

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Consideration of BellSouth
Telecommunications, Inc.'s entry into
interLATA services pursuant to Section 271 of
the Federal Telecommunications Act of 1996

Docket No. 960786B-TP

Filed: July 31, 2002

DECLARATION OF DAVID A. NILSON ON BEHALF OF
SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS,
INC. REGARDING BELLSOUTH'S THIRD-PARTY TESTING
AND ALECs' COMMERCIAL EXPERIENCE

AFFIDAVIT OF DAVID A. NILSON

I, David A. Nilson, having personal knowledge of the facts set forth herein, being
of lawful age and duly sworn upon my oath, depose and state:

- I am employed by Supra Telecommunications and Information Systems, Inc. ("Supra").
My business address is 2620 SW 27th Ave., Miami, Florida 33133. I am the Vice
president of Technology for Supra. I am responsible for, among other things, [REDACTED]
[REDACTED]
[REDACTED] formed
pursuant to an Interconnection Agreement between BellSouth and AT&T, approved by
the FPSC and adopted by Supra on October 5, 1999.

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FPSC-COMMISSION CLERK

1 2. I have been an electrical engineer for the past 27 years, with the last 23 years spent in
2 management level positions in engineering, quality assurance, and regulatory
3 departments. As a design engineer my duties included ASIC and Integrated Circuit
4 design, system design, and production deployment. I have also designed special purpose
5 systems used by both the FAA and the FCC in monitoring and compliance testing. I was
6 also responsible for validation design testing and FAA system conformance testing.
7 Since 1992 I have been performing network and system design consulting for various
8 industry and government agencies, including research and design engineering positions at
9 the Argonne National Laboratories. I joined Supra Telecom in the summer of 1997.

10
11 As a programmer for more than 35 years, I have extensive experience in systems analysis
12 and design, including quality assurance procedures required by various U.S. government
13 agencies.

14
15 I am the architect of Supra's network, and have participated in the negotiation and
16 implementation of virtually all of Supra's Interconnection agreements nationwide.

17
18 3. I have testified before the Florida Public Service Commission (FPSC) in numerous
19 generic dockets and in various disputes between Supra Telecom and BellSouth regarding
20 central office space availability, rates, requirements, and specifications for Collocation,
21 Unbundled Network Elements (UNEs), and UNE Combinations. I have participated in
22 settlement procedures before the FPSC staff on matters relating to OSS and OSS
23 performance against BellSouth. I have testified before the Texas Public Utilities

1 Commission (TPUC) on matters of collocation regarding disputes with SWBT. I have
2 made ex-parte presentations before the Federal Communications Commission (FCC)
3 regarding the Bell Atlantic / GTE merger, and the Department of Agriculture (RUS)
4 regarding Network Design and Expansion policies for CLECs. I have appeared before
5 the FCC staff on several occasions in disputes against BellSouth regarding collocation. I
6 have testified before regulatory arbitrators in Texas, and in Commercial arbitration
7 against BellSouth. I have been deposed numerous times by BellSouth, and SWBT. I was
8 qualified as an Expert Witness in Telecommunications by the Texas Public Utilities
9 Commission in 2000.

10
11 4. The purpose of my declaration is to describe the deficiencies that Supra has found in
12 BellSouth's CLEC OSS since Supra launched local telephone service in Florida. These
13 deficiencies have resulted in frustration, difficulties and problems both for Supra and its
14 customers. These deficiencies cover an array of OSS and provisioning issues, UNEs, and
15 other interconnection matters.

16
17 5. Supra is a competitive local exchange company incorporated, and lawfully doing
18 business in Florida. Supra is certified by the Florida Public Service Commission ("the
19 Commission" or "FPSC") to provide local exchange service within Florida. Supra's
20 principal place of business in Florida is 2620 S. W. 27th Avenue, Miami, Florida 33133.

21

1 6. Pursuant to the requirements of the Telecommunications Act of 1996, on May 19th, 1997,
2 Supra Telecom accepted a standard resale agreement with BellSouth. (“First Resale
3 Agreement”).

4
5 7. In June of 1997, Supra Telecom began offering local service in Florida to both residential
6 and business subscribers. Although Supra Telecom has grown its customer base, this
7 growth has been full of frustration, difficulties and problems. Therefore, Supra Telecom
8 is sharing its experiences over the past five (5) years of operating as a competitor to
9 BellSouth in Florida.

10
11 8. Pursuant to the requirements of the Telecommunications Act of 1996, on October 10,
12 1997, Supra Telecom accepted a standard Interconnection agreement with BellSouth¹,
13 which Supra was led to believe by BellSouth was the AT&T-BellSouth Interconnection
14 Agreement. (“First Resale Agreement”) The Interconnection Agreement was due to
15 expire on or around October 10, 1999.

16
17 9. Pursuant to the requirements of the Telecommunications Act of 1996, on October 5,
18 1999, Supra Telecom adopted the AT&T Interconnection Agreement with BellSouth.
19 (“Interconnection Agreement”) The Interconnection Agreement expired on or around
20 June 9, 2000, however the parties are continuing to operate under an “evergreen”
21 provision until a follow-on-agreement can be approved.

¹ The details surrounding the content of said Interconnection Agreement, and whether it was in fact, an adoption of the AT&T agreement of a standard offering has been the subject of several Dockets, including

1 10. In implementing the parties' Interconnection Agreement, the parties have experienced
2 several problems and difficulties in the process. These problems and difficulties cover an
3 array of OSS and provisioning issues, UNEs, and other interconnection matters. These
4 problems have been the subject of numerous commercial arbitration proceedings, the
5 awards resulting from which are hereby attached as confidential exhibits in this filing.

6
7 11. Currently Supra Telecom serves over 300,000 access lines in the state of Florida, and
8 based upon the FPSC's quarterly reports, Supra serves more access lines in Florida than
9 any other ALEC operating in Florida. As such Supra's experience with BellSouth's
10 CLEC OSS is significant, being based on the largest single group of access lines in
11 Florida served by any competitive LEC.

