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1311 Executive Center Drive, Suite 200  
Tallahassee, FL 32301-5027

June 17, 2002

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

RECEIVED TPOC  
JUN 17 PM 4:12  
COMMISSION CLERK

**RE: Docket No. 001305-TP –  
Supra’s Motion to Strike BellSouth’s Letter of October 30, 2001 to Blanca Bayo; Strike BellSouth’s Post-Hearing Position/Summary with Respect to Issue B; and to Alter/Amend Final Order Pursuant to F.R.C.P. 1.540(B)**

Dear Mrs. Bayo:

Enclosed is the original and seven (7) copies of Supra Telecommunications and Information Systems, Inc.’s (Supra) Motion to Strike BellSouth’s Letter of October 30, 2001 to Blanca Bayo; Strike BellSouth’s Post-Hearing Position/Summary with Respect to Issue B; and to Alter/Amend Final Order Pursuant to F.R.C.P. 1.540(B) in the above captioned docket.

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

Sincerely,

Brian Chaiken  
General Counsel

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RECEIVED & FILED

STATE ARCHIVE OF RECORDS

RECEIVED

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FPSC-COMMISSION CLERK

**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 U.S. Mail this 17<sup>th</sup> day of June, 2002 to the following:

Wayne Knight, Esq.  
Staff Counsel  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Nancy B. White, Esq.  
James Meza III, Esq.  
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T. Michael Twomey, Esq.  
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SUPRA TELECOMMUNICATIONS  
& INFORMATION SYSTEMS, INC.  
2620 S.W. 27<sup>th</sup> Avenue  
Miami, Florida 33133  
Telephone: (305) 476-4248  
Facsimile: (305) 443-9516

By: Brian Chaiken  
BRIAN CHAIKEN, ESQ.

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

Petition for Arbitration of the	)	
Interconnection Agreement between Bell-	)	
South Telecommunications, Inc. and	)	Docket No. 001305-TP
Supra Telecommunications & Information	)	
Systems, Inc. pursuant to Section 252(b)	)	Dated: June 17, 2002
of the Telecommunications Act of 1996	)	
<hr/>		

**SUPRA'S MOTION TO STRIKE BELLSOUTH'S LETTER  
OF OCTOBER 30, 2001 TO BLANCA BAYO; STRIKE  
BELLSOUTH'S POST-HEARING POSITION\SUMMARY  
WITH RESPECT TO ISSUE B; AND TO ALTER\AMEND  
FINAL ORDER PURSUANT TO F.R.C.P. 1.540(B)**

**SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS INC.** ("Supra"), by and through its undersigned counsel, pursuant to Florida Administrative Code Rule 28-106.204 and Florida Rule of Civil Procedure 1.540(b), hereby moves to: (1) strike a certain BELLSOUTH TELECOMMUNICATIONS, INC. ("BellSouth") letter dated October 30, 2001 to Blanca S. Bayo of the FPSC; (2) strike BellSouth's Post-Hearing position and summary with respect to Issue B; and (3) alter and/or amend Final Order PSC-02-0413-FOF-TP (dated March 26, 2002) with respect to Issue B of the underlying proceeding; and in support thereof states as follows:

**I. PROCEDURAL BACKGROUND**

1. On or about June 28, 2001, this Commission entered Order No. PSC-01-1401-PCO-TP ("Order Establishing Procedure") which established the procedures to be used in this arbitration docket. A true and correct copy of the Order Establishing Procedure is attached hereto as Exhibit "A".

2. On page 7, the Order Establishing Procedure set forth various dates, including the date of October 26, 2001 as the deadline for filing post-hearing briefs. On page 8, the Order Establishing Procedure set forth post-hearing procedure, including limiting post-hearing briefs to 40 pages length and stating that "**each party shall file a post-hearing statement of issues and positions.**" The Order Establishing Procedure further states at page 8 that "**if a party fails to file a post-**

hearing statement in conformance with Rule 28-106.215, *Florida Administrative Code*, the party shall have waived all issues and may be dismissed from the proceeding." In this regard, the Order Establishing Procedure reads in pertinent part as follows:

**"Post-Hearing Procedure**

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

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

See Order No. PSC-01-1401-PCO-TP at page 8, attached hereto as Exhibit "A".

3. Although supplemental procedural orders were subsequently entered in this docket, none of those orders altered or modified the filing date for post-hearing briefs or the procedure to be used in such briefs.

4. On September 25, 2001, this Commission entered a Prehearing Order (PSC -01-1926-PHO-TP), which added a new Issue B for hearing. The new Issue B stated as follows; **"Which agreement template shall be used as the base agreement into which the Commission's decision on the disputed issue will be incorporated."**

5. On September 26 and 27, 2001, this Commission held an evidentiary hearing in this docket.

6. On October 26, 2001, Supra filed its post-hearing brief in conformance with Order No.

PSC-01-1401-PCO-TP and Rule 28-106.215, *Florida Administrative Code*.

