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February 18, 2002

Mrs. Blanca Bayo, Director
Division of Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 323099-0850

**RE: Docket No. 001097-TP - Motion For Rehearing In Docket
No. 001305-TP; Motion For The Appointment of A Special
Master; Motion For An Indefinite Deferral; and Motion
For Oral Arguments**

Dear Mrs. Bayo:

Enclosed is the original and seven (7) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Notice of Service of Supra's Motion For Rehearing in Docket No. 001305-TP; Motion For The Appointment of A Special Master; Motion For An Indefinite Deferral; and Motion For Oral Arguments in the above-referenced docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return it to me.

Sincerely,

Brian Chaiken
General Counsel

DOCUMENT NUMBER - DATE
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CERTIFICATE OF SERVICE

Docket No. 001305-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Hand Delivery and/or Federal Express this 18th day of February, 2002 to the following:

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SUPRA TELECOMMUNICATIONS
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By: Brian Chaiken / QHS
BRIAN CHAIKEN, ESQ.

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 Filed: February 18, 2002
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SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.'S
MOTION FOR REHEARING IN
DOCKET NO. 001305-TP;
MOTION FOR THE APPOINTMENT OF A SPECIAL MASTER;
MOTION FOR AN INDEFINITE DEFERRAL;
MOTION FOR ORAL ARGUMENTS

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC. ("Supra"), by and through its undersigned counsel, hereby files this MOTION FOR REHEARING of the arbitration in Docket No. 001305-TP, pursuant to Rule 28-106.211, Florida Administrative Code, and states the following in support thereof:

1. Pursuant to Rule 28-106.211, Florida Administrative Code, the presiding officer before whom a case is pending has the authority to grant a rehearing for appearance of impropriety. *See* Commission Order No. PSC-02-0143-PCO-TP, attached hereto as Exhibit "A."
2. Commission Order No. PSC-02-0143-PCO-TP addressed a situation in which a Florida Public Service Commission (Commission) employee was found to have provided BellSouth Telecommunications, Inc. (BellSouth) with cross-examination questions. The Order stated: "in order to remove any possible appearance of prejudice, I find that this matter should be afforded a rehearing."

Facts Substantiating This Motion

3. The hearing in the above referenced Docket, No. 001305-TP, took place over two days, specifically, September 26, 2001 and September 27, 2001.
4. On October 5, 2001, Harold McLean, General Counsel for the Commission notified Supra that “a matter has arisen which warrants your attention.” *See* Commission Letter (“McLean’s Letter”) of October 5, 2001, attached hereto as Exhibit “B.”
5. Supra and BellSouth were parties to Docket No. 001097-TP. An evidentiary hearing in Docket No. 001097-TP was held on May 3, 2001.
6. On May 2, 2001, on the eve of the evidentiary hearing, Ms. Kim Logue – a Commission Staff employee - undertook to draft cross-examination questions in Docket No. 001097-TP for the use by Commission Staff legal counsel.
7. The cross-examination questions included both questions for BellSouth witnesses and Supra witnesses.
8. On the evening of May 2, 2001, Ms. Kim Logue sent these cross-examination questions, via e-mail to Nancy Sims, Director of Regulatory Affairs, in BellSouth’s Tallahassee regulatory office. *See* e-mail and accompanying cross-examination questions attached hereto as Exhibit “C.”
9. Ms. Logue sent the BellSouth regulatory employee both sets of cross-examination questions: those questions to be used by Commission Staff legal counsel against BellSouth and against Supra. There is of course a

legitimate question regarding whether the cross-examinations even originated with Ms. Logue or the product of BellSouth.

10. To make matters worse, Ms. Logue told the BellSouth regulatory employee to direct her as to “which witness [BellSouth or Supra] a given question should be directed.” *See* Exhibit “B”, paragraph 2, lines 4-5.
11. Sending cross-examination questions to either party in a proceeding is absolutely against Commission policy.
12. Ms. Logue’s e-mail was sent at 5:39 p.m. *See* Exhibit “C.”
13. Ms. Logue’s e-mail was sent as “High Importance.” *See* Exhibit “C.”
14. Ms. Logue’s e-mail states: “Please provide, either by phone call, fax or e-mail to which witness a given question should be directed.” *See* Exhibit “C.”
15. It is very likely that the BellSouth employee did in fact contact Ms. Logue sometime on the evening of May 2, 2001 – either by phone, fax or e-mail.
16. The strong presumption results from the fact that Ms. Logue waited over two hours, until 8:00 p.m., on the evening of May 2, 2001, before she sent the same cross-examination questions to Lee Fordham, Commission Staff legal counsel. *See* attached e-mail and accompanying cross-examination questions attached hereto as Exhibit “D.”
17. Additionally, the cross-examination questions sent to BellSouth, at 5:39 p.m., were clearly modified by Ms. Logue before they were sent to Mr. Fordham, over two hours later, at 8:00 p.m. *Compare* Exhibits “C” and “D.” McLean’s Letter suggests that a copy of the same cross-examination

questions were also sent to Supra via e-mail. McLean's Letter of course acknowledges that "we were unable to verify that this was the case." See Exhibit "B." The fact is Ms. Logue never sent Supra any questions. Ms. Logue only sent the cross-examination questions to BellSouth.

18. On January 31, 2002, after the completion of a Staff internal investigation, Chairman Lila A. Jaber, sitting as Prehearing Officer in Docket No. 001097-TP executed Order No. PSC-02-0143-PCO-TP. See Order attached hereto as Exhibit "A."
19. In this Order Chairman Jaber made the following findings, in paragraph number 4:

"Prior to the scheduled Agenda Conference, a **procedural irregularity** was brought to my attention, which prompted a deferral of the item . . . I directed further inquiry, and have since reviewed the findings of that inquiry. Although the inquiry has failed to disclose any prejudice to either party, **the Commission is sensitive to the mere appearance of impropriety. Accordingly, in order to remove any possible appearance of prejudice, I find this matter should be afforded a rehearing.**" (Emphasis added).

20. The Order characterized Ms. Logue's misconduct as a "procedural irregularity." It has never been Commission practice, however, to send cross-examination questions to a party in a proceeding on the eve of an evidentiary hearing. As such, the implication that this was simply some inadvertent error is contrary to the evidence.
21. Notwithstanding the Commission characterization of the misconduct, the Order nevertheless granted a rehearing on the following grounds:

“Although the inquiry has **failed to disclose any prejudice** to either party, the Commission is sensitive to the mere **appearance of impropriety**. Accordingly, in order to **remove any possible appearance of prejudice**, I find this matter should be afforded a rehearing.” (Emphasis added).

22. The Commission Order claims that the Staff inquiry into Ms. Logue’s misconduct “failed to disclose any prejudice.” Supra believes that this is simply contrary to the evidence and circumstances surrounding this incident. This misconduct was not disclosed to Supra until October 5, 2001, nearly 5 months after Ms. Logue’s improper e-mail¹. During this extended period, Ms. Logue had no reason to refrain from her behavior which is clearly indicative of a bias in favor of BellSouth.
23. Notwithstanding the claim that the inquiry failed to disclose prejudice in Docket No. 001097-TP, the Chairman nevertheless noted in her Order for Rehearing that **“the Commission is sensitive to the mere appearance of impropriety.”**
24. After noting that the Commission “is sensitive to the mere appearance of impropriety”, the Chairman went on to conclude: **“[a]ccordingly, in order to remove any possible appearance of prejudice, I find this matter should be afforded a rehearing.”**
25. In other words, the Chairman concluded that a rehearing was the proper remedy in circumstances, such as this, where a Commission employee engages in this type of misconduct “which creates an appearance of impropriety.” Supra would of course characterize Ms. Logue’s conduct as

¹ As Supra has not participated in an investigation, Supra cannot be sure that there were not other, improper communications involving Ms. Logue.

clear bias in favor of BellSouth, thus creating an appearance of impropriety.

26. Notwithstanding, the Chairman still correctly decided that the remedy of a rehearing in Docket No. 001097-TP was still the appropriate relief, even though the Staff inquiry allegedly “failed to disclose any prejudice.”

The Same Impropriety Exists in 001305-TP

27. Ms. Kim Logue was assigned to Docket No. 001305-TP, Supra’s only other case before the Commission. *See* Staff Case Management Document obtained from the Florida Public Service Commission Website, dated August 6, 2001, attached hereto as Exhibit “E.”
28. It is undisputed that Ms. Logue participated in Docket No. 001305-TP, and that she was, in fact, present at the two-day hearing.
29. There can be no question that Ms. Logue’s assignment to and participation in Docket No. 001305-TP did in fact grant Ms. Logue a second opportunity to prejudice Supra again as she clearly did in Docket No. 001097-TP. And, the Commission cannot state with certainty that Ms. Logue did not provide BellSouth with cross-examination questions, or any other untoward assistance, before the start of the evidentiary hearing in Docket No. 001305-TP.
30. The above facts of course raise serious questions involving the Staff’s conclusion of no prejudice, as a result of its internal investigation of Ms. Logue’s misconduct, as well as serious questions involving the conduct of BellSouth and its employees, and BellSouth’s failure to immediately

disclose – to the Commission - the illicit secret relationship between Ms. Logue and BellSouth’s Director of Regulatory Affairs, Nancy Sims.

31. There are a long line of cases involving the appearance of impropriety which arises when an illicit relationship develops between adversarial parties. *See Hernandez v. State*, 750 So.2d 50 (Fla. 3rd DCA 1999) *citing People v. Singer*, 226 Cal.App.3rd 23 (1990) (“such a conclusion is inescapable . . . Just as with the [illicit] relationship . . . between defense counsel and the prosecutor”).
32. In both Docket No. 001097-TP and Docket No. 001305-TP, Ms. Logue represented the Commission. While the Commission Staff is not a party to either proceeding, the Staff does in fact engage in conduct that is adversarial. Ms. Logue drafted the cross-examination questions to be used against BellSouth and Supra that the Staff legal counsel utilized in preparing for Docket No. 001097-TP.
33. Whether or not Ms. Logue drafted cross-examination questions in Docket No. 001305-TP is irrelevant. As a PSC employee in a supervisory role, Ms. Logue had access to cross-examination questions, documents and other Commission Staff information that like in Docket No. 001097-TP could assist BellSouth in its litigation against Supra. This access and Ms. Logue’s bias in favor of BellSouth by all standards of common sense creates an actual conflict of interest between two individuals and two entities – the Commission and BellSouth – with divided loyalties.

