

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

 **COPY**

IN RE: DOCKET NO. 001305-TP - Petition by BellSouth
Telecommunications, Inc. for arbitration of
certain issues in interconnection agreement
with Supra Telecommunications and Information
Systems, Inc.

BEFORE: CHAIRMAN LILA A. JABER
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER MICHAEL A. PALECKI

PROCEEDINGS: AGENDA CONFERENCE

ITEM NUMBER: 21

DATE: Tuesday, March 5, 2002

PLACE: 4075 Esplanade Way, Room 148
Tallahassee, Florida

REPORTED BY: MARY ALLEN NEEL
Registered Professional Reporter

ACCURATE STENOGRAPHY REPORTERS
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TALLAHASSEE, FLORIDA 32301
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DOCUMENT NUMBER-DATE

07072 JUL 10 8

FPSC-COMMISSION CLERK

PARTICIPANTS:

MICHAEL BARRETT, JASON-EARL BROWN, TODD BROWN, PATTY CHRISTENSEN, DAVID DOWDS, BETH KEATING, LAURA KING, WAYNE KNIGHT, HAROLD MCLEAN, TOBEY SCHULTZ, SALLY SIMMONS, and LATESA TURNER, FPSC STAFF.

BRIAN CHAIKEN and OLUKAYODE RAMOS, Supra Telecommunications and Information Systems.

NANCY WHITE, BellSouth Telecommunications, Inc.

STAFF RECOMMENDATION

ISSUE I: Should Supra's February 13, 2002, motion for oral argument be granted?

RECOMMENDATION: No. Staff recommends that oral argument on Issue I be denied.

ISSUE II: Should Supra's February 18, 2002, motion for oral argument be granted?

RECOMMENDATION: No. Staff recommends that Supra's request be denied.

ISSUE III: Should Supra's motion for rehearing, appointment of a special master, and indefinite deferral be granted?

RECOMMENDATION: No. The Commission should deny Supra's motion for rehearing, appointment of a special master, and indefinite deferral.

ISSUE IV: Should Supra's renewed motion for indefinite stay and in the alternative renewed motion for oral argument be granted?

RECOMMENDATION: No. Staff recommends that Supra's motion is an improper, premature pleading not contemplated by Order No. PSC-02-0202-PCO-TP, Commission rules, or the Rules of Civil Procedure.

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

RECOMMENDATION: BellSouth's most current template agreement should be used as the base agreement into which the Commission's decision on disputed issues will be incorporated.

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

RECOMMENDATION: Staff believes that the appropriate forum for the submission of disputes under the new agreement is the Commission.

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

RECOMMENDATION: Yes. The agreement should include language that it will not be filed with the Florida Public Service Commission for approval prior to an ALEC obtaining ALEC certification from this Commission.

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

RECOMMENDATION: No. BellSouth should not be required to allow Supra to download all CSRs as that would be contrary to the Telecommunications Act's prohibition against unauthorized access or disclosure of Customer Proprietary Network Information (CPNI).

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

RECOMMENDATION: No. Staff recommends that BellSouth's rate for a loop should not be reduced when the loop utilizes Digitally Added Main Line (DAML) equipment. When changes are to be made to an existing Supra loop that may adversely affect the end user, BellSouth should provide Supra with prior notification.

ISSUE 11A: Under what conditions, if any, should the interconnection agreement state that the parties may withhold payment of disputed charges?

ISSUE 11B: Under what conditions, if any, should the interconnection agreement state that the parties may withhold payment of undisputed charges?

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

RECOMMENDATION: Both parties should be allowed to withhold payment of charges disputed in good faith during the pendency of the dispute. Neither party should be allowed to withhold payment of undisputed charges. BellSouth should be permitted to disconnect Supra for nonpayment of undisputed charges.

ISSUE 11B: Under what conditions, if any, should the interconnection agreement state that the parties may withhold payment of an of undisputed charges?

RECOMMENDATION: Both parties should be allowed to withhold payment of charges disputed in good faith during the pendency of the dispute. Neither party should be allowed to withhold payment of undisputed charges. BellSouth should be permitted to disconnect supra for nonpayment of undisputed charges.

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

RECOMMENDATION: No. BellSouth should not be required to provide transport to Supra Telecom if that transport crosses LATA boundaries.

ISSUE 15: What performance measures should be included in the interconnection agreement?

RECOMMENDATION: Staff acknowledges Order No. PSC-01-1819-FOF-TP, in the generic performance measurements docket, Docket No. 000121-TP, established appropriate performance measurements applicable to BellSouth in the State of Florida. These measurements and BellSouth's forthcoming performance assessment plan will apply to BellSouth only. Staff does not believe that it is necessary to include those performance measurements in the parties' interconnection agreement, although the parties may choose to do so.

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

RECOMMENDATION: BellSouth should not be required to provision services for which rates, terms, and conditions are not identified in the interconnection agreement, prior to negotiating and executing an amendment.

ISSUE 18: What are the appropriate rates for the following services, items or elements set forth in the proposed interconnection agreement?

- (A) Resale
- (B) Network elements
- (C) Interconnection
- (D) Collocation
- (E) LNP/INP
- (F) Billing Records
- (G) Other

RECOMMENDATION: Staff recommends that the appropriate rates to be set forth in the interconnection agreement for (B) Network Elements, (C) Interconnection, (E) LNP/INP, (F) Billing Records, and (G), Other are those ordered in Docket No. 990649-TP, and in Docket No. 000649-TP (specifically for line-sharing). For the network elements for which rates have not been established by this Commission, the rates should be BellSouth's tariffed rates, which should not be subject to true-up.

ISSUE 19: Should calls to Internet service providers be treated as local traffic for the purposes of reciprocal compensation?

RECOMMENDATION: The FPSC currently lacks the jurisdiction to address the issue of whether calls to ISPs should be treated as local traffic for the purposes of reciprocal compensation.

ISSUE 20: Should the interconnection agreement include validation and audit requirements which will enable Supra Telecom to assure the accuracy and reliability of the performance data BellSouth provides to Supra Telecom?

RECOMMENDATION: No. The interconnection agreement need not include validation and audit requirements which would enable Supra Telecom to assure the accuracy and reliability of the performance data BellSouth provides to Supra Telecom. Order No. PSC-01-1819-FOF-TP in the generic performance measurements docket, Docket No. 000121-TP, established the appropriate validation and audit requirements applicable to BellSouth. Even though staff does not recommend requiring the parties to include the validation and audit requirements in the interconnection agreement, staff acknowledges that the parties may choose to do so.

ISSUE 21: What does "currently combines" mean as that phrase is used in 47 C.F.R. 5.315(b)?

ISSUE 22: Under what conditions, if any, may BellSouth charge Supra Telecom a nonrecurring charge for combining network elements on behalf of Supra Telecom?

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

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

RECOMMENDATION: BellSouth should only be required to provide combined UNES at TELRIC prices if such elements are already physically combined in BellSouth's network. In all other instances, BellSouth should not be obligated to combine UNES for Supra; however, BellSouth may agree to do so, and should be allowed to charge a market-based fee.

ISSUE 22: Under what conditions, if any, may BellSouth charge Supra Telecom a "nonrecurring charge" for combining network elements on behalf of Supra Telecom?

RECOMMENDATION: BellSouth should not be required to provide combined UNES at TELRIC prices if such elements are already physically combined in BellSouth's network. In all other instances, BellSouth should not be obligated to combine UNES for Supra; however, BellSouth may agree to do so, and should be allowed to charge a market-based fee.

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

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

RECOMMENDATION: Staff recommends that in order for Supra to gain access to and use BellSouth facilities to serve multi-tenant environments, an ALEC access terminal should be established to accommodate the necessary connections. Staff recommends that the appropriate rates for all of the addressed subloop elements should be the BellSouth rates established by this Commission in its Final Order in Docket No. 990649-TP.

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

RECOMMENDATION: Staff's recommendation is twofold. First, staff recommends that BellSouth should be obligated to provide local circuit switching at UNE rates to Supra to serve the first three lines to a customer located in Density Zone 1. Second, staff recommends that BellSouth should not be obligated to provide local circuit switching at UNE rates to Supra to serve four or more lines provided to a customer located in Density Zone 1, as long as the other criteria for FCC Rule 51.319(c)(2) are met.

ISSUE 32: (A) Under what criteria may Supra Telecom charge the tandem switching rate?

(B) Based on Supra Telecom's network configuration as of January 31, 2001, has Supra Telecom met these criteria?

RECOMMENDATION: Staff notes that Phase II of Docket No. 000075-TP will address this very issue in detail, and the criteria developed in that docket will apply. However, staff believes that the initial threshold, based on section 51.711(a)(2), is that Supra's switch must serve a geographic area comparable to that served by BellSouth's tandem switch. Staff believes the record indicates that Supra has not deployed a switch in the State of Florida; therefore, staff recommends that Supra does not meet the criteria for the tandem switching rate at this time.

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

RECOMMENDATION: Staff recommends that either of BellSouth's two proposed solutions would permit Supra to provide unbundled local loops for the provision of DSL service when such loops are provisioned on DLC facilities. The first solution would move the end user to a loop that is suitable for xDSL service. The second solution is to allow Supra to collocate its DSLAM equipment in the same RT housing where BellSouth's DSLAM equipment is located. If BellSouth cannot accommodate collocation at a particular RT where a BellSouth DSLAM is located, staff recommends that BellSouth unbundle the BellSouth packet switching functionality at the RT in accordance with FCC requirements.

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

RECOMMENDATION: The coordinated cut-over process proposed by BellSouth should be implemented to ensure accurate, reliable, and timely cut-overs when service is transferred from a BellSouth switch to a Supra switch. Additionally, staff recommends that BellSouth should be required to implement a single "C" (Change) order process in lieu of its "D" (Disconnect) and "N" (New) order process when provisioning UNE-P conversions.

ISSUE 38: Is BellSouth required to provide Supra Telecom with nondiscriminatory access to the same databases BellSouth use to provision its customers?

RECOMMENDATION: No. BellSouth is only required to provide Supra with nondiscriminatory access to OSS functionality, and not to provide direct access to the same databases BellSouth uses to provision its customers.

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

RECOMMENDATION: No. SMDI-E, IVMS, and any other corresponding signaling associated with voice mail

messaging should not be included within the cost of the UNE switching port. The appropriate rates are those found in BellSouth's FCC No. 1 tariff. In addition, if Supra chooses to provide its own link, it should notify BellSouth and BellSouth should determine within a reasonable time frame whether or not there are any other unbundled elements associated with completing that service and what, if any, additional charges are associated with that service.

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

RECOMMENDATION: The proper time frame for either party to render bills is one year, unless the bill was in dispute, meet point billing guidelines require either party to rely on records provided by the other party, or customer provided data such as PLU or PIU factors or other ordering data is incorrect.

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

RECOMMENDATION: No. BellSouth is not required to provide Supra with the capability to submit orders electronically for all wholesale services and elements, as long as BellSouth provisions orders for complex services for itself and ALECs in a like fashion and in substantially the same time and manner.

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

RECOMMENDATION: BellSouth should be allowed to manually intervene on Supra's electronically submitted orders in the same manner as it does for its own retail orders.

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

RECOMMENDATION: Yes. Staff recommends that Supra Telecom be allowed to share with a third party the spectrum on a local loop for voice and data when it purchases a loop/port combination (alternatively referred to as "line splitting"). In addition, staff recommends that BellSouth should not be required to provide its DSL services to Supra's voice customers served via UNE-P.

ISSUE 57: Should BellSouth be required to provide downloads of RSAG, LFACS, PSIMS, and PIC databases without license agreements and without charge?

RECOMMENDATION: No. BellSouth should not be required to provide downloads of RSAG and LFACS without license agreements and without charge. However, the parties may choose to negotiate downloads of these databases as well as the rates, terms and conditions of such an arrangement.

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

RECOMMENDATION: No. This Commission should not require Supra to pay for expedited service when BellSouth provides the service after the promised expedited date, but prior to BellSouth's standard interval.

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

RECOMMENDATION: No. BellSouth should not be required to identify all errors in the order. Because it may not be feasible for BellSouth to process the order beyond the point where the rejection occurred, BellSouth should only be required to identify the error that triggered the rejection.

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

RECOMMENDATION: Yes. BellSouth should be allowed to purge orders on the 11th business day after a clarification request, if a supplemental LSR is not submitted by Supra that is responsive to the clarification request on the original LSR. Furthermore, staff recommends that no additional notification is necessary on the 11th business day when an LSR is about to be purged, provided that the BellSouth Business Rules are universally available to Supra and all ALECs.

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

RECOMMENDATION: No. BellSouth should not be required to provide completion notices for manual orders for the purposes of the interconnection agreement.

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

RECOMMENDATION: Both parties should be allowed to withhold payment of charges disputed in good faith during the pendency of the dispute. Neither party should be allowed to withhold payment of undisputed charges. BellSouth should be permitted to disconnect Supra for nonpayment of undisputed charges.

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

RECOMMENDATION: No. Staff believes that it is appropriate for the Commission to make its determination on whether or not to impose a condition or term based upon whether the term or condition is required to ensure compliance with the requirements of Sections 251 or 252. Liability for damages, without a liability cap, is not an enumerated item under Sections 251 and 252 of the Act. Further, staff believes that the record does not support a finding that a liability for damages provision, without a liability cap, is required to implement an enumerated item under Sections 251 and 252 of the Act. Staff recommends that the Commission not impose adoption of such a provision.

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

RECOMMENDATION: No. Staff believes that it is appropriate for the Commission to make its determination on whether or not to impose a condition or term based upon whether the term or condition is required to ensure compliance with the requirements of Sections 251 or 252. Specific performance is not an enumerated item under Sections 251 or 252 of the Act. Further, staff believes that the record does not support a finding that a specific performance provision is required to implement an enumerated item under Sections 251 or 252 of the Act. Staff

recommends that the Commission not impose a specific performance provision when it is not required under Section 251 or 252 of the Act.

ISSUE 67: Should this docket be closed?

RECOMMENDATION: No. The parties should be required to submit a signed agreement that complies with the Commission's decision in this docket for approval within 30 days of issuance of the Commission's order. This docket should remain open pending Commission approval of the final arbitration agreement in accordance with section 252 of the Telecommunications Act of 1996.

1 CHAIRMAN JABER: All right, Commissioners.
2 We're on Item 21. This is Jaber, Baez, Palecki.

3 There is a preliminary issue, staff, that
4 we should probably take up, but let me let you
5 introduce the item overall.

6 MR. KNIGHT: Good morning, Commissioners.
7 The next item is Docket No. 001305, the petition
8 by BellSouth Telecommunications, Inc. for
9 arbitration of certain issues in interconnection
10 agreement with Supra Telecommunications and
11 Information Systems, Inc.

12 staff notes that additional motions and
13 responses were filed after the submission of the
14 recommendation. These include Supra's February
15 25, 2002 response to BellSouth's Opposition to
16 Supra's Motion for Rehearing in Docket No.
17 001305, which included a motion for the
18 appointment of a special master, motion for
19 indefinite deferral, and motion for oral
20 argument.

21 supra also filed on February 27, 2002, a
22 motion for oral arguments on the procedural
23 question raised by the Commission staff on the
24 wrongful denial of due process. On March 1st,
25 BellSouth filed its opposition to that motion.

1 At your pleasure, staff is prepared to
2 offer an oral recommendation on the February
3 27th motion. Staff is also prepared to answer
4 any questions you may have regarding the docket.

5 CHAIRMAN JABER: Thank you, Mr. Knight.
6 The only motion that is not written up in your
7 recommendation is the February 27th motion for
8 oral argument on the procedural question?

9 MR. KNIGHT: Correct.

10 CHAIRMAN JABER: And you are prepared to
11 give us an oral recommendation on that?

12 MR. KNIGHT: Yes, that is correct.

13 CHAIRMAN JABER: Hold onto that thought.
14 Commissioners, this is an item that has a number
15 of issues and a number of motions that have come
16 in after the hearing record closed. My desire
17 is to have oral argument on this issue.
18 Obviously, I'll be looking for you all to make a
19 motion in that regard if you agree.

20 COMMISSIONER BAEZ: Madam Chairman, I would
21 so move, but with certain conditions, and I
22 would like to try something perhaps out of the
23 ordinary and test our fortitude here. I would
24 move to grant oral argument, and I would look
25 for staff to let me know if one motion is enough

1 to deal with all the oral argument motions at
2 once, all the requests, rather, but you can
3 answer that in a second. What I would propose
4 is to give each party 15 minutes uninterrupted,
5 so I would ask the Commissioners' indulgence in
6 letting the parties finish their statements, and
7 then we can move on to questions. And that
8 would be my motion.

9 COMMISSIONER PALECKI: I believe I can
10 second that motion, but I just want to seek some
11 clarification. Is that on oral argument on all
12 issues or only the issues that are headed up by
13 the Roman numerals in the staff's
14 recommendation?

15 COMMISSIONER BAEZ: The way I approached
16 it or the way I'm thinking about it,
17 Commissioner, is that we have at least two
18 requests for oral argument, and I would like my
19 motion to address all the requests for oral
20 argument and have them all folded into the 15
21 minutes that I've suggested. So, you know --

22 CHAIRMAN JABER: You know, Commissioner
23 Palecki, what my thought is? If you do accept
24 this motion to have them argue for 15 minutes,
25 they are in charge of their 15 minutes.

1 COMMISSIONER BAEZ: That's right.

2 CHAIRMAN JABER: How they choose to
3 allocate their time is up to them. But I very
4 much want to take an opportunity to hear from
5 these parties. And 15 minutes of -- and I know
6 you're sending me the message. Uninterrupted is
7 me.

8 COMMISSIONER BAEZ: Well, I'm glad someone
9 was listening.

10 CHAIRMAN JABER: I got it. I got it.
11 Fifteen minutes of uninterrupted time I can
12 support, and they can allocate how they want to
13 discuss --

14 COMMISSIONER PALECKI: With that
15 clarification, I'll second the motion.

16 CHAIRMAN JABER: Okay. Show the request
17 for oral argument granted. It will be 15
18 minutes per side starting now. And, supra,
19 you're the party that requested oral argument,
20 so go first.

21 MR. CHAIKEN: Thank you very much, Madam
22 Chairperson. Supra Telecom appreciates the
23 opportunity to be heard on this matter.

24 The issue before the Commission is not a
25 really pleasant one, and we understand that. It

1 was not our intention to do so, but undoubtedly
2 the mere bringing of this motion will further
3 alienate Supra from many persons involved in
4 this Commission, as well as the staff. We do
5 not bring this motion lightly. We know the
6 consequences of it.

7 what we're asking this Commission for is a
8 rehearing in Docket 1305. what we are seeking
9 is a fair hearing, untainted and unbiased, so
10 that a clean record may be created so that in
11 the event that either side chooses to appeal, we
12 have an unbiased and untainted record. We think
13 that the only way to get to that point is to
14 make sure that the entire proceeding is without
15 the participation of persons who may be
16 predisposed to make recommendations in favor of
17 one party over another, and we feel that the
18 facts in this case will show that that did not
19 happen in Docket 1305, for two reasons,
20 basically.

21 I'll make the point that first we had the
22 participation of one Ms. Kim Logue, who was a
23 PSC staff supervisor who had improper and
24 inappropriate contacts with the Director of
25 Regulatory Relations of BellSouth. I'll go into

1 that in a moment. But the second issue we
2 believe shows that we did not receive a fair
3 hearing is what we perceive to be the
4 predisposition of some staff members to rule in
5 favor of BellSouth and not look at the
6 underlying facts and law regarding the issues.