7. On October 26, 2001, BellSouth filed its post-hearing brief. Relevant portions of BellSouth's post-hearing brief are attached hereto as Exhibit "B." On page 5 of its post-hearing brief, BellSouth briefly discussed Issue B, but **failed** to provide a summary for that issue as required by the Order Establishing Procedure. See Post-Hearing Brief Of BellSouth Telecommunications, Inc., at page 5, attached thereto as Exhibit "B".

8. In March 2002, Supra made various public records requests of the FPSC. In or about May 2002, Supra received documents responsive to its public records requests which have bearing on this motion. Based on Supra's public records requests, received in May 2002, Supra discovered that on October 29, 2001, Wayne Knight, FPSC lead staff Attorney, initiated a communication with Mike Twomey of BellSouth, for the purpose of informing Twomey that BellSouth had failed to include a position for Issue B in its post-hearing brief. Copies of the two relevant e-mails uncovered are attached hereto as Exhibit "C".

9. According to the first e-mail dated October 29, 2001 (at 2:45 p.m.) from Wayne Knight to Todd Brown (the FPSC staff member responsible for Issue B) and forwarded to Laura King (docket coordinator), Wayne Knight wrote the following:

**"Subject: Issue B Summary**

**Hi Todd,**

**I spoke with Mike Twomey at BellSouth regarding the issue B summary (or the lack thereof). He confirmed that it was an oversight, and they will be filing an amendment. Thanks for bringing it to my attention.**

See 10/29/01 (2:46 PM) e-mail attached hereto as part of Exhibit "C" (page E13).

10. Thereafter, on October 29, 2001 (at 2:55 p.m.), Todd Brown, sent an e-mail to Laura King and copied the following FPSC staff members: Jason-Earl Brown, Tobey Schultz, Latesa

Turner, David Dowds and Michael Barrett. The e-mail states as follows:

**"Subject: Issue B/1305/Amendment**

**Hello everybody,**

**Just wanted to let you know that in BellSouth's brief, Issue B did not contain a position statement. After discussing with Wayne, he has advised me that he contacted BellSouth and they will be filing an amendment that addresses their position on this issue. Just wanted to FYI everybody."**

See 10/29/01 (2:55 PM) e-mail attached hereto as part of Exhibit "C" (page E14).

11. As a result of Wayne Knight's communication with Mike Twomey of BellSouth, on October 30, 2001, James Meza III, Attorney for BellSouth, submitted to Blanca S. Bayo of the FPSC, a letter with a "position statement" for Issue B. The letter submitted by BellSouth was **not** a motion, nor did it seek any formal relief. Furthermore, the October 30, 2001 Letter cited no law or other authority in support of such a filing and was filed *after* the October 26, 2001 deadline for post-hearing briefs. A true and correct copy of BellSouth's October 30, 2001 letter to Blanca Bayo is attached hereto as Exhibit "D".

12. On March 26, 2002, this Commission entered a Final Order in this docket (PSC-02-0413-FOF-TP), in which this Commission adopted BellSouth's late-filed position summary with respect to Issue B; incorporating such position into the Final Order.

13. The October 30, 2001 Letter should be stricken from the record because: (a) the filing was not authorized and procedurally improper; (b) it is the product of a communication initiated by a Commission staff employee; and (c) the filing violates this Commission's Order Establishing Procedure (Order No. PSC-01-1401-PCO-TP) issued on June 28, 2001. Additionally, BellSouth's position on Issue B should be stricken and deemed waived pursuant to the Order Establishing Procedure. Thereafter, this Commission's Final Order of March 26, 2002 in this Order (PSC-02-0413-FOF-TP) should be altered and/or amended with respect to Issue B of the underlying

proceeding. Particularly, the final order should be revised to reflect Supra's position on Issue B (i.e. that the current Interconnection Agreement between the parties be used as the starting template).

## **II. MEMORANDUM OF LAW**

The June 28, 2001 Order Establishing Procedure (Order No. PSC-01-1401-PCO-TP) contained standard language used by this Commission in all dockets. The relevant language regarding the filing of post-hearing briefs containing summaries of the parties' positions on the issues, is a standard provision placed in all similar pre-hearing orders. The Order Establishing Procedure provides in pertinent part that a failure to file a post-hearing statement as required, will result in a waiver of the issue. BellSouth is well familiar with this language and its consequences in that BellSouth is constantly litigating before the FPSC.