34. As the courts have stated: “The validity of our adversarial system depends upon the guaranty of this ‘undivided loyalty and effort . . .’”*Id.* When there exists a . . . [secret] relationship courts are concerned that there may be a “reluctance to call or engage in abrasive confrontation . . .” or there may be a “reluctance to vigorously oppose . . . the other side.” *Id.* In other words, “counsel might pull his punches.” *Id.* This of course is the exact actual conflict of interest that exists here between Ms. Logue, representing the Commission, and Ms. Sims, representing BellSouth.
35. The courts are clear that once “having found an actual conflict of interest, the Court must presume prejudice resulting therefrom.” *See Cuyler v. Sullivan*, 466 U.S. 335, 349-351 (1980). “A defendant who shows that a conflict of interest actually affected the adequacy of representation **need not demonstrate prejudice in order to obtain relief.**” *Id.* (Emphasis added).
36. It is this legal conclusion by the courts, that raises serious and legitimate questions regarding the Staff’s conclusion that Ms. Logue’s misconduct failed to disclose any prejudice in Docket No. 001097-TP. *Supra* need not demonstrate prejudice in order to obtain relief. *Supra* need only demonstrate for the courts and the Commission that an actual conflict of interest exists. The Staff, in its recommendation to Chairman Jaber, simply articulated the wrong standard with respect to whether a rehearing was warranted in Docket No. 001097-TP.

37. Notwithstanding Staff's incorrect standard, Chairman Jaber reached the correct conclusion that the "appearance of impropriety" was sufficient to order a rehearing in Docket No. 001097-TP.
38. The cases cited above involve the appearance of impropriety and the right to effective assistance of counsel. These cases are instructive in this instance because they deal with the analysis that a court would undertake to determine whether a new trial should be granted in the criminal context. It is common sense that if a new trial were ordered in the more serious criminal context, then it only follows that such a standard for relief should be sufficient in a civil proceeding such as the one at issue herein.
39. Once the court determines that there is an actual conflict (i.e. secret-relationship as in Docket No. 001305-TP) then the court asks whether "a plausible alternative strategy" could have been pursued during any portion of the proceeding. *See Reynolds v. Chapman*, at 1343.
40. Likewise, in our case, the court or Commission would ask whether it is plausible that the PSC staff may have pursued an alternative strategy or course of action during the discovery phase of the proceeding or the evidentiary hearing itself in Docket No. 001305-TP. If so, then the court or Commission would be required to conclude that the plausible course of action was not followed because it conflicted with Ms. Logue's external loyalties.
41. "An actual conflict of interest occurs when an . . . attorney places himself in a situation inherently conducive to divided loyalties." *Zuck v. Alabama*,

588 F. 2d 436 (5th Cir. 1979). Likewise, in our case, an actual conflict of interest occurs when a PSC employee in a supervisory capacity places herself in a situation inherently conducive to divided loyalties. Supra need not mention again that Ms. Logue's misconduct remained a secret from Supra until after the evidentiary hearing in Docket No. 001305-TP. Accordingly, whether Supra is entitled to relief should not even be a debate.

42. In the present circumstances, there is, at a minimum, a secret relationship between Ms. Logue and Ms. Sims, the BellSouth employee. The degree to which this corruption extends will have to await a much larger and more thorough investigation of this incident. Notwithstanding, there need not be any speculation as to whether that secret relationship benefited BellSouth, because the May 2, 2001, e-mail makes it clear that BellSouth did benefit. There need not be any speculation that the May 2, 2001, e-mail from Ms. Logue to BellSouth remained a secret from Supra until after the close of the evidentiary hearing in Docket No. 001305-TP.
43. As such, unlike the case law cited herein where the court simply assumes compromising conduct has occurred as a result of the existence of the illicit relationship, in our case, there is explicit concrete evidence of bias in favor of BellSouth over Supra. The cross-examination questions provided BellSouth with the opportunity to pursue a different strategy or take a different course of action during the evidentiary hearing in Docket No. 001097-TP. It certainly follows that the same misconduct occurred in

Docket No. 001305-TP, presenting BellSouth with the opportunity for pursuing a different strategy or course of action in the Docket. Supra will note here again, that Supra need not prove that the same misconduct occurred in Docket No. 001305-TP in order to obtain the relief sought.

44. It is very reasonable to conclude that Ms. Logue continued to have improper communications with BellSouth in Docket No. 001305-TP. So long as Ms. Logue's misconduct remained undetected, she had no reason to refrain from engaging in the same conduct that she engaged in before the evidentiary hearing in Docket No. 001097-TP.
45. McLean's Letter notifying Supra of Ms. Logue's e-mail to BellSouth was on October 5, 2001. Presumably, the Staff learned of Ms. Logue's conduct sometime between the close of the hearing on Thursday, September 27, 2001 and the following Thursday, October 4, 2001. The cut-off date of October 4, is used because McLean's Letter is dated October 5, 2001 and was faxed to Supra at approximately 3:38 p.m. Supra will presume that the letter was written immediately upon learning of the misconduct.
46. There are still many questions surrounding how the Commission General Counsel learned of Ms. Logue's misconduct. Did Mr. McLean first learn of the wrongdoing from Commission Staff or BellSouth? If the Commission knew of the communication prior to September 26, 2001, why was this information withheld from Supra until after the evidentiary hearing in Docket No. 001305-TP?

47. This scandal only grows larger if Commission Staff now comes forward and suggest that they learned of Ms. Logue's misconduct sometime before the seven day window between the close of the hearing in Docket No. 001305-TP and the date of Mr. McLean's Letter. If this is the case, then this would further substantiate the institutional bias Supra believes is already evident.
48. In either case, so long as Ms. Logue's misconduct went undetected, she had no reason to stop engaging in the same conduct that she engaged in before the evidentiary hearing in Docket No. 001097-TP.
49. Accordingly, the extent to which Supra was compromised may never be known. But, there can be no question that Ms. Logue's assignment to and participation in Docket No. 001305-TP did in fact grant Ms. Logue a second opportunity to prejudice Supra as she clearly did in Docket No. 001097-TP.
50. The Commission cannot state with certainty that Ms. Logue did not provide BellSouth with cross-examination questions, or any other untoward assistance, before the start of the evidentiary hearing in Docket No. 001305-TP.
51. Whether Ms. Logue worked on the writing of the Staff Recommendation in Docket No. 001305-TP is irrelevant. The prejudice and/or bias occurred during the entire proceeding, which includes discovery, depositions as well as the evidentiary hearing.

52. The Commission cannot state with certainty that Ms. Logue did not leave at night with documents that she later delivered to BellSouth employees. The Commission cannot state with certainty that Ms. Logue did not meet with BellSouth employees after work hours to inform them of information that would compromise Supra in its litigation before the Commission.
53. And as already stated, the courts are clear that once “having found an actual conflict of interest, “the Court must presume prejudice resulting therefrom.” *See Cuyler v. Sullivan*, 466 U.S. 335, 349-351 (1980). “A defendant who shows that a conflict of interest actually affected the adequacy of representation **need not demonstrate prejudice in order to obtain relief.**” *Id.* (Emphasis added).
54. In Docket No. 001305-TP it is clear that an actual conflict of interest can be proven because Ms. Logue was assigned to both Docket No. 001097-TP and Docket No. 001305-TP. As such, the Commission must presume prejudice resulting therefrom. Most importantly, Ms. Logue had the opportunity and had already demonstrated a bias in favor of BellSouth to provide BellSouth with Commission Staff cross-examination questions, and Ms. Logue’s misconduct remained hidden from Supra during the evidentiary hearing in Docket No. 001305-TP. For all of these reasons, the Commission and/or a court should conclude that the “actual conflict” affected the “adequacy” of the Staff’s representation and impartiality in the proceeding. Under these circumstances, Supra “need not demonstrate prejudice in order to obtain relief.” A rehearing is in order.

55. As outlined at the beginning of this Motion, Chairman Jaber has already concluded that a rehearing is the proper remedy in circumstances, such as this, where a Commission employee engages in misconduct “which creates an appearance of impropriety.”
56. The precedent has already been established by Chairman Jaber.
57. Supra simply seeks the same relief, in this Docket, already granted in Docket No. 001097-TP.
58. While Supra disagrees with the Commission’s characterization of Ms. Logue’s misconduct as simply a “procedural irregularity,” as well as the Commission’s conclusion that “the inquiry failed to disclose any prejudice,” Supra does agree that the Commission should be “sensitive to the mere appearance of impropriety.”
59. Supra would of course characterize Ms. Logue’s willful misconduct as clear bias in favor of BellSouth designed to undermine Supra.
60. Therefore, in accordance with Chairman Jaber’s conclusions in Docket No. 001097-TP: “in order to remove any possible appearance of prejudice,” Docket No. 001305-TP “should be afforded a rehearing.”

Institutional Bias in favor of BellSouth

61. There is also the incident which just transpired with respect to Supra’s Motion For Supplemental Authority filed on January 30, 2002, in order to bring to the Commission’s attention the Eleventh Circuit Court’s decision in *BellSouth Telecommunications, Inc. v. MCIMetro Access Transmission*

Services, Inc. (00-12809) and *BellSouth Telecommunications, Inc. v. Worldcom Technologies, Inc.* (00-12810) published on January 10, 2002.

62. BellSouth filed a response stating that “Supra is incorrect in stating that the Eleventh Circuit’s decision is “controlling.”
63. Commission issued Order No. PSC-02-0159-PCO-TP, on February 1, 2002, granting in part and denying in part Supra’s Motion to File Supplemental Authority. Commission Order No. PSC-02-0159-PCO-TP struck the word “controlling” from Supra’s Motion and stated that it was argument. The Order stated that the 11th Circuit’s decision “shall be properly considered” in Docket No. 001305-TP.
64. Unfortunately, in Docket No. 001305-TP, the Prehearing Officer very likely relied upon the Commission legal staff’s recommendation with respect to Supra’s Motion to File Supplemental Authority.
65. Subsequent to the Prehearing Officer’s Order, the Staff filed its Recommendation in Docket No. 001305-TP, in which the Staff addressed the precedential value of the 11th Circuit’s decision by stating that: “The ruling is not as yet final, as the time for filing a motion for rehearing has not passed and a mandate has not been issued, **and so it does not presently have the force of law.**” (Emphasis added).
66. It seems that the Staff simply accepted BellSouth’s assertion that the 11th Circuit decision was not controlling: (1) when drafting its recommended order for the Prehearing Officer on Supra’s Motion for Supplemental Authority and (2) when issuing its overall recommendation in Docket No.

