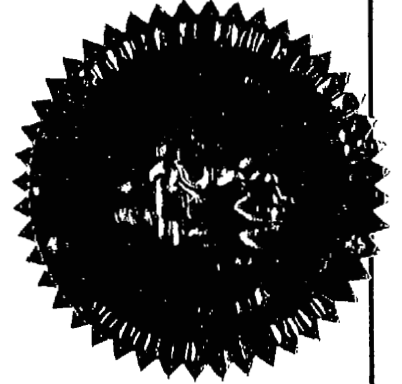


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030349-TP

In the Matter of

COMPLAINT BY SUPRA TELECOMMUNICATIONS  
AND INFORMATION SYSTEMS, INC. AGAINST  
BELLSOUTH TELECOMMUNICATIONS, INC.  
REGARDING BELLSOUTH'S ALLEGED USE OF  
CARRIER TO CARRIER INFORMATION.



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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER J. TERRY DEASON  
Prehearing Officer

DATE: Monday, August 4, 2003

TIME: Commenced at 9:35 a.m.  
Concluded at 10:44 a.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR  
Official FPSC Reporter  
(850) 413-6734

DOCUMENT NUMBER DATE

FLORIDA PUBLIC SERVICE COMMISSION 07213 AUG-7 2003

FPSC-COMMISSIONER DEAN

## 1 APPEARANCES:

2 JAMES MEZA, III, ESQUIRE, BellSouth  
3 Telecommunications, Inc., c/o Ms. Nancy H. Sims, 150 South  
4 Monroe Street, Suite 400, Tallahassee, Florida 32301-1556,  
5 appearing on behalf of BellSouth Telecommunications, Inc.

6 JORGE CRUZ-BUSTILLO, ESQUIRE, Supra  
7 Telecommunications & Information Systems, Inc. (Mia), 2620 S.W.  
8 27th Avenue, Miami, Florida 33133-3005, appearing on behalf of  
9 Supra Telecommunications & Information Systems, Inc.

10 LINDA DODSON, ESQUIRE, FPSC General Counsel's Office,  
11 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,  
12 appearing on behalf of the Commission Staff.

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## P R O C E E D I N G S

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2 COMMISSIONER DEASON: Call the prehearing conference  
3 to order. Could I have the notice read, please.

4 MS. DODSON: Pursuant to notice issued July 29th,  
5 2003, this time and place has been set for a prehearing in  
6 Docket Number 030349-TP, complaint by Supra Telecommunications  
7 and Information Systems, Incorporated against BellSouth  
8 Telecommunications, Incorporated regarding BellSouth's alleged  
9 use of carrier-to-carrier information.

10 COMMISSIONER DEASON: Thank you. Appearances.

11 MR. MEZA: Jim Meza on behalf of BellSouth.

12 MR. CRUZ-BUSTILLO: Jorge Cruz-Bustillo on behalf of  
13 Supra Telecom.

14 MS. DODSON: Linda Dodson on behalf of Commission  
15 staff.

16 COMMISSIONER DEASON: Staff, we have some preliminary  
17 matters; is that correct?

18 MS. DODSON: Yes, we do. There are some outstanding  
19 motions in this docket. BellSouth's motion to strike was  
20 received on July 25th. Supra's response was received on  
21 July 31st. BellSouth wishes to strike exhibits attached to  
22 Witness Nilson's direct testimony, DAN numbers 1, 6, 7, 8 and  
23 19.

24 COMMISSIONER DEASON: And then also 20 has been added  
25 to that in a supplemental filing; is that correct?

1 MS. DODSON: That's correct.

2 COMMISSIONER DEASON: So we have 1, 6, 7, 8, 19 and  
3 20. A response has been filed to the original motion to strike  
4 but not yet to the supplemental; is that correct?

5 MS. DODSON: That's correct.

6 COMMISSIONER DEASON: Okay. Mr. Meza, it's your  
7 motion.

8 MR. MEZA: Thank you. I am happy to report that we  
9 have reached an agreement with Supra on the use of these  
10 exhibits. Mr. Cruz-Bustillo and I met this morning, and he can  
11 correct me if I mischaracterize what we agreed to, but  
12 essentially the motion to dismiss would be denied without --  
13 excuse me. The motion to strike would be denied without  
14 prejudice. Supra would have until August 12th to identify the  
15 specific pages of the 2,000 pages of exhibits that it intends  
16 to use at the hearing and identify specifically the reason why  
17 they believe it's relevant and should be at issue in this  
18 proceeding.

19 We -- BellSouth would then have until August 22nd to  
20 file rebuttal comments or to file a motion to strike the narrow  
21 and defined exhibits that Supra identifies on August 12th.  
22 Supra's filing would be limited to five pages, and so would  
23 BellSouth's reply or motion to strike. That way we alleviate  
24 the concerns, BellSouth's concern about being surprised at the  
25 hearing and having to defend against 2,000 pages of exhibits

1 that Mr. Nilson never mentions, and we can narrow the limit or  
2 narrow the issues for any exhibits for the Commission's  
3 determination. Is that correct, Mr. Bustillo?

4 MR. CRUZ-BUSTILLO: Yes, that's correct. We're just  
5 going to identify those pages in each one of those exhibits  
6 that we intend on using that are relevant to the issues, and  
7 then write a sentence or two on why it's relevant to the  
8 issues.

9 COMMISSIONER DEASON: And you will file that by  
10 August the 12th?

11 MR. CRUZ-BUSTILLO: August 12, which we calculate is  
12 next Tuesday. And then giving BellSouth until the following  
13 Friday, which is the 22nd, to file a, I guess it would be a  
14 corrected -- it would be corrected direct testimony and allow  
15 BellSouth to file a -- ours would be five pages, allow them to  
16 file a five-page response to that. And if BellSouth wants to  
17 renew its motion to strike, Supra has no objection.

18 MR. MEZA: Yeah. And, Commissioner Deason, the  
19 important issue is that if Supra fails to identify a document,  
20 then it waives the right to introduce that document at the  
21 hearing.

22 MR. CRUZ-BUSTILLO: Well, yeah, let me -- right, with  
23 one exception, that on direct testimony, if we fail to file  
24 anything by next Tuesday within those four exhibits, we will  
25 not -- we will have waived the right to utilize those, those

1 entire exhibits or any individual pages on our direct  
2 testimony. What it would not do is for impeachment purposes on  
3 cross-examination of their witnesses or for impeachment  
4 purposes to the extent that I call their witnesses on direct  
5 testimony, I can use any pages from that document for  
6 impeachment purposes.

7 MR. MEZA: That's correct. And it would be limited  
8 to Exhibits 1, 6, 7 and 8.

9 MR. CRUZ-BUSTILLO: Right, for right now. We still  
10 have 19 and 20 to deal with. This agreement has to deal with  
11 1, 6, 7 and 8.

12 COMMISSIONER DEASON: Okay. So we have an agreement  
13 as it pertains to 1, 6, 7 and 8. Okay. So we still have an  
14 outstanding motion as it pertains to Exhibits 19 and 20; is  
15 that correct?

16 MR. MEZA: Yes, sir.

17 MR. CRUZ-BUSTILLO: Yeah. And I was going to allow  
18 Mr. Meza to do his motion and give my response, or his  
19 arguments for that.

20 COMMISSIONER DEASON: Well, first of all before --  
21 staff, I assume this is the first time you've heard the  
22 agreement. It's just been, apparently just been worked out.  
23 Do you have any comments or concerns?

24 MS. DODSON: No. We're in agreement with that.

25 COMMISSIONER DEASON: Okay. Let me ask a procedural

1 question then. The agreement that you all have entered into,  
2 does that need to be acknowledged in some way by the  
3 Commission, by the Prehearing Officer, or is it -- it's on the  
4 record here as part of this proceeding, so, I mean, it's been  
5 set forth and we can just acknowledge that to the extent --

6 MR. CRUZ-BUSTILLO: I think it's on the record. If I  
7 go to use it and I hadn't filed it by the 12th, I think he's  
8 appropriate citing to the record and having you deny me the  
9 right to use it at the hearing.

10 COMMISSIONER DEASON: Very well. Sounds fine to me.  
11 Okay. So we can address now the motion to strike as  
12 it pertains to Exhibits 19 and 20. Mr. Meza.

13 MR. MEZA: Yes, sir. Exhibit 19 is the deposition  
14 transcript of Conrad Ponder that was taken in Arbitration 5,  
15 which is a commercial arbitration proceeding which is  
16 confidential between Supra and BellSouth. Exhibit 20 is the  
17 deposition transcript of Richard Anderson, likewise, also in  
18 that proceeding.

19 BellSouth's grounds for 19 and 20 are primarily the  
20 same in that Mr. Nilson fails to address or even reference  
21 those exhibits in the deposition transcript in his direct or  
22 rebuttal testimony such that that indicates prima facie  
23 evidence that it's irrelevant to the case.