In FPSC Docket No. 000731-TP (Petition by AT&T Communications Of The Southern States, Inc. D/B/A AT&T For Arbitration Of Certain Terms And Conditions Of A Proposed Agreement With BellSouth Telecommunications, Inc. Pursuant To 47 U.S.C. Section 252), a similar incident resulted in a waiver of issues. In that docket, AT&T failed to file a post-hearing statement addressing issue 27 of the docket. In the staff recommendation of May 7, 2001 (FPSC Document No. 05720-01), FPSC Staff noted that AT&T had failed to file a post-hearing statement on the issue, and then concluded by stating in pertinent part that: "**[i]n accordance with Prehearing Order No. PSC-01-0324-PHO-TP, staff believes AT&T waives its position on this issue.**" A true and correct copy of the relevant portions of this staff recommendation is attached hereto as Exhibit "E". The final order in that docket entered by the Commission subsequently adopted the staff recommendation.

Likewise, in FPSC Docket No. 000649-TP (MCI\BellSouth Arbitration), BellSouth had failed to file a post-hearing statement regarding three legal issues in its post-hearing brief. After reviewing MCI's filing, BellSouth then sought to file a similar letter to Blanca Bayo of the FPSC

in which BellSouth addressed the three issues. A true and correct copy of the relevant portions of BellSouth's January 18, 2001 letter to Blanca Bayo in Docket No. 000649-TP is attached hereto as part of Exhibit "F" (see pages E20-E21) (FPSC Document No. 01011-01). On January 25, 2001, FPSC Staff issued a recommendation on the arbitration in Docket No. 000649-TP (FPSC Document No. 01146-01). In the recommendation, FPSC staff states as follows: **"On January 24, 2001, BellSouth filed a letter which addressed Issues A-C. BellSouth positions have not been addressed in this recommendation because the letter was not timely filed and BellSouth did not request leave to late-file these positions. This is staff's post-hearing recommendation on Issues A-C, as well as all other unresolved interconnection issues before this Commission for arbitration."** A true and correct copy of the relevant portions of the FPSC staff recommendation are attached hereto as Exhibit "F" (see pages E22-E23). This Commission subsequently adopted the FPSC Staff recommendation in Docket No. 000649-TP.

Based upon the above, it is clear that absent the October 30, 2001 Letter from BellSouth to Blanca Bayo, that BellSouth would have been deemed to have waived its position on Issue B for failing to provide a summary statement in its post-hearing brief. Like the AT&T and MCI arbitrations, a failure to timely present the statement in the post-hearing brief constitutes a waiver of the issue and that a late-filed letter attempting to supplement the record is procedurally improper and not allowed.

Rule 28-106.204(1), Florida Administrative Code, states in pertinent part as follows:

**"All requests for relief shall be by motion. All motions shall be in writing unless made on the record during a hearing, and shall fully state the action requested and the grounds relied upon. . . When time allows, the other parties may, within 7 days of service of a written motion, file a response in opposition."**

Thus according to Rule 28-106.204, Fla.Admin.Code, a motion is by definition a request for



relief. Similarly, Black's Law Dictionary (5th Ed.) defines the word "motion" as "[a]n **application to a court or judge for purpose of obtaining a rule or order directing some act to be done in favor of the applicant**". Given the above, it is clear that BellSouth's letter of October 30, 2001 was both untimely under the Order Establishing Procedure and procedurally defective.

In Picchi v. Barnett Bank of South Florida, N.A., 521 So.2d 1090, 1091 (Fla. 1988), the Florida Supreme Court held that a paper filed by an attorney which was not authorized by the rules of procedure or caselaw, was subject to being stricken. Likewise, the Court in Hicks v. Hicks, 715 So.2d 304, 305 (Fla. 5th DCA 1998), held that a motion filed by an attorney which violated Rule 2.060, Fla.R.Jud.Admin., was voidable and subject to being stricken. This Commission has entered similar rulings on unauthorized filings. See Order No. PSC-96-0790-FOF-WU (In re: Application for amendment of Certificate No. 488-W in Marion County by Venture Associates Utilities Corp.; Docket No. 930892-WU) at pages 4-6 (where motion to strike late-filed evidence was granted since it was not authorized); see also Order No. PSC-98-1254-FOF-GU (In re: Complaint of Mother's Kitchen Ltd. against Florida Public Utilities Company regarding refusal or discontinuance of service; Docket No. 970365-GU) (where this Commission struck various responses to motions as being untimely and thus not authorized under the applicable rules); and Order No. PSC-99-0186-FOF-GU (In re: Complaint of Mother's Kitchen Ltd. against Florida Public Utilities Company regarding refusal or discontinuance of service; Docket No. 970365-GU) (where this Commission struck various exhibits attached to a motion for reconsideration, which had not previously been made part of the record and thus were not authorized). Based upon the above, it is clear that this Commission has the power to strike any material or filing from the record which is either procedurally improper and/or not authorized by the applicable rules. Because BellSouth's October 30, 2001 Letter was procedurally improper

and not authorized by either the rules or the Order Establishing Procedure, the document should be stricken and BellSouth's position on Issue B waived in accordance with the Order Establishing Procedure and the prior cited precedence.

