINES 9-19 OF HIS TESTIMONY, WITNESS HENDRIX ASKED**
14 **HIMSELF THE FOLLOWING QUESTION AND PROVIDED THE FOLLOWING**
15 **RESPONSE:**

16 **Q. PLEASE SUMMARIZE YOUR TESTIMONY?**

17 **A.** In my position, I am responsible for negotiations with hundreds of
18 ALECs. While I often encounter ALECs that are not interested in devoting
19 time to renegotiations of existing agreement, Supra is the only ALEC with
20 whom I have dealt that has failed to file timely pleadings, testimony and
21 other documentation required by the Commission and that has failed to
22 comply with an express Commission order requiring the parties' to act.
23 Supra's intentional delaying tactics and bad faith should not have been
24 tolerated by BellSouth, and certainly should not be tolerated by this
25 Commission.

23 **WHAT IS YOUR RESPONSE?**

24 **A.** BellSouth's Hendrix' summary, is disingenuous, to say the least, as he did not
25 provide a single shred of testimony in support of his summary.

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

8
9 **Q. AT PAGE 4, LINE 23 TO PAGE 5, LINE 3, MR. RUSCILLI STATED THAT:**

10 EVEN IF THIS COMMISSION HAD THE LEGAL ABILITY TO ORDER
11 THE ARBITRATION PROCEDURE REQUESTED BY SUPRA AND TO
12 EMPOWER THE ARBITRATOR WITH THE ABILITY TO AWARD THE
13 RELIEF SOUGHT BY SUPRA, TO SO WOULD BE ADVERSE TO
14 PUBLIC POLICY. BELLSOUTH BELIEVES THAT, AS A MATTER OF
15 POLICY, IT IS CRITICAL THAT INTERCONNECTION AGREEMENTS BE
16 INTERPRETED CONSISTENTLY. ONE OF THE PRIMARY GUIDING
17 PRINCIPLES OF THE ACT IS THAT CARRIERS SHOULD BE TREATED
18 IN A NONDISCRIMINATORY FASHION.

19
20
21
22 **WHAT IS YOUR RESPONSE TO THIS STATEMENT?**

23 **A.** This Commission, in its wisdom approved the BellSouth/AT&T Interconnection
24 Agreement in 1997 that was eventually adopted by Supra in October, 1999. Attachment
25 1 of that agreement contains the exact provisions Supra is seeking. See generally
pages 61-67 of my direct testimony. BellSouth's position that "commercial arbitrators
could produce inconsistent results in matters dealing with interconnection issues that
arise between BellSouth and Alternative Local Exchanged Carriers" (see **DT of Ruscilli**
at page 5, lines 6-8) is based on nothing more than the fact that BellSouth has received
unfavorable results before commercial arbitrators. BellSouth has not presented one
instance where commercial arbitrators have produced inconsistent results in matters
dealing with interconnection issues.

1 BellSouth's further argues that "there would likely be an equally troubling
2 inconsistency in the remedies available to different carriers that are under the
3 Commission's jurisdiction" (see **DT of Ruscilli at page 6, lines 6-8**) is equally
4 unsupported by any facts. In order to resolve disputes, commercial arbitrators consider
5 the terms and conditions of the parties' agreement in conjunction with all applicable
6 federal and state rules, just as the Commission would do. The difference is that
7 commercial arbitrators have the ability to award damages, whereas the Commission
8 does not. This is BellSouth's fear.

9 Perhaps, BellSouth's sole reason is that it could get the public to fund its anti-
10 competitive activities while it continues to reap great benefits from those activities. As
11 stated in the Comments of BellSouth Europe to the European Commission's Green
12 Paper on the Liberalisation of Telecommunications Infrastructure and Cable Television
13 Networks, dated March 15, 1995, a true copy of which is attached hereto as **Supra**
14 **Exhibit OAR 71:**

15
16 The incumbent brings enormous structural advantages to competition in
17 the form of "paid-for" infrastructure, name recognition, brand loyalty,
18 consumer inertia, **preferential access to data regarding the calling**
19 **habits of its interconnecting competitor's customers, superior**
20 **access to infrastructure, established regulatory/legislative**
21 **relationships, etc. Page 6. (Emphasis added.)**

22 If the Commission decides that it does not have authority to decide this issue,
23 then it should not mandate that the parties must bring disputes to one forum, but instead
24 should allow the parties to bring disputes to any fora of their choosing.

25 **Q. AT PAGE 5, LINE 17 TO PAGE 6, LINE 2, MR. RUSCILLI ASKED HIMSELF
THIS QUESTION AND PROVIDED THIS RESPONSE:**

1 Q. WHAT HAS BEEN BELLSOUTH'S EXPERIENCE WITH
2 COMMERCIAL ARBITRATION?

3 A. BELLSOUTH'S EXPERIENCE WITH COMMERCIAL ARBITRATION
4 HAS PROVEN THAT THE PROCESS IS AN IMPRACTICAL, TIME-
5 CONSUMING AND COSTLY WAY TO RESOLVE INTERCONNECTION
6 DISPUTES. OUR EXPERIENCE SHOWS THAT IT IS DIFFICULT TO
7 FIND NEUTRAL COMMERCIAL ARBITRATORS THAT ARE
8 SUFFICIENTLY EXPERIENCED IN THE TELECOMMUNICATIONS
9 INDUSTRY SO THAT A DECISION CAN BE MADE EXPEDITIOUSLY
10 AND WITHOUT HAVING TO TRAIN THE ARBITRATOR ON THE VERY
11 BASICS OF THE INDUSTRY. THE COMMISSION AND ITS STAFF ARE
12 CLEARLY MORE CAPABLE TO HANDLE DISPUTES BETWEEN
13 TELECOMMUNICATIONS CARRIERS THAN ARE COMMERCIAL
14 ARBITRATORS.

10 **DO YOU AGREE?**

11 A. Absolutely not. Supra's experience with commercial arbitrators, [REDACTED]
12 [REDACTED] have been expedient and, although not
13 necessarily cheap, not altogether expensive. [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 Whereas, IDS filed its Complaint against BellSouth on May 11, 2001 titled Complaint of
18 IDS Long Distance, Inc. n/k/a IDS Telecom, L.L.C., Against BellSouth
19 Telecommunications, Inc., and Request for Emergency Relief, (CC Docket No. 010740-
20 TP), and the Commission's Standard Order is scheduled to be issued on 01/07/2002.
21 Even then, the Commission's Order is not final. According to Mr. Ruscilli, "the
22 Commission's decision would also be appealable, and the Commission would resolve
23 the matter only by ordering remedies within its power." (DT of Ruscilli at page 6, lines
24 12-13). What Mr. Ruscilli means is that after the Commission's Order, BellSouth would
25 now have the opportunity to litigate the Order to any level within the judicial system.

1 First, pursuant to FPSC Rule 25-22.060, BellSouth would file a Motion for
2 Reconsideration of the Commission's Order; whether such Motion is reasonable or not.
3 Thereafter, it typically takes the Commission between two to three months before
4 issuing its Final Order.

5 Second, if it has lost the Motion for Reconsideration, BellSouth would then file for
6 Judicial Review pursuant to Rule 9.110, Florida Rules of Appellate Procedures. All the
7 Orders issued by this Commission in the Dockets 980119-TP and 980800-TP, in which
8 Supra was a party, were appealed by BellSouth. BellSouth is yet to comply with the
9 Orders issued in these Dockets.

10

11 **Q. HAVE YOU REVIEWED MR. RUSCILLI'S DIRECT TESTIMONY IN**
12 **REFERENCE TO ISSUES 4 AND 9? IF YES, DO YOU WISH TO ADD ANY**
13 **SUBSTANTIVE COMMENTS?**

14 **A.** I have reviewed Mr. Ruscilli's Direct Testimony in reference to Issues 4 and 9
15 and as BellSouth has not set forth any new arguments in support of its positions, Supra
16 stands by its response to these issues which have been adequately addressed in my
17 Direct Testimony.

18

19 **Q. HAVE YOU REVIEWED MR. PATE'S DIRECT TESTIMONY WITH RESPECT**
20 **TO ISSUE 5? IF YES, WHAT IS YOUR RESPONSE?**

21 **A.** Please see my discussions regarding Parity Provisions in my Direct Testimony.
22 Furthermore, Supra agrees with Mr. Pate that Supra is entitled to view those customer
23 service records where the end-user has given Supra permission to do so. All that
24 Supra is requesting, is a download of BellSouth's customer service records to provide
25 Supra with the ability to operate during the numerous downtimes experienced with the

1 use of BellSouth's CLEC OSS. Supra Exhibit AZ 1. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4

5 **Q. IN MR. PATE'S DIRECT TESTIMONY AT PAGES 4 – 7, HE IDENTIFIES THE**

6 **PROCESS BY WHICH SUPRA IS AUTHORIZED TO VIEW CUSTOMER SERVICE**

7 **RECORDS. DO YOU AGREE WITH HIS SUMMARY?**

8 **A.** Not completely. Supra has operated under and will continue to operate under

9 the requirement to execute a blanket letter of authorization, whereby the terms and

10 conditions under which Supra can obtain customer service records is identified. It is

11 Supra's position, that as a certificated and fully operational ALEC, that its execution of

12 such a document is sufficient to ensure its compliance. BellSouth has failed to present

13 any evidence that the execution of a blanket letter of authorization is insufficient as a

14 stand-alone document necessary to ensure that an end-user's customer service records

15 are afforded its proper confidentiality.

16 Additionally, Supra has never been required to obtain an individual letter of

17 authorization prior to its review of a customer service record. Mr. Pate's discussion with

18 respect to this step in BellSouth's process for review of a customer service record is not

19 applicable to Supra and only serves to mislead this Commission as to Supra's

20 obligations with respect to this issue.

21 It is Supra's policy to obtain the end-user's authorization at the time the customer

22 calls to switch from BellSouth to Supra. Through the provision by the end-user of such

23 personal information as required by applicable FPSC Rules, such as Social Security

24 Number, Date of Birth, Driver's License Number, and Mother's Maiden Name, Supra is

25 able to ensure that its employees receive the proper authorization prior to reviewing the

1 applicable customer service records. See Supra's Employee Training Manual - **Supra**
2 **Exhibit OAR 74.**

3
4 **Q. IN CONNECTION WITH ISSUE 16 AT PAGE 22 OF MR. RUSCILLI'S DIRECT**
5 **TESTIMONY, HE STATES:**

6 In order to incorporate new or different terms, conditions or rates into the
7 parties Agreement, it is imperative that an Amendment be executed.

8 **DO YOU AGREE WITH THIS STATEMENT?**

9 **A.** No. Anytime Supra requests an amendment to the parties' agreement, It is
10 BellSouth's standard operating procedure to request that before BellSouth could agree
11 to such an amendment, Supra must agree to delete an entire Attachment. The most
12 recent example is the request made by Supra pursuant to the FPSC Order No. PSC-01-
13 1181-FOF-TP Issued on May 25, 2001 in CC Docket No. 990649-TP. Copy of request
14 letter attached as **Supra Exhibit OAR 75**, letter dated July 11, 2001 to Mr. Follensbee.
15 On July 12, 2001, I spoke with Mr. Greg Follensbee, BellSouth's lead negotiator who
16 told me that "BellSouth objects strongly to Supra's amendment request" and "promised
17 to send a formal response explaining BellSouth's objections." See **Supra Exhibit OAR**
18 **76**, letter dated July 23, 2001 to Mr. Follensbee. Mr. Follensbee replied to my letters
19 dated July 11 and 23, 2001 via his misdated letter dated July 19, 2001. See attached
20 **Supra Exhibit OAR 77**, In his response, Mr. Follensbee stated that :

21 In order to provide those rates, it will be necessary to replace the existing
22 attachment 2 with a new attachment 2 that incorporates the terms and
23 conditions that coincide with the new rates.

24 BellSouth's management's position is a direct violation of the FPSC Order No. PSC-01-
25 1181-FOF-TP which provides that:

1 ORDERED that the approved rates shall become effective when existing
2 interconnection agreements are amended to incorporate the approved
3 rates, and those agreements become effective.

4 There is nothing in this Order to support BellSouth's position.

5 BellSouth's true intentions are in connection with having to provide services that
6 Supra is entitled to receive under the parties' current Agreement, and that is simply to
7 delay and put-off the provisioning of these services. Although BellSouth does not
8 dispute, as it could not possibly, Supra's right to pick and choose new and better terms
9 and conditions, BellSouth has chosen instead to dispute the date in which it must
10 operate under such. BellSouth seeks to use the amendment process as a means to
11 hinder and delay both Supra and its end-users. It is no wonder why BellSouth takes this
12 position and affirms its stance by stating that the "...Amendment [will] become effective
13 when it is signed by both parties." (**Ruscilli DT at page 23**) The reason being that
14 BellSouth is able to put off the adoption of more favorable terms until the longest date
15 possible.

16 BellSouth cannot point to any foreseeable harm should Supra's position be
17 accepted, as there is none. If the Commission accepts BellSouth's position then
18 BellSouth will have no incentive to provide requested services and could, potentially,
19 delay executing an amendment indefinitely. As an example of this non-compliant
20 behavior one must look no further than Supra's attempts to adopt, as part of its current
21 Agreement, the "comparative advertising" provision contained within the Mpower
22 Interconnection Agreement. Although Supra requested the right to adopt that provision
23 via correspondence dated October 6, 2000 (**Supra Exhibit OAR 41**), BellSouth has
24 never responded, and has instead chosen to ignore Supra's request.

25 As further support of the need to adopt Supra's proposed language as an
incentive for ILEC compliance, one need look no further than the FCC's Fourth Report

1 and Order adopted July 12, 2001. With respect to collocation issues, the FCC
2 affirmatively stated that “[they] recognize that an incumbent LEC has powerful
3 incentives that, left unchecked, may influence it to allocate space in a manner
4 inconsistent with [its] duty” (Id. at paragraph 92) and, “...incumbents also have
5 incentives to overstate security concerns so as to limit physical collocation
6 arrangements and discourage competition.” Id. at paragraph 102. This language
7 properly reflects the FCC’s conclusions that ILECs require incentives in order to ensure
8 compliance with the Act. Additionally, the FCC’s concerns over ILEC abuse of its
9 former monopoly status with respect to its competitors [REDACTED]

10 [REDACTED] As such, this Commission must be proactive, with respect to
11 ILEC incentives for compliance, to properly promote competition in the state of Florida.

12 Based upon the foregoing, it is imperative that the Commission deny BellSouth’s
13 attempt to make Supra execute an amendment and uphold Supra’s position to make the
14 effective date retroactive to the date of the request in order to dispel any incentive on
15 behalf of BellSouth’s to delay acceptance of said request.

16
17 **Q. AT PAGE 22 OF MR. RUSCILLI’S TESTIMONY, HE NOTES THAT IT IS NOT**
18 **ONLY BELLSOUTH’S PRACTICE TO EXECUTE AMENDMENTS, BUT THAT THE**
19 **COMMISSION’S RECENT ORDER IN DOCKET NO. 990649-TP (UNE PRICING),**
20 **APPEARS TO CONFIRM BELLSOUTH’S POSITION. DO YOU AGREE WITH THIS**
21 **STATEMENT?**

22 **A.** No. Other than merely stating that it is BellSouth’s “practice” of executing
23 amendments, BellSouth has failed to set forth any reason, whatsoever, as to why these
24 practices must be adhered to in connection with this issue. Moreover, BellSouth’s
25 reliance upon the Commission’s Order in Docket 990649-TP, and the quotation from

1 page 473 cited in Mr. Ruscilli's testimony is misplaced as the Commission was
2 addressing UNE pricing rather than the provisioning of services as addressed in this
3 issue. BellSouth cannot be allowed to hide behind these mirages in order to uphold
4 their misdirected position.

5
6 **Q. AT PAGE 23 OF MR. RUSCILLI'S TESTIMONY, HE STATES:**

7 It is ludicrous for Supra to contend that BellSouth must provide Supra with
8 services, items or elements without compensation when those services,
9 items or elements are not in Supra's Agreement.

10 **DO YOU AGREE WITH THIS STATEMENT?**

11 **A.** No. BellSouth has missed the point. At pages 72 and 73 of my Direct Testimony
12 I addressed those instances wherein BellSouth should be required to provide items,
13 elements or services without additional compensation due BellSouth and I will therefore
14 not reiterate those here. It was never Supra's position that BellSouth provide said items
15 without compensation. However, it remains Supra's stance that for services, items or
16 elements it requests, whether or not addressed in the parties' Follow-On Agreement,
17 that such services should be provided at the time of request and that for new items,
18 elements or service, upon Supra's acceptance of a relevant and reasonable cost study,
19 the prices should be applied retroactively. Surely, BellSouth cannot claim that it is
20 unfamiliar with the concept of "true-ups", as such are applied to ALECs seeking to
21 collocate equipment in BellSouth central offices. Supra seeks similar treatment here.

22
23 **Q. IN CONNECTION WITH ISSUE 17 AND SUPRA'S RIGHT TO ENGAGE IN**
24 **"TRUTHFUL" COMPARATIVE ADVERTISING, BELLSOUTH HAS PROPOSED**
25 **CERTAIN LANGUAGE. IS THIS LANGUAGE ACCEPTABLE TO SUPRA?**

1 **A.** No. The language proposed by BellSouth (with the exception of the use of the
2 name "BellSouth") fails to afford Supra the unfettered right to engage in "comparative
3 commercial advertising," which right Supra is allotted under 15 U.S.C.A. Section
4 1125(c)(4)(A). As set forth in full in my Direct Testimony, although Supra requested the
5 right to adopt the "comparative advertising" provision set forth in the Mpower
6 Interconnection Agreement, BellSouth has never responded and has ignored Supra's
7 request. Furthermore, the language proposed by BellSouth goes directly against the
8 Federal Trade Commission's policy of encouraging comparative advertising.

9
10 **Q. IS BELLSOUTH THE OWNER OF THE "BELLSOUTH" MARK?**

11 **A.** No. As set forth in page 2 of the Order on BellSouth Intellectual Property
12 Corporation's ("BIPCO") Motion for Preliminary Injunction dated February 9th, 2001⁵(a
13 copy of which is attached hereto as **Supra Exhibit OAR 78**) BIPCO, a subsidiary of
14 BellSouth Corporation, owns all United States trademarks used by BellSouth
15 Corporation and its subsidiaries (i.e. BELLSOUTH, BELL, the BELL SYMBOL, AREA
16 PLUS, COMPLETE CHOICE, MEMORY CALL, PRESTIGE, PULSELINK,
17 RINGMASTER AND PRIVACY DIRECTOR⁶). BellSouth is licensed to use BIPCO's
18 trademarks in the provision of its local telecommunications services. As such, any
19 agreement between Supra and BellSouth, concerning Supra's right to use comparative
20 advertising, must necessarily include BIPCO as a signatory to same. Moreover, and as
21 a point of clarification, the Court in the BIPCO matter specifically and only enjoined
22 Supra from using the BELLSOUTH® mark: 1) in the phrases "Kick Up to 50% off your
23 _____

24 ⁵ This Order was entered in the action title BellSouth Intellectual Property Corporation v. Supra
25 Telecommunications & Information Systems, Inc., case no. 00-4205-Civ, pending before Judge Graham
and Magistrate Turnoff in the United States District Court for the Southern District of Florida ("BIPCO
matter").

1 current BellSouth phone Bill,” or “Get Up to 50% off your current BellSouth phone Bill,”
2 or 2) in a manner in which the BELLSOUTH® mark is distorted...” (Id.)

3
4 **Q. IN CONNECTION WITH ISSUE 18, WHAT IS SUPRA’S POSITION AS TO**
5 **THOSE ITEMS, ELEMENTS OR SERVICES THAT WERE NOT ESTABLISHED IN**
6 **THE COMMISSION’S MAY 25, 2001 ORDER IN DOCKET NO. 990649-TP?**

7 **A.** For those items, elements or services (collectively “items”) that have not been set
8 in Order Docket No. 990649-TP, it is Supra’s position that the parties should negotiate
9 the rates for such items and further that BellSouth, within a reasonable amount of time,
10 should supply Supra, with cost studies for said items. However, Supra wishes to make
11 clear to the Commission that it in no way endorses the use of BellSouth’s tariff’s for the
12 establishment of such rates as there is no reasonable basis why the parties cannot
13 negotiate or arbitrate such rates based upon cost studies.

14
15 **Q. IN REFERENCE TO ISSUE 26, IS IT YOUR UNDERSTANDING THAT THIS**
16 **ISSUE HAS BEEN NARROWED?**

17 **A.** Yes. Issue 26 was previously framed as: “Under what rates, terms and
18 conditions may Supra purchase network elements or combinations to replace services
19 currently purchased from BellSouth tariffs?”

20
21 **Q. HAS THIS ISSUE BEEN NARROWED?**

22 **A.** Yes. This issue has been narrowed to the following: Should the TELRIC cost to
23 do a record change in BellSouth’s OSS, plus the recurring price of the appropriate
24

25

⁶ The PRIVACY DIRECTOR mark is not owned by BIPCO, however, BIPCO has filed an application to register the mark.

1 network elements or combinations, be the non-recurring price to purchase network
2 elements and combinations in such situations.

3 Although this issue has been narrowed, it does not appear that BellSouth framed
4 its response accordingly. Rather, it appears that BellSouth has answered the original
5 issue 26 set forth above. Based upon the foregoing, it does not appear as if Supra
6 needs to address Mr. Ruscilli's Direct Testimony on this issue as Supra has thoroughly
7 addressed this matter. However, in the event it is revealed that BellSouth's response is
8 responsive to the aforementioned narrowed issue, Supra reserves the right to rebut Mr.
9 Ruscilli's testimony to that extent.

10

11 **Q. IN CONNECTION WITH ISSUE 35, MR. KEPHART, AT PAGE 27 OF HIS**
12 **DIRECT TESTIMONY, BELIEVES THAT THIS COMMISSION SHOULD AFFIRM ITS**
13 **DECISION IN THE AT&T ARBITRATION DOCKET 000731-TP FOR THOSE SUPRA**
14 **EMPLOYEES WHO WILL HAVE UNESCORTED ACCESS TO BELLSOUTH'S**
15 **PREMISES. DO YOU AGREE WITH THIS POSITION?**

16 **A.** No. The Commission, based upon the facts espoused in the AT&T arbitration,
17 Docket 000731-TP, ("AT&T matter"), required that AT&T conduct criminal background
18 checks on its employees and agents who have been with the company for less than two
19 years, and who may work on BellSouth's premises. Unlike the open-ended, Florida,
20 county by county criminal background check that Supra conducts on all of its
21 employees, AT&T had no criminal background check in place for its employees who
22 would have access to BellSouth's premises. As a result, AT&T argued that a two year
23 criminal background check was reasonable in light of BellSouth's request that AT&T
24 conduct a five year background check. Since Supra's security measures are more
25 stringent than those that BellSouth has in place for its own employees, any requirement

1 that Supra be required to conduct a second, less extensive criminal background check
2 is not only duplicative, it is also unreasonable, excessive and discriminatory.

3 BellSouth's argument is equally disingenuous when applied to vendors of Supra
4 as a majority of the vendors Supra retains, and whom have access to BellSouth's
5 premises, are obtained from a list of certified vendors provided and approved by
6 BellSouth. For those non-certified vendors retained by Supra, this argument is
7 baseless, as all of Supra's vendors are licensed and bonded contractors in accordance
8 with the laws of the state of Florida and as BellSouth fails to adhere to its own alleged
9 practice of conducting a five year criminal background check for vendors it hires.

10
11 **Q. IN YOUR RESPONSE ABOVE YOU STATE THAT "BELLSOUTH FAILS TO**
12 **ADHERE TO ITS OWN ALLEGED PRACTICE OF CONDUCTING A FIVE YEAR**
13 **CRIMINAL BACKGROUND CHECK FOR VENDORS IT HIRES." PLEASE EXPLAIN**
14 **THIS STATEMENT.**

15 **A.** At page twenty-two (22) of Mr. Kephart's Direct Testimony, he states:

16 BellSouth requires a seven (7) year criminal background check for all of its
17 employees prior to hiring, and a five (5) year criminal background check
18 for vendors and agents.

19 As more fully alluded to in the Rebuttal Testimony filed by Levoyd L. Williams,
20 Vice President of Network Operations for Supra, Mr. Kephart's statement is false.
21 Pursuant to Mr. Williams' testimony, he was previously employed as a Branch Manager
22 in charge of Florida Operations with Lexent Services, Inc. ("Lexent"), which is a certified
23 installation vendor for BellSouth. During Mr. Williams' tenure with Lexent he was solely
24 responsible for hiring and placing Lexent employees to work in BellSouth's central
25 offices. Although Mr. Williams hired and placed employees to work in various
BellSouth central offices, he was never asked to provide BellSouth with authorization to

1 conduct a criminal background check on any Lexent employee nor was he ever
2 requested to produce any means otherwise verifying that a criminal background check
3 had previously been conducted on a particular employee. The fact that BellSouth fails
4 to adhere to its own asserted security measures, when coupled with those stringent
5 criminal background checks Supra has in place for both its vendors and employees,
6 makes any further requirement not only duplicative, unreasonable and excessive, but
7 also ludicrous.

