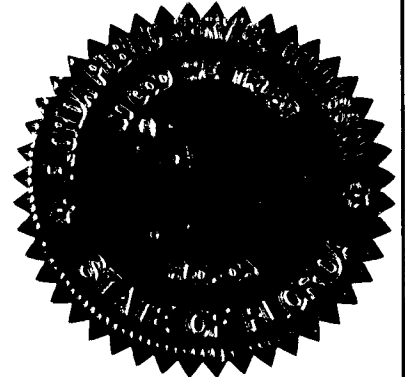


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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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VOLUME 1
PAGES 1 THROUGH 180

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER J. TERRY DEASON
COMMISSIONER RUDOLPH "RUDY" BRADLEY
COMMISSIONER CHARLES M. DAVIDSON

DATE: Friday, August 29, 2003

TIME: Commenced at 9:30 a.m.
Concluded at 5:23 p.m.

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

REPORTED BY: JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION

08429 SEP-88

FPSC-COMMISSION CLERK

1 APPEARANCES:

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5 behalf of BellSouth Telecommunications, Inc.

6 ADENET MEDACIER, ESQUIRE and JORGE CRUZ-BUSTILLO,
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9 behalf of Supra Telecommunications & Information Systems, Inc.

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

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P R O C E E D I N G S

1
2 COMMISSIONER DEASON: Call the hearing to order. Could
3 I have the notice read, please.

4 MS. DODSON: By notice issued July 19th, 2003, this
5 time and place has been set for a hearing in Docket Number
6 030349-TP, complaint by Supra Telecommunications and Information
7 Systems, Inc. against BellSouth Telecommunications, Incorporated,
8 regarding BellSouth's alleged use of carrier to carrier
9 information. The purpose of this hearing is as set forth in the
10 notice.

11 COMMISSIONER DEASON: Appearances.

12 MS. WHITE: Nancy White and Jim Meza for BellSouth
13 Telecommunications.

14 MR. CRUZ-BUSTILLO: Jorge Cruz-Bustillo, Supra Telecom.
15 And sitting with me second chairing this is Adenet Medacier,
16 Assistant General Counsel, with Supra Telecom, and then Dave
17 Nilson, Vice-President of Technology for Supra Telecom.

18 MS. DODSON: Linda Dodson, Bob Casey, Levent Ileri,
19 Cheryl Bulecza-Banks, Jerry Hallenstein, and Everett Broussard
20 appearing on behalf of the Commission.

21 COMMISSIONER DEASON: Preliminary matters?

22 MS. DODSON: Yes, Commissioner, there are several
23 preliminary matters. This morning the prehearing officer signed
24 the motion to strike, granting in part and denying in part the
25 motion.

1 COMMISSIONER DEASON: Has that order been distributed
2 to parties?

3 MS. DODSON: No, but I have it here and I can do that.

4 COMMISSIONER DEASON: Yes. Okay. Why don't you just
5 have that distributed to them, and you can continue.

6 MS. DODSON: The second item is Supra's motion to
7 compel. It is staff's understanding that the parties have been
8 negotiating the points of contention, and that all but the
9 portion of the motion relating to BellSouth's request for
10 Production of Documents Number 5 has been resolved.

11 COMMISSIONER DEASON: Is that correct, parties? Mr.
12 Meza?

13 MR. MEZA: That's correct.

14 COMMISSIONER DEASON: What is POD-5?

15 MR. CRUZ-BUSTILLO: Request for Production Number 5 is
16 a list of 20 service orders, ten service orders that BellSouth
17 processes from its retail divisions, from RNS, and ten service
18 orders from the wholesale side.

19 COMMISSIONER DEASON: Ms. Dodson, do you propose we
20 address that at this point?

21 MS. DODSON: Staff is prepared to give a recommendation
22 at this time.

23 COMMISSIONER DEASON: Okay. Do parties wish to argue
24 it at this point before we hear from staff?

25 MR. MEZA: I would like to briefly address why I think

1 it is irrelevant, if you desire.

2 COMMISSIONER DEASON: Briefly.

3 MR. MEZA: Yes, sir. Supra is requesting service order
4 information for a time period of June 9th, 2002, to June 9th,
5 2003, and specifically requested the information from SOCS. In
6 our response we advised Supra that there are no such orders in
7 SOCS. There is in another archived database to which we would
8 have to go retrieve them. And, more importantly, that the
9 information is irrelevant. We have given to Supra an extract
10 from the Sunrise Permanent Table that gives them all the
11 information that they need to determine which orders flow into
12 the Sunrise Table. Thus, we feel that it is repetitive,
13 duplicative and unnecessary. And, third, in order for us to
14 retrieve the specific orders from Supra, we need service order
15 numbers. Supra has not given any -- given us any of those
16 numbers.

17 COMMISSIONER DEASON: Okay. Mr. Cruz.

18 MR. CRUZ-BUSTILLO: Commissioner Deason, the test for
19 whether or not the -- first of all, I withdrew all of my other
20 requests for compelling the discovery because they provided most
21 of it or the information was not available. With respect to the
22 first point that we are asking from June to June 9th, we were
23 seeking those orders from last year until the time that this
24 motion was filed. Like Mr. Meza said, those orders are kept in
25 MOBI which Mr. Wolfe stated in his deposition could simply be

1 queried and retrieved. While we can obtain ten service orders
2 that we submit, I needed ten service orders that BellSouth
3 generates, and they would have the codes to pull that. And I
4 said pick any ten service orders.

5 And how is it relevant is that repeatedly in their
6 testimonies, in three different testimonies, they said that there
7 is no difference between a BellSouth service order and a CLEC
8 service order. And I just wanted to see what was on there. I
9 know what finally hits the Permanent Sunrise Table and I know
10 that that is different than the service order. But to the extent
11 that that is a point that they are trying to make in their
12 testimony, and the testimony is going to be entered into the
13 record, I wanted to see what was on their service orders. And
14 once I look at it, I may find that I believe that it is not
15 relevant, but the issue is is it information that could lead to
16 admissible evidence. If there is something in there substantive
17 that is relevant to this proceeding, then it would be admissible,
18 but I don't know until I look at that service order, and only
19 they can produce the service order. And they could have somebody
20 run it and e-mail it to Linda Dodson's computer, I guess.

21 COMMISSIONER DEASON: Staff.

22 MS. DODSON: Staff does believe that the information is
23 relevant to this proceeding, but staff also believes that without
24 a service order number that information could not be extracted
25 from SOCS.

1 COMMISSIONER DEASON: Well, Mr. Cruz just indicated he
2 informed BellSouth they could pick any ten they wanted. Mr.
3 Meza?

4 MR. MEZA: That's accurate. But the way the system
5 works is that we need service orders to do the query. We don't
6 have a list of service order numbers that we use. I mean, it is
7 triggered by service order number, that's how it is done.

8 MR. CRUZ-BUSTILLO: And what I was saying is that this
9 is retail information, a retail order generated from their retail
10 operation which they have access to. And I'm saying pick any ten
11 from the hundreds of thousands that you use.

12 COMMISSIONER DEASON: I think this is something that
13 reasonable people should be able to work out. Mr. Meza, provide
14 the information, get with Mr. Cruz, find out what he is looking
15 for, cooperate with him. You all can work this out. That's my
16 ruling.

17 Ms. Dodson, what's next?

18 MS. DODSON: Supra has filed a motion to publicly
19 disclose all information related to Operation Sunrise immediately
20 upon the issuance of a final order in this docket. Staff notes
21 that Supra filed this motion to disclose BellSouth confidential
22 information if the Commission finds that BellSouth has violated
23 Commission orders, Florida Statutes or federal law. A response
24 has not yet been received from BellSouth and the response time
25 has not elapsed. Staff recommends that this be addressed by

1 separate order or in the post-hearing recommendation.

2 COMMISSIONER DEASON: Does BellSouth intend to respond
3 or to address this in its brief?

4 MR. MEZA: Yes, sir.

5 COMMISSIONER DEASON: Okay. We'll address it in
6 briefs, and we can make it an issue for determination when this
7 matter comes up for a vote.

8 MS. DODSON: BellSouth has filed a motion for emergency
9 partial continuance. Witness Ruscilli is unable to attend the
10 hearing because of the death of his father-in-law. BellSouth
11 would like to continue the hearing without Mr. Ruscilli's
12 testimony. Mr. Ruscilli's testimony would then be taken at the
13 soonest available time. Supra would like to stipulate Mr.
14 Ruscilli's testimony into the record.

15 COMMISSIONER DEASON: Mr. Meza.

16 MS. WHITE: Ms. White, actually.

17 COMMISSIONER DEASON: Okay. Ms. White.

18 MS. WHITE: Yes. As Ms. Dodson advised, Mr. Ruscilli's
19 father-in-law died yesterday morning. He immediately advised Mr.
20 Meza and myself that he would not be able to attend the hearing
21 today. We tried to find someone who could adopt his testimony,
22 we just weren't able to get somebody on such short notice with
23 the expertise and the familiarity with the company policy and the
24 subject matter. Someone who would also have to become familiar
25 with the entire proceeding, the testimony of the other witnesses,

1 and the depositions. We have requested just a partial continuance.
2 Please allow the hearing to go forward today with the exception
3 of Mr. Ruscilli's testimony, find an hour or two at most, I
4 would think, to take that at another time.

5 And the reason why this is important, that we believe
6 it is important to our defense for you to hear Mr. Ruscilli live
7 is that on August 27th, 2003, we advised Supra and the Commission
8 of two pieces of new information that affected this docket. We
9 further advised that we intended to fully disclose and explain
10 this information on the record of this case. We intended to do
11 this through two witnesses; Witness Ruscilli and Witness Wolfe.

12 Specifically, Witness Wolfe can testify regarding the
13 second sweep of Operation Sunrise, but he cannot testify in
14 detail about the coding errors. Mr. Ruscilli would be the one to
15 do that, because he is the expert on BellSouth's policy
16 regarding CPNI, and he can communicate what happened, he can
17 identify and explain the activity, an activity that was contrary
18 to our policy and contrary to the design of the program. He is
19 the one who can put the coding errors in perspective.

20 Supra objects to BellSouth request. And the sole basis
21 for their objection is that the testimony of Mr. Ruscilli can be
22 stipulated into the record and BellSouth can accomplish its
23 objective through Witness Wolfe. This is just not true. While
24 it is true that Mr. Wolfe can testify as to the facts surrounding
25 the second sweep, he cannot testify as to what the coding errors

1 were, how they occurred, when they were halted, how many total
2 orders were affected, how many marketing pieces were sent,
3 whether any individuals returned to BellSouth, or what BellSouth
4 is doing to ensure this doesn't reoccur. This information is
5 simply not within Mr. Wolfe's knowledge or his area of
6 responsibility.

7 Further, Mr. Ruscilli's testimony is inaccurate as it
8 stands today. For example, on Page 3, Lines 7 through 10, and
9 Page 5, Lines 11 through 15, he states that -- testifies that
10 BellSouth does not use wholesale information to market. And that
11 is correct but for this error. And, therefore, he needs to be
12 allowed to testify about the ins and outs of the coding error in
13 order to correct his testimony. Denying BellSouth a partial
14 continuance, I believe, denies the Commission the full facts and
15 punishes BellSouth for an event beyond its control. We have been
16 forthright in bringing this information to the Commission, and we
17 should be allowed to put on the defense we want to put on. Thank
18 you.