001305-TP. The Staff's legal conclusion was of course completely false as a matter of law. *See Martin v. Singletary*, 965 F.2d 944, 945 n. 1 (11th Cir. 1992); and IOP 2, FRAP No. 36 of the 11th Circuit.

67. The failure to verify the precedential value of the 11th Circuit Decision is indicative of the institutional bias, in favor of BellSouth.
68. Accordingly, "in order to remove any possible appearance of prejudice," the Commission should find – as Chairman Jaber did in Docket No. 001097-TP – "that this matter should be afforded a rehearing." *See* Exhibit "A", paragraph 4.
69. The rehearing must encompass the entire proceeding. As it would be prejudicial to *Supra* to arbitrarily limit the rehearing.
70. Given that the same bias, prejudice or as characterized by the Commission "appearance of impropriety" exists in both Dockets, it would clearly be prejudicial to *Supra* if a rehearing were denied in Docket No. 001305-TP, after having been granted in Docket No. 001097-TP.

Timeliness

71. After *Supra* was notified of Ms. Logue's misconduct, Harold McLean, General Counsel for the Commission asked *Supra* not to take any action until after an internal investigation was completed by the Commission.
72. The Commission completed its investigation and an Order granting a rehearing in Docket No. 001097-TP was issued on January 31, 2002.
73. *Supra* did not file a Motion for Rehearing in Docket No. 001097-TP, as is being done here in Docket No. 001305-TP. The Order granting a rehearing

in Docket No. 001097-TP was done by Chairman Jaber on her own motion.

74. It has only been fifteen (15) days since the Chairman's Order directing that a rehearing be held in Docket No. 001097-TP.
75. Accordingly, this Motion for Rehearing is timely.

Special Master (consisting of three members)

76. Pursuant to Commission Order No. PSC-02-0143-PCO-TP, the presiding officer may fashion an order to promote the just, fast and inexpensive determination of all aspects of a proceeding.
77. The Ordering of a rehearing is a bifurcated decision. The first part of the decision regarding whether the rehearing is warranted is clear and based upon Commission precedent. The second part of the decision is who will hear the case once the rehearing is ordered.
78. A fair, just and inexpensive way to resolve this question is to order that a Special Master shall be appointed to handle the entire rehearing. The Special Master would consist of three members agreed to by both parties.
79. A good example of three independent individuals agreed to by the parties to hear disputes are the three members of the arbitration panel presently hearing disputes between Supra and BellSouth, selected pursuant to the terms of the parties' current interconnection agreement. If the parties are unable to agree, the list of qualified candidates can be submitted to the Commission for approval.

80. The Special Master would handle the entire rehearing and then prepare a Recommendation for final disposition by a majority vote of the Commission or Commission Panel, whichever is assigned by the Chairman.
81. Supra has no objection to the matter ultimately being decided by the Commissioners themselves, after the completion of the hearing process before an independent body.
82. On Wednesday, September 26, 2001, in Docket No. 001305-TP, Commissioner Palecki made the following observations:

In this Commission, we are becoming more and more burdened with telecommunications dockets where this Commission is acting as the police officer between the ALEC community and the ILECs. It's gotten to the point where it's taken up probably 50% of this Commission's hearing time.

Do you have any suggestion that you could give us as to how the burden of acting as the peacekeeper between these parties could be lessened? Are there any other forms of dispute resolution that could be used other than this Commission, because it -- honestly, it's becoming more and more overly burdensome to this Commission. (Emphasis added). Transcript, pg. 304, lines 11-23.

83. Supra agrees with Commissioner Palecki. Given that the grounds for a rehearing are absolutely clear. The remaining issue is how to rehear the matter so that it is not overly burdensome to the Commission, and to ensure that the parties receive a fair, unbiased hearing.
84. The answer is the appointment of a Special Master.

Indefinite Deferral of Docket No. 001305-TP

85. Supra requests that Docket No. 001305-TP be indefinitely deferred from being placed on any Commission Agenda Conference, until this Motion for Rehearing is ruled upon.

Request for Oral Argument

86. Pursuant to Rule 25-22.058, Florida Administrative Code, Supra requests the opportunity to present oral arguments with respect to its requests for a Motion for Rehearing to better aid the Commission in its decision.

WHEREFORE, Supra respectfully requests that the Commission grant a complete rehearing in Docket No. 001305-TP, Supra respectfully requests that the Commission order that the rehearing be conducted by a Special Master, Supra respectfully requests an indefinite deferral of Docket No. 001305-TP until this Motion for Rehearing can be ruled upon, and finally Supra respectfully requests that the Commission grant oral arguments to better aid the Commission in its decision.

RESPECTFULLY SUBMITTED this 18th day of February, 2002

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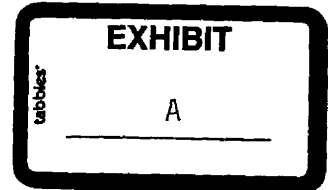


Brian Chaiken
General Counsel

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration concerning complaint of BellSouth Telecommunications, Inc. against Supra Telecommunications and Information Systems, Inc. for resolution of billing disputes.

DOCKET NO. 001097-TP
ORDER NO. PSC-02-0143-PCO-TP
ISSUED: January 31, 2002



ORDER SETTING MATTER FOR REHEARING
AND ESTABLISHING PROCEDURE

BellSouth Telecommunications, Inc. (BellSouth) provides local exchange telecommunications services for resale pursuant to the Telecommunications Act of 1996 and to resale agreements entered into between BellSouth and various Alternative Local Exchange Companies (ALECs). Supra Telecommunications and Information Systems, Inc. (Supra) is an ALEC certified by this Commission to provide local exchange services within Florida. On August 9, 2000, BellSouth filed a complaint against Supra, alleging that Supra has violated Attachment 6, Section 13 of their present agreement by refusing to pay non-disputed sums. The complaint also alleges billing disputes arising from the prior resale agreement with Supra.

On August 30, 2000, Supra filed its Motion to Dismiss Complaint or, in the Alternative, Stay Proceedings and/or Compel Arbitration. That Motion was granted in part and denied in part by Order No. PSC-00-2250-FOF-TP, issued November 28, 2000. In the Order, we retained jurisdiction over all disputes arising out of the original Agreement between the two parties, entered into on June 1, 1997.

On May 3, 2001, an evidentiary hearing was held on the portions of the complaint over which we retained jurisdiction. The findings from that hearing were incorporated in our Final Order on Complaint, Order No. PSC-01-1585-FOF-TP, issued July 31, 2001. On August 15, 2001, Supra filed its Motion for Reconsideration of Final Order No. PSC-01-1585-FOF-TP, and that Motion was set for Agenda Conference on October 2, 2001.

Prior to the scheduled Agenda Conference, a procedural irregularity was brought to my attention, which prompted a deferral of the item from the scheduled Agenda. I directed further inquiry, and have since reviewed the findings of that inquiry. Although the inquiry has failed to disclose any prejudice to either party, the Commission is sensitive to the mere appearance of impropriety.

ORDER NO. PSC-02-0143-PCO-TP
DOCKET NO. 001097-TP
PAGE 2

Accordingly, in order to remove any possible appearance of prejudice, I find that this matter should be afforded a rehearing.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case. The hearing will be conducted according to the provisions of Chapter 120, Florida Statutes, and all administrative rules applicable to this Commission.

Scope of Proceeding

The scope of this proceeding shall be limited to the issues raised by the parties in Order No. PSC-01-0898-PHO-TP (the first Prehearing Order), issued April 9, 2001, unless modified by the Commission. The rehearing shall be based on the original pleadings filed. Testimony and discovery for this rehearing will proceed on an expedited schedule. The expedited schedule shall not be modified except upon a showing of good cause.

Further, the pleadings and orders which occurred on or before February 7, 2001, including, Supra's Motion to Dismiss filed on August 30, 2000, and Supra's Motion for Reconsideration of the Order No. PSC-00-2250-FOF-TP, shall be incorporated into the record for the rehearing. Additionally, Order No. PSC-01-0493-FOF-TP, issued February 27, 2001, disposing of Supra's Motion for Reconsideration of Order No. PSC-00-2250-FOF-TP shall be incorporated into the record for rehearing.

Discovery

When discovery requests are served and the respondent intends to object to or ask for clarification of the discovery request, the objection or request for clarification shall be made within seven days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes.

The hearing in this docket is set for April 4, 2002. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by March 28, 2002. All interrogatories, requests for admissions, and requests for production of documents shall be numbered sequentially in order to facilitate their identification. The discovery requests will be numbered sequentially within a set and any subsequent discovery requests will continue the sequential numbering system. Pursuant

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DOCKET NO. 001097-TP
PAGE 3

to Rule 28-106.206, Florida Administrative Code, unless subsequently modified by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 75, and requests for production of documents, including all subparts, shall be limited to 75.

The compressed time schedule for this proceeding requires an expedited discovery process. Consequently, all discovery responses shall be served within fifteen (15) days of receipt of the discovery request. There shall be no extra time for mailing throughout this proceeding. Furthermore, in view of the scope and expedited nature of this proceeding, parties shall serve discovery requests and responses by either express mail, facsimile, e-mail, or hand delivery. In addition, the parties shall provide copies of their responses to the other party's discovery requests to Commission staff.

Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time period set forth in Section 364.183, Florida Statutes.

Diskette Filings

See Rule 25-22.028(1), Florida Administrative Code, for the requirements of filing on diskette for certain utilities.