7 First let me speak to the facts regarding
8 Ms. Logue. Ms. Logue, a PSC supervisor, was
9 assigned to Docket No. 001097-TP and 001305-TP.
10 These are the only two dockets pending before
11 the Commission which involve the two parties
12 before you, Supra and BellSouth. Now, Ms. Logue
13 in Docket 001097 e-mailed cross-examination
14 questions for both Supra witnesses and BellSouth
15 witnesses to Ms. Nancy Sims of BellSouth after
16 hours on the eve of the hearing in that docket.

17 Now, in the internal investigation and
18 report submitted to Harold McLean, the General
19 Counsel for the Commission, on January 3, 2002,
20 that report stated that no one associated with
21 the Commission would claim that e-mailing draft
22 cross-examination questions to one party and not
23 the other is correct or reasonable. There's no
24 question that Supra did not receive similar
25 draft cross-examination questions on the eve of

1 the hearing in Docket 1097.

2 Now, Ms. Sims filed an affidavit in this
3 case, and we learned from that affidavit that
4 she could not open the e-mail, and thereafter
5 she telephoned Ms. Logue. Ms. Logue then
6 informed Ms. Sims that she wanted to send her
7 cross-examination questions. Ms. Logue
8 thereafter sent the questions via facsimile.

9 After receiving the questions, Ms. Sims
10 conferred with BellSouth legal counsel as to the
11 propriety of reviewing the questions intended
12 for BellSouth and those intended for Supra.
13 Ms. Sims then telephoned Ms. Logue and informed
14 her that it was appropriate for her to review
15 the questions for BellSouth, but not for Supra.

16 At no time, as far as Supra is concerned,
17 and Supra is unaware of any facts which show
18 that BellSouth contacted the Commission and
19 General Counsel and let them know of this
20 contact or let them know that they received
21 these cross-examination questions on the eve of
22 the hearing.

23 Now, Ms. Logue not only participated, but
24 was in attendance at the hearing in Docket
25 1305. Based on the fact that she freely and

1 inappropriately provided BellSouth
2 cross-examination questions in 1097, it's safe
3 to assume that Ms. Logue had a predisposition,
4 had a bias, had some type of favoritism towards
5 BellSouth.

6 After the hearing in 1305, Supra was first
7 notified from the Commission, not from
8 BellSouth, of the inappropriate contact between
9 Ms. Logue and Ms. Sims back in May. The only
10 fact made known to Supra at that time was of the
11 e-mail from Ms. Logue to Ms. Sims. Supra was
12 not informed of any subsequent telephone calls
13 or any subsequent faxes.

14 Supra has not been able to participate in
15 any investigation into the communications or the
16 bias of Ms. Logue.

17 In Docket 1097, the Commission on its own
18 motion issued an order granting a rehearing in
19 that case. In fact, Commissioner Jaber yourself
20 issued that order and stated that as a result of
21 the mere appearance of impropriety, you would
22 afford the parties a rehearing in that matter.

23 Now, based on that standard and that
24 standard alone, and based on Ms. Logue's
25 participation and appearance at the hearing in

1 1305, supra believes it is entitled to a
2 rehearing in 1305.

3 Notwithstanding the participation of
4 Ms. Logue, I would also like to point the
5 Commissioners to the legal conclusion reached in
6 the staff's recommendation, the original
7 recommendation, not the revised one, as to Issue
8 1. And this was the issue in which supra
9 requested leave to file supplemental authority
10 based on the Eleventh Circuit's opinion. Now,
11 bear in mind that this Eleventh Circuit case
12 issued on -- I believe it was January 10th, 2002
13 -- involved BellSouth Telecommunications, and it
14 was a case in which BellSouth Telecommunications
15 argued the exact opposite position it is arguing
16 before this Commission. BellSouth
17 Telecommunications did not bring this opinion or
18 did not notify this Commission of this opinion.
19 It was supra Telecom who did.

20 Now, if you take a look at the staff
21 recommendation, and that was issued on February
22 7, 2002, with regard to the effect of the force
23 of law of that opinion, staff stated, "The
24 ruling is not as yet final, as the time for
25 final a motion for rehearing has not passed and

1 a mandate has not been issued, and so it does
2 not presently have the force of law."

3 Now, if you take a look at BellSouth's
4 opposition to Supra's motion for leave to file
5 supplemental authority, and that was filed on
6 February 1, 2002, they argued that, on page 3,
7 paragraph 6, "Supra is incorrect in stating that
8 the Eleventh Circuit's decision is controlling.
9 That decision is a nonfinal order involving a
10 split panel. Reconsideration, and even
11 reconsideration en banc, is still available."

12 Now, as Supra later pointed out, a simple
13 telephone call to the clerk's office of the
14 Eleventh Circuit would have confirmed for staff
15 that what BellSouth was suggesting was
16 incorrect, that in fact the opinion of the
17 Eleventh Circuit is binding, and this Commission
18 must consider it in ruling on Issue 1.

19 Subsequent to that, staff issued a revised
20 staff recommendation on February 25, 2002,
21 simply deleting its mirrored position of
22 BellSouth, and came up with a new position,
23 which unsurprisingly again mirrored BellSouth's
24 position. It's as if staff simply looked for
25 facts with would support BellSouth's case.

1 As proposed findings of fact are a crucial
2 part of the record in this case, Supra is very
3 concerned that it is not getting a fair trial
4 and is not getting a fair hearing.

5 Furthermore, staff's recommendations
6 regarding the very motions before you show some
7 form of bias. Staff in its revised
8 recommendation incorrectly asserted that Supra
9 is seeking a rehearing, quote, "based on staff's
10 post-hearing recommendation." Supra never made
11 that request. Supra made its request based on
12 the improper contacts between Ms. Logue and
13 Ms. Sims.

14 Staff also incorrectly asserted that Supra
15 is seeking a reconsideration of Commissioner
16 Jaber's order in Docket 001097. Supra did not.
17 In fact, the staff wrote on page 23 that, quote,
18 "Supra asked the Commission to ignore this
19 finding and replace it with a finding that there
20 was prejudice to Supra in that docket." Supra
21 never made that request. Supra, in fact,
22 asserted its support for Commissioner Jaber's
23 decision and stated at paragraph 37 of its
24 motion that Commissioner Jaber reached the
25 correct conclusion that the appearance of

1 impropriety was sufficient to order a rehearing
2 in Docket 001097.

3 What supra is seeking is a fair hearing.
4 This Commission has the authority pursuant to
5 Florida Statute 350.125 to order that this
6 hearing take place before the Division of
7 Administrative Hearings, and we make that
8 request in lieu of a request for a special
9 master to hear this case.

10 Now, supra has raised a few different due
11 process issues, and I would like to just briefly
12 raise this one, that should this Commission deny
13 supra's motion for rehearing and today go
14 straight into the underlying issues in this
15 case, it would deny supra the opportunity to
16 move for reconsideration and deny the supra the
17 opportunity to appeal before making a finding on
18 the underlying issues. And we would ask that
19 should the Commission deny supra's motion for
20 rehearing that it defer the underlying issues so
21 as to allow supra time to exercise its due
22 process rights.

23 Thank you very much.

24 CHAIRMAN JABER: Thank you, Mr. Chaiken.
25 BellSouth?

1 MS. WHITE: Yes, ma'am. Nancy white for
2 BellSouth Telecommunications Company.

3 There's only one issue of substance that is
4 proper for oral argument in this arbitration
5 docket today, and that's the impact of the
6 recent Eleventh Circuit case in BellSouth vs.
7 MCI Metro on Issue 1, what is the appropriate
8 forum for complaints concerning the
9 implementation of the new agreement. In
10 BellSouth vs. MCI Metro, the Eleventh Circuit
11 held that the Georgia Public Service Commission
12 did not have the authority under either the
13 Federal Act or Georgia law to resolve disputes
14 stemming from the BellSouth/MCI interconnection
15 agreement.

16 Now, Supra makes several arguments in
17 support of the proposition that the Eleventh
18 Circuit decision is not only controlling in
19 Florida, but that it requires this Commission to
20 force BellSouth to submit to binding
21 arbitration. All of these arguments fail
22 because Supra's proposition cannot hold.

23 First, while the Eleventh Circuit case may
24 be controlling as to whether the Florida
25 Commission has authority under the Federal Act

1 to interpret and enforce agreements, it is not
2 controlling as to whether the Florida Commission
3 has authority under Florida law to enforce and
4 interpret agreements. In MCI Metro, the
5 Eleventh Circuit interpreted Georgia law, not
6 Florida law. Under Florida law the Commission's
7 powers, duties, and authority are those that are
8 conferred expressly or impliedly by state
9 statute. Implied authority must be derived from
10 fair implication incident to any express
11 authority.

12 Contrary to Supra's assertions that Florida
13 law is silent on this issue, and unlike the
14 Georgia Commission, this Commission has express
15 authority to interpret and enforce
16 interconnection agreements pursuant to Section
17 364.162(1) of the Florida Statutes. This
18 section of Florida Statutes was not preempted by
19 the Federal Act and remains in full force and
20 effect. It specifically grants the Commission
21 the authority to arbitrate any dispute regarding
22 the interpretation of interconnection or resale
23 prices, terms, and conditions.

24 In one of its many pleadings on this issue,
25 Supra attempts to use the word game standard of

1 statutory interpretation as support for its
2 arguments. But under Florida law, the first
3 rule of statutory interpretation is that the
4 words in the statute are to be given their plain
5 and ordinary meaning.

6 So let's look at section 364.162. It
7 states that the Florida Commission, quote,
8 "shall have the authority to arbitrate any
9 dispute regarding interpretation of
10 interconnection or resale prices, terms, and
11 conditions," end quote. It doesn't take a
12 rocket scientist or a regulatory lawyer to
13 understand the plain meaning of these words.
14 The Commission has the authority to resolve
15 disputes regarding the interpretation of
16 interconnection agreements.

17 In addition, the Florida Commission has
18 implied authority under section 364.337 of the
19 Florida Statutes to exercise, quote, "continuing
20 regulatory oversight over the provision of basic
21 local exchange service provided by an ALEC for
22 purposes of ensuring fair treatment of all
23 telecommunications providers in the
24 telecommunications marketplace," end quote.
25 Thus, the Florida Commission's implied authority

1 arises from statutes which require more of this
2 Commission than just the, quote, general
3 supervision of all telephone companies, end
4 quote, that the Georgia statute provided.

5 Second, the Eleventh Circuit based its
6 decision in part on a finding that the Georgia
7 Commission was merely a quasi-legislative body
8 unsuited to hear contract disputes. Under
9 Florida law, however, this Commission exercises
10 quasi-judicial authority when such authority is
11 delegated to it by the Florida Legislature.
12 Such express authority has been granted to this
13 Commission pursuant to Section 364.162, Florida
14 Statutes, which grants the Florida Commission
15 express authority to resolve disputes stemming
16 from interconnection agreements.

17 Strangely enough, in a pleading filed on
18 February 19, 2002, Supra argued that this
19 Commission was only a quasi-legislative body,
20 similar to the finding by the Eleventh Circuit
21 on the Georgia Commission. In a pleading filed
22 in this docket on February 28th, however, Supra
23 argued that this Commission acts as a
24 quasi-judicial body. Supra cannot have it both
25 ways. This Commission is either

1 quasi-legislative and does not have the power to
2 adjudicate disputes, or it is quasi-judicial and
3 does have that power. We believe the answer is
4 the latter.

5 Third, Supra argues that there is no
6 adjudicatory rule mentioned in the Florida
7 statutes, and therefore the Florida Commission
8 does not have such authority. Obviously, they
9 have not read Chapter 364 closely, as Section
10 364.162 directly addresses the Florida
11 Commission's role in resolving interconnection
12 disputes.

13 Fourth, Supra argues that the Commission
14 has no authority to adjudicate disputes because
15 the Commission cannot enforce its orders. This
16 argument is baseless. The Florida Commission
17 has the ability to fine any company that has
18 refused to comply or has willfully violated any
19 lawful rule or order pursuant to section 364.285
20 of the Florida Statutes. In addition, the
21 Commission has the ability to sanction a party
22 for misconduct. Just because the Commission
23 also has the ability to seek relief in Circuit
24 Court as well does not negate the existing
25 enforcement powers of the Commission.

1 Finally, and most importantly, remember
2 what supra is doing here. supra is citing the
3 Eleventh Circuit case in support of a
4 proposition that this Commission has the
5 authority to force BellSouth to agree to binding
6 commercial arbitration against BellSouth's will.
7 The Eleventh Circuit was not presented with that
8 issue, and therefore that case cannot support
9 supra's position. There is absolutely no legal
10 support for the notion that BellSouth can be
11 compelled to submit to binding arbitration. The
12 Supreme Court of the United States has long
13 recognized that a party cannot be required to
14 submit to arbitration any dispute which he has
15 not agreed to submit.

16 This Commission recently ruled on this very
17 issue in the AT&T and BellSouth arbitration and
18 concluded that, quote, "nothing in the law gives
19 the Commission explicit authority to require
20 third-party arbitration," end quote.

21 supra claims that this Commission has no
22 choice, that it just order BellSouth to submit
23 to commercial arbitration. This is just not
24 true. In an arbitration of a new
25 interconnection agreement, this Commission on

1 several occasions has rejected the positions of
2 both parties and exercised its own independent
3 judgment in resolving an issue. There is
4 absolutely no requirement that the proposal of
5 one or the other party must be adopted.

6 Now, Supra has thrown a lot of mud at a lot
7 of people in this case, and what I would say
8 about that is this. First, regardless of what
9 may or may not have happened in Docket No.
10 001097, it has nothing to do with this docket.
11 The staff at issue in that docket was not
12 involved in the recommendation in this
13 arbitration docket. There is no evidence of
14 even the appearance of impropriety in this
15 docket. Supra simply wants you to assume that
16 something improper happened in this docket,
17 despite the staff's affirmative assurance that
18 it did not.

19 Second, although supra has been aware of
20 this situation since at least October 5th of
21 2001, they raised it for the first time in this
22 docket after the staff issued a recommendation
23 that they apparently didn't care for. They
24 raised it for the first time in February of
25 2002, some five months later, on the eve of the

1 vote.

2 Finally, Supra tries to play the
3 constitutional due process denial card. They
4 argue that if the Commission does not decide the
5 procedural motions and render a written order
6 before voting on the underlying issues, they
7 will be denied their due process rights. That
8 is false. If Supra's motions are denied in this
9 docket, it is a nonfinal order that cannot be
10 appealed unless a party shows that review of the
11 final order would not provide an adequate
12 remedy.

13 Essentially, the complaining party must
14 show irreparable harm, and that comes from --
15 I'll cite the case of Elder vs. Carter, 670
16 So.2d 1032. It does not mean that the
17 expenditure -- that there will be an expenditure
18 of time and money on a trial and subsequent
19 appeal. It means that they must show
20 irreparable harm, and this Supra has not done.
21 Appeal after the issuance of a final order
22 provides an adequate remedy and preserves all of
23 Supra's rights.

24 Arbitrations are intended to be completed
25 within a specific time period pursuant to the

1 Federal Act. This agreement expired in June of
2 2000. BellSouth brought its arbitration with
3 Supra to Commission in September of 2000. It
4 has been going on for almost two years. Even
5 Supra has admitted that the new agreement will
6 be retroactive to the June expiration date.
7 Every action that Supra had taken in this
8 arbitration has served to at best delay, and at
9 worst prevent your vote, essentially to delay or
10 prevent the day upon which they would be
11 required to sign a new interconnection
12 agreement.

13 If a party does not like a decision reached
14 by the Commission, the appropriate action is to
15 seek reconsideration or appeal. It is not
16 appropriate to file motion after baseless motion
17 in an attempt to wear down the staff, the
18 Commissioners, and the other party.

19 Bring this never-ending arbitration to a
20 conclusion. Vote on the entire staff rec,
21 please.

22 Thank you.

23 CHAIRMAN JABER: Thank you.

24 Commissioners, do you want to open this up
25 for questions, or do we want to hear from staff

1 on the rest of the recommendations?

2 I would note that we've disposed of Roman
3 numeral I and Roman numeral number II with
4 granting oral argument. Roman numeral number
5 III goes to heart of what Mr. Chaiken has
6 requested and again reinforced in his oral
7 argument, which would be the motion for
8 rehearing, appointment of a special master, and
9 an indefinite deferral.

10 Mr. Chaiken, I got the impression that you
11 modified today your request to ask that the case
12 go to DOAH in lieu of a special master.

13 MR. CHAIKEN: That's correct.

14 CHAIRMAN JABER: Okay. Commissioners, do
15 you have any questions on --

16 COMMISSIONER PALECKI: Chairman Jaber, I do
17 have a few questions for the parties that I
18 would like to ask.

19 CHAIRMAN JABER: Go ahead.

20 COMMISSIONER PALECKI: First, I would like
21 to ask Supra -- I understand that based upon the
22 events that happened in the other docket that
23 Supra believes it cannot get a fair hearing
24 before this Commission. My question is, has
25 Supra done any discovery to indicate whether

1 impropriety occurred in this docket?

2 MR. CHAIKEN: I believe we've made a public
3 document request asking for phone records,
4 facsimile records, e-mails.

5 COMMISSIONER PALECKI: Has there been any
6 indication that you can show us that there was
7 impropriety in this docket?

8 MR. CHAIKEN: I have not received the
9 documents back yet. So at this point in time,
10 other than the fact that Ms. Logue has shown a
11 predisposition to favor BellSouth and that she
12 did participate in 1305 and was present at the
13 hearing, as well as the evidence regarding Issue
14 1 that I presented earlier, that's all I have at
15 this time, but we're waiting for the document
16 request to come back.

17 COMMISSIONER PALECKI: Thank you.

18 CHAIRMAN JABER: Mr. Chaiken, there's
19 something that has been -- let me back up. I
20 want to commend you for how you handled yourself
21 this morning. One attorney to another attorney,
22 I know this can't be easy, and I really
23 appreciate how you've done this this morning.

24 But there's something that has been nagging
25 at me as I read these pleadings and as I just

1 heard you articulate it again this morning. And
2 I am flattered that you're trying to acknowledge
3 that the ruling I made in granting the rehearing
4 for the 1097 docket is something that you agree
5 with. I'm flattered by that. But I want to
6 make sure that people are clear as to my
7 finding.

8 You would acknowledge that I did not make a
9 finding that there was inappropriate behavior,
10 and I did not make a finding that Ms. Logue was
11 biased. You would acknowledge that?

12 MR. CHAIKEN: Yes. Yes, ma'am.

13 CHAIRMAN JABER: On page 2 of the order I
14 issued -- for the purposes of the record, I want
15 to be real clear on what I did and why. I
16 directed an inquiry when the allegations were
17 made clear to me. And my words in the order
18 are, "I directed further inquiry and have since
19 reviewed the findings of that inquiry." That's
20 page 2 of the order, 02-0143. "Although the
21 inquiry has failed to disclose any prejudice to
22 either party, the Commission is sensitive to the
23 mere appearance of impropriety. Accordingly, in
24 order to remove any possible appearance of
25 prejudice, I find that this matter should be

1 afforded a rehearing."

2 Now, that order was issued in the abundance
3 of caution. I did not have the benefit of
4 having the affidavit that has been made part of
5 this proceeding, the affidavit that was sent in
6 by Ms. Sims. I now have that. And I'm
7 reinforced and further comforted with the
8 decision that was made in the complaint docket.
9 But all of those allegations go to the complaint
10 docket. You agree with that?

11 MR. CHAIKEN: I do agree with that, yes.

12 CHAIRMAN JABER: All right. This is an
13 arbitration docket that was -- that went to
14 hearing after the complaint was resolved, or
15 after the complaint hearing was held. And I
16 listened very carefully to what you said, and I
17 haven't heard any allegations specific of staff
18 in this docket. This is your opportunity to
19 point those out, but I have not heard any
20 specific allegations about staff as it relates
21 to this docket.