19 COMMISSIONER DEASON: Well, let me ask you a question.
20 I understand the reason that Mr. Ruscilli cannot be here, and
21 that is totally understandable in that circumstance. However,
22 what I'm hearing you say is that the reason it is not acceptable
23 to simply have his testimony inserted into the record is because
24 there has been a discovery of some type of error in the coding,
25 and that part of his testimony is incorrect, and that it needs to

1 be corrected. It seems to me that we would have a debate as to
2 whether that is permissible if Mr. Ruscilli were here in the room
3 today and he were able to take the stand. If you attempt to
4 correct that testimony at this point, it seems to me that is
5 subject to objection, because it is no longer part of his
6 prefiled testimony, and we are supplementing the record past the
7 filing of prefiled testimony. We have had those debates before.
8 So I don't want you to utilize an unfortunate event in Mr.
9 Ruscilli's personal life as a way to try to circumvent what are
10 the requirements of prefilings testimony.

11 MS. WHITE: Absolutely not. Absolutely not. What I am
12 concerned about is I've got a witness who has prefiled testimony.
13 We have discovered information that says that part of that
14 testimony is now inaccurate. If he was here, he could not get on
15 the stand and swear that his testimony is true and accurate and
16 it's not. And if it is not allowed to be amended, then
17 essentially to some extent he is perjuring himself, which you
18 can't allow, I can't allow as an officer of the court. I can't
19 allow it to happen. I mean, we are doing the best we can with
20 this unfortunate sequence of events.

21 I mean, it was our intent -- when we discovered this
22 information, we immediately advised the Commission and Supra
23 because we felt that was the right thing to do. We had a plan,
24 you know, with Mr. Ruscilli, he was going to be here, he was
25 going to be on the stand, we would be able to deal with that

1 issue then, and maybe we would have had the argument then on
2 whether his testimony could go into the record as written,
3 whether accurate or not.

4 But, we offered in our letter that, you know, we would
5 be willing to continue his part of it or continue the whole
6 thing, whatever the parties and the Commission wanted to do. I'm
7 just concerned about that we have got testimony that if we are
8 forced to stipulate it into the record, we're stipulating
9 testimony that I know to be inaccurate, Supra knows to be
10 inaccurate, and now the Commission knows to be inaccurate.

11 COMMISSIONER DEASON: It is acceptable simply to strike
12 that testimony and insert the valid portion in the testimony in
13 the record?

14 MS. WHITE: If you strike the testimony, then I think
15 you've gutted our defense. I think then we're being denied due
16 process.

17 COMMISSIONER DEASON: Mr. Cruz.

18 MR. CRUZ-BUSTILLO: Well, what I just heard you say was
19 strike that one line and have one of the other two witnesses
20 testify to the correction that they did admit. I think if you
21 just strike that one line, you're not striking all the testimony.
22 But let me address the issue from -- we stipulate to introducing
23 his direct and rebuttal as if he were sitting here. And then if
24 we chose not to cross him, we wouldn't cross him. So here we are
25 waiving our rights. Our argument is we are waiving our

1 constitutional right to cross-examination by stipulating it.

2 The argument that they have in their motion in
3 Paragraph 3 is that Mr. Ruscilli needs to testify regarding the
4 information in this letter. What counsel told me before the
5 hearing and it is not a secret is this information was learned
6 from Mr. Wolfe. Mr. Wolfe is the operations manager of Operation
7 Sunrise.

8 Now, it is correct that if there was a glitch that it
9 would have occurred regarding disconnect reason codes, but as I
10 understand the second sweep it occurs in Operation Sunrise, and
11 that is under Mr. Wolfe. But in the event that the glitch
12 occurred on the wholesale side, well, that would be Mr. Pates'
13 area. Mr. Ruscilli is simply just a policy man that repeats what
14 the policy is. He has to learn his information from either Mr.
15 Pate or Mr. Ruscilli. So in our motion we put qualifications
16 that are in the prefiled testimony of Mr. Wolfe. Mr. Wolfe can
17 testify to everything that is in this letter. And with respect
18 to anything on the wholesale side, Mr. Pate can.

19 But, with respect to this letter, there is a legal
20 issue that I don't know that BellSouth thought about is that for
21 the purposes of this proceeding, the fact that they acknowledged
22 for the last five weeks they have been doing -- sending marketing
23 letters, carrier-to-carrier information, isn't central to this
24 case. The issue is whether or not they can even use our CLEC
25 LSRs. And I think that that is --

1 COMMISSIONER DEASON: I'm sorry, if they can even use
2 what?

3 MR. CRUZ-BUSTILLO: The issue in this case is whether
4 they can even use CLEC LSRs, local service requests that are
5 converted into service orders to trigger marketing reacquisition
6 efforts towards those customers that leave BellSouth because of a
7 service order we submitted. A subset of that is
8 carrier-to-carrier information. In their testimony they denied
9 it.

10 Now, Ms. White has identified that a line in Mr.
11 Ruscilli's testimony is incorrect. We are not going to raise any
12 issues of perjury. The discretion is within the Commission's
13 jurisdiction to say it is stricken, okay, we understand that he
14 is not lying here, you filed the letter.

15 So what I am concerned about is that I -- you know, the
16 prefiled testimony is precisely there for the reason that in the
17 event somebody doesn't show up, you file the testimony, you file
18 the rebuttal testimony, the parties that is prejudiced and should
19 wonder is us, and we are waiving our right to cross-examination
20 because he talks about is what BellSouth doing legal, that is for
21 post-hearing briefs.

22 The issue here -- this is an evidentiary hearing on the
23 facts regarding how Operation Sunrise actually works. And the
24 people that this Commission wants to hear from are from Mr. Pate,
25 Mr. Wolfe, and Ms. Summers because they are the day-to-day nuts

1 and bolts of how this thing actually works. Not regarding, you
2 know, whether or not it is legal. That is for this Commission to
3 decide at a subsequent date. So if he comes back, if he wants to
4 come in to summarize his testimony in two weeks, well, that is
5 what the prefiled testimony is there for. If he wants to come
6 in -- and, by the way, that is not in their motion, their motion
7 isn't for him to come in and summarize his testimony. The motion
8 is to come in and to supplement his testimony regarding the
9 second sweep.

10 Well, if Mr. Wolfe talks about the second sweep in his
11 testimony, if he wishes to, he doesn't have to, but wishes to do
12 it on the record, and Mr. Pate talks about any glitch in the
13 disconnect reason codes, well, that's fine, but the legal issue
14 is issue preclusion. If they raise it in this proceeding, and we
15 don't make an issue of it, then there is a question of is it
16 res judicata if later on another CLEC wanted to bring a complaint
17 against BellSouth regarding using conversion orders from
18 CLEC-to-CLEC to trigger marketing activities.

19 So while I think it is commendable that they
20 acknowledge that they discovered this that has been on the last
21 five weeks, it is not central or relevant to this proceeding and,
22 therefore, you know, we don't to need to continue it, and Mr.
23 Wolfe and Mr. Pate can more than cover what is in the letter.

24 COMMISSIONER DEASON: Ms. White, is it readily
25 ascertainable what sections in the prefiled testimony are

1 incorrect at this point? What portions of Mr. Ruscilli's
2 prefiled testimony are incorrect?

3 MS. WHITE: Yes. Probably given five minutes, yes.

4 COMMISSIONER DEASON: What I'm going to ask you to do
5 is make that review. What I propose to do is that we will
6 eliminate that testimony from Mr. Ruscilli's prefiled testimony.
7 We will insert that testimony in the record at the appropriate
8 time, then we will leave the record open in this proceeding after
9 today's hearing. I will allow you to review all of the record
10 that has taken place, whatever testimony is provided by other
11 witnesses.

12 If there is a deficiency in the record, in your
13 opinion, I will allow you then to request that there be
14 additional prefiled testimony filed for Mr. Ruscilli, subject to
15 objection, then I will deal with that at the appropriate time.
16 If we have to reconvene a hearing, which is not desirable by
17 anyone's point of view, I don't think, but if we have to do that,
18 we will.

19 If you request the additional prefiled testimony
20 subsequent to the hearing, if it is not objected to, we can
21 simply insert it. If it is objected to, I will deal with the
22 objection. And, if necessary, if there has to be a further
23 deposition, or if we actually have to reconvene the hearing and
24 hear cross-examination of the additional prefiled testimony,
25 assuming that it is allowed, I'm reserving judgment on that until

1 this record today is complete, and you can make a filing as to
2 why the record is deficient and there is the need for additional
3 prefiled testimony. That's the ruling, and that's the way we are
4 going to proceed.

5 MR. CRUZ-BUSTILLO: Commissioner, can I ask something?

6 COMMISSIONER DEASON: Yes.

7 MR. CRUZ-BUSTILLO: On the additional prefiled
8 testimony, would that be limited to the mechanics on how the
9 second sweep works? I mean, limited to the scope of this letter,
10 the August 27th letter, is that what you meant?

11 COMMISSIONER DEASON: That is understood, yes. It is
12 not going to be an opportunity to somehow come back and
13 supplement the record for other deficiencies that may come about
14 from today's proceeding, it is limited to the subject matter of
15 the original request.

16 MR. CRUZ-BUSTILLO: Thank you, Your Honor.

17 MS. WHITE: Commissioner Deason, I understand your
18 ruling, and I would ask that you allow me to make an offer of
19 proof as to what Mr. Ruscilli would have said, added to his
20 testimony if he was here. I would like to do that today, because
21 if I am not allowed to make that offer of proof today, I waive my
22 appellate right -- appellate review of your decision.

23 COMMISSIONER DEASON: Very well.

24 MR. CRUZ-BUSTILLO: I wasn't sure about that. Was that
25 to add a summary of his testimony that he would have made if he

1 were here?

2 COMMISSIONER DEASON: It is just to protect her
3 appellate purposes, is my understanding.

4 MS. WHITE: Exactly. I'm going to make a statement of
5 what Mr. Ruscilli would have testified to if Commissioner
6 Deason's ruling had been different, strictly to protect my
7 appellate rights.

8 COMMISSIONER DEASON: Staff, do you understand the
9 ruling, how we're going to proceed?

10 MS. DODSON: Yes, Commissioner.

11 COMMISSIONER DEASON: Very well.

12 MS. WHITE: This is the proffer of what Mr. Ruscilli
13 would have testified to. Number one, BellSouth is conducting an
14 ongoing investigation into coding errors mentioned in Ms. White's
15 letter of August 27th, 2003 to Blanca Bayo.

16 Two, beginning on July 18th, 2003, the second sweep of
17 the Harmonized data base extracted disconnect orders, D orders,
18 associated with at least two wholesale disconnect codes.

19 Number three, the two wholesale codes were CC and RT.
20 CC is UNE CLEC to reseller, UNE CLEC to UNE CLEC, or reseller to
21 UNE CLEC. RT is reseller to reseller.

22 Number four, as a result of the list pools that
23 included CC and RT as well as legitimate and appropriate codes,
24 at least 478,457 marketing pieces were sent in BellSouth's
25 region, at least 140,555 of which were sent in Florida. Eleven

1 CC and nine RT customers received these marketing pieces. Out of
2 those twenty customers, one CC and two RT Florida customers
3 received them.

4 Number six, none of the CC and RT customers who were
5 sent marketing pieces returned to BellSouth.

6 Number seven, as of August 27th, 2003, BellSouth, one,
7 suspended all marketing efforts or customer contact associated
8 with any customer list that could have included customers
9 identified through D orders containing the disconnect code of CC
10 and RT. And, second, removed CC and RT from the list of
11 disconnect codes that the second sweep of Operation Sunrise
12 extracts. And that is the end of my offer of proof.

13 COMMISSIONER DEASON: Thank you, Ms. White.

14 MS. WHITE: Thank you, Commissioner Deason.

15 COMMISSIONER DEASON: You understand that at the
16 conclusion of the hearing we will set a time for you to prepare
17 additional prefiled testimony, if you think it is needed, and I
18 will also need to see a reason why the record is deficient and
19 that testimony is needed, and then we will have a period of time
20 for Mr. Cruz to respond to that. He may accept that testimony,
21 he may object to it. We will hear that objection, and then we
22 will just take it from there.