12
13 12. In the FPSC's efforts to independently assess BellSouth Telecommunications, Inc.'s
14 ("BellSouth") Operational Support Systems (OSS) for purposes of Section 271
15 consideration, the FPSC voted to initiate the Third Party Testing ("TPT") of BellSouth's
16 CLEC OSS with KPMG as the test evaluator. At the inception of the TPT, it was never
17 specified that the TPT would be conducted in lieu of ALECs' testimony of their actual
18 commercial experiences in the administrative hearing where the FPSC will evaluate the
19 checklist items in BellSouth's Section 271 Application. However, as the TPT has
20 evolved, the FPSC has voted to deny the ALECs the opportunity to present testimonies
21 that address the commercial performance of BellSouth's CLEC OSS in the administrative

981832-TP where the FPSC ordered the original agreement be replace the filed agreement, and
[REDACTED]

1 hearing in which the checklist items are evaluated. The FPSC has practically excluded
2 all ALECs' testimonies that relate to OSS and/or provisioning concerns in the
3 administrative proceeding. Instead, these testimonies have been relegated to the TPT.
4 This action suggests that the FPSC is confused between OSS the "UNE – i.e., the
5 network" and OSS the "operational interface – i.e., the performance of the UNE" in its
6 decision.

7
8 13. It is apparent that BellSouth has successfully muddled these two outlooks of OSS so that
9 the two views are "*confused*" to look almost as one and the same from a distance.

10 They are not.

11 The truth is that one is the "network element" itself while the other is the requisite
12 "access" (features, functions and capabilities of the network element) that should be
13 provided to ALECs in order to facilitate local competition. It is clear that the TPT, in
14 seeking to evaluate the adequacy of the "network", has relied upon BellSouth provided
15 definitions, policies and procedures without a due cause finding that BellSouth's policies
16 and procedures in this matter are in any fashion or fact, lawful and in compliance with the
17 Act.

18
19 14. Instead, TPT has been a test of network performance in an effort to "fine-tune" the
20 "access" pieces to "desired" performance levels that will allow the ALECs comparable
21 levels of performance. This is not what was envisioned by the Act. From Code of
22 Federal Regulations 47, Section 51.313:

23 Sec. 51.313 Just, reasonable and nondiscriminatory terms and
24 conditions for the provision of unbundled network elements.

1
2 (a) The terms and conditions pursuant to which an incumbent LEC
3 provides access to unbundled network elements shall be offered
4 equally to all requesting telecommunications carriers. (b) **Where**
5 **applicable, the terms and conditions pursuant to which an**
6 **incumbent LEC offers to provide access to unbundled network**
7 **elements, including but not limited to, the time within which the**
8 **incumbent LEC provisions such access to unbundled network**
9 **elements, shall, at a minimum, be no less favorable to the**
10 **requesting carrier than the terms and conditions under which the**
11 **incumbent LEC provides such elements to itself.** (c) An incumbent
12 LEC must provide a carrier purchasing access to unbundled network
13 elements with the pre-ordering, ordering, provisioning, maintenance
14 and repair, and billing **functions of the incumbent LEC's operations**
15 **support systems.** (Emphasis Added)
16 (C.F.R. 47, Sec 51.313)

17 The FCC's order implementing this law was clearly spelled out in *The First Report and*
18 *Order on Local Competition* (CC Order 96-325 in Docket 96-98). First on the general
19 subject of parity in the provision of unbundled network elements:

20 312. We conclude that the obligation to provide "nondiscriminatory
21 access to network elements on an unbundled basis"² refers to both the
22 physical or logical connection to the element and the element itself. In
23 considering how to implement this obligation in a manner that would
24 achieve the 1996 Act's goal of promoting local exchange competition,
25 we recognize that **new entrants, including small entities, would be**
26 **denied a meaningful opportunity to compete if the quality of the**
27 **access to unbundled elements provided by incumbent LECs, as**
28 **well as the quality of the elements themselves, were lower than**
29 **what the incumbent LECs provide to themselves.** Thus, we
30 conclude it would be insufficient to define the obligation of incumbent
31 LECs to provide "nondiscriminatory access" to mean that the quality
32 of the access and unbundled elements incumbent LECs provide to all
33 requesting carriers is the same. As discussed above with respect to
34 interconnection,³ an incumbent LEC could potentially act in a
35 nondiscriminatory manner in providing access or elements to all
36 requesting carriers, while providing preferential access or elements to
37 itself. Accordingly, we conclude that the phrase "nondiscriminatory
38 access" in section 251(c)(3) means at least two things: first, the

² 96-325 footnote - 47 U.S.C. § 251(c)(3).

³ 96-325 footnote - See *supra*, Sections IV.G, IV.H.

1 quality of an unbundled network element that an incumbent LEC
2 provides, as well as the access provided to that element, must be equal
3 between all carriers requesting access to that element; **second, where**
4 **technically feasible, the access and unbundled network element**
5 **provided by an incumbent LEC must be at least equal-in-quality**
6 **to that which the incumbent LEC provides to itself.**⁴ (CC Order 96-
7 325, para 312, Emphasis Added)
8

9 Then specifically in regard to the OSS unbundled network Element:

10 316. As is more fully discussed below,⁵ to enable new entrants,
11 including small entities, to share the economies of scale, scope, and
12 density within the incumbent LECs' networks, we conclude that
13 incumbent LECs must provide carriers purchasing access to unbundled
14 network elements with the pre-ordering, ordering, provisioning,⁶
15 maintenance and repair, and billing functions of the incumbent LECs
16 operations support systems. **Moreover, the incumbent must provide**
17 **access to these functions under the same terms and conditions that**
18 **they provide these services to themselves or their customers.** We
19 discuss specific terms and conditions applicable to the unbundled
20 elements identified in this order below, in Section V.J. (CC Order 96-
21 325, para 316, Emphasis Added)
22

23
24 516. **We conclude that operations support systems and the**
25 **information they contain fall squarely within the definition of**
26 **"network element" and must be unbundled** upon request under
27 section 251(c)(3), as discussed below. Congress included in the
28 definition of "network element" the terms "databases" and
29 "information sufficient for billing and collection or used in the
30 transmission, routing, *or other provision* of a telecommunications
31 service."⁷ We believe that the inclusion of these terms in the definition
32 of "network element" is a recognition that **the massive operations**
33 **support systems employed by incumbent LECs, and the**
34 **information such systems maintain and update to administer**
35 **telecommunications networks and services, represent a significant**
36 **potential barrier to entry.** It is these systems that determine, in large
37 part, the speed and efficiency with which incumbent LECs can market,
38 order, provision, and maintain telecommunications services and
39 facilities. Thus, we agree with Ameritech that "[o]perational interfaces

⁴ 96-325 footnote - We note that providing access or elements of lesser quality than that enjoyed by the incumbent LEC would also constitute an "unjust" or "unreasonable" term or condition.

