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See DN 01218-03
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Supra Telecommunications and Information Systems, Inc., pursuant to Section 252(b) of the Telecommunications Act of 1996	Docket No. 001305-TP
Complaint of Supra Telecommunications and Information Systems Regarding BellSouth's Bad Faith Negotiation Tactics	Filed: October 26, 2001

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.'S POST HEARING BRIEF

Supra Telecommunications and Information Systems, Inc. ("Supra"), by and through its undersigned counsel, hereby submits its Post-Hearing Brief, and in support thereof, states as follows:

Issue B: Which agreement should be used as the base agreement into which the commission's decision on the disputed issues will be incorporated?

SUMMARY OF SUPRA'S POSITION

*** The current Agreement must be used as the base agreement for the Commission's decision on the disputed issues, because not only have the parties redlined it, but the parties are also familiar with it and have ongoing matters which are rooted therein. ***

DISCUSSION

Since before the beginning of this proceeding, Supra has maintained that it wished to negotiate a Follow-on Agreement from the current, FPSC approved Agreement. **JDH-5 - Hearing Exhibit 4**. Besides being the logical starting point for negotiations, the Agreement is a public document with which both parties are very familiar, and which was arbitrated by this Commission (Docket No. 96-0833-TP). Yet, instead of simply redlining that document,

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BellSouth chose to file a completely new, theretobefore never reviewed document as the starting point for negotiations. **HT, pg. 147, ln. 2–7.** As Supra does not have the extensive resources that BellSouth does, this immediately placed Supra at a disadvantage. Furthermore, as BellSouth had previously agreed to negotiate from the current agreement for Follow-On Agreements in other states, **OAR-67**, and had agreed to negotiate with MCI from its current agreement, **HT, pg. 138, ln. 25 - pg. 139, ln. 3**, BellSouth's motives become clear. During cross-examination, Hendrix was unable to identify the massive changes that made, as he claimed, the Current Agreement obsolete. Hendrix was able to summarize all of the changes in seven (7) pages. **HT, pg. 115, ln. 5 – 17 and Exhibit 6**. The parties should have been able to incorporate any of these changes, if viable and agreed upon, in the Follow-On Agreement.

Furthermore, and perhaps most significantly, is that BellSouth's proposed template agreement deletes numerous statutory safeguards contained in the current agreement. For example, the current agreement, **Hearing Exhibit 4**, contains numerous parity and nondiscrimination provisions that BellSouth has unilaterally removed for no good intentioned reason[1]. **DT of Ramos, pg. 42, ln. 13 - pg. 44, ln. 22.** BellSouth also removed § 2.3 of the General Terms & Conditions which provided that the terms of the Follow-On Agreement would apply retroactively to the termination date of the current agreement.

Based upon the evidence, the Commission should order that the Current Agreement serve as the base for the Follow-on Agreement.

Issue 1: What are the appropriate fora for the submission of disputes under the new agreement?

SUMMARY OF SUPRA'S POSITION

[1] Supra believes one of the reasons these provisions were removed was so BellSouth could avoid its obligation to provide Supra with direct access to BellSouth's OSS.

*** As the current Agreement requires commercial arbitration and the parties have and are using same as the alternative dispute resolution mechanism, there is no reason to disrupt the process. Commercial arbitration assures expediency and informal conflict resolution. ***

DISCUSSION

The current agreement provides for Commercial Arbitration, and addresses the following concerns: (1) Judicial economy; (2) Ability to award damages; (3) Commission orders have precedent; and (4) Speedy and efficient resolution of disputes. All the facts particular to this issue militate in favor of commercial arbitration. The Commission heard evidence that the parties have a tumultuous relationship and oftentimes require the quick and expeditious resolution of disputes. It is evident that the Commission's Docket is already encumbered with Telecommunications disputes, at the expense of the other utilities before the FPSC. **HT, pg. 304, ln. 11–23**. The current dispute resolution provision provides for resolution of service affecting disputes within 20 days, and other disputes within 90 days, unless the parties stipulate otherwise (§§ 9.7.1 and 12, Att. 1 of Agreement). The Commission is unable to accommodate the parties in this regard. In addition, arbitration forces the breaching party to compensate the other party for its attorney's fees and costs, it is final, non-appealable, and allows for the recovery of damages, a remedy that is not available before the Commission. **HT, pg. 249, ln. 6–9.** This inability to award damages provides disincentives to comply with the Follow-On Agreement.

Issue 4: Should the Interconnection Agreement contain language to the effect that it will not be filed with the Florida Public Service Commission for approval prior to an ALEC obtaining ALEC certification from the Florida Public Service Commission?

SUMMARY OF SUPRA'S POSITION

*** Any ALEC (whether certified or not) should have the right to adopt any interconnection agreement and conduct test operations thereunder, so long as that carrier is not

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providing telecommunications services to the public. This is consistent with both federal law and Fla. Stat. § 364.33. ***

DISCUSSION

There is no reason to include such language in the follow-on agreement, other than to unlawfully impede the speedy entrance of a non-certificated affiliate of Supra or any other carrier that seeks to adopt the follow-on agreement. With the insertion of this language, a new entrant would be unable to perform test orders, while its certification is pending before the Commission. The FPSC only requires certification to provide services. FPSC Rule 25-4.004, **DT of Ramos, pg. 68, ln. 7–13** and ¶53 of the FCC's First Report and Order in cc Docket 98-147 and Order 98-048.

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

SUMMARY OF SUPRA'S POSITION

*** BellSouth's pre-ordering interfaces are subject to extended downtime, thus providing unreliable access to CSRs. Supra should have CSRs available in its systems and agree not to access any CSR until authorized by the applicable customer. Such agreement is similar to Supra's current Blanket Letter of Authorization. ***

DISCUSSION

As an ALEC, BellSouth requires Supra to execute a Blanket Letter of Authorization ("BLOA"), whereby Supra agrees to access CSRs only after obtaining the applicable customer's authorization. **DT of Pate, pg. 5, ln. 1–25.** As Supra has properly executed a BLOA, Supra operates under its terms and only accesses CSRs upon the authorization of the applicable customers. **RT of Ramos, pg. 37, ln. 8–15.** Furthermore, as stated in the **RT of Ramos, pg. 37,**

ln. 22 - pg. 38, ln. 2 and OAR 74, Supra obtains personal information from the customer to verify that Supra is speaking with the correct party prior to accessing the applicable CSR.

One of the most pressing issues with BellSouth's refusal to provide Supra with downloads of CSRs occurs when Supra attempts to access the applicable customer's CSR at the time of the call and BellSouth's OSS, as provided to ALECs (i.e., LENS, EDI, TAG and RoboTAG), is experiencing downtime. **DT of Ramos, pg. 36, ln. 20 – pg. 37, ln. 3.** During such downtime, Supra is unable to view the applicable CSR while the customer is on the line, instead, being forced to wait for the BellSouth systems to come back online or to send a manual inquiry to BellSouth's LCSC. **HT, pg. 1232, ln. 2–9.** This OSS experience falls directly within the Parity discussion in the **DT of Ramos, pg. 42–60** as well as the OSS holding in **OAR 3.** Should Supra be provided with direct access to BellSouth's OSS, this issue may be moot.

Based on the foregoing, Supra ensures that it only accesses the correct CSR upon the prior authorization of the customer. As such, Supra can see no basis for BellSouth's CPNI argument and contends that a download is the only way, absent direct access to BellSouth's own OSS, to ensure that Supra can access CSRs during BellSouth's OSS downtime.