24 Additionally for Mr. Anderson, a cursory review of  
25 that deposition would lead anyone to the conclusion that he has

1 no knowledge whatsoever about the seminal issue in this case,  
2 and that is Operation Sunrise. So introducing his testimony or  
3 using it as an exhibit in Mr. Nilson's testimony, we believe,  
4 is improper.

5 This is another concern that we have, and that goes  
6 towards Mr. Cruz-Bustillo's assertion that he intends to use  
7 deposition transcripts in lieu of live testimony. But  
8 depending on how you rule on 19 and 20, we may not have an  
9 objection to that because the other witnesses will be present  
10 in the hearing. But Mr. Anderson and Mr. Ponder will not --  
11 are not BellSouth witnesses in this case, they were not  
12 BellSouth 30(b)(6) deponents in the commercial arbitration  
13 case, and Mr. Nilson doesn't reference or even address their  
14 testimony in his direct testimony. So we would move the  
15 Commission to strike Mr. Nilson's attempt to bootstrap those  
16 deposition transcripts into this case.

17 COMMISSIONER DEASON: Mr. Cruz.

18 MR. CRUZ-BUSTILLO: Yes, Commissioner Deason. On  
19 Page 6 of the draft prehearing order I had indicated that they  
20 are being filed in lieu of direct testimony. I plan on calling  
21 Mr. Ruscilli, Ms. Summers, Mr. Pate in our direct case in  
22 chief. And Mr. Ponder and Mr. Anderson were added to the  
23 extent that they are relevant to the issues here. So I filed  
24 those five depositions dealing with Operation Sunrise in lieu  
25 of direct testimony right now as a holding place. I intend on



1 subpoenaing them, which will be done this week, so that they  
2 can appear at trial.

3           At trial I do not or at hearing I do not intend on  
4 introducing, which was a concern Mr. Meza raised, the entire  
5 deposition in lieu of having that person testify. What I  
6 intend on doing, which I'm stating on the record, is putting  
7 the person on the stand and asking them questions that did  
8 they -- were they asked this question, did they give this  
9 answer? When they provide the question and the answer, that  
10 information will be placed in the record.

11           What I am concerned about, which has happened in  
12 other litigation not involving BellSouth, is where witnesses  
13 make representations and they have made inconsistent  
14 representations in a deposition, and I want to be able to make  
15 sure that they make the same representation. So they're simply  
16 being filed in lieu of direct testimony right now. I do not  
17 intend on introducing them in their entirety as if stated on  
18 the stand, but I intend on using them for impeachment purposes  
19 and for, and for asking them were they asked this question, did  
20 they give this answer at the time that they're on the stand.  
21 So those, those pages, those relevant questions will be  
22 introduced into the record, but not the entire transcript. So  
23 that's why they're placed there.

24           With respect to Ponder and Anderson, I haven't  
25 finished -- I haven't read their depositions in their entirety.

1 They were placed in there by the witness who drafted the direct  
2 testimony. I intend on reading them. To the extent that they  
3 add a substantive element to the case that is not referenced by  
4 Ruscilli, Pate or, or Summers, then I think that they are  
5 relevant. But if they are not, I have assured Mr. Meza that I  
6 will drop them by Friday or Monday of next week when I've  
7 completed reading the depositions and I'll withdraw the  
8 depositions.

9 COMMISSIONER DEASON: Mr. Cruz, let me ask you this  
10 question. If your intent is to call these individuals -- for  
11 right now let's talk about Witnesses Ponder and Anderson. If  
12 these witnesses are going to be called as adverse witnesses and  
13 it is your intent to ask them questions and then to refer to  
14 the deposition if, if there are incomplete or conflicting  
15 answers, why is it necessary to have these depositions in their  
16 entirety appended to another witness's prefiled testimony?

17 MR. CRUZ-BUSTILLO: Well, it's my understanding with  
18 Commission procedure I need to have something filed for a  
19 witness that I plan on calling on direct testimony. Simply  
20 filing it here at the Commission as a placeholder in lieu of  
21 direct testimony does not mean that I'm going to introduce it  
22 into evidence. The Commission is going to only allow me to  
23 introduce it into evidence. It's not automatic. When I place  
24 that person on the stand, because the issues in another  
25 proceeding were similar, it's like if you, if somebody is

1 charged with murder in state court or federal court, there's a  
2 different cause of action but the exact same discussion  
3 regarding Operation Sunrise. So I was going to ask them: Were  
4 you asked this question regarding Operation Sunrise? Did you  
5 give this answer? And then they will say yes or no. To the  
6 extent that that question and answer was given, that will be  
7 introduced into the record. But I do not intend to introduce  
8 that deposition into the record, and I cannot do that without  
9 you. the Prehearing Officer, being up there during the hearing  
10 saying that I can introduce it. But I don't intend to  
11 introduce the entire deposition; only those questions and  
12 answers that are right on point to the issues that are going to  
13 be heard before this Commission. And so that's why they're  
14 here.

15           And then I have to give them notice because I don't  
16 want Mr. Meza coming back and saying on the day of hearing,  
17 well, you didn't give me notice you were going to use that for,  
18 you know, impeachment purposes. Are you going to use it on  
19 direct? So by filing it, I give BellSouth notice that I'm  
20 using it. I could give BellSouth even more notice. Mr. Meza  
21 asked could I give him the exact pages that I'm going to use on  
22 direct examination as opposed to that. I don't think that I  
23 have to provide him the exact pages with questions and answers  
24 because the deposition all has to do with Operation Sunrise.  
25 But that's what he asked. I don't think that I have to do

1 that. But I don't intend on using -- putting it into evidence.  
2 I simply am having it there so they're on notice that I'm going  
3 to use it in direct examination. But the only thing that's  
4 going to get in the record are those specific questions and  
5 answers that have to do with Operation Sunrise. And then when,  
6 when the witness says yes or no, that information will have  
7 gotten into the record. But the whole transcript will not be  
8 put into the record and you, the Prehearing Officer, will make,  
9 can make sure it doesn't go into the record.

10 COMMISSIONER DEASON: Mr. Meza.

11 MR. MEZA: Yes. A couple of arguments in response.

12 First, what Mr. Cruz-Bustillo is saying he intends to  
13 do is not what Mr. Nilson actually did, which was file  
14 deposition transcripts to which he did not reference to,  
15 reference any information to in his direct testimony. That  
16 requires BellSouth to expend the energy, the time and the  
17 resources to identify areas in a 300, 200-page deposition to  
18 which he doesn't even reference.

19 If Mr. Cruz-Bustillo intends to subpoena these  
20 individuals to appear at the hearing, one of which, Mr. Ponder,  
21 is no longer a BellSouth employee, but if he intends to do  
22 that, then these deposition transcripts would be appropriate  
23 for impeachment purposes. There's no need to bootstrap them to  
24 Mr. Nilson's testimony because obviously it wasn't relevant to  
25 his testimony because he never referenced them.

1 MR. CRUZ-BUSTILLO: I think this will help you. I  
2 don't want to -- when Mr. -- when he's sworn in, under the  
3 rules it's automatically read into the record. Those  
4 deposition transcripts for those two witnesses that we're  
5 talking about right now will not automatically go into the  
6 record, and I'm saying that on the record here now.

7 MR. MEZA: The point is is that it's still  
8 procedurally improper the way it's currently postured before  
9 the Commission. They don't belong attached to Mr. Nilson's  
10 direct testimony. I don't think they belong in the case at  
11 all. And if Mr. Nilson would have read the depo of  
12 Mr. Anderson, he would have come to that same conclusion. And  
13 that's the problem that BellSouth is having is having to defend  
14 against, the eve of trial, a deposition transcript to which it  
15 doesn't belong in the case and to which Mr. Nilson makes no  
16 reference to.

17 COMMISSIONER DEASON: That's fine. Mr. Cruz, as I  
18 understand, what you're trying to do is preserve your ability  
19 to utilize those depositions when these witnesses take the  
20 stand, you want to use it for impeachment or during your  
21 cross-examination or for whatever appropriate purposes you see  
22 fit, and that you felt that it would be appropriate to include  
23 these depositions as prefiled exhibits to put everyone on  
24 notice of that intent; is that correct?

25 MR. CRUZ-BUSTILLO: That is correct, Commissioner.

1           COMMISSIONER DEASON: Okay. What I'm going to do is  
2 I'm going to grant the motion to strike, but I'm going to  
3 acknowledge and recognize on the record right now that you have  
4 given adequate notice that you're going to utilize these  
5 depositions when these witnesses take the stand and you will be  
6 allowed to do that. That is your intent. I think it's  
7 appropriate that you can utilize these depositions. Now they  
8 would be subject obviously to any objections to the question, I  
9 suppose to relevancy and things of that nature, but that's just  
10 in the due course of the cross-examination.

11           MR. CRUZ-BUSTILLO: That's fine.

12           COMMISSIONER DEASON: Okay. Do the parties  
13 understand? Does staff understand?

14           MS. DODSON: Agreed.

15           COMMISSIONER DEASON: Very well. Okay. Now we have  
16 --

17           MR. MEZA: If I may, it's a corollary point, and that  
18 is Mr. Cruz-Bustillo's attempt to use the deposition  
19 transcripts in lieu of live testimony, is that now moot? Are  
20 you saying that you're going to call them or subpoena them so  
21 we don't have to address that issue?