⁵ 96-325 footnote - See *infra*, Section V.J.

⁶ 96-325 footnote - The term "provisioning" includes installation.

⁷ 96-325 footnote - 47 U.S.C. § 153(29) (emphasis added).

1 are essential to promote viable competitive entry."⁸ (CC Order 96-325,
2 para 516, Emphasis Added)
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5 518. Much of the information maintained by these systems is
6 critical to the ability of other carriers to compete with incumbent LECs
7 using unbundled network elements or resold services. Without access
8 to review, *inter alia*, available telephone numbers, service interval
9 information, and maintenance histories, competing carriers would
10 operate at a significant disadvantage with respect to the incumbent.
11 Other information, such as the facilities and services assigned to a
12 particular customer, is necessary to a competing carrier's ability to
13 provision and offer competing services to incumbent LEC customers.⁹
14 Finally, if competing carriers are unable to perform the functions of
15 pre-ordering, ordering, provisioning, maintenance and repair, and
16 billing for network elements and resale **services in substantially the**
17 **same time and manner that an incumbent can for itself, competing**
18 **carriers will be severely disadvantaged, if not precluded**
19 **altogether, from fairly competing.** Thus providing
20 nondiscriminatory access to these support systems functions, which
21 would include access to the information such systems contain, is vital
22 to creating opportunities for meaningful competition. (CC Order 96-
23 325, para 518, Emphasis Added)
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26 The TPT may well have focused on the aspect of "the same time", but has completely
27 ignored "in the same manner", and for that matter the precise technical definition of the
28 UNE itself.

29 Further, Supra believes that the operational experience of one "VIP" LEC (i.e., KPMG),
30 cannot suffice or replace the commercial experiences of approximately 600 ALECs who
31 live or die by the real-world performance of BellSouth's CLEC OSS on a daily basis.
32

⁸ 96-325 footnote - Ameritech July 10 *Ex Parte* at 5.

⁹ 96-325 footnote - For these reasons, it is most important that incumbent LECs, which currently own the overwhelming majority of local facilities in any market, provide this information to those new entrants who initially will rely to varying degrees on incumbent LEC facilities. *See e.g.*, AT&T comments at 33-34.

1 Should this become the case, the FPSC would make BellSouth's CLEC OSS (“network”)
2 the only UNE that BellSouth is allowed to provide to ALECs at a degraded level
3 compared to all other UNEs it provides to its competitors that must be provided at parity
4 with what BellSouth provides itself.

5
6 Supra believes that the FPSC erred when it denied the ALECs the opportunity to present
7 testimonies with respect to ALECs’ actual commercial experience in the checklist tract of
8 this proceeding. Supra believes that the integrity¹⁰ of BellSouth's CLEC OSS as a UNE
9 (similar to other UNEs, i.e., local loop, transport, and switching) and the data that
10 documents (i.e., the commercial experience of) ALECs’ “access” to BellSouth's CLEC
11 OSS in the ALECs’ efforts to provide local telephony is information that is necessary and
12 a part of the checklist¹¹. The truth is that KPMG is evaluating how the “network
13 element” is pieced together, according to BellSouth's own definitions, and in doing so,
14 KPMG is testing for conformance to BellSouth's policy and procedures; which is
15 completely different from evaluating BellSouth's CLEC OSS for commercial
16 performance, vis-à-vis, ALECs’ real-life experiences. Further, the performance portion
17 of BellSouth's CLEC OSS documents ALECs’ commercial experience with specific
18 focus on “access” to the “network element” as though it has been completely “tuned to
19 standard” by KPMG. It is therefore necessary that these two evaluations be carefully

¹⁰ Supra notes that in Issues 5, 6, and 7 in Docket No. 960786A-TP (the administrative hearing track), the FPSC considers the integrity of UNEs pursuant to the Act. Supra contends that BellSouth's CLEC OSS is an UNE that happens to permeate almost all of BellSouth's operations; therefore, as an UNE it should likewise be evaluated pursuant to the provisions of the Act.

¹¹ Section 271(c) (2)(B) in several places, calls for “nondiscriminatory access” to several checklist items.

1 separated and accorded the weight they each deserve in order to ensure that the process of
2 “fine-tuning” the network is not construed to suffice for the actual commercial experience
3 of the ALECs. Indeed, the process of “fine-tuning” is *pseudo* real-world compared to the
4 real-world data of the ALECs’ commercial experience (directly resulting from the
5 "performance" they experience in their various transactions daily) brings to this
6 proceeding.

7
8 Furthermore, it has become obvious that there are problems in BellSouth's CLEC OSS,
9 for example errors in PIC or LPIC carrier OCN, **even though the ALEC LSR was**
10 **correct.** How many Florida Public Service Commission complaints were lodged against
11 KPMG, on this one item alone during testing? None? What other ALEC in Florida has
12 been this fortunate?

13
14 15. By not taking the TPT testing all the way to conclusion, including irate customers for
15 whom service should not have been lost due to the "perfect" LSR submitted by KPMG,
16 the process of TPT is quite artificial. The business of an ALEC is not proper order
17 syntax, but satisfied customers. As such the accumulated knowledge of TPT lacks
18 fundamental data regarding customer service and customer satisfaction.

19 Notwithstanding, the FPSC has relegated the ALECs’ “access” experience to the TPT
20 workshops where these real-world experiences will be construed as “comments” as
21 opposed to sworn testimonies¹². At the October 2, 2001, Commission Agenda

¹² “While this testimony is stricken from the hearing track, parties will not be precluded from resubmitting this testimony as comments in the OSS testing phase of this proceeding.” (Order at 7) Order No. PSC-01-1830-PCO-TL, Docket No. 960786-TL, issued on September 11, 2001. (Emphasis added).

1 Conference, it was unclear how the FPSC intends to use these comments, and whether
2 they will be given any weight in determining whether BellSouth receives Section 271
3 approval in Florida. Further, it was also unclear whether these comments will become
4 part of the record that the FPSC will forward to the FCC should the FPSC grant
5 BellSouth Section 271 approval.