Prefiled Testimony and Exhibits

Each party shall prefile, in writing, all testimony that it intends to sponsor. Such testimony shall be typed on 8 ½ inch x 11 inch transcript-quality paper, double spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

ORDER NO. PSC-02-0143-PCO-TP

DOCKET NO. 001097-TP

PAGE 4

Each exhibit intended to support a witness' prefiled testimony shall be attached to that witness' testimony when filed, identified by his or her initials, and consecutively numbered beginning with 1. All other known exhibits shall be marked for identification at the prehearing conference. After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing. Exhibits accepted into evidence at the hearing shall be numbered sequentially. The pages of each exhibit shall also be numbered sequentially prior to filing with the Commission.

An original and 15 copies of all testimony and exhibits shall be prefiled with the Director, Division of Commission Clerk and Administrative Services, by the close of business, which is 5:00 p.m., on the date due. A copy of all prefiled testimony and exhibits shall be served by mail or hand delivery to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.

Prehearing Statement

All parties in this docket shall file a prehearing statement. Staff will also file a prehearing statement. The original and 15 copies of each prehearing statement shall be prefiled with the Director of the Division of Commission Clerk and Administrative Services by the close of business, which is 5:00 p.m., on the date due. A copy of the prehearing statement shall be served on all other parties and staff no later than the date it is filed with the Commission. Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position. Such prehearing statements shall set forth the following information in the sequence listed below.

- (a) The name of all known witnesses that may be called by the party, and the subject matter of their testimony;
- (b) a description of all known exhibits that may be used by the party, whether they may be identified on a composite basis, and the witness sponsoring each;

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DOCKET NO. 001097-TP
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- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the party considers at issue and the party's position on each such issue;
- (f) a statement of each policy question the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (g) a statement of issues that have been stipulated to by the parties;
- (h) a statement of all pending motions or other matters the party seeks action upon;
- (i) a statement identifying the parties' pending requests or claims for confidentiality; and
- (j) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.
- (k) a statement identifying any decision or pending decision of the Federal Communications Commission (FCC) or any court that has or may either preempt or otherwise impact the Commission's ability to resolve any of the issues presented or the relief requested in this matter.

Prehearing Conference

Pursuant to Rule 28-106.209, Florida Administrative Code, a prehearing conference will be held on March 14, 2002, at the Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida. Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions raised in that party's prehearing statement.

Prehearing Procedure: Waiver of Issues

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Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: it was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate to fully develop the issue; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, it shall bring that fact to the attention of the Prehearing Officer. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement.

Document Identification

Each exhibit submitted shall have the following in the upper right-hand corner: the docket number, the witness' name, the word "Exhibit" followed by a blank line for the exhibit number and the title of the exhibit.

An example of the typical exhibit identification format is as follows:

Docket No. 12345-TL
J. Doe Exhibit No. _____
Cost Studies for Minutes of Use by Time of Day

Tentative Issues

The issues previously established by Order No. PSC-01-0898-PHO-TP (the first Prehearing Order), issued April 9, 2001, will be

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controlling and are reaffirmed in this Order. Attached to this order as Attachment "A" is the list of the issues from Order No. PSC-01-0898-PHO-TP. Prefiled testimony and prehearing statements shall address the issues set forth in Attachment "A".

Controlling Dates

The following dates have been established to govern the key activities of this case.

- | | |
|------------------------------------|------------------|
| 1) Direct testimony and exhibits | February 8, 2002 |
| 2) Rebuttal testimony and exhibits | March 1, 2002 |
| 3) Prehearing Statements | March 1, 2002 |
| 4) Prehearing Conference | March 14, 2002 |
| 5) Hearing | April 4, 2002 |
| 6) Briefs | April 18, 2002 |

Use of Confidential Information At Hearing

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding. Parties are cautioned to avoid disclosure of information considered proprietary by either party. Disclosure of another party's confidential information may result in sanctions.

Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute. Failure of any party to comply with the seven-day requirement described above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the

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Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material. Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Commission Clerk and Administrative Services's confidential files.

Post-Hearing Procedure

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

Based upon the foregoing, it is

ORDERED by Chairman Lila A. Jaber, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Chairman Lila A. Jaber, as Prehearing Officer, this 31st day of January, 2002.

/s/ Lila A. Jaber
LILA A. JABER
Chairman and Prehearing Officer

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This is a facsimile copy. Go to the
Commission's Web site,
<http://www.floridapsc.com> or fax a request
to 1-850-413-7118, for a copy of the order
with signature.

(S E A L)
PAC

ORDER NO. PSC-02-0143-PCO-TP
DOCKET NO. 001097-TP
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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

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ATTACHMENT "A"

**ISSUES FROM ORDER NO. PSC-01-0898-PHO-TP
(THE FIRST PREHEARING ORDER)**

- ISSUE 1:** Should the rates and charges contained (or not contained) in the 1997 AT&T/BellSouth Agreement apply to the BellSouth bills at issue in this Docket?
- ISSUE 2:** Did BellSouth bill Supra appropriately for End-User Common Line Charges pursuant to the BellSouth/Supra interconnection and resale agreement?
- ISSUE 3:** Did BellSouth bill Supra appropriately for changes in services, unauthorized local service changes, and reconnections pursuant to the BellSouth/Supra interconnection and resale agreements?
- ISSUE 4:** Did BellSouth bill Supra appropriately for secondary service charges pursuant to the BellSouth/Supra interconnection and resale agreements?

STATE OF FLORIDA



PUBLIC SERVICE COMMISSION

2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FL 32399-0850

TO: Mark E. Buechele/Brian Chaiken
Fax #: 6,13054431078

FROM: Records Fax Server

RE:

Note: This fax was generated by the Case Management System.

Multiple attempts will be made to fax this document. If all attempts fail, you will automatically be sent a copy of the document by U.S. Mail. You do not need to call to report a fax failure.

Oct 5 2001, 03:58 PM

STATE OF FLORIDA



PUBLIC SERVICE COMMISSION

2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FL 32399-0850

TO:

Mr. Brian Chaiken

305-443-9516

FROM:

Harold McLean, General Counsel

Fax: 413-7180

Voice: 413-6248

RE:

FPSC Docket No. 001097-TP

Note:

pgs. including cover sheet: 14

EXHIBIT
tabbies
E

STATE OF FLORIDA

COMMISSIONERS:
E. LEON JACOBS, JR., CHAIRMAN
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI



GENERAL COUNSEL
HAROLD A. MCLEAN
(850) 413-6248

Public Service Commission

October 5, 2001

Ms. Nancy White
BellSouth
150 W. Flagler Street
Suite 1910
Miami, Florida 33130

Mr. Brain Chaiken
Supra Telecommunications
2620 S.W. 27th Avenue
Miami, Florida 33133

Re: FPSC Docket No. 001097-TP

Dear Ms. White and Mr. Chaiken:

A matter has arisen which warrants your attention.

In the course of staff's normal prehearing procedures, technical staff notes areas of concern to the assigned staff attorney. The areas of concern are intended to aid the staff attorney in crafting cross examination questions designed to elicit information of interest to the staff in their analysis of the case. Occasionally, staff technical personnel actually draw suggested questions which are furnished to the assigned attorney to aid in their cross examination of a witness.

On the evening of May 2, 2001, Ms. Kim Logue, a Commission staff employee, undertook to draw cross examinations questions for the use of staff counsel, but in the course of that preparation, provided a draft of cross examination questions to Nancy Sims of BellSouth for the stated purpose of having Ms. Sims advise her as to "which witness a given question should be directed." Ms. Logue sent Ms. Sims a draft of questions intended for Bell's witnesses and a draft of questions intended for Supra's witnesses. While Ms. Logue maintains that she sent Supra the same package that she sent BellSouth, we are unable to verify that this was the case.

I have attached a copy of the questions, which our records show were sent by Ms. Logue to Ms. Sims.

Ms. Nancy White

Page 2

October 5, 2001

Two and a half hours later, Ms. Logue e-mailed a similar draft of the cross examination questions to Mr. Lee Fordham, the Commission staff attorney assigned to the docket, with the question designated for specific BellSouth and Supra witnesses. Neither Mr. Fordham nor, so far as I can determine, any Commission employee (other than Ms. Logue) knew of the earlier package sent to BellSouth.

I have attached a copy of the questions, which our records show were sent by Ms. Logue to Mr. Fordham.

In view of the foregoing, the Staff will recommend to the Commission that the time for filing motions for reconsideration be extended until the close of business, October 15, 2001.

Sincerely,



Harold McLean
General Counsel

cc: Lila Jaber, FPSC Commissioner
Braulio Baez, FPSC Commissioner
Michael Palecki, FPSC Commissioner

Enclosures

HM:vdw

5/2/01 5:18 PM

**TENTATIVE QUESTIONS FOR CROSS EXAMINATION
DOCKET NUMBER 001097
COMPLAINT OF BELLSOUTH AGAINST SUPRA**

QUESTIONS FOR BELLSOUTH

1. Has BellSouth received any monies as payment for amounts it believes are due based on the 1997 agreement?
 - A. If not, what amount does BellSouth believe it is due for the agreement term of June 1997-October 1999?
2. Does BellSouth believe it is due interest on this amount?
 - A. If so, what percent interest and/or total sum of interest does BellSouth believe it is entitled?
 - B. If so, what steps has BellSouth taken to collect the alleged amounts due?
 - C. Are these steps pursuant to BellSouth and Supra's 1997 negotiated resale agreement, or the agreement adopted by Supra in 1999 or some other procedure?
3. When a company with which BellSouth enters an agreement fails to adhere to the established procedures for payment of services provided, what steps are taken to collect said monies due?
4. Are these procedures published, and if so, where are they published?
 - A. Is this information provided to companies with which BellSouth enters agreements?
5. What specific section of the agreement provides the procedures for billing and payment of charges due?
6. Does BellSouth assess a late charge for untimely payment?
 - A. If so, how are these charges assessed?
 - B. Has BellSouth assessed late charges against Supra and for what period of time?
7. Has BellSouth made any type of "adjustment" to the amount due by Supra?
 - A. If so, what was the purpose of said adjustment and what time period was covered by the adjustment?
8. In light of what appears to be Supra's violations of its agreement with your company, why does BellSouth continue to provide service to Supra?
9. Is this continued provision of service without receipt of payment an approach normally taken with companies who do not pay for services rendered?
10. In paragraph 8 of your initial complaint, you seek "Commission concurrence in disconnecting Supra from BellSouth's ordering interfaces and disconnecting Supra's end users." Why do you believe Commission concurrence is required, when the agreement signed by the

parties and later approved by the Commission clearly provides the circumstances by which such disconnection may take place?