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

SUMMARY OF SUPRA'S POSITION

*** DAML is a line-sharing technology. Where line-sharing technology is involved in the UNE environment, Supra should only be obligated to pay the pro-rated cost of the shared network elements; such as the shared local loop. Supra must authorize DAML use on each customer line. ***

DISCUSSION

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BellSouth has failed to present any evidence that DAML lines are more expensive than copper lines. In fact, the evidence shows that DAML is cost effective. **Exhibit 16** – "Written Guidelines For Use of DAML Equipment in the Network," ¶¶ 2.1.1, 3.1.1, 3.3, and 3.3.1. Furthermore, BellSouth has failed to present any evidence that the reduced expense of DAML has been considered in the TELRIC rates for loops.

Significantly, modem speed decreases as a result of the use of DAML, thus generating customer complaints. **Exhibit 16, pg. 8; HT, pg. 430, ln. 1-4**. DAML served loops do not provide all the features, capabilities and functions of a copper loop. **RT of Dave Nilson, pg. 5, ln. 18-9**. Mr. Ruscilli does not deal with the added support costs to Supra for complaints of static, total loss of dialtone caused by lightning, and the fact that BellSouth does not even identify to Supra when the technology has been deployed to a Supra customer, increasing troubleshooting costs. **Id, at pg. 6, ln. 1-4**. If the FPSC adopted Supra's position, it would provide disincentives for BellSouth to switch a Supra customer's copper line with DAML. **Id, at pg. 6, ln. 9-20**. Finally, BellSouth is being unduly enriched by providing 2:1, 4:1, 6:1 and even 8:1 DAML lines, while charging Supra the full cost for each access line. **HT, pg. 434, ln. 23 - pg. 435, ln. 2.** Basically, BellSouth is able to provide up to 8 access lines via one DAML, and charge Supra for all 8 access lines, despite the reduction in its own costs. This is not equitable.

Issue11A: Under what conditions, if any, should the Interconnection Agreement state that the parties may withhold payment of disputed charges?

Issue11B: Under what conditions, if any, should the Interconnection Agreement state that the parties may withhold payment of undisputed charges?

SUMMARY OF SUPRA'S POSITION

*** The parties should be entitled to offset disputed charges. BellSouth cannot refuse to pay charges due an ALEC or refund past overcharges already paid and force the ALEC to

litigation for payment, while requiring the ALEC to pay BellSouth or lose service. This drains ALECs of cash and drives into bankruptcy. ***

DISCUSSION

Supra contends that either party should be allowed to offset monies due to the other when the other refuses or delays in paying. This is standard practice in the business world and encourages the parties to quickly resolve their disputes. For BellSouth to advocate a policy to the contrary is oppressive to ALECs. While BellSouth appears to state that either party can withhold disputed bills, it also unreasonably advocates that BellSouth should be the party to decide if a bill is disputed or if a bill is undisputed. **HT, pg. 261, ln. 11–13.** For example, BellSouth has refused to pay ALECs moneys owed for reciprocal compensation, and has forced them to resort to the courts for refunds; while in the interim, BellSouth required the ALEC to continue paying all charges assessed by BellSouth or lose service. **DT of Bentley, pg. 2, ln. 12 to 23.** In *BellSouth Telecommunications, Inc. v. ITC Deltacom Communications, Inc.*, 190 F.R.D. 693 (M.D. Ala, 1999), after the Alabama Commission ordered BellSouth to pay the CLEC for reciprocal compensation, it filed a stay with the Federal Courts and appealed that decision. BellSouth uses its dominant position to unfairly bully CLECs in to paying BellSouth their working capital during the pendency of billing disputes, and will continue to do so if CLECs are not allowed to offset money due them by BellSouth.

Supra seeks a provision allowing the parties to withhold payments of disputed charges, whether they are disputes of BellSouth bills or offsets by the other party.

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

SUMMARY OF SUPRA'S POSITION

*** Nothing, other than BellSouth, prevents Supra from providing unrestricted service across LATA boundaries. As such, Supra should be allowed to do so through the use of UNEs. Therefore, BellSouth's refusal to allow Supra access to the transport UNE across LATA boundaries is a refusal to allow access to BellSouth's network. ***

DISCUSSION

BellSouth has facilities to provide transport across LATA boundaries and provides services across LATA boundaries to those customers located at or near the LATA boundary. The UNE connections for transport across LATA boundaries already exist, BellSouth just simply refuses to provide access to these UNEs because of the competitive implications, using its own, unsupported interpretation of the Act as a pretext to deny Supra the ability to provide long distance service. The law prohibits BellSouth from providing end user service across LATA boundaries as an incentive for BellSouth to open its market to local competition. Nothing in the law prevents Supra from offering unrestricted services across LATA boundaries and if Supra is providing services across LATA boundaries using UNEs, it is Supra that is providing the service, not BellSouth. Therefore, a refusal by BellSouth to allow Supra access to the transport UNE across LATA boundaries is simply an illegal refusal to allow Supra access to BellSouth's network. This is consistent with the FCC's First Report and Order, which states, "the ability of a new entrant to obtain unbundled access to incumbent LECs' interoffice facilities, including those facilities that carry interLATA traffic, is essential to that competitor's ability to provide competing telephone service."[2] (Emphasis added.) See also 47 CFR §51.309, First Report and Order, cc Order 96-325 in Docket 96-98 at ¶356 and 440.

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

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

SUMMARY OF SUPRA'S POSITION

*** BellSouth must provide Supra with the same or better service. The performance measurements in the prior agreement have practical standards, directly related to how quickly BellSouth must provision service to Supra. With a different set of standards, BellSouth must provide effective performance measurements. ***

DISCUSSION

Supra believes that any measurements must compare the CLECs' and their customers' experience to BellSouth's and its customers' experience. Supra has proposed a set of performance measures, which represent a better gauge of the parties' contractual relationship. **DT of Bentley, pg. 6, ln. 6 - pg. 7, ln. 10**. BellSouth's contention that the parties should solely adhere to the measurements in Docket No. 00-0121-TP is deceptive. Bentley's late-filed exhibit illustrates this point. Of the 14 performance measurements in the generic docket that BellSouth believed addressed Supra's requests, 12 were different, one was the same and one was inconclusive. While Supra will accept the measurements of this generic docket for what they purport to measure, **HT, pg. 795, ln. 12–15**, it believes that in some crucial instances, it does not establish parameters that measure parity and non-discriminatory access. **(Supra's late-filed Exhibit to Bentley's deposition, filed on September 21, 2001).**

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

SUMMARY OF SUPRA'S POSITION

*** BellSouth cannot refuse to provide services ordered by Supra under any circumstances. If the services have not yet been priced under the agreement or by the

Commission, BellSouth must provide the services, and bill Supra retroactively once prices have been set by the Commission or negotiated by the parties. ***

DISCUSSION

BellSouth argued that to do so would "circumvent the "pick and choose" opportunity of other ALECs. **DT of Cox, pg. 14, ln. 5–6.** This is a red herring. The "pick and choose" opportunity is not lost, since any ALEC will be able to adopt the same provision and/or provide the services retroactively. In fact, BellSouth, in the arena of collocation, uses this very practice to its advantage to "true-up" its costs. Yet, as the "true-up" in this case works to the ALECs' advantage, BellSouth now opposes it. Such a provision would hasten ALECs' entries into the markets, and would promote the ability of ALECs to quickly provide new and advanced services to consumers. **DT of Ramos, pg. 72, ln. 2–6.**

Issue 18: What are the appropriate rates for the following services, items or elements set for in the proposed Interconnection Agreement?[3]

(B) Network Elements
(C) Interconnection
(E) LPN/INP
(F) Billing Records
(G) Other

SUMMARY OF SUPRA'S POSITION

*** The rates in the follow-on agreement should be those rates already established by the FCC and this Commission in current and/or prior proceedings. To the extent neither the FCC nor this Commission has established such rates, the rates should be those set forth in the current agreement between the parties. ***

DISCUSSION

[3] The parties have narrowed this issue through agreement.