22 MR. CHAIKEN: Well, ma'am, I would point
23 out the fact that the investigation into
24 Ms. Logue was concluded in January of 2002. It
25 appeared to us that reading that investigation

1 report, the only thing that was investigated was
2 the sole e-mail. We learned through the
3 affidavit of Ms. Sims that there was more than
4 just the sole e-mail. For the first time,
5 that's when we learned that.

6 Have we been given the opportunity to
7 conduct our own investigation? No, we have
8 not.

9 Have we subsequently made a document
10 request after receiving that report? Yes, we
11 have.

12 Do the facts evidence that Ms. Logue, who
13 it is undisputed participated and was present at
14 the hearing in 1305, that she had a
15 predisposition to favor BellSouth? We think
16 that the evidence clearly shows that.

17 And I think I did outline staff's just
18 blanket recapturing of BellSouth's position
19 regarding Issue 1, which they subsequently upon
20 receiving our subsequent argument just
21 deleted. I mean, I don't know what more I can
22 show absent given the opportunity to depose
23 Ms. Logue and to check out the records we've
24 requested.

25 CHAIRMAN JABER: Can we agree before we go

1 on further, though, that the complaint docket
2 has been disposed of or remedied in the sense
3 that there will be a rehearing in that docket,
4 and it will be a expedited rehearing?

5 MR. CHAIKEN: Correct. We're on that track
6 right now.

7 CHAIRMAN JABER: All right. Can we stop
8 talking about the complaint docket for a moment?
9 Let's turn to the arbitration docket. Let's
10 turn to this.

11 There isn't a doubt in my mind that this
12 staff conducted -- and I say this to you for
13 what it's worth to you. And you don't know
14 these Commissioners, and you certainly don't
15 know me, so you're going to have to take my word
16 for it. There isn't a doubt in my mind that
17 these dispositions are fair and not biased and
18 that we do our homework and participate in the
19 hearings and in the process wholeheartedly.

20 And as I recall this case in particular,
21 because you and Mr. Medacier had not
22 participated in Commission proceedings, I
23 remember feeling like I was holding your hands
24 throughout the entire process, and I remember
25 articulating -- and I went back last night and

1 read the transcript, every page of the
2 transcript, wherein I indicated to you all we
3 were going to be flexible in cross-examination,
4 because I think you had represented to me that
5 there wasn't a deposition and adequate
6 discovery, in your opinion. And we articulated
7 right there on the record that we were going to
8 be flexible in allowing sufficient
9 cross-examination. And cross-examination was
10 had, and you had ample opportunity to bring out
11 in the record whatever it was you wanted to
12 bring out. And I remember, and I again looked
13 it up last night, that the Commissioners asked
14 questions. I also know in my heart of hearts
15 that staff has relied on this record.

16 And I say all of this to you because I want
17 you to know that this is a new Commission with a
18 new set of Commissioners and a new staff
19 executive management team. We have a new
20 General Counsel that you have gotten to know
21 really well. We have a new Executive Director
22 that has articulated completely to her staff the
23 team philosophy and the role that these
24 Commissioners have and the role that this staff
25 has in serving the public. And I know this

1 staff, Mr. Chaiken.

2 And I know that what Ms. Kim Logue did that
3 I now can say definitely, because we have the
4 affidavit from Ms. Sims, was completely
5 inappropriate, and for that I want to publicly
6 apologize to you. I want to apologize to you on
7 behalf of this agency and on behalf of staff,
8 because it was completely wrong to send
9 cross-examination questions prior to the
10 hearing.

11 But, BellSouth, I want to send you a strong
12 message too. It was inappropriate for you to
13 receive the cross-examination questions, not
14 just Supra's questions, but you should have
15 returned BellSouth's questions too.

16 But we've lived and we've learned, and
17 those kinds of things will not happen anymore.
18 It's for that reason we will have a rehearing in
19 the complaint docket.

20 I don't have that concern with this docket.
21 The arbitration docket is different. I'm
22 comforted with the record. I know that everyone
23 asked questions that they were entitled to ask.
24 I have faith in this staff. They have not let
25 me down.

1 And, you know, all you have is the message
2 I'm sending you. I realize that. But I also
3 want to send you my gratitude, because you
4 pointing out to us these sorts of situations is
5 the feedback that I have. You've shown me where
6 it was broken. We will fix it.

7 And the other place I think that we've let
8 someone down, to some degree, I think I've let
9 staff down, or we've let staff down. Whatever
10 Ms. Logue did, whatever she was thinking, I have
11 to believe there was a lack of staff training,
12 because it is wrong to send out
13 cross-examination questions on the eve of the
14 hearing. I have to believe she didn't realize
15 it was wrong, so that's where we failed. But
16 live and learn.

17 With that, Commissioners, I need a motion
18 on Roman numeral number III.

19 COMMISSIONER BAEZ: Madam Chair, for
20 starters, I just want to ask staff. Your
21 recommendation doesn't change based on
22 Mr. Chaiken's modification of their request as
23 concerns a special master?

24 MS. CHRISTENSEN: No, Commissioner, our
25 recommendation would not change. It would still

1 be to deny the motion in its entirety.

2 CHAIRMAN JABER: Mr. Chaiken, one of the
3 things -- as you were talking about DOAH, one of
4 the concerns I've always had as it relates to
5 sending dockets that might have policy
6 implications is just that, that DOAH will send
7 it back because they don't make decisions that
8 are imbued with policy ramifications. And I
9 agree with that. I think the Public Service
10 Commission has the expertise and the technical
11 knowledge to make those kinds of decisions.

12 The other thing I would point to you is
13 that even if there was a hearing held at DOAH,
14 the decision would come back to the PSC in the
15 form of a recommended decision, so we would
16 ultimately decide it anyway, and it creates
17 delay. Especially delay when you're trying to
18 promote a competitive market as we all are in
19 telecommunications, it seems like sending it to
20 DOAH would just be counterproductive in that
21 regard.

22 COMMISSIONER PALECKI: May I just ask a
23 couple of follow-up questions?

24 Mr. Chaiken, you made a statement that you
25 have not had an opportunity to depose

1 Ms. Logue. And the question I have -- I've been
2 the prehearing officer in this docket. Have you
3 made any request to depose Ms. Logue or any
4 member of our staff?

5 MR. CHAIKEN: We were told that Ms. Logue
6 was in the Army reserves and was in Afghanistan.
7 In light of that fact, I don't know how we could
8 have deposed her.

9 COMMISSIONER PALECKI: Well, I haven't seen
10 any request, and I haven't seen any request that
11 you depose any member of staff.

12 I am concerned about your answer to a
13 further question, an earlier question that there
14 is outstanding discovery and that you just have
15 not received anything back from that discovery.
16 Has BellSouth been delinquent in providing you
17 with answers to discovery questions?

18 MR. CHAIKEN: No, sir. We didn't make that
19 request upon BellSouth. We made a public
20 document request upon the Commission.

21 COMMISSIONER PALECKI: And what was your
22 timing on that public document request?

23 MR. CHAIKEN: It was very recent, in the
24 last few days.

25 COMMISSIONER PALECKI: So the Commission

1 has not been delinquent either. It's only in
2 the last few days that you've made requests or
3 attempted to do any discovery as to whether
4 there has been any impropriety in this docket.

5 MR. CHAIKEN: That's correct. Let me
6 further state with regard to that that we were
7 asked by the General Counsel, Mr. McLean, to
8 wait to see the results of the internal
9 investigation, which we did. You know, we
10 didn't receive that until the beginning of
11 January. It's not as if we waited, you know,
12 three or four months or five months upon
13 learning of the incident. We waited for the
14 internal investigation to be completed.

15 COMMISSIONER PALECKI: well, it's March
16 5th now, so you have waited several months
17 before conducting any kind of discovery. Was it
18 your intention to conduct discovery as to
19 whether there has been impropriety in this
20 docket?

21 MR. CHAIKEN: well, sir, actually, we've
22 considered it, and we don't know what grounds we
23 can bring that discovery request, other than the
24 public document request. I don't know whose
25 authority we would ask for to depose staff

1 members or to depose members of BellSouth in
2 this case.

3 CHAIRMAN JABER: Commissioner Palecki, to
4 Supra's point, as it relates to arbitration, the
5 discovery cutoff period is closed. I mean, you
6 were the prehearing officer.

7 COMMISSIONER PALECKI: Yes.

8 CHAIRMAN JABER: I would ask that you
9 remind me. I'm pretty sure that the discovery
10 cutoff period would have been closed, so they
11 would have needed to seek your permission. But
12 I guess your point is that there was no such
13 request.

14 COMMISSIONER PALECKI: There has been no
15 request, and I guess that's -- I have to say,
16 Chairman Jaber, that I agree with you that there
17 has been no indication of impropriety. There
18 has been no indication of any appearance of
19 impropriety in this docket that I've seen. I
20 just don't see that there has been any ground
21 for us to grant the request that you've
22 requested.

23 And, Chairman Jaber, I can make a motion
24 that -- I would move staff on Issue III, and
25 that is that the Commission should deny Supra's

1 motion for rehearing, appointment of a special
2 master, and indefinite deferral of this docket.

3 COMMISSIONER BAEZ: I'm going to second the
4 motion. And I want to just throw out some
5 things that have concerned me about this whole
6 incident.

7 Chairman Jaber, I agree with you that there
8 was an appearance of impropriety. I agree with
9 the investigation results that in the end, the
10 company wasn't prejudiced, in part because I
11 know what decisions this Commission has made.
12 And the one thing that has been lost in all of
13 this, say what you will about the staff, a lot
14 of which I don't agree with, the people that
15 make the decisions are sitting up on this bench.

16 And in reading some of the company's
17 filings, it was -- some of it was offensive to
18 me. The issues of excising language in motions,
19 the suggestion that a prehearing officer merely
20 followed the recommendation of staff, you know,
21 those are very -- I take that personally.
22 whether he followed -- whether the prehearing
23 officer followed staff's recommendation or not,
24 that is his discretion and his prerogative.

25 I think the claims that the company has

1 made made it sound like -- and forgive me,
2 Commissioner Palecki, for not knowing more of
3 your stellar career, but, you know, that 20
4 years of law practice didn't figure into this.
5 I find those things -- I find those suggestions
6 offensive.

7 I have a problem with the timing of when
8 all of this comes up. I think the late flurry
9 of motions, although couched in due process
10 terms, I think that concerns me, because the
11 bottom line is, regardless of what the General
12 Counsel may have asked you to do, I think there
13 was proper reservation of rights that had to
14 have come up at the point, no matter when the
15 request was made, based on your knowledge or
16 what your perception of the facts were to be.
17 And I think that the late flurry of motions in
18 order to delay a Commission's decision on an
19 agreement that has been pending for two years
20 now, that troubles me, because at this -- we are
21 already in March, and at this late date, you
22 know, to hold back more on a process that I
23 agree with Commissioner Jaber has been fair, and
24 I think reading the recommendations of staff, I
25 believe they've been impartial as well, that

1 troubles me.

2 I'll be seconding the motion, because I
3 believe that what we owe the best interests of
4 this state, what we owe you all as parties is to
5 come to a vote, come to a resolution, and let
6 the process continue. I'm not asking the
7 company to -- I'm not asking any of the
8 companies to agree with whatever resolutions we
9 reach here based on our decisions, but we have
10 to step out of this process at some point. We
11 have to let, you know, step 2 and step 3 take
12 place. And I don't believe that taking a
13 decision now, making a decision now is going to
14 prejudice Supra's opportunity and Supra's due
15 process in addressing whatever exceptions they
16 may have with the results of our decisions. I
17 think that process continues. But for my money,
18 I think we need to reach a resolution here among
19 us and step back and let that process continue,
20 stop being in the middle of it in the nature of
21 which we are.

22 That said, I would second the motion on
23 Issue III. Is it III, Roman III?

24 CHAIRMAN JABER: Yes, Roman numeral III.
25 There has been a motion and a second. All those

1 in favor say aye.

2 MS. CHRISTENSEN: Commissioners, I'm
3 sorry. Can I ask for clarification on the
4 motion? There was an oral modification that was
5 made by Supra today to change it to a DOAH
6 referral, and I'm not sure that was clarified in
7 the motion, and I would ask if we can could get
8 that clarified.

9 COMMISSIONER PALECKI: Yes. I'll go ahead
10 and clarify my motion. It would deny the
11 request for a DOAH hearing as well. As far as
12 I'm concerned, there is not a need for rehearing
13 of the matter. I have a great deal of respect
14 for DOAH. I think DOAH does a fantastic job on
15 their referrals, but there's nothing to be
16 reheard. So to clarify the motion, it would
17 deny the request that this be referred to DOAH.

18 COMMISSIONER BAEZ: Second as modified.

19 CHAIRMAN JABER: The amended motion has a
20 second. All those in favor, say aye.

21 (Simultaneous affirmative responses.)

22 CHAIRMAN JABER: Opposed, nay.

23 (No response.)

24 CHAIRMAN JABER: Okay. That resolves
25 Roman numeral number III.

1 Now, Mr. Chaiken also did reinforce an
2 earlier request to stop here to allow the
3 company to appeal the decisions that have
4 already been made. Mr. Chaiken, I have to tell
5 you my preference is to resolve it all at once,
6 because I don't want the court to think of it as
7 an interlocutory appeal and send it back. So in
8 an effort to just move this along, I think,
9 Commissioners, we should go forward.

10 And I don't know, Ms. Keating, what issue
11 -- should we just clarify in our decision today
12 that we want to resolve the entire item?

13 MS. KEATING: I believe that would be
14 appropriate. And to some extent, that --

15 COMMISSIONER BAEZ: That's contained in the
16 record.

17 MS. KEATING: Tie it into Roman numeral
18 IV, wherein they renewed their request for an
19 indefinite stay. To some extent, that could be
20 covered there.

21 CHAIRMAN JABER: All right. Commissioners,
22 do we have a motion on Issue IV, and also
23 clarify that we're going forward with the
24 ultimate decision as well?

25 COMMISSIONER BAEZ: So moved.

1 COMMISSIONER PALECKI: Second.

2 CHAIRMAN JABER: Okay. A motion and a
3 second on Issue IV to accept staff's
4 recommendation. All those in favor say aye.

5 (Simultaneous affirmative responses.)

6 CHAIRMAN JABER: Opposed, nay.

7 (No response.)

8 CHAIRMAN JABER: That resolves Issue IV.

9 That brings us to the substantive portion
10 of the recommendation. But, Mr. Ramos, I have a
11 request of you. I want you to start over with
12 staff. I recognize that that's something you
13 may not take me up on, but it is request that
14 I'm making officially to you. I want you to get
15 to know Mr. McLean. I want you to get to know
16 Dr. Bane. I want you to have her to reintroduce
17 you to the technical staff here at the PSC.

18 One person's mistake or lack of judgment
19 should not reflect on the entire agency or the
20 years of technical expertise that's here. I am
21 really proud of this staff, and the nature of
22 this situation has allowed me to be patient and
23 listen to your concerns about staff. I will
24 always be patient.

25 As Chairman, I will not tolerate staff

1 bashing. And again, I just want to reinforce, I
2 am so proud of the way you handled it this
3 morning. I don't mean to say you have bashed our
4 staff. But you need to know that I am very
5 proud of this staff, and they will have my
6 support, which means it is really critical for
7 you to get to know them and for them to get to
8 know you. I hope you take me up on that offer.

9 COMMISSIONER BAEZ: And I want to share
10 that encouragement. Mr. Ramos, I want --

11 MR. RAMOS: Thank you very much.

12 COMMISSIONER BAEZ: I'm sorry. I want you
13 to understand one thing. Supra is very
14 important to the Commission's equation on
15 competition, on promoting competition. I'll go
16 on record to say that -- I mean, I have
17 relatives that are your customers, and they
18 speak very, very well of the service that you
19 all provide. You are a very important part of
20 what we all are trying to do up here.

21 I would also echo the Chairman's comments.
22 I think the company's -- the history of the
23 company's participation here has left certainly
24 a bad taste in my mouth. I urge you to become a
25 positive force here. I know that sometimes it's

1 difficult, because you have business issues that
2 you're dealing with.

3 And sometimes, as was said before, on a
4 digital network docket -- I don't know if you
5 were listening. Sometimes you don't like the
6 decisions that come out here. That makes it all
7 that more important for the companies to get
8 together with business solutions for this. We
9 do have a process in place to deal with what
10 comes before us, but we would rather not have to
11 deal with things that could be dealt with
12 otherwise on a business basis. So I would
13 encourage you to do that.

14 But, please, do not walk away from this
15 agenda conference feeling like we don't care
16 about the companies that are competing for
17 Florida's telecommunications business. We do
18 care. And specifically, a company like yours
19 which is providing a good example and surviving
20 and thriving in a major market, where I come
21 from in particular, is very encouraging to me.
22 So I commend you on the work that you're doing,
23 and I would urge you to, I think, make an effort
24 to understand our process a little better and to
25 become a positive participant in that process.

1 And I promise you, you will see the results.
2 You will see the fruits of that labor.

3 I'm sorry to interject, Madam Chairman.

4 CHAIRMAN JABER: No, I'm glad you did.

5 MR. RAMOS: Thank you very much.

6 CHAIRMAN JABER: Thank you.

7 MS. KEATING: Commissioners --

8 CHAIRMAN JABER: We're on Issue B.

9 MS. KEATING: Oh, I'm sorry.

10 CHAIRMAN JABER: Go ahead.

11 MS. KEATING: I apologize, but if I may
12 just get a couple of other quick clarifications.

13 CHAIRMAN JABER: Yes.

14 MS. KEATING: On Roman numeral Issue IV,
15 there was a renewed motion for oral argument.
16 Can I clarify if staff's recommendation is
17 denied in part to the extent that oral argument
18 was granted?

19 And also, on the February 27th motion that
20 was not addressed in staff's recommendation, if
21 I could get some clarification. It's
22 essentially a motion for oral argument on the
23 procedural question. And to the extent that you
24 did in fact grant oral argument, I wanted some
25 clarification as to whether that also addressed

1 that motion.

2 CHAIRMAN JABER: well, let me ask you about
3 that. I actually thought this motion has now
4 become moot. Can we render our decision making
5 this motion moot? It seems like the decisions
6 we made have taken care of all the underlying
7 requests made in the February 27th motion.

8 COMMISSIONER BAEZ: well, first of all,
9 Madam Chairman, when I made the motion to grant
10 oral argument, I tried to make it clear that
11 oral argument and the way that we granted it
12 with the time limits that we set were to address
13 all outstanding requests for oral argument. And
14 to the extent that that wraps whatever pending
15 motions were out there that weren't addressed in
16 the recommendation, it was certainly my intent
17 that the 15 minutes was, as the Chairman pointed
18 out, you know, you have your 15 minutes, you use
19 it at your discretion, you're responsible for
20 management of that, so that all issues that
21 needed oral arguments were being addressed, at
22 least presumed to be addressed.

23 CHAIRMAN JABER: All right. The request to
24 have rehearing was denied, and the request to
25 send it to anyone other than the PSC was

1 denied. Is there anything else in this motion
2 that we have not covered?

3 MR. MCLEAN: Only the indefinite deferral,
4 and I believe you also dealt with that.

5 COMMISSIONER PALECKI: I think we denied
6 that.

7 CHAIRMAN JABER: Right.

8 COMMISSIONER PALECKI: My feeling is that
9 we've denied the motion for rehearing,
10 appointment of a special master, all motions for
11 deferral, all motions for stays, and the motions
12 for oral argument were granted.