22           MR. CRUZ-BUSTILLO: No. No. No. No. No. I never  
23 said that I was going to use it in lieu of live testimony. It  
24 was filed in lieu of having direct testimony filed. But having  
25 direct testimony filed doesn't automatically mean it goes into

1 the record. And so I've never said that. We intend on  
2 subpoenaing them and we intend on utilizing the deposition that  
3 I take -- I may drop Ponder and Anderson within a week, and  
4 we've already discussed that.

5 MR. MEZA: Yeah. I just --

6 MR. CRUZ-BUSTILLO: Right. But I would use that  
7 deposition and the deposition that I have as a placeholder  
8 that's now been stricken from being prefiled, but you're on  
9 notice that I'm going to use it. But I'm not going to be --  
10 it's not in lieu of. I'm subpoenaing them. But if these two  
11 are not relevant and I find that they're not relevant, I'm  
12 dropping them.

13 MR. MEZA: Okay. Thank you. I apologize for the  
14 delay.

15 COMMISSIONER DEASON: I think we have an  
16 understanding. Okay.

17 Okay. Staff, we can continue with the preliminary  
18 matters.

19 MS. DODSON: Along with the filing of its response to  
20 BellSouth's motion to strike on July 31st, Supra also filed a  
21 motion to strike a diagram on Page 12 of Witness Summers'  
22 rebuttal testimony. A response from BellSouth has not been  
23 received on that yet.

24 COMMISSIONER DEASON: Mr. Meza, are you prepared to  
25 respond to that at this time?

1 MR. MEZA: Yes, sir.

2 COMMISSIONER DEASON: Okay. Mr. Cruz, you may  
3 proceed. It's your motion. I'll give you an opportunity to  
4 address it, and then I'll allow Mr. Meza to respond.

5 MR. CRUZ-BUSTILLO: Yeah. One of the -- the diagram  
6 appears on Page 12 of Ms. Michelle Summers' rebuttal testimony,  
7 and it shows the flow of service orders from SOCS through to  
8 the Sunrise Table and out to MKIS and third-party vendor. But  
9 that is not a, a -- is not -- it doesn't reflect the actual  
10 flow diagram that exists in Exhibit 8 and 9.

11 Exhibit 8, which was just part of our discussion, and  
12 Exhibit 9, Exhibit 9 was attached to our direct testimony, is  
13 Operation Sunrise manual and it contains a diagram showing the  
14 flow and how it occurs, how an order flows. And what I was  
15 concerned about was the motion to strike they just had included  
16 Exhibit 8, which was the Operation Sunrise manual that existed  
17 in 2000 and then it was updated in 2001.

18 And to the extent they were seeking to strike the  
19 diagram that appears in that manual by having that entire  
20 exhibit stricken and then replacing it with this computer drawn  
21 one that matches their testimony, then I was concerned with  
22 that. So, so long as I'm allowed to utilize the, the diagram  
23 that appears in the actual manual, then I will seek to impeach  
24 that diagram that they use. So it was just my concern that I  
25 wanted to preserve formally my right to strike it if, in fact,



1 they were seeking to strike the actual diagram that's included  
2 in the manual.

3 COMMISSIONER DEASON: So let me see if I just, if I  
4 understand. If you are allowed to utilize Exhibit 8, which was  
5 the subject of the previous motion to strike --

6 MR. CRUZ-BUSTILLO: Right. That document -- it's an  
7 actual specific page in Exhibit 8 with some other pages that  
8 describe that diagram.

9 COMMISSIONER DEASON: Okay. And you all have worked  
10 out an agreement as pertains to a number of exhibits, one being  
11 Exhibit 8.

12 MR. CRUZ-BUSTILLO: Yeah.

13 COMMISSIONER DEASON: Mr. Meza.

14 MR. MEZA: Yeah. That's correct. Assuming that  
15 Supra does what it intends to do for those four exhibits  
16 identified, I don't think that we would have a problem or a  
17 dispute on this issue because Mr. Cruz-Bustillo can use  
18 whatever he wants on cross-examination, including the rebuttal  
19 exhibit.

20 COMMISSIONER DEASON: Okay. All right. Mr. Cruz, I  
21 think -- if you have a problem with this, let me know. It just  
22 seems to me that you could just withdraw the motion to strike  
23 at this point and allow you the ability to renew it at the  
24 hearing, if you deem appropriate, but it seems like it may not  
25 be necessary.

1 MR. CRUZ-BUSTILLO: You know what, that's exactly  
2 what I'd do, Commissioner. I'd like to withdraw that without  
3 prejudice at this time to renew it at another time should be  
4 appropriate.

5 COMMISSIONER DEASON: Very well. Staff, you have  
6 that; correct?

7 MS. DODSON: We're in agreement on that.

8 COMMISSIONER DEASON: Okay. Next item, staff.

9 MS. DODSON: BellSouth has filed a partial motion to  
10 dismiss, and that will be -- is placed on the August 5th  
11 agenda.

12 COMMISSIONER DEASON: Yes. That's for -- that would  
13 be taken up tomorrow and it will be addressed by the panel.  
14 Are there other preliminary matters?

15 MS. DODSON: There are some procedural matters.

16 BellSouth has objected to the qualifications of  
17 Witness Nilson and Supra has objected to the qualifications of  
18 Witness Pate.

19 COMMISSIONER DEASON: And there's a possibility that  
20 we may be engaging in voir dire at the hearing. Mr. Meza?

21 MR. MEZA: Yes, sir. BellSouth takes issue with  
22 Mr. Nilson's characterization of the various FCC and Commission  
23 orders that he opines about in his direct and rebuttal  
24 testimony, and BellSouth would just like the opportunity to  
25 voir dire Mr. Nilson on the stand to impress upon the

1 Commission its belief as to why it should or should not give  
2 weight to Mr. Nilson's testimony on these legal issues.

3 COMMISSIONER DEASON: Okay. Mr. Meza?

4 MR. CRUZ-BUSTILLO: I'm Mr. Cruz-Bustillo.

5 COMMISSIONER DEASON: I'm sorry. Mr. Cruz. I am  
6 sorry.

7 MR. CRUZ-BUSTILLO: Yeah. The only, the only concern  
8 that we had when Mr. Nilson was doing his rebuttal testimony is  
9 that in the past -- it's anecdotal, I don't have any specific  
10 case -- I can remember BellSouth arguing that, well, you can't  
11 make that legal argument in a posthearing brief because there  
12 was no discussion at the evidentiary hearing regarding that  
13 legal issue, which I thought this is legal argument, so you  
14 don't need it. But so we thought it was relevant for Mr.,  
15 Mr. Nilson to give his lay opinion and lay out a road map for  
16 the Commissioners and for the staff regarding the thinking and  
17 the analysis on why the law should -- you should draw the legal  
18 conclusion that *Supra* draws regarding the reading of that law.  
19 So we think it's helpful.

20 Obviously he's not a lawyer, but obviously we think  
21 it's helpful for the Commission to, and the staff to read that  
22 legal argument and the Commissioners to read that legal  
23 argument -- not legal argument, his lay opinion regarding the  
24 law. And I think it adds to, you know, reaching a conclusion  
25 in this case.

1           COMMISSIONER DEASON: Well, obviously during your  
2 cross-examination, this goes for both, both parties, you're  
3 certainly entitled to conduct that type of inquiry.

4           I would just caution the parties that if the intent  
5 is to try to have a witness disqualified, I think if you would  
6 review the history of this Commission, that is an extremely  
7 rare occurrence. In fact, I don't know that it has ever  
8 occurred. Whenever we have this type of item come up, it  
9 usually is the Commission's decision that the Commission will  
10 give whatever weight it deems necessary to a particular  
11 witness's testimony.

12           And I understand that the, the nature of the  
13 questions would go to the, to that very question as to try to  
14 give the guidance to the Commission as to the amount of weight  
15 we should give to a particular witness's testimony. I would  
16 just ask that you keep that in mind and to keep this type of  
17 inquiry to a minimum. I certainly don't want to jeopardize  
18 your due process rights. That's not the intent of my comments.  
19 But just be cognizant of how the Commission has treated these  
20 things in the past and let's don't devote an inordinate amount  
21 of time to this particular type of inquiry. Is that  
22 acceptable?

23           MR. CRUZ-BUSTILLO: Yes.

24           MR. MEZA: Yes, sir. And just from BellSouth's point  
25 of view, it was not our intent to seek to disqualify

1 Mr. Nilson. We were just complying with the procedural order  
2 instructing us to identify any issues that we have with a  
3 potential witness, just to give the Commission a heads up on  
4 that.

5 COMMISSIONER DEASON: And I appreciate that.

6 MR. CRUZ-BUSTILLO: And that was my thinking, too. I  
7 read it and I said, well, I need to raise this objection now so  
8 I don't waive it to the extent I need it sometime later on down  
9 the road.

