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April 10, 2001

Mrs. Blanca Bayo, Director
Division of Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: Docket No. 001305-TP – Supra's Motion For Reconsideration of Commission Order Denying its Motion For Re-Hearing in Order No. PSC-02-0413-FOF-TP

Dear Mrs. Bayo:

Enclosed is the original and seven (7) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Notice of Service of its Motion For Reconsideration (with exhibits) of Commission Order No. PSC-02-0413-FOF-TP in the above captioned docket denying its Motion For Re-Hearing.

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 4/9/01

Brian Chaiken
General Counsel

CERTIFICATE OF SERVICE
Docket No. 001305-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Facsimile, Hand Delivery and/or Federal Express this 10th day of April, 2002 to the following:

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By: _____
BRIAN CHAIKEN, ESQ.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth Telecommunications, Inc. for arbitration of certain issues in interconnection agreement with Supra Telecommunications and Information Systems, Inc.	)))))	Docket No. 001305-TP Filed on April 10, 2002

SUPRA'S MOTION FOR RECONSIDERATION OF THE DENIAL OF ITS MOTION FOR RE-HEARING

Pursuant to Rule 25-22.060, Florida Administrative Code, Supra Telecommunications & Information Systems, Inc. ("Supra") submits this Motion for Reconsideration Order of No. PSC-02-0413-FOF-TP, issued on March 26, 2002, by the Florida Public Service Commission ("Commission") in the above referenced docket.

Reconsideration is required because (1) the Commission failed to apply legal precedent consistent with which it had previously applied, and (2) the Commission also failed to consider specific facts available to the Commission. This Motion is a Partial Motion for Reconsideration because Supra has extracted that portion of the Commission's Order involving Supra's Motion for Rehearing and Supra is filing that portion herein this filing – for ease and convenience. This entire Motion and its accompanying exhibits have been incorporated by reference, as if fully set forth therein, into the Motion for Reconsideration, filed contemporaneously herewith, dealing with the underlying arbitrated issues in this Docket, so there can no be mistake that this partial motion is part and parcel of Supra's single filing for a Motion for Reconsideration of the Commission's Final Order. In support of its Motion, Supra states as follows:

STANDARD OF REVIEW

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering an Order. See *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); *Pingree v. Quaintance*, 394 So. 2d 161 (Fla. 1st DCA 1981); and In re: Complaint of Supra Telecom, 98 FPSC 10, 497, at 510 (October 28, 1998) (Docket No. 980119-TP, Order No. PSC-98-1467-FOF-TP). This standard necessarily includes any mistakes of either fact or law made by the Commission in its order. In re: Investigation of possible overearnings by Sanlando Utilities Corporation in Seminole County, 98 FPSC 9, 214, at 216 (September 1998) (Docket No. 980670-WS, Order No. PSC-98-1238-FOF-WS) ("It is well established in the law that the purpose of reconsideration is to bring to our attention some point that we overlooked or failed to consider or a mistake of fact or law"); see e.g. In re: Fuel and purchase power cost recovery clause and generating performance incentive factor, 98 FPSC 8, 146 at 147 (August 1998) (Docket No. 980001-EI, Order No. PSC-98-1080-FOF-EI) ("FPSC has met the standard for reconsideration by demonstrating that we may have made a mistake of fact or law when we rejected its request for jurisdiction separation of transmission revenues").

Furthermore, although Supra is not, as of yet, seeking relief from this Order, Rule 1.540(b) of the Florida Rules of Civil Procedure provides, in pertinent part:

> On motion and upon such terms as are just, the court may relieve a party . . . from a final . . . order . . . for the following reasons: . . . (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.

In this instance it is clear that the Commission relied exclusively upon the Staff Recommendation in drafting the Final Order On Arbitration. It is also quite apparent that the Commission Staff never considered the information contained within this Motion which was available to the Commission at the time it made its decision. A reconsideration of the Final Order On Arbitration is not only warranted, but mandated by due process.

NEW HEARING

Issue: Should Supra be granted a new hearing in this docket?

Supra position: Yes.

Florida Public Service Commission (Commission) Decision: No.

The Commission's Decision held that absent an allegation of any specific improper act by the Commission Staff or BellSouth that Supra should not be afforded a new hearing.

Facts and Argument in support of Supra's position:

I. Commission failed to properly apply its own precedent and standard -- of the "appearance of impropriety."

II. Notwithstanding the Commission's misapplication of the standard of an "appearance of impropriety," there were many acts of impropriety occurring in Docket No. 001305-TP.

III. Relief from Judgment, Decrees or Orders

IV. New hearing must be assigned to DOAH

I. Misapplication of the standard known as the "appearance of impropriety"

Supra requested a new hearing in this docket as a result of the appearance of impropriety caused by acts committed by members of the Florida Public Service Commission (Commission) Staff who were assigned to and who participated in this Docket, evidencing favoritism/bias towards BellSouth. The Commission's Decision to

deny Supra's request, located between pages 17-21, conspicuously omits the legal standard set out in Commission Order PSC-02-0143-PCO-TP, issued on January 31, 2002.

The standard set out by Chairman Jaber in Order No. PSC-02-0143-PCO-TP, in Docket No. 001097-TP, for evaluating whether a new hearing should be granted, was as follows:

> "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).

The above quoted Commission Order is void of any requirement that a party must demonstrate an "improper act" as a condition precedent, to a Commission finding that an "appearance of impropriety" exists. The phrase "appearance of impropriety" embodies the standard. The plain meaning of the term "appearance" presupposes that no actual impropriety has taken place. This point was emphasized by Chairman Lila Jaber, at the March 5, 2002, Agenda Conference, when she stated:

> "You [Supra] would acknowledge that I did **not** make a finding that there was inappropriate behavior, and I did **not** make a finding that Ms. Logue was biased." (Double emphasis added). Hearing Transcript, pg 36, lines 8-11.

Chairman Jaber could not have been clearer. The Chairman's Order was not based on any finding that an improper act occurred in Docket No. 001097-TP. Furthermore, the Order is clear that no finding of bias was made. Consistent with Chairman Jaber's standard is the plain and ordinary meaning of the term "appearance." The American Heritage Dictionary, Third Edition, defines this term to mean "to seem likely" or a "pretense." A "pretense" is defined as "an outward show," "one without

foundation." The plain meaning of the term "appearance," used to characterize the Chairman's standard for a new hearing, presupposes that the "impropriety" requiring the new hearing be an impropriety "without foundation." In other words, the standard does not require a condition precedent of an allegation of some specific "act of impropriety" before the Commission is entitled to order a new hearing.

Decision mischaracterizes Supra's Motion

The Commission's Decision mischaracterizes Supra's Motion for Rehearing as a Motion for Rehearing based on staff's post hearing recommendation. *See Page 18, of the Decision.*

The problem with this characterization is that Supra, in its Motion, did **not** request for a rehearing based upon Staff's post-hearing recommendation. On the contrary, Supra moved for a new hearing based upon Commission precedent in Commission Order No. PSC-02-0143-PCO-TP, as a result of the existence of an actual impropriety, which began with the improper communications that occurred between Ms. Kim Logue (PSC Staff supervisor) and Ms. Nancy Sims (BellSouth's Director of Regulatory Affairs), and the appearance of impropriety that existed because of BellSouth's decision to keep Ms. Logue's contacts a secret from Supra until after the close of the evidentiary hearing in Docket No. 001305-TP.

The Commission Decision also includes a mischaracterization of Supra's Motion for Rehearing, which reads as follows (on page 18, 1st paragraph): "Supra asks us to find that Supra was prejudiced in this docket based . . . on speculation that individuals . . . could have conspired against Supra in this docket." (Underline added for emphasis). In its Motion, Supra never alleged a conspiracy. Supra only alleged the existence of an

"appearance of impropriety" caused by BellSouth's decision to keep the Logue conduct a secret. Supra was not required under the Chairman's standard to demonstrate that a conspiracy in fact existed between BellSouth and Senior Commission Staff. Notwithstanding Supra's burden of proof, or lack thereof, regarding the existence of a conspiracy, it would be fair to say that the evidence set forth herein, obtained via Supra's Public Document Requests, does, in fact, demonstrate the existence of a "conspiracy" between BellSouth and Senior Commission Staff.

Commission Decision attempts to modify standard

The Commission Decision in several instances modifies the standard for rehearing set forth in Commission Order PSC-02-0143-PCO-TP, none of which are consistent. The first variation of the standard utilized in Docket No. 001097-TP is as follows:

A. "Absent evidence or even an allegation of any specific improper act by our staff or BellSouth in this docket, Supra asks us to find that Supra was prejudiced in this docket." (Pg. 17-18 of Decision).

Contrary to the explicit standard set out in Commission Order PSC-02-0143-PCO-TP, issued on January 31, 2002, the Decision injects a new element requiring "evidence or an allegation of any specific improper act." The Decision then goes on to require a second new element requiring a finding of "prejudice." Chairman Jaber made absolutely clear at the March 5, 2002, Agenda Conference, that no such finding of "prejudice" is necessary for a new hearing to be ordered. Supra will reiterate again Chairman Jaber's comments:

> "You [Supra] would acknowledge that I did **not** make a finding that there was inappropriate behavior, and I did **not** make a finding that Ms. Logue was biased." (Double emphasis added). Hearing Transcript, pg 36, lines 8-11.

In accordance with the Chairman's comments it is evident that no finding of "prejudice" is necessary in order to require a new hearing. Chairman Jaber in fact found no such prejudice in Docket No. 001097-TP. Still Chairman Jaber ordered a new hearing in Docket No. 001097-TP. As such, this new, inconsistent element should be disregarded. The requirement of the new element negates the whole purpose of the precedent term "appearance." Prejudice cannot flow from an "appearance of impropriety," for the simple reason that under this standard no "impropriety" has actually occurred.

The next variation of the standard utilized in Docket No. 001097-TP, articulated by the Decision is as follows:

> B. "mere speculation of prejudice, absent any evidence or allegation of a specific improper act in this docket, is not a proper basis for us to require rehearing." (Pg. 19, 3rd full paragraph).

This is simply a restatement of the previous test. Again, the Decision seeks to restate its new test with all of the new elements that were not included in the Commission Order PSC-02-0143-PCO-TP granting a new hearing in Docket No. 001097-TP. As stated above, demonstrating "prejudice" is not necessary according to Chairman Jaber. Likewise, demonstrating a "specific improper act" is contrary to the explicit standard of demonstrating an "appearance of impropriety."

Accordingly, it is improper and inappropriate to add a new element to the standard for a new hearing that is not based upon any precedent and is not substantiated by any authority. The only possible reason Supra can contemplate for the insertion of the new element requiring an underlying improper act is because it is so obvious that an "appearance" of impropriety certainly **does** exist in Docket No. 001305-TP.

Apparently, as BellSouth vehemently opposed Supra's request for a new hearing[1], a new element was inserted so as to ensure that Supra could not meet the standard and the Commission could deny Supra the requested relief.

The Decision includes a third variation of the standard utilized in Docket No. 001097-TP. This time the standard has an emphasis on finding of prejudice. The Decision includes the following statement:

> C. "Supra has offered no proof or even allegations of any specific act that caused it [Supra] to be prejudiced in this docket" (Underline added for emphasis). (Pg. 19, 3rd full paragraph).

Commission Order No. PSC-02-0143-PCO-TP does not include any element requiring the showing of actual prejudice before a new hearing can be ordered. In fact, Chairman Jaber expressly stated that she found no prejudice. Notwithstanding this fact, the Decision of the Commission attempts to insert this new element at the last minute.

Supra requests that this Commission review the standard applied in Commission Order No. PSC-02-0143-PCO-TP, and apply such standard to the facts of this case - specifically, Supra requests that this Commission carefully review, as set out in detail below, the conduct of Ms. Logue, the dates and times in which communications were made between Staff and BellSouth, and the **silence** of BellSouth on these issues. The Commission's only conclusion can be that an "appearance of impropriety" did exist in Docket No. 001305-TP. Therefore, in accordance with the standard set out in Commission Order No. PSC-02-0143-PCO-TP, "in order to remove any possible appearance of prejudice" the Commission must order a new hearing in Docket No. 001305-TP.

[1] Of course, being the beneficiary of FPSC staff, why would BellSouth agree to have a new, unbiased hearing? If BellSouth truly believed its arguments would prevail on their merits, in front of a truly neutral

Supra has specifically identified an "appearance of impropriety"

a. Communications between FPSC Staff Supervisor and BellSouth Director of Regulatory Affairs on the eve of a hearing involving the parties.

In Supra's Motion for new hearing, Supra did identify a specific "appearance of impropriety" that began with Kim Logue (an FPSC Staff Supervisor) providing Nancy Sims (BellSouth's Director of Regulatory Affairs) with cross-examination questions, to be asked of both BellSouth and Supra witnesses, on the eve of the evidentiary hearing in Docket No. 001097-TP. On May 2, 2001, Kim Logue (Logue) sent two (2) e-mails to Nancy Sims (Sims) discussing the merits of the case. Sims also responded by e-mail. *See Composite Exhibit A,* containing three (3) e-mails. These communications were violations of the ex parte prohibitions found in Rule 25-22.033, Florida Administrative Code. (Rule prohibits the communications concerning the merits of a proceeding between Commission Staff employees and parties to a proceeding.)

Logue sent Sims a first draft of the cross-examination questions as early as 10:40 am, on the morning of May 2, 2001. *See Composite Exhibit B, first e-mail contained in the exhibit.* This e-mail was **received** by Nancy Sims at **1:40 p.m**. *See Composite Exhibit B, first e-mail.* Logue spent a good part of the remainder of the day working on the cross-examination questions. *See Composite Exhibit B*, particularly e-mails between Logue and Lee Fordham, Commission Staff legal counsel, assigned to Docket No. 001097-TP. Lee Fordham and Logue met to discuss the cross-examination questions prior to his leaving the office on May 2, 2001, some time prior to 5:00 pm. *See Composite Exhbit B, e-mail from Fordham sent at 2:47 pm.* At approximately 5:39 pm, Logue sent the final product of this meeting, with Fordham, to BellSouth. *See Exhibit C.* The cross-examination questions sent

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hearing officer, absent some other motive, it would not have so vehemently objected.

at 5:39 pm, however, did not arrive at Sims' computer terminal until 9:47 pm. The sending of these cross-examination questions to BellSouth was itself a second violation of the ex parte Rule of the Commission as well as a violation of Section 112.313(8), Florida Statutes.

Notwithstanding the facts set forth above, Supra has found evidence that Staff members have on previous occasions contacted BellSouth in violation of the ex parte prohibition. For example, on March 6, 2001, Supra filed a Motion to Reschedule a Hearing Date in Docket No. 001097-TP. By March 14, 2001, Fordham had already discussed Supra's March 6, 2001, Motion with Commissioner Jaber. *See Composite Exhibit D.* Commission Order No. PSC-01-0699-PSC-TP addressing Supra's Motion was not issued until March 20, 2001. *See Exhibit E.* Four days prior to the issuance of this Order, on March 16, 2001, Lee Fordham, Staff legal counsel, sent Logue an e-mail in which he disclosed the following:

> "Good morning Kim. Commissioner Jaber came up with what I thought was an excellent plan on this Motion. Obviously, Supra's real motive was to get the Prehearing so late that the Hearing would need to be continued. However, we called their hand and granted the Motion to Reschedule, but made it EARLIER. The Prehearing is now scheduled on April 6 instead of April 16. **BellSouth is delighted with this resolution**." (Bold and underline added for emphasis). *See Composite Exhibit D.*

It is evident from the e-mail that someone from the Commission disclosed the expected outcome of the Prehearing Officer's decision to BellSouth the week prior to the issuance of the Order. Whomever was the individual to actually disclose the information prior to its public release is not relevant for the instant Motion for Reconsideration. What is relevant is that the outcome was designed to please BellSouth. Fordham was certainly excited that "BellSouth was delighted" with the unannounced decision. This information was being relayed to Logue. It is fair to conclude that a bias did exist in favor of BellSouth.

We know from Sims' Affidavit, filed in response to Supra's Motion for a re-hearing, that Sims telephoned Logue after she was unable to open the e-mail containing the cross-examination questions. *See Exhibit F*, paragraph 4 of the Affidavit. What is conspicuously omitted from this Affidavit is what time Sims "telephoned" Logue. Was it shortly after 1:40 pm (*SeeComposite Exhibit B, first e-mail)* when Sims received the first draft of the cross-examination questions, or was it shortly after 9:47 pm when Sims received the second draft of cross-examination questions? *See Exhibit G.* It was at 8:00 pm, that Logue sent Fordham a copy of the cross-examination questions that had already been reviewed by BellSouth. *See Exhibit H.* As such, the only way Sims could have known to call Logue regarding the questions is if she had "advance notice" that she would be receiving the questions, or that Sims was referring to the e-mail, containing the cross-examination questions, she received at **1:40 pm**, in the early afternoon of May 2, 2001. All of the above information was conspicuously omitted from the Internal Investigation and Report issued by Richard Bellak on January 3, 2002.

b. The Affidavit of Nancy Sims, BellSouth Director of Regulatory Affairs

Supra filed its Motion for new hearing on February 18, 2002. On February 20, 2002, BellSouth filed its Opposition to Supra's Motion and attached an affidavit of Nancy Sims, BellSouth's Director of Regulatory Affairs. It is this Affidavit that conspicuously omits "how" Nancy Sims could have known to call Logue.