23 MS. WHITE: Yes, sir, absolutely. And the only reason
24 that I wanted to make my offer of proof on the record was because
25 we would not be on the record when you make your decision on the

1 subsequent filing, if any. So I appreciate your allowing me to
2 do that.

3 COMMISSIONER DEASON: Very well. Ms. Dodson, do you
4 have any other preliminary matters?

5 MS. DODSON: Yes. The parties have agreed to stipulate
6 all of the interrogatory answers and depositions into the record.
7 Therefore, staff asks that they be marked for the record at this
8 time. The stipulations are grouped as follows: Stipulation 1
9 proffered by BellSouth is all responses to Supra's and staff's
10 interrogatories and requests for production of documents.

11 COMMISSIONER DEASON: Now, you intend to have all of
12 those responses which you just identified as a composite exhibit,
13 is that correct?

14 MS. DODSON: That's correct.

15 COMMISSIONER DEASON: Do you have those available, or
16 is it just understood that they are what you just represented?
17 The reason I'm asking is normally when we come to a hearing room
18 we have documents stacked up this high and it is copies of all of
19 the stipulated exhibits. I don't see them here today. Is there
20 some reason we are changing protocol?

21 MR. MEZA: Yes. Ms. Dodson instructed the parties to
22 make copies of the appropriate discovery responses attributed to
23 them in the depositions, and BellSouth has those copies with us.
24 Because of the confidential nature of some of them, I did not
25 know how the Commission wished to proceed on that. But if you

1 like, they are here.

2 COMMISSIONER DEASON: Well, it is probably preferable
3 to keep the confidential information secure. And I will leave it
4 to my Commissioners if they feel it necessary to review anything,
5 or if it becomes necessary during cross-examination to review any
6 of these matters that it be disseminated at that point and then
7 taken back to a secure status. But for purposes of the record,
8 if we simply identify this as Composite Exhibit 1, all parties
9 are in agreement as to exactly what is contained therein, is that
10 correct?

11 MR. CRUZ-BUSTILLO: Yes, sir.

12 COMMISSIONER DEASON: Okay. Stipulation Number 1 is
13 identified as Composite Exhibit Number 1.

14 You may proceed, Ms. Dodson.

15 MS. DODSON: Stipulation Number 2 proffered by
16 BellSouth as confidential portions of all responses to Supra's
17 and staff's interrogatories and requests for production of
18 documents.

19 COMMISSIONER DEASON: So the confidential portions then
20 will be identified as Stipulation 2, and that will become
21 Composite Exhibit Number 2 for the hearing.

22 MS. DODSON: Stipulation Number 3 proffered by Supra is
23 all responses to BellSouth's and staff's interrogatories and
24 requests for production of documents.

25 COMMISSIONER DEASON: That will be Composite Exhibit 3.

1 MS. DODSON: Stipulation Number 4 proffered by Supra is
2 confidential portions of all responses to BellSouth's and staff's
3 interrogatories and requests for production of documents.

4 COMMISSIONER DEASON: Composite Hearing Exhibit Number
5 4.

6 MS. DODSON: Stipulation Number 5 proffered by Supra is
7 a confidential deposition, including exhibits for Witness Nilson.

8 COMMISSIONER DEASON: That will be Composite Hearing
9 Exhibit Number 5.

10 MS. DODSON: Stipulation Number 6 proffered by
11 BellSouth are the confidential -- is the confidential deposition
12 including exhibits for Ruscilli, Pate, Summers and Wolfe.

13 COMMISSIONER DEASON: That will be Composite Hearing
14 Exhibit Number 6.

15 MS. DODSON: Staff moves that Composite Exhibits 1
16 through 6 be moved into the record.

17 COMMISSIONER DEASON: Without objection? Hearing no
18 objection, then show that Composite Exhibits 1 through 6 are
19 admitted.

20 (Composite Exhibits 1 through 6 marked for
21 identification and admitted into the record.)

22 MS. DODSON: And staff notes that one copy of the
23 confidential matters associated with each stipulation is being
24 provided to the court reporter.

25 COMMISSIONER DEASON: Further preliminary matters?

1 MS. DODSON: Yes, there are some confidentiality
2 matters. Staff notes that there are several outstanding claims
3 and notices regarding confidential treatment. Staff would like
4 to remind the parties that they have 20 days after the hearing to
5 file any requests for confidential treatment for those documents
6 used in the hearing if they have not already filed such a
7 request. And those include BellSouth's notice of intent to
8 request confidential classification of the response to Supra's
9 First Request for Production of Documents Number 1; BellSouth's
10 notice of intent to request confidential classification of
11 responses to Supra's Second Request for Production of Documents
12 Number 8; and BellSouth's notice of intent to request
13 confidential classification of responses to Staff's First Request
14 for Production of Documents Number 1, all filed on August 22nd,
15 2003.

16 In addition, BellSouth has submitted two requests for
17 confidentiality classification of Supra's Exhibit DAN-RT-2 and a
18 request for confidential classification of portions of the
19 supplemental motion to strike. Those requests have been handled
20 under separate order.

21 COMMISSIONER DEASON: This is basically a notice to the
22 parties as to how -- put them on notice of how they should
23 proceed if this information is produced at hearing and to request
24 the continued confidential treatment of that information, is that
25 correct?

1 MS. DODSON: That is correct.

2 COMMISSIONER DEASON: Okay.

3 MS. DODSON: There have also been some changes to the
4 prehearing order. Specifically, the parties have requested the
5 following changes to the order of witnesses and the party
6 proffering the witnesses. Witness Nilson will be the first
7 witness proffered by Supra dealing with Issues 1 through 3. Mr.
8 Pate will now be the second witness proffered by BellSouth on
9 Issue 3. Then there is a panel of Witnesses Wolfe and Summers
10 proffered by BellSouth on Issue 3, and Witness Schoech proffered
11 by BellSouth as the last witness on Issue 3.

12 MR. MEZA: Commissioner Deason, forgive me, but I have
13 to speak up. I was not aware that we agreed to those changes.
14 And, in fact, I do not agree to those changes. I don't know how
15 that was communicated to staff, but I do not agree to change
16 Schoech or put Schoech behind Summers or in front of --

17 COMMISSIONER DEASON: We are going to take a ten-minute
18 recess. I think you all just need to sit down and talk about
19 this and agree to what you can agree, and then if there is not an
20 agreement, focus on the disagreement and we will address that.
21 Ten minutes.

22 MR. MEZA: Thank you, sir.

23 (Recess.)

24 COMMISSIONER DEASON: Call the hearing back to order.
25 I believe we were discussing order of witnesses, staff.

1 MS. DODSON: Yes. First of all, I would like to
2 apologize to BellSouth about the oversight on my part.

3 COMMISSIONER DEASON: Okay.

4 MS. DODSON: The order of witnesses will be as follows
5 Nilson proffered by Supra on Issues 1 through 3. Ruscilli would
6 normally be the next witness. BellSouth would like to wait to
7 stipulate that witness into the record so that they can go
8 through the testimony where it needs to be stricken.

9 COMMISSIONER DEASON: Very well.

10 MS. DODSON: The next witness is Pate proffered by
11 BellSouth on Issue 3, and then Schoech proffered by BellSouth on
12 Issue 3, and then Wolfe and Summers panel on Issue 3.

13 COMMISSIONER DEASON: And then we would wait and do Mr.
14 Ruscilli's prefiled testimony last, is that correct?

15 MS. WHITE: Yes, sir, if that is acceptable.

16 COMMISSIONER DEASON: Commissioner?

17 COMMISSIONER BRADLEY: Yes. I'm looking at Mr.
18 Ruscilli's name, and I see two stars, and when I turn over --
19 when I look at the prehearing order, and right up above basic
20 positions it says that the opposing party has called into
21 question this witness' qualifications as an expert witness. The
22 parties may conduct voir dire at hearing, may be requested.

23 I was just wondering how that factors into the
24 discussion that we had previously about Mr. Ruscilli and what the
25 impact might be as it relates to stipulating his testimony if he

1 is being -- if his credibility is being questioned as an expert
2 witness. I mean, what type of dynamic does that create?

3 MR. CRUZ-BUSTILLO: Commissioner Bradley, that was my
4 objection. And I had made it because the prehearing statement
5 asked for it, but I am withdrawing that objection. I mean, to
6 the extent that it is -- I mean, I am not going to cross-examine
7 him, so to the extent that I'm not cross-examining him that is
8 not an issue.

9 MR. MEZA: And for the purpose of Mr. Nilson, I will
10 address his qualifications in the cross-examination very briefly,
11 and allow the Commissioners to assess whatever weight they want
12 to to his testimony.

13 COMMISSIONER BRADLEY: Well, is he or is he not an
14 expert witness?

15 MR. MEZA: It is my position he is not an expert
16 witness. Mr. Nilson is not, and that Mr. Ruscilli is.

17 COMMISSIONER BRADLEY: Wait a minute. Say that again?

18 MR. MEZA: It is BellSouth's position that Mr. Nilson
19 is not an expert witness regarding CPNI matters --

20 COMMISSIONER BRADLEY: No, no, I'm speaking of Mr.
21 Ruscilli. He is the one with the double star.

22 MR. CRUZ-BUSTILLO: For Mr. Ruscilli, he is an expert
23 in his area which is implementing policy at the PSC, and the
24 experts on OSS and Sunrise are actually Pate and Wolfe, which we
25 will hear from. So I'm not raising that objection since I am

1 waiving my right to cross-examine him.

2 COMMISSIONER DEASON: So what we are going to do is
3 when we get a corrected version of the prefiled testimony, i.e.,
4 those portions that are incorrect being stricken from that, you
5 are not going to object to that testimony being inserted into the
6 record, is that correct?

7 MR. CRUZ-BUSTILLO: Well, again, you know, let me
8 reserve my -- again, let me reserve my objection because he in
9 the deposition, he knows what he is told with respect to the
10 mechanics of Operation Sunrise and OSS. His area is policy. And
11 so to the extent that he is talking about that, yes, I may raise
12 an objection because obviously Mr. Wolfe and Mr. Pate are clearly
13 the people with hands-on knowledge regarding the mechanics of
14 anything that may be happening. So to that extent -- but with
15 respect to is he -- am I objecting to him being an expert, which
16 is his testimony about what BellSouth's policies are, no, I'm not
17 objecting to that.

18 COMMISSIONER DEASON: We will deal with that at the
19 appropriate time.

20 MS. DODSON: Staff would like to note, in addition,
21 that while Supra had intended to call Witnesses Anderson and
22 Ponder, they have since decided not to do so.

23 COMMISSIONER DEASON: Very well.

24 COMMISSIONER BRADLEY: Let me see if I understand what
25 you just said. Supra no longer intends to call said BellSouth

1 employees as hostile or adverse witnesses, is that a correct
2 statement?

3 MR. CRUZ-BUSTILLO: We decided to do that to shorten
4 the hearing; that is, at the prehearing I thought the
5 understanding was between the parties is that we would call the
6 witnesses and both parties could ask leading questions and
7 basically do their cross, or recross, or however you would like
8 to characterize so that we could just get up the witnesses -- Mr.
9 Nilson will go up and put his direct and rebuttal. They will
10 cross, I may do some recross, and then the same thing with their
11 witnesses. Their rebuttals will automatically go into the
12 record, and then I will question them and Mr. Meza will question
13 them, and hopefully we can be done by 2:00 o'clock.

14 COMMISSIONER DEASON: That is encouraging. Staff, you
15 have one -- you indicated that there is one issue that is going
16 to be briefed, that was an item that we discussed at the August
17 5th agenda conference, correct?