13 MS. KEATING: Okay. Thank you. I just
14 wanted to clarify for the one that had not been
15 addressed in the recommendation in particular.

16 CHAIRMAN JABER: Thank, Ms. Keating. And
17 along the way, if you think of anything else, do
18 let us know.

19 All right. Issue B. Staff?

20 MR. TODD BROWN: Okay. Commissioners,
21 Issue B addresses which agreement template shall
22 be used on a going-forward basis.

23 Staff's recommendation is that BellSouth's
24 most current template agreement be used as the
25 base agreement into which the Commission's

1 decisions will be incorporated.

2 COMMISSIONER PALECKI: I can make a motion
3 on Issue --

4 CHAIRMAN JABER: I'm sorry. I have a
5 question. May I ask a question?

6 I looked again, staff, last night to see if
7 I could find an alternative template. So remind
8 me, has Supra submitted an alternative template
9 that we could use?

10 MR. TODD BROWN: No, ma'am, they have not.
11 They submitted at hearing a copy of the
12 agreement they currently operate under, but that
13 only had like a type-and-strike or red-line to
14 the general terms and conditions only, and the
15 other 14 or 15 sections were unchanged.

16 CHAIRMAN JABER: Go ahead, Commissioner
17 Palecki.

18 COMMISSIONER PALECKI: Well, my belief is
19 that using Supra's existing agreement as a base
20 agreement would not have been completely
21 unreasonable, but I think it would have been
22 highly inefficient to not recognize the updates
23 that BellSouth has incorporated to reflect
24 changes in the law and in the industry. And I
25 believe that, comparing the two documents, that

1 BellSouth's most current update as to the -- its
2 most current interconnection agreement is the
3 best template for a base agreement onto which
4 our decisions today would be incorporated.

5 CHAIRMAN JABER: Okay. So that's --

6 COMMISSIONER PALECKI: So I would move
7 staff's recommendation.

8 COMMISSIONER BAEZ: Second.

9 CHAIRMAN JABER: All those in favor say
10 aye.

11 (Simultaneous affirmative votes.)

12 CHAIRMAN JABER: Show Issue B approved.

13 Now, staff, the effective date of the
14 agreement, there was testimony that the
15 agreement should be applied retroactively. I
16 saw that in the transcript, but I didn't see a
17 specific issue on the effective date, so what
18 should we do there?

19 MR. KNIGHT: I believe it would be
20 addressed in the new agreement, or we could
21 state on our own motion that the effective date
22 would be -- or the agreement takes effect on the
23 date the order is issued. The terms would be
24 applied retroactivity to the June 2000 or the
25 date after the expiration of the old agreement.

1 COMMISSIONER BAEZ: Madam Chairman, it
2 seems to me, and I could be wrong, that that's
3 probably -- (a) it's something, I think, that
4 the parties have already agreed to and has been
5 represented, at least by one side, that it does
6 have retroactivity. But it seems to me that
7 that's the kind of thing that gets negotiated
8 ultimately, so I feel uncomfortable making that
9 decision if it's not before us.

10 CHAIRMAN JABER: Okay. And to the degree
11 this discussion alone has provided some
12 clarification, I would hope that the parties
13 take advantage of that.

14 Okay. Issue 1.

15 MR. MCLEAN: Madam Chairman, we have a bit
16 of an issue. Staff can't have access to the
17 table. We're in a post-hearing mode where you
18 don't normally hear from the parties.

19 CHAIRMAN JABER: Oh.

20 MR. MCLEAN: And we have a problem with
21 getting staff up to the table.

22 CHAIRMAN JABER: You know what I would
23 rather do? I hate to do this to you, aides.
24 I'm sorry, but I would much rather move staff
25 over there. Please be seated, Mr. Ramos. You

1 don't have to leave the table. This is our
2 problem, not your problem.

3 COMMISSIONER BAEZ: We need a bigger room,
4 huh?

5 CHAIRMAN JABER: Yes. You never thought we
6 could say that, huh?

7 COMMISSIONER BAEZ: Right.

8 CHAIRMAN JABER: Okay. Issue 1.

9 MR. KNIGHT: Issue 1 is what is the
10 appropriate forum for the submission of disputes
11 under the new agreement. Staff believes that
12 the appropriate forum for the submission of
13 disputes under the new agreement is at the
14 Commission.

15 CHAIRMAN JABER: Questions, Commissioners,
16 or a motion?

17 COMMISSIONER PALECKI: Well, I have some
18 discussion I would like to bring up.

19 It is my belief that the staff
20 recommendation is correct with regard to the
21 law, that we are not bound or we are not
22 required by current case law to stop being the
23 forum for these disputes. Basically, I believe
24 that Florida Statutes very specifically give us
25 authority to arbitrate any disputes, and I

1 believe that staff's recommendation is correct
2 with regard to that matter.

3 I have a problem, in that I don't
4 personally believe that with regard to supra and
5 BellSouth, this Commission is the optimum forum
6 for deciding these disputes, and I would like to
7 give several reasons why I don't.

8 First, our Governor, Jeb Bush, has spent
9 this past several years in making great efforts
10 to privatize governmental functions and to make
11 our government more efficient, and I believe
12 this Commission under the leadership of Chairman
13 Jaber has been doing much of the same. This
14 issue gives us an opportunity to take a function
15 that is normally a Commission regulatory
16 function and take it out of our hands and
17 privatize it. And I think it could be to
18 everyone's benefit that we allow these matters
19 to go to private arbitrations.

20 My second reason is that the Public Service
21 Commission is funded by regulatory assessment
22 fees that come directly from utility ratepayers,
23 and I believe regulatory assessment fees should
24 be used to fund Commission functions which
25 ultimately benefit the general body of

1 ratepayers. I do not believe that acting as the
2 referee in the numerous disputed issues between
3 BellSouth and Supra is a function which
4 ultimately benefits the general body of
5 ratepayers.

6 Three, since neither BellSouth nor Supra
7 has to pay the costs incurred by this agency in
8 litigating the numerous disputes, as those costs
9 are paid by regulatory assessment fees, an
10 adequate deterrent to litigation before this
11 Commission does not currently exist. In
12 contrast, substantial costs are imposed directly
13 on the parties in commercial arbitration, which
14 creates a deterrent.

15 Five, I personally don't want to continue
16 to act as the referee, the babysitter in
17 constant disputes between these parties, as
18 they've demonstrated an inability to resolve
19 even the simplest of disagreements without
20 seeking this Commission's intervention.

21 Five, based upon past events in another
22 docket, Supra believes it cannot get a fair
23 hearing before this Commission, and I am
24 sensitive to Supra's belief, although I believe
25 they are incorrect. I know they are incorrect.

1 So I would like to discuss these thoughts
2 on whether it would ultimately be in the public
3 interest to deny staff on Issue 1 and instead
4 require the parties in this docket to seek
5 resolution of disputes under the new
6 interconnection agreement before a commercial
7 arbitrator or, in the alternative, some sort of
8 outside arbitration mutually agreeable to both
9 parties. My proposal would include that
10 decisions of the commercial arbitrator would be
11 submitted to the Commission for approval in
12 exactly the same manner as a DOAH hearing
13 officer's report would come back to this
14 Commission for approval.

15 And I didn't want to make that as a
16 motion. I wanted to more or less bring it up
17 for discussion. But I very strongly feel that
18 our staff and this Commission may not be the
19 best forum when these two parties are involved.
20 And I would make this motion only with regard to
21 these two parties and not with regard to
22 arbitration or interconnection agreements in
23 general.

24 CHAIRMAN JABER: That's precisely the
25 concern I would have. I mean, to single out

1 these two parties, that's the concern I would
2 have. You could get yourself in a situation of
3 having a decision made by an arbitrator that's
4 inconsistent with how telecommunications is
5 evolving in the rest of the state.

6 Supra and BellSouth, I'm not giving up on
7 them yet. They have resolved some issues. And,
8 you know, Mr. Ramos, you have a good team. You
9 have a good team. You've got a good attorney,
10 and you've got staff people on your side now
11 that have technical expertise. I know that,
12 because they're former PSC employees.

13 And, BellSouth, you have every incentive to
14 make this relationship work. Supra's success
15 reflects positively on you. Their failure will
16 reflect negatively on you.

17 I'm not going to give up on these parties
18 yet, and I'm not going to give up on the
19 process. We have the statutory obligation to
20 address these arbitrations, whether it's via
21 federal law, state law, or both. And I believe
22 it's both. I mean, I think to treat this case
23 any different than all the other arbitrations
24 flies in the face of Congress. You know, we
25 have federal authority and FCC guidance, and I

1 would even question if we don't decide these
2 issues, will it look like we're refusing to act
3 on an arbitration, which will trigger --
4 Ms. Keating, this is a legal question I just
5 thought of. Would it trigger action by the FCC
6 to resolve it because we have refused to?

7 MS. KEATING: If we're refusing to include
8 the provision? You have done that on prior
9 occasions. With issues such as requests for
10 inclusion of provisions regarding specific
11 performance or damages, you have declined.
12 Declining on a specific issue hasn't necessarily
13 triggered FCC action, but they have gone up to
14 the federal court to be addressed there. But
15 it's possible.

16 COMMISSIONER BAEZ: Two things. I think I
17 heard Commissioner Palecki propose something on
18 a policy basis, and to the extent that that
19 needs to be or should be further discussed,
20 that's fine. I don't have any objection to
21 that. We've always -- I mean, I think we
22 continue to refer things to DOAH on a
23 case-by-case basis. I'm not going to sit here
24 and tell you that there aren't issues, even
25 issues between these two companies that will

1 arise at some point where you can clearly say,
2 "Hey, this is one of those times where we can't
3 add anything to the process, where our expertise
4 doesn't extend to the issue at hand, where it
5 wouldn't be better to have the hearing or the
6 determinations at least preliminarily take place
7 somewhere other than the Commission, because our
8 resources can be better employed in other
9 endeavors." That may be.

10 But I also think I would agree with the
11 Chairman. I think that there are -- this is a
12 tricky subject matter, and I think that our
13 expertise -- and certainly there are policy
14 considerations that are tied to almost every
15 issue. I think the referral to DOAH is a
16 rarity, although it's not uncommon.

17 To the extent that the Commissioner is
18 proposing some kind of new and different policy
19 in terms of procedures of this Commission,
20 that's a whole other subject. I'm not ready to
21 entertain singling out these two parties or this
22 particular relationship or interaction in
23 particular to be sent somewhere else, because I
24 think that's punting our responsibility.

25 And also, I don't think -- given what the

1 Chairman has clarified earlier, even if it goes
2 somewhere else, even in your own proposal,
3 Commissioner Palecki, you still wind up coming
4 back here for approval. So that involves our
5 process yet again. We're not streamlining, in
6 my opinion. Anything that involves us getting
7 involved on the back end to me is not
8 streamlining, you know. So then what it boils
9 down to in my mind is an issue of convenience.

10 Well, you know, as distasteful as it may
11 seem and as rancorous as disputes may get, I see
12 it as my job. I mean, that's what we do. I
13 wish everybody came up here holding hands and it
14 were easy, but, you know, the truth is that it's
15 not. That's not going to happen. That's what
16 makes it so nice when it does.

17 In any case, as to your proposal, if it's
18 made outside of this docket and on a policy
19 basis, let's discuss it. I'm open to new ideas
20 and ways to making the Commission function
21 better. But in terms of this docket, I don't
22 think that's appropriate necessarily. And
23 certainly based on the issues that are before
24 us, I don't believe that any of them really
25 qualifies as something that we could pass on to

1 a hearing officer or some alternative.

2 As to the arbitration, I think the cases --
3 I think there's case law out there saying that
4 we do have -- including this MCI Metro case,
5 binding effect aside, I mean, some of it says
6 that we can't order -- you know, we can't order
7 specific inclusion in agreements. So, I mean,
8 our hands are tied as to whether we can do that
9 or not.

10 In any case, I do have questions for staff,
11 because I want to clarify exactly what the basis
12 of your recommendation is here. If we approve
13 staff, staff's recommendation, our basis is, in
14 essence, that we have authority under state law,
15 under state statute. I'm sorry. Who should I
16 be pointing at?

17 MR. KNIGHT: Yes, we would have authority
18 under state statute.

19 COMMISSIONER BAEZ: That is the basis of
20 our --

21 MR. KNIGHT: Right.

22 COMMISSIONER BAEZ: -- decision on this.

23 MR. KNIGHT: 364.162.

24 COMMISSIONER BAEZ: Okay. What decision
25 are we making by your recommendation as pertains

1 the Eleventh Circuit case?

2 MR. KNIGHT: Well, we -- pursuant to the
3 recommendation, we would believe that the
4 Eleventh Circuit case does not apply a Florida
5 standard at this time. It did not look at
6 Florida state law to see whether or not there
7 was a basis for jurisdiction.

8 COMMISSIONER BAEZ: But it is on some level
9 acknowledgment that certainly the Act doesn't
10 give us the authority.

11 MR. KNIGHT: Correct. That's correct.

12 COMMISSIONER BAEZ: Are we saying that as
13 well?

14 MR. KNIGHT: Yes, we would be agreeing with
15 that.

16 CHAIRMAN JABER: Any other questions?

17 COMMISSIONER BAEZ: I don't. I can move
18 the issue. I can move staff's recommendation.

19 CHAIRMAN JABER: Commissioner Palecki, we
20 have a motion to approve staff's recommendation.

21 COMMISSIONER PALECKI: I don't believe I
22 can second that motion.

23 CHAIRMAN JABER: Okay. No problem.

24 (Passing gavel to Commissioner Baez.)

25 Commissioner Baez, I can second your motion

1 to approve the staff recommendation on Issue 1.

2 COMMISSIONER BAEZ: We have a motion and a
3 second. All those in favor?

4 CHAIRMAN JABER: Aye.

5 COMMISSIONER BAEZ: Aye. All those opposed?

6 COMMISSIONER PALECKI: Nay. And I would
7 just like to state that I do think we have the
8 authority to, in effect, farm these out to
9 arbitration. And really, my reason for that and
10 my justification -- my reason is that the number
11 of these arbitration disputes that have come
12 before this Commission are burdensome. The
13 amount of staff time that is spent on these
14 arbitration disputes is thousands and thousands,
15 tens, maybe hundreds of thousands of man-hours.
16 I think that if there is any one function that
17 should be privatized, it is these arbitration
18 disputes.

19 And my justification is that I would have
20 the arbitration reviewed by this Commission, and
21 I would have the decisions of the arbitrator
22 reviewed in the same manner that we review a
23 report of a DOAH hearing officer.

24 COMMISSIONER BAEZ: See, but, Commissioner,
25 I guess -- I understand your proposal, and I'm

1 not -- I don't disagree with the fact that we
2 probably do have the authority to structure our
3 process as we might deem most efficient, and
4 that's what I believe you're describing. I
5 think that's not quite the issue that we're --
6 at least not that I understand we're talking
7 about here. We're talking about telling two
8 parties, "You all have to go to arbitration,"
9 and I don't believe it to be the same thing.

10 If hypothetically the issue came to us and
11 our method of dealing with it, our method, our
12 process said that we send it to an arbitrator,
13 we hand it off to an arbitrator, to me that's a
14 distinction.

15 And again, as I said before, if there are
16 ways of making our process more efficient, then
17 there are -- there's a time and a place and a
18 manner to discuss that. But in my mind, I think
19 that's a different issue than saying to the
20 parties, "You have to include an arbitration
21 clause," in essence, mandating an arbitration
22 clause, mandating any type of term to be
23 included in the agreement as a way of dealing
24 with our responsibility, and those are two
25 different things.

1 CHAIRMAN JABER: I would only add onto
2 that, Commissioner Palecki, my concern, for
3 purposes of the record, is, it's the Legislature
4 and the Governor that privatizes functions, not
5 the Public Service Commission. And I didn't
6 want to say that earlier, but it's appropriate
7 now. The Commission's role is defined in state
8 law and in federal law. We have guidance, and
9 through FCC rules and regulation, we have
10 additional guidance. And it's something
11 Commissioner Baez said. It is our job to act on
12 these telecommunications interconnection
13 agreements and to -- and I know you probably
14 used the word "privatize" loosely. I understand
15 that, but --

16 COMMISSIONER PALECKI: Yes.

17 CHAIRMAN JABER: -- we can't on our own
18 delineate functions that we think should be
19 privatized or addressed by another forum.
20 That's something that has given me concern in
21 even addressing this issue. So it's for that
22 that I can support Commissioner Baez's motion.

23 COMMISSIONER BAEZ: There was a motion and
24 a second, and show it to two to one --

25 CHAIRMAN JABER: Yes.

1 COMMISSIONER BAEZ: -- in favor of staff's
2 recommendation.

3 CHAIRMAN JABER: Okay. Now, staff, what
4 happened to Issues 2, 3, and 4?

5 MS. KING: Commissioners, several issues
6 were resolved either prior to hearing or
7 post-hearing, so that's why there are
8 odd-numbered issues.

9 CHAIRMAN JABER: There you go. Issue 4.

10 MR. SCHULTZ: Issue 4 deals with whether
11 or not the interconnection agreement should
12 contain language requiring an adopted entity to
13 be a certified ALEC before submitting the
14 adopted agreement to the Florida Public Service
15 Commission for approval. Staff recommends that
16 the agreement should contain such language.

17 COMMISSIONER PALECKI: I can move staff's
18 recommendation.

19 COMMISSIONER BAEZ: Can I -- and I'm sorry,
20 but you all lost me on this one. I mean, I have
21 written up here, "why is this relevant?" Are the
22 parties not certificated, or are we talking
23 about downstream entities, or what's the -- I'm
24 trying to find some practical reason for
25 including this kind of language. I'm not

1 opposed to it. I don't care. It's a contract
2 between the parties, but, you know, I just -- I
3 was grasping for some --

4 MR. SCHULTZ: Both parties to my knowledge
5 are certificated, and there's no evidence in the
6 record as to why this is relevant.

7 COMMISSIONER BAEZ: Fair enough.

8 CHAIRMAN JABER: There's a motion.

9 COMMISSIONER BAEZ: Second.

10 CHAIRMAN JABER: All those in favor say
11 aye.

12 (Simultaneous affirmative responses.)

13 CHAIRMAN JABER: Issue 4 is approved.
14 Issue 5.

15 MR. SCHULTZ: Issue 5 deals with whether or
16 not BellSouth should be required to provide
17 Supra with a download of all BellSouth's
18 customer service records.

19 Staff believes that they should not because
20 this would violate Section 222 of the
21 Telecommunications Act, the prohibition against
22 disclosure of customer proprietary network
23 information.

24 CHAIRMAN JABER: The CSRs, tell me what
25 specific information is contained in the CSR.

1 MR. SCHULTZ: A CSR contains information
2 like the customer's name, their address, and the
3 type of telephone service that they receive.

4 CHAIRMAN JABER: Okay. And there was some
5 conflicting testimony, as I recall -- I'm
6 looking for it in the recommendation -- on the
7 downtime for the LENS.

8 MR. SCHULTZ: Uh-huh.

9 CHAIRMAN JABER: Can you walk me through
10 that testimony and perhaps an explanation of why
11 there was conflicting testimony on it?

12 MR. SCHULTZ: We had Supra saying that it
13 crashed a lot and it was down. BellSouth said
14 that it was up something like 98% of the time.
15 I believe they submitted an exhibit to that
16 effect, Exhibit 38. However, in the exhibit, it
17 mentioned that it only captured outages of 20
18 minutes or more, so I do believe that that could
19 help explain the difference.