It has been suggested that the sending of ex parte material to BellSouth was simply a "procedural irregularity." But Sims' Affidavit, coupled with Logue's professional background, contradicts this innocent explanation. First and foremost are Ms. Sims' qualifications. The Affidavit demonstrates that in 1994, Sims was hired as

Director of Regulatory Affairs. Ms. Sims must have had some high degree of knowledge of the Commission regulatory process *before* she was given this position. BellSouth is the largest Incumbent Local Exchange Carrier in the State of Florida and the position of Director of Regulatory Affairs is not likely to be given to a person with minimal or no experience. This observation regarding Ms. Sims' qualifications back in 1994 is important, because Ms. Sims has now had nearly eight (8) *additional* years of experience with dealing with the Commission Staff and Commission procedure.

At the outset of Ms. Sims' affidavit, she admits to receiving an e-mail from Logue on May 2, 2001. *See Exhibit F,* par. 3. We now know that the e-mail containing a first draft of the cross-examination questions was sent as early as 10:40 am, on the morning of May 2, 2002, and was received by Sims at 1:40 pm. The second attempt to send cross-examination questions was made after normal working hours, at approximately 5:39 pm, but was not received by Sims until 9:47 pm.

Interestingly, prior to the issuance of the Sims' Affidavit, the Commission Staff maintained that there was only a single e-mail communication between Ms. Logue and BellSouth and that the single e-mail consisted of the one sent at 5:39 pm.

Ms. Sims states in her Affidavit that she could not open the e-mail from Ms. Logue. *See Exhibit F, par 3.* As a result of her inability to open the e-mail, Ms. Sims states that she "telephoned" Ms. Logue. *See Exhibit F, par 4.* This telephone call had to have taken place some time in the early afternoon of May 2, 2001 – after 1:40 pm, and before 5:00 pm.

Ms. Sims' states that she telephoned Ms. Logue to "advise" her that she "could not open the e-mail." *See Exhibit F par 4.* During this "telephone" conversation, Ms.

Sims [an experienced Director of Regulatory Affairs] listened to Logue explain that Logue "had drafted suggested cross-examination questions for BellSouth's witnesses in Docket No. 001097, . . ." *See Exhibit F, par 4.*

After Logue informed Sims of the cross-examination questions, Logue stated that "she would fax those questions to [Sims] and that she wanted [Sims] to advise her which BellSouth witness could respond to which question." *See Exhibit F par 4.* This conversation simply confirms what Supra already was told by Commission Staff on October 5, 2001. What was new, for Supra, was the existence of the telephone call – previously omitted in Commission Staff's version of events.

Ms. Sims should have told Logue not to send these questions by facsimile, because of the inherent conflict of interest that would arise as a result of Logue's actions. Sims alleges she could not open her e-mail. But Ms. Sims can no longer claim naiveté once having been informed of what the e-mail contained. Notwithstanding Sims' direct knowledge of what information Logue intended on sending her, Sims told Logue to send her the questions. *See Exhibit F par 5.*

Chairman Jaber addressed the issue of BellSouth receiving the cross-examination questions at the March 5, 2002, Agenda Conference:

> "It was inappropriate for you [BellSouth] to receive the cross-examination questions, not just Supra's questions, but you should have returned BellSouth's questions too." *See Hearing Transcript,* Pg 36, lines 12-15.

Sims' affidavit seems to imply a naiveté as to the improper nature of Logue sending cross-examination questions to BellSouth with respect to BellSouth's witnesses. The conclusion for this implication arises from Sims' statement that upon discovering

that the questions included questions for Supra, then and only then did **Sims** decide that she **needed to confer with legal counsel**. *See Exhibit F, par 5.*

Supra is interested in knowing the name of the lawyer that advised Sims that it was appropriate to review the cross-examination questions. Supra is also interested in the name of the lawyer that advised Sims that there was no need to notify Supra or the Commission that Logue had sent these questions at 1:40 pm, on May 2, 2001 on the eve of the evidentiary hearing in Docket No. 001097-TP.

Sims confirmed that she telephoned Logue a second time. *See Exhibit F, par 5.* Again, this information was new to Supra and omitted from the version of events maintained by Commission Staff.

During the conversation with BellSouth's legal counsel, it is evident that the nameless BellSouth legal counsel advised Sims that it would be **appropriate** to review BellSouth questions, but not Supra questions. The reason that such a conclusion is reasonable is because during this second telephone conversation between Sims and Logue, Sims informs Logue that "I do not believe it [is] appropriate for me to see questions designed for Supra." *See Exhibit F par 5.* But, "I agreed to let Logue know which of the BellSouth witnesses could answer the questions for BellSouth." *See Exhibit F, par 5.*

According to Sims' affidavit, BellSouth's attorney never seems to have concluded that any of this misconduct created an actual conflict of interest, was improper, was a violation of the Commission ex parte rules, or was a violation Section 112.313(8), Florida Statutes.

Notwithstanding all of BellSouth's failures in this episode, the greatest failure is the agreement between Sims and her legal counsel not to immediately inform Harold McLean, Commission General Counsel of Logue's contacts with Sims.

If both Ms. Sims and her legal counsel - as BellSouth would like us to believe - were naïve to think that the law permitted them to review cross-examination questions that are only directed at BellSouth on the eve of an evidentiary hearing, then what is BellSouth's excuse for not informing Harold McLean of Logue's actions in providing Sims with the cross-examination questions to be directed at Supra? It is fair to suggest that Sims and her legal counsel reached an agreement not to notify McLean of what BellSouth's legal counsel had already concluded was improper – the sending of the Supra questions.

The Sims' affidavit is unclear as to whether there was in fact a third telephone call from Sims to Logue, on the afternoon of May 2, 2001, in which Sims informs Logue that she agreed to let Ms. Logue know which BellSouth witnesses could answer which questions. *See Exhibit F par 5.*

Sims admits in paragraph 7 of her affidavit that she "reviewed Ms. Logue's draft cross-examination questions." If Ms. Sims did not review the questions until after the second call, then there must have been a third telephone call. Paragraph 7 would be consistent with a third telephone call. If there was a third telephone call – this would be new, but not surprising, to Supra.

The Commission Staff assigned to a Docket are responsible for developing the evidentiary record. The Staff are the ones who determine, at the close of the hearing, what testimony was relevant and should be relied upon in the drafting of a

recommendation for the outcome of each issue. This is an important point to remember when examining Sims' next statement.

Ms. Sims' next "defense" as to why her agreeing to receive and review the cross-examination questions did not create a conflict of interest is: "I did not discuss the relevance, quality or substance of the draft questions with Ms. Logue." *See Exhibit F, par. 7.* This "defense" is, of course, irrelevant.

Because the Commission Staff plays such a pivotal role in developing the underlying record, once an "appearance of impropriety" is identified during the discovery and evidentiary phase of the proceeding the only cure is the ordering of a new hearing. It is this underlying record that is relied upon by the "advisory" staff that actually write the Commission recommendation. Allowing BellSouth the opportunity to formulate its answers and modify the presentation of its positions prior to the hearing forever taints the underlying record. Once the underlying record has been tainted by the "appearance of impropriety" of a staff member assigned to the Docket, it is an impossibility for the advisory staff to cure the tainted record. The only remedy is a new hearing.

The evidence is strong that Logue's conduct was intentional and deliberate and not as a result of an accident or lack of knowledge of the rules and procedures of the Commission. *See Exhibit I* (Logue Resume, identifying strong background in regulatory/legislative matters). *See also Composite Exhibit J* (Memorandum to D'Haeseleer, dated October 20, 2000, and Letter to Logue, dated October 29, 2000, in which the Commission confirms her hiring at $53,200.00, and agrees to compensate Logue for her moving expenses). It is apparent from her conduct that Logue had a great deal of self-confidence. For instance, Logue sent an e-mail on the evening of May 2, 2001, at

approximately 6:11 pm, in which she chastises a customer representative of AT&T Customer Service: "I do not appreciate being lied to;" and "I no longer need to put up with the kind of crap endured by your nasty and insubordinate representatives." *See Composite Exhibit J.* Logue was not some low level employee that needed extra training. She was a highly experienced individual in regulatory and telecommunications matters and was highly sought after by this Commission Staff.

Logue's misconduct had been intentionally and knowingly concealed by BellSouth until **after** the close of the evidentiary hearing in Docket No. 001305-TP, held on September 26 and 27, 2001. As Supra is unsure as to how Logue's misconduct was actually discovered, Supra cannot know for sure if BellSouth ever would have come forward with this information.

c. FPSC Internal Investigation and Report of the Wrongful Communications

On January 3, 2002, Richard Bellak (Bellak), Staff legal counsel in the division of appeals, issued an Internal Investigation and Report (Report). In this document, Bellak makes clear that BellSouth refused to address the question of why BellSouth did not inform the Commission about "receipt of Ms. Logue's e-mail." *See Exhibit K.* Bellak's quote is as follows:

> "This Report will, however, leave to BellSouth any response to the suggestion that it should have informed the Commission about receipt of Ms. Logue's e-mail." (Underline added for emphasis).

Accordingly, as of January 3, 2002, the document suggests that Bellak was unaware that BellSouth had ever come forward, on its own volition, to inform the Commission of the "receipt of Ms. Logue's e-mail." The Internal Investigation and Report is considered an official document. Falsification of this document or anyone

involved in causing the falsification of this document would be guilty of official misconduct. If the Commission Staff, other than Logue, had knowledge of Logue's misconduct and concealed this information from Supra until after the close of the evidentiary hearing in Docket No. 001305-TP, then Bellak's statement would be false.

Falsification would occur when the Report misrepresented the underlying facts related to the purpose for which it was issued in the first instance. Supra submits that the purpose for issuing the Report was twofold: (1) to create the appearance that an actual substantive investigation took place, and (2) more importantly to misrepresent "when" the Commission Staff first learned of Logue sending cross-examination questions to BellSouth. Whether Bellak, himself, had actual knowledge of when Senior Commission Staff learned of Logue's misconduct is irrelevant for a finding of official misconduct. Official misconduct can occur if others caused the falsification of a document. All those involved in limiting the scope of Bellak's Report and all those who stood silent after the Report's publication are guilty of official misconduct. *See* Section 839.25(1), Florida Statutes.

The language quoted from Bellak's Report is consistent with the position that Harold McLean, Commission General Counsel, had been conveying to Supra: that the e-mail - from Logue to Sims, sent at 5:39 pm, May 2, 2001 - was only discovered after the close of the evidentiary hearing in Docket No. 001305-TP and that Supra was notified immediately or soon after its discovery.

Chairman Jaber addressed Logue's misconduct at March 5, 2002, Agenda Conference. She stated:

> "I know that what Ms. Logue did . . . was **completely inappropriate**, and for that I want to publicly apologize to you [Supra] . . . because it was

completely wrong to send cross examination questions prior to the hearing." (Pg. 41, lines 2-15, March 5, 2002, Hearing Transcript). (Double emphasis added).

Given the complete "inappropriateness" and "wrongfulness" of Ms. Logue's misconduct, it is fair to conclude that had this information of misconduct been provided to Supra **prior** to the evidentiary hearing in Docket No. 001305-TP, that Supra would have sought to have, and the Commission would have, Ms. Logue removed from Docket No. 001305-TP. Supra was denied the opportunity to have Logue removed from Docket No. 001305-TP prior to the evidentiary hearing. Supra was denied this relief as a direct consequence of BellSouth's intentional decision to conceal this information from Supra.

In this case, however, the "appearance" that some improper conduct was occurring in Docket No. 001305-TP was perpetuated by BellSouth itself. The decision to allow Logue to participate in the evidentiary hearing in Docket No. 001305-TP was a specific act of impropriety. Please note, again, that the "impropriety" standard set out by Chairman Jaber does not require an underlying improper act. BellSouth chose to keep this information a secret. BellSouth could have removed this "appearance of impropriety" from Docket No. 001305-TP at any time by simply notifying Supra. BellSouth chose not to. Why it chose not to is irrelevant. What is relevant is that as a direct result of BellSouth's silence, a supervisory level Staff member, who unquestionably demonstrated bias in favor of BellSouth against Supra, who was not reprimanded in any way for doing so, also participated in and was present at the hearing in Docket No. 001305-TP.

As stated at the outset, Commission Order PSC-02-0143-PCO-TP, issued on January 31, 2002, is void of any requirement that a party must demonstrate an "improper act" as a condition precedent to a Commission finding that an "appearance of

impropriety" exists. This fact was affirmed by Chairman Jaber's comments at the March 5, 2002, Agenda Conference. At this Agenda Conference, Chairman Jaber went as far as to state:

> "You [Supra] would acknowledge that I did **not** make a finding that there was inappropriate behavior, and I did **not** make a finding that Ms. Logue was biased." (Double emphasis added). Hearing Transcript, pg 36, lines 8-11.

Chairman Jaber could not have been clearer. The Chairman's Order was not based on any finding that an "improper act" occurred in Docket No. 001097-TP. The Chairman's finding was to the contrary. Nevertheless, the Commission Decision has mutated what has been a well-known standard to include an element that is simply contrary to the whole notion behind the concept of an "appearance of impropriety."

As such, the attempt by the Commission to apply a different standard at this juncture is inappropriate. If the Commission applies the standard of Commission Order PSC-02-0143-PCO-TP, issued on January 31, 2002, and affirmed by Chairman Jaber at the Agenda Conference, then the only conclusion to reach is that a new hearing is warranted in Docket No. 001305-TP.

II. Many specific acts of impropriety

Notwithstanding the Commission's misapplication of the well-known standard of an "appearance of impropriety," there were many acts of impropriety which occurred in Docket No. 001305-TP.

Supra first learned of Logue's misconduct on Thursday, October 4, 2001, through a telephone call from Commission General Counsel, Harold McLean. This telephone call was followed by an official correspondence dated October 5, 2001. *See Exhibit L.* This letter conspicuously omits when Commission Staff learned of Logue's misconduct. This

letter is an official document. Falsification of this document or anyone involved in causing the falsification of this document would be official misconduct. *See* 839.25(1), Florida Statutes. If the Commission Staff, other than Logue, had knowledge of Logue's misconduct and concealed this information from Supra until after the close of the evidentiary hearing in Docket No. 001305-TP, then the failure to disclose this information in the October 5, 2001 Letter would also be official misconduct.

Falsification would occur when the Letter misrepresented the underlying facts related to the purpose for which it was issued in the first instance. Supra submits that the purpose for issuing the October 5, 2001 Letter was twofold: (1) to "officially" disclose Logue's misconduct to Supra, and (2) more importantly, to misrepresent "when" the Commission Staff first learned of Logue sending cross-examination questions to BellSouth. Whether McLean, himself, had actual knowledge of when Senior Commission Staff learned of Logue's misconduct is irrelevant for a finding of official misconduct. Supra finds it hard to believe that McLean would not have asked such an "obvious" question. Official misconduct can occur if others caused the falsification of this document. In the event McLean simply refused to make any inquiry into the obvious, all those involved in withholding information from McLean regarding when the misconduct was discovered, and all those who stood silent after the Letter's publication are guilty of official misconduct.

In Commission Order PSC-02-0143-PCO-TP, issued on January 31, 2002, Chairman Jaber writes: "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." The Agenda conference Chairman Jaber is referencing is the October 2, 2001, Agenda Conference. Presumably, Chairman Jaber learned of Logue's misconduct

either on Tuesday morning, of October 2, 2001, or the day before – Monday, October 1, 2001.

Supra has always found it odd that Commission Staff "first" learned of Logue's misconduct on Monday, October 1, 2001. The evidentiary hearing in Docket No. 001305-TP was held on Wednesday, September 26, 2001 and Thursday, September 27, 2001. If Logue's misconduct was brought to the attention of Chairman Jaber on Monday, October 1, 2001, this left the Commission Staff only one business day [Friday, September 28, 2001] to "innocently stumble" across the e-mail sent to BellSouth. The timing of these events is extremely suspicious. However, this is the version that has been maintained by McLean: that the e-mail - from Logue to Sims, sent at 5:39 pm, May 2, 2001 - was only discovered after the close of the evidentiary hearing in Docket No. 001305-TP and that Supra was notified immediately or soon after its discovery.

Commission Order PSC-02-0143-PCO-TP states that Commissioner Jaber immediately "directed further inquiry." Commissioner Jaber made this same comment at the March 5, 2002, Agenda Conference: "I want to be real clear on what I did and why. I directed an inquiry when the allegations were made clear to me." (Underline added for emphasis). Hearing Transcript, pg. 36, lines 14-17. From these statements, it is evident that Commissioner Jaber directed an inquiry sometime on Monday, October 1, 2001. Supra is unaware of who was "directed" to conduct the inquiry by Commissioner Jaber.