11. Do you agree that the disputed amount is \$306,559.94? (this is the figure initially provided)
 - A. If not, then what is the amount BellSouth purports to be in dispute?
 - B. Has BellSouth received any payment towards this amount due? If so, what amount of payment has been received?

12. To the best of your knowledge, has Supra made any payment towards the amounts due pursuant to the 1997 agreement since January 2001?

13. Has any settlement been offered?
 - A. If so, how much was the settlement offer?
 - B. Has the settlement offer been accepted?

14. Does the 1997 negotiated resale agreement between BellSouth and Supra allow for End User Common Line charges or FCC Access Charges?
 - B. Where are these charges identified in this same agreement?

15. To the best of your knowledge, is there any prohibition which prevents BellSouth from now disconnecting Supra and its end users for non-payment of services rendered more than a year ago?
 - A. If so, what is the nature of the prohibition?

16. What types of charges or credits are included in OCC?
 - A. Do you agree that unauthorized local service changes and reconnections are included in OCC?
 - B. Do unauthorized local service changes and reconnections constitute "slamming"?
 - C. Of the more than \$48K you believe is specific to OCCs, how much is attributable to unauthorized local service changes and reconnections? (ref. complaint)
 - D. What portion of the \$48K is attributable to each of the other categories you just mentioned?

17. Pursuant to Section VI F of the 1997 negotiated resale agreement, BellSouth charges \$19.41 for every unauthorized local service change. Is this correct?
 - A. At the rate of \$19.41 per line, and subject to check, that would equate to over _____ subscriber lines allegedly changed without the customer's authorization, would it not? (do quick math of whatever portion of \$48K is for slamming X \$19.41/line)
 - B. How does BellSouth determine that an unauthorized local service change has occurred?

18. You have stated that over \$33K of the OCC total is for secondary service charges. How did you arrive at the figure of over \$33K for secondary service charges?

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5/2/01
8:00 pm

PUBLIC SERVICE COMMISSION
TESTIMONIAL QUESTIONS FOR CROSS EXAMINATION
DOCKET NUMBER 001097
COMPLAINT OF BELL SOUTH AGAINST SUPRA

QUESTIONS FOR BELL SOUTH WITNESS MORTON

1. Has BellSouth received any monies as payment for amounts it believes are due based on the 1997 agreement?
 - A. If not, what amount does BellSouth believe it is due for the agreement term of June 1997-October 1999?
 - B. If so, what amount has been received pursuant to what is owed for the 1997 negotiated resale agreement?
 - C. Is it your interpretation of Supra's allegations that Supra believes it is due a refund for certain amounts remitted to BellSouth?

2. Does BellSouth believe it is due interest on this amount?
 - A. If so, what percent interest and/or total sum of interest does BellSouth believe it is entitled?
 - B. If so, what steps has BellSouth taken to collect the alleged amounts due?
 - C. Are these steps pursuant to BellSouth and Supra's 1997 negotiated resale agreement, or the agreement adopted by Supra in 1999 or some other procedure?

3. When a company with which BellSouth enters an agreement fails to adhere to the established procedures for payment of services provided, what steps are taken to collect said monies due?
 - A. Are these procedures published, and if so, where are they published?
 - B. Is this information provided to companies with which BellSouth enters agreements?

4. Does BellSouth assess a late charge for untimely payment?
 - A. If so, how are these charges assessed?
 - B. Has BellSouth assessed late charges against Supra and for what period of time?

5. Has BellSouth made any type of "adjustment" to the amount due by Supra?
 - A. If so, what was the purpose of said adjustment and what time period was covered by the adjustment?

6. Do you agree that the disputed amount is \$306,559.94? (this is the figure initially provided)
 - A. If not, then what is the amount BellSouth purports to be in dispute?
 - B. Has BellSouth received any payment towards this amount due? If so, what amount of payment has been received?

7. To the best of your knowledge, has Supra made any payment towards the amounts due pursuant to the 1997 agreement since January 2001?

8. You have stated that over \$33K of the OCC total is for secondary service charges. How did you arrive at the figure of over \$33K for secondary service charges?

QUESTIONS FOR BELL SOUTH WITNESS FINLEN

13. Do you believe that remedies to include the disconnection of both Supra and its end users should today be available to BellSouth given that the guiding tenets of the 1997 agreement are still applicable?

14. Why not? That's specifically what your agreement with BellSouth stipulates. Why are you now disputing the terms to which you agreed to in 1997?

15. On May 19, 1997, Mr. Ramos, as CEO of Supra, signed an agreement that was presented to the FPSC on June 26, 1997 for approval. This agreement was for the purpose of resale to end users of Supra Telecommunications was it not?

A. And did the agreement as entered into by Supra and subsequently approved by the FPSC, contain language stating that BellSouth would bill specific charges "which are identical to the EUCL rates billed by BST to its end users?"

B. Is Section VII L of the 1997 negotiated resale agreement entered into by Supra compliant with 47 CFR Section 51.617?

C. Did Supra enter into a resale agreement with BellSouth as an ALEC?

D. That being the case, how can Supra claim that Section 51.617(b) is applicable when it applies solely to IXCs using the ILEC's facilities to provide interstate or international telecom services to the IXC's subscribers?

E. Are you aware that BellSouth is prohibited from providing interstate or international telecom services?

F. Therefore, how can you have entered into an agreement, representing yourself as an ALEC, with BellSouth for the resale of services to your customers that is outside the ability and authority of BellSouth to provide to its own customers?

G. You've just stated that Supra entered the 1997 agreement with BellSouth identifying as an ALEC, correct? As an ALEC reselling an ILEC's services, said ILEC is required to charge EUCLs, pursuant to 47 CFR Section 51.617(a). Section 51.617(b) is not applicable to ALECs, but is applicable to IXCs. Therefore, how can Supra claim that Section 51.617(b) is applicable in this instance?

16. Pursuant to the agreement entered into in 1997, and subsequently approved by the FPSC, Supra was authorized to provide only the tariffed local exchange and toll services of BellSouth.

A. Did Supra provide interstate and international telecom services using BellSouth's facilities to Supra's subscribers and if so, was such an offering within or outside the scope, terms and conditions of the 1997 agreement?

B. Does Supra continue to provide such interstate access and related services vis a vis an agreement with BellSouth?

17. In the agreement signed by Mr. Ramos on May 19, 1997 and subsequently approved by the

QUESTIONS FOI SUPRA WITNESS BENTLEY

1. Please refer to page 3 of your direct testimony, specifically lines 2-6. It is your position that the effective date for Supra's adoption of the BellSouth/AT&T agreement is June 10, 1997, is that correct?

Answer will be "yes."

A. You regard June 10, 1997 as the effective date for Supra's adoption of the BellSouth/AT&T agreement because that is the effective date listed in the BellSouth/AT&T agreement, is that correct?

Answer will be "yes."

B. What date did Supra actually request to adopt the BellSouth/AT&T agreement?

Answer: Who knows that she will say, but she should say on or around October 5, 1999. (If she says June 10, 1997, ask if she has provided any evidence in the record that would support that date.)

2. Supra, in this instant matter, is alleging that it has been improperly billed by BellSouth. When did you first notify BellSouth of any dispute of its billing?

3. Was this notification timely provided in accordance with the terms of the agreement between BellSouth and Supra?

answer should be "no", but be prepared for her to respond "yes." Either way ask as a follow-up:

A. Doesn't Supra's agreement with BellSouth call for disputed charges to be brought within 60 days of billing?

B. Did Supra wait longer than the 60 days as stipulated in your agreement?

If yes, then:

C. Why did Supra not notify BellSouth of its billing dispute within sixty days, as stipulated and agreed to in the agreement signed in May of 1997?

4. Have late payment charges been assessed against Supra and if so, what amount has Supra been assessed and for what period of time?

5. Supra, is familiar with the terms of Section VIII, Item B of the agreement signed by Mr. Ramos on May 19, 1997, correct? For clarification purposes for the commissioners, Section VIII of the BellSouth/Supra agreement signed by Supra and BellSouth on May 19 and May 28, 1997, respectively, is titled "Discontinuance of Service."

6. Do you agree, subject to check, that Section VIII, Item B, No. 1, states, "The Company reserves the right to suspend or terminate service for nonpayment...?"

7. Do you agree, subject to check, that Section VIII, Item B, Number 5 states "If payment is not received or arrangements made for payment by the date given in the written notification,

Reseller's services will be discontinued. Upon discontinuance of service on a reseller's account, service to Reseller's end users will be denied."

A. Given that these are the terms to which you agreed, can you provide a plausible reason why BellSouth should not discontinue its service to you?

8. Approximately how long did the disputed amount of \$306K take to accumulate?

9. Why was this amount not disputed upon immediate recognition that a problem existed?

A. Why did the amount reach \$306K before Supra questioned that there was a problem?

B. And yet, in the agreement negotiated with BellSouth were stipulations of 60 days' notification for billing disputes, is that correct?

10. With respect to the majority of issues Supra alleges, during what specific period of time were these issues first raised?

11. So, the majority of these issues took place during a period of time wherein the negotiated agreement between BellSouth and Supra was in effect, specifically May 1997 through October 5, 1999?

12. Does Supra also then believe that the FPSC should adjudicate this matter according to the provisions in place and agreed to by the parties as set forth by the 1997 agreement?

13. Does Supra believe that remedies to include the disconnection of both Supra and its end users should today be available to BellSouth given that the guiding tenets of the 1997 agreement are still applicable?

A. Why not? That's specifically what Supra's agreement with BellSouth stipulates. Why is Supra now disputing the terms to which it agreed to in 1997?

14. On May 19, 1997, Mr. Ramos, as CEO of Supra, signed an agreement that was presented to the FPSC on June 26, 1997 for approval. This agreement was for the purpose of resale to end users of Supra Telecommunications was it not?

A. And did the agreement as entered into by Supra and subsequently approved by the FPSC, contain language stating that BellSouth would bill specific charges "which are identical to the EUCL rates billed by BST to its end users?"