8
9 **Q. AT PAGES 23 AND 24 OF MR. KEPHART'S DIRECT TESTIMONY, HE**
10 **STATES:**

11 The ALEC should not knowingly assign to BellSouth's premises any
12 individual who was a former employee of BellSouth and whose
13 employment with BellSouth was terminated for a criminal offense whether
14 or not BellSouth sought prosecution of the individual for the criminal
15 offense.

16 The ALEC should not knowingly assign to BellSouth's premises any
17 individual who was a former contractor of BellSouth and whose access to
18 BellSouth's premises was revoked for a criminal offense whether or not
19 BellSouth sought prosecution of the individual for the criminal offense.

20 **Q. DO YOU AGREE WITH THIS POSITION?**

21 **A.** No. The argument that was set forth in response to Issue 35 in my Direct
22 Testimony, specifically that BellSouth's requirements are unreasonable, excessive,
23 discriminatory and not in compliance with the FCC's ruling (FCC 99-48) issued on
24 March 31, 1999, are re-incorporated and affirmed herein in opposition to this posture
25 taken by BellSouth. Moreover, it is against public policy to preclude an individual from
obtaining employment and from otherwise attaining rehabilitation where that individual
has been previously convicted of a crime. If the Commission were to accept BellSouth's
position this would cut directly against public policy as it would force Supra to turn away

1 otherwise qualified candidates on the basis that they have been convicted of a crime.
2 This cut runs even deeper when one takes into account the fact that *Supra*, based
3 upon this absurd posture, would have to refuse employment to those individuals who
4 have not only been "accused" of having committed a criminal offense but who have yet
5 to have their day in court. I guess the phrase "innocent until proven guilty" has lost its
6 luster in the eyes of BellSouth.

7
8 **Q. HAS THE FCC ADDRESSED AN ILEC'S SECURITY CONCERNS**
9 **REGARDING ACCESS, BY A CLEC, TO AN ILEC'S PREMISES?**

10 **A.** Yes. In addressing security concerns of ILECs regarding physical collocation
11 and access to their premises CLECs, the FCC in its Fourth Report and Order, CC
12 Docket No. 98-147 adopted July 12, 2001, affirmed *Supra*'s position and stated:

13 We find, based on the record before us, that there is simply insufficient
14 evidence to support a finding that incumbent LECs' security concerns
15 require physical separation of collocated equipment from the incumbent's
16 own equipment in every instance. Incumbents claim that the placement of
17 competitors' equipment in the incumbent's premises raises serious
18 security concerns that can only be or are best addressed by physical
19 segregation of the competitors' equipment from the incumbent's
20 equipment. In contrast, competitors argue that the D.C. Circuit rejected
21 this argument, finding that there were "alternative means available to
22 [incumbent] LECs to ensure . . . security." Competitors also contend that
23 security is not one of the limits established in section 251(c)(6) on the
24 incumbent's obligation to provide physical collocation. The D.C. Circuit
25 recognized that incumbents' security concerns could be addressed by
26 alternative measures.⁷ Our rules currently permit incumbent LECs to
27 install security cameras or other monitoring systems, and to require
28 competitive LEC personnel to use badges with computerized tracking
29 systems while on the incumbent's premises, among other security options.
30 We find that such measures will provide sufficient security for an
31 incumbent's equipment in most circumstances.

32 _____

33
34
35 ⁷ See *GTE v. FCC*, 205 F.3d at 425 ("[I]t is hardly surprising that the FCC opted to prohibit [mandatory caged collocation], particularly given the alternative means available to LECs to ensure the security of their premises.").

1 While we recognize that incumbents, like other users of incumbent
2 LEC premises, have a right to protect their equipment from harm,
3 incumbents also have incentives to overstate security concerns so as
4 to limit physical collocation arrangements and discourage
5 competition. (See FCC Fourth Report and Order, at paragraphs 101 and
6 102- footnotes omitted.)

7 Q. WITH RESPECT TO ISSUES 38 AND 46, WHAT IS YOUR RESPONSE TO MR.
8 PATE'S POSITION THAT BELL SOUTH'S CLEC OSS IS IN COMPLIANCE WITH THE
9 PARITY REQUIREMENTS OF THE ACT?

10 A. I could not disagree more. In fact, Mr. Pate now believes that LENS provides
11 Supra with nondiscriminatory access to BellSouth's OSS. [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED] For a more complete technical discussion on this issue, please
19 see the Rebuttal Testimony of Adnan Zejinilovic.

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 Q. [REDACTED]

16 [REDACTED]

17 A. That LENS does not provide Supra with the capability to perform pre-ordering,
18 ordering, provisioning, maintenance and repair and billing functions in real time or in a
19 manner consonant with BellSouth's performance of the process. BellSouth Videotape,
20 "This Ol' Service Order."
21

22 [REDACTED]

23 [REDACTED]
24 [REDACTED]

25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED] presented in the
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 Additionally, the dual system of OSS (i.e. one system for the ILEC and another
9 for the ALEC) which are common today are inherently unequal. To paraphrase the
10 Supreme Court's wisdom in abolishing racial integration in public schools, "**separate**
11 **but equal, is inherently unequal.**" Of course, there is no equality here, separate or
12 otherwise. Effective OSS are the key to allowing an ALEC to effectively compete.
13 Without true parity in OSS, no competition can develop in the local exchange market.
14 BellSouth should be ordered to comply with its statutory obligations.

15 On or about September 24, 1999, witness Pate (under oath) made false claims in
16 his response on behalf of BellSouth to FPSC Staff 1st Set of Interrogatories, Item No. 11
17 in FPSC Docket No. 980119-TP:

18 REQUEST: Can online edit checks be made on the current version of
19 LENS? If yes, when was this feature made available?

20 RESPONSE: Yes. LENS is currently in a transition from "old LENS" to a
21 version of LENS based on TAG. TAG incorporates all of the online edit
22 checks in question.

23 The above response is blatantly false, as LENS was and has not been
24 transformed to a version based on TAG. Nor does TAG incorporate all of the online edit
25 checks which were at issue. As stated above, TAG, just like LENS, is edited by LEO
and LESOG, not by FUEL and SOLAR. As a matter fact, none of the ALEC OSS can
use the FUEL and SOLAR databases as ALECs do not issue service orders.

1 Amazingly, Mr. Pate continued to make such blatantly false statements in his responses
2 to the Commission's Staff's 1st Set of Interrogatories, Item Nos. 12 to 16 in FPSC
3 Docket No. 980119-TP, a true copy of which is attached as **Id.**

4 **Item No. 12:**

5 REQUEST: If the answer to interrogatory 11 is negative, is it technically feasible
6 to modify LENS to provide the same interaction and online edit checking features
7 that occur when BellSouth's retail ordering interfaces interact BellSouth's FUEL
8 and SOLAR databases?

8 RESPONSE: No response necessary

9 **Item No. 13:**

10 REQUEST: If it is possible to modify LENS to provide the online edit checking
11 features described in interrogatory 12, please describe the steps necessary to
12 accomplish this task, including the following:

13 RESPONSE :No response necessary

14 **Item No. 14:**

15 REQUEST: If it is not possible to modify LENS to provide the online edit checking
16 feature described in interrogatory 12, please explain why BellSouth believes that
17 such modifications are not feasible.

18 RESPONSE: Please see BellSouth's response to item No. 11.

19 **Item No. 15:**

20 REQUEST: Is BellSouth willing to engage in negotiations with Supra in order to
21 modify LENS to provide online edit checking?

22 If the answer is yes, please specify the conditions under which BellSouth is
23 willing to work with Supra on this matter (for example, cost limitations, time
24 constraints).

24 If not, why not?

25 RESPONSE: Please see BellSouth's response to Item No. 11.

1 In addition, Supra successfully completed verification testing of TAG on October
2 25, 1999, and therefore may now use TAG in production for pre-ordering and
3 ordering. BellSouth assumes that, because Supra has made the effort to
4 establish TAG, Supra will now use TAG rather than LENS.

4 **Item No. 16:**

5 **REQUEST:** Have other CLECs requested that LENS be modified to include
6 online edit checking? If yes, please identify those CLECs.

7 **RESPONSE:** No formal requests have been received via the Electronic Change
8 Control Process (EICCP).

9 Apparently, as has been their pattern, BellSouth employees make false
10 statements to judicial bodies without fear of any consequences. As stated above, TAG
11 does not provide online edit checking. The FPSC actually ordered BellSouth to modify
12 LENS to allow for the same online edit checking capability that BellSouth provides its
13 own retail services, provided by SOLAR and FUEL databases. Witness Pate's
14 response also contradicted BellSouth's avowed position on this matter. In BellSouth's
15 Motion For Reconsideration And Clarification filed on August 6, 1998 in CC Docket no.
16 980119-TP, BellSouth stated that:

17 In order to provide the same exact same online edit checking capability
18 that BellSouth's retail ordering systems provide, BellSouth would be
19 required to place computer hardware and software on the premises of the
20 ALEC. This would entail an enormous amount of investment in both time
21 and money. BellSouth's Regional Navigation System ("RNS") and other
22 systems such as the Direct Order Entry System ("DOE") would essentially
23 be placed on the premises of the ALEC.

24 BellSouth's claim, that in order to provide the same exact same online edit
25 checking capability that BellSouth's retail ordering systems provide, BellSouth would be
26 required to place computer hardware and software on the premises of the ALEC and
27 would entail an enormous investment in both time and money, lacks validity. In any
28 event, to the extent that BellSouth would have to do what it takes to comply with its

1 contractual and statutory obligations, *BellSouth must make all necessary investments to*
2 *comply.*

3 47 CFR §51.313 states that:

4 **(c) An incumbent LEC must provide a carrier purchasing access to**
5 **unbundled network elements with the pre-ordering, ordering,**
6 **provisioning, maintenance and repair, and billing functions of the**
7 **incumbent LEC's operations support systems.**

8 **Q. IN MR. PATE'S DISCUSSION REGARDING ISSUE 46, HE STATES THAT**
9 **BELLSOUTH'S COMPLEX SERVICE REQUESTS ARE HANDLED MANUALLY.**
10 **WHAT IS YOUR RESPONSE?**

11 **A.** Pate contradicts his previous deposition testimony given in the Petition of
12 MCImetro/BST Arbitration, Docket No. 11901 - U. **Supra Exhibit OAR 92.** The
13 contradictory testimony and the questions that elicited it are as follows:

14 **Q.** Are there any services that BellSouth only can order manually? In
15 other words, you can't even submit it into ROS. Somebody has to put it
16 down on a piece of paper and take it to a technician?

17 **A.** Well, no. But think of it this way, you have got to have some interface
18 some way to put it in the order and that's how ROS has been built; but the
19 services you just described I think are those complex services, which
20 means you've got to build it in the service order format just like you would
21 build it if you were entering into SOCS directly. And that's all ROS is
22 doing is just being the interface building in that same format.

23 See pages 46 and 47 *Id.*

24 **Q. MR. PATE SPENDS CONSIDERABLE TIME DISCUSSING THE CHANGE**
25 **CONTROL PROCESS ("CCP"). WHAT IS YOUR RESPONSE TO THIS**
26 **DISCUSSION?**

27 **A.** This is a red herring, as BellSouth's CCP is a sham. BellSouth has set up
28 various smokescreens, including its CGP, in an attempt to convince the state

1 commissions and the FCC that it is making every attempt to comply with the Act and to
2 further its aim to achieve 271 approval.

3 ALECs do not have any clout in BellSouth's CCP and are prevented from raising
4 any contractual OSS matters as well as from bringing anything besides a request. (I
5 have attached several examples of these "change requests" for your review. **Supra**
6 **Exhibits OAR 93 - 96**. When a ALEC makes a request, and a CLEC can only make a
7 request, BellSouth unilaterally determines whether to take any action or not. BellSouth
8 has no incentive, and Supra knows from experience [REDACTED] as well as from
9 the FCC's concerns in the Fourth Report and Order, that ILECs have a propensity to act
10 in an anti-competitive manner when they lack proper incentives.

11 Furthermore, if BellSouth was truly concerned with CLEC OSS, it could begin by
12 addressing the numerous issues raised in the various state commission, federal and
13 state court, commercial arbitration, and FCC proceedings brought against it for its
14 failure to provide nondiscriminatory access to its OSS. Instead, BellSouth puts forth this
15 sham of a process whereby BellSouth unilaterally determines what action to take with
16 respect to CLEC requests.

17

18 **Q. IS SUPRA AN ACTIVE PARTICIPANT IN BELLSOUTH'S CCP?**

19 **A.** No. Supra refuses to participate in BellSouth's sham process and to further help
20 BellSouth mislead the applicable regulatory bodies. First, it is a waste of resources that
21 ALECs could and should be using to compete against BellSouth. Therefore, Supra
22 cannot justify expending the time and manpower necessary to document and submit all
23 of its problems, participate in this process and end up no better off than if Supra had
24 done nothing. Instead, Supra's resources are better spent addressing this matter
25 through the commercial arbitration process mandated by the parties' Agreement.

1 Second, Supra does not want to be a part of a sham process that is intended to give the
2 appearance of compliance and aid BellSouth's attempts to obtain 271 approval. Finally,
3 in part of BellSouth's CCP documentation, the CLEC must agree to use the stated
4 Dispute Resolution Process as its exclusive means to resolve disputes, which I have
5 attached as **Supra Exhibit OAR 97**. This process serves to merely delay and avoid
6 resolution in favor of a CLEC, and is unacceptable to Supra.

7

8 **Q. THOUGH YOU DO NOT WISH TO USE BELLSOUTH'S CCP, MR. PATE**
9 **STATES THAT IT IS THE APPROPRIATE FORUM IN WHICH TO ADDRESS OSS**
10 **ISSUES. DO YOU AGREE?**

11 **A. No.** The parties' Agreement specifically requires that the parties take their
12 disputes to commercial arbitration. As such, [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED].

16 Furthermore, BellSouth's CCP Manual states, "The Change Control Process will
17 cover change requests for the following interfaces ...LENS ... EDI ... The scope of the
18 Change Control Process **does not** include the following: ... Contractual Agreements."
19 **Supra Exhibit OAR 98**. The CCP is designed to only address requests regarding non-
20 parity, CLEC OSS issues, on a non-contractual basis. BellSouth's CCP is not the
21 appropriate or mandatory forum to address Supra's issues.

22

23 **Q. IN CONNECTION WITH ISSUE 44, DO YOU AGREE WITH BELLSOUTH'S**
24 **PRACTICE OF REQUIRING SUPRA TO ADOPT "ALL TERMS THAT ARE**
25 **LEGITIMATELY RELATED TO THE TERMS THAT SUPRA DESIRES TO ADOPT**

1 **FOR ITSELF” AS STATED ON PAGE 35 OF JOHN RUSCILLI’S DIRECT**
2 **TESTIMONY?**

3 **A.** No. BellSouth misreads and misapplies the “pick and choose” rule adopted in
4 AT&T v. Iowa Utilities Board, 525 U.S. 366 (1999). Supra is allowed to pick and choose
5 which terms it desires to adopt and need not adopt an entire agreement, or portion
6 thereof, in order to attain the terms requested for adoption. BellSouth is using this
7 broad, general language as a means to (1) limit what terms, rates and conditions Supra
8 may pick, and (2) find reasons to argue so as to delay the implementation of such new
9 terms, rates and conditions. Should the new terms, rates and conditions apply
10 retroactively to the date of Supra’s request, BellSouth would not have such great
11 incentives to dispute what may or not be adopted.

12

13 **Q. DO YOU AGREE WITH MR. RUSCILLI’S POSITION THAT CHANGES TO THE**
14 **RELATIONSHIP BETWEEN SUPRA AND BELLSOUTH CAN ONLY BE AFFECTED**
15 **BY AMENDING THE CONTRACT WHICH WILL BE EFFECTIVE ON THE DATE THE**
16 **AMENDMENT MEMORIALIZING THE ADOPTION IS SIGNED BY BOTH PARTIES?**

17 **A.** No. As discussed in my Rebuttal Testimony to Issue 16 herein, the use of an
18 amendment serves no reasonable purpose other than to hinder and harm both Supra
19 and its telecommunications customers. The reason BellSouth has taken this stance
20 requiring an amendment and by further failing to acknowledge the amendment’s
21 effectiveness until executed by both parties, is that no harm can befall BellSouth.
22 Should the Commission accept BellSouth’s position, BellSouth will have no incentive to
23 affirm Supra’s request to adopt specific terms and could, potentially, delay executing an
24 amendment indefinitely. As an example of this non-compliant behavior one must look
25 no further than Supra’s attempts to adopt, as part of its current Interconnection

1 Agreement, the “comparative advertising” provision contained within the Mpower
2 Interconnection Agreement. Although Supra requested the right to adopt that provision
3 via correspondence dated October 6, 2000 (**Supra Exhibit OAR 41**), BellSouth has
4 never responded as it has instead chosen to ignore Supra’s request.

5 As further support of the need for an incentive for ILEC compliance, one need
6 look no further than the FCC’s Fourth Report and Order adopted July 12, 2001. With
7 respect to collocation issues, the FCC affirmatively stated that “[they] recognize that an
8 incumbent LEC has powerful incentives that, left unchecked, may influence it to allocate
9 space in a manner inconsistent with [its] duty” (Id. at paragraph 92) and, “...incumbents
10 also have incentives to overstate security concerns so as to limit physical collocation
11 arrangements and discourage competition.” Id. at paragraph 102. This language
12 reflects the FCC’s conclusions that ILECs require incentives in order to ensure
13 compliance with the Act. In Supra’s case, the FCC’s concerns over ILEC abuse of its
14 former monopoly status with respect to its competitors are proven accurate in the
15 Arbitral Tribunal’s Award. As such, this Commission must be proactive, with respect to
16 ILEC incentives for compliance, to properly promote competition in the state of Florida.

17 Based upon the foregoing, it is imperative that the Commission deny BellSouth’s
18 attempt to make Supra execute an amendment and uphold Supra’s position to make the
19 effective date retroactive to the date of the request in order to dispel any incentive on
20 behalf of BellSouth to delay acceptance of said request.

21 Moreover, any argument set forth by BellSouth that it is its “practice” to execute
22 amendments fails to withstand muster as BellSouth has failed to, and more importantly,
23 cannot set forth any reason, whatsoever, as to why these practices must be adhered to
24 in connection with this issue.

25

1 **Q. IN ISSUE 47, MR. PATE ARGUES THAT BELLSOUTH IS NOT OBLIGATED**
2 **TO PROVIDE SUPRA WITH AN ELECTRONIC INTERFACE FOR THE SUBMISSION**
3 **OF ALL OF SUPRA'S ORDERS. WHAT IS YOUR RESPONSE TO THIS POSITION?**

4 **A.** Please see my discussions regarding Parity Provisions in my Direct Testimony
5 as well as my responses to Issues 38 and 46 herein. I believe that my previous
6 discussions adequately address Mr. Pate's arguments as to Supra's submission of
7 LSRs under any circumstances.

8 As Mr. Pate has previously testified that BellSouth does not submit any manual
9 orders (**Supra Exhibit 92**), thus, BellSouth has an electronic interface for every
10 occasion. As such, the parity provisions of the Act as well as the logic of the Arbitral
11 Award require that BellSouth provide the same electronic interfaces to Supra.

12
13 **Q. IN CONNECTION WITH ISSUE 51, JOHN RUSCILLI IN HIS DIRECT**
14 **TESTIMONY AT PAGES 37 AND 38, STATES THAT "...BELLSOUTH IS NOT**
15 **REQUIRED TO PROVIDE ELECTRONIC ORDERING FOR ALL UNES..." IN**
16 **ADDITION TO MR. RUSCILLI, MR. PATE ALSO ADDRESSED THIS ISSUE.**
17 **PLEASE COMMENT.**

18 **A.** Please see my discussions regarding Parity Provisions in my Direct Testimony
19 as well as my responses to Issues 38 and 46 herein.

20 BellSouth's position that it is "not required to provide electronic ordering for all
21 UNEs" is typical of BellSouth's utter disregard for the Act's parity provisions. As set
22 forth in the Local Competition Order (96-325), the FCC stated, at paragraph 523, that
23 "(o)bviously, an incumbent that provisions network resources electronically does not
24 discharge its obligations under section 251(c)(3) by offering competing providers access
25

1 that involves human intervention." Similarly, the FCC, at paragraph 519 of its First
2 Report and Order, CC Docket 96-98 stated in pertinent part that:

3 As another example, the Georgia Commission recently ordered BellSouth
4 to provide electronic interfaces such that resellers have the same access
5 to operations support systems and informational databases as BellSouth
6 does, including interfaces for pre-ordering, ordering and provisioning,
7 service trouble shooting, and customer daily usage.⁸ In testimony before
8 the Georgia Commission, a **BellSouth witness acknowledged that "[n]o
9 one is happy, believe me, with a system that is not fully electronic."**⁹

10 Accordingly, if BellSouth uses electronic processes for its own retail pre-ordering,
11 ordering, provisioning, maintenance and billing processes, and does not provide the
12 same to its competitors to obtain what amounts to substantially the same elements or
13 services, it is not providing parity.

14 BellSouth's refusal to provide electronic interfaces in order to allow Supra to
15 compete in a non-discriminatory manner with BellSouth should not be taken lightly.
16 This is especially true when one views this statement [REDACTED]

17 [REDACTED] [REDACTED]

18 [REDACTED] Accordingly, Supra's proposed language, in my Direct
19 Testimony, should be adopted by this Commission.

20 **Q. AS TO ISSUE 52, BELLSOUTH HAS PROPOSED THE FOLLOWING**
21 **LANGUAGE:**

22 _____
23

24 ⁸ See In Re Petition of AT&T for the Commission to Establish Resale Rules, Rates, Terms and Conditions
25 and the Initial Unbundling of Services, Docket 6352, (Georgia Commission May 29, 1996).

⁹ Id.

1 The discount applied to Supra Telecom's purchase of BellSouth
2 Telecommunications services for purposes of resale shall be as set forth
3 in Exhibit A, attached hereto and incorporated herein by this reference.
4 The discount shall be applied to the retail rate for the telecommunications
5 service purchased by Supra Telecom. Such discount shall reflect the
6 costs attributable to any marketing, billing, collection and other costs
7 avoided by BellSouth as specified in the Act, by the FCC and the
8 appropriate state public service commission.

9 **IS SUPRA IN AGREEMENT WITH THE LANGUAGE PROPOSED BY**
10 **BELLSOUTH?**

11 **A.** No. The issue in the BellSouth/WorldCom Arbitration (Order No. PSC-01-0824-
12 FOF-TP) is identical to the issue before the Commission in the instant matter and that
13 issue is as stated:

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

17 As BellSouth's proposed language fails to address the heart of the issue (i.e. it
18 fails to affirmatively acknowledge that the resale discount **shall** apply to all
19 telecommunications services BellSouth provides to end users, **regardless of the tariff**
20 in which the service is contained), BellSouth's language is deficient and Supra's
21 language should be adopted. Since BellSouth failed to acknowledge, in no uncertain
22 terms, the application of the resale discount irrespective of the tariff that it may be
23 contained in, this defect can only lead to future, unnecessary litigation.

24 **Q. HAVE YOU REVIEWED MR. PATE'S DIRECT TESTIMONY IN REFERENCE**
25 **TO ISSUE 55? IF YES, DO YOU WISH TO ADD ANY SUBSTANTIVE COMMENTS?**

A. I have reviewed Mr. Pate's Direct Testimony in reference to Issue 55 and as
BellSouth has not set forth any new arguments in support of its position, Supra stands

1 by its response and proposed language to this issue, which has been adequately
2 addressed in my Direct Testimony.

3

4 **Q. HAVE YOU REVIEWED MR. PATE'S DIRECT TESTIMONY IN REFERENCE**
5 **TO ISSUE 57? IF YES, DO YOU WISH TO ADD ANY SUBSTANTIVE COMMENTS?**

6 **A.** I have reviewed Mr. Pate's Direct Testimony in reference to Issue 57 and as
7 BellSouth has not set forth any new arguments in support of its position, Supra stands
8 by its response to this issue, which has been adequately addressed in my Direct
9 Testimony.

10

11 **Q. IN CONNECTION WITH ISSUE 59 AT PAGE 39 OF JOHN RUSCILLI'S**
12 **DIRECT TESTIMONY, MR. RUSCILLI STATES:**

13

BELLSOUTH IS UNDER NO OBLIGATION TO EXPEDITE SERVICE
FOR SUPRA OR ANY OTHER ALEC.

14

15 **DO YOU AGREE WITH THIS STATEMENT?**

16

17 **A.** No. BellSouth's position exemplifies, once again, their refusal to comply with the
18 Act's parity provisions. If BellSouth is able to expedite orders for its customers, it must
19 also do so for Supra's customers. Moreover, there is no evidence that would lead
20 Supra to believe that expediting orders costs BellSouth any more than orders
21 provisioned in the ordinary course of business. Of course, as BellSouth has refused to
22 provide Supra with information regarding BellSouth's network, Supra has no
23 documentary evidence to support its position.

24

25 **Q. HAS BELLSOUTH PROVIDED SUPRA WITH QUICKSERVICE AT PARITY**
WITH ITS OWN RETAIL OPERATIONS?