18 MS. DODSON: That is correct. The parties -- I just
19 wanted to remind the parties that at the August 5th agenda
20 conference it was decided that the parties would include in their
21 post-hearing briefs the issue of the Commission's jurisdiction to
22 grant a remedy under 47 USC, Section 222.

23 COMMISSIONER DEASON: The parties are fully aware of
24 that?

25 MR. MEZA: Yes, Commissioner.

1 COMMISSIONER DEASON: Okay. BellSouth, do you have any
2 preliminary matters?

3 MR. MEZA: Yes, sir. Given your order and instructions
4 of this morning, I have conferred with Supra's counsel and we
5 have agreed to -- BellSouth has agreed to produce Supra ten
6 retail service orders of any date that we can find to Supra and
7 produce them to Supra as soon as we can, which will most likely
8 be next week. And I have also told Mr. Cruz-Bustillo given the
9 fact that we are producing it after the hearing date, that we
10 would not object to those service orders being included as a
11 late-filed confidential deposition exhibit, which we may want to
12 mark -- excuse me, hearing exhibit -- which we may want to mark
13 now or at the prehearing officer's discretion.

14 COMMISSIONER DEASON: Mr. Cruz, is that correct, you
15 are willing to have that identified as a late-filed hearing
16 exhibit, and we can go ahead, give it a number now, and when it
17 is produced it can be included in the record?

18 MR. CRUZ-BUSTILLO: Correct, Commissioner. And there
19 is a 50/50 chance that I just may say, after two minutes of
20 looking at it, that I don't want to include it because it doesn't
21 add anything.

22 COMMISSIONER DEASON: Well, let's go this. Let's
23 identify it as Hearing Exhibit 7, it's going to be a late-filed.
24 This is the response to which interrogatory?

25 MR. MEZA: It would be Supra's First Request for

1 Production of Documents Number 5.

2 COMMISSIONER DEASON: Response to Supra POD 5. We will
3 identify that and you can produce that by when?

4 MR. MEZA: Mr. Pate was trying to determine a date
5 during the break. I have not heard back from him, but I
6 instructed him to get it as soon as he can. But with the holiday
7 weekend, I don't know.

8 COMMISSIONER DEASON: We will preliminarily set that as
9 one week from today. If that is a problem, let me know before we
10 conclude today's hearing.

11 MR. MEZA: Thank you.

12 COMMISSIONER DEASON: Mr. Cruz, once you receive that,
13 and if you wish to incorporate that into the record, you will
14 need to file some indication of that. I would assume since
15 BellSouth is producing it, they probably should not object to it
16 being included in the record. In fact, I think they have already
17 indicated they don't object. Just give some indication as to
18 whether you want it into the record, and if you do want it in the
19 record, it will be included in the record as Hearing Exhibit 7.
20 If it is not necessary to go into the record, well, then it will
21 not be part of this proceeding.

22 (Late-filed Exhibit 7 marked for identification.)

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

24 COMMISSIONER DEASON: Other preliminary matters?

25 MR. MEZA: None from BellSouth.

1 COMMISSIONER DEASON: Supra, preliminary matters?

2 MR. CRUZ-BUSTILLO: None, Commissioner.

3 COMMISSIONER DEASON: Very well. I believe we can --
4 refresh my memory, did we or did we not include opening
5 statements?

6 MR. CRUZ-BUSTILLO: We did include opening statements.

7 COMMISSIONER DEASON: Okay. Let's do this. While it
8 is on my mind, let's go ahead and swear in witnesses, and then we
9 will go to opening statements. All witnesses that are present --
10 and I ask the attorneys when the witness takes the stand to
11 confirm if they were sworn. All witnesses that are present
12 please stand and raise your right hand.

13 (Witnesses collectively sworn.)

14 COMMISSIONER DEASON: Thank you.

15 Mr. Cruz, you may proceed with your opening statement.

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

17 Good morning, Commissioners, George Cruz-Bustillo,
18 Supra Telecom. We are here today on Supra's complaint alleging
19 that BellSouth is using carrier-to-carrier information to trigger
20 marketing reacquisition efforts. The evidence in this case will
21 show that all orders that are submitted by competitive local
22 exchange carriers -- there is two types of orders that
23 competitors submit. They are generally grouped into two groups.
24 Either noncomplex orders which come through LENS, or complex
25 orders which enter through the LCSC on the wholesale side of

1 BellSouth's operations.

2 LCSC is local carrier service center. A local carrier
3 service center order, complex order flows through SOCS. A
4 noncomplex conversion from BellSouth to Supra over reseller UNE
5 goes to SOCS. These orders then come down, they harmonize feed,
6 populate a first table, a second table, and a third table. The
7 evidence in this case will show that all orders that originate on
8 the wholesale side of BellSouth's operations ultimately populate
9 this final table which is called the permanent Sunrise Table.

10 If an order -- from this table leads are generated
11 which are then sent out to a third-party marketing vendor, and
12 those leads go out approximately seven days after an order has
13 been complete, after a conversion has been complete. The
14 evidence will also show that all orders that originate on the
15 retail side of BellSouth's operations from RNS or ROS do not
16 populate the permanent Sunrise Table. They do not reach the
17 permanent Sunrise Table. And leads can only be generated from
18 records that populate the permanent Sunrise Table.

19 Now, to walk you through very quickly, we had gone
20 through a demonstration here that when you have a noncomplex
21 order, it is called a single C. Prior to the single C, which is
22 March 2nd, 2003, all orders submitted on the wholesale side had a
23 D and an N order. When a CLEC LSR, local service request, was
24 sent in it created a D and an N. After March 2nd, 2002 here in
25 the State of Florida, for conversions over resale or UNE,

1 noncomplex orders, which is about 99 percent of Supra's order,
2 they flow through LENS electronically and they are considered --
3 it's a single order, it's a single C.

4 Now, let me just state for the record the evidence will
5 show that what flows through LENS and LEO here is a CLEC LSR,
6 local service request. The LESOG, local exchange service order
7 generator, transforms that LSR into a service order and that is
8 what the single C is. Here in the LCSC, which is for complex
9 orders, the single D or the CLEC LSR is transformed there into an
10 order. So the D and the N all flow to here.

11 Now, if the complex order was -- and we will be going
12 through this in the testimony -- was from BellSouth to resale,
13 okay, a disconnect reason code of BR would be generated here.
14 Supra does not generate these disconnect reason codes. No CLEC
15 generates them. They are generated by BellSouth's OSS. For
16 complex orders it is done here in the LCSC. For noncomplex
17 orders -- let's see, we have BellSouth to resale, BellSouth to
18 facilities-based, which would include UNE-P, and in this case RT,
19 which is reseller-to-reseller, CLEC-to-CLEC. A disconnect reason
20 code is generated there. All of these orders flow into SOCS.

21 Now, on the retail side BellSouth has two general
22 orders, or two main orders that are relevant to this proceeding.
23 This would be a winback. A customer has been with Supra for a
24 year, they want to go back to BellSouth. BellSouth on that
25 winback won't create a single C, they will create a D and an N.

1 I am not going to put the N up there, because I am going to add
2 something else. But it will have a disconnect reason code. We
3 ran out of disconnect reason codes. It will have a disconnect
4 reason code that is considered a noncompetitive. You are going
5 to hear that, a noncompetitive disconnect reason code. I don't
6 know what it is, but it is there so that it gets filtered out
7 down here, which I will show you in just one minute.

8 So on a winback, that D order won't make it down to the
9 final table. Another D order is where -- and the testimony will
10 be, or the evidence will show that this is what BellSouth
11 considers to be a competitive disconnect. And that is where an
12 in-bound call comes to a BellSouth retail service representative
13 and theoretically, or allegedly the customer tells BellSouth's
14 service rep I would like to disconnect my line, and that once I
15 lose dial tone I will then reconnect with a competitor.

16 BellSouth, the evidence will show that these codes that
17 they generate are by BellSouth considered unreliable. They have
18 other codes for moving, for transfer, but those are all
19 considered noncompetitive disconnect codes. Only when
20 BellSouth -- the evidence will show only when BellSouth's service
21 representatives believe the person is actually going to
22 another -- on that same line going to another competitor after
23 they disconnect do they enter the CO. These two orders from the
24 retail side flow to SOCS. Every night the evidence will show
25 that these orders are extracted through the Harmonize feed, that

1 is this tube. Sometime during the night they will populate the
2 extract file. The extract file will contain all orders for that
3 previous 24-hour period in SOCS, the evidence will show.

4 From here a subset of orders are brought down to what
5 is considered inside, brought down to the Harmonize data base,
6 and that will be the disconnect order that originated from the
7 LCSC, all the single Cs, as well as BellSouth's orders. And I
8 believe the evidence will show that there are some transfer
9 orders. What I'm not clear the evidence will show is whether new
10 orders are brought down here. I believe the evidentiary
11 documentation will show that new orders are not captured to the
12 Harmonize feed, but I believe one of the witnesses testified that
13 new orders are brought down to the Harmonize database.

14 In either case, the orders that are sitting here are
15 pending orders. This takes place on a nightly basis. The
16 evidence will show that it takes about 48 hours or 72 hours to
17 complete downstream a conversion. Every night these orders sit
18 here that are pending. Upon the completion, within 48 hours, 72
19 hours of a conversion, a signal is sent saying that these orders
20 are no longer pending.

21 When they are no longer pending, they all drop down to
22 what is called the temporary Sunrise Table. And I'm just going
23 to wrap it up with one more table. At this table the evidence
24 will show that all orders that -- actually I'm not sure whether
25 or not the evidence will show the Ts make it down. The evidence

1 will show that a transfer order with a disconnect order,
2 disconnect reason code, a noncompetitive disconnect reason code
3 will be eliminated. The only thing that will drop down to the
4 permanent table -- oh, I'm sorry. All orders that have a
5 noncompetitive disconnect reason code -- or, I'm sorry, all
6 disconnect orders as opposed to transfer orders that have a
7 noncompetitive disconnect code will also be removed. The
8 evidence will show that all disconnect orders today -- as of last
9 week when we took the deposition, that all disconnect orders
10 originating on the retail side with a competitive disconnect
11 order of C0 are also filtered out. The only thing that remains
12 on this table are single C orders or D orders originating from
13 the wholesale side.

14 The temporary Sunrise table then eliminates -- or so
15 the evidence will indicate eliminates the disconnect reason
16 codes, and these orders are then dropped, or these records are
17 then dropped down to the permanent Sunrise Table. On the seventh
18 day after a list is generated, they are sent out to a marketing
19 vendor which sends a mailing piece.

20 The conclusion is that at the end of this hearing you
21 will find that Operation Sunrise, that all of the records and
22 orders that populate the permanent Sunrise Table are orders that
23 originated from the wholesale side of BellSouth's operations and
24 not the retail side. Thank you.

25 COMMISSIONER DEASON: Mr. Meza.

1 MR. MEZA: Thank you. If I could get the microphone
2 from Mr. Cruz-Bustillo. Thank you.

3 This case is about BellSouth's attempt to compete in a
4 competitive marketplace and represents a classic example of a
5 CLEC, and this time it's Supra, saying that it wants competition,
6 but only if BellSouth can't compete. BellSouth attempts to
7 compete through a computer software program called Operation
8 Sunrise, which has three basic components. One, we try to target
9 and go after and win back local service customers who leave us to
10 go to a competitor. Two, we also attempt to identify and market
11 local toll customers who leave us and go to a competitor. And,
12 three, we market to current BellSouth customers who downgrade
13 their service with us for cheaper plans so that we could sort of
14 upsell the products that they decided they no longer need.