Supra will note that on October 1, 2001, the Florida Public Service Commission had a different Chairman. The Chairman at that time was E. Leon Jacobs, Jr. The Commission Inspector General, in this case John Grayson, is a resource attached to the Chairman's Office. As such, any investigation initiated by the Inspector General would have required

the authorization of the presiding Chairman of the Commission in October 2001 – in this case Chairman E. Leon Jacobs, Jr.

On Monday, October 22, 2001, John Grayson, Inspector General, sent Chairman Jacobs an e-mail asking precisely for this permission: "Have not heard back from you regarding initiating the investigation." *See Exhibit M.* On October 25, 2001, John Grayson sent to Chairman Jacobs, a Memorandum stating that Grayson has "initiated an investigation" into Logue's misconduct. *See Exhibit N.*

Grayson notes that the scope of his investigation will include:

> "Whether anyone with managerial responsibility over Ms. Logue had knowledge of the distribution of the cross-examination questions. If so, who was this knowledge communicated to, in what manner, and what if anything was done in response."

This memorandum makes evident that Grayson would examine who in the managerial ranks above Logue had knowledge of her misconduct, and what was done with this knowledge: was Logue terminated, reassigned, was Supra notified? This investigation was initiated on October 25, 2001. It is fair to conclude that Commissioner Jaber had knowledge that John Grayson had initiated an investigation on October 25, 2001. This would be consistent with Commissioner Jaber's statements that she "directed further inquiry."

John Grayson makes the following observation at the bottom of his memorandum (*See Exhibit N*): "It is important to note that effective October 10, 2001, Ms. Logue reported for active duty in the US Air Force. Her absence and the inability to interview her will make it difficult to complete this investigation until she returns." This statement reflects that as of October 25, 2001, Logue had still not been terminated from her position with the Commission. In fact, she was on Leave Without Pay. *See Composite Exhibit O.*

The evidence will demonstrate that **prior** to the evidentiary hearing in Docket No. 001305-TP Senior Management had knowledge of Logue's improper conduct, and actually considered demanding Logue's resignation but decided against doing so. Incredibly, Logue was not reassigned from the Docket in 001305-TP even after Senior Management learned of her improper conduct in favor of BellSouth. She still participated and was, in fact, present at the hearing in Docket 001305-TP.

Even more incredible is the fact that John Grayson was not informed of Logue's misconduct until October 9, 2001. Commissioner Jaber has stated that she had actual knowledge of the misconduct as of October 1, 2001. McLean, at a minimum, had knowledge as early as October 4, 2001, if not prior to the evidentiary hearing in Docket No. 001305-TP. Senior Management had knowledge that Logue would be reporting for active duty on October 10, 2001. *See Exhibit P.* Logue even went down to the Commission's personnel office to fill out a change of address for her W-4 form, on October 8, 2001. *See Exhibit Q.* The serious and legitimate question arises as to why John Grayson was not informed of Logue's misconduct until **after** Logue departed for active duty.

"Actual impropriety"

Amazingly, the evidence demonstrates that Senior Management learned of Logue's misconduct as early as July 2001, some in August 2001 and all of those to be named in this document as of September 21, 2001. All of these dates are, of course, **prior** to the evidentiary hearing in Docket No. 001305-TP. The evidence demonstrates that Senior Managers considered demanding Logue's resignation prior to the evidentiary hearing in Docket No. 001305-TP, but decided against doing so. These individuals then decided not to remove her from Docket No. 001305-TP, to avoid calling attention to her

misconduct. Finally, the evidence demonstrates that these individuals allowed Logue to continue to participate, including supervising other Staff members, in the evidentiary hearing held on September 26 and 27, 2001, in Docket No. 001305-TP.

Supra obtained a copy of John Grayson's Investigation File as a consequence of a public records request. Grayson's File reflects that an interview was conducted with Beth Salak, Assistant Director Competitive Markets and Enforcement, on or about November 7, 2001. *See Exhibit R.* During this interview, Grayson noted that Salak learned of Ms. Logue's misconduct some time on or about August 20, 2001. *See Exhibit R,* pg. 1, first paragraph. Grayson's notes indicate that Salak was "informed by [a] person in confidence that Ms. Logue has provided info[rmation] to BellSouth." This was before the evidentiary hearing in Docket No. 001305-TP.

Grayson's notes also indicate that Ms. Salak "decided to check the e-mails and to not inform Ms. Logue" for concern that the e-mails may be deleted. (Underline added for emphasis). *See Exhibit R,* pg. 1, third paragraph. Grayson's notes also indicate that Salak informed Sally Simmons, Chief Market Development Bureau, and Walter D'Haeseleer, Director Competitive Markets and Enforcement. *See Exhibit R,* pg. 1, second paragraph. The notes indicate that Salak believed that neither Simmons nor D'Haeseleer had prior knowledge. This statement by Salak is contradicted by Grayson's interview with Sally Simmons – which will be addressed below.

Grayson's notes involving Salak's interview also demonstrate that on August 20, 2001, "Walter [D'Haeseleer] called [a] dir[ector's] meeting to talk about ethics in dealing with utilities." *See Exhibit R,* pg. 1, fourth paragraph. This is consistent with the findings

Grayson made during his interview with Sally Simmons in which she confirms that a director's meeting was called on August 20, 2001, to discuss Logue's misconduct.

Grayson conducted an interview with Walter D'Haeseleer on November 26 or 27, 2001. Grayson's notes indicate that Beth Salak brought Logue's misconduct to D'Haeseleer's attention. *See Exhibit S.* In response to Grayson's question regarding what D'Haeseleer did with this information, D'Haeseleer said: I informed top management, specifically Dr. Bane – at this time Dr. Bane was Deputy Executive Director of the Commission. *See Exhibit S.* Grayson's notes indicate that D'Haeseleer wanted to handle the issue of misconduct "internally" and "quickly." *See Exhibit S.* Note that, at this time, the only parties known to have done anything improper were Logue and BellSouth. And, of course, handling such misconduct "internally" and "quickly" would be of great service to BellSouth.

Grayson's notes indicate that upon being notified by D'Haeseleer of Logue's wrongdoing, "Dr. [Mary] Bane [Deputy Executive Director of the Commission] "called Beth [Salak] regarding the situation" and "asked whether she [Beth] had any knowledge [of Ms. Logue's wrongdoing]. *See Exhibit R*, pg. 1, sixth paragraph. Grayson's notes indicate that Dr. Bane's call to Salak may have occurred in early September 2001. This raises the question as to why D'Haeseleer waited almost two weeks to notify Dr. Bane, after telling the Inspector General that he hoped to handle the matter "quickly."

Supra knows that D'Haeseleer notified Dr. Bane some time before September 6, 2001, because this is the date that Salak requested a download of all of Logue's e-mails going back to November 2000. Accordingly, some time before September 6, 2001, Grayson's notes indicate that "Dr. Bane requested that Beth [Salak] perform [an] e-mail

research to confirm or deny [the] allegations" made against Ms. Logue. *See Exhibit R*, pg. 2, first paragraph.

In direct response to this directive by Dr. Bane, Salak made an initial request, on or about September 6, 2001, to review all of Ms. Logue's e-mails going back to November 2000. A CD-ROM, containing the e-mails, was created by Karen Dockham, Systems Project Administrator, on or about September 12, 2001. Salak came back and asked for additional information. In response to this second request Karen Dockham created a second CD-ROM for Salak on September 20, 2001. *See Exhibit T* (e-mail from Karen Dockham to John Grayson, dated November 29, 2001).

According to Commission policy, when a request is received by BIP (Bureau of Information Processing), to allow access to an individual Commission employee's e-mail by another Commission employee, it is the Commission's practice to clear the request first with the Division Director – in this case, Walter D'Haeseleer. This practice is followed so that BIP does not get caught in a situation where anyone might accuse BIP of invading their privacy. Accordingly, before Karen Dockham could have produced the CD-ROM for Beth Salak, a written request would have been required to be submitted by Walter D'Haeseleer to the Director of the Division of Administration. This is further confirmation for the fact that D'Haeseleer and Salak did have actual knowledge of Logue's wrongdoing prior to September 6, 2001, the day Karen Dockham created the first CD-ROM. This is also well in advance of the evidentiary hearing held in Docket No. 001305-TP.

Grayson's notes indicate that it was Karen Dockham that likely reviewed the first CD-ROM for the existence of the e-mail to BellSouth. Grayson writes: "Karen [Dockham] provided e-mail w/ [cross-examination] questions provided to BellSouth." *See Exhibit R*,

pg. 2, third paragraph. A copy of the e-mail containing the cross-examination questions, sent at 5:39 pm on the evening of May 2, 2001, was provided to both Dr. Bane and D'Haeseleer. *See Exhibit R*, pg. 2, fourth paragraph. The evidence demonstrates that Salak, D'Haeseleer, and Dr. Bane all had actual knowledge of Logue's wrongdoing well in advance of the evidentiary hearing in Docket No. 001305-TP. Notwithstanding, a decision was made not to notify Supra of this wrongdoing. This is a specific "act of impropriety" in Docket No. 001305-TP. This is not a mere "allegation," this is a fact.

Before addressing Grayson's interview with Sally Simmons, Bureau Chief for Market Development, it is important to point out what was not "officially" brought to the attention of D'Haeseleer and Dr. Bane.

Cross-examination questions sent as early as 10:40 am

On May 2, 2001, Kim Logue (Logue) sent two (2) e-mails to Nancy Sims (Sims) discussing the merits of the case. Sims also responded by e-mail. *See Composite Exhibit A,* containing three (3) e-mails. These e-mails were ignored. These communications were violations of the ex parte prohibitions found in Rule 25-22.033, Florida Administrative Code.

What is striking is that Logue sent BellSouth (Sims) a first draft of the cross-examination questions as early as **10:40 am**, on the morning of May 2, 2001. *See Composite Exhibit B, first e-mail contained in the exhibit.* This first draft of cross-examination questions was received by Sims at 1:40 pm on May 2, 2001. *See Composite Exhibit B, first e-mail contained in the exhibit.* This has never been noted by anyone in the Commission. It took Supra very little effort to locate this e-mail. Even more importantly, it is quite obvious that Logue's initial story that she sent e-mails to both Supra and BellSouth

is a complete fabrication, as she had plenty of opportunities to send e-mails to Supra if she so desired. The assertion that Logue's misconduct was the consequence of "poor training" is simply contrary to the facts.

Logue spent a good part of the remainder of the day working on the cross-examination questions. *See Composite Exhibit B*, particularly e-mails between Logue and Lee Fordham, Commission Staff legal counsel, assigned to Docket No. 001097-TP. Lee Fordham and Logue met to discuss the cross-examination questions prior to his leaving the office on May 2, 2001, some time prior to 5:00 pm. *See Composite Exhibit B, e-mail from Fordham sent at 2:47 pm.* At approximately 5:39 pm, Logue sent the final product of this meeting, with Fordham, to BellSouth. *See Exhibit C.* The sending of these cross-examination questions to BellSouth was itself a violation of the ex parte Rule of the Commission as well as a violation of Section 112.313(8), Florida Statutes.

Section 112.313(8), Florida Statutes, reads in part:

"No . . . employee of an agency, . . . shall disclose or use information not available to members of the general public and gained by reason of his or her position for . . . benefit of any other person or business entity."

In our case, Ms. Logue disclosed information to BellSouth that was not available to Supra. Ms. Logue gained the cross-examination questions by reason of her position as a Senior Staff Supervisor assigned to the adversarial proceeding involving BellSouth and Supra. Finally, Ms. Logue provided this information for the benefit of BellSouth. In all respects, Ms. Logue's misconduct is a violation of Section 112.313(8), Florida Statutes.

Sally Simmons, Bureau Chief Market Development

John Grayson conducted an interview with Simmons on November 2, 2001. According to Grayson's notes Simmons had actual knowledge of Logue's misconduct as

early as **July 2001**. *See Exhibit U*, pg. 1. This would be consistent with the cryptic remark Simmons included in Logue's "Progress Report" dated July 11, 2001: "With respect to e-mails, I would suggest that you be more cautious in using them to address issues which may be sensitive." *See Exhibit V*, pg. 2, last paragraph. Grayson's specific notation in his File states: "**Awareness – Late July – after the fact/before dir meeting.**" (Double emphasis added). The phrase "after the fact" would be referring to sometime after May 2, 2001; and the phrase "before director's meeting" would be referring to sometime prior to August 20, 2001. As such, according to Grayson's interview with Simmons, she had actual knowledge of Logue's misconduct as early as July 11, 2001, but no later than August 20, 2001.

Simmons' response was "no," when Grayson asked Simmons if she had ever told anyone. *See Exhibit U*, pg. 1. This would be consistent with her having knowledge as early as July 2001. Grayson's notes also indicate that "nothing personally" was done to Logue after Simmons learned of the misconduct.

"Minimize damage"

Finally, Simmons confirmed, like Beth Salak (*Exhibit R*), to the Inspector General that a division meeting was called by Walter D'Haeseleer on August 20, 2001. *See Exhibit U*, pg. 1. Immediately preceding this notation by Grayson, for the August 20, 2001 meeting, the Inspector General notes: "**Walter/Beth > minimize damage**." (Double emphasis added).

Presumably, Grayson is referring to Walter D'Haeseleer and Beth Salak. As soon as these words were uttered, there should have been no question that the proper, appropriate and legal thing to do was to notify Supra. Notifying Supra, however, would have been

inconsistent with the purpose of the meeting called by D'Haeseleer: how to minimize damage and avoid having to restart the hearing process in Docket No. 001305-TP.

There is no doubt that had this information been provided to Supra **prior** to the evidentiary hearing in Docket No. 001305-TP, that Supra would have sought to remove Logue from the Docket. At this point it is important to reiterate Chairman Jaber's remarks at March 5, 2002, Agenda Conference:

> "I know that what Ms. Logue did . . . was **completely inappropriate**, and for that I want to publicly apologize to you [Supra] . . . because it was **completely wrong** to send cross examination questions prior to the hearing." (Pg. 41, lines 2-15, March 5, 2002, Hearing Transcript). (Double emphasis added).

Supra was denied the right to even seek to have Logue removed. This right was denied as a direct consequence of D'Haeseleer's decision to conceal this information from Supra. There is no need to discuss how to "minimize damage" if you are not planning on concealing the information. This is not speculation. This is fact. The fact is evident in that Supra was not notified of Logue's misconduct until after the hearing in Docket No. 001305-TP. *See Exhibit L* (Official Commission document, dated October 5, 2001, first notifying Supra of Logue's misconduct).

D'Haeseleer's decision to conceal this information until after the close of the evidentiary hearing in Docket No. 001305-TP is a violation of Section 112.313(8), Florida Statutes. In our case, D'Haeseleer obtained information (the discovery of Logue's misconduct) that was not available to Supra. D'Haeseleer gained this information by reason of his position as Division Director of Market and Competitive Services. Finally, D'Haeseleer concealed this information for the benefit of BellSouth. D'Haeseleer's decision to keep this information a secret from Supra is a specific act of impropriety.

D'Haeseleer's motivation, presumably, was to avoid having to restart the hearing process because of wrongdoing by one of his employees. This motivation falls directly in line with desires of BellSouth. This position taken by D'Haeseleer is reflected in the Staff members involved in Supra's cases. For example, as described earlier herein, Lee Fordham[2], Staff legal counsel, has violated ex parte rules – in favor of BellSouth – and has expressed particular excitement after learning that BellSouth is pleased with one of the Commission's decision, to push Supra into a hearing while BellSouth simultaneously kept Supra entangled in other matters. *See Composite Exhibit D.*[3]

D'Haeseleer's "act of impropriety" alone, should be more than enough to satisfy the Commission Decision's new, unsubstantiated, element that an "allegation of an improper act" must be identified in Docket No. 001305-TP, in order to satisfy the standard of an "appearance of impropriety." Notwithstanding, should the Commission decide to modify the standard again to require more than one "improper act," then Supra will demonstrate more "improper acts" occurring in Docket No. 001305-TP.

More "improper acts"

John Grayson's file contains notes of a meeting that took place before or on September 21, 2001. *See Exhibit W.* Prior to this meeting, Grayson's notes indicate that a conversation took place between **Marshal Criser, Vice-President of Regulatory**

[2] Significantly, the Inspector General's notes, attached as Exhibit U, reflect that both Lee Fordham and Beth Keating, Staff Legal Counsel, "may have knowledge" of Logue's misconduct prior to the evidentiary hearing in this Docket.

[3] March 16, 2001, Fordham sent Logue an e-mail in which he disclosed the following: "Good morning Kim. Commissioner Jaber came up with what I thought was an excellent plan on this Motion. Obviously, Supra's real motive was to get the Prehearing so late that the Hearing would need to be continued. However, we called their hand and granted the Motion to Reschedule, but made it EARLIER. The Prehearing is now scheduled on April 6 instead of April 16. **BellSouth is delighted with this resolution**." (Bold and underline added for emphasis). *See Composit Exhibit D.*

Affairs for BellSouth and Dr. Mary Bane, regarding Logue's wrongdoing. *See Exhibit W.* This conversation took place **prior** to the evidentiary hearing in Docket No. 001305-TP.