1 A. No. BellSouth has willfully and intentionally failed to provide Supra and its
2 customers the same quality of service that BellSouth provides to itself and its customers
3 as evidenced by BellSouth's failure to provide Supra's customers with soft dial tone,
4 also known as QuickService. [REDACTED]

5 [REDACTED] Service is the ability of a phone company to provide
6 customers expedited service, in circumstances where the phone line at the location is
7 already connected for service (i.e. has soft dial tone). **Supra Exhibit OAR 80.**
8 BellSouth CSRs are and have been trained that a CLEC order cannot have a desired
9 due date "sooner than the following day." **Supra Exhibit OAR 84.**

10 [REDACTED]

11 [REDACTED] Mr.
12 Hendrix, the Senior Director at BellSouth responsible for the negotiations and
13 implementation of contracts between BellSouth and its competitors, uses this issue as a
14 reiteration of BellSouth's philosophy in "helping Supra succeed." According to Hendrix,
15 because the word QuickService or QuickServe is not contained in the Agreement,
16 BellSouth is under no obligation to provide it to Supra. This is nonsensical, given the
17 parity provisions cited in my Direct Testimony.

18 When faced with this evidence, BellSouth's Pate, [REDACTED]

19 [REDACTED]

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 Although Supra first notified BellSouth of the QuickServe disparity between the
4 two companies in 1998 (**Supra Exhibits OAR 99 and 100.**), BellSouth has admittedly
5 failed to install any electronic system that would allow Supra to provide its customers
6 with same-day service, as BellSouth provides to its customers. **Supra Exhibit OAR**
7 **101.** LSRs that are submitted manually (i.e. via fax), whether Supra calls BellSouth's
8 LCSC or not, are generally provisioned later than electronically submitted LSRs. **Supra**
9 **Exhibit OAR 80.** Supra informed BellSouth on numerous occasions that BellSouth's
10 proposed "workaround" procedure does not resolve the problem, as Supra was told to
11 call the LCSC in order to inform BellSouth that a specific customer was entitled to
12 QuickServe. **Id.** Of course, this workaround failed because Supra CSRs would often be
13 on hold for as long as 45 minutes, trying to get a BellSouth representative to change a
14 maximum of 3 orders per call. **Id.** BellSouth does not dispute the length of the LCSC
15 hold times. **Id.**

16 BellSouth continues to deem QuickServe to be a competitive advantage.
17 Although Mr. Pate and BellSouth would contend otherwise, specifically that QuickServe
18 is no longer deemed by BellSouth to be a competitive advantage (**Id.**), QuickServe is
19 exactly that. BellSouth CSRs can confidently state that, where available, a customer
20 can receive service the same day. **This Ol' Service Order.** Supra CSRs can make no
21 such statement. Should they make such a statement, and should BellSouth fail to
22 timely provision such service, Supra often is faced with a FPSC complaint for failing to
23 timely provide service. Additionally, and perhaps more importantly, is the negative
24 impact created by such facts: Supra loses customer confidence and goodwill when
25 BellSouth is able to provision the customer's service more quickly.

1 Interestingly enough, if a customer who simply has "soft dialtone" (i.e.
2 QuickServe available) is to get same day service, it is unfathomable why a customer
3 who is simply being converted from Supra to BellSouth would have to wait 5 to 12 days
4 for such a conversion to take place. This is especially vexing when one considers that
5 the conversion is simply a billing change (See *AT&T Corporation v. Iowa Utilities Board*,
6 525 U.S. 366, 394 (1999)), requiring no physical change to the customer's line.

7
8 **Q. BELLSOUTH HAS PROPOSED THE FOLLOWING LANGUAGE IN**
9 **CONNECTION WITH THIS ISSUE:**

10 Supra may request an expedited service interval on the local service
11 request (LSR). BellSouth will advise Supra whether the requested
12 expedited date can be met based on work load and resources available.
13 For expedited requests for loop provisioning, Supra will pay the expedited
14 charge set forth in this Agreement on a per loop basis for any loops
15 provisioned in 4 days or less. Supra will not be charged an expedite
16 charge for loops provisioned in five or more days, regardless of whether
17 the loops were provisioned in less than the standard interval applicable for
18 such loops.

16 **Q. IS THIS LANGUAGE ACCEPTABLE TO SUPRA?**

17 **A.** No. The fact that BellSouth continues to require Supra to request expedited
18 service via a LSR is indicative of the lack of parity provided by BellSouth in connection
19 with its CLEC OSS. As set forth in my Direct Testimony, Supra's LSRs must go through
20 more steps than a BellSouth service order (i.e. CLEC LSRs flow through LEO and
21 LESOG, while BellSouth's does not, **Supra Exhibits OAR 102a, 102b and 103.**) and
22 require reformatting in order to be provisioned. Moreover, the interfaces/databases that
23 the LSRs are submitted through (i.e. LENS, TAG, RoboTAG or EDI) are unreliable, web
24 based systems. Similarly, DOE and SONGS, the systems provided to the LCSC for the
25 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

1 ROS." Accordingly, as BellSouth requests that such expedited service be obtained via
2 an LSR, BellSouth is failing to provide nondiscriminatory direct access to its OSS in
3 violation of the Act, the parties' agreement as well as the Tribunal's Award and Order
4 clarifying same.

5

6 **Q. HAVE YOU REVIEWED MR. PATE'S DIRECT TESTIMONY IN REFERENCE**
7 **TO ISSUE 60? IF YES, DO YOU WISH TO ADD ANY SUBSTANTIVE COMMENTS?**

8 **A.** I have reviewed Mr. Pate's Direct Testimony in reference to Issue 60 and as
9 BellSouth has not set forth any new arguments in support of its position, Supra stands
10 by its response and proposed language to this issue, which has been adequately
11 addressed in my Direct Testimony.

12

13 **Q. HAVE YOU REVIEWED MR. PATE'S DIRECT TESTIMONY IN REFERENCE**
14 **TO ISSUE 61? IF YES, DO YOU WISH TO ADD ANY SUBSTANTIVE COMMENTS?**

15 **A.** I have reviewed Mr. Pate's Direct Testimony in reference to Issue 61 and as
16 BellSouth has not set forth any new arguments in support of its position, Supra stands
17 by its response to this issue, which has been adequately addressed in my Direct
18 Testimony.

19

20 **Q. HAVE YOU REVIEWED MR. PATE'S DIRECT TESTIMONY IN REFERENCE**
21 **TO ISSUE 62? IF YES, DO YOU WISH TO ADD ANY SUBSTANTIVE COMMENTS?**

22 **A.** I have reviewed Mr. Pate's Direct Testimony in reference to Issue 62 and as
23 BellSouth has not set forth any new arguments in support of its position, Supra stands
24 by its response and proposed language to this issue, which has been adequately
25 addressed in my Direct Testimony.

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Q. IN CONNECTION WITH ISSUE 65 AT PAGE 41 OF JOHN RUSCILLI'S DIRECT TESTIMONY, HE STATES:

BellSouth's position is 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.

SIMILARLY, IN CONNECTION WITH ISSUE 66 AT PAGE 43 OF MR. RUSCILLI'S DIRECT TESTIMONY, HE STATES:

Specific performance is a remedy, not a requirement of Section 251 of the 1996 Act nor is it an appropriate subject for arbitration under Section 252.

DO YOU AGREE WITH THESE STATEMENTS?

A. No. BellSouth's position to provide a credit for the "actual cost of the services or functions not performed or performed improperly" fails to provide adequate protection to Supra that BellSouth will seek to comply with the terms of the parties Follow-On Agreement. Similarly, this logic applies to the inclusion of a "specific performance" provision as it is a deterrent to BellSouth for failing to abide by the terms of the Follow-On Agreement.

As set forth in my Direct Testimony, Supra has been confronted with numerous, instances of BellSouth's intent to harm Supra and to keep Supra from competing against it in the Florida telecommunications market.

[REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 As further support of the need to adopt Supra's proposed language as an
 17 incentive for ILEC compliance, one need look no further than the FCC's Fourth Report
 18 and Order adopted July 12, 2001. With respect to collocation issues, the FCC
 19 affirmatively stated that "[they] recognize that an incumbent LEC has powerful
 20 incentives that, left unchecked, may influence it to allocate space in a manner
 21 inconsistent with [its] duty" (Id. at paragraph 92) and, "...incumbents also have
 22 incentives to overstate security concerns so as to limit physical collocation
 23 arrangements and discourage competition." Id. at paragraph 102. This language
 24 properly reflects the FCC's conclusions that ILECs require incentives in order to ensure
 25 compliance with the Act. Additionally, the FCC's concerns over ILEC abuse of its

1 former monopoly status with respect to its competitors [REDACTED]

2 [REDACTED]. As such, this Commission must be proactive, with respect to
3 ILEC incentives for compliance, to properly promote competition in the state of Florida.

4 Additionally, R. Earl Poucher, of the Office of Public Counsel, in his Direct
5 Testimony before this Commission in Docket No. 991378-TL, went to great lengths to
6 present evidence and recommendations regarding BellSouth's willful noncompliance
7 and the appropriate measures to penalize such conduct. Mr. Poucher's states that:

8 Staff points to 7091 violations, which include other rules that are clearly
9 applicable here. If you were to fine the company \$25,000 for each
10 violation because they were willful, then the fine would total \$177,275,000.
11 As I have already described, BellSouth's performance is worse than any
12 telephone company in Florida. If the Commission allows the company to
13 continue to willfully violate its standards, then it will provide a green light
14 for others to follow suit.

15 See page 13 of Mr. Poucher's Direct Testimony.

16 Mr. Poucher also discussed BellSouth's reason for its continued, willful violations:

17 ...it is obvious that a choice was made to deliver greater stockholder
18 returns and bonuses for employees while depriving its customers of the
19 service levels the company was required to furnish under the rules of this
20 Commission. BellSouth's profit incentives are built into the salary
21 expectations of its personnel. BellSouth has distributed bonuses to its
22 Florida employees over the past four (sic) years because of high
23 profitability in its Florida operations, while it has continually violated its
24 service obligations throughout the state. Given the length of time the
25 company has violated the rules, it is clear that the primary driver of the
company performance is profits...

26 See pages 15-16 of Mr. Poucher's Direct Testimony.

27 Mr. Poucher even provided testimony regarding the fact that competition was not
28 a factor in BellSouth's continued, willful noncompliance:

29 BellSouth's access lines have continued to grow during the four year
30 period, along with its estimates of inward movement. The number of
31 access lines is the primary driver in the number of trouble reports and
32 inward movement is the primary driver of installation activity. BellSouth

1 forecasts . . . for the past four years shows a gain of almost a million
2 access lines and a 19 percent increase in inward movement activity.

3 See page 21 of Mr. Poucher's Direct Testimony.

4 Based upon the foregoing bad faith conduct, and the general non-compliant
5 attitude of BellSouth, the provisioning of "credits" for the failure of BellSouth to honor the
6 material provisions of the parties' Follow-On Agreement fails to adequately protect
7 Supra from the non-compliant behavior continually exhibited by BellSouth since the
8 inception of the parties' relationship. However, Supra would be remiss if it did not point
9 out that if the limitation of liability clause as specifically set forth by Supra is not
10 affirmed, then it is Supra's position that there should be no limitation of liability clauses
11 contained within the parties' Follow-On Agreement for the reasons in my Direct
12 Testimony as well as contained herein.

13
14 **Q. AT PAGE 42 OF JOHN RUSCILLI'S DIRECT TESTIMONY HE STATES:**

15
16 There is no reason for the Commission to allow Supra to seek more
17 damages as a result of a mistake by BellSouth than BellSouth's retail and
18 wholesale access customers would be allowed to seek as a result of the
19 same mistake by BellSouth.

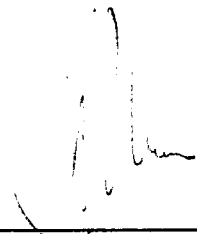
20 **Q. PLEASE COMMENT.**

21 **A.** I do not understand the foregoing statement as the exception to liability language
22 proposed by Supra does not pertain to a "mistake" made by BellSouth rather, it pertains
23 specifically, and unambiguously to intentional and gross negligent conduct on behalf of
24 BellSouth. Based upon BellSouth's intentional, "bad faith" conduct asserted against
25 Supra as set forth above, Supra's proposed language is a necessary measure to
provide BellSouth with financial incentive to comply with the parties' Follow-On
Agreement. Absent significant penalties for intentional and gross negligent non-

1 compliance with the said agreement, BellSouth will find it financially beneficial to not
2 comply with the Act as well as the parties' contractual terms.

3
4 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

5 **A.** Yes, it does at this time.

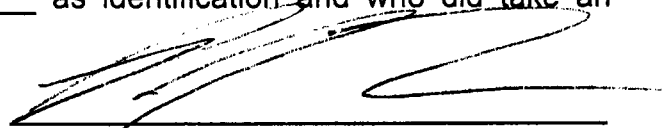


Olukayode A. Ramos

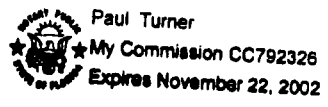
10 STATE OF FLORIDA)
11) SS:
12 COUNTY OF MIAMI-DADE)

13 15th The execution of the foregoing instrument was acknowledged before me this
14 day of August, 2001, by Olukayode A. Ramos, who is personally known to me
or who produced _____ as identification and who did take an
oath.

15 My Commission Expires:



NOTARY PUBLIC
State of Florida at Large



Print Name:

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49 BST's refusal to provide SMDI.
50 May 17, 2001 e-mail from P. Jordan to A. Medacier.

51 [REDACTED]

52 Omitted.

53 Omitted.

54 [REDACTED]

55 BST's refusal to provide DLR.

56 BST's refusal to provide SMDI.

57 BST's refusal to provide BAN.

58 BST's clarification codes re LSRs.

59 BST's threats to disconnect STIS's customer with aDSL.

60 [REDACTED]

61 BST's redline of Supra's current Interconnection Agreement as basis for Follow-On Agreement.

62 [REDACTED]

63 Minutes of CORE meeting.

64 Omitted.

65 Georgia Interconnection Agreement.

66 Ltr from STIS to BST re Interconnection Agreements in Georgia and Louisiana.

67 Response from BST re Interconnection Agreements in Georgia and Louisiana.

68 Amendment to Interconnection Agreement between IDS and BST.

69 Amendment to Resale Agreement between Worldwide and BST.

70 August 1, 2001 ltr from Nilson to Follensbee re network information.

71 BST Europe document.

72 [REDACTED]

73 Omitted.

74 [REDACTED]

75 July 11, 2001 ltr to Follensbee re amendments.

76 July 23, 2001 ltr to Follensbee re amendments.

77 Follensbee's response re amendments.

78 Order re BIPCO.

79 [REDACTED]

80 [REDACTED]

81 [REDACTED]

82 [REDACTED]

83 [REDACTED]

84 [REDACTED]

85 [REDACTED]

86 [REDACTED]

1 87
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[REDACTED]

Omitted.
Deposition of Pate – Petition of MCImetro/BST Arbitration, Docket No. 11901 - U.
CCP – Telepak.
CCP – Network One.
CCP – BST.
CCP – BST.
CCP – Dispute Resolution Process.
CCP – 8/23/00.
STIS ltr to BST re QuickService.
BST's response re QuickService.
LENS printouts re STIS's lack of QuickService.
[REDACTED]

1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

669

2 DOCKET NUMBER 001305-TP

3 DIRECT TESTIMONY OF CAROL BENTLEY

4 ON BEHALF OF

5 SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.

6 JULY 27, 2001

7
8
9 **Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH SUPRA**
10 **TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC. (SUPRA) AND YOUR**
11 **BUSINESS ADDRESS.**

12 **A.** My name is Carol Bentley. My business address is 2620 SW 27th Ave., Miami,
13 FL, 33133. I am employed by Supra as Chief Financial Officer. I have held this position
14 since 1998 and in this capacity I oversee all of Supra's financial matters, including, but
15 not limited to, Financial Statement preparation, Treasury Functions, General
16 Accounting, Tax Accounting, Accounts Receivable, Accounts Payable, Financial
17 Planning, Strategic Planning, and Capital Funding.

18 **Q. WHAT IS YOUR PROFESSIONAL EXPERIENCE AND EDUCATIONAL**
19 **BACKGROUND?**

20 **A.** My business career spans over 20 years in the high tech and
21 telecommunications industries. My areas of responsibilities have included General
22 Accounting, Financial Planning and Statistical Analysis, Business Modeling, Strategic
23 Planning, Systems Design and Implementation, and Contract Negotiation and
24 Administration.

25 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

A. In my testimony, I will address the following issues: 11, 15, 20, 41, 42, 48 and 63.

1
2 Issue 11: *Should the Interconnection Agreement allow either party to offset*
3 *from the other party disputed charges and other amounts due to the first party, from*
4 *sums due to the second party?*

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

6 **A.** Either party should be allowed to offset disputed charges due to the first party
7 against sums due to the second party. Since the current Interconnection Agreement
8 covers a business relationship whereby both parties bill and collect from each other,
9 then the billing, payment, collection and dispute processes must take into consideration
10 all aspects of the billing process. Billing, payment, collections and disputes must be
11 reviewed in whole, not on a piecemeal basis.

12 A good example of what can happen when billing, payments, collections and
13 disputes are segregated is the dispute for reciprocal compensation between BellSouth
14 and Intermedia, Inc. ("Intermedia"), a Tampa based ALEC. See *BellSouth*
15 *Telecommunications, Inc. v. ITC Deltacom Communications, Inc.* 190 F.R.D. 693
16 (M.D.Ala., 1999). In that case, Intermedia asserted a claim against BellSouth for monies
17 owed for reciprocal compensation. Intermedia was not able to offset the monies it
18 claimed BellSouth owed it against amounts billed by BellSouth to Intermedia.
19 Intermedia was forced to pay, in full, all amounts billed by BellSouth, all the while not
20 being able to collect the monies it was due from BellSouth. Intermedia was eventually
21 able to prevail in the courts after several years of attempting to resolve the matter, but
22 not before facing a possible bankruptcy as a result of having to pay BellSouth its bills,
23 without receiving amounts owed by BellSouth.

24 Let's clarify what, exactly, is at issue. Supra seeks to offset monies it believes it
25 is owed by BellSouth, against monies BellSouth believes it is owed by Supra, during the

1 pendency of a billing dispute. This exact situation has arisen in the very recent past.
2 BellSouth, having deeper pockets and significantly more resources, is in a position to
3 threaten Supra with disconnection of service during a billing dispute, absent some
4 contractual provisions which protect Supra (see issue 63). As such, it is possible for
5 BellSouth to force Supra to make payments to BellSouth while BellSouth withholds
6 Supra's monies thereby having the ability to drain Supra of its financial resources long
7 before Supra can defend itself against this one-sided scenario. Supra, on the other
8 hand, has no means to threaten disconnection of BellSouth, should BellSouth refuse to
9 pay disputed sums.

10 To allow an ILEC to continue to collect monies from what it has billed the ALEC,
11 while the ILEC withholds its payment to the ALEC, whether disputed or not, gives the
12 ILEC an unfair advantage and severely disadvantages the ALEC. No party in a mutual
13 business relationship should have the power to do such financial harm to the other
14 party, especially where, as in this case, the parties are competitors and BellSouth is a
15 former monopoly provider upon which Supra must rely.

16

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

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

20 **A.** Performance Measurements are of an utmost concern to Supra. It is this portion
21 of the agreement that measures the effectiveness of the performance of the parties
22 under the terms of the agreement.

23 Supra is unwilling to waive its rights by agreeing now, to comply with some
24 unknown outcome of ongoing or future proceedings concerning Performance

25

1 Measurements. The fact that these dockets and/or proceedings are pending provides
2 further weight to the importance of Performance Measurements.

3 Supra's past experience with BellSouth on this matter is that BellSouth
4 consistently and repeatedly acts in bad faith. The SQMs that are part of the parties'
5 existing Agreement and the Interim Performance Metrics proposed by BellSouth are
6 inadequate. At first glance, the metrics proposed seem quite extensive, however upon
7 more thorough examination it is apparent that BellSouth has no intention of measuring
8 the metrics that have the most bearing on ALECs.

9 As an example, the interim metric titled, "Percent Flow-Through Service
10 Requests" is a complete sham due to the exclusion of stated fall out reasons such as:
11 Fatal Reject, Auto Clarification, Manual Fallout (also known as "planned fallout") and
12 CLEC System Fallout. The excluded items contain the most important reasons why
13 local service requests (LSRs) don't flow through. To exclude those LSRs first and then
14 measure how many of the remaining LSRs flow through is not an accurate
15 measurement of the systems. Of course, the vast majority of the remaining requests
16 flow through, thereby skewing the metric, and giving the impression, albeit misleading,
17 that most of the LSRs flow through. It would be much more meaningful to measure
18 every single LSR submitted to determine how many flowed through and for those
19 requests that didn't flow through, what the reasons were.

20 On a recent tour of BellSouth's Atlanta LCSC, I observed BellSouth employees
21 working on all the LSRs that did not flow through the BellSouth system interfaces. I was
22 shown a very lengthy report for that day, showing all the requests that had fallen out of
23 the system. The supervisor told me that there was nothing wrong with the LSRs
24 submitted by the ALEC, but these requests were designed to fall out for manual
25 handling. The BellSouth Retail office systems do not have routine, residential orders fall

1 out of the system for "planned" manual handling. Furthermore, BellSouth provides its
2 Retail divisions with systems that include on-line edit checking. The on-line edit
3 checking allows the BellSouth Retail representatives to process error free orders.
4 ALECs have been provided no such capabilities. As a result, it is very important that
5 when measuring order flow through that what is measured is a comparison between the
6 time an ALEC processes its request for service and the time the service is actually
7 delivered to the end-user.

8 Many of the pre-ordering and ordering performance measures could be
9 eliminated all together if BellSouth would provide direct access to its own OSS. Supra
10 contends that unless or until BellSouth's retail operations are using the same OSS as
11 ALECs, the parties will never be at parity, as is required by the Telecommunications
12 Act.

13 Supra proposes the establishment of Performance Measures for pre-ordering,
14 ordering, provisioning, billing, maintenance, systems performance and quality of
15 services provided. As a rule, all measures should be a comparison of like activities
16 between the ILEC and the ALEC. Each general category of activities should be broken
17 down into smaller steps for measuring effectiveness and parity.

18 Supra further proposes that the Performance Measures should include standards
19 and/or targeted achievement levels. BellSouth has repeatedly argued to Supra that it is
20 only required to perform the measurements and report its findings. Similarly, BellSouth
21 has repeatedly asserted that it is under no obligation to reach any performance
22 standards and/or targets. Supra doesn't believe it serves any purpose to go through the
23 exercise of measuring and reporting if there is no incentive to attempt to reach parity or
24 agreed upon standards.

25

1 BellSouth has a history of failing to achieve required performance measurement
2 standards. On July, 19, 2001, BellSouth paid a \$4.5 million fine to the Georgia Public
3 Service Commission for failing to meet Commission mandated performance standards
4 for three consecutive months as ordered by the Commission in January, 2001.

5 Supra proposes the following Performance Measures, which should directly
6 compare the performance of BellSouth's own retail operations to BellSouth's
7 performance in connection with handling Supra's orders/LSRs:

8 For business and residential, the time any order is submitted to the time it is
9 provisioned. And, most importantly, if ALECs cannot submit orders directly, then
10 the measure must be from the time the ALEC submits a request until the request
11 is provisioned. This measure should also be calculated for the ILEC and a
12 comparison should be done.

13 The number of orders (requests, if ALECs cannot submit orders) that flow
14 through electronically vs. the number of orders that fall out of the systems. This
15 measure should report the reasons orders fall out of the systems (reasons for
16 clarification). This measure should also be calculated for the ILEC and a
17 comparison should be done.

18 The number and type of errors reported for all orders submitted. It should be
19 noted that measuring errors for requests/LSRs submitted is erroneous and
20 irrelevant because if the ILEC provided on-line edit checking at par with its own
21 order processing edit checking, there would be no errors contained within the
22 LSRs. The error on orders submitted should be compared between the ILEC
23 and the ALEC's.

24 The number of orders which are processed manually, at any point in the process.

25 For orders where QuickServe or QuickService is available, a separate
measurement for the time the order is submitted to the time the order is
completed.

The length of time between FOC and Completion.

The length of time between Due Date and Completion.

The number of orders, by type completed by the Due Date.

The number of orders, by type completed after the Due Date.

The number of service calls within 30 days of provisioning service.

1 The number of service calls within 30 days after a service call.

2
3 The amount of billing adjustments issued each month as a percentage of the total monthly bill.

4 The average length of time it takes to access BellSouth's underlying systems.

5 The number of hours each month that the OSS provided by BellSouth is out of service.

6
7 The number of OSS outages reported each month.

8 The number of OSS trouble calls logged each month.

9 The number of bugs identified in BellSouth's OSS each month.

10 The number of bugs outstanding each month for BellSouth's OSS.

11 The average number of repair calls, as a percentage of access lines, reported each month.

12
13 Furthermore, Supra requests that BellSouth be required to e-mail Supra the
14 measurement reports on a monthly basis.

15
16
17 Issue 20: *Should BellSouth be required to adopt validation and audit*
18 *requirements which will enable Supra to assure the accuracy and reliability of the*
19 *performance data BellSouth provides to Supra, and upon which the FPSC will ultimately*
20 *rely when drawing conclusions about whether BellSouth meets its obligations under the*
21 *Act?*

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

23 **A.** Supra believes that BellSouth should be required to adopt validation and audit
24 requirements, which would enable Supra and the FPSC to be assured of the accuracy
25 and reliability of the performance data BellSouth provides. Parity between ILECs and ALECs is at the heart of what is required to successfully provide for competition. It is

1 essential that performance measurement standards are established and reported, and,
2 more importantly, that they are accurate and can be relied upon.