10 COMMISSIONER DEASON: Very well. I think we're on  
11 the same, same page here.

12 Okay. Staff, you may continue.

13 MS. DODSON: There are some outstanding  
14 confidentiality requests which will be handled by separate  
15 orders.

16 COMMISSIONER DEASON: Okay. There are a number of  
17 items. I do note that there is one order pending. I think  
18 that it's going to be issued shortly as it pertains to a number  
19 of exhibits attached to the testimony of Witness Nilson. I'm  
20 reviewing staff's list of items now.

21 First of all, let me just ask the parties, are there  
22 any particular confidentiality matters which you think we need  
23 to address at this point? And now is your opportunity.

24 Mr. Meza.

25 MR. MEZA: Yes, sir. I guess I am confused by

1 Supra's position on confidentiality. And to give the  
2 Prehearing Officer an idea of what is confidential, essentially  
3 every single piece of information that Supra is using to  
4 support its case came from the commercial arbitration  
5 proceeding, and that proceeding and all documents produced in  
6 that proceeding are confidential. So every -- all of Nilson's  
7 exhibits are confidential. There is no question about that  
8 because they were produced in the commercial arbitration  
9 proceeding.

10 To the extent that BellSouth doesn't seek  
11 confidentiality, for instance, its direct and rebuttal  
12 testimony, we do not anticipate in seeking confidential status  
13 for that specific testimony, but we need to -- we would like to  
14 maintain the preservation of the confidentiality of the  
15 exhibits that Supra is attaching. That makes some sense.  
16 Because we have one proceeding, we have this aura of  
17 confidentiality that we'd like to preserve.

18 COMMISSIONER DEASON: And I believe that's the  
19 subject of an order which is pending. Is that correct, staff?

20 MS. DODSON: Yes, that's correct.

21 MR. MEZA: But I think Mr. Cruz-Bustillo filed a  
22 motion to withdraw his notice of intent to seek confidential  
23 classification, to which we filed a request for confidential  
24 classification because it was our information.

25 COMMISSIONER DEASON: Well, let me say something and,

1 Mr. Cruz, I'll allow you to respond in just a second. But just  
2 let me just kind of lay something out here for, maybe to kind  
3 of guide our discussion here.

4 The Commission has a process for parties to avail  
5 themselves of which gives them the opportunity to claim  
6 confidentiality, and that information is treated confidential  
7 until ruled upon by the Commission. And if the Commission  
8 rules that it is confidential, it is confidential until either  
9 the time expires or there is another ruling by the Commission  
10 which indicates that it should be treated differently. I  
11 expect all parties to abide by that process. Sometimes it's  
12 cumbersome, but it's necessary.

13 If there is information which this Commission has  
14 determined to be confidential, it needs to be treated as  
15 confidential until that changes, and I expect that to be abided  
16 by.

17 Now having said that, I know that there may be some  
18 particular nuances that's going on here that maybe need to be  
19 discussed in greater detail. Mr. Cruz --

20 MR. CRUZ-BUSTILLO: Yes, Commissioner.

21 COMMISSIONER DEASON: -- do you have anything to add  
22 to that?

23 MR. CRUZ-BUSTILLO: Yes. Yes, I do. The documents  
24 produced during the proceedings in the commercial arbitration  
25 are considered to be confidential at that time; you can't go

1 out and give them to the press or that kind of thing. The  
2 awards of those tribunal are not. But here we're talking about  
3 information they turned over during that commercial proceeding.  
4 We filed it here and told Mr. Meza before we filed the  
5 complaint that we were going to file it and we were going to  
6 file it with the intent to classify it as confidential and then  
7 follow it up.

8 In that time that we filed that with the appropriate  
9 intent to classify it but before we filed the confidential  
10 request, which I think is 21 days later, they filed their  
11 rebuttal testimony. In their rebuttal testimony they laid out  
12 in detail exactly how Operation Sunrise works, how the  
13 Harmonize fees work, everything. So portions of the direct  
14 testimony that I had blocked out dealt with the words  
15 "Harmonize," "Sunrise" to the extent that that's already been  
16 revealed in rebuttal testimony. It's on the Commission's web  
17 site. That's public.

18 So what I did was there was two parts of my motion to  
19 withdraw the intent to classify. All those portions of the  
20 direct testimony that have to do with Operation Sunrise, which  
21 is everything we were describing that we had blocked out,  
22 that's public because it's already public, it's on the  
23 Commission's web site.

24 With respect to the exhibits, I have marked down only  
25 three exhibits because Mr. Pate has a bunch of exhibits



1 attached to his rebuttal testimony, which is identical to the  
2 exhibits that Mr. Nilson had. And I, I drew up a list right  
3 here. I'm looking at Exhibits 6, 7, 8, 9, 10, 12, 13 and 14.  
4 Six is a 1,000-page training manual, and we've already said  
5 we're going to identify those specific pages. To the extent  
6 that we identify specific pages regarding Operation Sunrise  
7 that are already identified in the rebuttal testimony, then we  
8 would think that that would be public. It's five pages,  
9 probably five or ten pages. I can't see us using more from  
10 that 1,000-page manual.

11           Number 7, it's the minutes regarding the creation of  
12 Operation Sunrise. Obviously the date that Operation Sunrise  
13 started is important; that's relevant. But to the extent that  
14 we identify pages that deal with how Operation Sunrise  
15 functions, that's public. I mean, you read Ruscilli and you  
16 read their rebuttal testimony, they, they made it all public.  
17 And their answer is, their argument is it's -- and it's both of  
18 our arguments. This case comes down to a legal interpretation,  
19 but there's no dispute regarding the facts.

20           Exhibit Number 8, that's the 2000 version of the  
21 manual that's used, and I think that that's public because all  
22 the manual does is describe the diagram that they have as  
23 Ms. Summers' Page 12 and that we are going to use for, to show  
24 BellSouth's explanation of how the service order flows.

25           DAN-9, that's the current version of Operation

1 Sunrise that was last updated in 2001. Exhibits 8 and 9, the  
2 whole exhibits, which are only like 13 or, I don't know, I  
3 forgot how many pages there are, describe in detail how  
4 Operation Sunrise works. And we think that, that is public to  
5 the extent that BellSouth has already provided a detailed  
6 explanation of how Operation Sunrise works to the extent that  
7 the manual is inconsistent with their statements. The fact is  
8 they've made it public.

9 DAN-12, like 6 and 7, I put a "C" around it. How  
10 switches are contacted? That may be confidential to the extent  
11 that it deals with some process they have that's not really  
12 directly related to -- there could be other things not directly  
13 related to Operation Sunrise.

14 DAN-12, a CLEC ordering process flow. This is  
15 identical to an exhibit attached to Pate's rebuttal testimony.

16 And DAN-13, that's the residential customer flow of  
17 the order. That's, again, information made public in  
18 Mr. Pate's rebuttal testimony.

19 And DAN-14, the ALEC preordering flow, this comes  
20 from Pate's original deposition and, again, is consistent with  
21 an exhibit attached to Mr. Pate's rebuttal testimony.

22 So the only thing right now that I have that could  
23 maybe be confidential that are things that are not directly to  
24 Sunrise, which we intend to identify for Mr. Meza, are Exhibits  
25 6, 7 and 10.

1           So I withdrew -- I did two parts, just to summarize.  
2 I withdrew all of the redacted portions of the direct testimony  
3 because it's all been made public already in the rebuttal  
4 testimony. And then with respect to the exhibits, I'm saying  
5 that Exhibits 8, 9, 12, 13 and 14 are public and that maybe 6,  
6 7 and 10 are not. But to the extent that we identify specific  
7 pages that are directly relevant to the flow of the service  
8 order, which is what BellSouth tried to describe in its  
9 rebuttal testimony, those pages should be public.

10           And regarding -- one final thing. Regarding the  
11 nondisclosure provision in our prior agreement regarding  
12 commercial arbitration, that nondisclosure agreement only  
13 applies to the extent that the party doesn't make the  
14 information public. If one party makes the information public,  
15 to the extent that BellSouth turns this information over to us  
16 and has now chosen to make it public as opposed to us running  
17 and making it public and then trying to enforce the  
18 nondisclosure provision, BellSouth is the one that's made it  
19 public. So they can't use the nondisclosure provision to say  
20 we want this information confidential because we don't want  
21 anybody to know to the extent that it may, and I don't know  
22 that it does, but it may conflict with their rebuttal  
23 testimony. So that's one part of our motion.

24           And then we'll get to our second part, which is to  
25 the extent that you do grant confidential classification, I

1 have asked for this Commission to lift that confidential  
2 classification at the end of the hearing as opposed to 18  
3 months from now to the extent the Commission does find a  
4 violation. Because I have some case law in my prehearing  
5 statement that says that a party cannot hide behind a  
6 nondisclosure provision to prevent public disclosure of a  
7 violation of the law, so.