This is a fact, not an allegation. Both **BellSouth's Vice-President** and the Commission's Deputy Executive Director had actual knowledge of Logue's wrongdoing. A decision was made not to notify Supra. This conclusion is evident from the simple fact that Supra was not notified until after the close of the evidentiary hearing in Docket No. 001305-TP. Dr. Bane's decision not to notify Supra is a violation of Section 112.313(8), Florida Statutes.

In our case, Dr. Bane obtained information (the discovery of Logue's misconduct) that was not available to Supra. Dr. Bane discussed Logue's misconduct with the Vice-President for BellSouth, Florida. Dr. Bane gained this information by reason of her position as Deputy Executive Director. Finally, Dr. Bane concealed this information for the benefit of BellSouth. Dr. Bane's decision to keep this information a secret from Supra is a violation of Section 112.313(8), Florida Statutes.

The decision not to notify Supra until October 5, 2001, also raises serious and legitimate questions regarding whether any favors, promises or other benefits were exchanged for delaying the release of this information to Supra. This of course would be a criminal violation.

The evidence indicates, that as of September 21, 2001, the following individuals all had actual knowledge of Logue's misconduct: **Dr. Mary Bane, Walter D'Haeseleer, Beth Salak, Sally Simmons, Karen Dockham, Nancy Sims (BellSouth, Director of Regulatory Affairs), an unidentified BellSouth legal counsel, and Marshall Criser (BellSouth, Vice-President, Regulatory Affairs).**

The evidentiary hearing in Docket No. 001305-TP was not even scheduled to begin until September 26, 2001. Each Commission employee with actual knowledge of Logue's wrongdoing is in violation of Section 112.313(8), Florida Statutes. Each violation is a separate "improper act." The failure to disclose or decision to conceal this information from Supra occurred in Docket No. 001305-TP. Accordingly, a new hearing in this docket is most certainly warranted.

Even more troubling than the specific acts of wrongdoing outlined above, is the fact that the October 5, 2001 Letter was designed and issued with the intent to misrepresent "when" the misconduct was discovered. There can be no other reason for this letter. For the simple reason that had McLean not issued this October 5, 2001 Letter, it is very likely that Supra would still be unaware of this wrongdoing. While the Senior Management of the Commission may find some satisfaction in the fact that they did disclose the wrongdoing at some point, they should not feel so comforted. Not only did the Senior Management of the Commission violate Supra's constitutional procedural due process rights[4] in Docket No. 001305-TP, but they violated several civil statutes and possibly several criminal statutes in the process.

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[4] Quasi-judicial bodies have a duty to safeguard against violation of procedural due process. The United States Supreme Court has stated that:

> "A fair trial in a fair tribunal is a basic requirement of due process. This applies to administrative agencies which adjudicate as well as to courts. Not only is a biased decision maker **constitutionally unacceptable** but our system of law has always endeavored to prevent even the probability of unfairness." *Hithrow v. Larkin*, 421 U.S. 35, 46-47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975). (Emphasis added).

Florida has a plethora of case law also providing that a fair trial in a fair tribunal is a basic requirement of due process. *See Rucker v. City of Ocala*, 684 So.2d 836, 841 (1st DCA 1996) (It is well established that "[i]t is fundamental that the constitutional guarantee of [procedural] due process, . . . extends to every proceeding," also for an administrative hearing "[t]o qualify under due process standards, the opportunity to be heard must be meaningful, full and fair, and not merely colorable or illusive"). Administrative agencies sitting in a quasi-judicial capacity have a duty not to "shut its eyes to constitutional issues that arise in the course of administrative proceedings it conducts." *Communications Workers of America, Local 3170 v. City of Gainesville,* 697 So.2d 167, 169 (1st DCA 1997). The "notion that the constitution stops at

September 21, 2001 Meeting

As alluded to above, Grayson's notes indicate that on September 21, 2001 – prior to the evidentiary hearing in Docket No. 001305-TP – a high level meeting was held between "Walter [D'Haeseleer], Beth [Salak], Sally [Simmons] and Dr. Bane" involving "what is going to be done" regarding Ms. Logue. *See Exhibit W.*

At this September 21, 2001, meeting these Senior Managers discussed whether to "ask for [Logue's] resignation" on or before September 24, 2001 or September 25, 2001. *See Exhibit W.* Again, this was still prior to the evidentiary hearing in Docket No. 001305-TP, which was held on September 26 and 27, 2001.

Grayson's notes indicate that these Senior Managers decided **not** to ask for Logue's resignation "if [she was] called to active duty before the effective date of the resignation." *See Exhibit W. See also Exhibit* X (e-mail, dated September 21, 2001, from Logue to Simmons, Salak and Della Fordham indicating that Logue may be called to active duty soon). It has been asserted that these Senior Managers were under the misguided notion that federal law prohibits the Commission from terminating an employee for "wrongdoing," if that individual is called to active duty.

What the federal law says is that you cannot terminate an individual for being "absent" from work as a result of being called up for active duty. Logue violated not only ex-parte regulations, but Florida state law as well. Her termination would have been based solely on "wrongdoing" - in particular "violations of Commission policy and state law." As

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the boundary of an administrative agency's jurisdiction does not bear scrutiny." *Id. See* also *Jennings v. Dade County* 589 So. 2d 1337, 1340, (3d DCA 1991) ("Certain standards of basic fairness must be adhered to in order to afford due process"); *See also Miami-Dade County v. Reyes*, 772 So.2d 24, 29 (3d DCA 2000) ("Due process envisions a law that hears before its condemns, proceeds upon inquiry, and renders a judgment only after proper consideration of issues advanced by adversarial parties") (Emphasis added).

such, her termination would **not** have violated any federal law whatsoever. Her termination would have been appropriate, legal and justified.

The Commission is an agency with several hundred employees. Employment law is no stranger to Senior Management. Supra believes that the Senior Managers provided this "story" to Grayson, during their interviews, to obscure the primary basis underlying the decision not to terminate Logue or require Logue's resignation: to avoid having to restart the hearing process in Docket No. 001305-TP, which, if restarted, would make BellSouth very unhappy.

Accordingly, Logue was neither terminated nor asked to resign. Grayson's notes indicate that Dr. Bane kept a copy of the resignation letter. *See Exhibit W.* Even more outrageous than not terminating Ms. Logue immediately, was the decision by these Senior Managers to allow Ms. Logue to continue to participate in the evidentiary hearing in Docket No. 001305-TP. Removing Ms. Logue from the docket would have raised questions as to why she was removed. To avoid having Supra ask too many questions prior to the hearing, and in order to "**minimize damage**" (*See Exhibit* U) the decision was reached not to notify Supra until after the close of the evidentiary hearing in Docket No. 001305-TP, to be held on September 26 and 27, 2001. This decision can only have been made for the benefit of BellSouth. This conclusion is irrefutable, as there is no other logical explanation.[5]

October 5, 2001 Letter

As stated earlier herein, whether McLean, himself, had actual knowledge of when Senior Commission Staff learned of Logue's misconduct is irrelevant for a finding of official misconduct. Although, Supra finds it hard to believe that McLean would not have

[5] "When you have eliminated the impossible, whatever remains, however improbable, must be the truth." (Quote by: Sir Arthur Conan Doyle).

asked such an "obvious" question. *See Goin v. Commission On Ethics*, 658 So.2d 1131, 1135 (1st DCA 1995) ("A public official subject to the ethics code may not forge blindly ahead, oblivious to the legitimate public concerns raised by his or her actions"; and the provisions under Section 112.313, Florida Statutes, "permits proof of a violation by evidence of constructive knowledge.").

As previously stated, official misconduct can also occur if others caused the falsification of a document. In the event McLean simply refused to make any inquiry into the obvious (contrary to McLean's duty as a Commission employee), all those involved in withholding information from McLean regarding when the misconduct was discovered, and all those who stood silent after the Letter's publication are guilty of official misconduct.

Innocent discovery of e-mail?

Supra has always found it odd, that Commission Staff "first" learned of Logue's misconduct on Monday, October 1, 2001. The evidentiary hearing in Docket No. 001305-TP was held on Wednesday, September 26, 2001 and Thursday, September 27, 2001. If Logue's misconduct was brought to the attention of Chairman Jaber on Monday, October 1, 2001, this left the Commission Staff only one business day [Friday, September 28, 2001] to "innocently stumble" across the e-mail sent to BellSouth. Supra has always found this hard to believe. However, this is the version that has been maintained by McLean: that the e-mail - from Logue to Sims, sent at 5:39 pm, May 2, 2001 - was only discovered after the close of the evidentiary hearing in Docket No. 001305-TP and that Supra was notified immediately or soon after its discovery. Of course, the evidence set forth above proves this to be a false statement.

As noted at the outset, Grayson initiated his investigation on October 25, 2001. *See Exhibit N.* Grayson's interviews of Senior Commission Staff took place in November 2001. While this investigation was ongoing, someone directed Richard Bellak, staff legal counsel, to draft an official document analyzing whether the cross-examination questions sent to BellSouth in May 2001, was harmless error in Docket No. 001097-TP. Supra is very interested to know who gave the order to have this "official document" drafted by Bellak, when Grayson was already conducting an investigation.

In the first week of January 2002, Commissioner Jaber became Chairman of the Commission. Chairman E. Leon Jacobs, Jr., stepped down as Chairman after not being reappointed by the Governor. On January 3, 2002, Bellak issued his Internal Investigation and Report. *See Exhibit K.* On January 31, 2002, newly invested Chairman Lila Jaber issued an order directing that a new hearing be conducted in Docket No. 001097-TP. Strangely enough, Supra never filed for a new hearing in Docket No. 001097-TP. There was no finding of bias or improper conduct in Docket No. 001097-TP. (*See* Chairman Jaber's comments at the March 5, 2002, Agenda Conference; Hearing Transcript, pg 36, lines 8-11).

The Chairman's actions were precisely the opposite of what the Commission wrote in its March 26, 2002, Decision (on page 20, first paragraph): "Absent proof or specific allegations of wrongdoing, however, we will not halt the processing of any of our dockets simply because those opportunities [to commit wrondoing] may exist." Notwithstanding this comment, without any finding of wrongdoing or any finding of bias, Chairman Jaber, on her own motion, halted the proceedings in Docket No. 001097-TP and ordered a new hearing.

Supra is also unaware of any statute or case law that permits a prehearing officer on her own motion to order a new hearing. The Florida Administrative Code Rule 28-106.211 cited by Chairman Jaber presupposes that one party has filed a motion.

Notwithstanding the lack of legal foundation, an Order directing a new hearing was issued on January 31, 2002. After its issuance, John Grayson, Inspector General, discontinued his ongoing investigation into Logue's misconduct and all those who had knowledge of this misconduct. On February 11, 2002, John Grayson sent Chairman Lila Jaber a Memorandum in which he stated, among other things:

> "On January 31, 2002, an order setting Docket No. 001097-TP for rehearing was issued. Thus I am closing my file on this investigation with the recommendation that training in the area of staff communications be conducted on an ongoing basis." *See Exhibit Y, last paragraph.*

Accordingly, on February 11, 2002, Chairman Jaber had knowledge that Grayson had been conducting an investigation into Logue's misconduct. As stated earlier herein, "[a] public official subject to the ethics code may not forge blindly ahead, oblivious to the legitimate public concerns raised by his or her actions." *See Goin v. Commission On Ethics*, 658 So.2d 1131, 1135 (1st DCA 1995). The Inspector General is a resource attached and within the trust of the Office of the Chairman of the Florida Public Service Commission. All of the facts evidencing specific wrongdoing prior to the evidentiary hearing in Docket No. 001305-TP were contained in Grayson's file and within the trust of the Chairman's Office at the time Grayson sent Chairman Jaber his memorandum on February 11, 2002.

Supra filed its Motion for Rehearing in Docket No. 001305-TP on February 18, 2002. In paragraph's 46 and 47, Supra raises the issue of "what" did Logue's superiors know and "when" did they know it.

During the March 5, 2002, Agenda Conference, Commissioner Palecki asked Supra: "Has there been any indication that you can show us that there was impropriety in this docket [001305-TP]?" Hearing Transcript, page 35, lines 5-7. At the very moment that this question was asked all of the individuals with actual knowledge of Logue's wrongdoing were sitting in the Commission chambers: **Dr. Mary Bane, Harold McLean, Walter D'Haeseleer, Beth Salak, Sally Simmons, Karen Dockham, Nancy Sims (BellSouth, Director of Regulatory Affairs) and Marshall Criser (BellSouth, Vice-President, Regulatory Affairs)**. All of these individuals sat silent. None of these individuals came forward to confess that they knew before the evidentiary hearing in Docket No. 001305-TP and that this information was intentionally and knowingly withheld from Supra.

At the time Supra filed its Motion and Staff subsequently filed its Recommendation on February 25, 2002, all of the above evidence was available.

If Staff now seeks to argue that it was Supra's responsibility to bring these facts to the Commissioners in order to receive relief, then this entire regulatory process is a travesty and an even greater injustice to all CLECs and Floridians than previously perceived. It is also an impossible mountain to climb when the Commission Senior Staff, which are responsible for overseeing Commission employees, are engaged in a "conspiracy" and "cover-up" against Supra. The evidence in Grayson's file is irrefutable.

If there were no corruption in this agency, then Supra could have expected the Senior Managers of the Commission – who would not have been involved in the decision to conceal this information from Supra – to have notified Supra immediately upon learning of

the misconduct and to have immediately removed Logue from all cases involving BellSouth, specifically the only other one between Supra and BellSouth. This was not done.

Supra refrained from initiating public records request to the extent that it has, in order to give the agency the benefit of the doubt and with the understanding that a legitimate internal investigation was being conducted. Still no Senior Managers came forward at the time and none have come forward now. Supra has had no choice but to make broad public records request in order to determine how deep and widespread the corruption extends.

For all those Commission employees who feel "offended" by Supra's **public** records request, Supra respectfully asks why? Section 112.311(6), Florida Statutes, outlines the Florida legislature's policy with respect to public officers and employees. This provision states that public officers and employees "are agents of the people and hold their positions for the **benefit of the public**." (Double emphasis added).

This entire process in Docket No. 001305-TP has been an outrage. Section 112.311(6), Florida Statutes, states that Public Officers "are bound to observe, in their official acts, the **highest standards of ethics** . . . regardless of personal considerations, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of **foremost concern**." (Emphasis added). It will certainly be a difficult decision to order a new hearing because of specific wrongdoing engaged in by most of the Senior Managers of the Commission. Commissioners, however, are not appointed to make easy decisions. A Commission appointment is a "privilege" afforded to a few in order to serve the public - along with this privilege comes the duty to observe the highest standards of ethics, irrespective of personal considerations, in making very difficult decisions.

The "improper acts" abound in great numbers in Docket No. 001305-TP, to the extent that some of the "improper acts" could also be violations of criminal law.

Logue's **not** participating in the drafting of the Recommendation is not a defense and does not cure the Improper Conduct.

The Commission Staff in the past has issued the same refrain, that all of the above facts are simply harmless error because Logue did not participate in the drafting of the Staff Recommendation. Apparently, the fact that her BellSouth bias may have influenced other staff members whom she directly supervised has not crossed any one's mind. What the Staff is referring to is the Florida Supreme Court decision in *Cherry Communications, Inc. v. Deason*, 652 So.2d 803 (Fla. 1995). In *Cherry Communications, Inc. v. Deason*, the Court found that the staff members who are involved in the discovery phase and evidentiary phase of a proceeding, cannot participate in the drafting of the Recommendation for the Commission. In *Cherry Communications, Inc. v. Deason*, the attorney involved in both phases of the proceeding did not engage in any impropriety. He simply participated in both phases of the proceeding and the Court found this to be grounds for reversal and a new hearing.

Supra believes the Florida Supreme Court will find the specific acts of impropriety that occurred during the first phase of Docket No. 001305-TP to be inconsistent with Supra's due process right to receive a fair trial. As mentioned, herein above, the Commission Staff plays such a pivotal role in developing the underlying record, once an "appearance of impropriety" is identified during the discovery and evidentiary phase of the proceeding the only cure is the ordering of a new hearing. It is this underlying record that is relied upon by the "advisory" staff that actually write the Commission recommendation. Allowing BellSouth the opportunity to formulate its

answers and modify the presentation of its positions prior to the hearing forever taints the underlying record. Once the underlying record has been tainted by the "appearance of impropriety" and the actual acts of impropriety that occurred in this docket, it is an impossibility for the advisory staff to cure the tainted record. The only remedy is a new hearing. There is a tenet requiring quasi-judicial bodies to safeguard against violations of procedural due process. The United States Supreme Court has stated that:

> "A fair trial in a fair tribunal is a basic requirement of due process. This applies to administrative agencies which adjudicate as well as to courts. Not only is a biased decision maker **constitutionally unacceptable** but our system of law has always endeavored to prevent even the probability of unfairness." *Hithrow v. Larkin*, 421 U.S. 35, 46-47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975). (Emphasis added).