3 It is these performance standards that must be evaluated in determining ILEC
4 271 applications. It is these performance standards that must be evaluated when
5 resolving disputes between ILECs and ALECs. It is these performance standards that
6 must be met in order to assure telecommunications consumers that they have a
7 legitimate choice in telecommunication services. As such, there must be a method to
8 validate the accuracy of the measurement and the performance against the standard.

9
10 Issue 41: *Should BellSouth be required to provide Supra the right to audit*
11 *BellSouth's book and records in order to confirm the accuracy of BellSouth's bills?*

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

13 **A.** Supra, or any other carrier utilizing BellSouth's network to provide
14 telecommunications services, does not have direct access to certain pieces of the
15 network that generate or house billing data. In addition to providing certain billing
16 records (see issue 48 – billing records), Supra needs to be reasonably assured that the
17 amounts billed by BellSouth are accurate. This can be achieved by conducting periodic
18 audits of BellSouth's books and records, pursuant to Generally Accepted Auditing
19 Standards ("GAAS"), to determine the accuracy of the invoicing and bills.

20 To an ALEC providing telecommunications services, one of the largest
21 components of its cost base are the expenses paid to the Incumbent Local Exchange
22 Carriers for the ordering of elements and resold services. It is not unreasonable for
23 Supra to be provided with the ability to analyze the invoices and validate the charges.

24 Furthermore, Supra does not have direct access to BellSouth's ordering,
25 provisioning, rating or billing systems. As a result, Supra's ability to validate the

1 amounts billed by BellSouth by means other than a periodic audit is severely limited.
2 The only reasonable alternative is to require BellSouth to provide direct access to its
3 ordering, provisioning, rating and billing systems.¹

4 Supra has not been provided with direct access to BellSouth's ordering,
5 provisioning, rating, and billing systems, [REDACTED]

6 [REDACTED]
7 [REDACTED] Supra has no choice but utilize the LENS interface that has been
8 provided to access those systems. Using LENS, Supra can only submit requests for
9 service (LSRs) and is unable to enter, process or track service orders.

10 After submitting an error free LSR, Supra is at the mercy of BellSouth and its
11 systems to properly execute and bill for the requested services. Supra has no visibility
12 to the BellSouth LON system, which is where Supra's error free orders are manually
13 entered, due to what BellSouth refers to as "planned system fallout". Supra has no
14 visibility to LEO or LESOG, which are the systems BellSouth uses to transform Supra's
15 LSRs into Service Orders. Supra has no visibility to SOCS, which is the BellSouth
16 system used to process and track the Service Orders. Supra has no access or visibility
17 to CWIN, which is the system BellSouth uses to provision Service Orders. Supra has
18 no visibility to the Hold File, which is where service orders flow to after provisioning, if
19 there are system processing errors. Supra has no access or visibility to GADB, which is
20 one of several rating systems used by BellSouth to price the services it bills to Supra.
21 Supra has limited visibility to the Accounts Database, which is where end user account

22

23

24

25

¹ [REDACTED]
² Id.

1 details are maintained. Supra has no access or visibility to BOCRIS, which is one of
2 several systems used by BellSouth to generate the bills it presents to Supra. Supra has
3 no access to ETCS, which is the system that collects the toll messages, or CDRs from
4 the Central Office Switch. Supra has no access to Alpha which is the system that filters,
5 edits and modifies the toll messages or CDRs for CABs processing or passing on to
6 BIBs for UNE processing. See **Supra Exhibit CB-2**.

7 Another category of charges Supra is subject to is called "Other Charges &
8 Credits." This category consists of a broad range of charges that BellSouth systems
9 and employees can add to Supra's bill without an LSR from Supra, without a call detail
10 record generated by the switch or without any input from Supra at all. There are a
11 number of databases and systems that BellSouth uses to track and bill for services.
12 Supra has no access and no visibility to any of these systems.

13 In all of the ordering, provisioning and billing processes that have been
14 described, Supra must take BellSouth's word for it and trust that BellSouth's systems
15 and employees all perform flawlessly throughout very complex systems and processes
16 required to execute orders, provision services, rate charges and generate bills.

17 It is unreasonable to expect Supra to rely on such systems, procedures and
18 employees for error free bills. It is reasonable however, for Supra to conduct periodic
19 audits of BellSouth's underlying data, procedures, systems and processes, pursuant to
20 GAAS, in order to insure that Supra is receiving reasonably accurate bills.

21
22 Issue 42: *What is the proper time-frame for either party to render bills?*

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

24
25

1 **A.** Supra is not asking any party to waive its statutory rights to collect charges for
2 services provided, but simply suggesting that bills for those services must be rendered
3 within a reasonable time frame.

4 Standard business and accounting practices require that companies close their
5 books once a year and provide a complete accounting of the results to its shareholders,
6 lien holders, bankers, etc. Nevertheless, it would never be possible to completely close
7 a company's books if there were potentially unbilled charges.

8 In many cases the charges for services will be unknown to Supra until a bill is
9 rendered. For most charges, Supra must rely on BellSouth to provide the billing records
10 (also see issue 48) and the bills in order to determine what the billing amount is. A bill,
11 along with the billing records, must be rendered by BellSouth for Supra to correctly
12 record its cost of sales. It is not unreasonable for Supra to be provided with the bill for
13 those charges in a reasonable time frame.

14 Furthermore, a periodic audit of BellSouth's books and records is necessary to
15 determine not only the accuracy of the bills rendered, but also to insure that all services
16 for which a charge was issued have been rendered. (See issue 41 in conjunction with
17 this matter.)

18 Standard commercial practice is that bills are rendered within six months of
19 providing the goods or services. The provision for rendering bills as late as six months
20 after the service has been provided should be the exception, not the norm.

21
22 Issue 48: *Is BellSouth obligated to provide Supra with Billing Records? If so,*
23 *what records and in what format?*

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

25

1 **A.** At Supra's request, BellSouth should provide any and all billing records
2 generated or housed by network elements that are not directly accessible by Supra.
3 Being that BellSouth is the only party that has complete and total direct access to all the
4 elements within its network, it must be obligated to turn over all of the relevant billing
5 records to Supra, which leases, but has no direct access to, the facilities. The
6 alternative would be to provide Supra with direct access to all of the network elements
7 that either generate or house billing data and all of the ordering, provisioning, rating and
8 billing systems. This includes direct access to central office switches, to the SS7
9 network, to BellSouth's outside plant, and to SOCS, CRIS, BOCRIS, ETCS, ALPHA,
10 CWIN, GADB, CABS, BIBS and any other system included in ordering, provisioning,
11 rating or billing.

12 BellSouth should be required to provide all of the underlying billing records in
13 industry standard formats as well as to periodically validate that the records it has
14 supplied are complete, true and accurate.

15
16 Issue 63: *Should BellSouth be permitted to disconnect service to Supra or a*
17 *Supra customer while a payment dispute is pending? Under what circumstances, if*
18 *any, would BellSouth be permitted to disconnect service to Supra?*

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

20 **A.** Supra feels that it is never appropriate for BellSouth to disconnect service to
21 Supra or Supra's customers at BellSouth's own discretion. Such a drastic remedy
22 should be one of last resort, to be granted by an impartial third party, whether it be a
23 judge, a panel of arbitrators, or the Commission. There are more appropriate remedies
24 elsewhere in the Interconnection Agreement for resolving billing and payment disputes.

25

1 When an ALEC's service or its customers' service is disconnected, the ALEC is
2 unable to conduct business. If the disconnection continues for more than a few minutes
3 or hours, the ALEC could, potentially be out of business permanently. Such egregious
4 consequences warrant special consideration and thoughtful deliberation.

5 Supra doesn't feel that this looming and potential threat is good for Florida
6 Telecommunication Customers. As an ALEC, Supra was required to go through a
7 rigorous certification process. The process is necessary to assure the Commission that
8 Florida consumers will be consistently and reliably serviced by the local carrier of their
9 choice. Citizens of Florida should not have to worry that their services may be
10 disconnected because their carrier and BellSouth may be engaged in a dispute.
11 Disconnection of consumers' telephone service or disconnection of consumers' carriers'
12 service is simply not an appropriate dispute resolution tool.

13 Supra also feels that to include the proposed service disconnection language in
14 the agreement allows BellSouth to act first, then defend its actions later. In fact,
15 BellSouth has carried out the very scenario described here with Supra in the past.
16 When Supra has filed a billing dispute with BellSouth, BellSouth has repeatedly taken
17 the stance that the moment it responds to Supra that the billing dispute is denied, then
18 the amounts in question are no longer in dispute. At times during the parties'
19 relationship, immediately following dispute denial notices, come the threats to
20 disconnect Supra's service and its customers' service. In fact, BellSouth has
21 disconnected Supra's service without carrying out the required dispute resolution steps
22 outlined in the parties' agreement.

23 On May 16, 2000, in the midst of a billing dispute between the parties, BellSouth
24 disconnected Supra's access to its ALEC OSS, LENS, thereby impairing, if not denying,
25 Supra's ability to provide service to its customers. This wrongful disconnection

1 remained for three days and nearly put Supra out of business. Only after a conference
2 call with Supra's attorney, did BellSouth finally restore Supra's connection to its ALEC
3 OSS. [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 Disconnection of Supra's service or its customers' service has such egregious
7 consequences it should only be an available remedy of last resort and only be available
8 as ordered by the Public Service Commission or an appropriate court as part of a
9 specific dispute resolution.

10 It is true that Supra's own Florida tariff permits Supra to disconnect its customers'
11 service for nonpayment. However, BellSouth's disconnection of Supra and Supra's
12 disconnection of its customers are different in a number of respects. Supra is in the
13 business of providing telecommunications services. If BellSouth wrongfully disconnects
14 Supra, consumers throughout the state of Florida are unfairly affected. If Supra
15 wrongfully disconnects a Supra customer, only that customer is unfairly affected.

16 Supra cautions the Commission in allowing BellSouth the requested
17 disconnection language in the Interconnection Agreement, as the parties' history has
18 shown that BellSouth will take whatever action it desires when it so desires and, as
19 such, may abuse such a contractual right to its competitor's detriment. As such, any
20 disconnection of service must be made only after the parties have engaged in a proper
21 dispute resolution proceeding, (i.e. through Alternative Dispute Resolution, as requested
22 by Supra.)

1 **CAN YOU SUMMARIZE THE RELIEF THAT SUPRA IS SEEKING?**

2 Supra is seeking the insertion of the following provisions in the Follow-On Agreement:

- 3 a) That one party be allowed to offset from the other party any sums due under the
4 Agreement.
- 5 b) That BellSouth be held to specific comprehensive performance measures and
6 standards, comparing the performance of BellSouth's own retail operations to
7 BellSouth's performance in connection with handling Supra's LSRs, as
8 specifically set forth at pages 6 and 7 hereinabove.
- 9 c) That BellSouth be required to adopt validation and audit requirements, which
10 would enable Supra and FPSC to be assured of the accuracy and reliability of
11 the performance data BellSouth provides.
- 12 d) That BellSouth be required to provide Supra the right to audit BellSouth's books
13 and records in order to confirm the accuracy of BellSouth's bills.
- 14 e) That BellSouth be required to render bills to Supra in a proper time frame in
15 accordance with standard commercial practice.
- 16 f) That BellSouth be required to provide Supra with all underlying billing records in
17 industry standard format and to periodically validate that the records it supplies
18 Supra are complete, true and accurate.
- 19 g) That BellSouth not be allowed to disconnect Supra's services or Supra's
20 customers' services without an arbitration award or an order from a commission.

21
22
23
24 **DOES THAT CONCLUDE YOUR TESTIMONY?**

25 Yes.

Carol Bentley
Carol Bentley

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

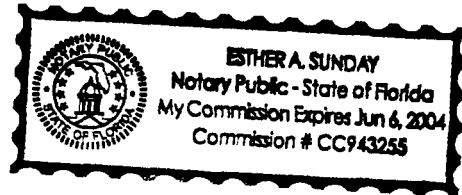
The execution of the foregoing instrument was acknowledged before me this
27th day of July, 2001, by Carol Bentley, who is personally known to me or who
produced _____ as identification and who did take an oath.

My Commission Expires:

Esther Sunday

NOTARY PUBLIC
State of Florida at Large

Print Name:



1 SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.

2 REBUTTAL TESTIMONY OF CAROL BENTLEY

3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

4 DOCKET NO. 001305-TP

5 AUGUST 15, 2001

6

7

8 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH SUPRA

9 TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC. (SUPRA

10 TELECOM) AND YOUR BUSINESS ADDRESS.

11

12 A. My name is Carol Bentley. My business address is 2620 SW 27th Ave.,
13 Miami, FL, 33133. I am employed by Supra Telecom as Chief Financial
14 Officer. I have held this position since 1998 and in this capacity I oversee all
15 of Supra Telecom's financial matters, including, but not limited to, Financial
16 Statement preparation, Treasury Functions, General Accounting, Tax
17 Accounting, Accounts Receivable, Accounts Payable, Financial Planning,
18 Strategic Planning, and Capital Funding.

19

20

21 Q. WHAT IS YOUR PROFESSIONAL EXPERIENCE AND EDUCATIONAL

22 BACKGROUND?

23

1 A. My business career spans over 20 years in the high tech and
2 telecommunications industries. My areas of responsibilities have included
3 General Accounting, Financial Planning and Statistical Analysis, Business
4 Modeling, Strategic Planning, Systems Design and Implementation, and
5 Contract Negotiation and Administration.

6

7 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY TODAY?**

8

9 A. I will rebutt the direct testimony of Clyde L. Greene, BellSouth Specialist,
10 Wholesale Billing.

11

12 **Q. MR. GREENE TESTIFIED TO ISSUE NUMBER 42, WHAT IS THE PROPER**
13 **TIMEFRAME FOR EITHER PARTY TO RENDER BILLS FOR OVERDUE**
14 **CHARGES. HE TESTIFIED THAT "UNTIL AN ACCESS BILLING**
15 **SUPPLIER QUALITY CERTIFICATION OPERATING AGREEMENT IS**
16 **DEVELOPED, THE STATUTE OF LIMITATIONS WILL APPLY." DO YOU**
17 **AGREE?**

18

19 A. No, I do not agree. The interconnection agreement between the two parties
20 is an all inclusive agreement. There should not be side agreements required
21 to address the parties' business dealings. Furthermore, Mr. Greene indicated
22 that the side agreement, Access Billing Supplier Quality Certification
23 Operating Agreement must first be developed. Supra does not agree to leave

1 this issue open until an ancillary agreement can be negotiated. The parties
2 need to agree on the length of time allowed for late billings and include it in
3 the contract. Supra Telecom suggests billings should be rendered no more
4 than 180 days after services have been delivered.

5

6 Supra Telecom is not asking any party to waive its statutory rights to collect
7 charges for services provided, but simply suggesting that bills for those
8 services must be rendered within a reasonable time frame.

9

10 Standard business and accounting practices require that companies close
11 their books once a year and provide a complete accounting of the results to
12 its shareholders, lien holders, bankers, etc. It would never be possible to
13 completely close a company's books if there were potentially unbilled charges
14 laying in wait.

15

16 As a Telecommunications services provider, one of the largest components of
17 Supra Telecom's cost base is the bill rendered to Supra Telecom by the
18 Incumbent Local Exchange Carrier. It is not unreasonable for Supra Telecom
19 to be provided with the bill for those charges in a reasonable time frame.

20

21 Standard commercial practice is that bills are rendered within six months of
22 providing the goods or services. Also, it should be noted that rendering a bill
23 later than a few days after providing the goods or services is considered to be

1 outside the norm. The provision for rendering bills as late as six months after
2 the service has been provided should be the exception, not the norm.

3

4

5 **Q. MR. GREENE TESTIFIED REGARDING ISSUE 48, "WHAT BILLING**
6 **RECORDS SHOULD BELLSOUTH BE OBLIGATED TO PROVIDE TO**
7 **SUPRA TELECOM? SHOULD BELLSOUTH BE REQUIRED TO PROVIDE**
8 **SUPRA TELECOM WITH BILLING RECORDS WITH ALL EMI STANDARD**
9 **FIELDS?" DO YOU HAVE ANY COMMENTS REGARDING HIS**
10 **TESTIMONY?**

11

12 A. Yes, Mr. Greene testified mostly about billing records that are provided to
13 Supra via ODUF, ADUF and EODUF in the EMI format. The issue is broader
14 that just the DUF files and broader than just the EMI format. Supra Telecom
15 should be provided with the same billing data that BellSouth has access to
16 directly from the central office switch. In the exhibit attached to my direct
17 testimony, **Exhibit CB 2**, the systems used in filtering, altering, rating and
18 processing the call detail records and the message records are described. All
19 the records are collected in the Electronic Toll Collection System (ETCS)
20 directly from the central office switch via periodic polling throughout any given
21 day. The data is collected in Automated Message Accounting (AMA) format.
22 Supra Telecom maintains that it is entitled to all of this data and that the data

1 should be provided in AMA format or whatever the current industry standard
2 format is.

3

4 This data is required to properly bill our customers, to review traffic and/or
5 calling patterns of our customers, to properly bill other carriers who access
6 Supra's leased network, and for any other purpose that Supra sees fit.
7 BellSouth has access to this data for its customers and Supra should have
8 the same access.

9

10 Furthermore, Supra Telecom should be provided any and all billing records
11 generated or housed by network elements that are not directly accessible by
12 Supra Telecom. Being that BellSouth is the only party that has complete and
13 total direct access to all the elements within its network, it must be obligated
14 to turn over all of the relevant billing records to Supra Telecom, who leases,
15 but is not provided with direct access to, the facilities. The alternative would
16 be to provide Supra Telecom with direct access to all of the network elements
17 that either generate or house billing data and all of the ordering, provisioning,
18 rating and billing systems. This includes direct access to central office
19 switches, to the SS7 network, to BellSouth's outside plant, and to SOCS,
20 CRIS, BOCRIS, ETCS, ALPHA, CWIN, GADB, CABS, BIBS and any other
21 system included in ordering, provisioning, rating or billing.

22

1 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

2 A. Yes.

3

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Carol Bentley

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STATE OF FLORIDA)

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) SS:

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COUNTY OF MIAMI-DADE)

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16

The execution of the foregoing instrument was acknowledged before me
17 this _____ day of August, 2001, by Carol Bentley, who is personally known to
18 me or who produced _____ as identification and who did
19 take an oath.

20

21

My Commission Expires:

22

23

NOTARY PUBLIC

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State of Florida at Large

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Print Name:

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1 COMMISSIONER JABER: Now, let's get clear on
2 confidential exhibits. From OAR-1 through OAR-48, tell me
3 which ones are confidential.

4 Mr. Chaiken, you want to take a stab?

5 MR. CHAIKEN: I was hoping to confer really briefly
6 with Ms. White, if I may.

7 COMMISSIONER JABER: Okay.

8 MS. WHITE: Maybe Mr. Twomey. He's the one that did
9 the pleadings.

10 COMMISSIONER JABER: All right.

11 MS. WHITE: Yes, we wouldn't have a problem, or if
12 you want to do it at the next break.

13 COMMISSIONER JABER: No, I don't want to start
14 referring to exhibits until we have a good handle on what's
15 confidential. So we will just take three minutes off the
16 record.

17 (Off the record.)

18 COMMISSIONER JABER: Staff, it would be helpful when
19 you know which items have been requested confidential that you
20 indicate that in the prehearing order.

21 MR. KNIGHT: Okay. We will.

22 MR. TWOMEY: Commissioner Jaber, BellSouth and Supra
23 jointly filed a document on September 19, 2001, called "Joint
24 Request for Specified Confidential Classification," and that
25 document, which we can go through on the record, sets forth the

1 specific exhibits that are deemed confidential as well as
2 specific designations of the parts of the prefiled testimony.
3 And again, at this point I'm just talking about the Supra
4 witnesses that are confidential. And if you'd like, I can go
5 through that right now.

6 COMMISSIONER JABER: Yeah, I think for purposes of
7 the record it would be helpful for you to read into the record
8 which ones you believe are confidential and what parts of the
9 testimony are.

10 MR. TWOMEY: Okay. Let me start with the exhibits.
11 We've got the exhibits divided into two categories. One is a
12 category of documents that relate to the commercial arbitration
13 proceeding between the parties that we've claimed
14 confidentiality regarding, and Supra has sort of a qualified
15 statement about its confidentiality that's already in the
16 record. But we separated that out from the second category of
17 documents which are what we call business proprietary documents
18 to BellSouth that I think in most proceedings are typically
19 confidential, but we decided to break those out just in case
20 the Commission came to a different conclusion about the
21 confidential status of one category or the other. We wanted
22 you to be able to have those divided.

23 The documents that relate to the commercial
24 arbitration award are listed as follows: OAR-3, OAR-4, OAR-5,
25 OAR-6, OAR-7, OAR-47, OAR-51, OAR-54, OAR-62, OAR-72, OAR-79,

1 OAR-80, OAR-104, DAN -- well, do you want to do them all at the
2 same time? Because we've got some for the other witnesses too.

3 COMMISSIONER JABER: The ones that relate to the
4 arbitration?

5 MR. TWOMEY: No. My point is, Mr. Nilson has one
6 too. Do you want to do that when he comes up?

7 COMMISSIONER JABER: When he comes up.

8 MR. TWOMEY: Okay. And then CB-1, which is now a
9 part of Mr. Ramos's testimony because it was Ms. Bentley's
10 exhibit.

11 COMMISSIONER JABER: Okay. The ones you just read to
12 me have to do the arbitration; correct?

13 MR. TWOMEY: That's correct. And the one statement
14 we need to make is that OAR-61 in the prehearing statement,
15 excuse me, the prehearing order is listed as BST's redline of
16 Supra's interconnection agreement. And we talked about that a
17 little bit yesterday with my witness. It's actually Supra's
18 redline, which is why it's confidential because they referred
19 to the commercial arbitration award in the redline.

20 Do you disagree with that? That's that redline that
21 Adnan had. It had the reference to the June 5th award in the
22 redline. That's how I knew it was not the one that we proposed
23 to you. It was the one that you sent to us in June of 2001.

24 MR. CHAIKEN: I believe that Staff has already ruled
25 that that was not to be held confidential.

1 MR. TWOMEY: Well, actually, I think he's actually
2 right about that because it had been filed into the public
3 record before we had an opportunity, and I don't need to argue
4 that right now. I just want to be sure that the records are
5 clear that the description of the document is not BST's
6 redline, it is Supra's redline. That's my only point.

7 COMMISSIONER JABER: Yeah, the prehearing order is
8 clarified to reflect that OAR-61 is Supra's redline of
9 BellSouth's current interconnection agreement.

10 MR. TWOMEY: Okay. And, actually, Mr. Chaiken is
11 absolutely right that we requested confidential treatment of
12 that early on, but it does not include it so I'm sorry. I
13 should not have included that.

14 COMMISSIONER JABER: All I'm trying to do --

15 MR. TWOMEY: Is get the exhibits right.

16 COMMISSIONER JABER: Exactly.

17 MR. TWOMEY: All right. The exhibits, the additional
18 exhibits that are confidential by virtue of containing
19 BellSouth proprietary business information --

20 COMMISSIONER JABER: Okay. Wait. Before you get to
21 that, OAR-3, 4, 5, 6, 7, 47, 51, 54, 62, 72, 79, 80, 104,
22 CB-1 shall be identified separately as confidential composite
23 Exhibit 21.

24 (Exhibit 21 marked for identification.)

25 COMMISSIONER JABER: Now, for purposes of the record,

1 to the degree those numbers were included in previous exhibits,
2 they should be deleted and indicated that it's a separate
3 confidential exhibit, part of Exhibit 21.

4 Next list.

5 MR. TWOMEY: The next list -- and the reason I was
6 talking about 61 is that 61 was included in what we've jointly
7 filed a week ago, but it was an oversight, and it should not
8 have been included.

9 So I'm going to give you the list of confidential
10 exhibits. It's OAR-63, OAR-81, OAR-82, OAR-83, OAR-84, OAR-85,
11 OAR-86, OAR-87A, OAR-87B, OAR-88, OAR-89A, OAR-89B, OAR-90,
12 OAR-102, OAR-103, and CB-2.

13 COMMISSIONER JABER: Okay. OAR-63, 81, 82, 83, 84,
14 85, 86, 87A, 87B, 88, 89A, 89B, 90, 102, 103, and CB-2 shall be
15 identified as Confidential Composite Exhibit 22.

16 (Exhibit 22 marked for identification.)

17 COMMISSIONER JABER: For purposes of the record, to
18 the degree those numbers conflict with what was previously
19 identified in Exhibits 18 through 20, that should be
20 disregarded, and these should be made part of Composite
21 Confidential Exhibit 22.

22 MR. KNIGHT: Commissioner?

23 COMMISSIONER JABER: Yes.

24 MR. KNIGHT: That would in sense eliminate Exhibit 20
25 because that is CB-1 and 2.

1 COMMISSIONER JABER: I've already identified it,
2 Wayne. It's easier to leave the numbers the way they are.

3 MR. KNIGHT: Okay.

4 MR. TWOMEY: Okay. Now, the next issue is that there
5 are portions of the prefiled testimony that also contain
6 confidential information. And I know that Supra, when it
7 filed, filed a confidential version and a nonconfidential
8 version, and I'm not sure when you insert it into the record
9 whether we need to also go through -- we have a list here of
10 the page numbers and line numbers for the confidential
11 information. It was included in the filing we made last week,
12 and I don't know if you need me to put that into the record
13 right now or not.