If permitted to set any rate, BellSouth would establish exorbitant, unsubstantiated rates as it has done in the past (i.e., its UNE-P Agreement). Additionally, in no way does Supra approve of the use of BellSouth's tariffs for the establishment of such rates as there is no reasonable basis why the parties cannot negotiate or arbitrate such rates based upon cost studies. Supra wants the rates established by the FCC and this Commission in their current and/or prior proceedings. **DT of Ramos, pg. 76, ln. 6 – pg. 77, ln. 11.**

To the extent that neither the FCC nor this Commission has established any applicable rates, the rates should be those already set forth in the current agreement. Moreover, the record in this proceeding is void of any evidence from BellSouth that supports any rate not established by the FCC or this Commission. A perfect example of this is BellSouth's unsupported rates for an ALEC's interface to BellSouth's OSS. Where is the evidence that supports a rate of $3.50 per LSR received from Supra by one of the interactive electronic interfaces[4] and a rate of $19.99 per LSR received from Supra by means other than one of the interactive electronic interfaces[5]? In addition, in **OAR-3,** it was held that LENS does not even work properly and that it does not even come close to providing Supra with parity. Please note that if provided with non-discriminatory direct access to BellSouth's OSS, this portion of Section G becomes moot, as Supra would be submitting service orders directly into SOCS.

Supra is entitled to cost-based rates from BellSouth, as these rates ensure Supra that it is being charged appropriate rates. As such, Supra proposes the following: 1) for Network Elements and Combinations, LNP, INP and Interconnection, Supra seeks those rates as set forth in this Commission's May 25, 2001 Order (PSC – 01-0804-FOF-TP) in the Florida Generic UNE Docket 99-0649-TP; 2) for Network Elements where the Generic UNE Docket did not establish a

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[4] BellSouth has subsequently lowered this amount to $1.37.
[5] BellSouth has subsequently lowered this amount to $10.63.

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rate, Supra seeks to use BellSouth's proposed rates from the SCAT in BellSouth's 271 filing in this Commission's Docket Number 96-0786A-TL and 96-0786B-TL as interim rates subject to a true-up (i.e., the approved rate to be applied retroactively with the difference, if any, paid to the proper party) of the non-usage based rates upon a Commission approved rate and for usage based rates upon Commission approval of the rate, a replacement of the interim rate with no true-up; 3) for Line-Sharing, Supra seeks the rates as approved by this Commission's arbitration of the MCI agreement 00-0649-TP (such rate shall be interim until a permanent rate is established by this Commission, subject to true-up); and 4) for Market-Based Rates, a) Supra seeks BellSouth to provide such market-based rates for elements and/or services for which BellSouth has no obligation to provide at cost-based rates, including, but not limited to Operator Services, Directory Assistance and the port charge for local switching for UNE-P lines where customers in the 50 largest MSAs have 4 lines or more; and b) see discussion *supra* regarding BellSouth's unsupported rates for an ALEC's interface to BellSouth's OSS.

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

SUMMARY OF SUPRA'S POSITION

*** ISP calls should be treated as local traffic for purposes of reciprocal compensation. AT&T still incurs the cost of the ISP Traffic over its network. Additionally, such calls are treated as local under BellSouth's tariffs and the FCC has treated ISP Traffic as intrastate for jurisdictional separation purposes. ***

DISCUSSION

Supra merely seeks that the follow-on agreement reflect current FCC rulings and Part 51, Subpart H of Title 47 of the Code of Federal Regulations (C.F.R.) as adopted on April 18, 2001.

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Issue 20: Should the Interconnection Agreement include validation and audit requirements which will enable Supra to assure the accuracy and reliability of the performance data BellSouth provides to Supra?

SUMMARY OF SUPRA'S POSITION

*** BellSouth must have an independent audit conducted of its performance measurement systems, annual audits, and, when requested by Supra, audits when performance measures are changed or added; all paid for by BellSouth. ***

DISCUSSION

BellSouth argues that this type of auditing is part of generic performance measurement docket 00-0121-TP. **DT of Cox, pg. 19, ln. 20-23.** However, BellSouth has failed to point Supra to any issue in that Docket, which pertains to issue 20. Although Supra has not participated in that Docket, Supra disagrees that that Docket addressed the same issues. For instance, the audit recommended by Final Order PSC-01-1819-FOF-TP can only be performed at a regional level. **(§ XXXI of Final Order PSC-01-1819-FOF-TP)**. In addition, the audit is not OSS specific. It averages all data, and treats all CLECs as one. BellSouth will always be able to manipulate the data, as it is the one providing it. If there is discriminatory access in Florida, BellSouth can beat the audit, by manipulating the data in other states. Since the Commission cannot affect BellSouth's behavior in other states, BellSouth is in a "Win-Win" situation.

Significantly, BellSouth has admitted to this panel that BellSouth's retail OSS and CLEC OSS are not at parity. **HT, pg. 1210, ln. 13–16.** Therefore, the performance data applicable to Supra cannot be lumped with other CLECs. Supra won the right to non-discriminatory direct access to BellSouth's own OSS in **OAR-3**. Non-discriminatory access makes most of Supra's concerns moot.

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

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Issue 23: Should BellSouth be directed to perform, upon request, the functions necessary to combine unbundled network elements that are ordinarily combined in its network? If so, what charges, if any, should apply?

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

SUMMARY OF SUPRA'S POSITION

*** The Commission should allow Supra to provide telecommunications services to any customer using any combination of elements that BellSouth routinely combines in its own network and to purchase such combinations at TELRIC rates. This interpretation of the term "currently combines" is consistent with the nondiscrimination policy of the Act. ***

DISCUSSION

BellSouth should be directed to perform, upon request, the functions necessary to combine unbundled network elements that are not ordinarily combined in its network. First Report and Order, cc Docket 96-98, Order 96-325 at ¶¶ 294-296. Furthermore, C.F.R. 47 51.309 states that BellSouth must provide without:

> **limitations, restrictions, or requirements on request for, or the use of, unbundled network elements that that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service <u>in the manner the requesting telecommunications carrier intends</u>.**[6] (Emphasis added.)

The law does NOT say in the manner that BellSouth intends, nor does the Act provide for the ILEC to determine, limit, coerce, or mandate an ALEC to limit the uses it has for a UNE to anything other than **"a telecommunications service"[7].** The definition of a Telecommunications Service is set forth by the Communications Act of 1934, as amended, as follows:

[6] C.F.R. 47 51.309
[7] ID

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(46) TELECOMMUNICATIONS SERVICE. – The term telecommunications service means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.[8][9]

So as long as Supra is providing a telecommunications service, and not interfering with other users, BellSouth cannot dictate uses of UNEs. In considering any of BellSouth's claims regarding UNE combinations, it is imperative to at all times view such claims in the light of BellSouth's proven record of refusal to comply with this Commission's orders, its contractual obligations, and its "tortious intent to harm". **OAR-3**. It is BellSouth's policy to avoid providing cost based UNE combinations to competitors that forms the basis for its position on these issues. This policy is anti-competitive and designed to appear to regulatory bodies as "responsive to Supra in a substantive manner, without actually being so."

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

1. Must an ALEC be allowed to combine UNE(s) without restriction?
2. If BellSouth is allowed to be relieved of its obligation to combine UNE(s) on behalf of the ALEC, how exactly will that be handled without violating other provisions of the

[8] The Communications Act of 1934, as amended, SEC 3(46) [47 U.S.C. 153] Definitions,
[9] 47 U.S.C. 251(c)(3)

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law? BellSouth has not proposed an answer to the second part, should it be successful on the first.

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

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

Here it could not be clearer -- UNE(s) sold by the ILEC must be provided in a form that allows them to be combined at the ALECs request. It does not state that the ALECs must perform the work themselves. In fact, the final thought is that an ILEC may provide the combinations themselves to avoid having to allow the ALEC to effect the combination.