8 COMMISSIONER DEASON: Mr. Meza?

9 MR. MEZA: Yes. Thank you.

10 First, I think Mr. Cruz-Bustillo is failing to  
11 recognize the distinction between referencing certain  
12 procedures in direct testimony, in rebuttal testimony and the  
13 actual exhibits. BellSouth has told this Commission and, to a  
14 certain extent, the public what exactly Operation Sunrise is.  
15 But simply because a document refers to Sunrise and that the  
16 public-filed testimony refers to Sunrise doesn't make a  
17 confidential exhibit public. I mean, the fact that they share  
18 the word "Sunrise" or that they both talk about "Sunrise" does  
19 not make them both public documents, and that is a very  
20 important distinction.

21 We provided this information to Supra in the  
22 commercial arbitration proceeding because of the agreement that  
23 we had with Supra that anything produced would be considered  
24 confidential. The fact that we have a program called Operation  
25 Sunrise is not confidential. The draft of the minutes and the

1 development of the program is confidential. I mean, it's a  
2 trade proprietary secret.

3 And our request for confidential classification is  
4 two-fold. One, it's because we are contractually obligated to  
5 keep it confidential and, two, is that it meets the definition  
6 of proprietary trade secret under Florida law. And I would  
7 urge the Commission to maintain the confidential status of the  
8 exhibits that Supra has filed because those exhibits -- we have  
9 not disclosed the contents of those exhibits.

10 COMMISSIONER DEASON: Okay. Well, let me reiterate  
11 what I said earlier. There is a process; and if there are  
12 items that have been classified as confidential, they shall  
13 remain confidential until there is a ruling otherwise by this  
14 Commission. I expect all parties to abide by that and not  
15 disclose any information that has been treated confidential.

16 Mr. Cruz, I understand it is your position that there  
17 may have been some information, if not all, that you believe  
18 that on their own accord that BellSouth has made public. I  
19 would encourage both parties to sit down and see if you can  
20 reach common ground and see if there's any agreement if any of  
21 the information has been made public and to have an agreement  
22 that that information can be utilized. Absent such an  
23 agreement, I'm going to expect that the confidential status  
24 that has been granted by this Commission remain confidential.  
25 Also, if this Commission has not yet ruled on a request for

1 confidentiality, it shall remain confidential until there is  
2 such a ruling.

3           Mr. Cruz, I understand that at some point you may  
4 wish to file a motion with the Commission depending upon the  
5 outcome of this case, and you're certainly free to do that.  
6 But -- and the Commission will take that motion up in due  
7 course. But until that motion is ruled upon, the confidential  
8 nature has to remain as such until there is a different ruling  
9 by the Commission. Is that understood? It seems pretty clear  
10 to me.

11           MR. CRUZ-BUSTILLO: Yes, Commissioner, that's  
12 understood. The motion, I think, that you told that I could  
13 file later, I already filed.

14           COMMISSIONER DEASON: It's been filed?

15           MR. CRUZ-BUSTILLO: Yeah, it's been filed to ask for  
16 it. So I guess I would renew it then with the panel?

17           COMMISSIONER DEASON: Yes. I --

18           MR. CRUZ-BUSTILLO: That's to lift it. Right now, if  
19 I understand, the procedure is once a request for confidential  
20 classification is requested, everything remains confidential  
21 until you rule; right?

22           COMMISSIONER DEASON: That's correct.

23           MR. CRUZ-BUSTILLO: Right. So there's been no  
24 ruling. So then we would wait -- once you make that ruling,  
25 then I would ask if you, because you could deny it, but if you,

1 if you granted it, then I would renew my motion at that time.

2 COMMISSIONER DEASON: I will allow you -- I think  
3 that is the proper procedure, staff; is that correct?

4 MS. DODSON: That's correct.

5 MR. CRUZ-BUSTILLO: Okay.

6 COMMISSIONER DEASON: And obviously Mr. Meza could  
7 respond to that and I'm sure that he would respond. All of  
8 those matters would be taken up in due course.

9 But for the -- we do have a hearing scheduled for  
10 August 29th, and during the course of that hearing anything  
11 that has either been classified confidential or has claimed to  
12 be confidential will have to be treated as such during the  
13 course of that hearing, unless there's a ruling by the  
14 Commission to the contrary.

15 MR. MEZA: Commissioner Deason, if I could just ask  
16 for one point of clarification, and it's a result of the unique  
17 situation that we find ourselves in in this case, and that is  
18 Supra doesn't have any facts. It's all based upon documents  
19 that BellSouth has produced and is now using to support their  
20 interpretation of the process and the law that's implicated.

21 I would ask that we get an understanding from Supra  
22 that to the extent they have any additional filings in this  
23 case that arguably involves something that has already been  
24 designated as confidential, that it remain so until there is a  
25 ruling from this Commission on Mr. Cruz's motion or reurged

1 motion.

2 For instance, in his August 12th filing he's going to  
3 identify why he thinks certain portions of exhibits are  
4 relevant to this case, and those very exhibits are right now  
5 confidential. And so I want to make sure that by filing this  
6 motion on the 12th that, that the confidential status, even if  
7 it's temporary, remains until the Commission resolves the  
8 issue.

9 COMMISSIONER DEASON: Mr. Cruz?

10 MR. CRUZ-BUSTILLO: Yeah. I was going to say that  
11 the -- to the extent that the, the documents will talk about  
12 where a service order flows, and I'm going to say this  
13 document, I'm not saying what's in the document, is relevant to  
14 the service order being taken from SOCS but prior to the  
15 conversion being complete or something like that, well, that's  
16 not confidential and that's, you know, that's in the rebuttal  
17 testimony. And as long as I'm not -- all I'm going to do is  
18 I'm going to link the page number that's bated stamped with why  
19 it's relevant. But the things that are relevant to this  
20 proceeding are all public. So as long as I don't, as long as I  
21 don't disclose the contents and you have notice of it, you now  
22 can defend against that page.

23 MR. MEZA: Fair enough. I just don't want you  
24 disclosing --

25 MR. CRUZ-BUSTILLO: Right. I'm not going to give a



1 handwritten -- I'll say I got it from R-5 or whatever, but.

2 MR. MEZA: Okay. Thank you.

3 COMMISSIONER DEASON: I think we have an  
4 understanding.

5 MR. CRUZ-BUSTILLO: I still have another, another  
6 issue.

7 COMMISSIONER DEASON: Please proceed.

8 MR. CRUZ-BUSTILLO: One of, one of the things in the  
9 prehearing statement was a statement of requirement that cannot  
10 be complied with.

11 The depositions which we talked about earlier, and  
12 let's use Pate, Ruscilli and Summers, you know, I put them on  
13 the stand in our direct case and I asked them: Were you asked  
14 this question? Were you given this answer? And all of it,  
15 because I've gone through it in detail, deals with the service  
16 flow, the flow of the service order, and that's arguably  
17 public.

18 So to the extent that -- you know, I put in here on  
19 Page 18 in my prehearing statement, I had one or two  
20 alternatives. One was that I'd be allowed for, on cross or,  
21 you know, on direct, direct testimony but in crossing the  
22 hostile witness saying, you know, were you asked this question?  
23 Did you give this answer?

24 There's either one or two ways to do it: Either  
25 allow me to do that, and BellSouth will obviously see those

1 pages because I want to, I'll have pages for everybody, and  
2 that goes into the record because the witness is testifying to  
3 it, or we all look at, you know -- this, this, I don't think,  
4 is practical. We all look at the yellow, the red envelope  
5 seeking the question and the answer and then it's typed into  
6 the record. And the reason I don't think that that's a  
7 reasonable alternative is, you know, the testimony -- you know,  
8 testimony has the greatest impact on the Commissioners. You're  
9 sitting here listening to the story in front of you and you  
10 really need to hear the question and the answer coming from the  
11 witness, and I think that that has a greater impact on the  
12 Commission coming to a decision than saying let's look at the  
13 question and the answer and then the court reporter will  
14 transcribe it as if asked and answered.

15           So what I wanted to do was to the extent that these  
16 questions, and they do, are directly relevant to the Operation  
17 Sunrise and how the service order flows, that that be allowed,  
18 that I be allowed to utilize the depositions of Ruscilli,  
19 Summers and Pate in, in direct testimony and that be asked on,  
20 right here, be transcribed into the record. Because, again, I  
21 don't think that that's public because it's directly relevant  
22 to how it works.

23           COMMISSIONER DEASON: Well, Mr. Cruz, let me say --  
24 and, Mr. Meza, I'll give you an opportunity to respond in just  
25 a moment. To the extent there is confidential information

1 contained within the depositions -- and I don't know if that's  
2 the fact or not. Is it, is it generally the case that there is  
3 confidential information in depositions or not?

4 MR. CRUZ-BUSTILLO: Well, no. The only thing that  
5 makes it allegedly confidential is the fact that it was taken  
6 in Arbitration 5. But the questions and answers are  
7 specifically to Operation Sunrise and exactly what Summers  
8 described in her rebuttal and exactly what Ruscilli described  
9 in his rebuttal. And to the extent that that rebuttal didn't  
10 exist, then BellSouth can say it's still private because it's  
11 not out there.