14 COMMISSIONER JABER: Let me make sure I understand
15 how confidential testimony is handled.

16 Mr. Knight, I thought that the redacted versions
17 actually get filed.

18 MR. KNIGHT: Correct.

19 COMMISSIONER JABER: And the witnesses refer to the
20 redacted versions. And the degree it's important to look at
21 the confidential testimony, it's referred to generally. Does
22 it ever get -- it doesn't get moved into the record; correct?

23 MR. KNIGHT: No, not the confidential version.

24 MR. TWOMEY: I just wanted to make sure of that. So
25 we don't need to go through this list of page numbers and line

1 numbers?

2 COMMISSIONER JABER: I don't believe so.

3 MR. TWOMEY: Okay.

4 COMMISSIONER JABER: Not yet.

5 Anything further on confidential exhibits? Do we all
6 have an understanding of the exhibit numbers?

7 Do you have an understanding of the exhibit numbers,
8 Mr. Chaiken, in what we just did?

9 MR. CHAIKEN: Yes, we do. We have one procedural
10 question, which would be -- and I'm sorry for asking it now,
11 but should it be found ultimately that some of the exhibits are
12 not confidential, would it be the burden on Supra to move those
13 in, or would Staff do it themselves?

14 COMMISSIONER JABER: Now, assuming there's no
15 objection, we will admit these exhibits into the record, and
16 they'll just be treated as confidential and secured through our
17 normal confidential procedures, the rules and statutes that
18 cover confidentiality here.

19 MR. CHAIKEN: Does that include portions of the
20 testimony if those are found not to be confidential?

21 COMMISSIONER JABER: Mr. Knight, what do you all do
22 with the testimony?

23 MR. KNIGHT: Those portions that would not be -- they
24 could either refile, refile them indicating the portions that
25 are not confidential would not be redacted, and they could

1 become substitute exhibits, or we could go through and provide
2 them with a list of what is not confidential. We'll have a
3 ruling on that fairly shortly.

4 COMMISSIONER JABER: That's as it relates to the
5 exhibits. I think Mr. Chaiken is asking about the testimony.
6 You want to be able to file the confidential
7 testimony?

8 MR. CHAIKEN: Should it be deemed not to be
9 confidential.

10 COMMISSIONER JABER: Ms. White, you were --

11 MS. WHITE: Wouldn't it be done just like the
12 exhibits? I mean, you file the redacted copy for the public
13 record, but the unredacted copy is filed subject to the
14 confidential classification, and that it could be used, but it
15 just has to be kept confidential in the regular course of the
16 Commission's rules.

17 COMMISSIONER JABER: So you propose that it be
18 identified as an exhibit?

19 MS. WHITE: The confidential portions? That might
20 make it easier for -- I hate to do it, but it might make it
21 easier for the Staff on the recommendation.

22 COMMISSIONER JABER: Mr. Chaiken, what I'm thinking
23 about is actually identifying the confidential part of the
24 testimony as a separate exhibit and letting you all refer to
25 it. It will be treated as confidential, you know, through the

1 ruling, and Staff can refer to it as an exhibit.

2 MR. CHAIKEN: I don't have a problem with that.

3 COMMISSIONER JABER: Do you have a copy of that
4 testimony?

5 MR. CHAIKEN: We would have to, you know, cut and
6 paste from our testimony. It can be done. I don't think it
7 can be done in time for the purpose of the hearing today.

8 COMMISSIONER JABER: Let's revisit this issue after
9 lunch. You all talk about how it should be done.

10 Mr. Knight, you talk to General Counsel and the
11 Bureau Chief and find out what happens in other cases when this
12 issue comes up. Okay?

13 MR. KNIGHT: Will do.

14 COMMISSIONER JABER: Anything else, Mr. Chaiken?

15 MR. CHAIKEN: No, ma'am.

16 COMMISSIONER JABER: You tender your witness for
17 cross?

18 MR. CHAIKEN: Yes, ma'am. I'm sorry, I think my
19 witness has an opportunity to provide a five-minute summary.

20 COMMISSIONER JABER: Mr. Ramos, five-minute summary.

21 THE WITNESS: Thank you very much, Commissioners.
22 Good morning, Commissioners. The purpose of this summary of my
23 testimony is to highlight some parts of my direct and rebuttal
24 testimonies in order to provide information to the Commission
25 concerning the relevant portions to this proceeding.

1 First, I must say that it has been a difficult
2 relationship for Supra as BellSouth has often acted in bad
3 faith with the tortious intent to harm Supra. Please see Pages
4 40 to 41 of Exhibit OAR-3.

5 Moving forward, Supra needs and the desire to serve
6 consumers have always been and always be a major motivating
7 force of our business. Supra is also trying to protect the
8 rights of its customers. This Commission should be aware that
9 Supra has over 100,000 customers in South Florida alone. And
10 the only way to protect their immediate right, next to FPSC, is
11 to obtain an interconnection agreement with BellSouth that will
12 ensure and assure that Supra is able to provide the same
13 quality service as BellSouth. Consumers have benefited
14 immensely from the development of effective competition in the
15 long distance, wireless, and Internet services; after five
16 years since the passage of the Telecom Act, they are yet to
17 benefit from competition in the local exchange market due to
18 the actions and inaction of BellSouth and some other incumbent
19 local exchange carriers.

20 For Supra to compete, it must be able to offer at
21 least the same quality services that BellSouth provides its
22 customers, and the agreement must provide for that. Because
23 BellSouth is a monopoly and new entrants must rely entirely, as
24 Supra does, on BellSouth's network to compete with BellSouth,
25 BellSouth has a disincentive to provide Supra with quality

1 service.

2 BellSouth has known since about June 1998, and again
3 as well as April 26, 2000, that Supra needed certain
4 information about its network in order to ensure clarity and
5 parity in the parties' follow-on agreement. As BellSouth
6 refused to provide the necessary information, Supra was finally
7 forced to request for this information via discovery request.
8 Supra was also forced to file a motion to compel leading to the
9 discovery orders that BellSouth refused to fully comply with.
10 Significantly, BellSouth's inability to provide the USOCs for
11 UNE combos. Please see again Pages 15 to 16 of OAR-3.

12 BellSouth will want this Commission to believe that
13 Supra is delaying this proceeding. Far from it. To the
14 contrary, BellSouth is the party that is delaying this
15 proceeding. Please see Pages 12 to 42 of my direct testimony
16 as well as Pages 14 to 32 of my rebuttal testimony.

17 Disconnection of services. If Supra seems cautious
18 in its negotiation with BellSouth, it's because of its past
19 relationship with BellSouth. Supra is also trying to protect
20 the rights of its customers. BellSouth only values its
21 internal policies, not the interconnection agreement,
22 definitely not Supra or its customers. Please see Page 13,
23 Line 8 to Page 14, Line 13 of my rebuttal testimony.

24 Supra also wants parity in OSS requirements. I
25 invite the Commissioners to review Exhibit OA-3 (sic) with

1 special attention because it sheds some light on the issues in
2 this proceeding, especially 38, 46, 47, 51, 55, 57, 59, 60, 61,
3 and 62.

4 Alternative dispute resolution. The parties have had
5 two arbitrations completed and have two pending. And that
6 issue is well discussed in my direct testimony at Pages 61 to
7 67, as well as my rebuttal testimony, Pages 33 to 35. And
8 please, I'd like you to see Exhibits OAR-38, 39, and 40.

9 One wonders why BellSouth is so afraid of -- so
10 against commercial arbitration. BellSouth has stated that it
11 is expensive; it is time-consuming. Supra does not find it to
12 be like that. As a matter of fact, Supra believes strongly
13 that instead of allowing public money to be used to fund the
14 party's anticompetitive activities, the losing party should be
15 responsible for the costs of its inaction or actions, and
16 that's exactly what commercial arbitration proceedings provide
17 for.

18 Perhaps we should take a look at OAR-71, which is
19 clearly a document filed by BellSouth Europe, and that
20 document -- part of the document -- and excerpt of that
21 document is on Page 34 of my rebuttal testimony. I will read
22 from there directly, which is Line 15. According to BellSouth
23 Europe, "The incumbent brings enormous structural advantages to
24 competition in the form of paid-for infrastructure, name
25 recognition, brand loyalty, consumer inertia, preferential

1 access to data regarding the calling habits of its
2 interconnecting competitor's customers, superior access to
3 infrastructure, established regulatory/legislative
4 relationships." That is Page 6 of that particular document
5 filed by BellSouth Europe. That summarizes my testimony.

6 MR. CHAIKEN: Mr. Ramos is available for cross
7 examination.

8 COMMISSIONER JABER: Mr. Chaiken, let me go back to
9 your question with respect to the confidential testimony
10 because I've had some recommendation from our legal Staff that
11 I think is absolutely correct. All of the testimony is
12 inserted into the record, all of it. The entire testimony of
13 Mr. Ramos is inserted into the record.

14 For purposes of the public transcript, there is a
15 part of the testimony that is indicated as redacted. And if
16 there is a subsequent ruling that rules against the
17 confidentiality, then our legal Staff does some sort of
18 memorandum into the record file that says, you know, pages
19 whatever are no longer afforded confidential treatment.

20 Now, Ms. Keating, you need to correct me if I'm
21 wrong, but that's how it's handled.

22 MS. KEATING: That's the way I recall us handling it
23 in the past.

24 COMMISSIONER JABER: And I think for the sake of
25 consistency, I'd like do it that way in this case.

1 MR. CHAIKEN: That's fine. I have no problem with
2 that.

3 COMMISSIONER JABER: Okay. And thank you for asking
4 the question. That was a new one on me.

5 Ms. White, do you have any problems with handling it
6 that way?

7 MS. WHITE: No, ma'am.

8 COMMISSIONER JABER: Okay. Mr. Ramos, you've been
9 tendered for cross.

10 Go ahead, BellSouth.

11 CROSS EXAMINATION

12 BY MS. WHITE:

13 Q Good morning, Mr. Ramos, my name is Nancy White for
14 BellSouth Telecommunications, and I'm going to start with your
15 cross examination with your adoption of Ms. Bentley's
16 testimony. Mr. Twomey will then follow me with the cross
17 examination of your direct and rebuttal filed testimony.

18 You're adopting Carol Bentley's direct and rebuttal
19 testimony in this docket; is that correct?

20 A That's correct.

21 Q And it's my understanding that Ms. Bentley has
22 resigned from BellSouth. Is that a true statement?

23 A From Supra.

24 Q I mean, from Supra, I'm sorry. From Supra; is that
25 correct?

1 A That's fine. That's correct.

2 Q Can you tell me why she resigned?

3 A I guess for personal reasons. I don't know much
4 about why she resigned, but she only told us "for personal
5 reasons."

6 Q All right. Let's move to Issue 15, which is what the
7 appropriate performance measures should be in this docket. Can
8 you tell me what your expertise is in the area of performance
9 measurements?

10 A I have reviewed -- I'm an accountant, by the way.
11 I'm a CPA. And I've reviewed BellSouth's internal procedures
12 that we're able to have as well as what BellSouth provides
13 currently to CLECs, and I am very, very confident about the
14 subject matter.

15 Q Okay. Are you familiar with Docket Number 000121-TP,
16 which is the investigation into the establishment of operations
17 support systems permanent performance measures for incumbent
18 local exchange telecommunications companies?

19 A Yes, I'm familiar with that docket, but --

20 Q I'm sorry. I didn't mean to interrupt, I'm sorry.

21 A Okay. But Supra is not a participant in that docket.

22 Q Okay. So Supra did not participate in that docket?

23 A That's correct.

24 Q Mr. Ramos, I'm going to hand you a copy of Order
25 Number PSC-01-1819-FOF-TL dated September 10, 2001 in Docket

1 Number 000121-TP. I'm handing a copy out to everyone. I'm not
2 going to enter it as an exhibit because it is a public record
3 but just for ease.

4 Are you familiar with this order, Mr. Ramos?

5 A I am not familiar with the order because the order,
6 as you can see, was issued on September 10th, and I have not
7 had time to read it at all.

8 Q Okay. So you don't know whether this order resolves
9 the performance measurement issues that Supra raised in
10 Mr. Bentley's testimony?

11 A Based on my review of the docket itself to date and
12 the testimony that Supra has filed in this proceeding, Supra, I
13 have stated in our testimony that we would like to have the
14 performance measurements relating to the parties' follow-on
15 agreement specifically stated in the agreement. The fact that
16 these dockets are still underway and it's still open to
17 litigation, we are not able to reasonably conclude that this is
18 going to satisfy our needs.

19 Q Well, I thought you said you hadn't studied it to see
20 whether it would satisfy your needs.

21 A I did not say that. I did not say that I have read
22 this particular order. The September 10th order, I have not
23 read it because we've been busy on this particular proceeding
24 by the time that this order was released.

25 Q Okay. Well, what is the basis for your statement

1 that you don't think what the Commission has decided in Docket
2 Number 000121 satisfies Supra's issues with regard to
3 performance measurements?

4 A For instance, testimony that was filed was filed on
5 July 27th, and the rebuttal was filed on August 15th. This
6 order was issued on September 10th. Supra has not had the time
7 to review this particular order. But based on our testimony,
8 which is the record in this proceeding, Supra wants to have a
9 clear performance measurement included in the parties'
10 agreement.

11 Q So just to make sure I understand, and I may
12 paraphrase it, you can tell me whether I'm correct or not, are
13 you saying, to Supra, it doesn't really matter what's in the
14 Commission's order in the generic performance measurement
15 docket, you want your own set of performance measurements? Is
16 that a fair paraphrase?

17 MR. CHAIKEN: I object. That mischaracterizes the
18 witness's testimony.

19 MS. WHITE: Well, I'm not trying to. I'm just trying
20 to see if what my understanding is correct. If it's not, he's
21 very capable of telling me I'm wrong.

22 COMMISSIONER JABER: Ask the witness your question in
23 the form of, is your understanding correct that.

24 MS. WHITE: Okay.

25 BY MS. WHITE:

1 Q Is my understanding correct that Supra does not want
2 the performance measurements that are in -- that have been
3 ordered by the Commission in Docket 000121 and instead wants
4 its own set of performance measurements?

5 A Ma'am, I have answered the question earlier on, and
6 my position is still the same. The record is the record. The
7 testimony that we filed in this proceeding stays Supra's
8 position. And that position is this, that Supra is unwilling
9 to waive its rights based on a generic proceeding. And like
10 I've mentioned earlier on, if we review this particular order
11 issued on September 10th and we feel that it meets our
12 requirements, counsel would say that, but right now at this
13 point, I do not know.

14 Q Okay. So you don't know whether this order in the
15 generic performance measurements docket satisfies the issues
16 that are laid out in Ms. Bentley's testimony; is that correct?

17 A This order, I have not reviewed it, so I cannot make
18 any opinion -- I cannot form any opinion of the order.

19 COMMISSIONER JABER: So the answer to her question is
20 yes?

21 THE WITNESS: Yes.

22 MS. WHITE: Thank you.

23 COMMISSIONER JABER: Counsel, Mr. Chaiken, you know,
24 I forgot to ask you about the videotape to Mr. Ramos's
25 testimony. When would it be appropriate to -- you wanted us to

1 see the videotape; correct?

2 MR. CHAIKEN: Yes. That will be used with regards to
3 Mr. Pate.

4 COMMISSIONER JABER: Mr. Pate?

5 MR. CHAIKEN: Yes, who has not testified in this
6 proceeding yet.

7 COMMISSIONER JABER: That videotape was attached to
8 Mr. Ramos's testimony, wasn't it?

9 MR. CHAIKEN: Correct. It will be used to impeach.

10 COMMISSIONER JABER: But we should play the videotape
11 during Mr. Ramos's testimony.

12 MR. CHAIKEN: If you'd like to handle it that way, we
13 will.

14 COMMISSIONER JABER: Before BellSouth is done with
15 its cross examination, we will play the videotape.

16 MR. CHAIKEN: Sure.

17 COMMISSIONER JABER: Staff, don't you think that's
18 the correct way of handling it?

19 MR. KNIGHT: Yeah, that would be appropriate.

20 BY MS. WHITE:

21 Q Mr. Ramos, would you look at Page 4 of Ms. Bentley's
22 direct testimony, specifically the paragraph that starts on
23 Line 20 and concludes on Page 5, Line 7?

24 A Yes.

25 Q In that paragraph, she's talking about a recent tour

1 she made of BellSouth's Atlanta LCSC. Were you on that tour
2 with Ms. Bentley?

3 A No, I was not on the tour, but when Ms. Bentley --
4 before she came back from the tour, we had a call. She told me
5 about it, so I'm familiar with the subject matter.

6 Q On issue number -- I'm sorry. Let me go to Page 7 of
7 her direct testimony, Lines 13 and 14, and that's where Supra
8 is requesting that BellSouth be required to e-mail Supra the
9 measurement reports on a monthly basis. Do you see that?

10 A Can you repeat that, please.

11 Q Yes. Page 7, Lines 13 and 14.

12 A Yes.

13 Q Are you aware of what the Commission ordered
14 concerning this particular method of distributing the
15 measurement reports in Docket 000121?

16 A I am not familiar with it. Is that similar as
17 contained in this September order?

18 Q That's the investigation into the establishment of
19 permanent performance measurements for OSS docket.

20 A I am not familiar with the --

21 Q So you're not familiar with the distribution methods
22 that the Commission ordered in that docket?

23 A Not at this point. If that distribution method is
24 what is contained in this September 10 order, then I'm not
25 familiar with it.

1 Q Okay. Issue 20 is concerning the validation and
2 audit requirements to ensure the accuracy and reliability of
3 performance data. Are you aware of what the -- familiar with
4 what the Commission ordered regarding the validation and
5 auditing of performance data in the permanent performance
6 measures docket?

7 A Not at this point.

8 Q Okay. If you'd look at Page 8 of Ms. Bentley's
9 testimony, Lines 20 through 22. This is of her direct
10 testimony.

11 A Lines 20 --

12 Q Through 22. Do you see where she says that one of
13 the largest components of an ALEC's cost base are the expenses
14 paid to incumbent local exchange carriers for the ordering of
15 elements and resold services?

16 A Yes.

17 Q Is that true for Supra?

18 A That's correct.

19 Q Can you tell me how much Supra paid BellSouth for
20 services rendered by BellSouth to Supra in the year 2000?

21 MR. CHAIKEN: Objection. This has no relevance to
22 this proceeding.

23 COMMISSIONER JABER: Ms. White.

24 MS. WHITE: I'm sorry. It's impeachment and it's
25 disconnection for nonpay.

1 COMMISSIONER JABER: To which issue?

2 MS. WHITE: It's impeachment as to credibility.

3 It's -- the disconnection for nonpay is Issue 63.

4 COMMISSIONER JABER: I'll allow the question.

5 MS. WHITE: Would you like me --

6 COMMISSIONER JABER: Repeat it for Mr. Ramos.

7 MS. WHITE: -- to repeat the question?

8 BY MS. WHITE:

9 Q How much did Supra pay BellSouth for services
10 BellSouth rendered to Supra in the year 2000?

11 A Supra has not paid BellSouth anything for the year
12 2000 because there have been billing disputes between the
13 parties. And if you want me to elaborate on that, I will do
14 that.

15 Q No, thank you. Can you tell me how much Supra has
16 paid BellSouth for services that BellSouth has rendered to
17 Supra for the year 2000 from January 1st to date, I mean,
18 sorry, 2001 from January 1st to date?

19 A Supra has not paid BellSouth any amount because there
20 have been billing disputes between the parties. And as a
21 matter of fact, it is Supra's belief that BellSouth owes Supra
22 money.

23 Q Mr. Ramos, are you familiar with the requirement that
24 telecommunications companies are required to pay regulatory
25 assessment fees to the state of Florida?

1 A Yes.

2 Q I'm going to hand you a copy of the Commission's Rule
3 25-4.0161, and ask you to read the first paragraph to yourself,
4 please.

5 A (Witness complies.)

6 MS. WHITE: And I'm handing a copy of this out to
7 everyone. Again, I don't think it needs to be an exhibit since
8 it's a public document we can take judicial notice of.

9 MR. CHAIKEN: I object to this exhibit on the grounds
10 of relevancy.

11 COMMISSIONER JABER: Ms. White, to which issue does
12 your question relate?

13 MS. WHITE: This issue relates strictly to
14 impeachment of the witness's credibility.

15 COMMISSIONER JABER: Mr. Chaiken, I'm going to allow
16 the question. Let me hear it, let me see what it relates to,
17 and you're welcome to renew your objection later.

18 BY MS. WHITE:

19 Q Have you read the first paragraph?

20 A Yes.

21 Q And is it your understanding after reading that
22 paragraph that telecommunications companies in determining the
23 fee can deduct from gross operating revenues any amount paid to
24 another company?

25 MR. CHAIKEN: I object. The document speaks for

1 itself, and the question calls for a legal conclusion.

2 COMMISSIONER JABER: Ms. White.

3 MS. WHITE: I thought I asked is it his understanding
4 after reading that, but I will move on if that will help
5 matters. It's a public record. Let me ask the question. I
6 asked if it was his understanding that that's what the document
7 said.

8 COMMISSIONER JABER: I'll allow the question.

9 A Yes, that's my understanding of the document.

10 Q I'm going to hand out a document that's entitled,
11 "Alternative Local Exchange Company Regulatory Assessment Fee
12 Return," covering the period from January 1st, 2000 to
13 December 31, 2000 and filed by Supra with this Commission.

14 MS. WHITE: And would I like to have this marked as
15 an exhibit.

16 MR. CHAIKEN: I object on the grounds of relevancy.

17 COMMISSIONER JABER: Let me see it first. Hang on.
18 Okay. There's been an objection as to relevancy, Ms. White.

19 MR. CHAIKEN: Furthermore, if I may continue my
20 objection. This document was signed by Carol Bentley. It was
21 not attached as an exhibit to her testimony. To question
22 Mr. Ramos on this exhibit, I think, is completely improper.

23 COMMISSIONER JABER: Ms. White.

24 MS. WHITE: It goes strictly to impeachment of the
25 witness's credibility. He adopted Ms. Bentley's testimony.

1 Also, he is the president of the company, and this was filed on
2 behalf of Supra Telecommunications, the company, not on behalf
3 of Ms. Bentley personally.

4 COMMISSIONER JABER: Mr. Chaiken, I'm going to
5 overrule your objection. And I'm also going to state, you
6 remember how flexible I was during cross examination yesterday?
7 That flexibility doesn't end today. This is -- let me tell the
8 parties both -- this is the problem with doing discovery at the
9 hearing. And I have to tell you, I have been more, more
10 flexible in this hearing than I ever have been. And if you all
11 think in a future arbitration or interconnection dispute when
12 I'm Presiding Officer that I'll be this flexible, you are sadly
13 mistaken.

14 I'm going to be flexible in allowing this cross
15 examination. Mr. Ramos is president of the company, and he has
16 adopted Ms. Bentley's testimony. I do believe it's within
17 BellSouth's prerogative to cross examine and impeach your
18 witness, so I'll allow the question. Next time, do your
19 discovery way before the hearing.

20 Go ahead, Ms. White.

21 BY MS. WHITE:

22 Q Ms. Ramos, can you tell me at the bottom of that page
23 that I handed to you --

24 MS. WHITE: And I'm sorry, I would like it marked as
25 the next exhibit.

1 COMMISSIONER JABER: That will be Exhibit 23. Short
2 title?

3 MS. WHITE: "Supra's ALEC Regulatory Assessment Fee
4 Return."

5 (EXHIBIT 23 marked for identification.)

6 A What was the question, again, please.

7 Q If you could, look at the bottom of that page and
8 tell me who signed this document on behalf of Supra.

9 A Carol Bentley, I believe, well, based on this
10 signature.

11 Q And her title is listed there as chief financial
12 officer for Supra?

13 A That's correct.

14 Q And on May 21, 2001, when this document was signed,
15 was she indeed the chief financial officer for Supra?

16 A She was.

17 Q And if you look at the top of the page, do you see
18 the section labeled "Period Covered"? It's next to the left of
19 the box that has Supra's name and address.

20 A Yes.

21 Q And can you -- do you agree that that period shows
22 from January 1, 2000 to December 31, 2000?

23 A That's correct.

24 Q Can you look at Line Number 8 of that document for me
25 and read that aloud?

1 A "Less: Amounts paid to other telecommunications
2 companies."

3 Q And what is the amount of intrastate revenue listed
4 on that line?

5 A Which one?

6 Q On Line 8. What is the amount listed on that line?

7 A \$1,032,596.

8 Q Okay. When go down to the section labeled "Company
9 Information" -- do you see that?

10 A That's correct.

11 Q And the question, "Do you lease telecommunications'
12 facilities," do you see that?

13 A That's correct.

14 Q And what is the name of the company to which you put
15 down as leasing telecommunications facilities from?

16 A BellSouth.

17 Q Mr. Ramos, did Supra pay BellSouth \$1,032,596 in the
18 year 2000?

19 A No. Maybe not in cash but, yes, because of setoff.

20 Q I'm sorry, you are going to have to explain that one
21 to me.

22 A Okay. Thanks. The parties have had several billing
23 disputes going way back to January of 2000. And the business
24 for the billing dispute has been the fact that Supra believes,
25 and Supra has been vindicated, that BellSouth must provide it

1 with UNE combinations.