With respect to altering and/or amending the Final Order entered previously in docket on March 26, 2002 (i.e. PSC-02-0413-FOF-TP), that Final Order should be changed to reflect Supra's position on Issue B. Florida Rule of Civil Procedure, 1.540(b) states in pertinent part as follows:

**"(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, decree, order, or proceeding 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 ... The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment, decree, order, or proceeding, was entered or taken ..."**

Florida Rule of Civil Procedure 1.540(b) "is a rule providing for equitable relief and is to be liberally construed." Lacore v. Giralda Bake Shop, Inc., 407 So.2d 275, 276 (Fla. 3d DCA 1981). This rule allows a party to be relieved of an order which in part, was procured through misconduct discovered after entry of the order. See In re: Adoption of a Minor Child, 593 So.2d 185 (Fla. 1991); Office Depot, Inc. v. Miller, 584 So.2d 587 (Fla. 4th DCA 1991); Woginiak v. Kleiman, 523 So.2d 1209 (Fla. 3d DCA 1988); Pearlman v. Pearlman, 405 So.2d 764 (Fla. 3d DCA 1981).

In this instance, through one-sided communications with BellSouth, unknown to Supra at the time, BellSouth filed a supplement to its post-hearing brief in this arbitration which should have not been considered. The job of FPSC Staff (including Wayne Knight) is to objectively

assist the Commission in making decisions which benefit consumers of this state; not to assist BellSouth after it had already missed a substantive filing deadline. It was not Wayne Knight's job to assist BellSouth in litigating this docket. Wayne Knight's actions can only be characterized as misconduct. Likewise, BellSouth's actions also can only be characterized as misconduct in: (a) participating and being a party to staff initiated one-sided communications regarding a substantive deadline; (b) in not adequately disclosing the events leading to its October 30, 2001 Letter; and (c) in late filing an amendment to its post-hearing brief, which is neither authorized by the rules or the Order Establishing Procedure. BellSouth's actions should **not** be rewarded - especially when such conduct was assisted by FPSC Staff without any notice to Supra.

The undisputed evidence demonstrates that BellSouth had failed to comply with a substantive deadline. Further, that Wayne Knight communicated with BellSouth to inform them of this failure; and that had Mr. Knight not communicated with BellSouth, Supra would have prevailed on the issue. Accordingly, Mr. Knight's communications with BellSouth went to the merits of the proceeding. Moreover, since Supra was never informed of these events until after the time had passed to file a motion for rehearing on the issue and since the conduct goes to the merits of the proceeding, Rule 1.540(b) required a reversal on Issue B. See Morhaim v. State Farm Fire and Casualty Co., 559 So. 2d 1240, 1241 (Fla. 3d DCA 1990) (evidence is such as will probably change the result).

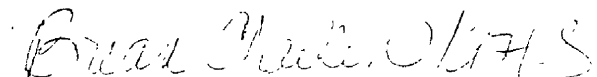
Accordingly, for the reasons stated above, this Commission should strike BellSouth's October 30, 2001 letter to Blanca Bayo, deem BellSouth's position on Issue B to this arbitration waived, and alter/amend Final Order PSC-02-0413-FOF-TP (dated March 26, 2002) to reflect Supra's position on this issue (i.e. that the current Interconnection Agreement be used as the template for all subsequently rulings by this Commission in this arbitration docket).

**WHEREFORE** SUPRA respectfully requests that this Commission strike

BELLSOUTH's October 30, 2001 Letter to Blanca Bayo, deem BellSouth's position on Issue B to this arbitration waived, and alter/amend Final Order PSC-02-0413-FOF-TP (dated March 26, 2002) to reflect Supra's position on Issue B (i.e. that the current Interconnection Agreement be used as the template for all subsequently rulings by this Commission in this arbitration docket).

**RESPECTFULLY** submitted, this 17th day of June, 2002.

SUPRA TELECOMMUNICATIONS &  
INFORMATION SYSTEMS, INC.  
2620 S. W. 27<sup>th</sup> Avenue  
Miami, FL 33133  
Telephone: 305/476-4248  
Facsimile: 305/443-9516

  
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  
ORDER NO. PSC-01-1401-PCO-TP  
ISSUED: June 28, 2001

ORDER ESTABLISHING PROCEDURE

On September 1, 2000, BellSouth Telecommunications, Inc. (BellSouth) filed a petition for arbitration of certain issues in interconnection agreement with Supra Telecommunications and Information Systems, Inc (Supra). Supra filed its response, and this matter was set for hearing.

Part II of the Federal Telecommunications Act of 1996 (Act) sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act regards interconnection with the incumbent local exchange carrier, and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements arrived through compulsory arbitration. Specifically, Section 252(b)(1) states:

(1) Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(C) states that the State commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. This section requires this Commission to conclude the resolution of any unresolved issues not later than nine months after the date on which the local exchange carrier received the request under this section. The parties have, however, waived the nine-month requirement of Section 252(b)(4)(C).