15 What Supra is primarily complaining about is
16 BellSouth's local service reacquisition efforts through Operation
17 Sunrise. And in this process the evidence will show that just
18 like any other business in a competitive market, BellSouth
19 identifies those retail customers who left our network, our
20 retail network to presumably go to a competitor and attempts to
21 win that customer back. BellSouth does not know where the
22 customer went or what services he or she is receiving from its
23 new provider. All BellSouth knows is that it lost a retail
24 customer and that it wants it back. This is no different than
25 the Miami Herald attempting to win back a customer who canceled

1 his subscription with the Herald to go to the Sun Sentinel. The
2 Herald doesn't know where a customer went, just that it lost a
3 customer.

4 Now, let me give you a high level description of how
5 Sunrise operates and explain why it does not use wholesale
6 information. Unfortunately, unlike Mr. Cruz-Bustillo, I'm not as
7 savvy and I will have to draw what I believe Sunrise represents.

8 MR. CRUZ-BUSTILLO: Commissioner Deason, can I stand by
9 the podium so I can see?

10 COMMISSIONER DEASON: Surely. That's fine.

11 MR. MEZA: Okay. There are essentially two sweeps in
12 Operation Sunrise. The first sweep I'm going to tell you about
13 that the evidence will show is the competitive disconnect sweep.
14 What we have here is all service orders that arrive from a CLEC
15 LSR or from the BellSouth retail side are here. They reside in
16 this database called SOCS. From that database and from the
17 extract that Mr. Cruz-Bustillo told you about is a filter. That
18 filter collects only completed residential orders. There are no
19 pending orders at this point after this filter is -- after the
20 information flows through the filter.

21 After that there is a second filter. This filter
22 excludes the following information, all of which could be
23 considered wholesale information or carrier-to-carrier
24 information. First, it only accepts D and C orders. Second, it
25 excludes noncompetitive disconnect reason codes because it would

1 make no sense to include them any further because you knew or you
2 would presume that they are not going to a competitor, so there
3 is no need to win them back. It also excludes information from
4 orders that do not have a disconnect reason code. Again, if you
5 don't know why the customer left, and you can't presume that it
6 is competitive disconnect, then there is no reason to target it
7 for marketing purposes. And it excludes wholesale competitive or
8 noncompetitive disconnect reason codes. Thus, at this point we
9 have no idea where the order came from, we have no idea what
10 services the customer is receiving, we have no idea why the
11 customer left BellSouth, and we have no idea what type of carrier
12 the customer went to.

13 Once that information is -- once that filter occurs, it
14 goes to the Sunrise permanent table. And the only information
15 from the service order that started way up here that enters into
16 the Sunrise permanent table, which is where the BellSouth retail
17 group actually has access to the information, is the following
18 innocuous information; the MPA, NXX, line, customer code, which
19 is BellSouth's customer code, and the date the order was
20 extracted from SOCS. That's it.

21 So from the start, the beginning where the service
22 order information contained, everything regarding any service
23 order that goes through the system, what you are left with is
24 essentially a telephone number and the customer code. From that
25 permanent table Sunrise bashes these five fields against

1 BellSouth's retail CRIS records representing what these customers
2 had, what services they had with BellSouth while they were a
3 BellSouth customer. If there is a match in CRIS and we can
4 identify the name of the customer, the address, the demographics
5 of the customer, what products it had with BellSouth, it comes
6 back to the Sunrise Table where eventually leads are generated.

7 If there is no match to CRIS, to our CRIS records, then
8 the permanent table information that went through CRIS is
9 excluded and not further sent back to the permanent table. One
10 important point. The service order information that is used for
11 Sunrise, that is the same information that goes to BellSouth's
12 retail side in the CRIS records to tell it to stop billing. If
13 that didn't happen, if BellSouth retail didn't know that it lost
14 a customer as a result of a CLEC initiating an LSR, we would
15 continue to bill that customer because we would have no other way
16 to know that we lost the customer.

17 COMMISSIONER DEASON: Mr. Meza, can you flip that back
18 for a second, please.

19 MR. MEZA: Sorry.

20 COMMISSIONER DEASON: When you make the comparison to
21 the CRIS database to see if there is a match --

22 MR. MEZA: Yes, sir.

23 COMMISSIONER DEASON: -- but you also indicate that all
24 service orders information is sent to your CRIS database, how do
25 you determine -- it seems to me that if that information is sent,

1 if there is a disconnect it would no longer be in CRIS. Or is it
2 just that CRIS still has that information, they have just got a
3 disconnect indicator by it?

4 MR. MEZA: Right. CRIS always -- I mean, the customer
5 service records never change, they always exist. And let me
6 clarify that what actually is bashed against the Sunrise
7 permanent table is a snapshot of CRIS that exists on another
8 database called the SIW. So, Mr. Wolfe or Ms. Summers can
9 testify about how often that snapshot occurs. I believe it's
10 monthly. But that is bashed against the records that existed at
11 that time of the customer. These are the current CRIS records
12 that are updated constantly for both retail and wholesale
13 customers so that our systems know that we lost a retail customer
14 but we have gained a wholesale customer, so make the changes
15 accordingly.

16 COMMISSIONER DEASON: And if there is a match found in
17 the comparison, what is the next step? Does that trigger an
18 action and what is that action?

19 MR. MEZA: If there is a match, it goes back to the
20 Sunrise permanent table and then there is actually another table
21 that I didn't have room to put, but it is called the target
22 table. And in that target table you have all the information in
23 addition to the NPA/NXX line and customer coded date such as the
24 address, the name, the demographics, the type of services the
25 customer had. And from that target table leads are generated.

1 COMMISSIONER DEASON: Thank you.

2 MR. MEZA: Okay. Now, in reference to BellSouth's
3 August 27th letter, I would like to briefly explain to you what
4 the Second Sweep is all about. And unlike the first sweep which
5 dealt with competitive disconnect, the second sweep deals with
6 noncompetitive disconnects. And what happens here is that
7 Sunrise goes to the second filter that I mentioned above in the
8 first example and pulls from the service order information all D
9 orders submitted by the BellSouth retail side with certain
10 disconnect reason codes, and these are noncompetitive disconnect
11 reason codes. BellSouth implemented this in order to go after
12 customers who originally were excluded from Sunrise in the first
13 sweep because we felt that there were some additional potential
14 winback customers that were excluded through the process.

15 So once we get D orders with the retail disconnect
16 code, that goes in, that information goes in, and like the first
17 sweep, the NPA/NXX line, customer code, date, and the only
18 difference between the first sweep and the second sweep is now we
19 include the retail disconnect reason code. And we can do that
20 here because it is our information. It is our customer. There
21 is no prohibition against us knowing why a customer left us.
22 And, again, these are only D orders associated and processed by
23 the retail side. Once you get this, this is again in the Sunrise
24 permanent table, the process is the same. It goes to CRIS, there
25 is a match, it comes back here where you have leads.

1 Now, Supra's legal argument is that BellSouth's retail
2 side is prohibited from using service order information that is
3 generated from a CLEC LSR to identify and winback a BellSouth
4 customer.

5 MR. CRUZ-BUSTILLO: Commissioner, objection. I thought
6 this was an opening statement regarding the evidence for the
7 hearing and not legal argument.

8 MR. MEZA: I will tell you, Commissioner Deason, that
9 the only evidence that Supra has presented in its testimony is
10 legal argument, and I should be able to address what Supra will
11 argue through its testimony of Mr. Nilson.

12 COMMISSIONER DEASON: To the extent -- he is permitted
13 to include legal argument in his opening statement.

14 MR. CRUZ-BUSTILLO: Okay.

15 MR. MEZA: This is what the fight is about right here.
16 That's it. The parties agree pretty much to the process. I have
17 a little problem with Mr. Cruz-Bustillo's chart, but it's not
18 worth fighting over. This is it. Supra says that we can't use
19 the fact that its service order information is generated from a
20 CLEC LSR to identify that lost customer for marketing purposes.
21 But Supra recognizes that that same information must be provided
22 to the retail side for some purposes. We just can't use it for
23 marketing purposes.

24 What Supra doesn't tell you is that Supra conducts its
25 own winback activities. That it receives the same information

1 that Sunrise generates through what is called the PMAP line loss
2 reports, and it is attached to Mr. Ruscilli's testimony as
3 Exhibit 1. Unlike Sunrise, which Mr. Cruz accurately stated is
4 produced weekly, the PMAP daily line loss report, hence its
5 titled, is given to Supra and all CLECs every day. It provides
6 more information than Sunrise provides. It actually provides the
7 name of the customer and specifically tells Supra that they lost
8 a customer to another carrier.

9 So what you have here is that BellSouth has a process
10 that it uses to identify customers that leave us, then we have to
11 do additional steps to find out who that customer is. And we
12 don't even know for a fact that they actually went to a
13 competitor, where Supra gets the information, gets more
14 information and gets it faster. Supra's basic position is that
15 it can't use disconnect -- that we cannot use disconnect reports
16 for winback purposes, but Supra can. That can't be what the FCC
17 intended when you look through the various orders that we are
18 going to ask you to look through today.

19 And, finally, when you listen to the evidence presented
20 in this case and legal arguments, ask yourself this one question.
21 Where is the evidence of the anticompetitive behavior? Supra
22 gets the same information, if not more, faster. Supra has
23 presented no evidence that it lost a single customer as a result
24 of Operation Sunrise. And, fundamentally, BellSouth has a right
25 to know when it loses a retail customer and has a right to

1 attempt to compete in the market to get that customer back.

2 Thank you.

3 COMMISSIONER DEASON: Thank you. Staff, I assume you
4 have no opening statement, correct?

5 MS. DODSON: Correct.

6 COMMISSIONER DEASON: Okay. I believe we can call the
7 first witness. I believe it is Mr. Nilson.

8 MR. MEZA: Commissioner, may I ask what is being handed
9 out?

10 COMMISSIONER DEASON: I'm sorry, you wish an exhibit
11 number?

12 MR. MEZA: Oh, this is deposition in case you need it.

13 COMMISSIONER DEASON: I'm sorry.

14 MR. MEZA: Okay, thank you.

15 COMMISSIONER DEASON: Have we already identified this
16 deposition as an exhibit? Mr. Cruz, do you wish to have it
17 identified?

18 MR. CRUZ-BUSTILLO: I'm sorry, Commissioner.

19 COMMISSIONER DEASON: The deposition that is being
20 distributed, has that been already identified as an exhibit, or
21 do you wish to have it identified?

22 MR. CRUZ-BUSTILLO: I think it has already been
23 identified as an exhibit by the staff. And I believe the
24 stipulation was that all of these depositions would be submitted
25 into the record along with other discovery, so I don't know the

1 number.

2 MR. MEZA: It's Number 5.

3 COMMISSIONER DEASON: Okay, very well.

4 COMMISSIONER BRADLEY: Mr. Chair?

5 COMMISSIONER DEASON: Yes.

6 COMMISSIONER BRADLEY: Before we begin, I would like to
7 have both parties respond to this question just for the record.
8 And this concerns the proper venue, and correct me if I'm wrong.
9 Florida law allows this Commission to deal with anticompetitive
10 behavior, and I want both parties to respond to this. It is also
11 my understanding that the federal statute -- under the federal
12 statute, the federal statutes clearly states that the database
13 should be kept separate from marketing. And I'm trying to, as I
14 said, just for the record, determine why this matter was brought
15 before the Public Service Commission and not maybe carried to
16 federal court. And I understand the difference between
17 anticompetitive behavior, but it would seem to me that, after
18 listening to the opening statements, we most definitely are
19 dealing with information and marketing. And I am just --

20 MR. CRUZ-BUSTILLO: I will try to give an answer, since
21 we brought the complaint. When we brought the complaint we
22 brought it under federal rules and under state statutes. This
23 Commission has already found in an order that it has jurisdiction
24 to enforce FCC regulations. But not only that, this Commission
25 has issued an order saying that it has the power to enforce the

1 specific provision that we are claiming has been violated. The
2 open issue that we discussed at the prehearing had to do with
3 federal remedies versus state remedies.