The labor to effect such combinations should be performed by BellSouth at TELRIC cost. This should be reflected as a one-time, non-recurring cost, constant with the manner in which it is performed and the number of carriers that will benefit (Supra alone). There shall be no monthly recurring costs charged for elements that do not have a physical representation (i.e. they don't exist). All elements shall be charged to Supra at TELRIC cost. Supra shall have rights to exclusive use of unbundled loop elements, regardless if the UNE is used alone, or in combination with other network elements provided by BellSouth or any other carrier.

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

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

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SUMMARY OF SUPRA'S POSITION

*** BellSouth should not impose any additional charge on Supra for any combination of network elements above the TELRIC cost of the combination. ***

DISCUSSION

There is no evidence in the record that BellSouth incurs any additional expense, and therefore BellSouth should not be entitled to such. To hold otherwise will allow BellSouth to charge an unregulated, and likely exorbitant, amount in order to combine network elements that it ordinarily combines, but simply has not as of the date Supra makes its request.

Issue 28: What terms and conditions and what separate rates, if any, should apply for Supra to gain access to and use BellSouth's facilities to serve multi-tenant environments?

SUMMARY OF SUPRA'S POSITION

*** Where single points of interconnection do not exist, BellSouth should construct such and Supra should be charged no more than its fair share of the forward-looking price. The single point of interconnection should be fully accessible by Supra technicians without the necessity of having a BellSouth technician present. ***

DISCUSSION

See *UNE Remand Order* (CC order 99-238) ¶ 224 -- 226; 47 C.F.R. §51.317, 51.319 and 51.5. See also **DT of Nilson, pg. 71, ln. 6 - pg. 83, ln. 9**.

Issue 29: Is BellSouth obligated to provide local circuit switching at UNE rates to Supra to serve the first three lines to a customer located in Density Zone 1? Is BellSouth obligated to provide local circuit switching at UNE rates to Supra to serve four or more lines provided to a customer located in Density Zone 1?

SUMMARY OF SUPRA'S POSITION

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*** Supra is entitled to purchase local circuit switching at UNE rates to provide service to ALL customer lines in Density Zone 1, not just for the first, second, and third lines purchased by customers when those customers have four lines or more. ***

DISCUSSION

The *Third Report and Order*[10] is clear that until the ILEC offers the Enhanced Extended Loop (EEL) throughout zone 1, the LEC must continue to sell Supra lines in excess of 3 to the same customer at the same address. BellSouth has no such ubiquitously available EEL offering. The *Third Report and Order* goes on to state that Local Switching Must be provided to Supra for both line side and port side switching, so that the EEL thus provided may be combined with Local switching, Tandem Switching, and Interoffice Transport from another office(s) to provide service to a customer in Density Zone one of the 50 MSA's.

BellSouth must provide EEL as a cost based UNE, if it intends to limit the purchase of 4 or more lines to one location. If BellSouth were to ubiquitously provide such an EEL, provision MUST be made to connect said EEL UNE to an Unbundled Local Switching UNE in another office. Again the FCC is quite clear on this issue. The EEL must be offered connected to a leased Unbundled Local Switching port, in this case typically a port rather than a line side connection supplying Supra and its customer all features of switch.

Until those conditions are met, BellSouth MUST continue to sell Supra Unbundled Local Switching in the same Density Zone 1 wire center that the loops serving the customer terminate, regardless of the number of lines the customer purchases.

> Circuit Switching. Incumbent LECs must offer unbundled access to local circuit switching, except for local circuit switching used to serve end users with four or more lines in access density zone 1 in the top 50 Metropolitan Statistical Areas (MSAs),

[10] *Third Report and Order* Local Switching, Section V.D ¶¶ 241-300.

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> provided that the incumbent LEC provides non-discriminatory, cost-based access to the enhanced extended link throughout zone 1. (An enhanced extended link (EEL) consists of a combination of an unbundled loop, multiplexing/concentrating equipment, and dedicated transport. The EEL allows new entrants to serve customers without having to collocate in every central office in the incumbent's territory.) Local circuit switching includes the basic function of connecting lines and trunks on the line-side and port-side of the switch. The definition of the local switching element encompasses all of the features, functionalities, and capabilities of the switch.[11]
>
> Incumbent LECs must also offer unbundled access to shared transport where unbundled local circuit switching is provided. Shared transport is defined as transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches in the incumbent LEC's network.[12]

While the FCC declared that ILECs are not required to offer Shared Interoffice Transport in an office where they are not required to offer switching, the EEL utilizes dedicated transport and ILECs are not relieved of their responsibility to offer Unbundled Dedicated Interoffice Transport.

Issue32A: Under what criteria may Supra charge the tandem switching rate?

Issue32B: Based on Supra's network configuration as of January 31, 2001, has Supra met these criteria?

SUMMARY OF SUPRA'S POSITION

*** When Supra's switches serve a geographic area comparable to that served by BellSouth's tandem switch, then Supra should be permitted to charge tandem rate elements. ***

DISCUSSION

BellSouth has violated the current agreement by failing to allow Supra to collocate its equipment, despite the fact that Supra has the undisputed right to do so. **OAR-3** and Attachment 6, §§ 3.4, 5.1 and 6.2 of the current agreement. Now, BellSouth argues that because Supra has not yet collocated a switch, it should be barred from receiving tandem switch rates for the life of

[11] *Third Report and Order,* Section II, Executive Summary, page 11.

[12] *Third Report and Order,* Section II, Executive Summary, page 12.

the follow-on agreement. This is ridiculous. Supra's business plan calls for Supra to collocate in the same central offices in which BellSouth tandem switches are located. Supra's business plan calls for Supra to serve the **exact same** geographic location as BellSouth serves. This, too, cannot be disputed. As such, upon installation of the switches, Supra should be entitled to the tandem switching rate.

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

SUMMARY OF SUPRA'S POSITION

*** When existing loops are provisioned on digital loop carrier facilities, and Supra requests such loops in order to provide xDSL service, BellSouth should provide Supra with access to other loops or subloops so that Supra may provide xDSL service to a customer. ***

DISCUSSION

Per 47 C.F.R. § 51.319, an ILEC is required to provide nondiscriminatory access to unbundled packet switching capability only where each of the following conditions are satisfied:

(i) The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (*e.g.*, end office to remote terminal, pedestal or environmentally controlled vault);
(ii) There are no spare copper loops capable of supporting the xDSL services the requesting carrier seeks to offer;
(iii) The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access Multiplexer at the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by § 51.319(b); and
(iv) The incumbent LEC has deployed packet switching capability for its own use.

BellSouth has failed to account for Unbundled Access to the packet switching UNE where an xDSL compatible loop cannot be provisioned over existing copper facilities in a normal

timeframe or at all. This language allows BellSouth to escape its requirement to unbundle packet switching for Supra in all cases without providing Supra any guarantee that its customers will receive xDSL service on the same terms and conditions as BellSouth provides itself and its affiliates.

The Final order in the *UNE Remand Order* 99-0238 at ¶ 313 held:

> We agree that, if a requesting carrier is unable to install its DSLAM at the remote terminal or obtain spare copper loops necessary to offer the same level of quality for advanced services, **the incumbent LEC can effectively deny competitors entry into the packet switching market. We find that in this limited situation, requesting carriers are impaired without access to unbundled packet switching. Accordingly, incumbent LECs must provide requesting carriers with access to unbundled packet switching in situations in which the incumbent has placed its DSLAM in a remote terminal.** (emphasis added)

Although BellSouth witness Kephart states that Supra may collocate its own DSLAM "...even if that means that room inside the remote terminal must be augmented or that the remote terminal itself must be expanded or replaced to make room for Supra's or another ALEC's DSLAM," he admits that it could take months to build a new remote terminal, add to and/or make space to an existing terminal. **HT, pg. 408, ln. 2-12**. During this time period, Mr. Kephart admits that Supra would be unable to offer customers, in the affected area, xDSL services despite the fact that BellSouth could. **HT, pg. 408, ln. 24 - pg. 409, ln. 15**.