DOCUMENT NUMBER-DATE

08028 JUN 28 01

FILED IN REPORTING

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

Section 252(b)(4)(A) provides that this Commission shall limit its consideration of any petition to the issues set forth in the petition and in the response, if any. The hearing will be conducted according to the provisions of Chapter 120, Florida Statutes, and all administrative rules applicable to this Commission.

#### Discovery

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

The hearing in this docket is set for Wednesday, September 26, 2001 through Friday, September 28, 2001. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by Wednesday, September 19, 2001. All interrogatories, requests for admissions, and requests for production of documents shall be numbered sequentially in order to facilitate their identification. The discovery requests will be numbered sequentially within a set, and any subsequent discovery requests will continue the sequential numbering system. Pursuant to Rule 28-106.206, Florida Administrative Code, unless subsequently modified by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 250, and requests for production of documents, including all subparts, shall be limited to 150.

Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such

request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time period set forth in Section 364.183(4), Florida Statutes.

#### Diskette Filings

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

#### Prefiled Testimony and Exhibits

Each party shall prefile, in writing, all testimony that it intends to sponsor. Such testimony shall be typed on 8 1/2 inch x 11 inch transcript-quality paper, double spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

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

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

the foregoing requirements may bar admission of such exhibits and testimony.

Prehearing Statement

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

- (a) The name of all known witnesses that may be called by the party, and the subject matter of their testimony;
- (b) a description of all known exhibits that may be used by the party, whether they may be identified on a composite basis, and the witness' sponsoring each;
- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the party considers at issue and the party's position on each such issue;
- (f) a statement of each policy question the party considers at issue, the party's position on each



such issue, and which of the party's witnesses will address the issue;

- (g) a statement of issues that have been stipulated to by the parties;
- (h) a statement of all pending motions or other matters the party seeks action upon;
- (i) a statement identifying the parties' pending requests or claims for confidentiality;
- (j) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore; and
- (k) a statement identifying any decision or pending decision of the FCC or any court that has or may either preempt or otherwise impact the Commission's ability to resolve any of the issues presented or the relief requested in this matter.

Prehearing Conference

Pursuant to Rule 28-106.209, Florida Administrative Code, a prehearing conference will be held Wednesday, September 5, 2001 at the Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida. Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions raised in that party's prehearing statement.

Prehearing Procedure: Waiver of Issues

Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: it was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate to fully develop the issue; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the

issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

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

Document Identification

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

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

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

Controlling Dates

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

- |                                    |                       |
|------------------------------------|-----------------------|
| 1) Direct testimony and exhibits   | July 18, 2001         |
| 2) Rebuttal testimony and exhibits | August 8, 2001        |
| 3) Prehearing Statements           | August 22, 2001       |
| 4) Prehearing Conference           | September 5, 2001     |
| 5) Hearing                         | September 26-28, 2001 |
| 6) Briefs                          | October 26, 2001      |

Use of Confidential Information At Hearing

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

When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material. Counsel and witnesses

are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

Post-Hearing Procedure

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

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

Based upon the foregoing, it is

ORDERED by Commissioner Michael A. Palecki, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

ORDER NO. PSC-01-1401-PCO-TP  
DOCKET NO. 001305-TP  
PAGE 9

By ORDER of Commissioner Michael A. Palecki, as Prehearing Officer, this 28th day of June, 2001.



MICHAEL A. PALECKI  
Commissioner and Prehearing Officer

( S E A L )

WDK

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,

ORDER NO. PSC-01-1401-PCO-TP  
DOCKET NO. 001305-TP  
PAGE 10

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, ) Docket No. 001305-TP  
Inc. and Supra Telecommunications & Information )  
1 System, Inc., Pursuant to Section 252(b) of the ) Filed: October 26, 2001  
Telecommunications Act of 1996. )  
\_\_\_\_\_ )

**POST-HEARING BRIEF OF BELL SOUTH TELECOMMUNICATIONS, INC.**

BellSouth Telecommunications, Inc. ("BellSouth") submits this post-hearing brief in support of its positions on the issues submitted to the Commission for arbitration in accordance with the Section 252 of the Telecommunications Act of 1996, 47 U.S.C. § 252. Considering the evidence and applicable law, the Commission should adopt BellSouth's position on each of the issues which remain in dispute.

**INTRODUCTION**

This arbitration proceeding was initiated by BellSouth against Supra Telecommunications and Information Systems, Inc. ("Supra").<sup>1</sup> BellSouth has been attempting to negotiate the terms of a new interconnection agreement with Supra since March, 2000. Although BellSouth and Supra were able to reach agreement on a number of issues, many issues remain unresolved.