4 In this case there is no federal remedy outlined in a
5 statute or FCC rule. The remedy we -- so that really is an
6 academic discussion because we are not asking this Commission to
7 impose a federal remedy, we are asking this Commission to impose
8 a state remedy under 364. Interestingly enough, this Commission
9 last year issued a PAA order, which was not protested, and in
10 that PAA order this Commission under state law only found the
11 identical holding that has been made by the FCC, which is for
12 reacquisition efforts as opposed to retention efforts. BellSouth
13 cannot share information from its wholesale side to its retail
14 side.

15 And like Mr. Meza said, Supra does not object,
16 BellSouth has to update CRIS. BellSouth has to update its
17 systems when somebody converts. We are saying that the only
18 people that can't get this information on their retail side is
19 MKIS. And their argument is, interestingly enough, that after
20 they update CRIS, MKIS is the only people that get it and there
21 is firewalls all around that so only MKIS can look at it. And we
22 are saying those are the only people that can't look at it.

23 Of course you can update CRIS. Of course you can use
24 information obtained form in-bound retail calls. You just can't
25 use an order that starts on the wholesale side and feed it

1 directly down to MKIS so that they can generate the lead.

2 COMMISSIONER BRADLEY: Okay. But my question goes more
3 to jurisdiction and venue.

4 MR. CRUZ-BUSTILLO: Oh, I'm sorry. The jurisdiction is
5 right here in this Commission. This Commission has found it has
6 jurisdiction to enforce this specific FCC regulation, so that
7 BellSouth's argument on that issue is more for an appellate brief
8 as opposed to whether or not this Commission has already found
9 that it has jurisdiction, which it has, to enforce this specific
10 regulation that we are talking about.

11 MR. MEZA: And I will provide you a direct response.
12 We totally agree with your assessment of the jurisdiction
13 problems associated with this case. And you will find that as
14 the day progresses that we will be fighting over the
15 interpretation of what the FCC meant in two paragraphs in a March
16 2003 order. And I do not think that this Commission should be in
17 a position of having to interpret in an enforcement proceeding
18 what the FCC meant when it said certain things. That this is
19 what you can do and this is what you cannot do.

20 And one very important distinction with this case is
21 that Supra's tie to jurisdiction in this court, in this
22 Commission is that by violating the FCC rules there is somehow
23 some anticompetitive behavior that is going on, and under
24 364.01(g) you have jurisdiction to resolve that. Well, there is
25 no evidence of anticompetitive behavior. All there is,

1 basically, is a legal argument whether or not the FCC meant what
2 it said in Paragraph 27 and 28 of FCC Order 03-42.

3 COMMISSIONER BRADLEY: Okay. So just to further
4 clarify, we are not dealing with the federal statute, we are
5 dealing with an FCC rule?

6 MR. MEZA: Well, the orders themselves derive from
7 Federal Statute 222(b).

8 COMMISSIONER BRADLEY: Okay.

9 MR. CRUZ-BUSTILLO: And let me just clarify that the
10 PAA order was PSC-02-0875-PAA-TP. And that was issued on June
11 28th, 2002. The FCC order that Mr. Meza is talking about came
12 out in March 2003, and their argument has been that since March
13 2003 they are allowed to use the CLEC LSRs for market
14 reacquisition. And presumably, I guess, they acknowledge that
15 prior to March 2003 they didn't have that authority. But they
16 are saying that that preempts, I guess, this state commission's
17 PAA order which rely totally on Chapter 364.

18 MR. MEZA: Let me briefly respond to that because it is
19 an inaccurate assessment of our position.

20 COMMISSIONER BRADLEY: Our PAA order is subject to
21 appeal, isn't it?

22 MR. CRUZ-BUSTILLO: No, it wasn't protested, so it
23 became a final order.

24 MR. MEZA: Our position is not that as of March 2003
25 what we are doing in Sunrise suddenly became permissible. If you

1 read the order in question, the FCC says we clarify, meaning that
2 this is what we intended from the beginning to require. So it is
3 BellSouth's position that from the inception of Sunrise through
4 local service reacquisition, which began in March of 2001 was
5 suspended until August of it 2001 and continues today, everything
6 that we are doing complies with the FCC rules and orders.

7 MR. CRUZ-BUSTILLO: The PAA order under state law
8 prohibited the use of it as of June 28th, 2002. So in Florida it
9 was illegal until you got that clarification.

10 COMMISSIONER BRADLEY: So the PAA order was not
11 protested? I mean, there was no protest?

12 MR. MEZA: I'm not familiar with the referenced order
13 Mr. Cruz-Bustillo cites. It has not been referenced in any of
14 his pleadings.

15 MR. CRUZ-BUSTILLO: No, it is referenced in all my
16 pleadings, in my complaint, and in my response to your motion to
17 dismiss.

18 COMMISSIONER BRADLEY: Staff.

19 MS. DODSON: Pardon me, Commissioner. What was your
20 question?

21 COMMISSIONER BRADLEY: The PAA order, I was trying to
22 determine if there was a protest filed against what was rendered
23 by the Commission as a result of that PAA order.

24 MS. DODSON: There was no protest filed.

25 MR. MEZA: Let me further clarify that I believe under

1 jurisdiction principles that this Commission does have the
2 authority to implement additional rules and regulations other
3 than what the FCC has already proposed in order to prevent
4 anticompetitive behavior. But when those rules and regulations
5 conflict with the FCC, then regardless of what you have
6 previously ruled, you have to abide by the FCC's interpretation.

7 So even if Mr. Cruz-Bustillo was correct that at one
8 point in time this Commission expressly prohibited what Sunrise
9 is doing and the FCC later clarified that it is correct, the FCC
10 wins because you are dealing with FCC rules, federal statute, and
11 FCC orders.

12 MR. CRUZ-BUSTILLO: What we are saying is the FCC
13 didn't allow that as of March 2003, that the paragraphs that
14 BellSouth will focus on clarify that the prohibition remains in
15 effect so long as the -- that's it, that the prohibition remains
16 in effect.

17 Commissioner Deason, just so that the record reflects
18 that in my -- right now Ann Shelfer is handing out the PAA order,
19 and it is referenced in my complaint, and we relying on the PAA
20 order as the legal authority. Because this hearing, as I always
21 understood it, is the factual nuts and bolts, and that the legal
22 argument is for this Commission to decide in post-hearing briefs.
23 But we were, in the post-hearing briefs, going to rely on the
24 PAA, as well as the key customer tariff order, as well as FCC
25 03-42.

1 COMMISSIONER DEASON: You may proceed with your
2 witness. We haven't done the preliminaries.

3 MR. CRUZ-BUSTILLO: What do I do?

4 COMMISSIONER DEASON: We need to get his testimony
5 inserted into the record and his exhibits identified.

6 MR. MEZA: Jorge, I have a cheat sheet if you want to
7 use it.

8 MR. CRUZ-BUSTILLO: Sure.

9 MS. WHITE: I need it back. I always bring a cheat
10 sheet.

11 COMMISSIONER DEASON: Well, my illusion has just been
12 shattered. Ms. White, I never thought that you used a cheat
13 sheet.

14 MS. WHITE: It doesn't hurt. You never know when your
15 mind is going to go blank.

16 COMMISSIONER DEASON: Mr. Cruz.

17 MR. CRUZ-BUSTILLO: One second, Commissioner, so I can
18 see this one second.

19 DAVID A. NILSON

20 was called as a witness on behalf of Supra Telecommunications &
21 Information Systems, Inc. and, having been duly sworn, testified
22 as follows:

23 DIRECT EXAMINATION

24

25 BY MR. CRUZ-BUSTILLO:

1 Q Good morning. Could you please state your name for the
2 record and please spell your last name for the court reporter?

3 A My name is David A. Nilson, N-I-L-S-O-N.

4 Q And by whom are you employed and in what capacity?

5 A Supra Telecommunication and Information Systems.

6 Q And in what capacity are you employed with Supra?

7 A Vice President of Technology.

8 Q Have you caused to be filed direct and rebuttal
9 testimony in this case?

10 A I did.

11 Q Do you have any changes to that testimony?

12 A I do not.

13 Q If I were to ask you the questions contained in your
14 direct and rebuttal testimony today, would the answers be the
15 same?

16 A Yes.

17 MR. CRUZ-BUSTILLO: I would ask at this time that Mr.
18 Nilson's direct and rebuttal testimony be inserted into the
19 record as though read from the stand.

20 COMMISSIONER DEASON: Is there an objection?

21 MR. MEZA: No, sir.

22 COMMISSIONER DEASON: Show then that the prefiled
23 direct and prefiled rebuttal testimony of Mr. Nilson will be
24 inserted into the record.

25 BY MR. CRUZ-BUSTILLO:

1 Q Mr. Nilson. Did you cause to be filed certain exhibits
2 in this proceeding?

3 A I did.

4 Q Attached to your direct and rebuttal testimony?

5 A To both, yes, sir.

6 Q Were those exhibits created under your supervision and
7 control?

8 A They were.

9 Q Do you have any changes to those exhibits?

10 A I do not.

11 MR. CRUZ-BUSTILLO: I would ask at this time that those
12 exhibits attached to his direct and rebuttal testimony be
13 inserted into the record with the exception of those exhibits
14 that were stricken, and with respect to Exhibits 6 and 7, only
15 those portions of the exhibit that were identified in Mr.
16 Nilson's supplemental direct testimony. Is that correct, Mr.
17 Meza?

18 MR. MEZA: That is correct.

19 MR. CRUZ-BUSTILLO: Mr. Commissioner, could I have
20 those inserted into the record?

21 COMMISSIONER DEASON: Well, what exhibits have been
22 deleted or stricken? Is this contained in the prehearing order?

23 MR. CRUZ-BUSTILLO: I hope so.

24 MR. MEZA: Yes, sir.

25 COMMISSIONER DEASON: It is. Okay.

1 MR. MEZA: And as referenced by your ordered today has
2 been --

3 COMMISSIONER DEASON: That is correct. We addressed
4 that also.

5 MR. CRUZ-BUSTILLO: Oh, that's right. In the motion to
6 strike the other exhibits were accepted that were -- certain were
7 stricken, so what is left is accepted.

8 MR. MEZA: Right.

9 COMMISSIONER DEASON: I just want to make sure the
10 record is clear as to what exhibits we are identifying. I
11 believe accompanying the prefiled direct testimony there were
12 prefiled Exhibits DAN-1 through 20, I believe.

13 MR. CRUZ-BUSTILLO: That is correct.

14 COMMISSIONER DEASON: And which of those exhibits are
15 we not identifying for purposes of today's hearing?

16 MR. MEZA: Give me one second.

17 MR. CRUZ-BUSTILLO: Let us take one minute to confer.

18 (Pause.)

19 MR. CRUZ-BUSTILLO: Commissioner.

20 COMMISSIONER DEASON: Yes.

21 MR. CRUZ-BUSTILLO: I have the list in front of me.
22 There is one that I have a question about. I believe I know my
23 recollection of what the motion to strike was. Mr. Meza doesn't
24 have an accurate recollection and wants to be able to check his
25 records. I wanted to identify -- I wanted to identify those

1 exhibits that I believe that are in, those that I know that are
2 out, and if I am incorrect on that, because it has already been
3 subject to a motion to strike, the record should reflect that it
4 has already been stricken. You know, I can't claim it is in
5 because you let it in now when it was already stricken from
6 before. So I just wanted to identify them quickly.

7 COMMISSIONER DEASON: Well, let's do this. We are
8 going to take a lunch break, but not right now. But later on
9 when we do, if you can review what exhibits should be included in
10 the composite exhibit, we will get that clarified. We will not
11 identify these exhibits as of right now. The testimony has been
12 inserted into the record, so there is a basis to conduct
13 cross-examination. If there are questions on an exhibit, I will
14 allow those questions to take place, and we will then make sure
15 that the composite exhibits that are identified are consistent
16 with your records and with the cross-examination that took place.
17 Fair enough?