It is undisputed that despite orders to the contrary, BellSouth has continuously refused to allow Supra to collocate. **RT of Nilson, pg. 53, ln. 19-24 and OAR-3**. As BellSouth is in a position to delay nearly forever collocation in a remote terminal for various reasons, **RT of Nilson, pg. 54, ln. 9-12**, this Commission has the authority to and should provide contractual support for the FCC's third prong on this issue thereby assuring Supra of Judicial support in the implementation of the interconnection agreement in areas where the FPSC itself lacks that authority to effectively compel BellSouth to honor its responsibilities. *First Report and Order* cc

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Order 96-325 at ¶ 135-136. Accordingly, Supra asks that this Commission order BellSouth to provide Supra, at Supra's option, the ability to order collocated DSLAM and unbundled access to packet switching as a UNE at TELRIC cost, wherever BellSouth deploys local switching over DLC facilities.

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

SUMMARY OF SUPRA'S POSITION

*** The coordinated cut-over process proposed by Supra should be implemented to ensure an accurate, reliable, and timely cut-over within a 5 minute time frame. BellSouth's proposed process does not ensure that customers switching from BellSouth to Supra receive the same treatment that BellSouth customers receive. ***

DISCUSSION

Supra must have proper coordination with BellSouth to prevent service outages as a result of the cut-over process. When this process is properly coordinated between the ALEC and the BellSouth frame technician and personnel effecting local switch translations and Local number portability translations, the number of service outages should drop dramatically. **RT of Nilson, pg. 57, ln. 19 – pg. 58, ln. 2.**

RT of Nilson, pg. 58, ln. 12 – pg. 59, ln. 18, provides an overview of the process when a BellSouth retail customer converts to an ALEC and the customer wants to keep the existing number.

> Therefore the number must be "ported" to the ALEC. This is effected through Global Title Translations at a national level such that **after** the conversion, the nationwide, multicarrier SS7 signaling network ubiquitously **knows** that the number no longer resides on the BellSouth switch with SS7 point code abcd, but that it reside on the ALEC switch with point code zxyw. Once that change is made, and it propagates through the SS7 network, the number is ported to the new switch.

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

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

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

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

The lack of coordination will result in service outages to Supra's customers. With Supra's customer base over 110,000 and growing daily, even a small fractional percentage of failures effects hundreds of Florida telephone subscribers.

Further, the BellSouth witnesses do not agree on this issue and Ruscilli's **JAR-1** language included the provision for translations coordination. While Kephart testified ONLY regarding cutover to an ALEC switch, **not** the UNE-P case he understood to be Supra's position. **RT of Kephart, pg. 6, ln. 25 – pg. 7, ln. 2.** BellSouth should combine the testimony of its witnesses into a single acceptable policy covering UNE and UNE-P.

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

SUMMARY OF SUPRA'S POSITION

*** This issue was resolved by **OAR-3**. BellSouth was ordered to give Supra non-discriminatory direct access to BellSouth's OSS starting June 15, 2001. Additionally, such is mandated by the Act, as Supra should be allowed direct access to the same OSS, databases and legacy systems that BellSouth uses itself. ***

DISCUSSION

BellSouth has consistently represented to this and other Commissions that its ALEC OSS, including but is not limited to LENS, EDI, TAG and RoboTAG, provides ALECs with non-discriminatory access to BellSouth's OSS. **RT of Pate, pg. 12, ln. 20–23 and HT, pg. 1185, ln. 12-17.** This representation is a BellSouth fallacy.

During the cross-examination of Pate, he acknowledged that a Human-to-Machine interface is not non-discriminatory access. **HT, pg. 1188, ln. 16–19.** Pate went on to state that if an ALEC wanted non-discriminatory access via a Machine-to-Machine interface, that it would have to pay for it, as the Human-to-Machine interface made available by BellSouth would not provide it. **HT, pg. 1188, ln. 20 – pg. 1189, ln. 1.** A Human-to-Machine interface fails to provide non-discriminatory access due to human intervention[13]. **HT, pg. 1182, ln. 16–17.** ALEC OSS requires human intervention, while BellSouth retail OSS does not. See video, "This Ol Service Order" **OAR-31**. As such, the two systems are, by definition, not at parity. LENS, which BellSouth has consistently represented as a Human-to-Machine interface that provides ALECs with non-discriminatory access, actually provides discriminatory access as a result of the necessary human intervention. **HT, pg. 1210, ln. 13–16.**

[13] Supra contends that ALEC OSS is unequal to BellSouth retail OSS for a number of reasons, but as BellSouth has admitted to this reason, Supra will focus on it.

Mr. Pate also testified, in relation to his exhibit **RMP-6**, that 10.9% of ALEC LSRs that are electronically submitted through BellSouth's ALEC OSS fallout for manual/human intervention. **HT, pg. 1207, ln. 25 – pg. 1208, ln. 7.** This fallout for human intervention occurs regardless of the electronic interface being used by the ALEC. As such, an ALEC that uses a Human-to-Machine or Machine-to-Machine interface is going to have LSRs that require and receive human intervention, and, as admitted by BellSouth, human intervention is what prevents non-discriminatory access.

In comparison, BellSouth's **Late-Filed Exhibit 36** indicates that ". . . 'mechanized fallout' does not occur when [BellSouth] service representatives submit requests via RNS or ROS." As such, BellSouth experiences 0% "mechanized fallout" while ALECs experience 10.9%. This 10.9% of electronically submitted LSRs that result in human intervention is in addition to the 11% of all ALEC submitted LSRs that **must** be manually submitted for human intervention. **HT, pg. 1185, ln. 24–25.**

As all ALEC OSS requires some form of human interaction, all ALEC OSS fails to provide non-discriminatory access (see the parity discussion in **DT of Ramos, pg. 42–60**). In addition to BellSouth's failure to provide non-discriminatory access to OSS, see **OAR-3**, for the holding of the parties' commercial arbitrators regarding Supra's right to non-discriminatory direct access to BellSouth's OSS by June 15, 2001.

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

SUMMARY OF SUPRA'S POSITION

*** These signals are features and functions of the switch port to inform the end user of a voice message. The previous agreement recognized that this signaling and all other related

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voicemail signaling are part of the switch port; therefore, there should be no additional charges beyond the port cost for such signaling. ***

DISCUSSION

Unbundled Local switching requires that ALECs that lease switching ports be given all features and functionality of the port. One such feature is the ability of the port to produce stutter dialtone, or activate a light on the telephone set of a subscriber in response to a signal from a voicemail system or provider to let the telephone subscriber know of a message. Done via the System Message Desk Interface (SMDI) and Inter Switch Voice Messaging (ISVM) using the SS7 network to communicate with other switches. **DT of Nilson, pg. 101, ln. 18 - pg. 102, ln. 3**. Kephart acknowledges that BellSouth, in situations where Supra provides its own transport for the SMDI signaling, would not seek to charge Supra an additional fee for the SMDI signaling. **HT, pg. 426, ln. 12-22.** Supra proposes to clarify the language of the current agreement.