6
7 16. It is common knowledge that BellSouth claims that its OSS is a region-wide network.

8
9 It is not. The LENS interface is **not** the same in all nine states according to recent
10 BellSouth documents. However the back office processing problems endemic in one
11 state **will** be replicated from one state to another due to the legacy systems employed.

12
13 17. Indeed, it is based on this fact that BellSouth had asked the FPSC to use the Georgia
14 Public Service Commission's ("GPSC") testing result in its evaluation.¹³ Although the
15 FPSC declined BellSouth's offer, the FPSC concluded that

16
17 [T]hird-party testing of BellSouth's OSS systems under the plan our
18 staff has recommended may actually provide better, more accurate
19 information about the status of BellSouth's systems than might be
20 obtained through further administrative proceedings on this issue.
21 (Order No. PSC-99-1568-PAA-TP, 9) (Emphasis added).
22

23 The FPSC went on to articulate its purported use of the TPT result as follows:

¹³ “. . . , because BellSouth's wholesale customers in Florida use the very same OSS as BellSouth's wholesale customers in Georgia, the results of the testing will be equally applicable in Florida.” (Order at 5) (Emphasis added) Order No. PSC-99-1568-PAA-TP, Docket No. 960786-TL, issued on August 9, 1999.

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[T]hus, if BellSouth's OSS systems pass the third-party testing in Florida, then BellSouth shall be considered to have remedied the OSS concerns that we identified in Order No. PSC-97-1459-FOF-TL for purposes of our recommendation to the FCC on any future application by BellSouth for interLATA authority in Florida. Likewise, if only portions of BellSouth's OSS systems pass the third-party testing in Florida, then BellSouth shall not be required to make any further demonstration to us with regard to those portions. (Order No. PSC-99-1568-PAA-TP, 9-10)

18. In both its evaluations, the U.S. Department of Justice ("DOJ") alluded to the significance of the competitors' "commercial experience" in evaluating BellSouth's application for Section 271. The DOJ stated as follows:

The Department and the FCC place great weight on performance data in evaluating the actual commercial experience of BellSouth's competitors. (*DoJ November 6, 2001, Evaluation, at 31*) (Emphasis added)

The DOJ further stated that

. . . , until the Georgia metrics audit is complete or until there is additional commercial experience with the reported metrics, the [Federal Communications] Commission should not rely solely on BellSouth's performance reports in reviewing otherwise credible complaints that BellSouth is not meeting the requirements of the Act. (*DoJ March 21, 2002, Evaluation, at 31*) (Emphasis added)

However at the front end, LENS, TAG, EDI are all configuration driven programs. As such, Supra has previously [REDACTED]

[REDACTED]

1 [REDACTED]
2 [REDACTED] As such Supra had **no** ability to order UNE combinations (or the UNE-P
3 subset) before June 18, 2001, long after other ALECs had that ability.
4

5 19. Even today the ability to convert BellSouth customers to UNE combinations (or the
6 UNE-P subset) is not very effective. The simple fact is that real world, existing
7 customers have combinations of services that the BellSouth CLEC OSS cannot handle.
8 Placing change orders on existing UNE lines is one thing, but acquiring BellSouth retail
9 customers and converting such to a CLEC UNE customer is much more failure prone.
10 On customers with voicemail, CLASS features, Internet, or DSL, Supra's conversion to
11 UNE orders fall out or are clarified over 65% of the time. Simple orders are processed
12 with fewer problems. Small volumes of orders are processed with fewer problems than
13 higher volumes. The simple fact is that BellSouth's CLEC OSS cannot handle the
14 volume its retail systems can handle.
15 BellSouth's own OSS performs all order error checking within the OSS interface¹⁴, and
16 the interface submits an essentially perfect service order each and every time directly into
17 SOCS to begin provisioning.

18
19 It is important to remember the FCC test that BellSouth relies on to claim that it is in
20 compliance with the Act. BellSouth must provide ALECs with OSS functions in the
21 same time **and manner** in which BellSouth provides the same functions to itself. The
22 TPT may have been designed to test first prong (time), but has completely ignored the

1 second prong (manner). The evidence before the FPSC undisputedly shows that ALEC
2 Local Service Requests jump through more hoops than do BellSouth Service Orders. The
3 effects of such are far-reaching.

4
5 The FCC envisioned that some changes might be necessary to implement these goals:

6 524. We recognize that, although technically feasible, providing
7 nondiscriminatory access to operations support systems functions **may**
8 **require some modifications to existing systems necessary to**
9 **accommodate such access by competing providers...** (CC Order
10 96-325, para 524, Emphasis added)
11

12 What has happened in BellSouth territory¹⁵ is that wholesale replacement of existing OSS
13 interfaces has occurred. Additionally entire **groups** of new OSS systems have been
14 created, with fundamentally complex processing which further separates the relationship
15 of between a BellSouth retail order, and an ALEC wholesale order in regards to "same
16 time and manner".

17
18 Three additional systems parse and reject ("clarify") ALEC orders. Orders submitted
19 from LENS are **not** error checked with any efficiency or completeness.¹⁶ Yet even when
20 the ALEC **assures** that the order for the identical services the ALEC's new customer is
21 currently enjoying are properly and syntactically formatted, the ALEC may yet "fall out".

¹⁴ ROS or RNS.

¹⁵ On the contrary, in Texas, and other Southwestern Bell (SWBT) states, the ILEC retail ordering systems BEASE (business) and CEASE (residential) were modified to handle a different company code and offered essentially unmodified to CLECs by order of the TPUC. This fact was cited to by the FCC in 96-325 at ¶ 506: ¹⁵ "...SBC contends that its provisioning processes are neutral with respect to competing providers of service and that provisioning for competitors does not take longer than provisioning for its own customers"

1 The completed LENS LSR is then submitted to a gauntlet of BellSouth's OSS, including
2 TAG, LEO, and LESOG. In any system the order may be declared syntactically
3 incorrect, it may be more complex than the OSS can handle and fall out for manual
4 handling by BellSouth at any of the three stages, or a properly submitted LSR may cause
5 a BellSouth system error which will auto-clarify an otherwise perfectly good LSR.