B. Is Section VII L of the 1997 negotiated resale agreement entered into by Supra compliant with 47 CFR Section 51.617?

C. Did Supra enter into a resale agreement with BellSouth as an ALEC?

D. Is Supra aware that BellSouth is prohibited from providing interstate or international telecom services?

E. That being the case, how can Supra claim that Section 51.617(b) is applicable when it applies solely to IXCs using the ILEC's facilities to provide interstate or international telecom services to the IXC's subscribers?

F. You've just stated that Supra entered the 1997 agreement with BellSouth identifying as an ALEC, correct?

G. As an ALEC reselling an ILEC's services, the ILEC is required to charge End User

Common Line Charges (EULCs), pursuant to 47 C.F.R. Section 51.617(a). Section 51.617(b) is not applicable to ALECs, but is applicable to DXCs.

...Therefore, how can Supra claim that Section 51.617(b) is applicable in this instance when it applies to DXCs using the ILEC's facilities to provide interstate or international telecom services?

15. Pursuant to the agreement entered into in 1997, and subsequently approved by the FPSC, Supra was authorized to provide only the tariffed local exchange and toll services of BellSouth.

A. Did Supra provide interstate and international telecom services using BellSouth's facilities to Supra's subscribers and if so, was such an offering within or outside the scope, terms and conditions of the 1997 agreement?

B. Does Supra continue to provide such interstate access and related services vis a vis an agreement with BellSouth?

16. In the agreement signed by Mr. Ramos on May 19, 1997 and subsequently approved by the FPSC, Supra agreed to OCC charges stipulated in Section VI F, specifically, did it not?

A. And you are now disputing these charges, correct?

B. Have you previously provided satisfactory proof or are you now in possession of such satisfactory proof that would clearly indicate BellSouth is wrong in its claim for more than \$48K in OCC charges?

(Does Supra have proof re: unauthorized local access change and reconnection charges that Supra says it was wrongfully charged. LOAs, etc. ?)

C. Also, does Supra agree that unauthorized changes in local access charges are, by definition, "slamming"?

17. Please refer to page 3 of your rebuttal testimony. Please read lines 10-20.

A. Did Supra attempt to purchase UNEs prior to March 2000?

B. Has BellSouth refused to provide Supra with the capability of ordering UNEs since March 2000?

18. Supra alleged on November 20, 2000 that Supra has been prohibited, since November 1997, from ordering UNEs, is that correct?

A. Is Supra now able to order UNEs?

B. Since what date has Supra's ability to order UNEs been available?

19. Supra believes it is entitled to a refund of more than \$224K, plus interest, is that correct? Why?

1. What specific section of the agreement provides the procedures for billing and payment of charges due?
2. In light of what appears to be Supra's violations of its agreement with your company, why does BellSouth continue to provide service to Supra?
3. Is this continued provision of service without receipt of payment an approach normally taken with companies who do not pay for services rendered?
4. In paragraph 8 of your initial complaint, you seek "Commission concurrence in disconnecting Supra from BellSouth's ordering interfaces and disconnecting Supra's end users."
 - A. Why do you believe Commission concurrence is required, when the agreement signed by the parties and later approved by the Commission clearly provides the circumstances by which such disconnection may take place?
5. Does the 1997 negotiated resale agreement between BellSouth and Supra allow for End User Common Line charges or FCC Access Charges?
 - A. Where are these charges identified in this same agreement?
6. To the best of your knowledge, is there any prohibition which prevents BellSouth from now disconnecting Supra and its end users for non-payment of services rendered more than a year ago?
 - A. If so, what is the nature of the prohibition?
7. What types of charges or credits are included in OCC?
 - A. Do you agree that unauthorized local service changes and reconnections are included in OCC?
 - B. Do unauthorized local service changes and reconnections constitute "slamming"?
 - C. Of the more than \$48K you believe is specific to OCCs, how much is attributable to unauthorized local service changes and reconnections? (ref. complaint)
 - D. What portion of the \$48K is attributable to each of the other categories you just mentioned?
8. Pursuant to Section VI F of the 1997 negotiated resale agreement, BellSouth charges \$19.41 for every unauthorized local service change. Is this correct?
 - A. At the rate of \$19.41 per line, and subject to check, that would equate to over _____ subscriber lines allegedly changed without the customer's authorization, would it not? (do quick math of whatever portion of \$48K is for slamming X \$19.41/line)
 - B. How does BellSouth determine that an unauthorized local service change has occurred?

QUESTIONS FOR SUPRA

1. Supra, you are, in this instant matter, alleging that you have been improperly billed by BellSouth. When did you first notify BellSouth of any dispute of its billing?
2. Was this notification timely provided in accordance with the terms of the agreement between BellSouth and Supra?
 - A. If not, why did Supra not notify BellSouth of its billing dispute within sixty days, as stipulated and agreed to in the agreement signed in May of 1997?
3. Have late payment charges been assessed against Supra and if so, what amount has Supra been assessed and for what period of time?
4. Supra, are you familiar with the terms of Section VIII, Item B of the agreement signed by Mr. Ramos on May 19, 1997? For clarification purposes for the commissioners, Section VIII of the BellSouth/Supra agreement signed by Supra and BellSouth on May 19 and May 28, 1997, respectively, is titled "Discontinuance of Service."
5. Supra, do you agree, subject to check, that Section VIII, Item B, No. 1, states, "The Company reserves the right to suspend or terminate service for nonpayment...?"
6. Do you agree, subject to check, that Section VIII, Item B, Number 5 states "If payment is not received or arrangements made for payment by the date given in the written notification, Reseller's services will be discontinued. Upon discontinuance of service on a reseller's account, service to Reseller's end users will be denied."
 - A. Given that these are the terms to which you agreed, can you provide a plausible reason why BellSouth should not discontinue its service to you?
7. Approximately how long did the disputed amount of \$306K take to accumulate?
8. Why was this amount not disputed upon immediate recognition that a problem existed?
 - A. Why did the amount reach \$306K before Supra questioned that there was a problem?
9. Doesn't your agreement with BellSouth call for disputed charges to be brought within 60 days of billing?
 - A. Why did you wait longer than the 60 days, as pursuant to your agreement with BellSouth, to notify BellSouth of a dispute?
10. With respect to the majority of issues you raise, during what specific period of time were these issues first raised?
11. So, the majority of these issues took place during a period of time wherein the negotiated agreement between BellSouth and Supra was in effect?
12. Do you also then believe that the FPSC should adjudicate this matter according to the provisions in place and agreed to by the parties as set forth by the 1997 agreement?

From: Kim Logue
Sent: Wednesday, May 02, 2001 5:39 PM
To: 'nancy.sims@bellsouth.com'
Subject: questions

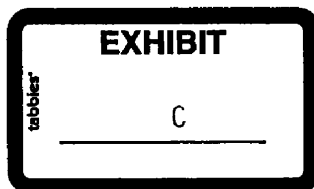
Importance: High



Please provide, either by phone call, fax or e-mail to which witness a given question should be directed.

thanks,

me.



**TENTATIVE QUESTIONS FOR CROSS EXAMINATION
DOCKET NUMBER 001097
COMPLAINT OF BELL SOUTH AGAINST SUPRA**

QUESTIONS FOR BELL SOUTH

1. Has BellSouth received any monies as payment for amounts it believes are due based on the 1997 agreement?
 - A. If not, what amount does BellSouth believe it is due for the agreement term of June 1997-October 1999?
2. Does BellSouth believe it is due interest on this amount?
 - A. If so, what percent interest and/or total sum of interest does BellSouth believe it is entitled?
 - B. If so, what steps has BellSouth taken to collect the alleged amounts due?
 - C. Are these steps pursuant to BellSouth and Supra's 1997 negotiated resale agreement, or the agreement adopted by Supra in 1999 or some other procedure?
3. When a company with which BellSouth enters an agreement fails to adhere to the established procedures for payment of services provided, what steps are taken to collect said monies due?
4. Are these procedures published, and if so, where are they published?
 - A. Is this information provided to companies with which BellSouth enters agreements?
5. What specific section of the agreement provides the procedures for billing and payment of charges due?
6. Does BellSouth assess a late charge for untimely payment?
 - A. If so, how are these charges assessed?
 - B. Has BellSouth assessed late charges against Supra and for what period of time?
7. Has BellSouth made any type of "adjustment" to the amount due by Supra?
 - A. If so, what was the purpose of said adjustment and what time period was covered by the adjustment?
8. In light of what appears to be Supra's violations of its agreement with your company, why does BellSouth continue to provide service to Supra?
9. Is this continued provision of service without receipt of payment an approach normally taken with companies who do not pay for services rendered?
10. In paragraph 8 of your initial complaint, you seek "Commission concurrence in disconnecting Supra from BellSouth's ordering interfaces and disconnecting Supra's end users." Why do you believe Commission concurrence is required, when the agreement signed by the

parties and later approved by the Commission clearly provides the circumstances by which such disconnection may take place?

11. Do you agree that the disputed amount is \$306,559.94? (this is the figure initially provided)
 - A. If not, then what is the amount BellSouth purports to be in dispute?
 - B. Has BellSouth received any payment towards this amount due? If so, what amount of payment has been received?

12. To the best of your knowledge, has Supra made any payment towards the amounts due pursuant to the 1997 agreement since January 2001?

13. Has any settlement been offered?
 - A. If so, how much was the settlement offer?
 - B. Has the settlement offer been accepted?

14. Does the 1997 negotiated resale agreement between BellSouth and Supra allow for End User Common Line charges or FCC Access Charges?
 - B. Where are these charges identified in this same agreement?

15. To the best of your knowledge, is there any prohibition which prevents BellSouth from now disconnecting Supra and its end users for non-payment of services rendered more than a year ago?
 - A. If so, what is the nature of the prohibition?

16. What types of charges or credits are included in OCC?
 - A. Do you agree that unauthorized local service changes and reconnections are included in OCC?
 - B. Do unauthorized local service changes and reconnections constitute "slamming"?
 - C. Of the more than \$48K you believe is specific to OCCs, how much is attributable to unauthorized local service changes and reconnections? (ref. complaint)
 - D. What portion of the \$48K is attributable to each of the other categories you just mentioned?