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

SUMMARY OF SUPRA'S POSITION

*** BellSouth should be required to continue its current practice of not rendering bills for charges more than one year old. BellSouth does not render bills to its own retail customers for charges more than one year old and BellSouth should not bill Supra, as a wholesale customer, any differently. ***

DISCUSSION

Supra maintains its position that BellSouth should be required to continue its current practice of not rendering bills for charges more than one year old. Attachment 6, § 2.3 of the current agreement. BellSouth has contended throughout this arbitration that one year is more than sufficient to render bills, but does not wish to waive its statutory right to render bills after

one year. **HT, pg. 342, ln. 23 - pg. 343, ln. 21.** However, BellSouth did not offer any competent testimony on the issue. BellSouth's Greene was unable to advise the panel on Florida's Statute of Limitation[14], or testify to any situation where BellSouth has to produce any bills beyond the twelve-month period. **HT, pg. 342, ln. 23 - pg. 343, ln. 21.** Supra submits that BellSouth is prohibited from billing its retail customers beyond twelve months. The same should apply to Supra. To do otherwise creates an accounting nightmare for Supra.

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

SUMMARY OF SUPRA'S POSITION

*** This issue was resolved by **OAR-3**. Non-discriminatory direct access to BellSouth's OSS will provide Supra with the ability to submit orders electronically for all services and elements available for such, just as BellSouth. ***

DISCUSSION

Please see Supra's Discussion regarding Issue 38.

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

SUMMARY OF SUPRA'S POSITION

*** This issue was resolved by **OAR-3**. Non-discriminatory direct access to BellSouth's OSS will enable Supra's electronically submitted orders to receive the same amount of manual processing as BellSouth's orders. ***

DISCUSSION

Please see Supra's Discussion regarding Issue 38.

[14] This is a red herring anyway, as the Statute of Limitations would apply in a situation where Supra failed to pay a bill, not the length of time in which BellSouth had to submit the bill.

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

SUMMARY OF SUPRA'S POSITION

*** When utilizing the voice spectrum of the loop and another carrier utilizes the high frequency spectrum (or vice versa), Supra must be compensated one half of the local loop cost.[15] BellSouth refuses to pay line-sharing charges for customers with BellSouth xDSL. BellSouth proposes to disconnect the ADSL of any customer (regardless of provider) if provisioned by UNE-P. ***

DISCUSSION

When BellSouth provides xDSL service to an end user and the end user converts its voice services to Supra via UNE-Platform, it is undisputed that BellSouth intends to disconnect that customer's xDSL service. **DAN-6 and HT, pg. 270, ln. 25 - pg. 271, ln. 21**. xDSL, as acknowledged by BellSouth witness Cox, is a feature of the copper loop. **RT of Cox, pg. 270, ln. 25 - pg. 271, ln. 21**. The term "network element" is defined in the Act as "a facility or equipment used in the provision of a telecommunications service. Such term also includes **features, functions and capabilities that are provided by means of such facility or equipment** . . " 47 U.S.C. § 153(29) (emphasis added); See also the *Fourth Report and Order* (CC Order 01-204 in CC Docket 98-147 (*Deployment of Advanced Wireline Services)*) Released April 8, 2001 at ¶ 31. Accordingly, and as a feature of the loop, BellSouth should not be allowed to disconnect any already combined facilities, as such would result in a disconnection of a customer's service, and be in violation of 47 U.S.C.A. § 251(c)(3), 47 C.F.R. § 51.315(b) and the Supreme Court's ruling in AT&T v. Iowa Utilities Bd., 525 U.S. 366, 119 S.Ct 721 (1999), which held:

[15] FCC Advanced Services Order 98-147 in Docket 98-48.

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> **Rule 315(b) forbids an incumbent to separate already combined network elements before leasing them to a competitor... As the Commission explains,** [§ 251(c)(3)] is aimed at preventing incumbent LECs from disconnect[ing] previously connected elements, over the objection of the requesting carrier, not for any productive reason, but just to impose wasteful reconnection costs on new entrants" **... It is well within the bounds of the reasonable for the Commission to opt in favor of ensuring against an anticompetitive practice." Id. at pg. 393-395 (Emphasis added)**

Ms. Cox admitted that to the extent "BellSouth were actually physically disconnecting already-connected network elements, [that BellSouth] would be in violation of Supreme Court and FCC rules." **HT, pg. 278, ln. 20-23.** Ms. Cox also acknowledged that the more DSL that is deployed by BellSouth, the harder it could become for a CLEC, using the UNE-platform, to provide voice service to BellSouth customers. **HT, pg. 276, ln. 10-19.** Since any charges associated with disconnecting xDSL service in a UNE-P environment would be wasteful in nature, **DT of Nilson, pg. 112, ln. 18-25**, and there is no evidence that BellSouth would be unable to make a profit by continuing to provide such service, to allow BellSouth to carry out its stated policy would be anticompetive and a violation of the aforementioned authorities.

In a matter brought before the New Mexico Public Regulation Commission (Utility Case No. 3269), the Commission therein was faced with the same issue of Qwest Corporation's ("Qwest") policy to disconnect its high-speed data service (called "Megabit") from a customer deciding to change to a CLEC for local voice service. The Workshop Facilitator, in a Report on Emerging Services ("Report") released on June 11, 2001, found that the threateaned loss of Megabit service from Qwest would not only affect customer decisions about taking voice service from others but their refusal to continue to provide Megabit services in these circumstances imposed "significant barriers to competition..." Report at pg. 4. "Qwest should not be considered to be in compliance with public interest requirements as long as it maintains a policy of denying its end users Qwest's own Megabit or xDSL services when it loses a voice customer

to a CLEC through line sharing." Id. As set forth in the Commisson's Proposed Recommendation on Emerging Services as affirmed on October 16, 2001 ("Recommendation"), Qwest "agreed to continue providing Megabit DSL service on a line-shared basis to current customers who switch to a CLEC providing voice service over UNE-P," undoubtedly because to disconnect such services would be anticompetitive. Recommendation at pg. 5. (See also the Nebraska Public Service Commission's Order on Emerging Services (Application No. C-2537) entered on October 16, 2001 ("NPSC Order"), wherein Qwest not only agreed to continue providing Megabit DSL service on a line-shared basis to current customers who switch to a CLEC providing voice service over UNE-P, but also agreed to "allow a UNE-P customer to request that Qwest provide them DSL Megabit data service only and Qwest [would] provide that service." NPSC Order at pg. 4.

BellSouth relies on FCC Order No. 01-26 in CC Docket No. 98-147, 96-98 (Released January 19, 2001) at ¶ 26 regarding *Deployment of Wireline Services Offering Advanced Telecommunications Capability* and this Commission's Order No. PSC-01-0824-FOF-TP issued March 20, 2001 at page 51. However, BellSouth's reliance is misplaced since the issue of disconnecting already combined network elements, an anticompetitive action in violation of the Act, was not addressed in either of those cited matters. Specifically, the FCC stated: "To the extent that AT&T believes that specifiec incumbent behavior constrains competition in a manner inconsistent with the Commission's line sharing rules and/or the Act itself, we encourage AT&T to pursue enforcement action." FCC Order No. 01-26 at pg. 14, ¶ 26. Accordingly, any suggestion by BellSouth that Supra can enter into line-splitting agreements with other carriers for the provision of DSL can only be viewed as another example of BellSouth's anticompetitive behavior. Hence, Supra requests that BellSouth be required to continue to provide data services

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

BellSouth's position that sharing of the spectrum on local loop/port combination is only permitted when BellSouth utilizes the portion of the spectrum to provide voice is discriminatory and anti-competitive. Any purchaser of local loops from BellSouth should be allowed to use the loop in providing both voice and data at the same time. The Commission's ordering of such arrangement will further the deployment of advanced data services to all portions of the state, and will not be dependent on the deployment schedule of BellSouth alone.