6
7 20. If and when the order passes the gauntlet, it is submitted to the same SOCS that the
8 BellSouth interface directly, and electronically submits orders into.

9
10 21. [REDACTED]

[REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

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21 Further, in FPSC Docket No. 001305-TP, BellSouth admitted that the OSS it provides to
22 Supra does not provide non-discriminatory access. (Hearing Transcript, September 24,
23 2001, at 1188)

24

¹⁶ See the finding of this Commission in Docket 980119-TP. The situation is unchanged today. BellSouth has not implemented on-line edit checking in LENS to this day despite clear Commission orders to do so.

¹⁷ The parties' Interconnection Agreement provides that, "BellSouth shall provide the ability to enter a service order via Electronic Interface as described in Subsection 5.1 of this Section."

1 12. Regarding the TPT, the DOJ observed that the

2 “Florida test is broader in scope and promises to provide a more robust
3 assessment of BellSouth’s OSS than did the Georgia OSS test.” (*DoJ*
4 *November 6, 2001, Evaluation, at 6*) (Emphasis added) This
5 observation appears to contemplate the notion that BellSouth’s Florida
6 271 application will include “actual commercial experiences” of
7 BellSouth’s competitors. Thus, it is imperative that the Florida TPT
8 leaves “*no stone unturned*” in its effort to make the right decision in
9 this matter. *Supra* observes that the mere fact that the Florida TPT is
10 “more robust,” is not a promise that this will “. . . , demonstrate that
11 BellSouth’s OSS is nondiscriminatory,”

12
13 In its evaluation, the DOJ noted that ALECs’ access to “fully functional OSS is essential”
14 to their ability to provide services to all types of customers. (*DOJ November 6, 2001,*
15 *Evaluation, at 13*) The DOJ further observed that ALECs are negatively impacted by all
16 of the problems and difficulties that they experience in accessing BellSouth’s CLEC OSS
17 and concluded that:

18
19 . . . the combined effects of contending with these problems – many of
20 which most affect CLECs relying on the UNE-platform and DSL-
21 capable loops – may raise costs for CLECs operating in Georgia and
22 Louisiana, degrade the quality of service CLECs offer to their
23 customers, erode CLEC reputations and customer relationships, and
24 constrain CLECs from aggressively marketing their services. (*DoJ*
25 *November 6, 2001, Evaluation, at 14*) (Emphasis added)
26

27 The DOJ’s observations are not limited to only the states of Georgia and Louisiana;
28 rather these problems are region-wide as evidenced by BellSouth’s claims and the
29 attached [REDACTED] *Supra* has obtained. Thus, until such time as BellSouth
30 conclusively proves that it has and continues to provide ALECs with nondiscriminatory
31 access to network elements, databases and interconnection in accordance with the

1 provisions of Section 271, the FPSC should carefully examine all ALECs complaints and
2 problems with respect to BellSouth's CLEC OSS.

3 The DOJ further notes that when ALECs' orders that are manually processed¹⁸
4 they:

5 . . . , are more likely to be provisioned incorrectly, . . . and observes
6 that manual processing . . . prevents CLECs from relying on their own
7 automated systems and slows CLECs' response to customer inquiries.
8 (*DoJ November 6, 2001, Evaluation, at 13*)
9

10 This evaluation concluded that it is such manual submission of orders that denied Covad
11 *real-time access* to the electronic functions necessary for Covad to maintain good
12 customer relations. (*DOJ November 6, 2001, Evaluation, at 16*) The DOJ then observed
13 that the:

14 [F]CC anticipated such problems when it established that, to achieve
15 checklist compliance, an RBOC must demonstrate development of
16 sufficient electronic and manual interfaces to allow competing carriers
17 to access all necessary . . . OSS functions and, in particular, equivalent
18 electronic access to functions that the RBOC itself accesses
19 electronically. (*DoJ November 6, 2001, Evaluation, at 16*)
20

21 However BellSouth's own witnesses, before this commission last fall in Docket 001305-
22 TP, paint a much different picture regarding the parity of BellSouth's OSS system(s).
23 First, Mr. Ronald Pate, BellSouth's CLEC OSS witness testified to BellSouth's
24 understanding of the FCC's requirements for automation and integration of OSS
25 components:
26

¹⁸ "To manually process an order, BellSouth's service representatives re-type some or all of the information on the CLEC order form into an internal electronic service order. This manual processing increases the expense of CLEC ordering, lengthens the time required to place customers in services, and creates errors that cause service requests to be improperly rejected or to be provisioned incorrectly (*DOJ November 6, 2001, Evaluation, at 14*)

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21 BY MR. TURNER:

22 Q Mr. Pate, what is your understanding of the FCC's
23 definition of nondiscriminatory with respect to OSS?

24 A Their definition is that, as I just stated in my
25 summary, with respect to services where you have a retail
1 analog, you have to provide that **in substantially the same time**
2 **and manner**. Where there is no retail analog, and that's just
3 really specific to unbundled network elements, it has to be
4 provided such that it allows an efficient competitor a
5 meaningful opportunity to compete.

6 Q Thank you. Mr. Pate, what is your definition of a
7 human-to-machine interface?

8 A The human-machine interface primarily deals with two
9 things. One, it deals with where the application itself is
10 developed by BellSouth. That's used in with respect as we talk
11 to the ALEC community. As a result of that application being
12 developed by us, we also maintain it, and you do not have the
13 code or ability to modify it. So any enhancements, we have
14 total control over that. That will prevent you typically from
15 being able to use that, manipulate the data, pull that data
16 into your systems.

17 Another component associated that goes closely with
18 this that's been important to the FCC in its rulings is the
19 ability to integrate information from a preordering standpoint
20 to ordering so that there's not the need of dual entry rekeying
21 **of information**. So those two components -- and that results
22 then, of course, since you don't have the ability to pull your
23 information in or integrate it, human intervention associated
24 with it.

See 9-27-2001 Hearing Transcript Ronald Pate Docket 001305-TP pg
1186 ln 21- pg 1187 ln 24. (Emphasis Added.)

Mr. Pate further testified as to BellSouth's understanding of the FCC's requirements, per
the checklist, for a finding of non-discriminatory access to OSS needed to obtain 271
approval from the FCC:

12 Q Would you consider a human-to-machine interface to be
13 nondiscriminatory according to the FCC's definition?

14 A I'm sorry, could you please ask me that one more

1 15 time.