12 But the only questions I want to ask are, you know,  
13 do you work for MKIS; yes or no? The service order flows on a  
14 nightly basis. Yes, it does. Do you get service orders from  
15 anywhere else? No, we do not. I mean, do you get the  
16 information regarding the service order from any other source?  
17 No, we get it from Harmonize only. You know, things like that.

18 COMMISSIONER DEASON: Well, if those, if those  
19 questions and answers constitute confidential information,  
20 there's one of two courses: Either we'd have to close the  
21 hearing for you to verbalize those questions and get an answer,  
22 which is not an optimal situation, or you would have to have  
23 that information presented to the Commission in a red folder  
24 and you would have the Commission refer to a specific question  
25 and answer and ask the witness is that question and answer

1 still correct today and try not to reveal any confidential  
2 information. I know that is burdensome and cumbersome, but it  
3 has been done many, many times at this Commission very  
4 successfully, and you get the opportunity to present it right  
5 in front of the Commissioners the information that you think is  
6 relevant and necessary.

7 MR. CRUZ-BUSTILLO: Those were the two options that I  
8 outlined in my thing, and I'll do either one of those. And if  
9 Mr. Meza agrees with me that we can do it live, fine, I'll do  
10 the envelopes. That's what I was planning on doing. For each  
11 question and answer I was going to make a specific copy, have a  
12 specific red folder, so that way you don't mix them up and  
13 stuff like that and say this is this question and this is that  
14 answer. I'll do it that way. That's fine with me. But if  
15 Mr. Meza will agree with me at some point between now and then  
16 to say, fine, those questions and answers are fine to stay  
17 public. But I'll do the red envelopes.

18 COMMISSIONER DEASON: And that is a very attractive  
19 alternative, too. To the extent the parties can sit down and  
20 say that this question and answer, you know, is public  
21 information, well, then it would avoid a lot of unnecessary  
22 effort to, to go through during the hearing.

23 MR. CRUZ-BUSTILLO: Because I don't think there's any  
24 disagreement on the facts.

25 COMMISSIONER DEASON: Okay. Mr. Meza, I'll allow you

1 an opportunity to respond.

2 MR. MEZA: Sure. I think you hit the nail right on  
3 the head. Mr. Cruz-Bustillo and I will get together. And if  
4 he tells me in advance the questions that he's going to ask,  
5 I'm sure we'll agree on whether something is confidential.

6 Now in all candor, I think that we can reach an  
7 understanding of the topics that are public. And I don't want  
8 to burden the Commission or Mr. Cruz-Bustillo in his direct  
9 examination to the extent it's unnecessary. So we'll work  
10 together to come up with some --

11 COMMISSIONER DEASON: Well, I would encourage you to  
12 do so. And I would also, to the extent that there's not an  
13 agreement reached, Mr. Cruz, you're going to have the ability  
14 to conduct the necessary cross-examination. I want to assure  
15 you of that. It may be a little time consuming, but if you  
16 have any doubt when you, before you verbalize a question, you  
17 may, at the hearing itself you may wish to refer to counsel,  
18 opposing counsel and say I'm now about to inquire on page  
19 whatever of a deposition. And it's better to do that sometimes  
20 than to blurt out something that is already -- it's kind of  
21 like trying to get toothpaste back in the tube after it's  
22 blurted.

23 MR. CRUZ-BUSTILLO: We will be very cautious,  
24 Commissioner.

25 COMMISSIONER DEASON: Okay. Anything -- is there

1 anything else concerning confidential information?

2 MS. DODSON: I have nothing further.

3 COMMISSIONER DEASON: Okay. We've been, we've been  
4 proceeding with a number of preliminary matters which staff has  
5 set forth. I'm going to open it up now to the parties to  
6 address any preliminary matters. We may have already addressed  
7 those matters during the course of addressing staff's, but,  
8 Mr. Meza, you may proceed.

9 MR. MEZA: Thank you. I have three, and one just  
10 point of inquiry.

11 The first procedural issue is the panel testimony  
12 that BellSouth filed for the rebuttal testimony of Mr. Wolfe  
13 and Ms. Summers. I don't think that we were required to seek  
14 Commission approval to file panel testimony, but to the extent  
15 we did, I would like to have permission to offer them up at the  
16 same time on their cross in my case in chief.

17 COMMISSIONER DEASON: Okay. Mr. Cruz, do you have  
18 any objection to Witnesses Summers and Wolfe on rebuttal  
19 presenting that testimony as a panel?

20 MR. CRUZ-BUSTILLO: You know, I have the -- I don't,  
21 I don't know what panel testimony is.

22 COMMISSIONER DEASON: I'm sorry.

23 MR. CRUZ-BUSTILLO: Can somebody explain to me what  
24 panel testimony is so I can know whether or not I have an  
25 objection and why they did it? Because if it's going to hamper

1 my cross-examination, I have an objection.

2 COMMISSIONER DEASON: Very well. Mr. Meza?

3 MR. MEZA: Yeah. It's not going to -- well, it  
4 shouldn't hamper your cross-examination. It's done routinely  
5 in issues that involve similar facts but a different area of  
6 expertise. Ms. Summers is the downflow expert on Sunrise,  
7 where Mr. Wolfe is the technological expert on Sunrise.  
8 Together they form our opinion on Sunrise. And so you can  
9 direct each question, and it's identified in their rebuttal  
10 testimony who's answering which specific question. And if you  
11 believe that a question is not appropriate or you don't know  
12 who is the person to answer it, you can say this is my  
13 question, who is the --

14 MR. CRUZ-BUSTILLO: Let me ask this. Like when I --  
15 I don't know whether they do that here, but do they invoke the  
16 rule so the witnesses have to sit outside? Because I wouldn't  
17 want Mr. Wolfe to be listening to Ms. Summers' answer and  
18 Ms. Summers listening to Wolfe's answer before they give the  
19 answer.

20 COMMISSIONER DEASON: Well, you may have an objection  
21 then because they're going to be sitting side by side sharing a  
22 microphone.

23 MR. CRUZ-BUSTILLO: Yeah. No. No. No. No. Then I  
24 want to make an oral motion to, to allow me the opportunity to  
25 invoke the rule and allow one witness to sit outside while I

1 ask those questions in the testimony of her so that each party  
2 doesn't hear the other one answering.

3 COMMISSIONER DEASON: So now you're requesting that  
4 as it pertains to Witnesses Summers and Wolfe?

5 MR. CRUZ-BUSTILLO: Oh, yes, absolutely. Oh, yeah.  
6 I didn't even know what panel was, but that just totally  
7 prejudices the other party to hear what -- one witness to hear  
8 the other witness answering.

9 COMMISSIONER DEASON: Okay. Let me -- first of all,  
10 let me add a little bit to what Mr. Meza said.

11 The Commission from time to time finds it beneficial  
12 to use a panel of witnesses, and where I have found that in the  
13 past to be beneficial is that we routinely get questions that  
14 get referred to another witness, and either that witness has  
15 already testified and you have to recall that witness or that  
16 testimony, we have to remember what questions didn't get  
17 answered by that witness, it's just a little cumbersome. I  
18 mean, it can be done. We have found that it is more efficient  
19 to ask the question -- and if there is a -- to a panel, and one  
20 witness can answer and another witness can elaborate, if  
21 necessary. It's just an efficiency.

22 If it is your concern that there may be conflicting  
23 testimony between these two witnesses and you want to maintain  
24 the ability to utilize that in your case, well, then I can, I  
25 can understand why you would not want the utilization of a



1 panel.

2 MR. CRUZ-BUSTILLO: And I don't know that there is  
3 because I haven't read it. I read their testimony, the panel,  
4 and but now I need to go back and read it with -- looking at it  
5 with that, you know, seeing if they are, in fact, conflicting.  
6 Because I actually thought when I was reading it that it was  
7 Summers' testimony and for some reason they had written Wolfe  
8 by mistake, so.

9 COMMISSIONER DEASON: Let me offer this for your  
10 consideration. You know, you made the point earlier that it is  
11 beneficial to have Commissioners have things right in front of  
12 them, hear testimony, see exhibits in front of them. For the  
13 continuity of your cross-examination so that Commissioners get  
14 the best picture, sometimes it's best to have the answers  
15 presented right then when the question is answered instead of  
16 having that question basically tabled and referred to another  
17 witness, then have that witness come forward in the midst of  
18 another set of testimony. That's something for you to  
19 consider.

20 I'm not, obviously not telling you how to present  
21 your case. I can just tell you that panels in the past have  
22 worked. I don't know if it's appropriate for these two  
23 witnesses or not. I have not read these witnesses' testimony  
24 as of yet, so I don't know if there's a potential there for  
25 there to be conflicts. I do know that from time to time the

1 subject matter that this Commission addresses is very complex,  
2 which I'm sure you can have an appreciation of, and that there  
3 are questions that are asked which are better answered by a  
4 different individual, and having the panel sometimes  
5 facilitates that. That's the only reason for a panel.