20 CHAIRMAN JABER: Okay. Commissioners?

21 COMMISSIONER PALECKI: I can move the
22 staff's recommendation.

23 COMMISSIONER BAEZ: Second.

24 CHAIRMAN JABER: Show Issue 5 approved
25 unanimously.

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Issue 10.

MR. JASON-EARL BROWN: This issue addresses whether BellSouth's UNE loop rate should be discounted when DAML equipment is deployed to a Supra customer's line, and further, should Supra be notified if any such modification is made.

Staff recommends that BellSouth's rate for a loop should not be discounted when the loop utilizes DAML equipment. However, when changes are made to an existing Supra loop that may adversely affect the end user of Supra, BellSouth should provide Supra with prior notification.

CHAIRMAN JABER: Now, you don't go so far as to say how notification should be given, but let me make it clear. You are recommending that BellSouth should give Supra notification on any changes related to their loops; right?

MR. JASON-EARL BROWN: That is correct, Commissioner.

CHAIRMAN JABER: And do you have any suggestions on how notice should be given, what the criteria should be?

MR. JASON-EARL BROWN: That was actually added to the issue. We just wanted to provide

1 guidance to both parties in our recommendation.

2 MS. SIMMONS: I don't believe there's
3 specific evidence that could be relied upon that
4 would address the notification in terms of how
5 it should be done and how far ahead.

6 CHAIRMAN JABER: Is there something,
7 though, you can direct the parties to? I'm just
8 trying to give direction and guidance so that
9 when the parties sit down and negotiate this
10 further, they'll have some idea of -- they'll
11 have some good ideas.

12 MR. JASON-EARL BROWN: There basically was
13 limited testimony on this particular item.

14 CHAIRMAN JABER: Okay. Anything in other
15 dockets, Sally, that you might direct the
16 parties to?

17 MS. SIMMONS: I don't think I can offer a
18 specific suggestion. I'll see if anyone else on
19 the staff has a specific suggestion.

20 MR. DOWDS: Commission, this is -- or
21 Chairman, this is the first time that the issue
22 of provisioning of DAML has ever been before the
23 Commission. There really is no precedent.

24 CHAIRMAN JABER: Okay. All right.
25 Commissioners?

1 COMMISSIONER PALECKI: I can move the staff
2 recommendation.

3 COMMISSIONER BAEZ: Second.

4 CHAIRMAN JABER: There has been a motion
5 and a second. You can show Issue 10 approved
6 unanimously.

7 Mr. Dowds and Ms. Simmons, I would ask that
8 you make yourselves available for additional
9 meetings with the parties and brainstorm
10 together on how that process could work.

11 Okay. Issue 11A, 11B, and 63 we can take
12 up together.

13 MR. SCHULTZ: All right. Issue 11A, B, and
14 63 deal with under what conditions should the
15 parties be able to withhold payments during a
16 dispute and when they should be able to withhold
17 undisputed charges, and when should BellSouth be
18 permitted to disconnect supra for nonpayment of
19 charges.

20 staff recommends that both parties be
21 allowed to withhold payments of charges disputed
22 in good faith, neither party be allowed to
23 withhold payment of undisputed charges, and
24 BellSouth should be permitted to disconnect
25 supra for nonpayment of undisputed charges.

1 CHAIRMAN JABER: Commissioners?

2 COMMISSIONER BAEZ: What you've just
3 outlined, that's consistent with the way it
4 happens generally?

5 MR. SCHULTZ: It is consistent with how
6 retail customers are treated. It is also
7 consistent with our disconnection I think
8 discussed in the MCI worldCom arbitration.

9 COMMISSIONER PALECKI: Madam Chairman, I
10 move staff recommendation on Issues 11A, 11B,
11 and Issue 63.

12 COMMISSIONER BAEZ: Second.

13 CHAIRMAN JABER: There has been a motion
14 and a second on Issues 11A, 11B, and 63. You
15 can show those issues approved unanimously.

16 Issue 12.

17 MS. TURNER: Commissioners, Issue 12 deals
18 with interLATA, interoffice transport and
19 whether or not BellSouth should be required to
20 provide such transport to Supra via UNES.

21 Staff is recommending that BellSouth should
22 not be required to provide such transport, as
23 BellSouth is prohibited by Section 271 of the
24 Act from providing interLATA services.

25 COMMISSIONER PALECKI: I would like to ask

1 you about -- on page 78 of the recommendation,
2 you note that this issue may warrant further
3 investigation, I understand that the basis being
4 that since the record doesn't contain, and
5 certainly there is no clear guidance from the
6 law in terms of distinctions and so on. How
7 would you all propose looking at this issue
8 further? I mean, is it as simple as a generic
9 docket, or -- I see Mr. D'Haeseleer nodding in
10 agreement.

11 MS. SIMMONS: Commissioners, that would
12 really be at your discretion. We think with
13 additional evidence, possibly this whole matter
14 could be clearer. So that's -- really, it's at
15 the Commissioners' discretion.

16 COMMISSIONER BAEZ: Okay. You were just
17 raising it for awareness purposes and not making
18 a recommendation --

19 MS. KEATING: That's correct.

20 COMMISSIONER BAEZ: -- specifically.

21 CHAIRMAN JABER: What guidance have we had
22 from the FCC on this issue?

23 MS. KEATING: None that I'm aware of, and
24 we've actually called and have not been able to
25 actually speak to the gentleman that we believe

1 may be able to offer some guidance. But there's
2 no formal guidance out there.

3 CHAIRMAN JABER: You know, we could --
4 Commissioner Baez, we could ask staff to think
5 about it a little bit more outside of this
6 docket and follow up with the FCC and recommend
7 --

8 COMMISSIONER BAEZ: Yes, I think that's
9 appropriate. I wouldn't want to go so far as to
10 direct opening a docket or anything like that.
11 But I definitely think that whatever efforts
12 you've been making so far should be continued.

13 CHAIRMAN JABER: A motion on Issue 12?

14 COMMISSIONER BAEZ: I can move the issue,
15 Madam Chairman.

16 COMMISSIONER PALECKI: Second.

17 CHAIRMAN JABER: Okay. Show Issue 12
18 approved unanimously.

19 Issue 15. I'm assuming Issues 13 and --
20 everywhere that there's a gap between issues,
21 I'm assuming those were settled.

22 MS. CHRISTENSEN: That's correct,
23 Commissioner.

24 MR. KNIGHT: Yes, Commissioner.

25 CHAIRMAN JABER: Issue 15.

1 MR. TODD BROWN: Commissioners, Issue 15
2 addresses the performance measurements that
3 should be included in the interconnection
4 agreement.

5 Staff recommends that we look no further
6 than the generic performance measurements
7 docket, specifically the order No.
8 PSC-01-1819-FOF-TP. That order established the
9 appropriate performance measurements applicable
10 to BellSouth in the State of Florida. And also
11 they recently filed their performance assessment
12 plan, and we believe that those two things will
13 adequately address the concerns.

14 CHAIRMAN JABER: And Supra is participating
15 in that generic docket; right?

16 MR. TODD BROWN: I don't believe they are.
17 I believe they made reference in the hearing
18 that they did not participate in that docket.

19 CHAIRMAN JABER: What --

20 COMMISSIONER BAEZ: Can you walk -- I'm
21 sorry.

22 CHAIRMAN JABER: What about the conference
23 calls that Ms. Harvey has -- I don't know if
24 they're weekly or biweekly now. But regardless
25 of the case, Mr. Ramos, I would also ask that

1 you meet Lisa Harvey and make yourself part of
2 that 271 OSS process.

3 COMMISSIONER BAEZ: I just wanted to ask
4 staff if they would walk through, you know, what
5 the relationship between the performance
6 measurements, how they're going to relate back
7 to existing interconnection agreements.

8 MS. SIMMONS: I'll try to address that.

9 COMMISSIONER BAEZ: In 50 words or less.

10 MS. SIMMONS: What we're trying to say is
11 that because there was this generic docket,
12 we've established performance measurements,
13 standard self-effectuating remedies for
14 BellSouth. Those are controlling on BellSouth.
15 And we're simply just trying to say that we
16 don't think it's necessary that they be included
17 in the agreement, because BellSouth is bound by
18 the terms of the order in the generic docket.

19 COMMISSIONER BAEZ: And any ALEC can avail
20 themselves of those requirements.

21 MS. SIMMONS: Yes. They would apply to all
22 ALECs doing business with BellSouth.

23 COMMISSIONER BAEZ: Okay.

24 CHAIRMAN JABER: Did I have a motion on 15?

25 COMMISSIONER BAEZ: You have it now.

1 CHAIRMAN JABER: There has been a motion.

2 COMMISSIONER PALECKI: Second.

3 CHAIRMAN JABER: Second to approve staff
4 recommendation. Show that approved unanimously.
5 Issue 16.

6 MS. TURNER: Commissioners, this issue
7 considers whether or not BellSouth should be
8 required to provision services for which rates,
9 terms, or conditions are not identified in the
10 interconnection agreement.

11 It is staff's position or staff's
12 recommendation that BellSouth should not be
13 required to provide services for which rates,
14 terms, or conditions are not included in the
15 interconnection agreement prior to the parties
16 negotiating and executing an amendment to that
17 agreement.

18 CHAIRMAN JABER: All right. Adoption of
19 agreements, does this preclude a company from
20 picking and choosing terms of an agreement and
21 formulating the agreement that they want to use
22 as it relates to them?

23 MS. KEATING: Not at all. To the extent
24 that they wanted to adopt a provision from
25 another agreement, they could. It would simply

1 be incorporated into their current approved
2 agreement.

3 CHAIRMAN JABER: Okay. So they provide
4 BellSouth -- they would provide BellSouth notice
5 of which terms from previous agreements they
6 want to adopt, and those provisions get
7 formulated into the master agreement that Supra
8 and BellSouth use going forward?

9 MS. KEATING: That's correct. They would
10 have to be active agreements that had not
11 expired. But, yes, this would not have anything
12 to do with -- would not impair their ability to
13 opt into something under 252(i).

14 CHAIRMAN JABER: Okay.

15 COMMISSIONER PALECKI: And that would just
16 be a ministerial task; correct? It would not
17 require negotiations or any sort of dispute?

18 CHAIRMAN JABER: It's their right to adopt
19 any provision.

20 MS. KEATING: That's correct.

21 CHAIRMAN JABER: Now, how do you reconcile
22 that with the time period that the agreement is
23 governed by, you know, when it will expire? If
24 they adopted an agreement that was set to expire
25 in two months, let's say, part of the agreement,

1 and they adopted a different term from an
2 agreement that still had six months on it, how
3 do you reconcile the time periods?

4 MS. KEATING: The way this Commission has
5 interpreted that has been that the term expires
6 on the date that it expires in the original
7 agreement. Now, the parties could agree to
8 extend the length of that term, but that would
9 be an agreement between Supra and BellSouth, and
10 that would essentially create a new term. But
11 for purposes of strict opt-in under 252(i), the
12 Commission has consistently held that the term
13 expires upon the conclusion of the original
14 agreement.

15 COMMISSIONER BAEZ: Now, we're speaking
16 legal requirements in here. But as I was
17 reading the recommendation, some notion of "in
18 the meantime" popped into my head. To your
19 knowledge, is it common that even though there's
20 an agreement in principle, that in the interim
21 between the -- you know, the meeting of the
22 minds, as it were, and the process of adopting
23 an amendment and having it approved and made
24 part of the interconnection agreement, is it not
25 uncommon to see services being provided sort of

1 while the process is going on? And I know that
2 maybe you all don't have access to that kind of
3 information. I'm just wondering if in your
4 experience you've heard of that ever happening.

5 MS. KEATING: Ms. Simmons may be better
6 able to address that one.

7 MS. SIMMONS: I really can't address that
8 in terms of that interim period of time.

9 Now, I would point out that there is some
10 information on page 90 in the context of
11 Issue 44, which the parties settled, where the
12 agreed-upon language requires the parties to
13 amend the current agreement within 30 days of
14 Supra's request. So this interim period is not
15 going to be lengthy.

16 COMMISSIONER BAEZ: Yes, it's narrowed.
17 And I guess one of the things that kind of
18 struck me is that this also creates a situation
19 where if the relationship between the companies
20 is of a certain quality, that those are things
21 that they can agree to which our process doesn't
22 -- you know, they can accommodate themselves,
23 and our process in the meantime doesn't have to
24 be involved, or until our process is involved.
25 So I just wanted to see if anybody knew anything

1 about that or --

2 MS. SIMMONS: I can't really -- I just
3 don't have knowledge about what goes on during
4 that interim period.

5 COMMISSIONER BAEZ: And I understand.
6 Thank you.

7 Madam Chair, I can move the issue.

8 CHAIRMAN JABER: Okay. There has been a
9 motion on Issue 16.

10 COMMISSIONER PALECKI: Second.

11 CHAIRMAN JABER: You can show Issue 16
12 approved unanimously.

13 Commissioners, I need a 10-minute break.
14 We've been going for a long time, so can we come
15 back at 12:20, please, and we'll finish up this
16 item.

17 (Short recess.)

18 CHAIRMAN JABER: Let's go ahead and get
19 back on the record. Staff, I think we were on
20 Issue 18.

21 MR. JASON-EARL BROWN: Yes, Commissioners.
22 This issue considers what rates are appropriate
23 for network elements, interconnection, LNP/INP,
24 billing records, and other network elements to
25 be set forth in the interconnection agreement.

1 staff recommends that the appropriate rates
2 to be set forth are those ordered in Docket No.
3 990649 and in Docket 000649. For those network
4 elements that have not been established by this
5 Commission, staff recommends that the rate
6 should be BellSouth's tariffed rates and should
7 not be subject to true-up.

8 CHAIRMAN JABER: Now, walk me through why
9 you believe those rates should not be subject to
10 true-up.

11 MR. JASON-EARL BROWN: The tariffed rates
12 are presumptively valid, and any subsequent rate
13 can only be applied on a going-forward basis.

14 CHAIRMAN JABER: Okay. Florida law makes
15 those rates presumptively valid?

16 MS. SIMMONS: Yes.

17 CHAIRMAN JABER: And for us to change them,
18 we would have to find that there's some
19 inconsistency with the law?

20 MS. SIMMONS: Correct. And then any change
21 would be on a going-forward basis.

22 CHAIRMAN JABER: All right. Well, is there
23 something that would prevent us from doing a
24 true-up with a change in rates being applied
25 prospectively?

1 MS. SIMMONS: Could you restate? I'm
2 sorry.

3 CHAIRMAN JABER: well, I'm having trouble
4 understanding the nexus between doing a true-up
5 and the tariff being presumptively valid, sally.
6 And I know when we get a tariff and consider it
7 for approval, you take a look at it and make
8 sure that it's consistent with law.

9 MS. SIMMONS: Correct.

10 CHAIRMAN JABER: And they're presumptively
11 valid. And only if you find that the submission
12 is not consistent with law do you recommend that
13 we deny it.

14 MS. SIMMONS: Correct. Normally what would
15 happen is, if we think there is a possible
16 violation, we bring it before the Commission,
17 if we thought there was a possible legal issue.
18 And then if the Commission felt there was a
19 problem, that it was not consistent with the
20 law, then normally what would happen would be
21 that the Commission would order the tariff be
22 canceled.

23 CHAIRMAN JABER: Okay. So the true-up is
24 not necessary, because the theory is that you've
25 taken a look at that rate when the tariff was

1 filed, and such tariff is presumptively valid.

2 MS. SIMMONS: I think perhaps I should let
3 Ms. Keating comment. I don't think there's any
4 way to go back in time, but perhaps she can
5 explain further.

6 MS. KEATING: Well, let me make sure I
7 understand the question correctly. At the point
8 in time when we take a look at a tariff, if we
9 find that it's invalid, do we go back in time?

10 CHAIRMAN JABER: No. My fundamental
11 question goes to the true-up. Why can't we true
12 up the rates?

13 MS. KEATING: I'm not sure exactly what
14 they're being trued up to. That --

15 MS. SIMMONS: I guess the question is
16 whether or not the rates only have prospective
17 application or if there's some way to go back in
18 time. That is your question, I think. Am I
19 understanding?

20 CHAIRMAN JABER: Well, true-up in the
21 regulatory, rate base regulatory framework might
22 mean a reduction in rates and a refund. But in
23 this framework, can't a true-up mean just a
24 prospective rate reduction?

25 MS. KEATING: Oh, you're talking about --

1 Let me make sure and see if I'm on the same
2 page. If, say, the Commission -- for these
3 rates that were not originally identified for
4 rates, if the Commission at a later date had a
5 proceeding to actually set rates, at that point
6 would the rates for this agreement change to the
7 rates that had been set?

8 CHAIRMAN JABER: Yes, for the term of the
9 agreement or for the purpose of using for future
10 negotiation and future agreements.

11 MS. KEATING: Good question. I think if
12 you were to specify that if the Commission in
13 the future does set rates for additional
14 elements, those will be rates that apply for
15 purposes of agreements, I believe that you could
16 clarify that. If I'm understanding this
17 correctly, I --

18 COMMISSIONER BAEZ: On a prospective basis?

19 MS. KEATING: On a prospective basis.

20 COMMISSIONER BAEZ: Well, then there is no
21 true-up.

22 MS. KEATING: Right. That's why I was a
23 little confused with the term "true-up."

24 CHAIRMAN JABER: Because true-up in the --
25 you know, let me go back to staff's

1 recommendation. Tell me what you meant. For
2 the network elements -- I mean, this is why I'm
3 asking the question. For the network elements
4 for which rates have not been established by
5 this Commission, the rates should be BellSouth's
6 tariffed rates, which should not be subject to
7 true-up. What did you mean by that?

8 MR. JASON-EARL BROWN: Basically the rates
9 -- first of all, let me add, the items on this
10 issue were basically split to those items that
11 were established by this Commission and those
12 that were not. The other network elements that
13 were not were never specified by either party.
14 Therefore, staff did not know as to -- was
15 unable to justify what items that it wanted to
16 be issued subject to true-up.

17 CHAIRMAN JABER: Well, look at page 95 of
18 staff's recommendation. You acknowledge that
19 the parties agree on the fact that some network
20 elements -- rates have been established for some
21 network elements, but for network elements where
22 we have not specifically addressed the rate, it
23 looks like Supra wants to designate the interim
24 rates -- designate rates as interim rates and
25 then subject to true-up.

1 MR. JASON-EARL BROWN: On this particular
2 item, Commissioner, Supra had varying proposals
3 for those items that were not addressed by this
4 Commission, and basically they were not
5 supported by -- the ones that were on record
6 were not practical, and that's the reason we
7 went with the rates of -- BellSouth's tariffed
8 rates.

9 CHAIRMAN JABER: Okay. Elaborate for me a
10 little bit more. Why weren't they practical?

11 MR. JASON-EARL BROWN: First, if you'll
12 turn to page 96 in the staff recommendation, in
13 the Supra witness's direct testimony, the rates
14 -- he suggested the rates for these unaddressed
15 items be taken from the expired agreement. In
16 the rebuttal testimony, he argued that the
17 parties should negotiate the rates for such
18 items. And it wasn't until the brief where they
19 suggested another proposal, and that one was not
20 supported by the record.

21 CHAIRMAN JABER: Okay. But you would not
22 -- I guess this is really in an effort of having
23 a dialogue so that the parties are fully
24 apprised of where there might be points of
25 negotiation. And it seems to me that staff

1 acknowledges that some rates have not been
2 established, and some interim rate may be
3 appropriate, and that there's nothing wrong with
4 doing a true-up later.

5 I'm trying to understand the crux of
6 staff's recommendation. I want to know if
7 there's anything wrong with saying to the
8 parties, "You may want to negotiate rates for
9 these elements where a rate hasn't been
10 established, and there may not be anything wrong
11 with using it as an interim rate."