Supra believes that the Florida Supreme Court will find after a review of the specific wrongdoing, in Docket No. 001305-TP, that a fair trial was not afforded Supra in this docket.

Given all of the evidence outlined in this document, there can be no question that there exists not only an "appearance of impropriety", but actual acts of impropriety, within Docket No. 001305-TP. Therefore, under any standard and certainly consistent with Chairman Jaber's ruling in Docket No. 001097-TP "in order to remove any possible appearance of prejudice" Supra moves this Commission to order a new hearing in Docket No. 001305-TP.

III. Relief from Judgment, Decrees or Orders

Rule 1.540(b), Florida Rules of Civil Procedure, reads in part:

> "On motion . . . the court may relieve a party . . . from a final . . . order . . . for the following reasons: . . . (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing; (3) fraud

(whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party." (Underline added for emphasis).

The Commission failed to consider the above referenced rule when it denied Supra's Motion for Rehearing in Docket No. 001305-TP. As already mentioned in this document, Supra refrained from initiating a public records request to the extent that it has, in order to give the agency the benefit of the doubt and with the understanding that a legitimate internal investigation was being conducted. In addition to the ongoing internal investigation that McLean insisted was being conducted, the version of events being maintained by McLean was: (1) that there was only a single e-mail communications between Logue and Sims, and (2) that the e-mail - from Logue to Sims, sent at 5:39 pm, May 2, 2001 - was only discovered after the close of the evidentiary hearing in Docket No. 001305-TP and that Supra was notified immediately or soon after its discovery. Of course, the evidence set forth in this document proves this version of events to be false.

If the Commission finds that Supra's Motion was not timely because the Commission believes that this evidence of wrongdoing could have been discovered prior to the evidentiary hearing in Docket No. 001305-TP, then the Commission must still order a new hearing based upon the above referenced rule for the simple reason that the Commission Senior Staff which are responsible for overseeing Commission employees were engaged in a "conspiracy" and "cover-up" against Supra. The conspiracy and cover-up began prior to the evidentiary hearing in Docket No. 001305-TP and continued for months afterwards. These acts of obstruction, by Commission Senior Staff, were the only reasons why this evidence of wrongdoing is coming out now. As such, a new hearing is still warranted.

The above referenced Rule also allows for a new hearing for "misrepresentation" or "misconduct of an adverse party." Again, this document is replete with evidence that Commission Senior Staff, which are responsible for overseeing Commission employees, were engaged in a "conspiracy" and "cover-up" against Supra. This conspiracy and cover-up also included Marshall Criser, BellSouth Vice-President for Regulatory Affairs, an unidentified Attorney representing BellSouth and Nancy Sims. The conspiracy and cover-up began prior to the evidentiary hearing in Docket No. 001305-TP and continued for months afterwards.

As such, there is evidence of "misrepresentation" as well as "misconduct of an adverse party" – in this case BellSouth. Accordingly, Rule 1.540(b), Florida Rules of Civil Procedure, allows the Commission to order a new hearing upon the facts that have been presented in this Motion.

IV. New hearing must be assigned to DOAH

Any new hearing must be assigned to the Division of Administrative Hearing (DOAH). The Commission's Order is void of any decision regarding whether a new hearing would be referred to DOAH. Presumably, the Commission must have decided that there was no need to address this issue, since it was denying Supra's Motion for a new hearing.

First, Section 350.125, Florida Statutes, permits the Commission to assign cases to DOAH. Consistent with this authority, at the March 5, 2002, Agenda Conference Commissioner Palecki stated: "I have a great deal of respect for DOAH. I think DOAH does a fantastic job on their referrals . . ." *See* Hearing Transcript, Pg. 50, lines 13-15.

The Commission **failed** to consider Section 120.57(1)(l), Florida Statutes, when it was discussing the matter at the March 5, 2002, Agenda Conference. This section reads in part:

> "The agency [FPSC] may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law."

The Commission's only necessary role after receiving a recommended order from DOAH is to reject or modify the conclusions of law. *See* Section 120.57(1)(l), Florida Statutes, *See also Barfield v. Department of Health*, 805 So.2d 1008 (Fla. 1st DCA 2001). The Commission need not scour the record to ensure that each issue resolution is based on competent substantial evidence, because this will be the standard on appeal to the appellate court.

Chairman Jaber stated at the March 5, 2002, Agenda Conference that: "the decision would come back to the PSC in the form of a recommended decision, so we would ultimately decide it anyway, and **it creates delay**."[6] (Double emphasis added). *See* Hearing Transcript, Pg. 43, lines 14-17. The facts are contrary to this assertion.

The **delay**, if any, arises from the discovery period and the length of the evidentiary hearing. DOAH would still be under the same time restraints as the Commission. Also, once the DOAH recommended Order is issued, the Commission need simply review its conclusions of law. The Commission can be comforted in the fact the conclusions of law regarding the Federal Act will also be reviewed by the Northern

[6] Any delay would not prejudice the parties, as they are able to operate under their current, FPSC approved agreement. Furthermore, should BellSouth argue that it is prejudiced by delay, Supra would note that

District of Florida, pursuant to Section 252. There is no real delay in the Commission's legal staff reviewing conclusions of law.

As for the findings of fact, Section 120.57(1)(l), Florida Statutes, does not allow the Commission to disturb those findings, unless clearly erroneous and not based upon competent, substantial evidence. And as already noted, the Commission need not scour the record to ensure that each issue resolution was based on competent substantial evidence, because this will be the standard on appeal to the appellate court. No undue delay will result.

Even if the Commission wanted to recheck every issue to ensure that it was based upon competent, substantial evidence, this can be remedied very simply. The Act requires that the Commission render a decision within nine (9) months. The DOAH hearing and recommended order could be scheduled to accommodate enough time for the Commission Staff to review the findings of fact. Accordingly, contrary to Chairman Jaber's remark that sending the rehearing to DOAH would be "counterproductive" (*See* Hearing Transcript, pg. 43, line 20), sending the rehearing to DOAH would in fact promote justice and not cause any noticeable delay in the Commission issuing a decision.

Remember, all public policy decisions are still made by the Commissioners, not by DOAH. Commissioner Palecki summed it up simply by analogizing the role of a DOAH hearing officer to that of Commission Staff. Hr. Tr., pg. 71, ln. 22-3, March 5, 2002.

As a practical matter the review process will be more efficient. The hearing officer will have made a specific finding on all the issues. Commission Staff will go

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BellSouth had the opportunity to report the misconduct of Logue as far back as May 2, 2001, but instead chose to remain silent.

straight to the record to determine if that decision was based upon competent, substantial evidence. It would seem that sending the new hearing to DOAH will be a very efficient and productive thing to do.

Finally, sending this rehearing to DOAH will provide the parties in Docket No. 001305-TP a sense of security that the underlying record in the proceeding was developed by a fair and impartial hearing officer – as opposed to a Commission staff that has demonstrated a bias in favor of BellSouth.

Given this authority and the fact that referring this matter to DOAH will not create any undue delay, and will create a sense that the underlying record was developed by a fair and impartial hearing officer – as opposed to the biased Commission staff - Supra moves this Commission to refer the new hearing in Docket No. 001305-TP to DOAH.

Wherefore,Supra respectfully moves that the Commission reconsider its Order denying Supra's request for a Re-Hearing in Docket No. 001305-TP, on the basis that the Order failed to follow Commission's precedent as set forth in Order No. PSC-02-0143-PCO-TP, in Docket No. 001097-TP.

RESPECTFULLY SUBMITTED this 10th day of April, 2002.

Supra Telecommunications &
Information Systems, Inc.
2620 S. W. 27th Ave.
Miami, Florida 33133
Telephone: 305/476-4248
Facsimile: 305/443-9516

By: Brian Chaiken

BRIAN CHAIKEN, ESQ.
Florida Bar No. 0118060

From: Kim Logue
Sent: Wednesday, May 02, 2001 12:41 PM
To: 'nancy.sims@bellsouth.com'
Subject: questions

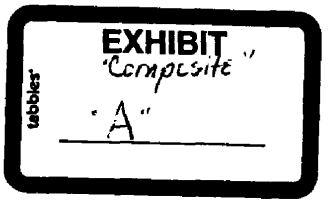
Importance: High

Nancy:

1. Regarding specifically the 1997 agreement, what is the total amount Bell believes it is owed?35,000
2. Does this amount include interest? no If not, what amount of interest does Bell believe it would be due? Or, in the alternative, what interest rate does Bell normally use? Is this amount not also listed in its tariffs for past due amounts? yes
3. What amount of money has Bell received as payment regarding the terms of the 1997 agreement? Does this constitute payment in full? no If not, what amount does Bell believe to remain outstanding?35k

If you could provide the answers to these questions this afternoon, it would be greatly appreciated.

Kim



From: Kim Logue
Sent: Wednesday, May 02, 2001 2:03 PM
To: 'nancy.sims@bellsouth.com'
Subject: disputed amount

is the amount in dispute still $306,559.94?

From: Sims, Nancy H [Nancy.Sims@bellsouth.com]
Sent: Wednesday, May 02, 2001 5:51 PM
To: Kim Logue
Subject: RE: disputed amount

Yes - this is the amount.

-----Original Message-----
From: Kim Logue [mailto:KLogue@PSC.STATE.FL.US]
Sent: Wednesday, May 02, 2001 2:03 PM
To: 'nancy.sims@bellsouth.com'
Subject: disputed amount

is the amount in dispute still $306,559.94?

From: System Administrator [postmaster@BellSouth.com]
Sent: Wednesday, May 02, 2001 12:41 PM
To: Kim Logue
Subject: Delivered: questions

Importance: High

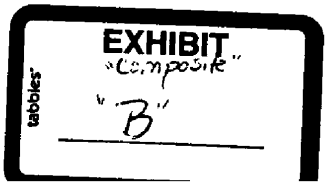
questions

<<questions>> Your message

To: 'nancy.sims@bellsouth.com'
Subject: questions
Sent: Wed, 2 May 2001 12:40:51 -0400

was delivered to the following recipient(s):

Sims, Nancy H on Wed, 2 May 2001 13:40:57 -0400
MSEXCH:MSExchangeMTA:BLS01:BLSMSGPRV03



From: Kim Logue
Sent: Wednesday, May 02, 2001 2:45 PM
To: Lee Fordham
Subject: cross

Lee,

Me, Sally and Cayce are fine-tuning some questions....Cayce and I will come up and see you shortly. What time are you leaving today?

Kim

Tracking:

Recipient	Read
Lee Fordham	Read: 5/2/2001 2:45 PM

From: Kim Logue
Sent: Wednesday, May 02, 2001 2:59 PM
To: Lee Fordham
Subject: RE: cross

thanks. we'll be there before then.

-----Original Message-----
From: Lee Fordham
Sent: Wednesday, May 02, 2001 2:47 PM
To: Kim Logue
Subject: RE: cross

I leave at 4:30.

-----Original Message-----
From: Kim Logue
Sent: Wednesday, May 02, 2001 2:45 PM
To: Lee Fordham
Subject: cross

Lee,

Me, Sally and Cayce are fine-tuning some questions....Cayce and I will come up and see you shortly. What time are you leaving today?

Kim

Tracking:

Recipient	Read
Lee Fordham	Read: 5/2/2001 2:59 PM

From: Kim Logue
Sent: Wednesday, May 02, 2001 4:07 PM
To: Lee Fordham
Subject: before you leave

please stop by my office before you leave.

Kim

Tracking:

Recipient	Read
Lee Fordham	Read: 5/2/2001 4:09 PM

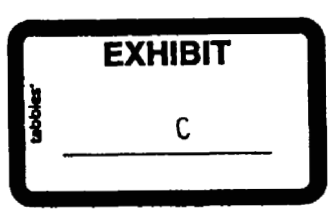
From: Kim Logue
Sent: Wednesday, May 02, 2001 5:39 PM
To: 'nancy.sims@bellsouth.com'
Subject: questions

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 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?

5/2/01
8:00 pm

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

QUESTIONS FOR BELLSOUTH 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 BELLSOUTH 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

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 adotpoin 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?

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 Telecommmunications 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

...(ILECs), 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 change and reconnection charges that Supra says it was wrongfully charged. LOAs, etc. ?)

C. Also, does Supra agree that unauthorized changes in local access changes 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?

From: Lee Fordham
Sent: Friday, March 16, 2001 11:01 AM
To: Kim Logue
Subject: RE: Docket 001097

Good morning, Kim. Commissioner Jaber came up with what I thought was an excellent plan on this Motion. Obviouly, Supra's real motive was to get the Prehearing so late that the Hearing would need to be continued. However, we called their hand and granted the Motion to Reschedule, but made it EARLIER. The Prehearing is now scheduled on April 6 instead of April 16. BellSouth is delighted with this resolution.

-----Original Message-----
From: Kim Logue
Sent: Wednesday, March 14, 2001 8:28 AM
To: Lee Fordham
Subject: RE: Docket 001097

Excellent. Happy Camper here.

-----Original Message-----
From: Lee Fordham
Sent: Wednesday, March 14, 2001 8:19 AM
To: Kim Logue
Subject: RE: Docket 001097

On prehearing motions, we just prepare a proposed order for the prehearing officer and present it to them. I will be preparing a proposed Order on this one by the end of the week, hopefully today.

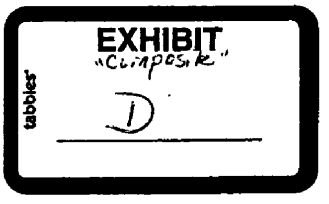
-----Original Message-----
From: Kim Logue
Sent: Wednesday, March 14, 2001 8:13 AM
To: Lee Fordham
Subject: RE: Docket 001097

Will a reply to Supra's Motion be filed? What is the process for denying such a motion?

-----Original Message-----
From: Lee Fordham
Sent: Wednesday, March 14, 2001 8:03 AM
To: Kim Logue
Subject: RE: Docket 001097

Good morning, Kim. I have already had some discussions with Comm. Jaber regarding this Motion. My position is the same as yours. 2 weeks ago I had provided Supra with several options, including telephonic appearance. We do not intend to create trauma to everyone else to accommodate Supra. Thanks for your input.

-----Original Message-----
From: Kim Logue
Sent: Tuesday, March 13, 2001 4:20 PM
To: Lee Fordham
Subject: Docket 001097



Lee:

I see from the documents filed that Supra is requesting a postponement of the prehearing

conference until sometime in May because of "conflicts." As you know, the hearing is scheduled for May 3rd. To not stick to the schedule already established months and months ago will cause an undue burden on the scheduling of resources all the way around, especially when the 271 docket hits. We're having a hard enough time scheduling hearings, and to adjust the prehearing conference will result in an adjustment of the entire schedule. At this point, I'm not willing to buy into Supra's motion. And I'm aggravated that Supra waited until March 2001 to advise of a "scheduling conflict", when the Florida schedule was set a month before the Texas schedule, two months before the schedule for the first arbitration in Atlanta, and three months before the second arbitration in Atlanta. While I would, in most cases be amenable to adjusting scheduling conflicts, this isn't one of those times. At a minimum, Supra should have advised us in December of the first conflict, or should have even advised Texas and Georgia of the conflicts with the already set Florida schedule.

There is a one week gap in Supra's alleged conflicts in April (April 2-6) that would permit a prehearing conference, but again, we'd have to run this through the scheduling hoopla in order to get it changed.

Not surprisingly, BellSouth has filed its objections to Supra's Motion, and having read Bell's opposition, I believe it has not only merit, but suggested resolution as well. I'm sure that Supra has more than one attorney. I also believe that the prehearing could be held the first week of April, if Comm. Jaber's schedule permits. This would preclude having to rearrange the remaining schedule. I also like Bell's suggestion that Supra could participate by phone.

As I see it, there are two options: 1) no, hell no. and 2) have the prehearing the first week of April.

I'd like to get this matter resolved this week, if possible. To that end, and to see if there truly are two options, i.e., #2, could you please check with Joanne Chase to see if Comm. Jaber's schedule could entertain a prehearing the first week of April? Please advise.

Kim

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

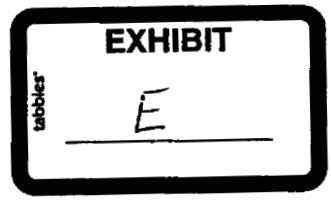
In re: Request for arbitration concerning complaint of BellSouth Telecommunications, Inc. against Supra Telecommunications and Information Systems, Inc. for resolution of billing disputes.	DOCKET NO. 001097-TP ORDER NO. PSC-01-0699-PCO-TP ISSUED: March 20, 2001

ORDER GRANTING IN PART AND DENYING IN PART SUPRA'S MOTION TO RESCHEDULE HEARING DATE

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. The prehearing conference and hearing are currently scheduled for April 16, 2001, and May 5, 2001, respectively.