Issue 57: Should BellSouth be required to provide downloads of RSAG and LFACS databases without license agreements and without charge?[16]

SUMMARY OF SUPRA'S POSITION

*** This issue was resolved by **OAR-3**. Alternatively, BellSouth should provide these database downloads without a license agreement or use restrictions and should provide these downloads at no cost. Supra already has the right to RSAG in its present agreement "batch feeds" with "monthly updates." ***

DISCUSSION

Please see Supra's Discussion regarding downtime in Issue 5 as well as the **DT of Ramos, pg. 94, ln. 22 – pg. 96, ln. 12.** Additionally, at least the RSAG database contains information and functionalities for which Supra is denied access. **HT, pg. 1234, ln. 19 – pg. 1236, ln. 12.** As such, a download of the entire database would provide Supra with access to the same information and functionalities as those enjoyed by BellSouth. With such a download,

[16] The parties have narrowed this issue through agreement.

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to a CLEC through line sharing." Id. As set forth in the Commisson's Proposed Recommendation on Emerging Services as affirmed on October 16, 2001 ("Recommendation"), Qwest "agreed to continue providing Megabit DSL service on a line-shared basis to current customers who switch to a CLEC providing voice service over UNE-P," undoubtedly because to disconnect such services would be anticompetitive. Recommendation at pg. 5. (See also the Nebraska Public Service Commission's Order on Emerging Services (Application No. C-2537) entered on October 16, 2001 ("NPSC Order"), wherein Qwest not only agreed to continue providing Megabit DSL service on a line-shared basis to current customers who switch to a CLEC providing voice service over UNE-P, but also agreed to "allow a UNE-P customer to request that Qwest provide them DSL Megabit data service only and Qwest [would] provide that service." NPSC Order at pg. 4.

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

BellSouth's position that sharing of the spectrum on local loop/port combination is only permitted when BellSouth utilizes the portion of the spectrum to provide voice is discriminatory and anti-competitive. Any purchaser of local loops from BellSouth should be allowed to use the loop in providing both voice and data at the same time. The Commission's ordering of such arrangement will further the deployment of advanced data services to all portions of the state, and will not be dependent on the deployment schedule of BellSouth alone.

Issue 57: Should BellSouth be required to provide downloads of RSAG and LFACS databases without license agreements and without charge?[16]

SUMMARY OF SUPRA'S POSITION

*** This issue was resolved by **OAR-3**. Alternatively, BellSouth should provide these database downloads without a license agreement or use restrictions and should provide these downloads at no cost. Supra already has the right to RSAG in its present agreement "batch feeds" with "monthly updates." ***

DISCUSSION

Please see Supra's Discussion regarding downtime in Issue 5 as well as the **DT of Ramos, pg. 94, ln. 22 – pg. 96, ln. 12.** Additionally, at least the RSAG database contains information and functionalities for which Supra is denied access. **HT, pg. 1234, ln. 19 – pg. 1236, ln. 12.** As such, a download of the entire database would provide Supra with access to the same information and functionalities as those enjoyed by BellSouth. With such a download,

[16] The parties have narrowed this issue through agreement.

Supra would also obtain parity with respect to these databases. (See Parity provision in the **DT of Ramos, pg. 42–60** as well as the Parity holding in **OAR-3.**)

Furthermore, there is no evidence in the record that BellSouth incurs any additional expense, and therefore BellSouth should not be entitled to such. To hold otherwise will allow BellSouth to charge an unregulated, and likely exorbitant, amount in order to provide a download of a necessary function of its OSS for which it provides discriminatory access to ALECs.

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

SUMMARY OF SUPRA'S POSITION

*** This issue was resolved by **OAR-3**. BellSouth was ordered to give Supra non-discriminatory direct access to BellSouth's OSS starting June 15, 2001. BellSouth should not receive additional payment when it fails to perform in accordance with the specified expedited time-frame. ***

DISCUSSION

As Mr. Ramos stated, BellSouth provides expedited service to its customers at no charge while denying Supra the same capability (see discussion regarding QuickServe in the **RT of Ramos, pg. 61, ln. 11 – pg. 65, ln. 4**). With respect to QuickServe, **OAR-3** held that non-discriminatory direct access to BellSouth's OSS would provide Supra with the same ability as BellSouth. As such, non-discriminatory access would render this issue moot.

In addition, there is no evidence in the record that BellSouth incurs any additional expense in providing Supra with expedited service in relation to standard service. **RT of Ramos, pg. 61, ln. 11 – pg. 65, ln. 4 and DT of Ramos, pg. 96, ln. 14 – pg. 97, ln. 16.** As such, BellSouth should not be entitled to charge Supra for an expedited fee in any event.

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Alternatively, BellSouth should not be entitled to charge Supra for an expedited fee where BellSouth fails to provide expedited service by the promised day, but still provides the service prior to the standard day, as BellSouth's failure to provide the expedited service by the promised day results in customer service issues as well as increased costs to Supra. As it is BellSouth's practice to charge an expedited fee when the service is provided prior to the standard day, but after the promised day (see Mr. Knight's cross-examination of Ms. Cox in the **HT, pg. 302, ln. 16 – pg. 304, ln. 9**), Supra opposes any such reward for BellSouth's failure to perform its obligations.

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

SUMMARY OF SUPRA'S POSITION

*** This issue was resolved by **OAR-3**. Identifying all errors at once will prevent the need for submitting the order multiple times and reduce cost. Additionally, if any order has been clarified, BellSouth should be required to immediately notify Supra of such clarification in the same manner as BellSouth notifies itself. ***

DISCUSSION

As BellSouth's OSS notifies itself of ordering errors, through its real-time, edit-checking capabilities, the parity requirements of the Act require that Supra enjoy the same capabilities. Pursuant to **OAR-3,** Supra is entitled to non-discriminatory direct access to BellSouth's OSS by June 15, 2001. As such, Supra would receive the same real-time, edit-checking capabilities as BellSouth and this issue would be moot.

Alternatively, Supra needs the ability to identify all errors in a LSR at one time, thus reducing the need to submit the same LSR numerous times and reducing costs to all parties. An

example of the ridiculous situation that faces Supra is found in the pre-filed testimony of Mr. Ramos. **DT of Ramos, pg. 98, ln. 14–23.** Additionally, as the process is currently defined, Supra receives numerous LSRs with multiple BellSouth errors, one after another, which requires Supra to submit additional LSRs and incur greater costs.

Additionally, BellSouth should immediately notify Supra of a clarification. It is Supra's experience that the notification process is not immediate or even within the same day at times. As BellSouth starts the clock to purge a clarified LSR upon the issuance of a clarification, Supra expects to have a full and complete opportunity to work that clarification and that can only occur with an immediate notice of the clarification. **DT of Ramos, pg. 97, ln. 18 – pg. 99, ln. 21.**

Issue 61: Should BellSouth be allowed to drop or "purge" orders? If so, under what circumstances may BellSouth be allowed to drop or "purge" orders, and what notice should be given, if any?

SUMMARY OF SUPRA'S POSITION

*** This issue was resolved by **OAR-3**. BellSouth should not be allowed to purge LSRs once the LSRs pass through the front-end ordering interface. Alternatively, if any LSRs are dropped by BellSouth's systems, BellSouth must notify Supra (electronically or in writing) within 24 hours of the LSRs being dropped. ***

DISCUSSION

Pursuant to **OAR-3**, Supra is entitled to non-discriminatory direct access to BellSouth's OSS by June 15, 2001. As such, Supra would receive the same treatment with respect to purged orders as BellSouth, thus making this issue moot.

BellSouth should not be allowed to purge LSRs once they pass through the front-end ordering interface. Without real-time, edit-checking capabilities, BellSouth should be responsible for the completion of the LSRs and such LSRs should remain on BellSouth's system until its

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personnel resolve the clarification problems. Alternatively, if any LSRs are dropped, BellSouth should be under an obligation to affirmatively notify Supra (electronically or in writing) within twenty-four (24) hours of the LSR being dropped. **DT of Ramos, pg. 100, ln. 3 – pg. 101, ln. 16.**

Issue 62: Should BellSouth be required to provide completion notices for manual orders for the purposes of the interconnection agreement?