2
3 16 **Q Sure. Would you consider a human-to-machine**
4 17 **interface to be nondiscriminatory pursuant to the FCC?**

5
6 18 **A No, I don't believe it is based on the FCC's**
7 19 **requirements in itself.** They have made it clear that they want
8 20 the ability for the integration that I just spoke to. But they
9 21 have also made it clear that providing that interface standing
10 22 alone may not get you approval, but it's still capable to have
11 23 those interfaces, because a lot of people, by "people," I mean
12 24 by that ALECs, do not want to invest in funds developing their
13 25 own, which is going to be required to have a
14 1 machine-to-machine. They've got to invest.

15
16 2 Q Is LENS considered a human-to-machine interface?

17 3 A Yes.

18 9-27-2001 Hearing Transcript Ronald Pate Docket 001305-TP pg 1188 ln 12- pg
19 1189 ln 3. (Emphasis Added.)
20

21 Mr. Pate then went on to state:

22 3 Q I guess my question to you, Mr. Pate, I'm confused,
23 4 is that consistent with the answers you have just provided me
24 5 regarding LENS not being nondiscriminatory access?

25
26 6 A What I've said is that I put those all in a group to
27 7 show that BellSouth meets under the FCC the
28 nondiscriminatory
29 8 access issue. **I have never said that LENS as a standalone**
30 **interface by itself would pass the scrutiny of those tests.**
31 9-27-2001 Hearing Transcript Ronald Pate Docket 001305-TP pg 1195
32 ln 3-8. (Emphasis Added.)
33

34 It should be quite clear that despite BellSouth's mantra that it offers non-
35 discriminatory access as to both time and manner, that BellSouth's own OSS witness
36 before this Commission has **already admitted** that LENS provides discriminatory access
37 to OSS **under the FCC 271 rules**, due to its failure to integrate, and as such LENS fails
38 the test of "substantially same time and manner" set as the other condition by witness
39 Pate.

1 This is clearly the problem anticipated by the DOJ above.

2 22. Further the KPMG testing omits testing of circuits and facilities traditionally recognized
3 as the ILECs most profitable. Included in this list not tested are Switched DS1 service
4 (T1 voice service), ISDN BRI (Basic Rate Interface), and ISDN PRI (Primary Rate
5 Interface). It appears that the test plan is limited to those who wish to compete for POTS
6 service, only.

7
8 23. BellSouth believe that the successful completion (FOC) of a CLEC conversion order does
9 not constitute CPNI. As such BellSouth believes that it is not violating CPNI law by
10 using the fact that a Supra LSR received a Firm Order Confirmation (was FOC'ed) to
11 trigger its marketing department of activity on a particular Telephone number. BellSouth
12 has created OSS Systems that "watch" CLEC completed orders, sending the customer
13 information that "BellSouth retains on all of its previous customers" to Marketing where
14 decisions are made as to whether this particular customer is going to be subjected to a
15 winback promotion, or other BellSouth contact.

16 Supra believes the evidence in its possession proves CPNI violations occur every night in
17 batches via this BellSouth process. Supra would like the opportunity to place this
18 evidence before the Florida Public Service Commission in the Administrative track.

19
20 24. Supra Exhibit # 3 is a mailing that was sent to my home on two occasions this year by
21 BellSouth. The first time was when my Supra line of over 4 years was converted from
22 resale to UNE combinations. The second time, my home number was placed in a list of

1 lines scheduled to be disconnected for non-payment. When the line was re-connected as
2 if payment had been made, a second notice from BellSouth was sent.

3 This mailing says nothing about ALEC service. Instead it advertises "Here's important
4 information about your new telephone service!" and it gives an "Order Number (BST)".
5 This is **not** the Supra Purchase Order Number (PON) on this order. Additionally the
6 customer is supplied with the BellSouth PIN number for this account, which would
7 enable the customer to easily convert back to BellSouth, and change line features at the
8 same time. Supra has tried for years to get access to this PIN number, changed on every
9 PON on this line for years. BellSouth refuses to give Supra access to this code, but is
10 now supplying it to Supra's customers as a result of a Supra order for a Supra customer.
11 BellSouth's motives are patently obvious.

12 How many KPMG "customers" received this notice or another winback approach from
13 BellSouth? An answer of zero begs the obvious question, why not KPMG if every other
14 ALEC is subjected to this and the KPMG test was a real world test.

15
16 25. Although BellSouth's service representatives have difficulties reproducing ALECs'
17 submitted orders accurately for manual processing, BellSouth agrees that its service order
18 accuracy rates are low. However, BellSouth contends that the errors responsible for these
19 low accuracy rates should be discounted because "other performance measures suggest
20 that these errors are not affecting customers", meaning ALECs customers. (*DOJ*
21 *November 6, 2001, Evaluation, at 17, 18*) The DOJ concluded that because of manual
22 processing and the effects inherent, "CLECs cannot provision service to their customers
23 as quickly and accurately as BellSouth." (*DOJ November 6, 2001, Evaluation, at 21*)

1 Finally, the DOJ asserted that proper analysis of BellSouth's performance is critical in
2 determining whether local markets should be opened for competition, and in ensuring
3 that once opened that they will remain opened. Thus, the DOJ concluded that reliable
4 operational performance measures are necessary. The DOJ further found that
5 performance measures are deemed reliable "if the measures are meaningful, accurate and
6 reproducible¹⁹." This evaluation states that "[T]he Department and the FCC place great
7 weight on performance data in evaluating the actual commercial experience²⁰ of
8 BellSouth's competitors." (*DOJ November 6, 2001, Evaluation, at 31*) (Emphasis added)
9 Finally, the DOJ concluded that

10 the establishment of reliable performance benchmarks before the FCC
11 approves an application increases the probability that the regulators
12 will be able to ensure that the RBOC continues to provide services at
13

¹⁹ The DOJ explains reliable performance measures as: Meaningful metrics require clear definitions that will allow measurement of activities or processes in a way that has real-world, practical significance. Accurate metrics are faithful to established definitions in that they are correctly calculated from the proper subset of raw data using processes that ensure the data are accurately handled and transferred. Reproducible metrics can be reproduced at future dates for verification purposes because the raw data have been archived for an appropriate period in a secure, auditable form and because changes to the systems and processes used for gathering and reporting metrics are carefully controlled and fully documented. (*DOJ November 6, 2001, Evaluation, at 31, Footnote No. 106*)