17. Pursuant to Section VI F of the 1997 negotiated resale agreement, BellSouth charges \$19.41 for every unauthorized local service change. Is this correct?
 - A. At the rate of \$19.41 per line, and subject to check, that would equate to over _____ subscriber lines allegedly changed without the customer's authorization, would it not? (do quick math of whatever portion of \$48K is for slamming X \$19.41/line)
 - B. How does BellSouth determine that an unauthorized local service change has occurred?

18. You have stated that over \$33K of the OCC total is for secondary service charges. How did you arrive at the figure of over \$33K for secondary service charges?

QUESTIONS FOR SUPRA

1. Supra, you are, in this instant matter, alleging that you have been improperly billed by BellSouth. When did you first notify BellSouth of any dispute of its billing?
2. Was this notification timely provided in accordance with the terms of the agreement between BellSouth and Supra?
 - A. If not, why did Supra not notify BellSouth of its billing dispute within sixty days, as stipulated and agreed to in the agreement signed in May of 1997?
3. Have late payment charges been assessed against Supra and if so, what amount has Supra been assessed and for what period of time?
4. Supra, are you familiar with the terms of Section VIII, Item B of the agreement signed by Mr. Ramos on May 19, 1997? For clarification purposes for the commissioners, Section VIII of the BellSouth/Supra agreement signed by Supra and BellSouth on May 19 and May 28, 1997, respectively, is titled "Discontinuance of Service."
5. Supra, do you agree, subject to check, that Section VIII, Item B, No. 1, states, "The Company reserves the right to suspend or terminate service for nonpayment...?"
6. Do you agree, subject to check, that Section VIII, Item B, Number 5 states "If payment is not received or arrangements made for payment by the date given in the written notification, Reseller's services will be discontinued. Upon discontinuance of service on a reseller's account, service to Reseller's end users will be denied."
 - A. Given that these are the terms to which you agreed, can you provide a plausible reason why BellSouth should not discontinue its service to you?
7. Approximately how long did the disputed amount of \$306K take to accumulate?
8. Why was this amount not disputed upon immediate recognition that a problem existed?
 - A. Why did the amount reach \$306K before Supra questioned that there was a problem?
9. Doesn't your agreement with BellSouth call for disputed charges to be brought within 60 days of billing?
 - A. Why did you wait longer than the 60 days, as pursuant to your agreement with BellSouth, to notify BellSouth of a dispute?
10. With respect to the majority of issues you raise, during what specific period of time were these issues first raised?
11. So, the majority of these issues took place during a period of time wherein the negotiated agreement between BellSouth and Supra was in effect?
12. Do you also then believe that the FPSC should adjudicate this matter according to the provisions in place and agreed to by the parties as set forth by the 1997 agreement?

13. Do you believe that remedies to include the disconnection of both Supra and its end users should today be available to BellSouth given that the guiding tenets of the 1997 agreement are still applicable?

14. Why not? That's specifically what your agreement with BellSouth stipulates. Why are you now disputing the terms to which you agreed to in 1997?

15. On May 19, 1997, Mr. Ramos, as CEO of Supra, signed an agreement that was presented to the FPSC on June 26, 1997 for approval. This agreement was for the purpose of resale to end users of Supra Telecommunications was it not?

A. And did the agreement as entered into by Supra and subsequently approved by the FPSC, contain language stating that BellSouth would bill specific charges "which are identical to the EUCL rates billed by BST to its end users?"

B. Is Section VII L of the 1997 negotiated resale agreement entered into by Supra compliant with 47 CFR Section 51.617?

C. Did Supra enter into a resale agreement with BellSouth as an ALEC?

D. That being the case, how can Supra claim that Section 51.617(b) is applicable when it applies solely to IXCs using the ILEC's facilities to provide interstate or international telecom services to the IXC's subscribers?

E. Are you aware that BellSouth is prohibited from providing interstate or international telecom services?

F. Therefore, how can you have entered into an agreement, representing yourself as an ALEC, with BellSouth for the resale of services to your customers that is outside the ability and authority of BellSouth to provide to its own customers?

G. You've just stated that Supra entered the 1997 agreement with BellSouth identifying as an ALEC, correct? As an ALEC reselling an ILEC's services, said ILEC is required to charge EUCLs, pursuant to 47 CFR Section 51.617(a). Section 51.617(b) is not applicable to ALECs, but is applicable to IXCs. Therefore, how can Supra claim that Section 51.617(b) is applicable in this instance?

16. Pursuant to the agreement entered into in 1997, and subsequently approved by the FPSC, Supra was authorized to provide only the tariffed local exchange and toll services of BellSouth.

A. Did Supra provide interstate and international telecom services using BellSouth's facilities to Supra's subscribers and if so, was such an offering within or outside the scope, terms and conditions of the 1997 agreement?

B. Does Supra continue to provide such interstate access and related services vis a vis an agreement with BellSouth?

17. In the agreement signed by Mr. Ramos on May 19, 1997 and subsequently approved by the

FPSC, Supra agreed to OCC charges stipulated in Section VI F, specifically, did it not?

- A. And you are now disputing these charges, correct?
- B. Have you previously provided satisfactory proof or are you now in possession of such satisfactory proof that would clearly indicate BellSouth is wrong in its claim for more than \$48K in OCC charges?
- C. (ask for proof re: unauthorized local access change and reconnection charges that Supra says it was wrongfully charged. LOAs, etc. Also, does Supra agree that unauthorized local access changes are, by definition, "slamming." (BS should have some documentation, etc. to show that customers called in stating that their service was switched w/o their authorization...burden goes to Supra to prove LOA, etc exists...otherwise...slamming)

18. You alleged on November 20, 2000 that Supra has been prohibited, since November 1997, from ordering UNEs? Are you now able to order UNEs? Since what date has your ability to order UNEs been available?

19. Supra, why do you believe you are entitled to a refund of more than \$224K, plus interest?

20. Please refer to page 3 of your direct testimony, specifically lines 2-6. It is your position that the effective date for Supra's adoption of the BellSouth/AT&T agreement is June 10, 1997, is that correct?

Answer will be "yes."

A. You regard June 10, 1997 as the effective date for Supra's adoption of the BellSouth/AT&T agreement because that is the effective date listed in the BellSouth/AT&T agreement, is that correct?

Answer will be "yes."

B. What date did Supra actually request to adopt the BellSouth/AT&T agreement?

Answer: Who knows that she will say, but she should say on or around October 5, 1999. If she says June 10, 1997, ask if she has provided any evidence in the record that would support that date.) (this goes to issue 1)

21. Please refer to page 3 of your rebuttal testimony. Please read lines 10-20.

A. Did Supra attempt to purchase UNEs prior to March 2000?

B. Has BellSouth refused to provide Supra with the capability of ordering UNEs since March 2000?

From: Kim Logue
Sent: Wednesday, May 02, 2001 8:00 PM
To: Lee Fordham
Subject: Docket 001097 Cross

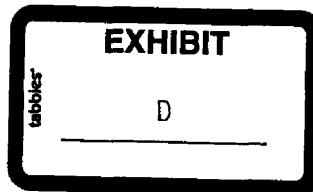
Importance: High



Lee:

Here's the suggested cross. Please advise if you have questions and/or concerns.

Kim



**TENTATIVE QUESTIONS FOR CROSS EXAMINATION
DOCKET NUMBER 001097
COMPLAINT OF BELL SOUTH AGAINST SUPRA**

QUESTIONS FOR BELL SOUTH WITNESS MORTON

1. Has BellSouth received any monies as payment for amounts it believes are due based on the 1997 agreement?
 - A. If not, what amount does BellSouth believe it is due for the agreement term of June 1997-October 1999?
 - B. If so, what amount has been received pursuant to what is owed for the 1997 negotiated resale agreement?
 - C. Is it your interpretation of Supra's allegations that Supra believes it is due a refund for certain amounts remitted to BellSouth?

2. Does BellSouth believe it is due interest on this amount?
 - A. If so, what percent interest and/or total sum of interest does BellSouth believe it is entitled?
 - B. If so, what steps has BellSouth taken to collect the alleged amounts due?
 - C. Are these steps pursuant to BellSouth and Supra's 1997 negotiated resale agreement, or the agreement adopted by Supra in 1999 or some other procedure?

3. When a company with which BellSouth enters an agreement fails to adhere to the established procedures for payment of services provided, what steps are taken to collect said monies due?
 - A. Are these procedures published, and if so, where are they published?
 - B. Is this information provided to companies with which BellSouth enters agreements?

4. Does BellSouth assess a late charge for untimely payment?
 - A. If so, how are these charges assessed?
 - B. Has BellSouth assessed late charges against Supra and for what period of time?

5. Has BellSouth made any type of "adjustment" to the amount due by Supra?
 - A. If so, what was the purpose of said adjustment and what time period was covered by the adjustment?

6. Do you agree that the disputed amount is \$306,559.94? (this is the figure initially provided)
 - A. If not, then what is the amount BellSouth purports to be in dispute?
 - B. Has BellSouth received any payment towards this amount due? If so, what amount of payment has been received?

7. To the best of your knowledge, has Supra made any payment towards the amounts due pursuant to the 1997 agreement since January 2001?

8. You have stated that over \$33K of the OCC total is for secondary service charges. How did you arrive at the figure of over \$33K for secondary service charges?

QUESTIONS FOR BELL SOUTH WITNESS FINLEN

1. What specific section of the agreement provides the procedures for billing and payment of charges due?
2. In light of what appears to be Supra's violations of its agreement with your company, why does BellSouth continue to provide service to Supra?
3. Is this continued provision of service without receipt of payment an approach normally taken with companies who do not pay for services rendered?
4. In paragraph 8 of your initial complaint, you seek "Commission concurrence in disconnecting Supra from BellSouth's ordering interfaces and disconnecting Supra's end users."
 - A. Why do you believe Commission concurrence is required, when the agreement signed by the parties and later approved by the Commission clearly provides the circumstances by which such disconnection may take place?
5. Does the 1997 negotiated resale agreement between BellSouth and Supra allow for End User Common Line charges or FCC Access Charges?
 - A. Where are these charges identified in this same agreement?
6. To the best of your knowledge, is there any prohibition which prevents BellSouth from now disconnecting Supra and its end users for non-payment of services rendered more than a year ago?
 - A. If so, what is the nature of the prohibition?
7. What types of charges or credits are included in OCC?
 - A. Do you agree that unauthorized local service changes and reconnections are included in OCC?
 - B. Do unauthorized local service changes and reconnections constitute "slamming"?
 - C. Of the more than \$48K you believe is specific to OCCs, how much is attributable to unauthorized local service changes and reconnections? (ref. complaint)
 - D. What portion of the \$48K is attributable to each of the other categories you just mentioned?
8. Pursuant to Section VI F of the 1997 negotiated resale agreement, BellSouth charges \$19.41 for every unauthorized local service change. Is this correct?
 - A. At the rate of \$19.41 per line, and subject to check, that would equate to over _____ subscriber lines allegedly changed without the customer's authorization, would it not? (do quick math of whatever portion of \$48K is for slamming X \$19.41/line)
 - B. How does BellSouth determine that an unauthorized local service change has occurred?