12 MS. KEATING: If I could just jump in here,
13 it sounds like there may be a little bit of a
14 different use of the term "true-up."

15 COMMISSIONER BAEZ: I think there is.

16 MS. KEATING: I think the way staff is
17 looking at it is that perhaps if the Commission
18 does set rates at a later date, that the
19 tariffed rates that had been in effect until
20 then should not -- there shouldn't be a rebate
21 or a true-up in the retroactive sense of the
22 term in that instance.

23 However, I think perhaps what you may be
24 talking about is on a going-forward basis, if
25 the Commission sets rates, should those be the

1 new rates as opposed to the tariffed rates. I
2 think that's perfectly allowable.

3 CHAIRMAN JABER: Okay. Understand that I
4 know you don't mean refund. I'm not talking
5 about refund. I'm talking about a prospective
6 change in the rate. So that being the
7 foundation, is there anything wrong with saying
8 to the parties, "Go off and negotiate an interim
9 rate wherever you believe is appropriate, and
10 it's okay to consider that rate as an interim
11 rate"?

12 MS. SIMMONS: I think if it's something the
13 parties agree to, that's not a problem.

14 CHAIRMAN JABER: Okay. Well, then do we
15 need to modify staff's recommendation in sending
16 that message? I mean, you come out
17 affirmatively and say the rate should be
18 BellSouth's tariffed rates and should not be
19 subject to true-up.

20 MS. SIMMONS: I guess my comment would be,
21 there have been instances where we've gotten an
22 agreement back in an arbitration that was not
23 completely consistent with the Commission's
24 order, and so long as the parties agree, it has
25 been our practice to say that that's perfectly

1 permissible.

2 CHAIRMAN JABER: Do you see what I'm trying
3 to accomplish, Commissioner Baez? I don't want
4 to say to the parties, "You can't do this."

5 COMMISSIONER BAEZ: Well, I'm with you on
6 that, and I just want some clarification. What
7 we're talking -- what staff is trying to address
8 is the difference between a subsequently set --
9 in essence, moving a rate off of a tariff and
10 onto a docket, determined by docket.

11 You can't have true-up without
12 retroactivity. Retroactivity can be negotiated,
13 which I think that's what -- I think that's what
14 you're trying to --

15 CHAIRMAN JABER: Yes, and if true-up is
16 the hang-up, forget true-up. The parties agree
17 to an interim rate with the understanding that
18 it may change.

19 COMMISSIONER BAEZ: Well, but, see -- now,
20 hang on there, because I think you have to --
21 yes, that notion is acceptable, or it's
22 certainly acceptable to me.

23 But I also think, you know, we need to --
24 and tell me if this is what we're trying to
25 establish, because now -- not to lay more

1 confusion upon this, but what we're trying to
2 establish is continuity, and what we're trying
3 to say is where we haven't set a rate, the
4 tariffed rate is the applicable rate. If
5 subsequently we set a rate, in essence,
6 nullifying that tariffed rate, replacing it with
7 a rate that has been, you know, determined by
8 the Commission, that that difference -- that
9 that's a prospective change. Is that --

10 MS. SIMMONS: Yes, that would be our
11 position.

12 Now, in terms of what the Chairman was
13 suggesting, this possibility of interim, what I
14 was going to -- I was going to offer a
15 suggestion. Perhaps in the last sentence of the
16 staff's recommendation, perhaps there could be a
17 caveat, unless the parties agree otherwise.

18 CHAIRMAN JABER: That would satisfy my
19 concern. It's just that this seems so
20 affirmatively -- you've got to use the BellSouth
21 tariffed rates, and that's --

22 COMMISSIONER BAEZ: Yes. It's not -- I
23 don't think we want to send the message that
24 negotiation on rates is -- because the fact is
25 that the tariffed rate is only a substitute for

1 a rate that hasn't been set by the Commission,
2 but that nothing precludes parties from
3 negotiating even these rates that we've set. I
4 mean, is that --

5 MS. SIMMONS: Sure. And as I say, on a
6 practical basis, in other arbitrations where the
7 parties have come back with a contract after an
8 arbitration decision, we have had instances
9 where the contract includes provisions that are
10 counter to the Commission's order. And on a
11 practical basis, we have always said that that
12 is fine if the parties agree to it.

13 CHAIRMAN JABER: And then that goes on to
14 be an agreement that someone else can adopt;
15 right?

16 COMMISSIONER BAEZ: You know, the effect of
17 that going forward is what it is, but we're not
18 precluding the fact that that can take place. I
19 guess that's what I want made clear.

20 MS. SIMMONS: Right. I think --

21 COMMISSIONER BAEZ: And I think your
22 language does it.

23 CHAIRMAN JABER: And your language --

24 MS. SIMMONS: Okay. We'll just clarify it.

25 CHAIRMAN JABER: Your language was "should

1 not be subject to true-up unless negotiated
2 otherwise"?

3 MS. SIMMONS: Yes, I'll put something like
4 "unless the parties agree otherwise."

5 COMMISSIONER BAEZ: Yes, because I think
6 the -- I think in practice, the effect of
7 whatever rate changes this Commission makes are
8 on a prospective basis.

9 COMMISSIONER PALECKI: Yes, and the word
10 "interim rate" is used here only as temporary,
11 not in a ratemaking function where we have a
12 specific definition that almost in ratemaking
13 includes capacity for true-up. Here we're just
14 talking about a temporary rate that's in effect
15 until the parties negotiate another rate;
16 correct?

17 MS. SIMMONS: But the other rate, the later
18 rate, for instance, set in, say, a generic
19 proceeding would then apply going forward.

20 COMMISSIONER PALECKI: Correct.

21 MS. SIMMONS: Unless the parties agree to
22 handle it otherwise.

23 COMMISSIONER BAEZ: Right, exactly.

24 COMMISSIONER PALECKI: But if we were to
25 say that true-ups were required, it would put a

1 chill on negotiations. You would have a
2 situation where it might be very difficult to
3 negotiate if you know that if you negotiate a
4 rate that's any different, it's going to require
5 a large sum of money to pass between one party
6 or the other. So I think your solution of
7 allowing the parties if they want to provide for
8 a true-up to do so is a good one that won't put
9 a chill on the negotiations.

10 MS. SIMMONS: Sure. And, you know, we have
11 that flexibility, plus to the extent the parties
12 don't reach some other agreement, then it's
13 clear --

14 COMMISSIONER BAEZ: You have a different
15 one.

16 MS. SIMMONS: -- what the Commission's
17 position is on it.

18 CHAIRMAN JABER: Ms. Keating, I would just
19 ask that you clarify that in the order.

20 MS. KEATING: I certainly will.

21 COMMISSIONER PALECKI: And I would move the
22 staff recommendation as revised.

23 CHAIRMAN JABER: Excellent.

24 COMMISSIONER BAEZ: Second.

25 CHAIRMAN JABER: There has been a motion

1 and a second. Show Issue 18 approved
2 unanimously.

3 Issue 19.

4 MR. BARRETT: Commissioners, Issue 19 asks
5 should calls to Internet service providers be
6 treated as local traffic for the purposes of
7 reciprocal compensation.

8 staff's recommendation is that this agency
9 lacks the jurisdiction to address that topic.

10 CHAIRMAN JABER: Commissioners?

11 COMMISSIONER PALECKI: I can move staff's
12 recommendation.

13 COMMISSIONER BAEZ: Second.

14 CHAIRMAN JABER: Show Issue 19 approved
15 unanimously.

16 Issue 20.

17 MR. TODD BROWN: Issue 20 addresses whether
18 the interconnection agreement should include
19 validation and audit requirements.

20 staff recommends that the interconnection
21 agreement does not need to include validation
22 and audit requirements, as they have already
23 been established in the generic performance
24 measurements docket and the order coming out of
25 that. However, the parties may choose to

1 include that in their agreement.

2 CHAIRMAN JABER: But whether they do or
3 they don't, you all clarified for us a few
4 minutes ago that the finding in the generic
5 docket will apply?

6 MR. TODD BROWN: That's correct.

7 COMMISSIONER BAEZ: So, in essence, we've
8 got a baseline. You know, there's a safety net
9 there, I guess.

10 MS. SIMMONS: That's correct. All ALECs
11 that deal with BellSouth would get the benefit
12 of the decisions that were made in the generic
13 performance measures docket.

14 COMMISSIONER BAEZ: I can move it, Madam
15 Chair.

16 CHAIRMAN JABER: There has been a motion on
17 Issue --

18 COMMISSIONER PALECKI: Second.

19 CHAIRMAN JABER: -- 20 and a second. You
20 can show Issue 20 approved.

21 Issues 21, 22, 23, and 24 can be addressed
22 together.

23 MR. SCHULTZ: Issues 21 through 24 deal
24 with BellSouth's obligation to combine unbundled
25 network elements on supra's behalf, and if so,

1 what charges apply.

2 Staff recommends that BellSouth only be
3 required to provide combined UNES at TELRIC
4 prices if such elements are currently combined
5 in BellSouth's network. If, however, BellSouth
6 voluntarily agrees to combine UNES, they may do
7 so and should be allowed to charge a
8 market-based fee.

9 CHAIRMAN JABER: How do you decide what a
10 market-based fee would be? Was there anything
11 in the record on that?

12 MR. SCHULTZ: It will be decided through
13 voluntary negotiations. There was no specific
14 evidence as to what it would be. The only thing
15 there was, Supra mentioned in its brief that
16 they were afraid it would be unduly high.

17 CHAIRMAN JABER: Unduly what?

18 MR. SCHULTZ: High, overpriced.

19 CHAIRMAN JABER: Was there any proposal in
20 Supra's brief on this issue?

21 MR. SCHULTZ: Not to deal specifically with
22 market-based fees. They suggested that TELRIC
23 rates should apply.

24 COMMISSIONER PALECKI: Madam Chairman, I
25 believe that there is some ongoing appellate

1 litigation with regard to this issue. We have
2 ruled on this issue on prior dockets. I
3 understand there are two states -- I believe
4 it's Kentucky and Tennessee -- that have ruled
5 inconsistently with the State of Florida, so we
6 may be getting some direction from the appellate
7 courts, and perhaps even the Supreme Court at
8 some time in the future. But at this time,
9 based upon our own precedent in prior dockets, I
10 think I can move staff on all four of these
11 issues.

12 CHAIRMAN JABER: There has been a motion on
13 all four issues.

14 COMMISSIONER BAEZ: I have a question
15 beforehand, and it goes back to this
16 market-based fee. I think the Chairman asked a
17 fair question, how does one determine what a
18 market-based fee is, because I think our
19 recommendation is somehow setting some limit
20 that is illusory. would it be -- and the answer
21 was that it should be -- you know, it's based on
22 negotiation, and I accept that. I'm wondering
23 if a fee subject to negotiation is not more
24 accurate than -- to me, saying they can charge a
25 market-based fee, that kind of begs the question

1 there, what is market-based. It's whatever is
2 negotiated, isn't it?

3 MS. SIMMONS: Yes. I guess it's whatever a
4 buyer and seller can agree on.

5 COMMISSIONER BAEZ: Right. Okay. Is that
6 what we're trying to -- I mean, I guess I just
7 want to make clear that that's exactly what
8 we're trying to entertain here, that it's
9 whatever the buyer and seller can agree on.

10 Is that consistent with the previous
11 arbitrations where we've dealt with the
12 currently combineds?

13 MS. SIMMONS: This is consistent. I'm not
14 sure of the exact wording that was used
15 previously, but this is consistent.

16 COMMISSIONER BAEZ: Is that the notion
17 that's part of our previous decisions, that it
18 should be whatever the market bears?

19 MS. SIMMONS: Yes.

20 COMMISSIONER BAEZ: Versus negotiated.

21 MS. SIMMONS: Yes, it's what the market
22 bears.

23 CHAIRMAN JABER: That was specifically in
24 the AT&T interconnection agreement. I didn't --

25 COMMISSIONER BAEZ: I don't remember the

1 language. I know --

2 CHAIRMAN JABER: -- participate in that, so
3 I -- tell me what that decision was. You've
4 represented that this recommendation is
5 consistent with the AT&T decision, which I
6 assume, Commissioner Palecki, that's the one on
7 appeal?

8 COMMISSIONER PALECKI: Yes.

9 CHAIRMAN JABER: Sally, I didn't sit on
10 that decision, so can you remind me what the
11 ultimate decision on this issue was, and did it
12 include the market fee language?

13 MS. SIMMONS: I've got to be honest, I
14 don't recall it well enough. I don't know if
15 anyone else sitting here on staff does.

16 MR. DOWDS: Chairman Jaber, I believe that
17 the issue as framed in the worldCom/BellSouth
18 arbitration, and also in the AT&T, the focus was
19 not on what price would apply absent
20 TELRIC-based pricing. It was rather what's the
21 scope of currently combined. So I'm not clear
22 either. I don't believe the issue addressed the
23 alternative pricing head on, but we can check up
24 and get back with you on that.

25 COMMISSIONER BAEZ: Is it fair to say that

1 based on our definition or our determination on
2 the currently combineds issue in that
3 arbitration, you know, it left -- it was implied
4 that somehow that's a market-based rate?

5 MR. DOWDS: I think so.

6 COMMISSIONER BAEZ: Or market-based fees,
7 rather.

8 MR. DOWDS: And basically it was the
9 distinction between TELRIC-based and whatever
10 else. And if it's not TELRIC --

11 COMMISSIONER BAEZ: And whatever else
12 was --

13 MR. DOWNS: If it's not TELRIC-based, then
14 it's up to the parties to negotiate rates,
15 terms, and conditions for it. I don't know for
16 a fact that we literally used the term
17 "market-based price," or fee, but the concept is
18 implicit in the recommendation.

19 COMMISSIONER PALECKI: So there was no
20 other option other than those two TELRIC prices
21 or whatever the market will bear, whatever the
22 parties are able to work out --

23 MR. DOWDS: Certainly.

24 COMMISSIONER PALECKI: -- among themselves.
25 And we couldn't or don't have authority to come

1 out with a different rate, something that we
2 think is fair, or do we?

3 MR. DOWDS: I don't think so, but I would
4 defer to counsel.

5 CHAIRMAN JABER: See, therein lies my
6 concern. I didn't -- this is the first --
7 recognize I didn't sit on the AT&T case, but
8 this is the first I've seen where we would be
9 perhaps accidentally setting a new standard to
10 be used on the establishment of the rate, and
11 I'm okay with that if we've already done it and
12 we've started that process and there was record
13 support for it.

14 Can't we accomplish the same thing by just
15 saying BellSouth may agree to do so, and in
16 fact, is encouraged to do so, and should charge
17 a mutually acceptable rate, or a rate that the
18 parties negotiate? What if they can't go back
19 and negotiate a market-based fee or disagree on
20 what the market will bear? Does it bring it
21 back here, and does it change the question to,
22 "Commission, don't use TELRIC, but use" -- or
23 isn't by definition TELRIC the market-based fee?
24 I don't want to get into that dispute, but we --

25 COMMISSIONER BAEZ: Are you asking --

1 CHAIRMAN JABER: -- really need to.

2 COMMISSIONER BAEZ: Are you asking whether
3 we're going to create an opportunity for another
4 arbitrated issue?

5 CHAIRMAN JABER: Yes.

6 COMMISSIONER BAEZ: I don't feel -- I don't
7 think that we are, because the recommendation --
8 and this is just my opinion, but I think what
9 we're saying is that to the extent that it's
10 voluntarily offered, I think underscoring the
11 fact that there is no requirement to currently
12 -- to combine elements, you know, that's the
13 law, I guess, or that's a determination that
14 we've made.

15 MS. SIMMONS: Right. I think what -- let
16 me just say this. What we're trying to do here
17 is say that where BellSouth has an obligation to
18 combine UNES, where that obligation exists, then
19 it's TELRIC-based. And it really -- the other
20 really isn't specifically addressed except that
21 -- you know, that BellSouth may volunteer to do
22 so, and then it's a negotiated arrangement.

23 I don't think -- even if the parties
24 couldn't agree, I would question -- and perhaps
25 legal could help here, but I question whether

1 the Commission could actually arbitrate
2 ultimately the price.

3 COMMISSIONER BAEZ: No, I agree with you.
4 I don't think that we can, and that's why I
5 think the word "voluntarily" is important.
6 However, you know, thinking about it, is there
7 so much more that we could say by not saying
8 anything, I guess. You know, you leave that --
9 there is no obligation; therefore, it is
10 negotiable. I mean, it's --

11 CHAIRMAN JABER: Right, and there's nothing
12 in the record to establish what the market-based
13 fee will be.

14 MS. SIMMONS: Correct. It boils down to
15 almost what kind of words are you more
16 comfortable with to describe this situation.

17 CHAIRMAN JABER: well, if there's no
18 record evidence for saying that the fee should
19 be market-based, from a legal standpoint, I
20 would be more comfortable saying it's whatever
21 the parties agree it will be.

22 COMMISSIONER BAEZ: Yes. Could we just
23 acknowledge that that's something that's left to
24 negotiation and leave it at that? I mean, I
25 don't want to go down a path that --

1 MS. KEATING: I think staff -- that was
2 what they were intending. There wasn't really
3 an intent to identify something separate and
4 apart from what the parties might negotiate. I
5 don't think that was really the intention. So I
6 was just going to suggest in that last sentence,
7 "In all other instances, BellSouth should not be
8 obligated to combine UNES for supra; however,
9 BellSouth should be encouraged to do so, and the
10 parties should also be encouraged to negotiate a
11 rate for such additional combined UNES."

12 CHAIRMAN JABER: Commissioner Palecki, can
13 we talk you into modifying your motion?

14 COMMISSIONER PALECKI: Absolutely. I would
15 move staff's recommendation as modified.

16 COMMISSIONER BAEZ: Second.

17 CHAIRMAN JABER: There has been a motion
18 and a second on Issues 21, 22, 23, and 24 to
19 accept staff's recommendation as modified today.
20 All those in favor say aye.

21 (Simultaneous affirmative responses.)

22 CHAIRMAN JABER: Okay. Show those issues
23 approved.

24 That brings us to Issue 28.

25 MR. JASON-EARL BROWN: Commissioners, Issue

1 28 considers what terms, conditions, and rates
2 are appropriate for Supra Telecom to gain access
3 to and use BellSouth's facilities in serving
4 multi-tenant environments.

5 staff recommends the form of access and the
6 prices for such access should be those
7 established by this Commission in its Final
8 Order in Docket No. 990649.

9 CHAIRMAN JABER: Commissioners, questions?

10 COMMISSIONER PALECKI: I can move staff on
11 this issue.

12 COMMISSIONER BAEZ: Second.

13 CHAIRMAN JABER: Show Issue 28 approved
14 unanimously.

15 Issue 29.

16 MR. BARRETT: Commissioners, Issue 29
17 concerns the local circuit switching. And I
18 might note that this issue asks you to interpret
19 FCC Rule 51.319(c)(2). That rule is provided
20 for in the recommendation.

21 CHAIRMAN JABER: Mr. Barrett, what was the
22 FCC's rationale behind that rule? What was it
23 they thought that rule accomplished?

24 MR. BARRETT: Commissioner, that rule, as I
25 understand their rationale, they established a

1 quantity of three based upon their
2 interpretation of the business market. The
3 large -- and again, as I understand this, four
4 lines and up would in general terms characterize
5 a large -- a larger business enterprise, and
6 three and under would capture a smaller business
7 enterprise.

8 CHAIRMAN JABER: Are we aware of any
9 dialogue or discussion at the FCC that the rule
10 would be revisited or the threshold would be
11 revisited?