On March 6, 2001, Supra filed its Motion to Reschedule Hearing Date. In the body of the Motion, however, Supra addresses only the date of the prehearing conference. Supra alleges therein that it has scheduling conflicts beginning on April 9, 2001, which will prohibit it from appearing at the prehearing until after May 1, 2001. There are three exhibits attached to the Motion indicating the basis of the conflicts. All three conflicts are hearings on pending arbitration cases in Texas and Georgia. Supra requests that the Prehearing be continued until after May 1, 2001.

On March 12, 2001, BellSouth filed its Opposition to Supra's Motion to Reschedule Hearing Date. BellSouth notes that each of the dates cited by Supra as conflicting with the prehearing conference in this Docket were set after the issuance by the Commission of the Case Assignment and Scheduling Record on November 21, 2000. BellSouth also observes that a prehearing conference



after May 1, 2001, would also necessitate continuing the hearing, which it opposes. BellSouth has no objection to a telephonic appearance by Supra at the prehearing conference.

Hearings scheduled in other jurisdictions are legitimate conflicts that warrant moving the prehearing conference in this instance. However, as noted by BellSouth, conducting the prehearing conference after May 1, 2001 as requested by Supra, would necessitate continuing the hearing. In an effort to avoid delay in the prompt resolution of the issues in this case, the prehearing conference shall be rescheduled to April 6, 2001, which is prior to any of the conflicts cited by Supra in its Motion.

Based on the foregoing, it is

ORDERED by Commissioner Lila A. Jaber, as Prehearing Officer, that Supra's Motion to Reschedule Hearing Date is granted in part and denied in part, as discussed in this Order. It is further

ORDERED that the prehearing conference in this matter, originally set for April 16, 2001, is rescheduled and will be held on April 6, 2001.

By ORDER of Commissioner Lila A. Jaber, as Prehearing Officer, this 20th Day of March, 2001.

LILA A. JABER
Commissioner and Prehearing Officer

(S E A L)

CLF

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 Records and Reporting, 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.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Supra Telecommunications & Information System, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996.	)	Docket No. 001305-TP

State of Florida
County of Leon

Affidavit of Nancy H. Sims

Before me, the undersigned authority, personally appeared Nancy H. Sims, who stated that she is currently the Director of Regulatory Relations for BellSouth Telecommunications, Inc.-Florida ("BellSouth-Florida"), and further states the following:

1. My title is Director of Regulatory Relations for BellSouth-Florida. I have held that title since 1994.

2. My business address is 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301.

3. On or about May 2, 2001, Kim Logue sent me an e-mail. I could not open the e-mail and did not know what it contained.

4. I telephoned Kim Logue to advise her that I could not open her e-mail. She told me that she had drafted suggested cross-examination questions for BellSouth's witnesses in Docket No. 001097, that she would fax those questions to me and that she wanted me to advise her which BellSouth witness

EXHIBIT
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could respond to which question. I was not aware at that time that there would be questions for Supra included.

5. When I received the fax from Ms. Logue, I discovered that she had included possible cross-examination questions for Supra's witness. I conferred with my counsel, telephoned Ms. Logue and advised her that I did not believe it was appropriate for me to see questions designed for Supra. I agreed to let Ms. Logue know which of the BellSouth witnesses could answer the questions for BellSouth.

6. I did not look at the questions intended for Supra and, in fact, I threw them away. I did not share those questions with any BellSouth witness or attorney.

7. I reviewed Ms. Logue's draft cross-examination questions for BellSouth and advised her which witness could address which question. I did not discuss the relevance, quality or substance of the draft questions with Ms. Logue. I merely advised her to which BellSouth witness the questions could be directed.

8. I did not have any substantive discussions or contact with Ms. Logue about Docket No. 001097-TP.

9. I did not have any substantive discussions or contact with Ms. Logue about Docket No. 001305-TP.

10. I never received any private documents from Ms. Logue at any time during the pendency of Docket No. 001305-TP.

11. At no time have I met with Ms. Logue after hours or outside the Commission setting.

12. At no time have I received documents from Ms. Logue, with the exception of the draft cross-examination questions in Docket No. 001097-TP.

13. At no time did anyone at BellSouth draft cross-examination questions for the Staff or the Commission in either Docket No. 001097-TP or Docket No. 001305-TP.

14. At no time, have I had a "secret" or "illicit" relationship with Ms. Logue. My only relationship with Ms. Logue has been on a professional basis.

15. I have had no inappropriate communications with Ms. Logue.

16. Further Affiant sayeth not.

Dated this 20th day of February, 2002.

Nancy H. Sims

Sworn to and subscribed
before me this 20th day February 2002

Tanya W. Lynn
Notary Public (Signature)

Tanya W. Lynn
Notary Public (Printed Name)

Personally Known ✓ or Produced Identification ____

Identification Produced _____

Tanya W. Lynn
MY COMMISSION EXPIRES
September 9, 2005
#DD060386
NOTARY PUBLIC, STATE OF FLORIDA

From: System Administrator [postmaster@BellSouth.com]
Sent: Wednesday, May 02, 2001 8:47 PM
To: Kim Logue
Subject: Delivered: questions

Importance: High

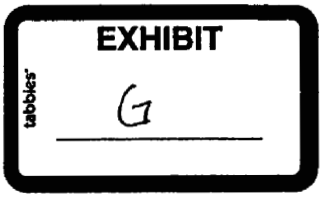
questions

<<questions>> Your message

To: 'nancy.sims@bellsouth.com'
Subject: questions
Sent: Wed, 2 May 2001 17:39:02 -0400

was delivered to the following recipient(s):

Sims, Nancy H on Wed, 2 May 2001 21:47:26 -0400
MSEXCH:MSExchangeMTA:BLS01:BLSMSGPRV03



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

Importance: High

CROS1097.WPD

Lee:

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

Kim

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

QUESTIONS FOR BELLSOUTH 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 BELLSOUTH 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 change and reconnection charges that Supra says it was wrongfully charged. LOAs, etc. ?)

C. Also, does Supra agree that unauthorized changes in local access changes 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?

KIM LOGUE
P.O. BOX 1398
MANASSAS, VA 20108-1398
703-755-2790 (office)
540-364-9465 (home)

Profile

Effective regulatory and government relations manager with sustained record of leadership in advocacy and development of government relations strategies to support domestic and international business opportunities and partnerships. Exceptional skills and consistent achievements in responding to changing government, economic and market conditions. Highly skilled in interpreting situations, recognizing opportunities and devising strategies to achieve public policy goals with federal, state and local governments and regulatory agencies.

Corporate Knowledge and Experience

January 2000 – Present

Senior Regulatory Analyst, Teleglobe Communications Corporation, Reston, VA
Legal and Regulatory Affairs Division

- Manage domestic and international regulatory and legislative issues affecting global telecommunications service, facilities and operations for countries of primary responsibility and for other countries as assigned
- Pursue common carrier and other operating authority in new markets
- Represent company in industry organizations
- Manage regulatory compliance and tariffing processes
- Manage investigation process relating to inquiries received from state commissions, legislatures and attorneys general
- Corporate point of contact for state and federal regulatory/government agencies
- Provide regulatory advise with regard to potential transactions, introduction of new services, state and federal certification, tariffing and structuring of affiliate and subsidiary relationship, including analysis of Internet and market entry issues.

September 1997 – January 2000

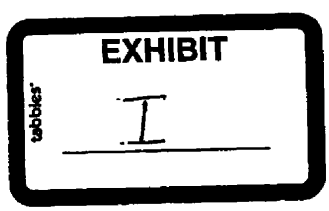
Regulatory/Legislative Analyst, Qwest Communications, Arlington, VA
Law and Government Affairs Division

- Manage regulatory case preparation function for Qwest's State Government Affairs department
- Develop strategy and tactics in formal regulatory proceedings (Section 251/252/271 of the Telecommunications Act of 1996)
- Assist in managing certification process of entry into local exchange service
- Respond to inquiries from state commissions, legislatures and attorneys general concerning a wide range of issues (dialing parity, Y2K, NPA conservation, Section 271, USF, LNP, rate information, etc.)
- Monitor/analyst current regulatory environment for impact on Qwest's business interests
- Manage state legislative and regulatory proposals to determine relative priority to Qwest's business plans and those of its subsidiaries

November 1995 – June 1997

Manager, Legislative Affairs, The Tobacco Institute, Washington, D.C.
Public Affairs Division

- Manage state and local legislative activities for the Institute and all member companies
- Assist in formulation of industry position on pending state and local legislation
- Determine financial impact of proposed excise, sales and manufacturers' taxes on member companies and industry
- Attend Congressional and regulatory hearings concerning industry
- Prepare issue briefs, white papers, talking points and other reports as appropriate
- Manage database of state and local industry-related laws and ordinances



STATE OF FLORIDA

OIC

Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE	:	October 12, 2000
TO	:	Walter D'Haeseleer, Director, Division of Competitive Services
FROM	:	Sally Simmons, Chief of Market Development, Division of Competitive Services SAS
RE	:	Request to Appoint Kim Logue to Public Utilities Supervisor (Position No. 00443), Carrier Services Section

Due to the demanding nature of the above referenced position, this vacancy was advertised in the NARUC Bulletin and major Florida newspapers in order to help attract a broader base of applicants. The Job Opportunity Announcement included a statement that special consideration would be given to applicants who have experience with the Telecommunications Act of 1996 (TA 96), strong oral and written communication skills, and experience supervising or coordinating proceedings. Fifty-seven applications were received for the position.

The overwhelming majority of proceedings handled by this section are conducted under TA 96, and some prior understanding of this federal law and associated FCC regulations is essential in order to function effectively. Consequently, I offered interviews to the seven applicants with TA 96 experience, and all were interviewed. Written exercises were also administered in order to discern the applicant's familiarity with some of the more prevalent issues in arbitration and complaint proceedings.

One applicant, Kim Logue, has decidedly more experience than the other candidates in terms of her telecommunications and supervisory background. She has experience with TA 96, and has held positions in regulatory and legislative affairs with AT&T, Qwest, and Teleglobe. In total, she has ten years of telecommunications experience.

During the oral interview, Ms. Logue was very articulate and composed, and many of her responses suggested that she is comfortable and effective in a leadership position. She performed adequately on the written exercises, particularly in view of the fact that she has not been actively involved with TA 96 proceedings since the first of this year. Her writing style was solid, and she demonstrated familiarity with a variety of relevant subjects. Rick Moses has worked with Ms. Logue in the past, and has found her to be very responsive to his requests. In addition, a reference check with her AT&T Vice President was extremely favorable. He indicated that she was very energetic, highly committed to her work, very professional, and well regarded within her organization (noted that she had been promoted several times).

Based on the above, I would appreciate receiving your concurrence and the necessary executive level approvals to appoint Kim Logue to the position of Public Utilities Supervisor. Given her experience, my understanding of her salary requirements, the difficulty with filling this position, and budgetary considerations, I am requesting that she be hired at an annual salary of $53,200. In addition, I am requesting that the Commission pay up to $2,000 of her moving expenses. Her current annual salary is $54,000, and I understand that her guaranteed income with bonuses is $60,000. Based on my discussions with her, I believe this salary and moving allowance package would be acceptable to her.

The applicable form to accompany this request is attached. If you need any additional information, please let me know.

Attachment

c: Beth Salak

STATE OF FLORIDA

DIVISION OF COMPETITIVE SERVICES
WALTER D'HAESELEER
DIRECTOR
(850) 413-6600

Public Service Commission

October 20, 2000

Ms. Kim Logue
P.O. Box 1398
Manassas, VA 20108

Dear Ms. Logue:

I am pleased to provide this letter confirming our offer and your acceptance of the position of Public Utilities Supervisor at a starting salary of $53,200. In addition, the Commission will pay your moving expenses in an amount commensurate with the lowest bid from three commercial movers. According to the estimates you have provided to date, which are based on 10,000 pounds, the lowest bid is $6,718.51.

Your first day of work will be November 8. Per our discussions, we have agreed that you will be on leave without pay from November 13 through December 6 in order to accommodate your vacation and provide time for your move from northern Virginia.

I look forward to working with you. Please call me at (850) 413-6605 if you have any questions or need assistance prior to starting work with the Commission.

Sincerely,

Sally A. Simmons

Sally A. Simmons
Bureau Chief
Market Development

From: Kim Logue
Sent: Wednesday, May 02, 2001 6:11 PM
To: 'AT&T Customer Service'
Subject: RE: RE: RE: Direct vs. LEC Billing

Importance: High

Well....now we know the alleged truth, which means that, to this point, AT&T has, at a minimum, been less than forthcoming, i.e., misleading in its information provided me, or at a maximum, has lied.

So you will know, and I'd respectfully request that you thoroughly check AT&T's records, I changed my service with AT&T to be disconnected in Virginia (540-364-9465) on December 4, 2000, with an effective date of December 6, 2000. I provided my forwarding telephone number in Florida (850-668-7237), as well as my new address on December 4, 2000. I gave this same information not only to AT&T's customer service (800-222-0300), but also to the calling card folks, as well as the group that handled the re-routing of my two toll-free lines. AT&T, at some point in time, but later than December 18, 2000, to my OLD address in Virginia. Mind you, AT&T had my new address and phone number, yet sent the bill to my old address. Go figure. This bill was not received by me until early March, as can be evidenced by the postmark on the envelope...I believe it's dated February 22, 2001. Furthermore, the bill states that it closed out on December 16, 2000, yet had charges/postings on it dated December 18, 2000. Therefore, the actual close-out date of the bill was not December 16, but a date future to December 18, 2000.

Again, I did not receive the bill until early March. The postmark bears out my allegation. I even requested on more than three occasions to fax a copy of the bill, disputing the close-out date, as well as the date received, to various customer service, credit/collections and other personnel. My request was never honored. Furthermore, I continued to question, but never received a viable answer as to why the bill was sent to the old address, when I'd clearly called in and had my service changed. My calling card calls after December showed up on my Sprint bill, so I knew AT&T had to have the correct BTN, my toll free numbers rang to my new telephone numbers, so I knew AT&T had the correct RTN. The answer still alludes me as to how in god's name AT&T did not update the stupid address. The address wasn't evidently updated until February 2001, which, coincidently, is the month that the bill was postmarked and forwarded to my home in Florida. Imagine that.

I have been an AT&T customer for over 20 years. I have never, and I repeat, never, not paid a bill. I worked at AT&T long enough to draw retirement. My father retired from AT&T with more than 45 years service. To now, I have had a great amount of loyalty to AT&T, through good times and bad. I and my family own a tremendous amount of stock in AT&T. To be treated like this, with no previous record of non-payment, is unfathomable. I gave a date to AT&T as to when payment would be mailed, and held to that date. And your records show that payment was indeed made in full.

I do not appreciate being lied to by customer service representatives, supervisors, or those who respond on-line. For this reason, and because AT&T will not change my billing back to being LEC billed, which you clearly have the option to do, I will discontinue my service with AT&T. Only, and only if AT&T changes my billing back to being LEC billed, will I consider AT&T's services. Long distance companies are a dime a dozen, and there are plenty of others out there who will gladly take my money. And if you can't understand the simple fact that I have done nothing wrong, and merely wish to receive one bill, with one due date, then shame on you. It is clearly AT&T's fault that they did not accurately update my records, pursuant to my timely and accurate request. It is not my fault that the bill in question was postmarked February 20, 2001. (I still have it, and will gladly send as proof of my allegation that it was not timely received.)

But I no longer need to put up with the kind of crap endured by your nasty and insubordinate representatives. Sprint will be glad to have my money...for local, intralata, interstate and international calls. And with them, it will be one-stop shopping.

Again, the choice is AT&T's....one bill, or one less customer.

Kim Logue

-----Original Message-----
From: AT&T Customer Service [mailto:customer_service@att.com]
Sent: Wednesday, May 02, 2001 5:49 PM
To: Kim Logue
Subject: Re: RE: RE: Direct vs. LEC Billing

Dear Kim Logue:

Thank you for contacting AT&T Online Customer Service.

I apologize for any frustration this misunderstanding may have caused you.

I have thoroughly reviewed your account and I can confirm the reason that your account must be direct billed by AT&T.

Due to a previous or current outstanding debt with AT&T or another Long Distance or Local carrier, AT&T requires your account to be Direct Billed. The decision to send you an AT&T Direct Bill was made by AT&T alone.

I trust the information I provided has been helpful to you.

You are a valued customer and we appreciate your business. If you need further assistance, please contact us at:

http://www.att.com/write

For your protection, an original of this e-mail transmission is being maintained in a secure file by AT&T.

Sincerely,

Karmin
AT&T Online Customer Service

Original Message Follows:

Excuse me, but your ignorance of the identity of my local phone company is quite evident by your reply. My local phone company is Sprint. I have, up until the April bill, been LEC billed for my long distance charges. Sprint DOES allow the inclusion of AT&T's long distance charges on my bill. I'm sure you're familiar with B&C agreements? Sprint has advised that they still allow billing of AT&T's long distance charges. It is YOU, AT&T, that are alleging otherwise. Please get your facts straight and provide me an accurate and truthful answer.