QUESTIONS FOR SUPRA WITNESS BENTLEY

1. Please refer to page 3 of your direct testimony, specifically lines 2-6. It is your position that the effective date for Supra's adoption of the BellSouth/AT&T agreement is June 10, 1997, is that correct?

Answer will be "yes."

A. You regard June 10, 1997 as the effective date for Supra's adoption of the BellSouth/AT&T agreement because that is the effective date listed in the BellSouth/AT&T agreement, is that correct?

Answer will be "yes."

B. What date did Supra actually request to adopt the BellSouth/AT&T agreement?

*Answer: Who knows that she will say, but she should say on or around October 5, 1999. (If she says June 10, 1997, ask if she has provided any evidence in the record that would support that date.)

2. Supra, in this instant matter, is alleging that it has been improperly billed by BellSouth. When did you first notify BellSouth of any dispute of its billing?

3. Was this notification timely provided in accordance with the terms of the agreement between BellSouth and Supra?

answer should be "no", but be prepared for her to respond "yes." Either way ask as a follow-up:

A. Doesn't Supra's agreement with BellSouth call for disputed charges to be brought within 60 days of billing?

B. Did Supra wait longer than the 60 days as stipulated in your agreement?

If yes, then:

C. Why did Supra not notify BellSouth of its billing dispute within sixty days, as stipulated and agreed to in the agreement signed in May of 1997?

4. Have late payment charges been assessed against Supra and if so, what amount has Supra been assessed and for what period of time?

5. Supra, is familiar with the terms of Section VIII, Item B of the agreement signed by Mr. Ramos on May 19, 1997, correct? For clarification purposes for the commissioners, Section VIII of the BellSouth/Supra agreement signed by Supra and BellSouth on May 19 and May 28, 1997, respectively, is titled "Discontinuance of Service."

6. Do you agree, subject to check, that Section VIII, Item B, No. 1, states, "The Company reserves the right to suspend or terminate service for nonpayment...?"

7. Do you agree, subject to check, that Section VIII, Item B, Number 5 states "If payment is not received or arrangements made for payment by the date given in the written notification,

Reseller's services will be discontinued. Upon discontinuance of service on a reseller's account, service to Reseller's end users will be denied."

A. Given that these are the terms to which you agreed, can you provide a plausible reason why BellSouth should not discontinue its service to you?

8. Approximately how long did the disputed amount of \$306K take to accumulate?

9. Why was this amount not disputed upon immediate recognition that a problem existed?

A. Why did the amount reach \$306K before Supra questioned that there was a problem?

B. And yet, in the agreement negotiated with BellSouth were stipulations of 60 days' notification for billing disputes, is that correct?

10. With respect to the majority of issues Supra alleges, during what specific period of time were these issues first raised?

11. So, the majority of these issues took place during a period of time wherein the negotiated agreement between BellSouth and Supra was in effect, specifically May 1997 through October 5, 1999?

12. Does Supra also then believe that the FPSC should adjudicate this matter according to the provisions in place and agreed to by the parties as set forth by the 1997 agreement?

13. Does Supra believe that remedies to include the disconnection of both Supra and its end users should today be available to BellSouth given that the guiding tenets of the 1997 agreement are still applicable?

A. Why not? That's specifically what Supra's agreement with BellSouth stipulates. Why is Supra now disputing the terms to which it agreed to in 1997?

14. On May 19, 1997, Mr. Ramos, as CEO of Supra, signed an agreement that was presented to the FPSC on June 26, 1997 for approval. This agreement was for the purpose of resale to end users of Supra Telecommunications was it not?

A. And did the agreement as entered into by Supra and subsequently approved by the FPSC, contain language stating that BellSouth would bill specific charges "which are identical to the EUCL rates billed by BST to its end users?"

B. Is Section VII L of the 1997 negotiated resale agreement entered into by Supra compliant with 47 CFR Section 51.617?

C. Did Supra enter into a resale agreement with BellSouth as an ALEC?

D. Is Supra aware that BellSouth is prohibited from providing interstate or international telecom services?

E. That being the case, how can Supra claim that Section 51.617(b) is applicable when it applies solely to IXCs using the ILEC's facilities to provide interstate or international telecom services to the IXC's subscribers?

F. You've just stated that Supra entered the 1997 agreement with BellSouth identifying as an ALEC, correct?

G. As an ALEC reselling an ILEC's services, the ILEC is required to charge End User

Common Line Charges (EUCLs), pursuant to 47 CFR Section 51.617(a). Section 51.617(b) is not applicable to ALECs, but is applicable to IXCs.

...Therefore, how can Supra claim that Section 51.617(b) is applicable in this instance when it applies to IXCs using the ILEC's facilities to provide interstate or international telecom services?

15. Pursuant to the agreement entered into in 1997, and subsequently approved by the FPSC, Supra was authorized to provide only the tariffed local exchange and toll services of BellSouth.

A. Did Supra provide interstate and international telecom services using BellSouth's facilities to Supra's subscribers and if so, was such an offering within or outside the scope, terms and conditions of the 1997 agreement?

B. Does Supra continue to provide such interstate access and related services vis a vis an agreement with BellSouth?

16. In the agreement signed by Mr. Ramos on May 19, 1997 and subsequently approved by the FPSC, Supra agreed to OCC charges stipulated in Section VI F, specifically, did it not?

A. And you are now disputing these charges, correct?

B. Have you previously provided satisfactory proof or are you now in possession of such satisfactory proof that would clearly indicate BellSouth is wrong in its claim for more than \$48K in OCC charges?

(Does Supra have proof re: unauthorized local access charge and reconnection charges that Supra says it was wrongfully charged. LOAs, etc. ?)

C. Also, does Supra agree that unauthorized changes in local access charges are, by definition, "slamming"?

17. Please refer to page 3 of your rebuttal testimony. Please read lines 10-20.

A. Did Supra attempt to purchase UNEs prior to March 2000?

B. Has BellSouth refused to provide Supra with the capability of ordering UNEs since March 2000?

18. Supra alleged on November 20, 2000 that Supra has been prohibited, since November 1997, from ordering UNEs, is that correct?

A. Is Supra now able to order UNEs?

B. Since what date has Supra's ability to order UNEs been available?

19. Supra believes it is entitled to a refund of more than \$224K, plus interest, is that correct? Why?

Florida Public Service Commission

The information in this and related pages was automatically generated from the Case Management System (CMS) of the FPSC and may be incomplete. For COMPLETE and OFFICIAL information from CMS, you MUST contact the Bureau of Records and Hearing Services at (850) 413-6770.

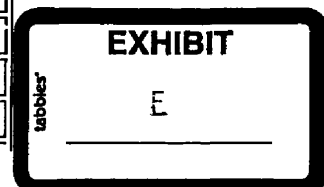
Docket 001305

Petition by BellSouth Telecommunications, Inc. for arbitration of certain issues in interconnection agreement with Supra Telecommunications and Information Systems, Inc.

- [Document Filings Index](#)
- [Events List](#)
- [Parties of Record and Interested Persons](#)
- [Staff Assigned](#)
- [Commissioners Assigned](#)

WARNING: THIS TIME SCHEDULE IS TENTATIVE AND SUBJECT TO REVISION.
Time Schedule (CASR) for Docket 001305:

Description	Previous Due	Due Date	Completed
Supra Petition Response Due	None	09/21/2000	10/18/2000
Notice of Issue ID	None	12/20/2000	12/22/2000
Direct Testimony & Exhibits (All)	07/02/2001	02/26/2001	02/26/2001
Staff Recommendation	None	03/23/2001	03/23/2001
Agenda (Deferred to 4/17/01)	None	04/03/2001	04/03/2001
FAW Notice Filed for Prehearing	None	04/03/2001	04/04/2001
Agenda (Deferred from 4/3/01)	None	04/17/2001	04/17/2001
FAW Notice Filed for Hearing	None	04/18/2001	04/18/2001
FWW Notice Filed for Rescheduled	None	04/18/2001	04/18/2001
Standard Order	04/23/2001	05/07/2001	05/23/2001
Order Establishing Procedure	06/22/2001	06/27/2001	06/28/2001
Supplemental Order Establishing Procedure	None	07/13/2001	07/13/2001
Direct Testimony & Exhibits	07/18/2001	07/27/2001	07/27/2001
Testimony - Rebuttal & Exhibits (All)	08/08/2001	08/15/2001	
Prehearing Statements	04/19/2001	08/22/2001	
Notice of Prehearing and Hearing	None	08/27/2001	
Prehearing	09/05/2001	09/10/2001	
Prehearing Order	05/11/2001	09/17/2001	
Transcript of Prehearing Due	09/10/2001	09/17/2001	
Hearing (09/26-28/01)	05/16/2001	09/26/2001	
Transcript of Hearing Due	05/24/2001	10/05/2001	



Briefs Due	06/14/2001	10/26/2001	
Staff Recommendation	01/17/2002	01/10/2002	
Agenda	08/07/2001	01/22/2002	
Standard Order	08/27/2001	02/11/2002	
Close Docket or Revise CASR	12/27/2001	03/11/2002	

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- *
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*** Indicates an entry which is an "official party of record".

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- *Wayne Knight*
- *Laura King*
- *Kim Logue*
- *Tobey Schultz*

- Michael Barrett
- Latesa Turner

Commissioners Assigned to Docket: 001305

Pre-hearing Officer:

- Michael (Mike) Palecki

Hearing Officer(s):

- E. Leon Jacobs
- Braulio Baez
- Michael (Mike) Palecki



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