The remaining issues that this Commission must resolve reach nearly every corner of the parties' interconnection agreement; they concern matters as varied as how disputes between the

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<sup>1</sup> BellSouth filed its petition for arbitration on September 1, 2000, raising fifteen disputed issues concerning the parties' proposed interconnection agreement. Supra raised an additional fifty-one issues in its response. Thirteen issues (2, 3, 6, 30, 36, 37, 39, 43, 50, 54, 56, 58 and 64) were either withdrawn at Issue Identification or were withdrawn or resolved during the Intercompany Review Board meeting in June, 2001. An additional twenty issues (A, 7, 9, 13, 14, 17, 25A, 25B, 26, 27, 31, 35, 41, 44, 45, 48, 51, 52, 53 and 55) were either withdrawn or resolved during the mediation, the hearing or in subsequent meetings thereafter. The Commission heard this matter on September 26 and 27, 2001.

been sought, but clearly the District Court opinion is binding on the Commission until that decision is reversed. Nevertheless, that decision does not require that the Commission resolve any issue in any particular manner, just that the Commission arbitrate and resolve each "open issue."

**Issue B: Which agreement template shall be used as the base agreement into which the Commission's decision on the disputed issues will be incorporated?**

BellSouth initiated this proceeding on September 1, 2000, with the filing of a Petition for Arbitration. Included in that filing was a proposed interconnection agreement, containing rates, terms and conditions, as well as an identification of the issues that BellSouth believed were in dispute based on the parties discussions at that point. Hearing Tr. Vol. 1 at 70-71. To date, BellSouth is the only party to file a complete proposed agreement into the record of this proceeding. *Id.* In fact, Supra did not file any proposed language until it submitted a red-line draft of proposed General Terms and Conditions on June 18, 2001. Hearing Tr. Vol. 1 at 16. That filing, made nearly six months after the Commission staff directed the parties to submit proposed language on each unresolved issue, did not include any of the numerous attachments that comprise the bulk of interconnection agreements. *Id.* Therefore, the only complete proposed agreement that the Commission should consider for adoption in this case is the agreement filed by BellSouth with its Petition for Arbitration.

Moreover, Supra has not submitted proposed language for the unresolved issues. This is a critical omission that BellSouth believes is designed to delay the adoption of a new agreement. BellSouth respectfully requests that, when deciding the issues in this case, the Commission should provide the parties with specific language for incorporation into an agreement template. If the Commission adopts BellSouth's position, specific language or a statement that the issue



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**From:** Wayne Knight  
**Sent:** Monday, October 29, 2001 2:46 PM  
**To:** Laura King  
**Subject:** FW: Issue B summary

FYI

-----Original Message-----

**From:** Wayne Knight  
**Sent:** Monday, October 29, 2001 2:45 PM  
**To:** Todd Brown  
**Subject:** Issue B summary

Hi Todd,  
I spoke with Mike Twomey at BellSouth regarding the issue B summary (or the lack thereof). He confirmed that it was an oversight, and they will be filing an amendment. Thanks for bringing that to my attention.

<b>Tracking:</b>	<b>Recipient</b>	<b>Read</b>
	Laura King	Read: 10/29/2001 4:19 PM

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**From:** Todd Brown  
**Sent:** Monday, October 29, 2001 2:55 PM  
**To:** Laura King  
**Cc:** Jason-Earl Brown; Tobey Schultz; Latesa Turner; David Dowds; Michael Barrett  
**Subject:** Issue B/1305/Amendment

Hello everybody,

Just wanted to let you know that in BellSouth's brief, Issue B did not contain a position statement. After discussing with Wayne, he has advised me that he contacted BellSouth and they will be filing an amendment that addresses their position on this issue. Just wanted to FYI everybody.

Thanks,  
Todd

James Meza III  
Attorney

BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(305) 347-5561

October 30, 2001

Mrs. Blanca S. Bayo  
Division of the Commission Clerk and  
Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399

RE: Docket No. 001305-TP (Supra)

Dear Ms. Bayo:

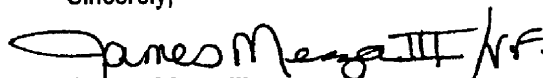
On October 26, 2001, BellSouth filed its Post Hearing Brief in the above-referenced proceeding. BellSouth inadvertently omitted from its brief a section setting forth a summary of its position for Issue B. This summary should read as follows:

\*\*\*The Commission should use BellSouth's proposed agreement as a template in this proceeding.\*\*\*

BellSouth respectfully requests that this summary be included as part of BellSouth's Post Hearing Brief.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served on the parties shown on the attached Certificate of Service.