6 Let's do this: I'm going -- you've been put on  
7 notice of the desire of BellSouth to have these two witnesses  
8 appear as a panel. You have a better understanding of what the  
9 panel, what that procedure is. I will allow you the  
10 opportunity to review that rebuttal testimony, perhaps confer  
11 with Mr. Meza, if you deem appropriate, and then allow you the  
12 opportunity to make an objection to the utilization of a panel  
13 at the hearing. And if the Commission agrees that it is not  
14 appropriate, that it would prejudice your case to have these  
15 witnesses appear as a panel, well, then we will, we will not  
16 allow that.

17 MR. MEZA: Okay. Thank you.

18 COMMISSIONER DEASON: But I think it's appropriate,  
19 instead of me making a ruling at this point based upon the  
20 limited information that I have, that it's best to give you an  
21 opportunity to better digest it and to discuss it with opposing  
22 counsel to see what is the best procedure to follow.

23 MR. CRUZ-BUSTILLO: Thank you, Commissioner.

24 COMMISSIONER DEASON: Mr. Meza, any questions?

25 MR. MEZA: No, sir. Thank you.

1 COMMISSIONER DEASON: Okay. Other preliminary  
2 matters.

3 MR. MEZA: Yes, sir. We would like to take rebuttal  
4 and direct at the same time. I don't think that should be  
5 controversial.

6 MR. CRUZ-BUSTILLO: That's the first I've heard of  
7 that. What does that mean?

8 MR. MEZA: It's to avoid, in my case, putting on  
9 Mr. Ruscilli twice, putting up his direct, allowing you to  
10 cross him, then putting up the rebuttal, putting him up as a  
11 rebuttal witness and you cross him again. You just -- and the  
12 same thing with Mr. Nilson. Mr. Nilson would give his direct,  
13 his rebuttal, prefiled, he would give his five-minute summary,  
14 and I'll cross him on both sets of testimony.

15 MR. CRUZ-BUSTILLO: Can I think about that?

16 COMMISSIONER DEASON: Surely you can.

17 MR. CRUZ-BUSTILLO: Can we defer that until the  
18 morning of?

19 COMMISSIONER DEASON: Mr. Meza, can you wait that  
20 long?

21 MR. MEZA: Sure. But at this rate -- I mean, I'd  
22 like to get finished in a day. I mean, that's -- it's just an  
23 expedient --

24 MR. CRUZ-BUSTILLO: Oh, no, no, no, no, no. I intend  
25 that this hearing is going to be done in a day. I'm on a plane

1 back. I don't want to drag this out. Just let me just think  
2 about it.

3 COMMISSIONER DEASON: Just let me offer an  
4 observation that the Commission from time to time -- in fact,  
5 it's probably becoming almost the norm around here is to take  
6 direct and rebuttal. We find it efficient and it usually comes  
7 about allowing parties to present their case in a more concise  
8 and effective manner. But that's not to say it is the rule and  
9 it can vary from case to case, and obviously you need the  
10 ability to, to digest that and make a decision. I can  
11 understand that.

12 MR. MEZA: I would just point out that I think I need  
13 more advanced notice than the day of the hearing so I can  
14 prepare my cross-examination. It's going to depend.

15 COMMISSIONER DEASON: Okay. Okay.

16 MR. CRUZ-BUSTILLO: Well, you know, we agree to do  
17 it. I've just been told that what you just were telling me, in  
18 my ear while you were saying it, the Commissioner is right, you  
19 know. I just want to see how that, you know --

20 COMMISSIONER DEASON: Let's do this --

21 MR. MEZA: We agree.

22 MR. CRUZ-BUSTILLO: I'd like to raise the objection,  
23 if I have to, on the morning of the hearing so that the  
24 Commissioner knows that I may raise it. But there's a  
25 99 percent chance I won't. I agree to doing --

1           COMMISSIONER DEASON: Let's do this. Let's make  
2 the -- we're going to go forward with the assumption we're  
3 going to take direct and rebuttal together.

4           MR. CRUZ-BUSTILLO: At the same time.

5           COMMISSIONER DEASON: And -- but I will allow you the  
6 flexibility to make an objection to that. But instead of the  
7 morning of the hearing -- let's see, this hearing is scheduled  
8 for the 29th. If you could file that by Monday, I assume,  
9 which would be the 24th or 25th, whatever that day is of that  
10 week.

11          MR. CRUZ-BUSTILLO: 25th.

12          COMMISSIONER DEASON: 25th. If could you file that  
13 by the 25th, then that would put all parties on notice and then  
14 we can discuss it at the hearing. But at least parties would  
15 be put on notice that there's a concern.

16          MR. CRUZ-BUSTILLO: Thank you for that reservation,  
17 although I don't think I'm going to do it.

18          COMMISSIONER DEASON: Very well.

19          MR. MEZA: The last procedural issue that I have is I  
20 just want to make sure that Supra is on notice and that staff  
21 is on notice that I reserve the right to cross-examine my own  
22 witnesses to the extent Mr. Cruz-Bustillo puts them on in his  
23 direct. I don't think that should be an issue, but --

24          COMMISSIONER DEASON: I believe that's understood.  
25 Mr. Cruz, do you have a concern with that?

1 MR. CRUZ-BUSTILLO: No. In fact, I was going to ask  
2 almost something similar to what he just asked, which is on,  
3 when I call them on direct, I want to treat them as a hostile  
4 witness, which means ask them leading questions, which is what  
5 exactly he's asking and I think. Absolutely.

6 MR. MEZA: Sure. I don't have a problem with that.

7 MR. CRUZ-BUSTILLO: I don't have a problem with that.

8 COMMISSIONER DEASON: Very well.

9 MR. MEZA: My last question of inquiry is relating to  
10 the submission that Supra did as to questions of fact and law.  
11 BellSouth did not submit a specific set of questions in law as  
12 did Supra. It was our position that the issues themselves  
13 encompass the issues of fact and law and that the posthearing  
14 briefs will address all issues of fact and law that come out in  
15 the hearing.

16 The lack of a filing should not be construed as  
17 BellSouth's consent to those issues and facts identified by  
18 Supra. To be honest with you, I've never, I've never  
19 experienced a case where there was a set of issues and then  
20 issues of fact and law later identified in the prehearing  
21 statement. I just want to reserve my right to object to that.

22 COMMISSIONER DEASON: Well, I read that, and the way  
23 I took that was that that was Supra's way of better presenting  
24 their position on the issues and that's what I took it. Now if  
25 it's an attempt to introduce new issues which are in addition

1 to those that are already described, I need to understand that.  
2 Mr. Cruz.

3 MR. CRUZ-BUSTILLO: Commissioner, no, absolutely not,  
4 not new issues. As I tried to explain it to the staff was  
5 that, you know, you file a breach of contract, you have duty,  
6 breach, causation, damages. Well, the judge makes -- the  
7 defense trial makes certain findings of fact during the case  
8 regarding each element.

9 When I was reading the prehearing statement, I saw it  
10 was provide statement of facts. So what I intended it to be,  
11 and I put it under Issue 3, is these are the findings that I  
12 believe the Commission would make and it would hit point A, B,  
13 C, D in order to find the conclusion of the issue, which is  
14 breach of contract or, in this case, are they sharing? Well,  
15 you would want to find so that the Commissioners -- I'm trying  
16 to, you know, provide a road map.

17 And then on the questions of law, if, in fact,  
18 Mr. Meza and I both believe that this comes down to a question  
19 of law and that the facts will be the same, virtually,  
20 virtually no dispute, no dispute over the facts, that then the  
21 questions of law provide a road map for an analysis that I  
22 believe that the Commissioners would make in order to draw the  
23 conclusion that the FCC did, in fact, prohibit this. So that  
24 was it. It was to provide that road map and that analysis that  
25 sometimes you don't, you don't find until the posthearing

1 brief. And since the prehearing statement asked for it, I  
2 provided it.

3 COMMISSIONER DEASON: And, and that's the way I took  
4 that, that prehearing statement and what was incorporated in  
5 the draft prehearing order, and I applaud you for going into  
6 that much detail. I don't think though that limits, Mr. Meza,  
7 what format and what information he includes or what, what  
8 legal issue he chooses to address in his brief. I think that  
9 was your concern. Is that --

10 MR. MEZA: Fair enough. Thank you. I have no  
11 further issues. Thank you.

12 COMMISSIONER DEASON: Mr. Cruz, any preliminary  
13 matters? Okay.

14 MR. CRUZ-BUSTILLO: Oh, on the opening statement, I  
15 read in the draft prehearing -- are we going to be provided a  
16 ten-minute opening statement regarding --

17 COMMISSIONER DEASON: That's something that I had  
18 intended to address and now is the appropriate time to do that.  
19 That's optional, depending on the parties' desire. My only  
20 concern is that all parties be aware either there will be  
21 opening statements or there will not be opening statements. I  
22 don't want one party coming prepared to make an opening  
23 statement and the other party not prepared to make an opening  
24 statement.

25 So I'm going to -- what's the parties' desire? Is



1 there a desire for openings statements?