2 Being a UNE combo provider, Supra must -- or is
3 entitled to revenues, access charges, DSL, and some other
4 revenues, that because of the fact that BellSouth has get at
5 Supra from being a UNE combo provider and just being a resale
6 provider, Supra isn't able to collect those revenues. And part
7 of those revenues are the subject of damages that were awarded
8 by arbitrators as evidenced in OAR-3.

9 Q Are you finished with your response?

10 A I believe so.

11 Q Now, I believe you said earlier, it was either an
12 answer to one of my questions or in your summary, that
13 BellSouth owed Supra money; is that correct?

14 A That's correct.

15 Q And you also testified that Supra had not paid
16 BellSouth anything -- paid any amounts to BellSouth in the year
17 2000.

18 A That's correct.

19 Q Now, this form on Line 8 says, "Amounts paid to other
20 telecommunications companies," and it lists that \$1,032,000,
21 doesn't it?

22 A That's correct.

23 Q But BellSouth did not pay -- I mean, excuse me.
24 Supra did not pay BellSouth \$1,032,000 in the year 2000, did
25 it?

1 A Like I explained to you earlier, ma'am, maybe not
2 directly in cash but setoff. BellSouth has been collecting
3 revenues that belongs to Supra. And that, again, has been
4 clearly awarded to Supra based on Supra Exhibit OAR-3.

5 COMMISSIONER JABER: Mr. Ramos, is this a form you
6 filed with the Florida Public Service Commission?

7 THE WITNESS: Yes, ma'am.

8 COMMISSIONER JABER: Is this a form that someone in
9 your company swears that the information is true and correct,
10 the information contained within this sheet is true and
11 correct?

12 THE WITNESS: I believe so, ma'am.

13 COMMISSIONER JABER: And if I understand your
14 testimony correctly, money from Supra, regardless of what your
15 billing disputes are, money from Supra in the amount of
16 \$1,032,596 did not go to BellSouth as indicated in Line Number
17 8; is that correct?

18 THE WITNESS: Yes, ma'am.

19 COMMISSIONER JABER: So if Line Number 8 is supposed
20 to reflect amounts actually paid -- I understand you have a
21 billing dispute, but if Line Number 8 actually is supposed to
22 indicate amounts paid, money exchanging hands, then the
23 information on Line Number 8 is incorrect, isn't it?

24 THE WITNESS: That's correct, ma'am. What you said
25 is correct, but I will defend this document. I have never seen

1 it before. I'm not familiar with it. But the only thing there
2 is that -- on that Line 8, there's a "See asterisk 2, fees on
3 back," or something like that. And that document is not
4 attached to this. Maybe there's an explanation to this. I
5 don't know, but I'm only speaking to what I see here.

6 COMMISSIONER JABER: Thank you, Mr. Ramos.

7 Go ahead, Ms. white.

8 BY MS. WHITE:

9 Q Mr. Ramos, isn't the consequence of putting down
10 money on Line 8 the fact that you will pay a lower regulatory
11 assessment fee than if you had zero on Line 8?

12 A I don't believe so.

13 Q You don't believe so?

14 A That's not true.

15 Q Well, Mr. Ramos, let's look at this. Look at Line 7.

16 A Yes.

17 Q Line 7 is total revenues, and you have \$4,128,972 on
18 that line. And do you see Line 8 where it says, "less"?
19 Doesn't "less" usually mean to subtract?

20 A Yes.

21 Q So if you subtract 1,032,000 from 4,128,000, you get
22 \$3 million, and the regulatory assessment fee, if you look at
23 Line 10, is you multiply Line 9 by .0015, don't you?

24 MR. CHAIKEN: I object, Commissioner. The document
25 speaks for itself. The witness claims he has no knowledge of

1 it prior to this.

2 COMMISSIONER JABER: Ms. White.

3 MS. WHITE: Here, I'm just asking a mathematical
4 question. He's a CPA. He's already testified he's a CPA.

5 COMMISSIONER JABER: I'll allow the question.

6 MR. CHAIKEN: Excuse me, Commissioner. I'm sorry to
7 interrupt, but one more objection is the fact that this
8 document, as pointed out by the witness, is incomplete.

9 COMMISSIONER JABER: Yeah, I understand that, but I
10 think as it relates to asking for a simple mathematical
11 calculation, the rest of the document is not necessary, but you
12 can renew the objection as it relates to additional questions.

13 Go ahead, Ms. White.

14 BY MS. WHITE:

15 Q Isn't it correct that Line 10, regulatory assessment
16 fees due, it says, "Multiply Line 9 by .0015;" is that correct?

17 A That's correct.

18 Q And Line 9 you list \$3,096,000; right?

19 A That's correct.

20 Q And that amount is lower than the amount on Line 7,
21 which is \$4,128,000; correct?

22 A That's correct.

23 Q So if you're multiplying a lower amount by .0015,
24 will not your regulatory assessment fee be lower?

25 A That's correct. But the point of the matter is,

1 Supra -- my belief is Supra did not do this, did not
2 incorporate this \$1,032,000 to lower its regulatory assessment
3 fees.

4 First of all, I mean, the company declared revenues
5 of 4,128,972 as business revenues. It will not just because of
6 a million -- and how much will the difference be really if one
7 calculates the difference between the \$3 million and the
8 \$4 million? Maybe \$5,000? Supra has paid to this Commission
9 more than that, so I do not see any reason why Supra would have
10 done that.

11 Q Mr. Ramos, we've already noted that the date on this
12 document is May 21, 2001. Did you see that at the bottom of
13 the page?

14 A That's correct.

15 Q Would you agree that that date occurred before the
16 commercial arbitration award?

17 A That's correct, but Supra has been filing its billing
18 disputes with BellSouth before then, and Supra has made its
19 claims to BellSouth even before this May 21, 2001.

20 Q Let's move on to Issue 63.

21 COMMISSIONER JABER: Actually, Ms. White, we're going
22 to pause and play the videotape now.

23 MS. WHITE: May I ask that I finish my cross of
24 Mr. Ramos before you do that? I don't that much more and that
25 would be kind of a natural breaking point before Mr. Twomey

1 started.

2 COMMISSIONER JABER: We have got to take a break at
3 twelve o'clock, and I wanted to be able to --

4 MS. WHITE: I'm sorry. Okay. That's fine.

5 COMMISSIONER JABER: Okay. For purposes of
6 understanding the transcript when you see it, the videotape
7 will not be transcribed. The court reporter will indicate that
8 the videotape is an exhibit and was played at the hearing.

9 (Videotape played.)

10 COMMISSIONER JABER: How appropriate was that? Let's
11 go get some lunch. We are going to take an hour break. We'll
12 be back at one o'clock.

13 (Lunch recess.)

14 COMMISSIONER JABER: Prior to the lunch break,
15 Ms. White, you were cross examining Mr. Ramos; right?

16 MS. WHITE: Yes. And prior to that, I did, through
17 the help of the Staff, obtain the two-sided copy of the exhibit
18 that's been labeled as Number 23.

19 COMMISSIONER JABER: Good.

20 MS. WHITE: And I'll be happy to pass those out and
21 substitute this one for the one I passed out earlier since this
22 one does have both pages.

23 COMMISSIONER JABER: Yes. I think that would be
24 appropriate.

25 MS. WHITE: And I apologize for not having both pages

1 to begin with. That was just an oversight.

2 COMMISSIONER JABER: Mr. Chaiken, I wanted to point
3 out to you during your objections that you will be able to
4 redirect on this exhibit, and now you have the entire exhibit.

5 All right. The record reflects that there are two
6 pages to Exhibit 23 now.

7 BY MS. WHITE:

8 Q Mr. Ramos, on Issue 11 that's also in Ms. Bentley's
9 testimony, which is the issue about allowing either party to
10 setoff from the other party disputed charges, let me ask you
11 this. If Supra filed a claim in state court or at the
12 Commission or before a commercial arbitration tribunal that
13 took two years to resolve, even if that claim is unrelated to
14 billing issues, would it be your position that Supra need not
15 pay any bills during that period?

16 A That is not my position. My position is that Supra
17 shall pay bills that are undisputed, but bills that are
18 disputed, Supra must not be first to pay that. And as I've
19 explained previously, BellSouth also is collecting revenues
20 that belong to Supra, and BellSouth is keeping those revenues.

21 Q So it's your position that if Supra disputes -- that
22 every bill Supra disputes, it should not have to pay anything
23 on? Is that a fair statement?

24 A That's correct.

25 Q Okay. Issue 63 concerns the disconnection for

1 nonpayment. Now, I believe you said in your summary that Supra
2 wants to protect the rights of its customers on this issue; is
3 that correct?

4 A That's part of it, correct.

5 Q Isn't it true that Supra disconnects basic service
6 for end user customers who don't pay their bill?

7 A That's correct.

8 Q Okay. Are you aware that this issue was decided by
9 the Commission in the MCI arbitration in Order Number
10 PSC-01-0824-FOF-TP issued on March 30, 2001?

11 A I'm not familiar with that particular order, but also
12 what I would tell the Commissioners is this, that a contract
13 that Supra and BellSouth operate under is different from the
14 tariff that Supra files at this Commission regarding its end
15 users. So what I'm effectively saying is that the relationship
16 between Supra and its end users is different or guided by
17 different contracts for the relationship between BellSouth and
18 Supra.

19 MS. WHITE: Commissioner, can I have just a minute,
20 please.

21 COMMISSIONER JABER: Uh-huh.

22 MS. WHITE: I'm through with my piece of the cross
23 examination of Mr. Ramos's adoption of Ms. Bentley's testimony.
24 And I would move Exhibit 23. Or do you want to wait until the
25 very end?

1 COMMISSIONER JABER: Aren't you going to cross
2 examine him on all of the testimony or --

3 MS. WHITE: No, I'm sorry. We talked about that
4 yesterday morning.

5 COMMISSIONER JABER: Thank you. I had forgotten.

6 MS. WHITE: Mr. Twomey will cross examine Mr. Ramos
7 on Mr. Ramos's prefiled testimony.

8 COMMISSIONER JABER: Thank you. I had forgotten
9 about that.

10 MS. WHITE: So would you rather wait until the very
11 end to move the exhibit?

12 COMMISSIONER JABER: Yes.

13 MR. TWOMEY: Thank you. And I apologize for being in
14 my shirt-sleeves a moment ago. I had forgotten to put my coat
15 back on after the lunch break.

16 CROSS EXAMINATION

17 BY MR. TWOMEY:

18 Q Mr. Ramos, good afternoon. My name is Mike Twomey,
19 and I represent BellSouth. I have a few questions for you
20 about your testimony.

21 Mr. Ramos, Issue A concerns allegations of bad faith
22 that Supra has raised relative to BellSouth; is that right?

23 A That's correct.

24 Q And among other things, Supra believes that the
25 current interconnection agreement should be the starting point

1 for negotiations; correct?

2 A That's correct.

3 Q And Supra believes that the additional network
4 information that was requested should have been provided for
5 BellSouth to have been in good faith; is that right?

6 A That's correct. And again, that is in accordance
7 with applicable laws. The FCC in its First Report and Order at
8 Paragraph 155 specifically ordered that if a company like Supra
9 Telecom requests for that network information, BellSouth must
10 provide it to Supra.

11 Q And BellSouth's taken the position that the
12 information request you made was too broad and vague; is that
13 right?

14 A That's my understanding.

15 Q I'm sorry?

16 A That's my understanding, yes.

17 Q Yes. And in fact, BellSouth asked Supra to be more
18 specific about what it was looking for in order to narrow the
19 issues; correct?

20 A Correct, to an extent, and that was up till a later
21 point. On April 26, 2000, after having several discussions
22 with Mr. Finlen, I sent a letter to Mr. Finlen requesting for
23 this information, and I cited to Paragraph 155 of the FCC
24 First Report and Order. Mr. Finlen promised me that he was
25 going to get information that Supra is seeking on this cause.

1 Q Mr. Ramos, do you remember that I took your
2 deposition in this case?

3 A That's correct.

4 Q And in the deposition I asked you about some other
5 proceedings that were going on around the country between Supra
6 and other companies. Do you remember that?

7 A That's correct.

8 Q And I asked whether or not you had a proceeding in
9 California that raised the same issues that were -- any of the
10 same issues that were in this case. Do you remember that?

11 A That's correct.

12 Q And didn't you testify that there were none of the
13 same issues in the California case?

14 A That's correct.

15 MR. TWOMEY: Okay. Commissioner, Ms. White is
16 handing out a document that I'd like to be marked for
17 identification as the next exhibit, and it's a copy of an
18 arbitrator's report. Let me back up. It's a copy of an
19 arbitrator's report, and then stapled behind is a copy of a
20 Commission order from California which approves the
21 arbitrator's report that's in the front.

22 COMMISSIONER JABER: Okay. Exhibit 24 is identified
23 as the March 2, 2001 final arbitrator's report with attached
24 California order.

25 (Exhibit 24 marked for identified.)

1 BY MR. TWOMEY:

2 Q Mr. Ramos, would you turn to Page 2 of the document
3 that you've just been handed that's Exhibit 24?

4 A Yes.

5 Q The final paragraph at the bottom, that indicates
6 that Pacific Bell -- well, let me back up. This document is a
7 final arbitrator's report in a case between Supra and Pacific
8 Bell Telephone Company; correct?

9 A Correct.

10 Q And this was a case concerning the negotiation and
11 arbitration of a new agreement; correct?

12 A Correct.

13 Q As reflected on Page 2, Pacific Bell took the
14 position that it did not want to continue operating with Supra
15 under the terms of an expired agreement; correct?

16 A Correct.

17 Q And that one of the reasons -- among the reasons was
18 that that agreement was expired and not updated and didn't
19 reflect recent Commission decisions; correct?

20 A Correct.

21 Q On Page 3, the second paragraph under Supra's
22 position, it's a fact, isn't it, that you proposed to use the
23 same current -- the current interconnection agreement with
24 Pacific Bell as the starting point for negotiations?

25 A Correct.

1 Q And didn't you also insist that Pacific Bell provide
2 you with network information in order to conduct the
3 negotiations?

4 A Correct.

5 Q And didn't Pacific Bell, as reflected on Page 4, say
6 that the request for information was too broad and vague?

7 A Correct.

8 Q And wasn't the request for information you made of
9 Pacific Bell exactly the same request for information you made
10 of BellSouth?

11 A Not exactly the same.

12 Q I'm looking at Page 4.

13 A Yeah.

14 Q The template of information and the FCC reference,
15 isn't that to the same network reliability council template?

16 A That's correct.

17 Q Okay. And as reflected on Page 5 in the second full
18 paragraph, didn't Pacific Bell respond to your inquiry as being
19 too broad and vague, and ask you to narrow the issues?

20 A That's correct.

21 Q Didn't Supra refused to do so?

22 A That's correct.

23 Q Is it still your testimony that there were no issues
24 in the California case that are the same as the issues in this
25 case?

1 A The question you asked at the depo was different. I
2 did not say that there, because the way you phrased the
3 question, it did not reflect that -- whether there's some
4 issues in the California case involved in the Florida case.
5 But here in California, Supra at that time did not have any
6 customers at all, and that was the deciding factor in
7 California. In Florida, it's a different matter entirely.
8 Supra has got 100,000 customers. Supra has got customers in
9 each and every central office that BellSouth has. In
10 California, like I said, the false statement here is that Supra
11 has got no customers in California at that time.

12 Q Maybe my question was imprecise, and if it was, I
13 apologize. My question was intended to be, didn't I ask you
14 whether there were any of the same issues in the California
15 case, and didn't you testify that there were none?

16 A I am very sorry. I apologize if I misunderstood your
17 question. But my understanding of your question is what I've
18 answered truthfully at that time.

19 MR. TWOMEY: May I approach the witness?

20 COMMISSIONER JABER: Yes.

21 BY MR. TWOMEY:

22 Q Mr. Ramos, would you please read the question
23 beginning on Line 11 and the answer you gave to that question.

24 A Yes. You asked me, "Do you know if any of the same
25 issues that have been raised in this proceeding are also being

1 arbitrated in the proceeding in California with SPC?"

2 And I said, "None of the issues. They're different."

3 Because of the fact that also when we talk about
4 arbitration, we're talking about arbitration. This particular
5 order we did not go to any arbitration at all. This was just a
6 decision, an opinion issued without any single arbitration, and
7 that is the truth. So there was no arbitration at all, at all
8 in California.

9 Q Would you go to the first page of Exhibit 24?

10 A Sure. Is that the order?

11 Q Yes.

12 A Okay. Sure.

13 Q It's the one we've been looking at. Doesn't the
14 first sentence indicate that this is a petition -- actually,
15 both the reference and the background sections say, the
16 first line, "On March 2, 2001, Pacific Bell Telephone Company
17 filed a petition for arbitration of an interconnection
18 agreement"?

19 A That's correct.

20 Q This was a case involving the petition for
21 arbitration of a new interconnection agreement, wasn't it,
22 Mr. Ramos?

23 A Absolutely. You're right. It's a case involving
24 petition for arbitration of an interconnection agreement, but
25 my understanding of an arbitration of an interconnection

1 agreement is exactly what the parties are going through here,
2 and they define the issues to be arbitrated in this docket. We
3 have Issue A, we have 62 or 67 other issues that are being
4 arbitrated. In California, nothing like that happened.

5 Q That's exactly right. Let's look at Page 5 -- no,
6 I'm sorry. Let's look at page, yes, Page 5. Doesn't the
7 arbitrator conclude that Supra's requests were too broad and
8 vague; they did not reasonably narrow the issues to a more
9 manageable request based on any identified disputed issues; and
10 that you made a blanket request and refused to engage in
11 meaningful negotiations? Didn't the arbitrator conclude that?

12 A What is that?

13 Q On Page 5. It's in the paragraph beginning with the
14 word "second." I've paraphrased it.

15 A That's correct.

16 Q And as a result of this finding, didn't the
17 arbitrator tell Supra that you only had two choices, either
18 sign an effective agreement that somebody else had negotiated,
19 or terminate your existing agreement with Pacific Bell?

20 MR. CHAIKEN: Commissioner, I object. That's a
21 separate proceeding. It didn't involve a hearing of the facts.
22 This was regarding a motion to dismiss. The two cases are
23 completely different.

24 COMMISSIONER JABER: Mr. Chaiken, the counsel is
25 using this document to impeach your witness, and your witness

1 clearly is familiar with the document. So I'll allow this
2 questioning and you can redirect.

3 BY MR. TWOMEY:

4 Q Mr. Ramos, let me try to put a point on it. The
5 reason there was no arbitration in California is because Supra
6 refused to engage in meaningful negotiations and instead
7 repeatedly requested broad network information from Pacific
8 Bell; correct?

9 A That's not correct.

10 Q That's what the arbitrator found; correct?

11 A That's not correct. Because also I remember clearly
12 as well that there was some negotiations between the two
13 counsels, Supra's counsel and as well as Southwestern (sic)
14 Bell's counsel, that led to this particular order. And there
15 was some discussions as well with the arbitrator, the
16 Administrative Law Judge, by Supra's counsel. So this order
17 itself does not in any way, shape, or form reflect those
18 particular discussions.

19 Q Didn't the California Public Utilities Commission
20 approve the arbitrator's final report in this case?

21 A Yes, they did.

22 Q And you've terminated your agreement with Pacific
23 Bell; is that right?

24 A That's correct.

25 COMMISSIONER JABER: Mr. Ramos, so you terminated

1 your agreement with Pacific Bell in California, but you said
2 you do have customers in California.

3 THE WITNESS: You know, I'm sorry. I think I'll take
4 that back. I don't know whether the agreement was terminated.
5 I'm not sure about that. I will take that back.

6 COMMISSIONER JABER: I guess my curiosity though is,
7 do you have customers in California?

8 THE WITNESS: Yes, we do have customers in California
9 now.

10 COMMISSIONER JABER: Are you facilities-based in
11 California?

12 THE WITNESS: We have some UNE combinations
13 accounting in California. Yes, we're facilities-based. Based
14 on using UNE combinations, we are facilities-based.

15 COMMISSIONER JABER: And you obtain those UNE
16 combinations from Pacific Bell?

17 THE WITNESS: That's correct, ma'am.

18 COMMISSIONER JABER: Okay.

19 BY MR. TWOMEY:

20 Q Mr. Ramos, let me ask you a question about that video
21 that was shown right before the break. Where did you get that
22 video?

23 A From BellSouth.

24 Q Well, it was not requested or provided in discovery
25 in this proceeding. Where did you get it?

1 A From one of the proceedings before, probably from the
2 arbitration proceeding. I can't remember, but it was used as
3 well during the arbitration proceeding.

4 Q I know it was used. I guess my question is -- I
5 realize you rely on your attorneys, as many clients do -- do
6 you have any independent recollection of where that video came
7 from?

8 A It should be from one of the proceedings with
9 BellSouth.

10 Q Okay.

11 A It's a BellSouth video.

12 Q Mr. Ramos, Supra is an Internet service provider in
13 addition to being a voice provider; isn't that right?

14 A Yes.

15 Q You've got approximately 40,000 customers, is that
16 right, for Internet service?

17 A Maybe about 30,000, 40,000 customers, yes.

18 Q And didn't you have plans to purchase DSLAM equipment
19 to provide DSL service yourself from a company called Paradyne?

20 A That's correct, but all that effort to purchase the
21 DSLAM equipment has been thwarted by BellSouth's refusal to
22 allow Supra to collocation its equipment. In 1998, about
23 June 30, Supra filed a complaint before this Public Service
24 Commission regarding collocation issues. And one of the
25 equipment Supra was going to collocate at that time is a DSLAM

1 equipment. The PSC issued the order that BellSouth should
2 allow Supra to collocate its equipment; BellSouth refused. And
3 Supra had to take this up again at commercial arbitration. Up
4 till now, Supra has not been able to collocate a single piece
5 of equipment.

6 Q On that note, Mr. Ramos, Supra does not have a switch
7 operational in the state of Florida; isn't that right?

8 A That's correct, we do not have. We depend solely on
9 BellSouth's network.

10 Q And you did not have a switch operational on
11 January 31, 2001; correct?

12 A That's correct. But also, we've made arrangements
13 previously in the past with Lucent Technologies, with Paradyne
14 to have switches. We have signed contracts. Even the
15 equipment was manufactured for Supra. Supra made down
16 payments, but it's senseless for Supra to go keep equipment in
17 warehouses gathering dust if there's no way of installing them.
18 Even, as a matter of fact, based on the arbitrator's award at
19 this point, Supra is also negotiating with --

20 COMMISSIONER JABER: Mr. Ramos, are you talking about
21 the arbitrator's award that is OAR-3 that's a confidential
22 exhibit?

23 THE WITNESS: Yes, ma'am.

24 COMMISSIONER JABER: Be careful not to reveal any
25 confidential information.

1 THE WITNESS: Okay. I'm sorry, ma'am. I'm sorry,
2 ma'am.

3 COMMISSIONER JABER: You can testify generally
4 without revealing any confidential information, perhaps;
5 perhaps not. I don't know.

6 THE WITNESS: Okay. I will try.

7 MR. TWOMEY: Commissioner, may I approach the
8 witness?

9 COMMISSIONER JABER: Yes.

10 BY MR. TWOMEY:

11 Q Mr. Ramos, I'm going to hand you a copy of the
12 discovery responses Supra served on BellSouth in this case.
13 Interrogatory Number 8, would you read that question into the
14 record?

15 A "Does Supra have local switches in the state of
16 Florida? If the answer to this Interrogatory is in the
17 affirmative, please identify the location of each such local
18 switch, state the type of local switch, including the model and
19 manufacturer, and state the date when the local switch first
20 became operational."

21 And the answer, "Yes. BellSouth is well aware of its
22 actions and the various regulatory, judicial, and arbitral
23 rulings against BellSouth in regard of denial of Supra's rights
24 to collocate local switches in BellSouth central offices.
25 Supra has approved application, FPSC, court, and arbitral

1 ruling enabling Supra to collocate the following Class 5 local
2 switches in the referenced BellSouth offices. BellSouth is
3 currently in default of the arbitral award that ordered
4 BellSouth to provide such collocation by June 5, 2001, in
5 additional to FPSC ruling dated January 1999."

6 Q Okay. Thank you. Mr. Ramos, I just asked you a
7 minute ago whether you had any local switches operational in
8 the state of Florida, and you said no, and the interrogatory
9 says yes. Can you clear up that for me?

10 MR. CHAIKEN: I object. I don't believe Mr. Ramos is
11 the sponsor of that Interrogatory. I believe Mr. Nilson is,
12 and that would be a proper question for Mr. Nilson.

13 COMMISSIONER JABER: Mr. Twomey.

14 MR. TWOMEY: Well, I think I'm entitled to ask
15 Mr. Ramos the question. I've asked him what his understanding
16 is of his own company's operations in the state of Florida, and
17 I've gotten inconsistent answers. I don't think it makes any
18 difference whether Mr. Nilson put his name at the bottom of the
19 Interrogatory. He either has switches in Florida or he does
20 not, and I've gotten both answers.