18 MR. CRUZ-BUSTILLO: Yes, Commissioner. Thank you.

19 COMMISSIONER DEASON: So right now we will not identify
20 the prefiled exhibits to the direct.

21 Is there any question about the prefiled exhibits to
22 the rebuttal? There are two exhibits according to my records.

23 MR. MEZA: BellSouth did not raise any objections and
24 does not have any objection to the rebuttal exhibits.

25 COMMISSIONER DEASON: Okay. What we will do is we will

1 reserve Hearing Exhibit 8 for the purposes of the prefiled direct
2 exhibits, whatever they may be.

3 And we will go ahead and identify as Hearing Exhibit 9
4 the prefiled exhibits to the rebuttal testimony of
5 Witness Nilson. And I believe that is DAN-RT-1 and 2.

6 (Exhibit 9 marked for identification.)

7 MR. CRUZ-BUSTILLO: Commissioner, after he does his
8 cross, will I be permitted a few questions of recross?

9 COMMISSIONER DEASON: You can always seek to -- you
10 will have the opportunity to conduct -- yes, you will have the
11 opportunity to do redirect, that's correct.

12 MR. CRUZ-BUSTILLO: Redirect.

13 COMMISSIONER DEASON: But it is limited to questions
14 that were raised during cross, yes. Do you tender the witness?

15 MR. CRUZ-BUSTILLO: I tender the witness, yes.

16 COMMISSIONER DEASON: What about a summary?
17
18
19
20
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25

REDACTED

050

1 SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.
2 DIRECT TESTIMONY OF DAVID A. NILSON – DOCKET NO. 030349-TP
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

4 JUNE 27, 2003

5
6 **Q. PLEASE STATE YOUR NAME AND ADDRESS**

7 A. My name is David A. Nilson. My address is 2620 SW 27th Avenue, Miami,
8 Florida 33133.

9
10 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

11 A. I am the Chief Technology Officer of Supra Telecommunications and
12 Information Systems, Inc. (“Supra”).

13
14 **Q. PLEASE DESCRIBE YOUR BACKGROUND AND WORK EXPERIENCE.**

15 I have been an electrical engineer for the past 27 years, with the last 23 years spent
16 in management level positions in engineering, quality assurance, and regulatory
17 departments. In 1976, I spent two years working in the microwave industry,
18 producing next generation switching equipment for end customers such as AT&T
19 Long Lines, ITT, and the U.S. Department of Defense. This job involved extensive
20 work with various government agencies. I was part of a three-man design team
21 that produced the world’s first microwave integrated circuit which was placed in
22 production for AT&T within 30 days of its creation. I held jobs at two different
23 companies in quality control management, monitoring and trouble-shooting

1 manufacturing process deviations, and serving as liaison and auditor to our
2 regulatory dealings with the government. I spent 14 years in the aviation industry
3 designing both airborne and land-based communications systems for various
4 airlines and airframe manufacturers worldwide. This included ASIC and
5 Integrated Circuit design, custom designed hardware originally designed for the
6 Pan American Airlines call centers, and various system controllers used on Air
7 Force One and Two, other government aircraft and the Royal Family in England. I
8 designed special purpose systems used by both the FAA and the FCC in
9 monitoring and compliance testing. I was responsible for design validation testing
10 and FAA system conformance testing. Since 1992 I have been performing
11 network and system design consulting for various industry and government
12 agencies, including research and design engineering positions at the Argonne
13 National Laboratories. I joined Supra Telecom in the summer of 1997. A
14 programmer for more than 35 years, I have extensive experience systems analysis,
15 design, and quality assurance procedures required by various US government
16 agencies. I Have designed Internet Service Provider networks and organizations,
17 including Supra's. I have done communications related software consulting to
18 Fortune 500 corporations such as Sherwin Williams, Inc.

19 I have attended extensive management and engineering training programs with
20 Motorola, Lucent, Nortel, Siemens, Alcatel, Ascend, Cisco, Call Technologies,
21 Southwestern Bell Telephone, Verizon (formally known as Bell Atlantic), and
22 others.

1 I am the architect of Supra's network, Internet Service Provider, designer of our
2 central office deployments and network operations. This includes planning,
3 capacity and traffic analysis to define equipment capacity from market projections
4 for both voice services, Class 5 switch design and planning, transmission, data and
5 Internet services, xDSL, voicemail and ILEC interconnection, ordering and billing.
6 I have negotiated interconnection agreements with Sprint, Verizon, Ameritech
7 (SBC), SWBT and SWBT(SBC), and BellSouth.
8 I participate in bill analysis and dispute resolution and am intimately familiar with
9 BellSouth retail and CLEC OSS systems, CRIS and CABS billing systems and
10 standards. I have resolved tens of millions of dollars in over billed charges.

11

12 **Q. HAVE YOU EVER TESTIFIED BEFORE?**

13 Yes, I testified before the Florida Public Service Commission (FPSC) in numerous
14 generic dockets and in various disputes between Supra Telecom and BellSouth
15 regarding central office space availability, rates, requirements, and specifications
16 for Collocation, Unbundled Network Elements (UNEs), and UNE Combinations. I
17 have participated in settlement procedures before the FPSC staff on matters
18 relating to OSS and OSS performance against BellSouth. I have testified before
19 the Texas Public Utilities Commission (TPUC) on matters of collocation regarding
20 disputes with SWBT. I have made ex-parte presentations before the Federal
21 Communications Commission (FCC) regarding the Bell Atlantic / GTE merger,
22 the UNE Triennial review in 2002, and the Department of Agriculture (RUS)
23 regarding Network Design and Expansion policies for CLECs. I have appeared

1 before the FCC staff on several occasions in disputes against BellSouth regarding
2 collocation. I have testified before regulatory arbitrators in Texas, and in
3 Commercial arbitration against BellSouth. I have been deposed numerous times
4 by BellSouth, and SWBT. I was qualified as an Expert Witness in
5 Telecommunications by the Texas Public Utilities Commission in 2000. I have
6 testified in Federal District Court and Federal Bankruptcy Court.

7

8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

9 A. The purpose of my testimony is to address the issues identified in this
10 proceeding. I will address:

11 **Issue 1)** Whether BellSouth can share carrier-to-carrier information acquired
12 from its wholesale OSS and / or wholesale operations, with its retail division to market
13 to its current and potential customers.

14 **Issue 2)** Whether BellSouth can share carrier-to-carrier information acquired
15 from its wholesale OSS and / or wholesale operations, to furnish leads and / or
16 marketing data to its in-house and third party marketers.

17 **Issue 3)** Has BellSouth shared and / or used carrier-to-carrier information
18 acquired from its wholesale OSS and / or wholesale operations, in its retail division,
19 with its in-house marketers and / or third party marketers for marketing purposes. If
20 such practices are improper, what penalties should be imposed.

21 Specifically I will address the retail and wholesale functionality of BellSouth's
22 ordering / preordering OSS, the provisioning, Customer records and billing OSS, and

1 the way these system provide marketing feeds to BellSouth, from BellSouth's own
2 documents.

3

4 **OSS Overview**

5

6 **Q. FOR THE PURPOSES OF THIS PROCEEDING, WHAT IS THE**
7 **FUNCTIONALITY OF BELLSOUTHS OSS?**

8 A. BellSouth's OSS is a distributed system of networked system organized into
9 functionalities of Interfaces and engines. The engines are typically the older, function
10 specific legacy systems and databases created at a time when ordering / provisioning /
11 billing process was less integrated. Many people, each expert in their assigned
12 systems was required to place a customer order.

13 Interfaces provide automation and communications between the legacy
14 engines, implement the automated business rules previously performed manually,
15 coordinate the retrieval of line and customer specific data, take user input to address
16 customer requirements and coordinate the submission of new data and commands to
17 the legacy engines and their associated databases.

18 Engines are the common portions of the OSS, both retail and wholesale data
19 and orders are maintained by these core engines, in common databases. Interfaces
20 differ distinctly between retail and wholesale operations as do the business rules they
21 implement.

22

23

1 **Q. WHAT ARE THE LEGACY ENGINES INVOLVED?**

2 A. For preordering, BellSouth uses the following engines / databases: IMAT,
3 ZTRK, SOLAR, OASIS1, CRIS, ORBIT, RSAG, ORION, WOLF, ATLAS, GIMI,
4 AAND, SWISH, CLUE, DSAP, LIST, QUANTUM, CBI, AMOS, ORBIT, OLD,
5 P/SIMS, COFFI, DSAP and CDIA. For Ordering, BellSouth uses OPI, SOCS and
6 BOCRIS., MARCH, COSMOS and LFACS.

7

8 Of these the most important to this docket are CRIS, BOCRIS and SOCS.

9 CRIS (“Customer Records Information System”) contains customer records for both
10 retail and wholesale customers. The CRIS engine, in addition to storing all customer
11 records also provides both retail and wholesale billing, although some wholes billing is
12 processed by CRIS, and then sent to IBS (“Industrial Billing System”) for final bill
13 rendering. BOCRIS, among its many functionalities, provides interfaces and
14 additional functionality to the interfaces. SOCS (“Service Order Creation System”) is
15 the core ordering engine. All retail and wholesale orders are processed and validated
16 by SOCS before being dissociated into commands to individual engines.

17

18 The SOCS routes service orders to SOAC² whose function is to distribute the
19 orders to appropriate databases/systems such as:

¹ OASIS is linked to COFFI, ATLAS, CRIS & FUEL.

² SOAC – Service Order Analysis Center

- 1 • MARCH³ - where Service Orders are converted into data format compatible
2 with the switch data format
- 3 • LFACS⁴ - database containing the information on loops and facilities.
- 4 • COSMOS⁵ - contains data relevant to Central Office i.e. new numbers,
5 equipment inventory etc.

6

7 **Q. WHAT ARE THE RETAIL INTERFACES?**

8 A. BellSouth retail interfaces are BellSouth OSS Systems such as RNS
9 (residential), ROS(business), which replace the older legacy interfaces DOE(Southern
10 Bell region) , and SONGS(South Central Bell region). The newer interfaces provide
11 higher levels of automation and integration, modern implementations, and GUI
12 interfaces that character based DOE and SONGS do not possess. However there is
13 one common denominator between all 4 retail interfaces.

14

15 They all directly connect to SOCS to submit orders without any intervening
16 systems.

17

18 **Q. WHAT ARE THE WHOLESALE INTERFACES?**

³ MARCH – Message and Recent Change

⁴ LFACS – Loop Facility Assignment Control System

⁵ COSMOS – Computer System for Mainframe Operations

1 A. The interfaces are best understood by referring to the OSS schematics, **Supra**
2 **Exhibit # DAN12, Supra Exhibit # DAN13, and Supra Exhibit # DAN13.** Whether
3 the CLEC is ordering resale, UNE-P, UNE-L, interconnection UNEs, there are 4
4 interfaces, three of which are shown clearly on **Supra Exhibit # DAN12, and Supra**
5 **Exhibit # DAN13.**

- 6 1. LENS (and from LENS through TAG)
- 7 2. TAG
- 8 3. EDI (Which today either flows through TAG, or has implemented the
9 same set of validation rules used by TAG).
- 10 4. Paper LSR. (Not shown in the OSS Schematic exhibits)

11

12 EDI was initially created as an interim solution to AT&T's request for industry
13 standard Direct Access to BellSouth OSS. When the ATIS organization ratified EDI
14 as a standard electronic record exchange format, and identified 850 and 860
15 telecommunications record standards, EDI was converted to a standard offering. SBC
16 and Verizon implemented EDI pre-ordering and ordering. BellSouth developed EDI
17 ordering, but supported pre-ordering through the proprietary TAG while EDI pre-
18 ordering systems did not exist.