Sincerely,

  
James Meza III

Enclosures

cc: All Parties of Record  
Marshall M. Criser III  
Nancy B. White  
R. Douglas Lackey

**CERTIFICATE OF SERVICE**  
**Docket No. 001305-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

Federal Express this 30<sup>th</sup> day of October, 2001 to the following:

Wayne Knight  
Staff Counsel  
Division of Legal Services  
Florida Public Service Commission  
2540 **Shumard** Oak Boulevard  
Tallahassee, FL 32399-0850  
Tel. No. (850) 413-6232  
Fax. No. (850) 413-6250

Supra Telecommunications and  
Information Systems, Inc.  
1311 Executive Center Drive  
Kroger Center - Ellis Building  
Suite 200  
Tallahassee, FL 32301-5027  
Tel. No. (850) 402-0510  
Fax. No. (850) 402-0522  
[mbuechele@stis.com](mailto:mbuechele@stis.com)

Brian Chaiken  
Paul Turner (+)  
Supra Telecommunications and  
Information Systems, Inc.  
2620 S. W. 27<sup>th</sup> Avenue  
Miami, FL 33133  
Tel. No. (305) 476-4248  
Fax. No. (305) 443-1078  
[bchaiken@stis.com](mailto:bchaiken@stis.com)

  
James Meza III

(+) Signed Protective Agreement

State of Florida



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# Public Service Commission

MAY - 7 AM 11:54

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TALLAHASSEE, FLORIDA 32399-0850

RECORDS AND REPORTING

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

DATE: MAY 3, 2001

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (FORDHAM, FUDGE)  
DIVISION OF COMPETITIVE SERVICES (BARRETT, FLEMING, WATTS, BLOOM, AUDA, HINTON) *for CH RAG meB*  
DIVISION OF REGULATORY OVERSIGHT (VINSON, BROUSSARD, DUFFEY, FISHER)

RE: DOCKET NO. 000731-TP - PETITION BY AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC. D/B/A AT&T FOR ARBITRATION OF CERTAIN TERMS AND CONDITIONS OF A PROPOSED AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS, INC. PURSUANT TO 47 U.S.C. SECTION 252.

AGENDA: 05/15/2001 - REGULAR AGENDA - POST HEARING DECISION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\000731.RCM

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*for CH RAG meB*  
*for CH RAG meB*

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

DOCKET NO. 000731-TP  
DATE: May 3, 2001

**ISSUE 27:** Should the Commission or a third party commercial arbitrator resolve disputes under the Interconnection Agreement?

**RECOMMENDATION:** The Commission should resolve disputes under the Interconnection Agreement. (FUDGE)

**POSITIONS OF THE PARTIES:**

**AT&T<sup>15</sup>:** AT&T did not file a post-hearing statement addressing this issue.

**BELLSOUTH:** BellSouth cannot be required to use commercial arbitrators. The Commission must resolve disputes brought before it and cannot unilaterally delegate that responsibility. Furthermore, BellSouth's experience with commercial arbitration in the resolution of disputes under the 1996 Act has been expensive and unduly lengthy in nature.

**STAFF ANALYSIS:** AT&T raised this issue in its initial Petition for Arbitration. However, AT&T did not present any evidence on this issue at hearing or in its brief. Therefore, in accordance with Prehearing Order No. PSC-01-0324-PHO-TP, staff believes AT&T waives its position on this issue.

In his direct testimony, BellSouth witness Ruscilli stated that because BellSouth perceived third party arbitration as providing a speedy and inexpensive resolution of interconnection agreement disputes, an alternative dispute resolution provision was included in the original interconnection agreement with AT&T. (TR 861-862) However, BellSouth quickly realized that the perceived benefits of third party arbitration never materialized. In fact, witness Ruscilli believes that the Commission and its staff are more capable of handling disputes between telecommunications carriers. Id.

BellSouth argued in its brief that "[t]here is nothing in the law that allows the Commission to require BellSouth or any party to submit to a binding third party arbitration rather than having the Commission itself address a dispute." (BellSouth BR p.32)

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<sup>15</sup>AT&T's position from its January 3, 2001 Prehearing statement was: Without formal procedures established by the Commission for a rocket docket, a third party arbitrator could expeditiously resolve complaints under the interconnection agreement. Arbitration would allow the Commission to address important policy matters rather than commercial disputes between parties.

DOCKET NO. 000731-TP  
DATE: May 3, 2001

Based on the evidence presented, staff believes that third party arbitration is neither speedy nor inexpensive and that arbitrators may not be sufficiently experienced in the telecommunications industry. (Ruscilli TR 861-862) Moreover, nothing in the law gives the Commission explicit authority to require third party arbitration. Consequently, staff recommends that the Commission should resolve disputes under the Interconnection Agreement.

**T. MICHAEL TWOMEY**  
General Attorney

BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(404) 335-0750

January 18, 2001

Mrs. Blanca S. Bayo  
Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399

RE: Docket No. 000649-TP (MCI Arbitration)

Dear Mrs. Bayo:

It has been brought to our attention that the Post-Hearing Brief filed by BellSouth Telecommunications, Inc. ("BellSouth") in the above-referenced proceeding inadvertently failed to discuss the three legal issues raised by the Staff. BellSouth apologizes for this oversight and regrets any inconvenience this omission may have caused.