21 COMMISSIONER JABER: I'm going to sustain the
22 objection. I think Mr. Ramos's answer speaks for itself. And
23 when Mr. Nilson takes the stand, you can use that document to
24 cross examine Mr. Nilson.

25 MR. TWOMEY: Thank you. Madam Chairman, Ms. White is

1 handing out a document that I'd like marked as the next exhibit
2 for identification, and it's a copy of an amended complaint.

3 COMMISSIONER JABER: Exhibit 25 is Union Planters
4 Bank amended complaint.

5 (Exhibit 25 marked for identification.)

6 MR. CHAIKEN: Commissioner, I object to this exhibit.
7 It has no relevance to the proceeding whatsoever.

8 COMMISSIONER JABER: What's the objection? Say that
9 again.

10 MR. CHAIKEN: Relevancy objection.

11 MR. TWOMEY: I think the document is highly relevant.
12 There are accusations in this document and interrogatory
13 responses and references to affidavits that indicate that
14 Mr. Ramos personally, as well as his company, have filed forged
15 documents, false documents, and I think it goes directly to not
16 only the company's credibility but Mr. Ramos's credibility
17 personally.

18 COMMISSIONER JABER: Mr. Twomey, give me issue
19 numbers, testimony references.

20 MR. TWOMEY: It does not necessarily relate to any
21 particular issue, but it relates to his credibility. And I
22 think I'm entitle to cross examine him on whether he is a
23 credible witness so that you can take that into account when
24 listening to the rest of his testimony on the other issues.

25 COMMISSIONER JABER: Mr. Chaiken, I'm going to allow

1 the questions as they relate to impeachment of the witness.

2 And, Mr. Twomey, I'm going to be listening really
3 carefully to your questions.

4 MR. TWOMEY: I'm going to go through these very
5 quickly.

6 MR. CHAIKEN: Commissioner, if I just may make my
7 record really briefly --

8 COMMISSIONER JABER: Yes.

9 MR. CHAIKEN: -- is that this is an amended complaint
10 containing allegations which are not substantiated or proven,
11 no findings of fact have been made.

12 COMMISSIONER JABER: So you will be able to establish
13 that on redirect if necessary.

14 MR. CHAIKEN: I suppose I would.

15 BY MR. TWOMEY:

16 Q Mr. Ramos, what I have actually handed you is a
17 document that I've stapled together, but it is actually a
18 collection of pleadings. And the first thing is an amended
19 complaint, which is approximately 13 pages, and then a motion
20 to compel, which is behind that, that is 10 pages, and then
21 answers to interrogatories in that same case that are 9 pages.
22 So for your references, I just wanted to let you see where we
23 are going.

24 Mr. Ramos, it's true, isn't it, that Union Planters
25 filed a suit against not only Supra but you personally for

1 failing to pay substantial amounts of money that you had
2 borrowed; isn't that right?

3 MR. CHAIKEN: I object again, Commissioner. This has
4 no relevance to the proceeding whatsoever.

5 COMMISSIONER JABER: Mr. Twomey.

6 MR. TWOMEY: I'm trying to establish the lack of
7 credibility of this witness so that you will take that into
8 consideration when you listen to his other testimony on this
9 case.

10 COMMISSIONER JABER: Mr. Twomey, another complaint in
11 another jurisdiction, in my opinion, doesn't go to the
12 credibility as it relates to his testimony here. So if you
13 want to rephrase your question and try again, I may allow it.

14 BY MR. TWOMEY:

15 Q All right. Let's try this. Let's go to Page 2,
16 Mr. Ramos, of the second document, which if you look, there are
17 some pages blank of blank at the bottom of each page. It's
18 Page 14 of -- actually, it's Page 15 of 45.

19 Isn't it true that in connection with a financing
20 application that you made, you provided tax returns for years
21 1996 through 1999 to Union Planters that were -- that bore a
22 preparer's signature of Shubitz Rosenbloom, and Mr. Rosenbloom
23 has denied ever preparing a tax return for 1999 for Supra;
24 isn't that true?

25 MR. CHAIKEN: I object, Your Honor. This has nothing

1 to do with this case.

2 COMMISSIONER JABER: Mr. Twomey.

3 MR. TWOMEY: Madam Chairman, these documents and the
4 following questions I have indicate a scheme by Mr. Ramos to
5 file fraudulent documents.

6 COMMISSIONER JABER: Mr. Twomey, what issue --

7 MR. TWOMEY: Credibility.

8 COMMISSIONER JABER: No. Move on.

9 BY MR. TWOMEY:

10 Q Mr. Ramos, let's talk about Issue A for a moment.
11 That issue concerns negotiations that were supposed to be
12 conducted between the parties on May 29, May 30, 31, and
13 June 1 through 6, 2001; correct?

14 A Correct.

15 Q The parties, in fact, only had three meetings;
16 correct?

17 A Correct.

18 Q The first meeting was on May 29th, and Supra prepared
19 the agenda for that meeting; correct?

20 A Correct.

21 Q And at that meeting, none of the issues in this case
22 were discussed other than Supra's request for network
23 information; correct?

24 A That's not correct. I will translate that. The
25 agenda that was prepared, I think, is attached as exhibit --

1 for the May 29th meeting.

2 Q Now, just in case my question was not clear,
3 Mr. Ramos, I'm not asking what was on the agenda. I'm asking
4 what was actually discussed at the meeting. Isn't it a fact
5 that the only issue that was discussed was Supra's request for
6 network information?

7 A That's correct, yes.

8 Q Okay. Now, there was a second -- in fact, there were
9 a number of issues discussed at that first meeting that related
10 to Supra's -- some disputes that Supra had raised that are
11 entirely outside of this proceeding; correct?

12 A That's correct.

13 Q Now, the parties met again on June 4. And at the
14 June 4th meeting, BellSouth expressed an interest in discussing
15 the issues that were in dispute in this case, and Supra elected
16 not to do so because of the lateness of the hour; isn't that
17 right?

18 A That's not true. As a matter of fact, in the agenda
19 proposed for the May 29th meeting, Supra specifically stated in
20 that agenda that the parties should discuss all issues. And
21 the record is the record. The agenda is there. I mean, and
22 the agenda is there, that Supra wanted to discuss all issues.

23 And I recall that Ms. Parkey Jordan -- because one of
24 the things that Supra requested for the June 4th -- on the
25 June 4th meeting was also this issue of UNE combos being part

1 of the agreement as well as the OSS, direct access to OSS, and
2 I remember Ms. Jordan saying that you've got to wait for the
3 award to be released the following day before Supra starts
4 making this kind of request.

5 Q Did you prepare minutes of this meeting, Mr. Ramos?

6 A Personally, no. But --

7 Q Did anybody else prepare minutes?

8 A I believe that Mr. Nilson prepared some minutes.

9 MR. TWOMEY: Okay. Madam Chairman, I'd like to have
10 this document that's being passed out -- it's a letter dated
11 June 5th, 2001 to Parkey Jordan from David Nilson regarding the
12 June 4th meeting. I'd like that to have the next exhibit
13 number.

14 MR. CHAIKEN: Commissioner, I believe this is already
15 an exhibit to Mr. Nilson's testimony. It's Exhibit DAN-9.

16 COMMISSIONER JABER: Mr. Twomey.

17 MR. TWOMEY: Well, I only have pulled out this and
18 one other document. And just for the ease of the record, it
19 would be helpful for me to have this as a separate exhibit
20 rather than buried in the composite exhibit, but I will defer
21 to the Commission on that.

22 COMMISSIONER JABER: You do agree, though, that it is
23 DAN-1 (sic)?

24 MR. TWOMEY: Yes.

25 COMMISSIONER JABER: Okay. Mr. Chaiken, we'll go

1 ahead and identify it again as Exhibit 26. We don't
2 necessarily have to move it into the record, though --

3 MR. TWOMEY: That's fine.

4 COMMISSIONER JABER: -- since it's already an
5 exhibit.

6 MR. TWOMEY: That's fine.

7 COMMISSIONER JABER: So this is Jordan letter dated
8 June 5, 2001.

9 MR. TWOMEY: Thank you.

10 (Exhibit 26 marked for identification.)

11 BY MR. TWOMEY:

12 Q Mr. Ramos, would you turn to the second to last page
13 of this document? Well, let me back up. This is a letter that
14 Mr. Nilson sent setting forth the minutes of the meeting on
15 June 4th; correct?

16 A Yes, correct.

17 Q And I believe if you look at the subject line on the
18 first page, it incorrectly indicates that it's the minutes of
19 the May 29th meeting, but in the first paragraph of the
20 document, it correctly represents that it's the June 4th
21 meeting; is that right?

22 A That's correct.

23 Q Would you turn to the second to the last page?

24 A Yes, I'm there.

25 Q Under the topic "Follow-on agreement" --

1 A Yes.

2 Q -- it indicates -- incidentally, that's the fifth and
3 last item on the agenda for that meeting; is that correct?

4 A That's correct.

5 Q Doesn't it indicate that BellSouth through Ms. Jordan
6 expressed a desire to discuss the list of 56 issues raised by
7 Supra in response to BellSouth's request for arbitration?

8 MR. CHAIKEN: Commissioner, I object to his
9 questioning on this exhibit. This was an exhibit filed by Mr.
10 Nilson. It was a document written by Mr. Nilson. Mr. Nilson
11 is going to give testimony later in this proceeding. Why
12 Mr. Ramos is being questioned on the exhibit, it's improper.

13 COMMISSIONER JABER: Mr. Twomey.

14 MR. TWOMEY: Well, my response to that is that
15 Mr. Ramos has testified that he was present for this meeting.
16 He's testified about what his recollection is of the meeting.
17 I'm using this document to refresh his recollection of what
18 actually happened in the meeting, and he's also testified in
19 his deposition that Mr. Nilson prepares minutes and that
20 Mr. Nilson's minutes are accurate.

21 COMMISSIONER JABER: I'll allow the question.

22 BY MR. TWOMEY:

23 Q Mr. Ramos, after you've had a chance to look at this
24 document, does it refresh your recollection that BellSouth
25 requested discussion of all 56 issues that were still

1 outstanding?

2 A Absolutely. And the same thing with Supra as well.

3 Supra requested the issues to be discussed.

4 Q I'm sorry?

5 A I said absolutely, that BellSouth requested the --
6 based on these minutes, BellSouth requested that the issues be
7 discussed, the same thing with Supra.

8 Q I'm having trouble hearing your last statement. Did
9 you say that BellSouth requested the issues be discussed?

10 A That's correct, and as well as the same with Supra.
11 Supra also requested that the issues be discussed.

12 Q Okay. Let's look at the sentence that carries over
13 to the next page.

14 A Okay.

15 Q It indicates that given the lateness of the hour, and
16 it has the time in parentheses, and the fact that BellSouth had
17 still not provided any of the requested template data, Supra
18 declined to discuss these issues at this time. Is that an
19 accurate reflection of what happened at that meeting?

20 A And then as well as -- the letter went on to state
21 that Supra stated its willingness to discuss all such issues,
22 including issues that arise from the template data once such
23 data is received and reviewed.

24 MR. TWOMEY: Just for the record, Madam Chairman, I
25 think the answer to my last question was yes, but he didn't say

1 it. And I just want to make sure, so I'm going to ask him that
2 question again.

3 COMMISSIONER JABER: Go ahead. But before you do
4 that, Mr. Ramos, for purposes of the record, I want you to
5 start your answers with a yes or no and then explain.

6 THE WITNESS: Okay.

7 BY MR. TWOMEY:

8 Q Isn't it true, Mr. Ramos, that Supra refused to
9 discuss the issues because of the lateness of the hour and its
10 continued request for network template data?

11 A Yes. But also Supra stated in that letter that Supra
12 would be willing to discuss all these issues once BellSouth
13 provides the information.

14 Q And that's the same network information that you were
15 requesting of Pacific Bell; right?

16 A That's correct.

17 Q Now, isn't it a fact, Mr. Ramos, that Supra and
18 BellSouth had one more meeting during that week at which other
19 issues were discussed, including the follow-on agreement?

20 A That's correct.

21 Q That is, there were other issues besides the issues
22 in this case that were the subject of the InterCompany review
23 board meeting as well; right?

24 A Can you repeat your question, please.

25 Q There were issues discussed in the June 6th

1 InterCompany review board meeting that were outside the scope
2 of this arbitration; correct?

3 A I don't believe so.

4 MR. TWOMEY: Madam Chairman, I'm handing out a
5 document here that is a June 4th -- I'm sorry, that is the
6 wrong one. I'm sorry.

7 Q Mr. Ramos, your memory is better than mine. The
8 meeting on June 6th concerned some of the issues in this
9 proceeding; correct?

10 A Correct.

11 Q And the issues that were discussed were those issues
12 that Supra was willing to discuss but not all issues; correct?

13 A Correct.

14 Q And Supra refused to discuss any issue that it
15 thought related to the network template; correct?

16 A That's not correct, because when you're saying
17 "refused to discuss," Supra cannot be discussing issues in a
18 vacuum. That's going to be putting the company at a
19 disadvantage, and that's exactly what Supra has been saying.
20 The record of this proceeding has got to be complete, and
21 that's why we've requested for this network information.

22 MR. TWOMEY: Madam Chairman, we are handing out a
23 document that we'd like the next exhibit number given to. It
24 is a document dated June 5th, 2001. It's a letter from
25 Adenet Medacier to Parkey Jordan regarding a follow-on

1 agreement, or the follow-on agreement.

2 COMMISSIONER JABER: Exhibit 27 is identified as the
3 Medacier June 5th, 2001 letter.

4 (Exhibit 27 marked for identification.)

5 BY MR. TWOMEY:

6 Q Mr. Ramos, I'd like to direct your attention to the
7 last sentence in the letter -- well, the one before "Call me if
8 you have any questions" -- that says that Supra is still
9 waiting for BellSouth to produce BellSouth's network
10 information, and that Supra is only willing to discuss the
11 following issues as previously identified by the parties.

12 Does that refresh your recollection about Supra's
13 refusal to discuss issues that it believed were unrelated to
14 the network template?

15 A My answer was simply what I told you earlier on, and
16 that is the fact that Supra has not refused to discuss issues.
17 Supra's reluctance to discuss issues is based on the fact that
18 Supra expects to have this information.

19 And if you look at the first paragraph of the letter
20 itself it states, "After further consideration, and although
21 the parties already have held two InterCompany review board
22 meetings, Supra is willing to have another InterCompany review
23 board meeting tomorrow, Wednesday, June 6, 2001, starting at
24 4:00 p.m., to attempt to resolve a number of the issues which
25 have previously been identified and narrowed before the FPSC.

1 The parties will address all the issues in terms of the
2 arbitrator's award of June 5, 2001."

3 Q My question, Mr. Ramos, is, isn't it true that if you
4 look at the exhibit that was attached here, Supra was only
5 willing to discuss the issues listed on Attachment A and was
6 unwilling to discuss any other issues?

7 A Yes and no.

8 Q Well, Mr. Ramos, you're going to have to help me
9 understand how I'm supposed to interpret "Supra is only willing
10 to discuss the following issues" as meaning anything other than
11 you're only willing to discuss the following issues.

12 A That's correct. As I've explained to you, and, you
13 know, this is a position that at the InterCompany review board
14 meeting, Supra's representatives have expressed to BellSouth's
15 representatives that it is important for the parties to discuss
16 these issues based on the information that BellSouth is
17 supposed, and required by law, to provide to Supra.

18 Let's go back to Paragraph 155 of the FCC's
19 First Report and Order for a moment. Commissioners, please
20 allow me, please, to read that Paragraph 155 into the record.

21 MR. TWOMEY: Commissioner, I don't believe it's
22 responsive to my question, but if you want him to read it into
23 the record, I will not object to it because it says what it
24 says.

25 COMMISSIONER JABER: Thank you, Mr. Twomey. We do

1 allow witnesses to elaborate on their answers.

2 Go ahead, Mr. Ramos.

3 A Thank you, ma'am. "We agree with incumbent LECs and
4 new entrants that contend that the parties should be required
5 to provide information necessary to reach agreement." I'm
6 reading from Page 18 of my direct testimony.

7 "Parties should provide information that will speed
8 the provisioning process, and incumbent LECs must prove to the
9 state commission, or in some instances the Commission or a
10 court, that delay is not a motive in their conduct. Review of
11 such requests, however, must be made on a case-by-case basis to
12 determine whether the information requested is reasonable and
13 necessary to resolving the issues at stake. It would be
14 reasonable, for example, for a requesting carrier to seek and
15 obtain cost data relevant to the negotiation, or information
16 about the incumbent's network that is necessary to make a
17 determination about which network elements to request to serve
18 a particular customer."

19 In that Footnote 8 to that particular order of the
20 FCC it states, "See discussion of technical feasibility, infra,
21 Section VI. In addition, the Commission's federal advisory
22 committee, the Network Reliability Council, has developed
23 templates that summarize and list activities that need to occur
24 when service providers connect their networks pursuant to
25 defined interconnection specifications or when they are

1 attempting to define a new network interface specification. As
2 consensus recommendations from the Council, we presume the
3 elements defined in the templates are good faith issues for
4 negotiation." Comments of the Secretariat of the Second
5 Network, The Path Forward.

6 COMMISSIONER JABER: Mr. Ramos, let me talk to you
7 for a minute.

8 THE WITNESS: Yes, ma'am.

9 COMMISSIONER JABER: I don't necessarily have a
10 question, but I have something that I have not been able to
11 understand about Supra or BellSouth or this relationship that
12 you all, or lack thereof, that you all seem to have. You,
13 according to your own testimony, are dependent on the BellSouth
14 network.

15 THE WITNESS: Yes, ma'am.

16 COMMISSIONER JABER: You need the UNE platform, and
17 they have to provide you access to their system. Why is it so
18 hard for you all to sit in a room and reach an agreement like
19 professional adults that you are? It boggles my mind that you
20 have so much trouble. You have a business to operate,
21 admittedly a business that is dependent on their network. They
22 have to by law provide you access, and that's what we do. We
23 ensure that they provide you access.

24 The things that you have been discussing for the last
25 three hours are so miniscule. It's just amazing to me that you

1 can't sit in a room and agree on these issues.

2 So here's my question. How is that we can help you
3 sit in a room like adults and reach an agreement? You must
4 understand that the whole time you've been litigating this
5 case, you have not had access to the BellSouth network and that
6 has got to be hurting your business.

7 THE WITNESS: That's correct, ma'am, very correct.

8 COMMISSIONER JABER: Well, why don't you shed some
9 light on my lack of understanding on why you all can't get
10 along?

11 THE WITNESS: Thank you very much, ma'am.

12 COMMISSIONER JABER: Be very brief, and please don't
13 misunderstand, this is not an opportunity for you to elaborate
14 on what you prefiled. It's an opportunity for you to explain
15 why I shouldn't be so frustrated with the parties right now.

16 THE WITNESS: Ma'am, I don't know. I don't know.

17 COMMISSIONER JABER: If at the end of this hearing we
18 require that you sit down and enter into good faith
19 negotiations, you understand that you're required by our
20 directive to do that.

21 THE WITNESS: I understand, ma'am.

22 COMMISSIONER JABER: Do you also understand that
23 before the hearing concludes and before Staff files a
24 recollection, if you sit down and negotiate the entire case, we
25 won't have to decide which party has acted in bad faith?

1 THE WITNESS: I understand, ma'am.

2 COMMISSIONER JABER: And the longer you keep this
3 case pending, the more likely it is that we will decide which
4 party has acted in bad faith.

5 THE WITNESS: I understand, ma'am.

6 COMMISSIONER JABER: Okay. Go ahead, Mr. Twomey.

7 MR. TWOMEY: Thank you, Commissioner.

8 BY MR. TWOMEY:

9 Q Well, Mr. Ramos, I just want to make sure there's no
10 misunderstanding here. You are in business today; correct?

11 A Yes.

12 Q You have 100,000 customers from whom you get revenue;
13 correct?

14 A Yes.

15 Q And you haven't paid BellSouth since October '99;
16 correct?

17 MR. CHAIKEN: Object. It has no relevance to this
18 proceeding.

19 COMMISSIONER JABER: Mr. Twomey.

20 MR. TWOMEY: Well, Mr. Ramos has suggested that it's
21 hurting his business, and I'm just trying to understand what
22 the basis for that statement is.

23 COMMISSIONER JABER: Mr. Chaiken, we heard cross
24 examination on this issue yesterday and we heard it this
25 morning, I'm going to allow the question.

1 How much longer, Mr. Twomey, do you have of this
2 witness?

3 MR. TWOMEY: Total? Forty-five minutes.

4 COMMISSIONER JABER: Go ahead.

5 BY MR. TWOMEY:

6 Q Mr. Ramos, do still have that Paragraph 155 out?

7 A Yes.

8 Q You read it into the record, and I have an excerpt
9 here. I want to make sure that my excerpt is the same as
10 yours. According that document, BellSouth is required to
11 furnish information about its network that a requesting
12 telecommunications carrier reasonably requires to identify the
13 network elements that it needs in order to serve a particular
14 customer. Isn't that what it says?

15 A That's correct.

16 Q Has Supra ever identified a particular customer for
17 whom it needs network information?

18 A Okay. My answer to that is this.

19 Q I'd like you to start with a yes or no, if that's
20 okay.

21 A Yes. But the answer to that is this. Looking for
22 that footnote to that particular paragraph, the FCC has
23 recognized that that template is a good faith negotiation basis
24 and it's there. The record is the record.

25 Q My question was, have you ever identified a

1 particular customer with respect to whom you need network
2 information, and your answer to that was yes.

3 Which particular customer was it that you identified,
4 and when did you do that?

5 A Mr. Twomey, Supra is not -- Supra has got customers
6 in each and every BellSouth central office in South Florida. I
7 believe that's enough -- that gives Supra enough right to
8 request for that information. And if I'm wrong, you can
9 correct me.

10 COMMISSIONER JABER: Mr. Ramos, that doesn't answer
11 the question. The question very directly was, did you ever
12 identify the customers, and if so, when?

13 THE WITNESS: We did not identify the customers,
14 ma'am.

15 COMMISSIONER JABER: Okay.

16 BY MR. TWOMEY:

17 Q Now, Mr. Ramos, Issue A, and I have it here,
18 specifically asks whether either party was in bad faith --
19 excuse me, "Has BellSouth or Supra violated the requirement in
20 Commission Order PSC-01-1180-FOF-TI to negotiate in good faith
21 pursuant to Section 252 (b)(5) of the Act?"

22 And then it has a second question which is not
23 relevant to what I'm asking. That order that it's referring to
24 did not require BellSouth to provide you with the network
25 information that you were asking. That wasn't addressed in

1 that order, was it?

2 A Yes, you're right. It was not specifically addressed
3 in the body of the order. But meanwhile, the complaint that
4 Supra filed in January of 2001 on this matter that led to the
5 issuance of the order particularly requested for that relief.

6 Q All right. Mr. Ramos, let's talk about Issue B for a
7 moment.

8 A Sure.

9 Q Issue B concerns the base agreement into which the
10 decisions in this case will be incorporated; isn't that right?

11 A That's correct.

12 Q Isn't it true that when BellSouth filed its petition
13 for arbitration in this case on September 1, 2000, along with
14 the petition, BellSouth filed a complete proposed agreement
15 which included general terms and conditions as well as all of
16 the attachments that would be necessary in a final agreement?

17 A That's correct.

18 Q Supra filed a response to BellSouth's petition for
19 arbitration; isn't that right?

20 A That's correct.

21 Q Supra did not attach a competing version of an
22 agreement; correct?

23 A That's correct, but also because of the fact that
24 Supra has been requesting of BellSouth that the parties be
25 allowed to negotiate from the parties' current agreement.

1 Q BellSouth -- excuse me. Supra, as of today, has not
2 filed a complete proposed agreement into the record of this
3 proceeding for the Commission to consider; isn't that true?

4 A That's correct, but I have to explain that as well.
5 As part of the documents filed when Supra filed its status of
6 the negotiations as well as the bad faith negotiation tactics,
7 Supra filed an attachment to that motion. And that attachment
8 is the general terms and conditions redlined by Supra.

9 And Supra stated that once BellSouth provides Supra
10 with information about its network, that Supra will be filing
11 the remainder of the agreement. And in all our testimonies, I
12 mean, at least in my testimony and Mr. Nilson's testimony as
13 well, we have requested that the Commission allow us to
14 supplement the record once we receive this information.

15 Q And the information you want is the network
16 information that BellSouth's required to provide when you need
17 it to serve a particular customer. That's the network
18 information you're talking about; correct?

19 MR. CHAIKEN: I object. That's not what the FCC's
20 First Report and Order states.

21 COMMISSIONER JABER: Mr. Twomey.

22 MR. TWOMEY: Well, first of all, I thought that's
23 what he agreed it said. And if he wants to go back and read
24 Paragraph 155 again into the record, we can do that. But it
25 says -- I mean, he -- and I asked a couple of questions about

1 that. He agreed with me that it talks about serving a
2 particular customer.

3 COMMISSIONER JABER: Mr. Chaiken, I'm going to allow
4 the question because, frankly, I heard it as a follow-up to
5 Mr. Ramos's own answer. So I'll allow the question.

6 BY MR. TWOMEY:

7 Q I'm just trying to establish, Mr. Ramos, that the
8 question -- when you say you can't file any attachments because
9 you don't have that network information, it's that same network
10 information we were talking about a few minutes ago that was
11 referred to in Paragraph 155 relating to a particular customer;
12 correct?