SUMMARY OF SUPRA'S POSITION

*** This issue was resolved by **OAR-3**. Supra should receive completion notices for all orders, including manual orders. Giving Supra a Firm Order Commitment, missing that date and never giving notice of when the service is actually turned on leads to customer complaints, billing issues and increased costs. ***

DISCUSSION

Per **OAR-3**, Supra is entitled to non-discriminatory direct access to BellSouth's OSS by June 15, 2001. As such, Supra would receive the same completion notices for manual orders as well as submit manual orders for the same items as BellSouth, thus making this issue moot.

As argued by Mr. Ramos, completion notices are necessary items that notify Supra that a customer has been successfully converted to Supra. This notification allows Supra to coordinate its billing system with BellSouth's to ensure that the customer is properly billed. Without a completion notice, the billing systems will not be coordinated and the customer becomes susceptible to double billing. Unfortunately for Supra, the customers invariably blame this occurrence on Supra and Supra suffers damage to its reputation and its ability to generate revenue. **DT of Ramos, pg. 102, ln. 21 – pg. 103, ln. 12.**

BellSouth argues that posting notices to CSOTs is sufficient. **DT of Pate, pg. 54, ln. 12–15.** However, this may be convenient for BellSouth, but it is costly and inefficient for Supra. Without direct notification to Supra, Supra's representatives must constantly monitor CSOTs,

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waiting for BellSouth's system to be updated with the necessary information. This invariably ends up being a waiting game, as CSOTs does not immediately reflect conversions. Thus, Supra incurs additional costs waiting for an update that may occur too late to avoid the double-billing scenario discussed above. **DT of Ramos, pg. 103, ln. 17–25.**

Issue 63: Under what circumstances, if any, would BellSouth be permitted to disconnect service to Supra for nonpayment?

SUMMARY OF SUPRA'S POSITION

*** BellSouth cannot use the threat of disconnection while a payment dispute is pending. The appropriate remedy should be determined through dispute resolution. ***

DISCUSSION

Supra believes that the parties should keep the current agreement's provision regarding disconnection of services for disputed invoices. Supra's position has been that BellSouth cannot disconnect Supra's access to OSS when there is a billing dispute. **DT of Bentley, pg. 13, ln. 6 - 25; pg. 14, ln. 19**. The Commission is already aware that this is a tool that BellSouth has used to harm and intimidate. BellSouth previously disconnected Supra's access to OSS on May 16, 2000, while the parties were in the midst of a billing dispute. **DT of Bentley, pg. 14, ln. 8–9**. The disconnection of services cost Supra tremendous loss of revenues, good will and customers. In the commercial arbitration, BellSouth was found to act in "...deliberate breach done with the intent to harm Supra." **CB-1.**

This Commission is also aware from other proceedings that BellSouth used the threat of disconnection to strong-arm other CLEC to pay bills, even when BellSouth overcharged for services, failed to provide the services it billed, and/or failed to credit offsets owing to CLECs. In IDS's complaint, docket No. 01-0740-TP, BellSouth threatened IDS and IDS's customers with disconnection of services unless IDS agreed to pay BellSouth, despite the fact that

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BellSouth owed them $929,000[17]. In addition, BellSouth requested that IDS make a deposit of $3 Million for future services.

BellSouth's Cox testified that BellSouth will not disconnect a CLEC if there is a valid dispute. **HT, pg. 242, ln. 23 - pg. 243, ln. 15.** However, Cox agreed that in such situations, BellSouth would be the sole party to make the determination whether a dispute is in good faith or not. **HT, pg. 261, ln. 11–14.** In light of BellSouth's past abuse of its power to disconnect, BellSouth cannot have *carte blanche* on disconnection of services. In fact, BellSouth does not have any solution or any procedure to redress a CLEC in the event of a wrongful disconnection of OSS. **HT, pg. 626, ln. 5–11.**

Therefore, the commission must prevent any party from disconnecting the other's access to OSS, unless it is by order of neutral judiciary body.

Issue 65: Should the parties be liable in damages, without a liability cap, to one another for their failure to honor in one or more material respects any one or more of the material provisions of the Agreement for purposes of this interconnection agreement?

SUMMARY OF SUPRA'S POSITION

*** There should be no limitation of liability for material breaches of the agreement. ***

DISCUSSION

A party to the follow-on agreement that is found to be in breach must be liable to the other in damages, without a liability cap. **DT of Ramos, pg. 104, ln. 22 – pg. 105, ln. 8.** This Commission does not have any credible argument by BellSouth on this issue. BellSouth's Cox testified that BellSouth has not considered this issue.

[17] At page 54, line 15 of Direct Testimony of Keith Kramer:

> In his letter, Mr. Morton threatened that if IDS did not pay this amount by January 22, 2201, any further requests by IDS for additional services would be refused and IDS' end-users' services would be interrupted by February 8, 2001. ......I subsequently received a letter from Petra Pryor stating that BellSouth had declined IDS' $1.4 million dispute that she had previously directed us to deduct from our bill in October

Q. Should either BellSouth or Supra be found in breach of the follow-on agreement, how would they be able to recover damages?
A. I don't know.
Q. It's not something you've considered?
A. Not specifically, no. **HT, pg. 250, ln. 12–17.**

BellSouth's only argument is that a party's damage should be "limited to a credit for the actual cost of the services or functions not performed or performed improperly." **DT of Ruscilli, pg. 41, ln. 4–7**. Supra disagrees, and believes that normal commercial practice mandates that the breaching party compensate the other. In previous proceedings, BellSouth was found to have caused more that $2,828,547.40 dollars in damages to Supra, **CB-1,** as a result of BellSouth's intent to harm Supra and its customers. To confer immunity against damages to a party advocates breaching of the agreement. BellSouth cites to its retail tariff in arguing that it should be immune from liability. **DT of Ruscilli, pg. 41, ln. 19 – pg. 1n. 21.** This is a red herring. Supra is not bound by BellSouth's retail tariff; moreover, the relationship between Supra and BellSouth is different from that of BellSouth and its retail customers. If BellSouth intends to, and actually does, comply with the follow-on agreement, it should not be concerned with potential liability.

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

SUMMARY OF SUPRA'S POSITION

*** The current agreement allows for the remedy of specific performance and so should this agreement. Services under the agreement are unique, and specific performance is an appropriate remedy for BellSouth's failure to provide the required services. ***

DISCUSSION

2000. Again no explanation was provided. She also indicated that BellSouth would be crediting IDS only $535,000 of the $929,000 that we had both calculated as the delta between the resale and the UNEs.

Supra submits that any party should be able to obtain specific performance under the follow-on agreement, where appropriate. **DT of Ramos, pg. 107, ln. 17 – pg. 108, ln. 5.** Specific performance is generally available in contract in Florida, when appropriate to achieve an equitable and fair result. *Rybovich Boat Works, Inc., v. Atkins*, 585 So.2d 270 (Fla. 1991); *Beefy Trail, Inc. v. Beefy King International, Inc.*, 267 So.2d 853 (4 DCA 1972); *Seaboard Oil Co. v. Donovan,* 128 So. 821 (Fla. 1930)(equitable remedy to do affirmative act is decree for specific performance). BellSouth argued that a specific performance provision is not appropriate for arbitration. Supra disagrees and cites to this Commission's Order PSC-01-0824-FOF-TP at page 181. Contrary to BellSouth's proposition, that order stated that all open issues are available for arbitration by this Commission. If the Commission were to find that such provisions do not meet the requirements of § 251 or 252 of the Act, then Supra requests that there be no mention of a limitation of liability or any limitation of remedies. Otherwise, Supra seeks a provision mandating specific performance as a remedy for BellSouth's breach of the agreement.

Respectfully Submitted this 26th day of October, 2001

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Federal Express this 26th day of October 2001 to the following:

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