²⁰ In ruling on the ALECs' Motion for Reconsideration of the Prehearing Officer's Order, filed on May 2, 2001, the Order states that the ALECs argued "that it is necessary for us [FPSC] to consider [ALECs' actual] commercial experience in this proceeding, because such experience will differ from ALEC to ALEC. They emphasize that the FCC has indicated that actual commercial data provides the best evidence of the status of OSS. (Order at 5) Order No. PSC-01-1252-FOF-TL, Docket No. 960786-TL, issued on June 5, 2001. It is note-worthy, that this is the same commercial experience that the FPSC struck from the administrative hearing track in Docket No. 960786A-TP. In its decision, the FPSC stated, "[W]e agree that the FCC has indicated this information [*ALECs' actual commercial experience*] is important; however, these arguments do not identify any error in the Prehearing Officer's decision. Furthermore, they [*the ALECs*] fail to consider that this type of information will be considered by us in this docket. It will simply be addressed in another venue besides the administrative hearing -- that venue being the third-party test. (Order at 12) By addressing "this type of information" in the TPT, FPSC made it clear that this information will be treated as comments and not sworn testimonies. (Order at 7) Order No. PSC-01-1830-PCO-TL, Docket No. 960786-TL, issued on September 11, 2001.

1 levels such that CLECs will have a meaningful opportunity to compete
2 *(DOJ November 6, 2001, Evaluation, at 31)* (Emphasis added)
3

4 26. Furthermore, on July 22, 2002, the FPSC issued Order No. PSC-02-0989-PAA-TP,
5 Docket No. 000121A-TP, In re: Investigation into the establishment of operations support
6 systems permanent performance measures for incumbent local exchange
7 telecommunications companies. (BELLSOUTH TRACK) in which the Commission
8 orders BellSouth to

9
10 . . . , file a specific action plan by July 30, 2002, that would reduce
11 BellSouth-caused fall-out and result in compliance with benchmarks.
12 In addition, BellSouth shall adjust its Self-Effectuating Enforcement
13 Mechanism (SEEM) to establish a greater monetary incentive to meet
14 the minimum flow-through benchmark for this metric. (Order at 5)
15

16 In reaching this decision, the Commission observed that ALECs' ability to serve their
17 customers, in a timely manner, is critical to their ability to submit orders that will flow-
18 through without human intervention. (Order at 3) The FPSC noted that between
19 December 2001 and March 2002, BellSouth has consistently failed the OSS test for UNE
20 flow-through. (Order at 4) Therefore, the Commission concluded that:

21
22 UNE flow-through is especially important to ALECs in Florida
23 because UNEs are a step in the direction of facilities-based
24 competition. As such, a more proactive approach will be taken to
25 motivate BellSouth to perform at or above the benchmark for all
26 elements of flow-through. (Order at 5)
27

28 Supra contends that the most proactive approach for the Commission is to
29 withhold from granting BellSouth 271 approval until BellSouth's CLEC OSS actually

1 functions as BellSouth claims. Anything short of this finding will not be enough
2 motivation for BellSouth to bring its OSS to that level of “meaningful opportunity to
3 compete.”

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²¹ The Interconnection Agreement further provides that “BellSouth shall provide the ability to enter a service order via Electronic Interface as described in Subsection 5.1 of this Section. The service order shall provide [Supra] the ability to: (i) establish service and order desired features; (ii) establish the appropriate

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directory listing; and (iii) order intraLATA toll and interLATA toll when applicable in a single, unified order.” (June 5, 2001, Award at 24)

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Even more

1 perplexing is this Commission's complete disregard for the findings of fact made by three
2 independent, experienced arbitrators.

3
4 30. To make matters worse, BellSouth continues to engage in an anti-competitive manner by
5 denying ALECs access to BellSouth's billing OSS. No ALEC in Florida has been
6 granted unbundled access to CABS or CRIS, the two billing OSS used by BellSouth, or
7 even the data contained within. Specifically, BellSouth continues to deny Supra
8 information which would allow Supra to reconcile BellSouth's bills, while, at the same
9 time, refusing to provide Supra with complete Call Detail Records which would allow
10 Supra to bill for things such as reciprocal compensation, wireless calls originated and
11 terminated by Supra customers, and various access charges to IXCs. BellSouth has
12 furnished bills in such a manner that there is insufficient detail to allow Supra to audit
13 and/or verify accuracy of the bills.

14
15 31. In CC Docket No. 02-35, FCC 02-147, Joint Application by BellSouth Corporation,
16 BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. for Provision of
17 In-Region, InterLATA Services In Georgia and Louisiana (FCC 02-147), the FCC stated
18 that

19
20 [B]ellSouth must provide competing carriers with complete and
21 accurate reports on the service usage of competing carriers' customers
22 in substantially the same time and manner that BellSouth provides
23 such information to itself, . . . (FCC 02-147, ¶173) (Emphasis added)
24

1 Supra agrees with the FCC’s conclusion that *complete and accurate* bills are very vital in
2 the ALEC’s ability to audit the bills and in-turn bill its end-user customers. This is a
3 critical step that is vital for the ALECs to stay liquid. The FCC recognizes that *complete*
4 *and accurate* bills are critical and necessary to the ALECs general operability – hence the
5 finding that wholesale bills should be provisioned “. . . in a manner that gives competing
6 carriers a meaningful opportunity to compete.” (FCC 02-147, ¶173) Although the FCC
7 determined that BellSouth provides nondiscriminatory access to its billing functions,
8 Supra notes that the mere presence of “non-discrimination” does not indicate ALECs are
9 provided a *meaningful opportunity* to compete in the BellSouth’s service region and with
10 BellSouth. (FCC 02-147, ¶173).