I'm becoming more and more impatient with this line of crap AT&T is providing, and I'd like an answer from a manager, specifically, a Staff Manager or District Manager. Someone who should be educated enough on what's going on to provide an accurate and complete answer.

Kim Logue

-----Original Message-----
From: AT&T Customer Service [mailto:customer_service@att.com]
Sent: Tuesday, May 01, 2001 10:00 PM
To: Kim Logue
Subject: Re: RE: Direct vs. LEC Billing

Dear Kim Logue:

Thank you for contacting AT&T Online Customer Service.

I can certainly understand your concern regarding your billing arrangement.

Many AT&T customers receive one phone bill, in which the AT&T long distance charges are included in the local phone company's bill. However, AT&T and your local phone company are two separate companies.

Entel does not carry billing for AT&T. Therefore, adding the AT&T charges to your local company's bill is not an option. In order to receive your long distance charges with your local provider's bill, you must be with another local provider that will carry AT&T charges.

I apologize for any inconvenience this may have caused.

You are a valued customer and we appreciate your business. If you need further assistance, please contact us at:

http://www.att.com/write

For your protection, an original of this e-mail transmission is being maintained in a secure file by AT&T.

Sincerely,

Shenida
AT&T Online Customer Service

Original Message Follows:

You've still not answered my concerns. Why is billing no longer provided
via my LEC? When was this decision made? Why was I not notified that I would no longer have a choice? The last correspondence I received, was a
letter stating that IF and let me repeat, IF I wanted to be direct-billed,
I'd have to contact AT&T. IF NOT, and I repeat, IF NOT, I would be charged
$1.50 for LEC billing. I chose to continue being LEC billed, which means,
pursuant to your letter, that I would be charged $1.50. I WAS GIVEN A CHOICE. I CHOSE TO CONTINUE, YES, CONTINUE, TO BE LEC BILLED. I am not stupid, and I am fully aware of the federal and state rules concerning customer notification. If, by your actions, I clearly never had a choice in
the matter, then your letter to myself, and millions of other AT&T customers, was misleading at best, and fraudulent, at worst. As a former
AT&T employee in Law & Government Affairs, and the current supervisor of the
Carrier Services division at the Florida Public Service Commission, I know
where of I speak.

Now, please take seriously my complaint, and respond to it in full.

Kim Logue

-----Original Message-----
From: AT&T Customer Service [mailto:customer_service@att.com]
Sent: Tuesday, May 01, 2001 12:13 PM
To: Kim Logue
Subject: Re: Direct vs. LEC Billing

Dear Kim Logue:

Thank you for contacting AT&T Online Customer Service.

Unfortunately, billing through your local phone company is not an option, however, we do offer online billing with automatic withdrawal from your credit card or checking account.

Sign up for the AT&T Inter@ctive Bill by visiting:

http://www.customerservice.att.com/online_bill/

- Read the information on the AT&T Inter@ctive Bill page
- Click Sign Up
- Complete the required information and click Continue

If you enroll in AT&T online billing services for the first time before February 05, 2002 you will receive a $1.00 off your bill every month for 12 months. The credit will be applied to the bottom of the bill and can not be carried over to the next month.

You are a valued customer and we appreciate your business. If you need further assistance, please contact us at:

http://www.att.com/write

For your protection, an original of this e-mail transmission is being maintained in a secure file by AT&T.

Sincerely,

Syreeta
AT&T Online Customer Service

Original Message Follows:

Form Message

Full Name: Kim Logue
Email Address: klogue@psc.state.fl.us
Website Source:
Subject: Direct vs. LEC Billing
WebCategory: Residential Telephone Services Feedback
WebSubCategory:
WebSubSubCategory:
Telephone Number: 850-668-7237
Body: Residential Telephone Services Feedback Pursuant to a national marketing letter sent by AT&T, I was advised that, if I CHOSE to CONTINUE being LEC billed, I would be billed a charge of $1.50 per month. However, if I CHOSE to be direct-billed by AT&T, there would be no such service charge. The OPTION, as provided in AT&T's letter, was to

call ONLY in the event I wished to change my billing to be direct billed by AT&T. If I CHOSE to CONTINUE being LEC- billed, I didn't have to do anything. THEREFORE, I DID NOTHING. I DID NOT CALL, I DID NOT WRITE. However, on March 23, 2001, my service was switched, without my knowledge, permission or consent, to be direct- billed by AT&T. On April 3, 2001, I contacted AT&T and requested that my billing be CHANGED BACK to being LEC- billed. The confirmation number for this transaction is S9NMF040301. The AT&T representative with whom I spoke was "Rhonda" out of the Jacksonville, NC CSSC. Upon receiving a bill directly from AT&T, I called to the 222- 0300 number to AGAIN request that I be LEC billed. The gentleman with whom I spoke said that he could not confirm why the first request didn't go through, but that he would place a "priority" on my second request. Evidently, that request went unheeded as well. Today, April 30, 2001, I called a THIRD time to ensure the second request went through without incident. No such luck. I have ONLY NOW been advised that, "in my area" I will have NO CHOICE. If I want AT&T, I will HAVE TO BE DIRECT BILLED. This is in direct conflict with the letter I received, and what two AT&T representatives had previously told me. I have NEVER been advised that, "in my area" I will no longer have a choice. I have NEVER received, either verbally or in writing, that AT&T had CHANGED ITS MIND regarding MY OPTIONS. I DO NOT WANT TO BE DIRECT BILLED. I WANT TO BE LEC BILLED. HOWEVER, IF I AM NOT AFFORDED A CHOICE, AS PER AT&T'S LETTER, THEN I WILL ADVISE YOU THAT I WILL BE EXERCISING A CHOICE I DO HAVE, WHICH IS TO SWITCH TO SPRINT, THUS ENSURING I WILL RECEIVE ONE BILL. And with the way AT&T is going these days, they can ill afford to bleed customers, especially ones who bill around $200 a month. Now the choice is AT&T's. Do you want to keep me as a customer, or not? If so, then I will require LEC billing. Regardless of whether or not, pursuant to AT&T's letter, it will cost me $1.50 per month. Take your pick, AT&T...either you get my money, or Sprint does. Either way, I'm writing only one check per month for my telephone service. Kim Logue
850-668-7237
PWSS Tracking Number:

State of Florida

Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: January 3, 2002
TO: HAROLD MCLEAN, GENERAL COUNSEL
FROM: RICHARD C. BELLAK, DIVISION OF APPEALS RCB
RE: INTERNAL INVESTIGATION AND REPORT; KIM LOGUE'S FURNISHING OF DRAFT CROSS-EXAMINATION QUESTIONS TO BELLSOUTH IN DOCKET NO. 001097-TP

BACKGROUND

My review of this matter begins with information supplied to Ms. Nancy White of BellSouth and Mr. Brian Chaiken of Supra Telecommunications in a letter from the Commission's General Counsel dated October 5, 2001. In pertinent part, the letter states:

> On the evening of May 2, 2001, Ms. Kim Logue, a Commission staff employee, undertook to draw cross-examination 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 BellSouth'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.

In a responsive letter dated October 8, 2001, Mr. Chaiken stated two primary concerns:

> First, let me confirm that Supra did not receive an e-mail from Ms. Logue on May 2, 2001, or at any other time. Second, a close reading of the cross-examination questions attached to your letter raises some question as to the neutrality and impartiality of Ms. Logue.

Later, Mr. Chaiken states two additional concerns:

> We are particularly interested to know why BellSouth never informed the Commission that it had received the e-mail from Ms. Logue back in May 2001.... Supra is now left to wonder what impact Ms. Logue may have had on other FPSC BellSouth decisions.

This Report will consider whether the result in this docket was affected by the circumstances concerning the e-mail described above and whether the cross-examination questions drafted by Ms. Logue raise some question as to her neutrality and impartiality. This Report will, however, leave to BellSouth any response to the suggestion that it should have informed the Commission about receipt of Ms. Logue's e-mail.

EXHIBIT
tabbies
'K'

DISCUSSION

I. Effect of provision of draft cross-examination questions to BellSouth.

Neither Ms. Logue, who is not currently employed at the Commission, nor anyone else associated with the Commission claims that e-mailing draft cross-examination questions to one party and not the other is correct or reasonable. Ms. Logue, in fact, denied having done so. Moreover, the better way to find out which witnesses to direct questions to would be to ask about each witness's area of expertise rather than to send any draft cross-examination questions to the parties. However, assuming the worst case scenario that the draft questions were, whatever the cause, only sent to BellSouth, the issue remains as to the effect of the error. In the undersigned's view, the effect was de minimus and the error, therefore, harmless. The reason for this conclusion is that in most instances, the actual questions asked on cross-examination at the hearing by Mr. Fordham in representing Commission staff were not the questions drafted by Ms. Logue.

In a memorandum dated October 5, 2001 from Mr. Fordham to the General Counsel, Mr. Fordham noted that of 33 questions he asked BellSouth's witnesses, only 2 were substantially the same as those drafted by Ms. Logue. Of 39 questions he asked Supra's witness, only 8 were substantially the same as those drafted by Ms. Logue. While this is not surprising, given that technical staff are not attorneys, it does have the effect of minimizing whatever error may have occurred. Though, arguably, no party should have been given the draft questions, or at the least, both should have been given them, where they were substantially not the questions asked at the hearing, the error was harmless.

II. Effect of the draft cross-examination questions as to raising the issue of Ms. Logue's neutrality and impartiality.

In his letter of October 8, 2001, Mr. Chaiken lists questions 8, 10, 11B, 12, 13 and 15 for BellSouth and questions 1 and 2 for Supra, with particular emphasis on 1B and the comment "who knows what she will say...", as raising some question as to Ms. Logue's neutrality and impartiality. Although this Report concludes that furnishing the draft questions only to BellSouth was an error, though a harmless error for the reasons stated, the undersigned does not conclude that the questions listed by Mr. Chaiken raise doubts as to Ms. Logue's neutrality and impartiality. In this regard, it is important to note that the Commission is required to be neutral and impartial as to parties, but not as to the legal arguments presented by parties. Indeed, no tribunal could adjudicate the issues brought before it if it were neutral and impartial as to the arguments presented.

Specifically as to this case, Mr. Chaiken asserts that questions 10, 11B, 12, 13 and 15 for BellSouth concern whether BellSouth should have the right to disconnect Supra's service and that the line of questioning had no relevance to the proceeding. However, in Order No. PSC-01-1585-FOF-TP, the Commission discussed "Termination of Service" at Part VI of the order and concluded that "BellSouth may exercise its right to terminate service to Supra in the event timely payment is not made". Order 1585 at p. 10. Moreover, question 8 for BellSouth as to "...why does BellSouth continue to provide service to Supra" is, by inference, a challenge to BellSouth's compliance with Section 364.10, Florida Statutes, prohibiting undue preferences, since providing service where bills remain unpaid could be characterized as an undue preference for the purposes of the statute.

Finally, questions 1 and 2 for Supra, including the remark "who knows what she will say" referring to witness Bentley, appear benign in context. Ms. Logue, who is not an attorney, was apparently affording Supra an opportunity to further explain and assert its theory that the charges at issue were governed by the 1999, rather than 1997, agreement between Supra and BellSouth. In so doing, Ms. Logue was more generous to Supra than the Commission ultimately was on that issue. In Order 1585, the Commission noted:

> In Order No. PSC-00-2250-FOF-TP, issued November 28, 2000, we determined that the relevant agreement in this instant matter is the resale agreement entered into by BellSouth and Supra on June 26, 1997....

Order 1585 at p. 4. The Commission further noted, with evident disapproval, that

> ...even after this Commission's specific ruling in Order No. PSC-00-2250-FOF-TP, Supra continued to urge the BellSouth/AT&T [i.e., 1999] agreement as controlling.

Order 1585 at p. 6. Ms. Logue's questions, which would have afforded Supra the opportunity to continue asserting issues the Commission considered legally foreclosed by its prior ruling, hardly show some lack of impartiality or neutrality as to Supra as a party, even if the parenthetical comments demonstrate skepticism as to Supra's position on the issue addressed by those questions.

CONCLUSION

The undersigned views the alleged furnishing of draft cross-examination questions only to BellSouth as an error. However, the error was harmless where the questions actually asked both parties at the hearing by the attorney representing the Commission staff were, substantially, not the draft cross-examination questions.

The undersigned views the questions listed in Supra's October 8, 2001 letter as not raising an issue as to Ms. Logue's impartiality or neutrality for the reasons stated in the body of this Report.

RCB

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

L

STATE OF FLORIDA

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.

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 3:18pm

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?

5/2/01
8:00 pm

TE[illegible]ATIVE QUESTIONS FOR CROS[illegible] XAMINATION
DOCKET NUMBER 001097
COMPLAINT OF BELLSOUTH AGAINST SUPRA

QUESTIONS FOR BELLSOUTH 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 BELLSOUTH 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?

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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?

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 UPRA 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 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 (BOCLS), pursuant to 47 CFI ection 51.617(a). Section 51.617(b) is 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 change and reconnection charges that Supra says it was wrongfully charged. LOAs, etc. ?)

C. Also, does Supra agree that unauthorized changes in local access changes 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?

John Grayson

From: John Grayson
Sent: Wednesday, October 24, 2001 3:58 PM
To: Shirley Jeff
Subject: RE: Investigation

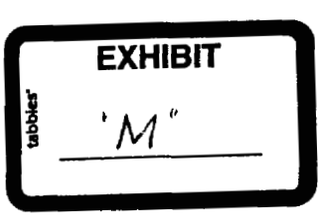
We discussed it in passing today. All is well.

-----Original Message-----
From: Shirley Jeff
Sent: Wednesday, October 24, 2001 3:53 PM
To: John Grayson
Subject: RE: Investigation

John:
I mentioned this to the Chairman. Has he discussed it with you yet? If not, do I need to schedule another hearing with him?

-----Original Message-----
From: John Grayson
Sent: Monday, October 22, 2001 10:10 AM
To: E. Leon Jacobs
Cc: Shirley Jeff
Subject: Investigation

Have not heard back from you regarding initiating the investigation.



State of Florida

Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

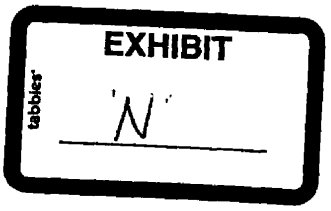
DATE: October 25, 2001
TO: E. Leon Jacobs, Chairman
FROM: John M. Grayson, Inspector General
RE: FPSC Docket No. 001097-TP / Cross examination questions distribution investigation

It has come to my attention that on May 2, 2001, Ms. Kim Logue, a staff employee in the Division of Competitive Services, Bureau of Market Development, provided a draft of cross examination questions to Ms. Nancy Sims of BellSouth prior to the hearing in the above referenced proceeding.

In response to this information, I have initiated an investigation to determine the following:

- Whether Ms. Logue violated any statute, rule, or internal policy/procedure.
- Whether anyone with managerial responsibility over Ms. Logue had knowledge of the distribution of the cross examination questions. If so, who was this knowledge communicated to, in what manner, and what if anything was done in response.
- BellSouth's response to receiving the information.
- Whether Ms. Logue provided similar communications in other dockets to which she was assigned.

It is important to note that effective October 10, 2001, Ms. Logue reported for active duty in the US Air Force. Her absence and the inability to interview her will make it difficult to complete this investigation until she returns.



STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

EXECUTIVE DIRECTOR

DEPUTY EXECUTIVE DIRECTOR/TECHNICIAL

REPORT OF PER NNEL ACTION

DATE PRINTED 11/19/01

DOCUMENT 009

EMPLOYEE LOGUE,KIM

FROM

EMPLOYEE

SOCIAL SECURITY #	POS #	POS F.T.E	SVC	EFFECTIVE DATE
[redacted]	000443	1	01	11/11/01

EMPLOYEE NAME

LOGUE,KIM KF

COPES ORGANIZATION

61020203020000000000000 BUREAU OF MARKET DEVELOPMENT

APPOINTMENT TYPE	APPOINTMENT STATUS	STATUS EXPIRE
01	EXEMPT	

PAY PLAN	CLASS	CBU	INCL.	ANNIV. DATE
SELECTED EXEMPT SERV	2263	87	N	0701

OFFICIAL CLASS TITLE

PUBLIC UTILITIES SUPERVISOR - SES

ACTION

11 LEAVE OF ABSENCE WO/PAY

PAY

TYPE	BASE RATE	RATE	HR. BASE	HR. RATE	FTE
M	4544 17	4544.17	26.22	26.22	1

CAD	LEADWORKER	SHIFT	ON CALL	CONTACT	OTHER
.00	.00	00	00	.00	.00

W4	EXMPT	ADD WITH	RET	INSURANCE	LAST PERF APPRAISAL
01	03	00	HA	0001	NOT RATED

SAMAS ACCOUNT CODE INTER DEPT.