12 MR. BARRETT: Commissioner, that is on
13 their plate. I can't sit here and tell you that
14 that is coming tomorrow or next week, but I do
15 -- it is my understanding that they are
16 re-evaluating that.

17 CHAIRMAN JABER: So, legal, to the degree
18 some new guidance comes from the FCC, it could
19 trigger a change in interconnection agreements
20 going forward?

21 MS. KEATING: That's correct, to the extent
22 that the agreements contain change of law
23 provisions.

24 CHAIRMAN JABER: Commissioners, any
25 questions or a motion?

1 COMMISSIONER PALECKI: I would move staff's
2 recommendation.

3 COMMISSIONER BAEZ: Just one question for
4 clarification. What we're determining is that
5 the first three lines of any customer,
6 regardless of how many lines that customer has,
7 is what falls under the obligation?

8 MR. BARRETT: That is my understanding as
9 well.

10 COMMISSIONER BAEZ: Okay. I can second it.

11 CHAIRMAN JABER: Show Issue 29 approved
12 unanimously.

13 Issues 32A and 32B may be taken up
14 together.

15 MR. TODD BROWN: Issue 32 addresses under
16 which criteria Supra Telecom may charge the
17 tandem switching rate. And the B section of
18 that also addresses whether on January 31, 2001,
19 Supra Telecom's network configuration would meet
20 those criteria.

21 Staff recommends or notes that Phase II of
22 Docket No. 000075 will address those very issues
23 in detail, and the criteria developed in that
24 docket will apply. Staff notes that we don't
25 need to address this issue at this time because

1 of a threshold that's established by Section
2 51.711(a)(2), which basically states that the
3 switch must serve a geographic area comparable
4 to that served by BellSouth's tandem switch.

5 CHAIRMAN JABER: Now, I went back to the
6 transcript, as I said earlier, last night, and I
7 found the acknowledgment by supra that they do
8 not have a switch in Florida.

9 MR. TODD BROWN: That's correct.

10 CHAIRMAN JABER: That seems to be the
11 foundation for the applicability of the rule.

12 MR. TODD BROWN: That's my understanding.

13 CHAIRMAN JABER: Okay. Commissioners?

14 COMMISSIONER PALECKI: Move staff's
15 recommendation.

16 COMMISSIONER BAEZ: Second.

17 CHAIRMAN JABER: Show Issues 32A and B
18 approved unanimously.

19 Issue 33.

20 MR. BARRETT: Commissioners, Issue 33 asks
21 what are the appropriate means for BellSouth to
22 provide unbundled local loops for the provision
23 of DSL service when such loops are provisioned
24 on digital loop carrier facilities.

25 In this recommendation, BellSouth offered

1 two solutions to do just that, and it's staff's
2 recommendation that Supra could avail itself to
3 the options that BellSouth proposes.

4 CHAIRMAN JABER: All right. On this issue
5 I was really confused by -- staff, you seem to
6 acknowledge in passing that BellSouth changed
7 its position. Can you walk me through what you
8 believe the change was?

9 MR. BARRETT: Sure, Commissioner. As I
10 understand it, as you recall from the opening in
11 the oral arguments, BellSouth pointed out this
12 case has been alive and kicking for quite some
13 time. And it's my understanding that in the
14 earlier negotiations, BellSouth may not have
15 offered those two options. And Supra's witness
16 contends that BellSouth has flip-flopped on its
17 proposals, and that was the essence of my
18 understanding of that.

19 CHAIRMAN JABER: And how much of that did
20 you take into account? How much of that formed
21 your recommendation on this issue?

22 MR. BARRETT: Well, Commissioner,
23 obviously, I looked at the weight of BellSouth's
24 solution. And they didn't propose one solution;
25 they proposed more than one solution. And to

1 me, that swayed my recommendation. It wasn't a
2 situation where it's take it or leave it. It's
3 a situation where I'm giving you more than one
4 option, and that was the basis for my
5 recommendation.

6 CHAIRMAN JABER: Commissioners, questions?

7 COMMISSIONER PALECKI: Just one question.
8 Are both of those options always available, or
9 does each option apply depending on what the
10 location, the physical equipment that's
11 available to a particular customer?

12 MR. BARRETT: I think to a degree,
13 Commissioners, it is going to be dependent upon
14 the facility situation that BellSouth would
15 have. As you know, they do have a number of
16 central offices throughout state. And I can't
17 pinpoint anything in this record that I could
18 point to you and say, "Look, this applies to all
19 of the central offices." So it's my
20 understanding that it would apply in most
21 instances. And in the extreme instance that it
22 does not apply, I think that the FCC rule takes
23 that into account as well.

24 COMMISSIONER PALECKI: So the first option
25 to move the end user to a loop that is suitable

1 for xDSL service would apply to those customers
2 who are within proximity to a central office.
3 And I can't remember what the distance is, but
4 there's a certain maximum distance which would
5 apply here; is that correct?

6 MR. BARRETT: That is my understanding.

7 COMMISSIONER PALECKI: And then where
8 there's customers that are being served out of
9 the remote terminals, then it would allow supra
10 to collocate its DSLAM equipment in that remote
11 terminal in order to provide the loop necessary
12 to serve the more remote customers.

13 MR. BARRETT: That is my understanding as
14 well.

15 COMMISSIONER PALECKI: Thank you. I can
16 move staff's recommendation on Issue 33.

17 COMMISSIONER BAEZ: Second.

18 CHAIRMAN JABER: There has been a motion
19 and a second on Issue 33. You can show it
20 approved unanimously.

21 MS. KEATING: Madam Chairman, I hate to
22 put a stall on the process, but I'm afraid -- I
23 think we've just caught a little typo back on
24 Issue 32 that probably needs to be clarified for
25 purposes of the vote sheet. There's a reference

1 to 51.711(a)(2). I believe it should be (a)(3).

2 CHAIRMAN JABER: Okay. Show the motion and
3 vote on Issue 32 corrected to reflect that the
4 appropriate FCC rule is 51.711(a)(3).

5 MS. KEATING: Thank you.

6 CHAIRMAN JABER: Okay. That brings us to
7 Issue 38. No, 34.

8 MS. TURNER: Commissioners, Issue 34 deals
9 with the process to be used in coordinated
10 conversions from a BellSouth switch to a Supra
11 switch, and additionally, whether or not
12 BellSouth should be required to implement a
13 single change order as opposed to two internal
14 orders when it provisions UNE-P conversions.

15 Staff is recommending in the prior, that
16 BellSouth's coordinated conversion be used in
17 the conversion of service from a BellSouth
18 switch to a Supra switch. And with respect to
19 UNE-P conversions, staff is recommending that
20 BellSouth should be required to implement a
21 single "C" order as opposed to the two internal
22 new and disconnect orders when provisioning
23 UNE-P conversions.

24 CHAIRMAN JABER: Commissioners?

25 COMMISSIONER PALECKI: I would move staff's

1 recommendation.

2 COMMISSIONER BAEZ: Second.

3 CHAIRMAN JABER: Okay. There has been a
4 motion and a second on Issue 34. Show that
5 approved unanimously.

6 Issue 38.

7 MR. BARRETT: Commissioners, Issue 38 asks
8 is BellSouth required to provide Supra Telecom
9 with nondiscriminatory access to the same
10 databases BellSouth uses to provision its
11 customers.

12 In this issue, it's staff's belief that
13 Supra is arguing for direct access to
14 BellSouth's Legacy systems. However, it is
15 staff's belief that BellSouth is not required to
16 provide Supra with the direct access, only with
17 the nondiscriminatory access to OSS
18 functionality.

19 CHAIRMAN JABER: Mr. Barrett, is it
20 technically possible to provide direct access to
21 the databases? Help me understand that.

22 MR. BARRETT: Commissioner, the short
23 answer would be no, I do not believe that it
24 is. You have to consider that BellSouth's
25 Legacy systems are serving a retail customer

1 base, and the OSS platforms that the ALECs use
2 are serving a wholesale market. So I think that
3 the short answer to your question is no, I do
4 not believe it is technically feasible.

5 CHAIRMAN JABER: Commissioners?

6 COMMISSIONER PALECKI: I would move staff's
7 recommendation on Issue 38.

8 COMMISSIONER BAEZ: Second.

9 CHAIRMAN JABER: There has been a motion
10 and a second. You can show Issue 38 approved
11 unanimously.

12 Issue 40.

13 MS. KING: Commissioners, Issue 40
14 addresses if signaling associated with voice
15 mail messaging should be included within the
16 cost of the UNE switching port.

17 Staff is recommending that it not be
18 included within the cost of the UNE switching
19 port, but that BellSouth's FCC tariffed rates
20 are the appropriate rates for the signaling
21 associated with voice mail messaging.

22 Furthermore, staff is recommending that if
23 Supra chooses to provide its own links, that
24 BellSouth should determine within a reasonable
25 time frame whether or not there are any other

1 unbundled network elements associated with them
2 providing their own links and what additional
3 charges, if any, should apply.

4 COMMISSIONER PALECKI: I can move the
5 staff's recommendation on Issue 40, but I would
6 wish to encourage the parties to try to mutually
7 define a reasonable time frame so as to prevent
8 future problems. I think that this is something
9 well within the parties' ability to negotiate,
10 and if it's not, we could have further
11 problems. But I would go ahead and move staff's
12 recommendation on Issue 40.

13 COMMISSIONER BAEZ: I can second it.

14 CHAIRMAN JABER: Okay. There's a motion
15 and a second on Issue 40. You can show Issue 40
16 approved unanimously.

17 Forty-two.

18 MR. TODD BROWN: Issue 42 addresses the
19 proper time frame for either party to render
20 bills. Staff recommends that the proper time
21 frame is one year unless an exception applies.

22 COMMISSIONER PALECKI: And I can move
23 staff's recommendation on Issue 42.

24 I would encourage the parties to consider
25 the language from the MCI and AT&T

1 arbitrations. That language is listed on pages
2 176 and 177 of the recommendation. And I would
3 move staff's recommendation.

4 COMMISSIONER BAEZ: Second.

5 CHAIRMAN JABER: Okay. There has been a
6 motion and a second on Issue 42. You can show
7 that approved unanimously.

8 Issue 46.

9 MR. BARRETT: Commissioners, Issue 46 asks
10 is BellSouth required to provide Supra Telecom
11 the capability to submit orders electronically
12 for all wholesale services and elements.

13 Staff is recommending that, no, BellSouth
14 is not required to submit orders electronically
15 for all services and elements as long as
16 BellSouth provisions orders and complex services
17 for itself and ALECs in like fashion.

18 CHAIRMAN JABER: Issue 46, Commissioners?

19 COMMISSIONER BAEZ: I can move it.

20 COMMISSIONER PALECKI: I can second that
21 motion.

22 On the first full paragraph on page 182,
23 staff mentions the possibility of a generic
24 proceeding to explore policy implications for
25 electronic order submissions. I'm not sure if

1 this is something that perhaps could be
2 addressed within the collaborative. But I would
3 just want to perhaps encourage that this be
4 addressed within the collaborative. If it's
5 something that cannot be addressed within the
6 collaborative, it might be something we want to
7 look at generically in the future.

8 CHAIRMAN JABER: Yes. I don't see why it
9 couldn't be addressed in the collaborative if
10 it's not already. We actually don't know all of
11 the issues that the parties are discussing in
12 the collaborative, because they've been
13 encouraged to bring any issue they want to the
14 table, so it may already be addressed.

15 But, Ms. Simmons, I think Commissioner
16 Palecki's idea is a good idea. Pursue it in the
17 collaborative, and if it's not being discussed
18 there, bring it back to us.

19 MS. SIMMONS: Okay. I know we do have a
20 list of the issues being considered in the
21 collaborative. I don't know that anyone here
22 has actually looked at the list, because we're
23 not directly involved, but we'll check that out.

24 COMMISSIONER PALECKI: Thank you.

25 CHAIRMAN JABER: There's a motion and a

1 second to approve staff on Issue 46. You can
2 show Issue 46 approved unanimously.

3 Forty-seven.

4 MR. BARRETT: Commissioners, Issue 47 asks
5 when, if at all, should there be manual
6 intervention on electronically submitted
7 orders.

8 And in this issue, BellSouth states that --
9 excuse me. Staff's recommendation states that
10 BellSouth should be allowed to manually
11 intervene on orders in the same manner as it
12 does so for itself.

13 CHAIRMAN JABER: Staff, you made the
14 observation in your analysis that the testimony
15 from Supra on this issue was very limited, but
16 there was an allegation that BellSouth actually
17 has electronic interfaces available for every
18 type order and doesn't allow the use of them.
19 How did you go through and analyze that
20 allegation?

21 MR. BARRETT: Commissioner, you are correct
22 that the Supra testimony did reflect that that
23 was their belief. However, if you turn that
24 around and consider the BellSouth angle of that,
25 BellSouth cited to a percentage of their orders

1 that they process electronically and a
2 percentage of their orders that they process
3 manually, and obviously the -- I gave more
4 weight to the assertions from BellSouth because
5 they provided that data, whereas Supra -- it's
6 my opinion that Supra did not necessarily back
7 up their assertion.

8 CHAIRMAN JABER: How could they? I mean,
9 that's sort of an ongoing concern as it relates
10 to these complaint dockets or the arbitration
11 dockets. BellSouth, it's their system. It's
12 their interface. How is it that an ALEC can
13 back up the assertion? What would staff have
14 needed to see?

15 MR. BARRETT: Commissioner, they could have
16 pursued that through discovery, and I don't
17 believe that they did. Just to give you an
18 example, they could have given us some hard
19 numbers to analyze, and I don't believe that
20 they did.

21 CHAIRMAN JABER: Okay. Commissioners, any
22 questions on this issue?

23 COMMISSIONER PALECKI: I would move staff
24 on Issue 47.

25 COMMISSIONER BAEZ: I can second it, but I

1 do have a question. I guess what's the staff's
2 method of confirming? I mean, we've obviously
3 established some kind of standard of parity.
4 And you say to the extent that BellSouth
5 provides its own retail operations manual
6 processing because that's what they have to do,
7 then it's appropriate for Supra and other ALECs,
8 I would assume. What's our process? Can you
9 briefly just tell us, how can the staff -- how
10 does the staff get to say, "Yeah, that's one
11 that they provide manually to themselves because
12 they have to, and therefore it's appropriate for
13 others?" I mean, how do you confirm that
14 parity?

15 MR. BARRETT: I'm going to give you a short
16 answer and encourage our legal folks to help me
17 out. But the language in the Act basically
18 specifies that parity is what I do for myself.
19 And I don't have the specific cite from the Act,
20 and perhaps our legal counsel could help me out,
21 but staff operates on that basis.

22 COMMISSIONER BAEZ: Right. And I guess
23 what I'm saying -- and I'm not trying to put you
24 on the spot. I guess I want to understand
25 exactly what kind of independent confirmation we

1 have that that is in fact the case. I mean,
2 what basis do we use to be able to say, "Look,
3 supra or ALEC, your allegations or your claims
4 aren't necessarily accurate, because here is --
5 you know, you're getting manual on this.
6 BellSouth has to provide itself manual
7 processing on this as well." I mean, what's our
8 proof? What kind of data do we have? How do we
9 get information? Do we have information to
10 allow us to make that determination on those
11 grounds?

12 MS. SIMMONS: Let me try to answer that.

13 COMMISSIONER BAEZ: I was looking that way.
14 I'm sorry.

15 MS. SIMMONS: I believe -- and I know the
16 people that are directly involved in the
17 third-party OSS tests are not here today, you
18 know, here in the room today, but I believe that
19 that would be the more appropriate venue for
20 trying to reach that conclusion. I don't see
21 how it would be possible to address that within
22 the confines of an arbitration.

23 COMMISSIONER BAEZ: No, I understand and I
24 agree with you. I guess what I -- you know,
25 we're saying you will provide it, you will

1 provide electronic processing where you provide
2 it for yourself, and vice versa.

3 MS. SIMMONS: Right.

4 COMMISSIONER BAEZ: I guess what I want
5 clarified is that this is in fact -- I mean,
6 we're establishing the standard of parity or
7 we're upholding the standard of parity, and
8 there has to be some kind of backup involved on
9 our end to be able to -- you know, to be able to
10 substantiate our upholding that standard. You
11 can't just say it and not be able to prove it,
12 or confirm it, at least. I mean, is that fair?

13 MS. KEATING: Commissioner, if I could jump
14 in here, is where you're going what was our
15 basis in the record?

16 COMMISSIONER BAEZ: I just want some kind
17 of assurance that when we say you will provide
18 -- and if the OSS testing is the mechanism by
19 which we say, "Yes, you're providing manual to
20 yourself; therefore, parity allows for manual
21 provision to others," if that's the process that
22 allows the staff and this Commission to say that
23 and to make that determination, that's fine with
24 me. I'm not --

25 MS. SIMMONS: I believe that is the

1 vehicle, yes.

2 COMMISSIONER BAEZ: Ms. Keating, you were
3 going to -- and I interrupted you, and I'm
4 sorry.

5 MS. KEATING: I'm debating whether I should
6 open my mouth or not.

7 COMMISSIONER BAEZ: Well, I always try to
8 err on the side of silence. And I say that with
9 all --

10 MS. KEATING: Silence is golden.

11 CHAIRMAN JABER: -- kindness.

12 MS. KEATING: I just -- I feel compelled to
13 clarify, though, that for purposes of this
14 arbitration, staff's recommendation is based on
15 the weight of the evidence in the record and
16 that we haven't looked to the OSS testing to
17 fill out this particular record.

18 COMMISSIONER BAEZ: I understand that. I
19 understand that, and I didn't mean to imply that
20 we would have to or that this was some -- that
21 the recommendation or our decisions were somehow
22 lacking in that kind of support.

23 But I guess, you know, to my mind, you
24 can't just say something and have it appear out
25 of thin air. I mean, our responsibility is to

1 have some kind of support for that
2 determination. Whether in a legal sense it's
3 adequate enough to make a decision, that's a
4 whole other issue entirely. But when we say
5 you've got to do something and we've got to
6 figure out a way to make sure that you're doing
7 it, I just want that kind of -- I just needed a
8 little bit of comfort on that end to know that
9 we have processes in place.

10 CHAIRMAN JABER: And I guess it is the
11 weight of the evidence that made me even ask the
12 question, but it's that nagging concern. If an
13 ALEC, in their mind, there is an issue with
14 parity in a negative way, I mean, that there
15 isn't parity is the allegation -- and that's the
16 allegation here. And I was satisfied with the
17 answer, well, they could have done discovery and
18 put on or met the burden of showing that there
19 wasn't parity. I was satisfied with that
20 issue.

21 But let's say the ALEC has not conducted
22 discovery, has not asked the questions, has not
23 pursued meeting their burden to show that there
24 is something wrong going on. It's something I
25 want staff to be mindful of. Where those kinds

1 of questions aren't being asked, I would like --
2 and hopefully, Commissioners, you'll agree --
3 that staff ask those questions and develop the
4 record in these cases as fully as possible,
5 because that's what I believe the role of staff
6 is. I want you all to make sure that the record
7 has been developed to allow the Commissioners to
8 make the best informed decision they can make.

9 And I know that we have traditionally taken
10 the view that these are arbitration dockets, and
11 it's really Bell versus -- or whoever, Sprint
12 versus the ALEC. But in an effort to develop
13 the record and look at issues like parity,
14 perhaps it puts a little bit of a burden on us
15 too to make sure that the record is developed,
16 and it ensures fairness and balance.

17 That is not to substitute for the burden
18 that the companies have to meet, and the record
19 is the record. I mean, you know, we are
20 comforted by knowing where the weight of the
21 evidence is on each of these issues, and it's by
22 that comfort that we can vote on each of these
23 issues.