11
12 32. Although several parties filed comments with the FCC describing problems with
13 BellSouth’s billing systems, the FCC ignored these problems in favor of granting
14 BellSouth Section 271 approval by determining that BellSouth “. . . , provides
15 nondiscriminatory access to its billing functions.” Notwithstanding, BellSouth
16 acknowledged that “when including orders into its billing system, a small percentage of
17 orders include errors that require updating and are placed into a ‘hold file.’” (FCC 02-
18 147, ¶175) In making its determinations, the FCC failed to properly take into
19 consideration ALECs’ actual commercial experience, but instead relied on Third Party
20 Testing findings. (FCC 02-147, ¶174). Testimony from Supra, if allowed, would have
21 shown conclusively that orders that go into the hold file often remain there, with the
22 customer in limbo, for over six months. BellSouth has less than three people clearing
23 hold file errors in its nine-state region.

1

2 33. Supra believes that the Florida TPT is the right avenue for the FPSC to address
3 BellSouth's CLEC OSS (i.e., the “network element”). However, Supra equally believes
4 that ALECs’ actual commercial experience that results from their daily interface with
5 BellSouth's CLEC OSS (i.e., the operational performance of the “network”) is a critical
6 and an integral part of the checklist items that are evaluated in the administrative hearing
7 track of this proceeding. Florida ALEC's must be allowed to present evidence, and cross-
8 examine BellSouth on the evidence in this crucial proceeding.

9 Otherwise, the basis for defining the OSS network element for the purpose of granting
10 BellSouth 271 approval for entry into IntraLATA services will be as **defined by**
11 **BellSouth** and not adjudicated before any body.

12

13 **WHEREFORE**, Supra respectfully urges the FPSC not to grant BellSouth Section 271
14 approval without allowing all affected parties to provide relevant actual commercial
15 experience that will assist the FPSC in conducting an exhaustive analysis and thereby
16 reaching a reliable and supportable conclusion.

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Exhibits

Supra Exhibit # 1 [REDACTED]

Supra Exhibit # 2 [REDACTED]

Supra Exhibit # 3 Example of a BellSouth mailing to a customer stating "Here's important information about your new telephone service!" to a Supra customer, showing a BellSouth order number and PIN number not available to Supra. This is triggered by a Supra FOC on this line and is clear violation of Section 22 CPNI rules.

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David Nilson
David Nilson

STATE OF FLORIDA)

) SS:

COUNTY OF MIAMI-DADE)

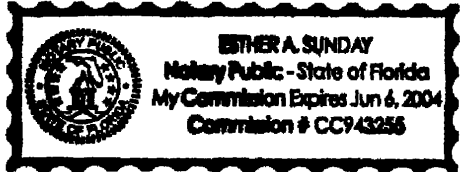
The execution of the foregoing instrument was acknowledged before me this 31st day of July, 2002, by David Nilson, who [X] is personally known to me or who [] produced _____ as identification and who did take an oath.

My Commission Expires:

Esther A. Sunday

NOTARY PUBLIC

State of Florida at Large



Print Name:

End of Testimony

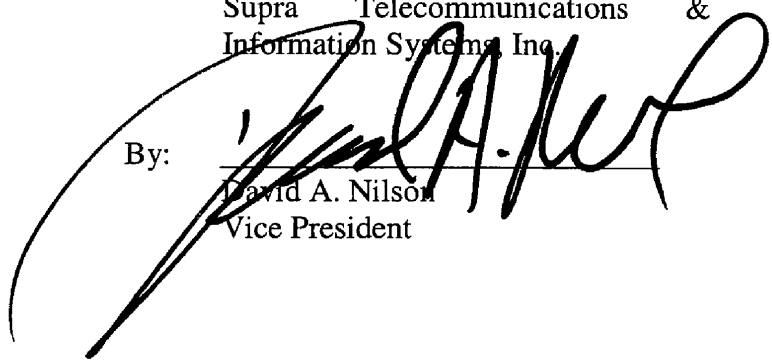
**VERIFICATION OF COMPLAINT FOR
DECLARATORY, INJUNCTIVE AND OTHER RELIEF**

I, David A. Nilson, hereby affirm under penalty of perjury that all of the allegations, matters and facts set forth in Supra Telecommunication & Information Systems, Inc.'s Verified Complaint for Declaratory, Injunctive and Other Relief are true and correct upon personal knowledge, information and belief.

Supra Telecommunications &
Information Systems, Inc.

By: _____

David A. Nilson
Vice President

A large, stylized handwritten signature in black ink, which appears to read 'D.A. Nilson', is written over the signature line and extends upwards into the company name area.

Docket No. 960786B-TP

Exhibit 1 – Confidential

Docket No. 960786B-TP

Exhibit 2 – Confidential

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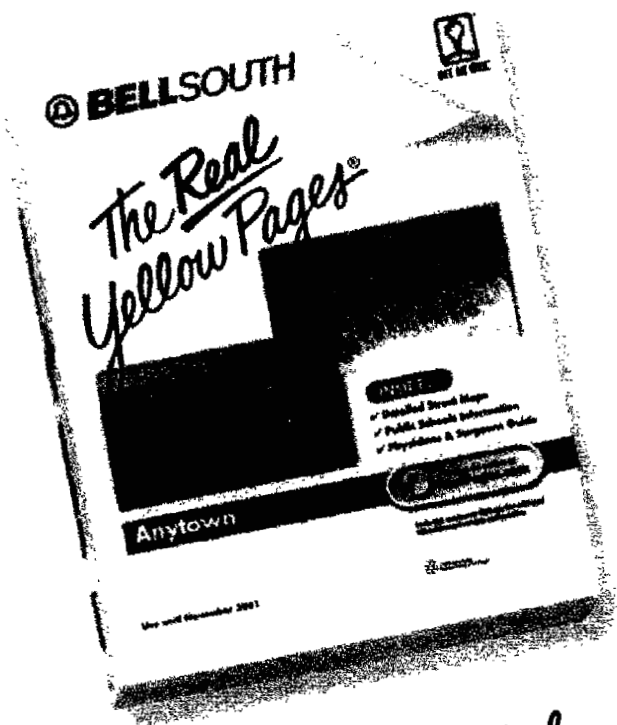
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PIN: 8373

*****AUTO**3-DIGIT 331 T11 P1
[REDACTED] NILSON 4097
[REDACTED] SW [REDACTED] TH ST
MIAMI FL 331 [REDACTED]



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This is a toll-free call to our automated order system. When you call, you will be asked for your order number and PIN that is printed on the other side of this card.

Please note that you will automatically receive the new issue of the directory when it comes out. This number is for ordering a complimentary copy of the current issue of your local directory if you need it now.