61502573003610100000001000000 0505001337

SAMAS ORGANIZATION

61100505001 BUREAU OF MARKET DEVELOPMENT

LEAVE WITHOUT PAY

HOURS	FROM	TO

LOCATION

LOCATION	PHYSICAL COUNTY	HEADQUARTER COUNTY
TALLAHASSEE	LEON	LEON

TO

EMPLOYEE

SOCIAL SECURITY #	POS #	POS F.T.E	SVC	EFFECTIVE DATE
[redacted]	000443	1	01	11/16/01

EMPLOYEE NAME

LOGUE,KIM KF

COPES ORGANIZATION

61020203020000000000000 BUREAU OF MARKET DEVELOPMENT

APPOINTMENT TYPE	APPOINTMENT STATUS	STATUS EXPIRE
01	EXEMPT	

PAY PLAN	CLASS	CBU	INCL.	ANNIV. DATE
SELECTED EXEMPT SERVIC	2263	87	N	0701

OFFICIAL CLASS TITLE

PUBLIC UTILITIES SUPERVISOR - SES

ACTION

13 RETURN FROM LEAVE OF ABSENCE

PAY

TYPE	BASE RATE	RATE	HR. BASE	HR. RATE	FTE
M	4544.17	4544.17	26.22	26.22	1

CAD	LEADWORKER	SHIFT	ON CALL	CONTACT	OTHER
.00	00	00	00	.00	00

W4	EXMPT	ADD WITH	RET	INSURANCE	LAST PERF APPRAISAL
01	03	.00	HA	0001	NOT RATED

SAMAS ACCOUNT CODE INTER DEPT.

61502573003610100000001000000 0505001337

SAMAS ORGANIZATION

61100505001 BUREAU OF MARKET DEVELOPMENT

LEAVE WITHOUT PAY

HOURS	FROM	TO
0	11/11/01	11/16/01

LOCATION

LOCATION	PHYSICAL COUNTY	HEADQUARTER COUNTY
TALLAHASSEE	LEON	LEON

SEPARATIONS AND TERMINAL LEAVE

REASONS FOR SEPARATION	ANNUAL	SICK PRE 73	POST 73	SPC. COMP
	0	0	0	0

ANNUAL PAID	SICK PAID	SPECIAL COMP PAID

COMMENTS

ADD'L COMP	TRAIN	000.00	HAZARDOUS	000.00	ADD'L COMP	TRAIN	000.00	HAZARDOUS	000 00
	COORD	000.00	TEMP SPEC	000 00		COORD	000.00	TEMP SPEC	000.00

REQUESTED BY

APPROVAL

DATE

DATE 11/19/01

EXHIBIT "Composite" 0

STATE OF FLORIDA

PUBLIC SERVICE COMMISSION

EXECUTIVE DIRECTOR

DEPUTY EXECUTIVE DIRECTOR/TECHNICIAL

REPORT OF PER NNEL ACTION

DATE PRINTED 11/19/01

DOCUMENT 010

EMPLOYEE LOGUE,KIM

FROM

EMPLOYEE

SOCIAL SECURITY #	POS #	POS F.T.E	SVC	EFFECTIVE DATE
[redacted]	000443	1	01	11/16/01

EMPLOYEE NAME

LOGUE,KIM KF

COPES ORGANIZATION

61020203020000000000000 BUREAU OF MARKET DEVELOPMENT

APPOINTMENT TYPE	APPOINTMENT STATUS	STATUS EXPIRE
01	EXEMPT	

PAY PLAN	CLASS	CBU	INCL.	ANNIV. DATE
SELECTED EXEMPT SERV	2263	87	N	0701

OFFICIAL CLASS TITLE

PUBLIC UTILITIES SUPERVISOR - SES

ACTION

13 RETURN FROM LEAVE OF ABSENCE

PAY

TYPE	BASE RATE	RATE	HR. BASE	HR. RATE	FTE
M	4544.17	4544.17	26.22	26.22	1

CAD	LEADWORKER	SHIFT	ON CALL	CONTACT	OTHER
.00	.00	.00	.00	.00	.00

W4	EXMPT	ADD WITH	RET	INSURANCE	LAST PERF APPRAISAL
01	03	.00	HA	0001	NOT RATED

SAMAS ACCOUNT CODE INTER DEPT.

61502573003610100000001000000 0505001337

SAMAS ORGANIZATION

61100505001 BUREAU OF MARKET DEVELOPMENT

LEAVE WITHOUT PAY

HOURS	FROM	TO

LOCATION

LOCATION	HEADQUARTER COUNTY
TALLAHASSEE	LEON

PHYSICAL COUNTY

LEON

SEPARATIONS AND TERMINAL LEAVE

REASONS FOR SEPARATION	ANNUAL	SICK PRE 73	POST 73	SPC. COMP
	0	0	0	0

ANNUAL PAID SICK PAID SPECIAL COMP PAID

COMMENTS

ADD'L COMP:	TRAIN	000.00	HAZARDOUS	000.00
	COORD	000.00	TEMP SPEC	000.00

TO

EMPLOYEE

SOCIAL SECURITY #	POS #	POS F.T.E	SVC	EFFECTIVE DATE
[redacted]	000443	1	01	11/16/01

EMPLOYEE NAME

LOGUE,KIM KF

COPES ORGANIZATION

61020203020000000000000 BUREAU OF MARKET DEVELOPMENT

APPOINTMENT TYPE	APPOINTMENT STATUS	STATUS EXPIRE
01	EXEMPT	

PAY PLAN	CLASS	CBU	INCL.	ANNIV. DATE
SELECTED EXEMPT SERVIC	2263	87	N	0701

OFFICIAL CLASS TITLE

PUBLIC UTILITIES SUPERVISOR - SES

ACTION

11 LEAVE OF ABSENCE WO/PAY

PAY

TYPE	BASE RATE	RATE	HR. BASE	HR. RATE	FTE
M	4544.17	4544.17	26.22	26.22	1

CAD	LEADWORKER	SHIFT	ON CALL	CONTACT	OTHER
.00	.00	.00	.00	.00	.00

W4	EXMPT	ADD WITH	RET	INSURANCE	LAST PERF APPRAISAL
01	03	00	HA	0001	NOT RATED

SAMAS ACCOUNT CODE INTER DEPT.

61502573003610100000001000000 0505001337

SAMAS ORGANIZATION

61100505001 BUREAU OF MARKET DEVELOPMENT

LEAVE WITHOUT PAY

HOURS	FROM	TO
0	11/16/01	03/31/02

LOCATION

LOCATION	HEADQUARTER COUNTY
TALLAHASSEE	LEON

PHYSICAL COUNTY

LEON

COMMENTS

ADD'L COMP.	TRAIN	000.00	HAZARDOUS	000.00
	COORD	000.00	TEMP SPEC	000.00

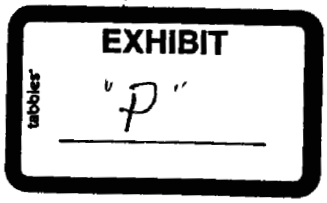
REQUESTED BY

APPROVAL

DATE

DATE 11/19/01

Kim Logue - Her unit was called to "active duty" - Report to base by 10/11/01.



STATE OF FLORIDA
OFFICE OF COMPTROLLER
BUREAU OF STATE PAYRO'

W-4

EMPLOYEE: PLEASE COMPLETE
U' SHADED AREAS ONLY
L T ACTIVITY DATE: 11/13/2000

	SOC. SEC. NUM. (9)	FIRST NAME (14)	M.I. (1)	LAST NAME (16)
SENT	[redacted]	KIM		LOGUE
/ OR NGE	KF			

	ADDRESS (30)	CITY (15)	STATE (2)	ZIP CODE (5 OR 9)	OR FOREIGN COUNTRY (
SENT	POST OFFICE BOX 7517	TALLAHASSEE	FL	32314	
/ OR NGE	~~P.O. Box~~ 103 Country PARK ROAD	Greensboro	NC	27455	

	BIRTH DATE MM	DD	YYYY	RACE CODE (SEE BELOW)	SEX (M=MALE) (F=FEMALE)		MARITAL STATUS (S=SINGLE) (M=MARRIED) (X=MARRIED CLAIMING SINGLE)	NUMBER OF W/H ALLOW. (2)	ADDITIONAL AMOUNT WHOLE DOLLARS	FOR AGENCY USE ONLY — ORGANIZATION OLO (4)	L2 (2)	L3 (2)
SENT	11	09	1962	1	F		S	3		6100	00	00
/ OR NGE									00			

MPTION FROM WITHHOLDING MAY BE CLAIMED ONLY IF:

Last year you had a right to a refund of **ALL** Federal income tax withheld because you had **NO** tax liability; **AND**
This year you expect a refund of **ALL** Federal income tax withheld because you expect to have **NO** tax liability.

you meet both of the above conditions enter year effective and "EXEMPT".

ACE ODES 1 = WHITE (NOT HISPANIC) 2 = BLACK (NOT HISPANIC) 3 = HISPANIC 4 = ASIAN OR PACIFIC ISLANDER 5 = AMERICAN INDIAN OR ALASKAN NATIVE 8 = OTHER

your last name differs from that on your social security rd, check here and call 1-800-772-1213 for more formation . . . . ☐

ATTACH COPY OF SOCIAL SECURITY CARD HERE.

03 REV OCT.30,1997) OMB NO 1545-0010

I claim exemption from withholding and I certify that I meet ALL of the conditions for exemption

		EFFECTIVE YEAR	"EXEMPT"
<===>	PRESENT	0000	EXEMPT
<===>	NEW OR CHANGE	_ _ _ _	

UNDER PENALTIES OF PERJURY, I CERTIFY THAT I AM ENTITLED TO THE NUMBER OF WITHHOLDING ALLOWANCES CLAIMED ON THIS CERTIFICATE OR ENTITLED TO CLAIM EXEMPT STATUS. I UNDERSTAND THAT ANY EXEMPTION FROM WITHOLDING EXPIRES ON FEBRUARY 15TH OF THE FOLLOWING CALENDAR YEAR.

Kim Logue — SIGNATURE

10,08,2001
MM DD YYYY
DATE SIGNED

FOR COMPTROLLER USE ONLY

Simms ... Copies ...

EXHIBIT
tabbies
"Q"

Beth Sokol

Wed, Nov 7, 2001 @ 11 am

Informed by person in confidence that Ms Logue had provided info to Beth Sokol. alleged email

Talked to Sally & Walter
- neither knew -

Decided to check e-mails and do not inform Ms. Logue for fear of e-mail deletion.

Walter called due meeting to approach Beth about ethics in dealing w/ subjects

Wanted to do e-mail research.

Dr. Bone called Beth regarding situation. Ask whether she had any knowledge.

EXHIBIT
tabbies
"R"

date?

Lt. Cone requested that Bell perform e-mail research & confirm or deny allegations.

Supra was a cited recommendation for Logue as documented in pdf review.

Karen provided e-mail w/ questions provided to Bell South. (Verified)

Provided info to Mary / Walder

Conducted search - looking through e-mail files for evidence of similar communication in other cases. None found.

Walter [illegible]SELEER Nov. 24 /?7

Moving Exp
Salary @ a premium

[illegible] - brought to attention

What did you do
- informed top mgmt (Co. Conc)

handle internally / quickly

legal implication - not
considered

EXHIBIT
"S"

John Grayson

From: Karen Dockham
Sent: Thursday, November 29, 2001 2:45 PM
To: John Grayson
Subject: Beth Salak's request

I believe that Beth made her initial request sometime on or around September 6, 2001. At that time, I found some information for her. She asked me if she could look at additional information so I created the first CD on September 12, 2001 so she could review the information. Later on, she asked for additional information and a second CD was on September 20, 2001 for her review.

If you need additional information, just let me know.

Friday Nov 2, 2002

Sally Simmons - Chief Market Development

Awareness -

date Late July - after the fact / before dir meeting
verify date

from Celia Solar

Yes anyone / no -

Response / what was done (nothing personally)

Walker / Celia > minimize damage

date Division meeting called by Walker
(Aug 20th)

Motive / case to be conducted as stated in PIP

may have wanted to ensure that questions were worded as best as possible and directed to best possible witnesses

Caldwell last equip to help

EXHIBIT
tabbies
"U"

may have knowledge

Keith Keithley / Lee Leadhom

& reconsideration rec. what to do ?

STATE OF FLORIDA

Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE : July 11, 2001
TO : Kim Logue, Supervisor, Carrier Services Section
FROM : Sally Simmons, Chief, Bureau of Market Development SAS
RE : Progress Report

In accordance with the performance review which I provided on May 11, 2001, this memorandum is to update you on the progress which you have made on the items which I cited for emphasis. In addition, I will comment on other activities since your last review.

One of the items cited for emphasis, the Internal Affairs item on processing agreements administratively, developed in such a way that there is very little to report. Based on input from Legal which was in a new direction, I revamped your memorandum during a time when you were on Air Force reserve duty. In addition, since you received essentially no questions at Internal Affairs, I cannot really comment on your handling of this item.

As for Agenda support on the AT&T/BellSouth arbitration recommendation, you did provide appropriate clarification when one of your analysts had difficulty and did not explain that a particular time frame should be considered only a guideline.

A key item for emphasis was to off-load your work on the negotiated agreements to the OPS person and/or bureau secretary. You have done a very good job of implementing this plan, and I perceive that the process is running quite smoothly, with minimal attention needed on your part. In addition, you have been working on revising the secretary's position description to include more of these duties when the current OPS employee leaves in August.

I believe that the Supra/BellSouth complaint recommendation was a learning process, which turned out fine in the end. The development process was awkward since the recommendation was largely legal in nature, yet you did not receive specific input from Legal until very late. I did sense that you initially underestimated the importance of tying your recommendation to the record developed in the proceeding. Since your recommendation was a "move staff," I cannot comment on your Agenda performance.

You did appear at Agenda on another occasion with a recommendation that the Commission conduct a workshop on the petition for the structural separation of BellSouth. You did all right in responding to questions from the Commissioners, but could have had a prepared answer to the question of what types of issues would be addressed in the workshop.

EXHIBIT
tabbies
"V"

While there were instances in late-May and early-June when some of your cases were off-schedule, I believe you are now very much on top of this situation and are doing the necessary follow-up to ensure that CASRs, CASR revisions, and memorandums are actually filed on time. I believe that most of the earlier difficulties were related to assuming that the CASRs, CASR revisions, and memorandums which you had initialed had been signed by Legal and subsequently filed with Records and Reporting.

With respect to e-mails, I would suggest that you be more cautious in using them to address issues which may be sensitive. If there is a significant possibility that the receiving party may react negatively, I believe a different approach would work better. In these types of situations, I would recommend an in-person visit or, if that is not possible, a telephone call. When you talk to someone, you have the opportunity to clear up any misunderstanding or concern very quickly. In-person is better than telephone since body language can be important in discerning someone's reaction. With an e-mail, misunderstandings or concerns can build up and create ill feelings and resentment.

Middle Supt.

CRISER talked w/ Bone

↳ heightened level of importance

his mood 9/18

meeting w/ Walter, Beth, Sally and Dr. Bone 9/21/01

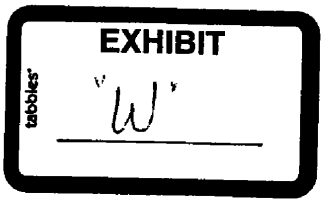
? - what is going to be done

resignation letter / Oct 12 ask for resignation on 9/24

hit vacay on 25th

resignation received / copy mailed by ltr called to Dr. Bone

decision delay before effective date of resignation



Della Fordham

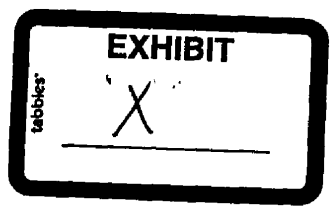
From: Kim Logue
Sent: Friday, September 21, 2001 11:45 AM
To: Sally Simmons; Beth Salak; Della Fordham
Cc: Judy Keele
Subject: AF Reserve Mobilization

Of the National Guard and Reserve Units receiving mobilization orders yesterday (9/20/01), my unit at Andrews AFB was not in the first wave. Yesterday's mobilization was of fighter, bomber, air refueling and air control units.

This does not mean, however, that my unit will not later be called to active duty. Future mobilizations are directed by the Dept of Defense, via the orders of the President.

I will keep you apprised as matters develop.

Kim



State of Florida

Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: February 11, 2002
TO: Lila A. Jaber, Chairman
FROM: John M. Grayson, Inspector General
RE: IN-01/02-03 [Logue Investigation]

On October 9, 2001, I was provided information regarding Ms. Kim Logue, a staff employee in the Division of Competitive Services, providing cross-examination questions to BellSouth, a party to Docket No. 001097-TP. On October 25, 2001, an investigation into this matter was initiated.

I have completed all aspects of this investigation except an interview of Ms. Logue. Effective October 10, 2001, Ms. Logue reported for active duty in the US Air Force. Her absence and the inability to interview her has rendered my investigation incomplete.

However, on January 31, 2002, an order setting Docket No. 001097-TP for rehearing was issued. Thus, I am closing my file on this investigation with the recommendation that training in the area of staff communications be conducted on an ongoing basis.

cc: Harold McLean, General Counsel
Mary A. Bane, Executive Director