13 A That's not correct. The information that I'm
14 requesting for is as explained in the paragraph -- the
15 footnote, which is in my direct testimony, Page 18, Footnote 8,
16 and that information is the network template.

17 Q Now, the Footnote 8 --

18 A Yes.

19 Q -- is a footnote to a paragraph; correct?

20 A That's correct.

21 Q And the paragraph talks about network information to
22 serve a particular customer; correct?

23 A That's correct. But the footnote itself is broader
24 than a particular customer.

25 Q Well, Mr. Ramos, isn't it true that one of the

1 allegations you've got in this case is that you want to use the
2 existing agreement between the parties?

3 A That's correct.

4 Q And that agreement has attachments; right?

5 A It does, yes.

6 Q And we both agree that we didn't give you that
7 network information you want; correct?

8 A Correct.

9 Q How was it that you were able to make a reasonable
10 decision to sign the contract that you currently have with all
11 of those attachments if you didn't have the network
12 information?

13 A That's an interesting question. At that time in
14 1999, Supra adopted the AT&T agreement as the result of the
15 Section 252 (i) of the Act. So we didn't go through any
16 arbitration between BellSouth and Supra at that time. It was a
17 straight adoption. So, you know, in 1999 when we did that,
18 there wasn't a need for -- there was no need to request this
19 information to adopt an agreement. You have to take it the way
20 it is, and that's exactly what we did then.

21 Q Let's be clear, Mr. Ramos. It's absolutely true, you
22 don't have to go through a proceeding to adopt an agreement,
23 but you had been operating for two years in Florida, and you
24 were making a decision for your business as to what agreement
25 would govern for the next period of time. And you selected the

1 AT&T agreement with its attachments, and you made that business
2 decision without network information.

3 I'm trying to understand why it is that you weren't
4 able to negotiate this arbitration, but you were able to make
5 the business decision in October '99 to use the agreement that
6 you're in now.

7 A Like I said earlier on, it was a straight adoption.
8 This new agreement, BellSouth has made various claims that the
9 controlling law has changed. BellSouth's practices and
10 procedures have changed, and that BellSouth was not going to
11 allow Supra to negotiate from that -- from the parties' current
12 agreement. Based on those facts that BellSouth has stated,
13 Supra needed to have the information about BellSouth's network,
14 that's number one, and number two is for Supra to know exactly
15 what has changed in BellSouth's practices and procedures so
16 that if those changes are really reasonable, they could be
17 incorporated into the parties' follow-on agreement.

18 Q Well, let me make sure -- I want to break that down
19 and understand what you've just said. You've been talking
20 about information about BellSouth's network that you wanted.

21 A That's correct.

22 Q Are you also now saying that you were not able to
23 negotiate unless you know about all of our practices and
24 procedures as well?

25 A That issue came into it as well. Initially, it was

1 just the issue of the network information and, again, as well
2 as maybe to expand more on the network information.

3 For instance, let's take the issue of UNE combos that
4 Supra has been requesting from BellSouth and that -- which
5 BellSouth has refused to provide to Supra to date. Supra is
6 aware that the network -- that BellSouth's network contains
7 several equipment, not just switches. And Supra should be able
8 to design other products and services to its end users using
9 BellSouth's network. And that's one of the reasons why Supra
10 needed to have the network information, so that Supra could
11 know the underlying equipment in BellSouth's central offices
12 and be able to design appropriate products and services to its
13 end users.

14 COMMISSIONER JABER: Mr. Ramos, let me make sure I
15 understand something. Until a follow-on agreement is executed
16 between you and BellSouth, you are operating under the last
17 agreement that you adopted even though it expired.

18 THE WITNESS: That's correct, ma'am. And also,
19 ma'am, the agreement -- the new agreement is retroactive.

20 COMMISSIONER JABER: Right. And by your own
21 testimony, you have not paid BellSouth because you believe
22 there should be a setoff. As a Commissioner, help me
23 understand why I should be convinced that you are acting in --
24 how is it that I'm convinced that you have an incentive to
25 enter into negotiations for a follow-on agreement? It sounds

1 like you're in a win-win situation. You're operating under an
2 existing agreement that expired, but you can do that according
3 to the Act, and you haven't paid BellSouth because you've got
4 this billing dispute. What incentive do you have to negotiate
5 a new agreement?

6 THE WITNESS: Okay. Thank you very much, ma'am. I
7 think that question I answered -- just a second -- that
8 question I answered at Page 12 of my rebuttal testimony.

9 COMMISSIONER JABER: Well, why don't you summarize
10 your answer for me?

11 THE WITNESS: Sure. The summary of my testimony on
12 that issue is this. The parties' current agreement, according
13 to BellSouth, is not clear, and that's why we've been forced
14 into several arbitration proceedings. What Supra seeks in the
15 follow-on agreement is clarity as well parity and to be able to
16 incorporate whatever new FCC rules that are out there that need
17 to be filed in the agreement as well as the FPSC orders that go
18 to be with that agreement. Supra seeks to have all that there.
19 But for Supra to just go blindly into entry into an agreement
20 that is one-sided will not be doing justice to Supra and its
21 end users.

22 COMMISSIONER JABER: So the fact that you want the
23 Commission to believe that you're not blinded or surprised by
24 BellSouth's tactics, you think is an incentive to enter into a
25 follow-on agreement?

1 THE WITNESS: Yes, ma'am, partly, ma'am. And then
2 also the fact that -- Supra has secured certain victories in
3 the commercial arbitration proceeding as demonstrated in
4 Exhibit OAR-3. Supra seeks to incorporate those findings in
5 the parties' follow-on agreement. Like the issue of the OSS --

6 COMMISSIONER JABER: Well, let me -- see, I need to
7 make sure I understand your answer to my questions. I'm
8 looking for whatever financial, economic incentive you would
9 have for entering into a new agreement. I'm looking for some
10 sort of harm that comes to you if you don't enter into the
11 agreement.

12 THE WITNESS: There are several. Like you've
13 mentioned earlier in the morning, Supra today has not been able
14 to operate its business successfully, and we are not able to
15 provide certain services to our end users like long-distance
16 service, ADSL service, and as well as collect access revenues
17 from LD providers.

18 COMMISSIONER JABER: Under your current agreement
19 that has expired, you can't do those things?

20 THE WITNESS: We can, ma'am.

21 COMMISSIONER JABER: So I come back to my question.
22 How are you harmed by not entering into a follow-on agreement?

23 THE WITNESS: How we are harmed is that if we're able
24 to take the follow-on -- if we are able to incorporate our
25 victories in the current agreement, in the follow-on agreement,

1 we would be able to generate more revenues by providing those
2 services to our customers instead of what we are doing right
3 now.

4 Ma'am, long distance service is a gravy for local
5 exchange carriers. That is the way it is. It is a gravy for
6 local exchange carriers. If, for instance, BellSouth allows
7 Supra to provide long-distance service to its customers using
8 UNE combinations, that's a great revenue for Supra. And it's
9 supposed to be part of the follow-on agreement.

10 COMMISSIONER JABER: I thought you just told me you
11 were able to provide UNE combination and DSL and long distance
12 through your current agreement.

13 THE WITNESS: Oh, no. I'm sorry. Maybe I misspoke
14 then. The agreement provides that, yes, we should be able to
15 do that, but we have not been allowed to do, if that's answers
16 your question.

17 COMMISSIONER JABER: I see. Go ahead, Mr. Twomey.

18 BY MR. TWOMEY:

19 Q Mr. Ramos, I just want to follow up on a couple of
20 things you just said. You testified that it is Supra's
21 intention to be able to provide ADSL service; correct?

22 A Correct.

23 Q You want to provide your own ADSL service; right?

24 A Yes.

25 Q And did you testify that it's your opinion that the

1 current agreement between the parties is not clear and needs to
2 be more precise about the obligations of the parties?

3 A That's what BellSouth told us.

4 Q No. I asked what is your opinion?

5 A My opinion is that it's clear. What BellSouth said
6 is not clear. Mr. Hendrix said it's not clear.

7 Q I thought in response to Commissioner Jaber's
8 question you just said that one of the problems you have with
9 the current agreement is that it's not clear.

10 A I said that BellSouth said it's not clear.

11 Q No. Let me try to do this again.

12 A Okay.

13 Q In response to Commissioner Jaber, did you not just
14 say that it's your opinion that the current agreement is not
15 clear, your opinion?

16 A That's not my opinion. That's BellSouth's opinion,
17 and that's expressed by Mr. Hendrix.

18 Q Okay. Mr. Ramos, do you still have Exhibit 27 in
19 front of you? That's the letter from Mr. Medacier.

20 A Yes, I do.

21 Q Okay. Just hang on to that for a minute. One of the
22 issues we have between the parties in this case is the issue of
23 how reciprocal compensation will be handled for ISP-bound
24 traffic; correct?

25 A Correct.

1 Q And that's Issue 19?

2 A That's correct.

3 Q If you look at Exhibit 27, which is a list of those
4 issues that Supra was willing to discuss at the June 6th
5 meeting, Issue 19 is not among those that are listed; isn't
6 that right?

7 A That's correct.

8 Q So on that policy issue -- well, wouldn't you agree
9 with me that that's a policy issue?

10 A I believe so, but I also -- I believe so, but also, I
11 believe that I think Mr. Nilson is the one that filed testimony
12 on that particular issue. He should be able to answer why --
13 that's why Supra needed the network information in order to be
14 able to discuss the issue.

15 Q Well, you anticipated my next question. So you don't
16 know the basis for Supra's contention that it needed network
17 information from BellSouth in order to discuss the policy issue
18 of reciprocal compensation for ISP-bound traffic? Are you
19 saying you can't answer that and I need to ask Mr. Nilson?

20 A You know, I think it's better for you to ask
21 Mr. Nilson. But based on my own two cents of the whole thing,
22 it probably has to do with records, billing records. But
23 Mr. Nilson will be able to answer the question better.

24 Q Mr. Ramos, let's talk about Issue 1 for a minute. Is
25 it your opinion that this Commission can't adequately resolve

1 disputes between the parties over the agreement between them?

2 A Can you repeat the question, please.

3 Q Is it your opinion that this Commission is unable to
4 adequately resolve disputes between the parties arising out of
5 an interconnection agreement?

6 A I believe the Commission can resolve issues from the
7 interconnection agreement, but I believe that the Commission is
8 limited in so many circumstances. And I will explain that.

9 One is the timeliness of the complaints. For
10 instance, in the parties' current agreement, from the date that
11 a party initiates a complaint, the arbitrators must resolve the
12 complaint within 90 days. That is a rule contained in the
13 parties' current agreement Attachment 1, except if there's an
14 agreement to waive such 90-day requirement. And if it's a
15 dispute affecting service, it is supposed to be resolved within
16 30 days. And again, if the parties agree to waive the 30-day
17 provision, then that will be the case.

18 Then also, maybe more importantly, is the fact that
19 the arbitrator's award or ruling is final. Whereas, for the
20 Public Service Commission, parties have rights to litigate --
21 to continue to litigate the issues, motion for reconsideration
22 of the order of the Commission, and then after that, they can
23 go to the appellate process.

24 So the Commission procedure is a much longer process
25 than a commercial arbitration proceeding that is contained in

1 Attachment 1 of the parties' current agreement and, again, as
2 well as the fact that public policy dictates that taxpayers'
3 money should not be used to finance a party's noncompliance
4 with an agreement approved by the PSC. And what I mean by that
5 is this. Based on the CPR rules and the parties' current
6 agreement, the losing party pays the cost of the arbitration
7 proceeding. Whereas, any proceeding before the FPSC, it is the
8 taxpayers that have got to fund that bill.

9 I understand that telecommunications services is for
10 the public interest, and I believe that the Commission's -- the
11 Florida Public Service Commission should approve
12 interconnection agreements, and then after that, the
13 enforcement of the agreement itself should be left in the hands
14 of commercial arbitrators who can deal with this in a
15 commercial way.

16 The Commission does not have authority to award
17 damages. In Supra's Exhibit OAR-3, damages have been awarded
18 against BellSouth to Supra. So it's a broad picture that one
19 has got to look at in order to reach a conclusion on this
20 particular matter.

21 Q Well, Mr. Ramos, let me break that answer down into a
22 couple of parts. You said that arbitrations under the CPR have
23 to be resolved within 90 days. Is that what you just said?

24 A For the parties' agreement, yes.

25 Q Without divulging any confidential information, isn't

1 it true that the arbitration that you've referred to a couple
2 of times was filed last year by Supra?

3 A Yes, October last year.

4 Q And isn't it true that we don't have a final award
5 resolving all outstanding issues, as we sit here today?

6 A That is true to an extent.

7 Q But we have a hearing on Monday.

8 A Okay. Mr. Twomey, remember, BellSouth and Supra
9 agreed to waive the 90-day provision.

10 COMMISSIONER JABER: Mr. Ramos, yes or no, and keep
11 your answers very succinct.

12 THE WITNESS: Yes, or maybe -- yes.

13 COMMISSIONER PALECKI: Mr. Ramos, let me ask you a
14 question. I've been wrestling with this arbitration issue
15 myself. You testified that you don't believe the taxpayers
16 should have to pay for the cost of the litigation, but at the
17 Public Service Commission, it's the regulatory assessment fees
18 that pay the salaries of the Commission and the Commission
19 Staff. So it's the general body of the ratepayers of both
20 Supra and BellSouth that pay for the litigation as far as the
21 Commission and its Staff is concerned.

22 The question I have is, what benefit does the general
23 body of ratepayers attain from this Commission deciding
24 squabbles between you and BellSouth as opposed to arbitrators
25 making those decisions?

1 THE WITNESS: Can you ask me the question again, sir?

2 COMMISSIONER PALECKI: Well, since it's the
3 ratepayers that pay for the Public Service Commission, our
4 salaries, our facilities, and the Staff's salaries and
5 facilities, the question I have is, what benefit will the
6 ratepayers of both Supra and BellSouth attain if this
7 Commission decides that it wishes to be the arbitrator of the
8 disputes between BellSouth and Supra?

9 THE WITNESS: Sir, respectfully, sir, I do not -- I
10 believe that the ratepayers are better served if commercial
11 arbitrators decide the disputes instead of the Public Service
12 Commission. Like I mentioned previously, the points I raised
13 earlier on relate to that particular answer.

14 COMMISSIONER PALECKI: Well, the way I see it is, we
15 have an inability to communicate between BellSouth and Supra.
16 We have a high level of animosity between the two parties. We
17 have a large number of disputes between these two utilities.
18 We've had what seems to me to be a lack of maturity on the part
19 of both Supra and BellSouth in being unable to resolve minor
20 disputes.

21 And I'm not sure I don't agree with you because I'm
22 not sure this Commission wants to be interposed in between
23 these two parties as the referee of your disputes. I'm just
24 trying to figure out, if it is something that would benefit the
25 ratepayers, then we should do it, but if it's not, and if

1 there's no benefit to the ratepayers, then this Commission
2 should have no part in being that referee.

3 Do you have any opinion as to whether the ratepayers
4 would benefit if this Commission acts as the referee between
5 your two utilities?

6 THE WITNESS: Sir, like I said earlier on, sir, I do
7 not think that the ratepayers are going to benefit if this
8 Commission resolves disputes between Supra and BellSouth and
9 even maybe other ALECs, for that matter. The ratepayers are
10 better served by commercial arbitrators because the losing
11 party is going to be a reasonable party, and that party will
12 have to bear the cost of the arbitration. Also, the ratepayers
13 will be able to -- like, in the case of Supra's contract,
14 damages, it's very key because without a cooperative party
15 knowing that it's going to be subjected to some damages by its
16 actions or inaction, that party is just going to behave in
17 whatever manner it wants to behave.

18 COMMISSIONER PALECKI: Thank you.

19 THE WITNESS: Thank you, sir.

20 COMMISSIONER JABER: Mr. Twomey.

21 BY MR. TWOMEY:

22 Q Mr. Ramos, let me ask you about Issue 5 for a moment
23 which concerns the download of customer service records. What
24 language has Supra proposed for inclusion in the agreement on
25 this issue?

1 A Issue 5, hold on please, hold on please. I'm going
2 to refer to my testimony. The language that Supra proposes is
3 a parity provision.

4 Q Is what?

5 A Parity, that whatever BellSouth has -- that whatever
6 applies to BellSouth, it should apply to Supra. And that is
7 contained at Page 69 of my direct testimony, Lines 14 to 23.

8 Q I'm sorry, what are the line numbers?

9 A Line 14, Page 69, Lines 14 to 23.

10 Q Okay. So you want this language that's on Lines 14
11 through 23 to go into the contract?

12 A No. Once -- I'm sorry.

13 Q I'm asking you, what language have you proposed on
14 this issue?

15 A Parity.

16 Q You want the word "parity" to be put into the
17 contract?

18 A That's correct, that whatever applies to Supra --
19 whatever applies to BellSouth shall apply to Supra. And I
20 believe also probably in our prehearing statement, I believe
21 that this issue has been flushed out more. Supra wants a
22 download of the customer service records just the way that
23 BellSouth has it for its own operations.

24 Q Mr. Ramos, perhaps I'm not being clear. We have
25 disputes between the parties. We have positions that we both

1 have taken in regard to the issues. What I'm trying to get
2 from you is -- well, let me try it this way so it doesn't
3 belabor the point.

4 Supra has not proposed any specific language on this
5 issue ever in this proceeding; correct?

6 A Maybe I should just review Supra's prehearing
7 statement.

8 COMMISSIONER JABER: Mr. Ramos, I think the point is,
9 the prehearing statement indicates a position. Your
10 testimony -- obviously you testified to a position.

11 THE WITNESS: Yes.

12 COMMISSIONER JABER: The specific question is, have
13 you crafted or proposed language to address what you want in
14 the contract related to this issue?

15 THE WITNESS: We have not.

16 COMMISSIONER JABER: Okay. That's it. As simple as
17 it is to answer my question --

18 THE WITNESS: Yes, ma'am.

19 COMMISSIONER JABER: -- pretend like -- I know it's
20 hard, but pretend like he's a Commissioner and answer his
21 questions as directly as you answer mine.

22 THE WITNESS: Okay.

23 COMMISSIONER JABER: And I made them do the same
24 thing for you all yesterday.

25 THE WITNESS: Okay, ma'am. Thank you, ma'am.

1 COMMISSIONER JABER: Try again.

2 MR. TWOMEY: Well, he answered your question, and
3 it's on the record, so that's sufficient for me.

4 COMMISSIONER JABER: Good.

5 MR. TWOMEY: Can I give you my list?

6 COMMISSIONER JABER: No. Move on.

7 BY MR. TWOMEY:

8 Q Mr. Ramos, isn't it true that among the issues that
9 BellSouth is concerned about is customer proprietary network
10 information and whether downloading the CSRs will give Supra
11 information about customers that are not Supra's customers that
12 is specifically prohibited by federal law?

13 A We understand that. BellSouth has some concerns
14 about that, but the issue of the customer proprietary network
15 information is discussed in the parties' general terms and
16 conditions. And I believe that that issue is adequately
17 addressed in the Exhibit B, which is attached to Supra's motion
18 filed in June.

19 Q Well, isn't it BellSouth's position that it would be
20 a violation of federal law for us to give you a download of the
21 CSRs?

22 A That's correct. That is BellSouth's position, but
23 Supra has made its position also that that is not true.

24 Q All right. Mr. Ramos, in Issue 38, you want direct
25 access to BellSouth's operational support systems; correct?

1 A Correct.

2 Q We watched "This Old Service Order" videotape that
3 you brought with you. BellSouth has a system called RNS;
4 correct?

5 A Correct.

6 Q And it's your position that you want Supra's customer
7 service reps to be able to sit at an RNS terminal and do
8 whatever it is that BellSouth's service reps do; is that right?

9 A That's correct.

10 Q Now, RNS as it is currently designed can only be used
11 to order retail BellSouth products for BellSouth retail
12 customers; isn't that right?

13 MR. CHAIKEN: I object. That's not anywhere in the
14 record.

15 COMMISSIONER JABER: Mr. Twomey.

16 MR. TWOMEY: Well, I don't think that that's a proper
17 objection. I'm asking him whether he agrees that that's true.
18 And it's actually in the record in Mr. Pate's testimony,
19 although he hasn't been subjected to cross and because we've
20 moved around the order of the witnesses. I guess I am asking
21 him a question that's in Mr. Pate's prefiled testimony, but
22 it's the same issue that both he and Mr. Pate addressed.

23 COMMISSIONER JABER: Mr. Chaiken, I'm going to allow
24 the question. If the witness knows the answer, he knows it.
25 If he doesn't, that's fine too. I'd also note, though, that

1 that videotape with attached to Mr. Ramos's testimony, and this
2 is a follow-up question for the videotape.

3 BY MR. TWOMEY:

4 Q Mr. Ramos, isn't it true that RNS can only be used to
5 order BellSouth retail products and services for BellSouth
6 customers?

7 A That's not true.

8 Q What is the basis for your -- okay. Let me back up.
9 It's your statement that if we hooked up an RNS terminal as it
10 currently works, you could submit an order for a wholesale
11 product using that service?

12 A That's correct. And again, also let me tell you
13 this, sir. In one of the interrogatories that Supra served on
14 BellSouth, Supra asked the question, what systems, or something
15 like that, that a BellSouth service rep uses to convert a Supra
16 customer back to BellSouth, and it said RNS, ROS, DOE, and
17 SONGS. So if BellSouth is capable of using those systems to
18 convert a Supra customer back to BellSouth, Supra also is
19 capable of using those customers to convert a BellSouth
20 customer. And not only that, we've seen -- I have seen RNS and
21 ROS. I've seen the two systems, so I know how they operate.
22 And I know for sure that to issue a service order is the same
23 thing.

24 Q Well, Mr. Ramos, just to perhaps bring this line of
25 questioning to an accelerated closure, would Supra be satisfied

1 with an order from this Commission ordering direct access to
2 BellSouth's RNS system as is with no system modifications
3 whatsoever?

4 A That's correct, and not only RNS. BellSouth has got
5 several other interfaces. A lot of the documents that have
6 been filed in this proceeding regarding BellSouth OSS
7 demonstrate the fact that BellSouth has extensive OSS that it
8 currently uses that Supra has got no access to at all. So my
9 answer should not be limited just to RNS. I understand that
10 "This Old Service Order," that video, is about RNS, but there
11 are several other systems that BellSouth has today.

12 Q Okay. All I'm trying to get to is that point that --
13 and you know, we've been talking about this for quite a while,
14 that BellSouth believes that it understands the capabilities of
15 its systems and that those systems cannot be used to order any
16 unbundled products. But setting that disagreement aside, you
17 would be satisfied with an order from this Commission that
18 simply gave you access without BellSouth on its part having to
19 do anything to change those systems; is that right?

20 A That's absolutely correct. And if BellSouth complies
21 with that, Supra will be the happiest.

22 COMMISSIONER JABER: Mr. Twomey, how much longer?

23 MR. TWOMEY: I believe I am just about done.

24 BY MR. TWOMEY:

25 Q Mr. Ramos, Issue 55 concerns

1 application-to-application interface for access service
2 requests. Do you see that? Or are you aware of that?

3 A Sure, yes.

4 Q Okay. You've testified here that Supra has been
5 unable to offer long-distance service. Haven't you testified
6 to that?

7 A That's correct.

8 Q Long-distance companies submit access service
9 requests, or ASRs, to BellSouth; correct?

10 A That's correct.

11 Q So Supra is not submitting any ASRs to BellSouth;
12 correct?

13 A That's not correct. Supra has attempted to submit
14 several ASRs to BellSouth, and Mr. Nilson will confirm this to
15 you. BellSouth has rejected those ASRs.

16 Q Well, if you are not operating as a long-distance
17 company, what access services are you purchasing?

18 A To operate as a long-distance company, you've got to
19 be allowed to have access to those access services, so
20 BellSouth has not given Supra access to the access services.

21 Q Well, let's try to break it down and make sure that I
22 understand what you've said. Whether or not you believe you
23 should be able to do something, I'm just trying to ask you to
24 tell me what you're actually doing. Are you or are you not
25 submitting ASRs for access service today?

1 A We are not because of the fact that we have not been
2 allowed to do that. Mr. Nilson has submitted ASRs that were
3 clarified, sent back to Supra, and Supra has not been able
4 to -- BellSouth has not provisioned those services.

5 Q Is Supra certificated to provide long-distance
6 service in the state of Florida?

7 A Absolutely, and by the FCC as well.

8 Q But you have no customers?

9 A At this point, no.

10 Q And Supra is able to resale the long-distance service
11 of other companies like AT&T; is that right?

12 A You asked me this question during my depo. Basically
13 my answer will still be the same that I told you earlier on at
14 my depo.

15 COMMISSIONER JABER: Mr. Ramos, we weren't at your
16 deposition. I don't care that he asked it of you before. Just
17 answer the question.

18 THE WITNESS: Okay. I'm sorry. Supra is not able to
19 resell AT&T's long distance.

20 MR. TWOMEY: I believe I am done, if you give me 20
21 seconds. That's all I have at this time.

22 (Transcript continues in sequence with Volume 6.)

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

4
5 I, TRICIA DeMARTE, Official Commission Reporter, do hereby
6 certify that the foregoing proceeding was heard at the time and
7 place herein stated.

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

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

18 DATED THIS 3rd DAY OF OCTOBER, 2001.

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