BellSouth has reviewed the discussion of these three legal issues contained in the Post-Hearing Brief filed by MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. (collectively "MCI"). BellSouth agrees generally with MCI's analysis of the Commission's jurisdiction (Issue A) and the Commission's authority and obligation to arbitrate issues concerning liquidated damages and specific performance in light of *MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc., et al*, Case No. 4:97cv141-RH (N.D. Fla. June 6, 2000) (Issue B). However, there are two points that BellSouth believes warrant additional discussion.

First, MCI correctly points out that the United States District Court for the Northern District of Florida has determined that the Commission is required to arbitrate and resolve all issues brought to the Commission, not just those that are subject to arbitration under the Telecommunications Act of 1996 ("1996 Act"). *MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc., et al*,

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING



Case No. 4:97cv141-RH (N.D. Fla. June 6, 2000). BellSouth has appealed that case to the United States Court of Appeals for the Eleventh Circuit, where a panel has rejected the appeal on jurisdictional grounds, since the District Court remanded the matter to the Commission rather than issuing a final order. Reconsideration has been sought, but clearly the District Court opinion is binding on the Commission until that decision is reversed. Nevertheless, that decision does not require that the Commission resolve any issue in any particular manner, just that the Commission arbitrate and resolve each "open issue." Such a resolution could result in the Commission concluding that BellSouth is not obligated to provide what MCI wants in the way of liquidated damages or specific performance on any terms. What the Commission cannot do, as long as the District Court decision stands, is refuse to consider or resolve an issue raised by the parties.

Second, MCI's discussion of the "legal standard" that should apply in resolving issues concerning liquidated damages and specific performance (Issue C) only underscores the fallacy in the District Court's approach. While MCI urges the Commission to apply concepts of "commercial reasonableness," such an approach does not constitute a governing "legal standard." Indeed, since there is, by definition, no statutory or regulatory provision under the 1996 Act governing liquidated damages or specific performance, there is no legal standard by which the Commission can judge MCI's requests.

BellSouth appreciates the opportunity to present its views on the three legal issues raised by the Staff and again apologizes for failing to do so in its Post-Hearing Brief. BellSouth has enclosed an original and 15 copies of this letter for filing in the captioned docket. An additional copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served on the parties shown on the attached Certificate of Service.

Sincerely,



T. Michael Twomey

Enclosures

cc: All Parties of Record  
Nancy B. White  
Marshall M. Criser III  
R. Douglas Lackey

CASE BACKGROUND

On May 26, 2000, MCI Metro Access Transmission Services, LLC and MCI WorldCom Communications, Incorporated (collectively referred to as "WorldCom") filed a Petition for Arbitration pursuant to 47 U.S.C. Section 252(b) of the Telecommunications Act of 1996, seeking arbitration of certain unresolved issues in the interconnection negotiations between WorldCom and BellSouth Telecommunications Incorporated (BellSouth). The petition enumerated 111 issues. On June 20, 2000, BellSouth filed its response. The administrative hearing was held on October 4-6, 2000.

Prior to the administrative hearing, the parties were able to reach agreement on a number of issues. Staff notes that although some additional issues were settled prior to hearing, nevertheless, the parties brought 50 disputed matters to arbitration. Given the relatively straightforward nature of many of the issues in dispute, staff is dismayed that settlement of more of these issues eluded the parties. Staff would note that a large-scale arbitration is a labor-intensive and time-consuming process that is governed by specific deadlines. Recognizing the potential for constrained resources, staff has concerns regarding its ability in future proceedings of this magnitude to sustain the detailed level of analysis and overall standard of excellence currently provided. Subsequent to the hearing, additional issues were settled.

To date, the resolved issues are: 4, 7, 7A, 10-14, 16, 17, 20, 21, 24-27, 29-33, 35, 38, 41, 43, 44, 48-50, 52-54, 69-74, 76, 77, 79, 82-90, 92, 93, 97-99, 102-104, 106, and 111. Issues 40, 46, 51, and 105 were referred to generic proceedings.

Preceding the staff's recommendation on the remaining interconnection issues for arbitration are three issues of a legal nature added by the Prehearing Officer, and identified as Issues A-C. Issue A addresses this Commission's jurisdictional considerations in this matter. Issues B and C concern liquidated damages and specific performance, as relative to Issues 107 and 108.

On November 9, 2000, WorldCom filed its position and support on all unresolved issues, including Issues A-C, in its Post Hearing Brief. BellSouth's Post Hearing Brief, which was also filed on November 9, 2000, set forth its final position on all unresolved issues, but did not present a specific position for Issues A-C. However, BellSouth's Post Hearing Brief contained a short section entitled "Statutory Overview." (BellSouth BR p. 3-4)

DOCKET NO. 000649-TP  
DATE: January 25, 2001

\* [ On January 24, 2001, BellSouth filed a letter which addressed Issues A-C. BellSouth positions have not been addressed in this recommendation because the letter was not timely filed and BellSouth did not request leave to late-file these positions.

This is staff's post-hearing recommendation on Issues A-C, as well as all other unresolved interconnection issues before this Commission for arbitration.