24 But, you know, the bottom line, I think, as
25 it relates to this Commission is that we want to

1 improve on the competitive market in
2 telecommunications, and rather than get bogged
3 down with the legalities, we need to, as
4 Commissioners and as staff, be mindful of the
5 need to develop a record.

6 Commissioner Baez, are you still concerned?

7 COMMISSIONER BAEZ: I'm fine, and I can
8 second the motion if Commissioner Palecki wants
9 to --

10 COMMISSIONER PALECKI: I just wanted to
11 follow up with staff. This is an issue that
12 over the course of time will be impacted both by
13 OSS testing as well as by implementation of our
14 performance standards. And I would suspect that
15 over a period of time, the amount of manual
16 intervention that will be tolerated before the
17 performance standards and the penalties kick in,
18 over time that will get smaller, will it not,
19 notwithstanding what's in any of these
20 interconnection agreements?

21 MS. SIMMONS: I guess I'm not absolutely
22 sure of the answer to that. One would think
23 over time volumes inherently are going to grow,
24 thus probably lending itself to more
25 mechanization over time. So I tend to agree

1 with what you're saying, but I don't have
2 anything hard and fast I can point toward.

3 COMMISSIONER PALECKI: But it is the
4 intention of the Commission and its staff to
5 very closely monitor both the OSS tests as well
6 as the performance standards as they're put in
7 place to --

8 MS. SIMMONS: Yes. Certainly --

9 COMMISSIONER PALECKI: To adjust those
10 standards whenever necessary.

11 MS. SIMMONS: Yes. Certainly with those
12 performance measures and standards, it's an
13 evolving process, with a provision for a
14 six-month review cycle, so we will be
15 revisiting.

16 COMMISSIONER PALECKI: And I would think
17 not only increasing volumes, but increasing
18 levels of automation in all phases will probably
19 have some effect on decreasing manual
20 intervention. I would hope so.

21 MS. SIMMONS: It could well, yes.

22 COMMISSIONER PALECKI: Thank you.

23 COMMISSIONER BAEZ: I can second the
24 motion.

25 CHAIRMAN JABER: There has been a motion

1 and a second on Issue 47 to accept staff's
2 recommendation. You can show that approved
3 unanimously.

4 Issue 49.

5 MS. KING: Commissioners, Issue 49
6 actually evolved into two issues. The first
7 issue asks whether or not Supra be allowed to
8 share with a third party the spectrum on a local
9 loop for voice and data when Supra purchases a
10 loop/port combination. And with regard to that
11 issue, the parties actually agreed and staff is
12 recommending that supra be allowed to share with
13 a third party the spectrum on a local loop when
14 they purchase the loop/port combination.

15 The second issue which evolved through
16 testimony and cross-examination addresses
17 whether or not BellSouth is obligated to provide
18 its DSL service to Supra's voice customers
19 served in a UNE-P arrangement, and staff
20 believes that BellSouth should not be required
21 to provide its DSL services to Supra's voice
22 customers served in a UNE-P arrangement.

23 CHAIRMAN JABER: Commissioners, questions?
24 A motion?

25 COMMISSIONER PALECKI: I can move staff's

1 recommendation on Issue 49.

2 COMMISSIONER BAEZ: Second.

3 CHAIRMAN JABER: Okay. You can show Issue
4 49 approved unanimously.

5 Issue 57.

6 MS. TURNER: Commissioners, Issue 57 deals
7 with whether or not BellSouth should be required
8 to provide downloads of its RSAG and LFACS
9 databases without license agreements and without
10 charge.

11 Staff notes that the issue has been
12 narrowed from the filing of the petition, and
13 with respect to PSIMS and PIC databases, the
14 parties have resolved that particular issue and
15 have come to language or an agreement on that.

16 Staff is recommending that BellSouth should
17 not be required to provide downloads of these
18 databases without license agreements and without
19 charge. However, staff is noting that the
20 parties may choose to negotiate downloads of
21 these databases, as well as whatever rates,
22 terms, or conditions are associated.

23 CHAIRMAN JABER: Questions? A motion?

24 COMMISSIONER BAEZ: I can move Issue 57.

25 COMMISSIONER PALECKI: Second.

1 CHAIRMAN JABER: Okay. You can show Issue
2 57 approved unanimously.

3 Fifty-nine.

4 MR. SCHULTZ: Issue 59 deals with whether
5 or not Supra should have to pay for expedited
6 service when BellSouth provides expedited
7 service after the offered expedited date, but
8 prior to BellSouth's standard interval. Staff
9 believes that Supra should not have to pay the
10 expedited fee in such instances.

11 CHAIRMAN JABER: Okay. But the crux of
12 your recommendation, if I understood it
13 correctly, is, you acknowledge BellSouth doesn't
14 have to provide the expedited service, but we
15 encourage them to do it, and if they do it, they
16 can't assess a fee because they've gone beyond
17 their promised due date.

18 MR. SCHULTZ: That's correct.

19 CHAIRMAN JABER: And the way to avoid even
20 being put in the situation is they shouldn't
21 miss the date that they've promised service.

22 MR. SCHULTZ: That's correct.

23 COMMISSIONER BAEZ: I can move staff.

24 COMMISSIONER PALECKI: I can second your
25 motion.

1 I would like to comment on page 199 of the
2 recommendation, the last full paragraph, the
3 last sentence, where staff states staff believes
4 the issue of whether BellSouth should have to
5 create an electronic ordering interface for
6 ALECs that use Quick Serve could be explored
7 more effectively in the context of a generic
8 proceeding. I would like to ask staff to keep
9 us apprised of that issue and whether that is
10 something in the future we should move forward
11 to a generic proceeding on. And I would second
12 Commissioner Baez's motion.

13 CHAIRMAN JABER: Okay. There has been a
14 motion and a second. You can show Issue 59
15 approved unanimously.

16 Issue 60.

17 MR. BARRETT: Commissioners, Issue 60, I
18 wanted to point out to you that you the wording
19 of that issue is somewhat contrary to the
20 argument that the parties offered. But as
21 worded, the issue states when BellSouth rejects
22 or clarifies a supra Telecom order, should
23 BellSouth be required to identify all errors in
24 the order that caused it to be rejected or
25 clarified.

1 What I wanted to point out to you is that
2 that question kind of leads you to consider a
3 yes or a no answer, and staff's recommendation
4 is no. But based on the testimony and based
5 upon the argument from the parties, the real
6 issue considers whether the -- whether BellSouth
7 should be required to identify all the errors at
8 the time of the rejection.

9 CHAIRMAN JABER: Commissioners, I want to
10 sort of express some frustration out loud on
11 this issue and see if collectively we can find a
12 resolution. This issue I struggled with,
13 because my tendency is to defer to common
14 sense. If BellSouth gets -- and this sort of
15 flies -- not your recommendation flies in the
16 face of common sense, but the parties' reaction
17 flies in the face of common sense.

18 If BellSouth gets an order and the first
19 name of the order is Cathy Schroeder instead of
20 Catherine Schroeder, I understand the need for
21 perfection, because there might be a Cathy
22 Schroeder and a Catherine Schroeder. But I
23 would like BellSouth to go on and look at the
24 address and the rest of the program and the
25 inputs and not to reject the order just for

1 simple typographical errors right away. I would
2 like that their review of the order and sort of
3 have multiple things circled and sent back to
4 the ALEC if appropriate. What I don't want is
5 for Bellsouth to stop at the name, send it back,
6 the order falls out, it goes back to Supra, only
7 to come back to Supra a day or two later with
8 some other minor error.

9 And I know that when you are processing
10 thousands of orders, minor errors, minor
11 mistakes add up. But there has to be some
12 common sense to this process.

13 COMMISSIONER PALECKI: I agree with you.
14 How do we say that?

15 CHAIRMAN JABER: I don't know.

16 COMMISSIONER BAEZ: well, can I have some
17 clarification here? And just for my purposes --
18 well, to clarify in my mind anyway, these orders
19 are rejected electronically, or they're rejected
20 by human eyes? And I guess that makes all the
21 difference to me as to what you're suggesting.

22 CHAIRMAN JABER: The testimony in this
23 record reflects that they're rejected both ways,
24 that electronic interfaces will kick out some
25 orders, and then the manual review may -- I get

1 this visual in my mind that some --

2 COMMISSIONER BAEZ: There are two kinds of
3 rejection is what you're saying. I mean, can we
4 confirm that? Is that your understanding of how
5 it works?

6 MR. BARRETT: Yes, that would be my
7 understanding.

8 COMMISSIONER BAEZ: Okay. Then I have --
9 and I had trouble with this issue as well. I
10 wanted to make sure that I was understanding it
11 correctly. You know, yes, logic would dictate
12 that when a rejected order comes back, it should
13 contain all the errors so that the next time the
14 order can be processed successfully. The
15 problem is that when systems are rejecting,
16 systems don't say, "Well, there's an error, and
17 there's an error, and there's an error." At
18 least to my knowledge, they don't work that way.
19 They stop at the first one.

20 CHAIRMAN JABER: And that we should have
21 confirmed, because I thought that the electronic
22 rejections get a manual review too.

23 Ms. Simmons, you were about to say
24 something?

25 MS. SIMMONS: I'm sorry. I can't answer

1 what you just asked. I don't know the answer to
2 that.

3 CHAIRMAN JABER: Does anyone? No?

4 COMMISSIONER PALECKI: If electronically
5 you can -- for example, on a computer screen, a
6 screen or an area of the screen will show up in
7 purple if it's not filled in. You know, there
8 could even electronically I would see be the
9 possibility that you might have more than one
10 error that results in the rejection.

11 COMMISSIONER BAEZ: I'm not saying that
12 systems don't exist that are capable of doing
13 that, but one of the things that is always
14 hovering like a cloud around it is, you know, to
15 what extent do you create a requirement or
16 impose a requirement that doesn't -- that's not
17 cost-effective, I mean, that, in essence,
18 mandates the overhauling of billions of dollars
19 of system. I mean, if that was one of the
20 solutions, or if that was the ramifications of
21 the solutions, I think I would have a problem
22 with it.

23 However, the Chairman has suggested the
24 possibility that even electronic kick-outs are
25 looked at by human eyes. If that's the case,

1 then I'm less uncomfortable with requiring that
2 human check, to really make the effort to catch
3 all the errors.

4 If it's a system -- you know, in the case
5 of it's only a system that's looking at it, then
6 I find a little bit more difficulty with it, and
7 perhaps we need to make distinctions.

8 MS. SIMMONS: Commissioners --

9 CHAIRMAN JABER: And the reality is we also
10 don't know enough through this record to go
11 either way.

12 COMMISSIONER BAEZ: I'm not sure that
13 there's enough in the record to make that
14 distinction.

15 CHAIRMAN JABER: I think the trouble I was
16 having with this issue is, again, affirmatively
17 saying BellSouth shouldn't be required to
18 identify all errors.

19 Maybe the way to handle my concern is to
20 put the burden back on the parties, to say, you
21 know, you will endeavor to identify all of the
22 errors the first time around, and recognizing
23 that there may be electronic impediments. And
24 it is not our intent to have anyone spend
25 millions of dollars to address those sorts of

1 impediments, but it seems to me that common
2 sense should dictate here. And the strong
3 message you should give your staff is get it
4 right the first time, both sides, get the orders
5 right the first time, get your review of the
6 orders right the first time. It saves everyone
7 time.

8 MS. SIMMONS: Chairman Jaber, I just wonder
9 if I could make one comment, just to follow on.
10 I think the way that the issue is worded in
11 terms of identifying all errors, there will be
12 occasions where I think that isn't technically
13 feasible, some instances where there are
14 dependencies in error checks, where you get an
15 error in one field making it impossible to check
16 another. So there will be those situations.

17 So the way this is styled as identifying
18 all errors, I don't think that is possible.
19 Perhaps more could be done, but I don't think as
20 worded it's technically feasible.

21 COMMISSIONER BAEZ: Well, let's explore
22 this, because the way I read the issue, it would
23 be easy enough just to say, yes, you have to
24 identify all errors, and let the process that
25 BellSouth is employing dictate what that means

1 exactly. I mean, if there is no manual or human
2 element to further inspect a rejected electronic
3 order, then maybe we need to discuss whether
4 there should be. But again, if there is a
5 manual, then once those human eyes are looking
6 at that order, then they're under a requirement
7 to find all the, you know, errors on it.

8 I don't know. I'm just throwing things out
9 there, because I think logic would dictate you
10 don't want to have orders corrected piecemeal.
11 I don't think it's -- you know, I don't think
12 it's efficient for anyone.

13 MS. SIMMONS: Ms. Keating did just offer me
14 some suggested language. I'll just throw this
15 out for consideration.

16 BST should be -- she was suggesting this.
17 BST should be required to identify all readily
18 apparent errors in the order. However, BST
19 should not be required to identify all errors,
20 because it may not be feasible for BST to
21 process the order beyond the point where the
22 rejection occurred. Thus, BellSouth may not be
23 able to identify every error that may trigger a
24 rejection.

25 CHAIRMAN JABER: I would leave out --

1 Commissioners, if you leave out that second
2 sentence, my concern is satisfied.

3 COMMISSIONER BAEZ: That couching language.

4 CHAIRMAN JABER: Requiring BellSouth to
5 identify readily apparent orders, period.

6 COMMISSIONER BAEZ: I'm comfortable with
7 that. I think the couching language leaves too
8 much left to interpretation. So I'm comfortable
9 with the first part of that suggested language.

10 CHAIRMAN JABER: Read that again,
11 Ms. Simmons.

12 MS. SIMMONS: "BST should be required to
13 identify all readily apparent errors in the
14 order," is the suggestion.

15 COMMISSIONER PALECKI: I like that as well,
16 and I would go ahead and amend the staff's
17 recommendation on Issue 60 to include that
18 language and move that recommendation as
19 amended.

20 COMMISSIONER BAEZ: I can second that.

21 CHAIRMAN JABER: Okay. There has been a
22 motion and a second on Issue 60 as modified
23 herein. Thank you, Commissioners. And you can
24 show Issue 60 approved unanimously.

25 Sixty-one.

1 MR. BARRETT: Commissioners, Issue 61 asks
2 should BellSouth be allowed to drop or purge
3 orders, and if so, under what circumstances may
4 BellSouth be allowed to do so, and what notice
5 should be given, if any.

6 Now, in this recommendation, the orders at
7 question -- well, this is basically an extension
8 of the issue we just covered, but in this issue,
9 you have an order that has been rejected, and it
10 is waiting on clarification. In other words,
11 the order is in the hands of the -- the
12 responsibility is with the ALEC to correct the
13 error and resubmit it to the ILEC.

14 CHAIRMAN JABER: Commissioners, questions
15 or a motion?

16 COMMISSIONER BAEZ: I can move the staff.
17 I don't have any questions.

18 COMMISSIONER PALECKI: I can second the
19 staff's recommendation.

20 CHAIRMAN JABER: Okay. There has been a
21 motion and a second on Issue 61. You can show
22 that approved unanimously.

23 Sixty-two.

24 MS. TURNER: Commissioners, Issue 62 deals
25 with whether or not BellSouth should be required

1 to submit completion notices for manual orders.
2 Staff is recommending that BellSouth should not
3 be required to submit completion notices for
4 manual orders, as that information is available
5 on its website.

6 CHAIRMAN JABER: How often is that website
7 updated?

8 MS. TURNER: The record reflects that the
9 website is updated on a daily basis. I think
10 it's nightly, is what is stated in the
11 testimony. I remember one of the witnesses
12 testified to that.

13 CHAIRMAN JABER: Commissioners?

14 COMMISSIONER BAEZ: As long as that's true,
15 I mean, if that's the case, I can move staff.

16 CHAIRMAN JABER: That was in the record.

17 MS. TURNER: That's correct.

18 CHAIRMAN JABER: And no one disputed that
19 evidence in the record.

20 MS. TURNER: That's correct.

21 COMMISSIONER PALECKI: Then I would second
22 the motion.

23 CHAIRMAN JABER: There has been a motion
24 and a second on issue 62. You can show that
25 approved unanimously.

1 Issue 63.

2 COMMISSIONER PALECKI: I think we've ruled
3 on that issue.

4 COMMISSIONER BAEZ: Yes.

5 CHAIRMAN JABER: Sixty-five.

6 MR. KNIGHT: Commissioners, Issue 65 asks
7 should the parties be liable in damages without
8 a liability cap to one another for their failure
9 to honor in one or more material respects any
10 one or more of the material provisions of the
11 agreement for purposes of this interconnection
12 agreement.

13 Staff's recommendation is no. Staff
14 believes it is appropriate for the Commission to
15 make its determination on whether or not to
16 impose a condition or term based upon whether
17 the term or condition is required to ensure
18 compliance with the requirements of Section 251
19 or 252.

20 CHAIRMAN JABER: Commissioners?

21 COMMISSIONER BAEZ: I think what we're
22 saying is we don't have authority to --

23 MR. KNIGHT: Pardon?

24 COMMISSIONER BAEZ: We don't have authority
25 to address that.

1 MR. KNIGHT: No.

2 CHAIRMAN JABER: That is what staff's
3 recommendation is.

4 MR. KNIGHT: That's correct.

5 CHAIRMAN JABER: And that's consistent with
6 -- the issue has been identified in a number of
7 arbitration proceedings, and our decision has
8 always been that we lack the statutory authority
9 to order damages and specific performance and
10 any equitable remedies; correct?

11 MR. KNIGHT: Right. That's outside our
12 jurisdiction.

13 COMMISSIONER PALECKI: I would move
14 staff's recommendation on Issue 65.

15 COMMISSIONER BAEZ: Second.

16 CHAIRMAN JABER: There has been a motion
17 and a second. You can show Issue 65 approved
18 unanimously.

19 Sixty-six.

20 MR. KNIGHT: Issue 66 speaks to a similar
21 situation, whether or not Supra Telecom should
22 be able to obtain specific performance as a
23 remedy for BellSouth's breach of contract for
24 purposes of this interconnection agreement.
25 There again, we believe that that is outside the

1 scope of the Commission's jurisdiction.

2 COMMISSIONER BAEZ: I can move staff.

3 CHAIRMAN JABER: There has been a motion,
4 Commissioner Palecki.

5 COMMISSIONER PALECKI: Second.

6 CHAIRMAN JABER: Okay. A motion and a
7 second on Issue 66. You can show that approved
8 unanimously.

9 Sixty-seven.

10 COMMISSIONER BAEZ: Move it.

11 COMMISSIONER PALECKI: Second.

12 CHAIRMAN JABER: Issue 67 is approved
13 unanimously.

14 Staff, I want to thank you all. I know it
15 has been a long day. Commissioners, I want to
16 thank you for your participation today. The
17 parties, we've said a lot and we've done a lot.
18 I hope that you have all listened to the
19 messages that we've tried to provide for you all
20 today.

21 I'm not giving up on the Bellsouth/Supra
22 relationship. I hope that you go back and
23 negotiate some of these terms further. The fact
24 that a lot of these issues were stipulated is a
25 great sign.

1 Mr. Ramos, I hope you take the opportunity
2 to go introduce yourself to Dr. Bane. She's
3 right there wearing that very bright purple
4 jacket that looks nice on her. Thank you for
5 your participation.

6 Internal affairs will begin at two o'clock.

7 (Conclusion of consideration of Item 21.)
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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, MARY ALLEN NEEL, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter transcribed under my supervision; and that the foregoing pages numbered 1 through 154 are a true and correct transcription of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, or relative or employee of such attorney or counsel, or financially interested in the action.

DATED THIS 11th day of March, 2002.



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