2 MR. CRUZ-BUSTILLO: Do you want to think about, talk  
3 about it?

4 MR. MEZA: Can we get back to you?

5 MR. CRUZ-BUSTILLO: And provide you notice on the  
6 25th?

7 COMMISSIONER DEASON: Just get with staff and they  
8 can incorporate it in the prehearing order. Either there will  
9 or will not be. I just want everyone to be in agreement that  
10 there will or will not be opening statements. If there is to  
11 be opening statements, there will be a ten-minute limitation  
12 per side.

13 MR. CRUZ-BUSTILLO: Well, let me say right now  
14 because if we don't reach an agreement then -- we would like a  
15 ten-minute opening statement just to say, you know, this is  
16 where we're going, this is what we're doing, this is the  
17 testimony.

18 COMMISSIONER DEASON: All right. That's customary,  
19 if a party wishes to have opening statements, to allow that.  
20 Mr. Meza, you're put on notice there will be opening statements  
21 and there will be a ten-minute limitation.

22 MR. MEZA: Thank you.

23 MR. CRUZ-BUSTILLO: Because I was afraid that maybe  
24 if we didn't agree, that then we'd be stuck, we've got to come  
25 back to you --

1           COMMISSIONER DEASON: It may be helpful to the  
2 Commissioners to better understand the nuances of this case.

3           MR. CRUZ-BUSTILLO: And this way at the end we can  
4 both agree not to have it, then we would just notify staff  
5 we're not, we're not going to do it.

6           COMMISSIONER DEASON: If, if the parties choose not  
7 to have opening statements, make sure that you both agree that  
8 there will not, and then at the time of the hearing just advise  
9 the Commission that parties have waived opening statements and  
10 then we'll proceed right into testimony and that's fine, too.  
11 But at this point we will -- there will be a provision to allow  
12 opening statements ten minutes per side.

13           MR. CRUZ-BUSTILLO: Okay.

14           COMMISSIONER DEASON: Okay. I think we're prepared  
15 to go through the draft prehearing order.

16           MS. DODSON: Commissioner?

17           COMMISSIONER DEASON: Yes.

18           MS. DODSON: I'd like to ask a question that probably  
19 could be asked later in going through the draft prehearing  
20 order. But I noticed that Supra had left, at least at the time  
21 the draft prehearing order was written, had left some of its  
22 exhibits intentionally left blank, and I wondered if there was  
23 a particular reason for that.

24           MR. CRUZ-BUSTILLO: There was no particular reason.  
25 Those exhibits don't exist. What happened was when Mr. Nilson

1 was drafting his, his testimony, he included some exhibits and  
2 then had issued a number and it didn't have an exhibit because  
3 he was coming up on a time limit. So we had staff, our staff  
4 identify that as intentionally left blank. But since I haven't  
5 given them to BellSouth and they don't exist, you know,  
6 certainly I can't use them at the hearing. So they just --

7 MS. DODSON: Thank you.

8 COMMISSIONER DEASON: Okay. Let's proceed through  
9 the draft prehearing order. And, as is customary, it is my  
10 desire to proceed section by section and to proceed quickly. I  
11 would encourage parties, if you have any concerns, please speak  
12 up and then we will give you an opportunity to address that.  
13 If I don't hear from you, well, then I'm going to proceed  
14 quickly to the next section.

15 And having said that, Section I, conduct of  
16 proceedings, questions or concerns.

17 Section II, case background.

18 Section III, procedure for handling confidential  
19 information.

20 Section IV, posthearing procedures.

21 Section V, prefiled testimony and exhibits.

22 Section VI, order of witnesses. And I would note  
23 that we've already had a discussion on the possibility of  
24 taking direct and rebuttal at the same time, and the record  
25 will reflect the decision. Yes.

1 MR. MEZA: If I may change the order of our witnesses  
2 on rebuttal, assuming we do -- or, well, since we are doing  
3 direct and rebuttal at the same time, I would like it to be  
4 Mr. Ruscilli, Mr. Pate, Tamra Schoech and then Ms. Summers.

5 COMMISSIONER DEASON: Can you repeat that again, the  
6 order that you desire?

7 MR. MEZA: Yes. It would be Ruscilli first, Pate  
8 second, Tamra Schoech third, and then the panel testimony,  
9 assuming there is a panel, of Summers and Wolfe.

10 COMMISSIONER DEASON: Okay. If there is not to be a  
11 panel, who do you desire to go, Summers or Wolfe?

12 MR. MEZA: Summers.

13 COMMISSIONER DEASON: Summers and then Wolfe? Very  
14 well. Okay.

15 MR. CRUZ-BUSTILLO: Then Nilson, Summers, Pate.

16 COMMISSIONER DEASON: Staff will show those changes.

17 MR. MEZA: Thank you.

18 COMMISSIONER DEASON: Mr. Cruz, do you have any  
19 changes to the order or any questions about the order?

20 MR. CRUZ-BUSTILLO: No. No. I was going to call  
21 Ruscilli on direct. Right. Okay. So it would be Nilson,  
22 Summers, Pate. And then we were going to -- okay. Yeah, there  
23 is. Nilson number one, Summers number two, number three is  
24 Pate, four is Ponder and five is Anderson, although I may be  
25 dropping them. We'll be notifying staff.

1 MR. MEZA: Just so that the Prehearing Officer is  
2 aware, Mr. Ruscilli and Mr. Pate will be in Tennessee that day  
3 and potentially the preceding day in an arbitration proceeding,  
4 and so I may, BellSouth may request some flexibility in  
5 presenting the witnesses because we'll be transporting them  
6 from Nashville to Tallahassee to appear in this proceeding.

7 COMMISSIONER DEASON: They will be here on the 29th;  
8 correct?

9 MR. MEZA: Yes, sir.

10 COMMISSIONER DEASON: Because that's the only day we  
11 have set aside.

12 MR. MEZA: Yes, sir.

13 COMMISSIONER DEASON: Okay.

14 MR. MEZA: Just some flexibility in the presentation  
15 of the witnesses depending upon --

16 COMMISSIONER DEASON: Well, as is customary, the  
17 Commission tries to be flexible with travel arrangements, and  
18 that is available to all parties.

19 MR. MEZA: Thank you.

20 COMMISSIONER DEASON: Section VII, basic positions.  
21 We will now proceed to the individual issues in  
22 Section VIII and begin with Issue 1. Issue 2. And Issue 3.  
23 There's a lot of pages to turn for three issues.

24 Section IX, exhibit list, any changes or corrections?  
25 Hearing none, Section X, proposed stipulations.

1 There are no proposed stipulations at this time, but I would  
2 note that there have been a number of discussions where parties  
3 have been encouraged to discuss a number of matters, not the  
4 least of which is confidentiality. I think the transcript of  
5 this proceeding would provide the parties guidance in that  
6 regard.

7 Section XI, pending motions. I believe that we have  
8 addressed all pending motions. And if I'm mistaken, staff,  
9 parties, please correct me so that we can be put on notice.

10 Okay. Hearing none, then we will proceed to Section  
11 XII, the pending confidentiality matters. Likewise, I believe  
12 that we've had an exhaustive discussion of those matters. If  
13 not, I would ask parties to advise me now or please advise  
14 staff immediately at the conclusion of this prehearing  
15 conference.

16 Section XIII, decisions that may impact our  
17 resolution. None are listed.

18 And Section XIV, rulings. Staff, I'm not aware that  
19 there have been any rulings made here that need to be  
20 incorporated. But if, if there, if there are any, obviously  
21 you would include them in Section XIV.

22 MS. DODSON: That's correct.

23 COMMISSIONER DEASON: That takes us to the end of the  
24 draft prehearing order. I would open it up at this point to --  
25 I will ask the parties if there are any final matters which

1 need to be addressed at this time. Mr. Meza?

2 MR. MEZA: Nothing for BellSouth.

3 COMMISSIONER DEASON: Mr. Cruz, anything final?

4 MR. CRUZ-BUSTILLO: No, Commissioner.

5 COMMISSIONER DEASON: Staff, anything?

6 MS. DODSON: No, Commissioner.

7 COMMISSIONER DEASON: Okay. Thank you all very much.

8 This prehearing conference is concluded.

9 (Prehearing conference adjourned at 10:44 a.m.)

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1 STATE OF FLORIDA     )  
2 COUNTY OF LEON        )

## CERTIFICATE OF REPORTER

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4           I, LINDA BOLES, RPR, Official Commission  
5 Reporter, do hereby certify that the foregoing proceeding was  
6 heard at the time and place herein stated.

7           IT IS FURTHER CERTIFIED that I stenographically  
8 reported the said proceedings; that the same has been  
9 transcribed under my direct supervision; and that this  
10 transcript constitutes a true transcription of my notes of said  
11 proceedings.

12           I FURTHER CERTIFY that I am not a relative, employee,  
13 attorney or counsel of any of the parties, nor am I a relative  
14 or employee of any of the parties' attorneys or counsel  
15 connected with the action, nor am I financially interested in  
16 the action.

17           DATED THIS 7TH DAY OF AUGUST, 2003.

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LINDA BOLES, RPR  
FPSC Official Commissioner Reporter  
(850) 413-6734