19 TAG is BellSouth's proprietary interface, based upon the CORBA standard. It
20 performs pre-ordering according to BellSouth's Local Exchange Ordering Guide
21 ("LEO") and BellSouth Business Rules ("BBR") according to BellSouth's local
22 implementation to the Telcordia LSOG. TAG Interfaces with CRIS, RSAG, ATLAS,

1 P/SIMS, COFFI, and DSAP customer, line and other input data, updating these
2 systems as required by the order. TAG outputs is processed LSR to LEO .

3 LENS is BellSouth's first mass market ALEC OSS to replace manually
4 prepared paper orders. LENS is an electronic web-based system used for pre-ordering
5 and ordering of services from BellSouth. Initially LENS had its own interfaces to the
6 Legacy engines listed above, but in 2001 was converted to interface solely to TAG. In
7 this Manner TAG has become both an interface and an engine capable of clarifying
8 LSRs which do not meet it's internal business rules.

9 A. Paper orders, and any order that falls out. Paper orders arerquired for virtually
10 all services except POTS. **Supra Exhibit # DAN12** shows a line leaving the LESOG
11 OSS called manual fallout. This represents orders which LESOG cannot translate the
12 LSR into a Service Order Format. These orders must be handled manually, they are
13 BellSouth caused errors, and are reported on performance reports as manual fallout.
14 These orders must be manually input into LENS, LEO/LESOG or DOE / SONGS by
15 personnel at BellSouth's Local Carrier Service Center ("LCSC"), depending on the
16 product or the nature of the clarification being resolved. Thus manually handled
17 orders are restored to the same stream as automated orders before the order arrives at
18 SOCS.

19

20 **Q. DOES TAG SUBMIT SERVICE ORDERS TO SOCS?**

1 A. No. Tag processes ATIS/OBF industry “standard⁶” LSRs only. BellSouth has
2 not made it possible for SOCS to understand an LSR as input. Instead two additional
3 engines are added to the OSS; LEO and LESOG. These are not legacy engines, in
4 fact they did not exist in 1996 when the Act was signed. The order serially flows
5 from LENS through TAG, LEO and LESOG before being submitted to SOCS. Prior
6 to the TAG validations, LEO validated LSR accuracy, a role it still shares with TAG.
7 LESOG is the Service Order generator that converts an ALEC LSR, into the Service
8 orders used by BellSouth retail. SOCS understands Service Orders as input and
9 receives them from RNS and ROS (retail), DOE and SONGS (Legacy retail or
10 Wholesale), and LESOG (Wholesale).

11 Thus all orders, manual, via one of the three interfaces, and orders that must be
12 manually handled by the LCSC all flow through to SOCS.

13

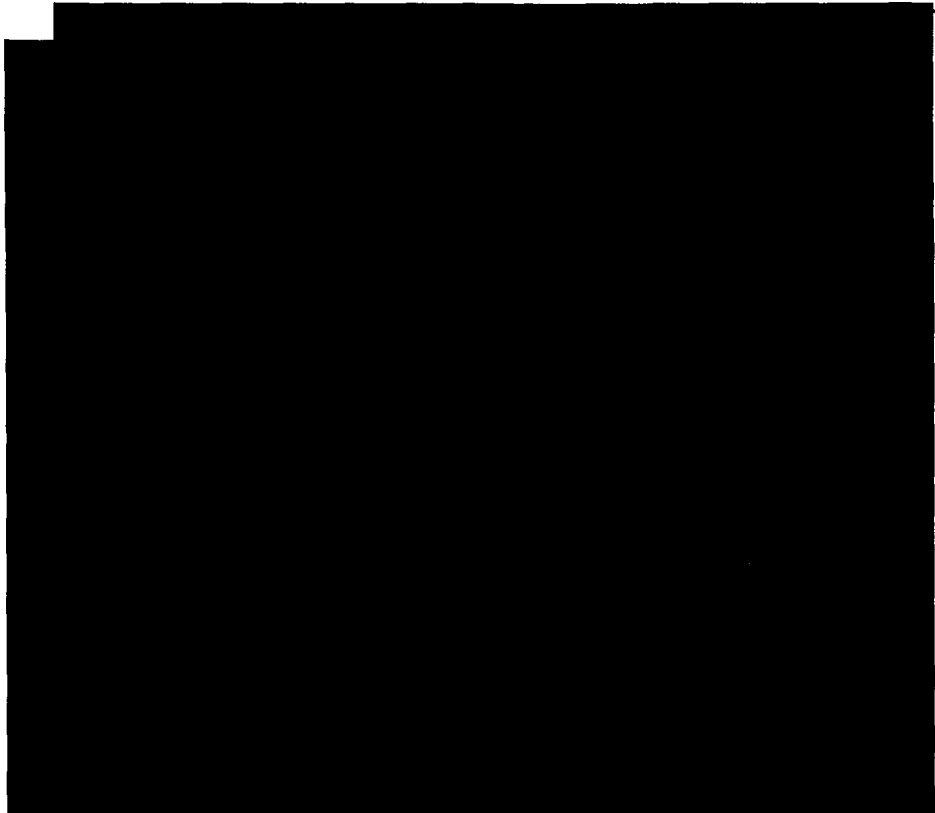
14 **Q. DO THE ALEC AND RETAIL INTERFACES OPERATE IN**
15 **ESSENTIALLY THE SAME TIME AND MANNER?**

16 A. No. BellSouth’s retail interfaces make direct machine to machine entry into the
17 SOCS system. Supra’s orders, once typed into LENS, are reviewed by additional
18 systems, TAG, LEO and LESOG, and / or are reviewed manually by BellSouth
19 CSRs. However, once an order is submitted to SOCS, whether retail, resale or
20 UNE, it is treated the same:

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⁶ BellSouth makes its own local changes and exceptions to the ATIS / OBF industry standard.

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(Emphasis Added) Bellsouth motion for interpretation

in

26 Here Mr. Pate testifies that SOCS behaves in the same manner regardless of
27 who submits an order into SOCS. This becomes quite important later as we discuss
28 Marketing Information Systems.

29



1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]

15 Integration of Marketing related or other systems into the OSS.

16

17 **Q. HOW DO THE ENGINES AND INTERFACES “COMMUNICATE”?**

18

19 A. I have reviewed BellSouth’s Regional Negotiation System, Technical
 20 Architecture Document, Exhibit 13 attached to **Supra Exhibit # DAN17**. According to
 21 that document:

22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]
 26 [REDACTED]
 27 [REDACTED]
 28 [REDACTED]
 29 [REDACTED]
 30 [REDACTED]
 31 [REDACTED]
 32 [REDACTED] **Supra Exhibit #**

33 **DAN17 sub exhibit 13 Page 1. (Emphasis added.)**

1

2 The Network Infrastructure for RNS provides the LAN (Local Area Network)
3 and WAN (Wide Area Network) that allows users and local applications to access
4 applications and services across the BellSouth region on the BOSIP network
5 (BellSouth Open Systems Interconnect Platform). **BOSIP is the region-wide TCP/IP**
6 **routed network for data communications.**

7 BellSouth's chose standard TCP/IP as their common network access protocol.
8 Where Legacy engines pre-date this protocol (for example the older DOE interface
9 using bisynchronous TN3270 protocol), BellSouth made these systems accessible to or
10 from the BOSIP network as well.

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DAN17 sub exhibit 13 pg. 6.

25 BellSouth has built a high-level gateway interface to its bisynchronous
26 mainframe network to support RNS, ROS and direct users from the BOSIP network.
27 Thus a common TCP/IP over Ethernet connection serves to provide access to ALL
28 BellSouth's OSS is directly via **BOSIP**. All that is needed is a simple, common
29 Ethernet jumper wire between the existing TCP/IP LAN and the router in BellSouth's

1 data center connecting to the BOSIP network to a connection.

2 In this manner it is relatively easy to add new systems to provide additional
3 functionality. The systems need only be programmed to send data to each other, the
4 infrastructure is pre-built.

5

6

7 **Obtaining Marketing data from ALEC orders.**

8

9 **Q. WHAT IS [REDACTED]**

10 A. Known to some as the [REDACTED], Marketing Information Support,
11 Strategic Information Warehouse, and other names, [REDACTED] is a BellSouth Corporate
12 program of activities with many diverse capabilities all aimed at increasing the number
13 customers and products purchased directly from BellSouth Telecommunications on a
14 retail basis. These include:

- 15 1. For existing retail customer – product winback activities intended to identify
16 customer disconnected products and resell or up sell the customer to regain the
17 lost revenue.
- 18 2. Local toll winback, aimed at reclaiming lost intraLATA toll customers (via
19 change in LPIC assignment).
- 20 3. Local Service win-back to reclaim customers lost to another carrier.
- 21 4. Possibility and probability that the systems can be used effectively for
22 interLATA toll winback and could be in service today on behalf of Bellsouth
23 Long Distance, Inc.

1 [REDACTED]
 2 [REDACTED]
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 4 [REDACTED]
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 6 [REDACTED]
 7 [REDACTED]

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[REDACTED]

Supra Exhibit # DAN18 pg 16-17

(Emphasis Added)

30

31 **Q. IS BELL SOUTH ALLOWED TO USE WHOLESALE INFORMATION IN**
 32 **WINBACK OF CUSTOMERS LOST FROM ITS RETAIL DIVISION?**

1 A. No. Per FPSC Order PSC-03-0726-FOF-TP they must use commercially
2 available information in a form available throughout the retail industry.

3

4 **Q. WHERE DOES BELLSOUTH OBTAIN ITS INFORMATION FOR LOCAL**
5 **SERVICE WIN-BACK (WHAT DOES BELLSOUTH CONSIDER**
6 **COMERCIAALLY AVAILABLE INFORMATION)?**

7 A. For local winback, BellSouth developed a feed, ostensibly from SOCS, that
8 would feed retail customer disconnects information and LPIC changes⁸. The feed is
9 called Harmonize. In reality the so called “retail customer disconnects” are the result
10 of an ALEC LSR. When Supra wins a customer from BellSouth, BellSouth doesn’t
11 know to put in a disconnect order, they receive a conversion order from Supra is all
12 they get. In addition the Harmonize feed does not connect to CAR and CARE.

13 Harmonize was developed specifically to extract retail disconnect information
14 from SOCS.

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[REDACTED]

Supra Exhibit # DAN18 pg 22

(Emphasis Added)

⁸ Here Ms. Summers contradicts herself.

1
2 Harmonize is the only source of information. Harmonize does not connect to
3 CAR or CARE.

4 [Redacted]
5 [Redacted]
6 [Redacted]
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14 [Redacted]
15 [Redacted]
16 [Redacted]
17 [Redacted]
18 [Redacted]
19 [Redacted]

20 **Supra Exhibit # DAN18 pg 25-26 (Emphasis Added)**

21
22 CAR is NOT used for local win-back

23 [Redacted]
24 [Redacted]
25 [Redacted]
26 [Redacted]

27 **Supra Exhibit # DAN18 pg 35 (Emphasis Added)**

28
29 **Q. WHAT INFORMATION IS INDICATIVE OF THE TOLL WINBACK**
30 **SITUATION DESCRIBED ABOVE?**

31 A. For toll winback, whether local or interLATA toll the indicator is the change of
32 the PIC or LPIC information in the customer record.

33 A.

34 **Q. IS THIS INDUSTRY STANDARD OR COMMERCIALY AVAILABLE**
35 **INFORMATION?**

1 A. BellSouth claims that CAR and CARE data is purchased with this information.
2 This does not seem plausible, and even if it is true, the data would have been supplied
3 to “the industry” from BellSouth’s own records. Here is how.

4

5 There is a misconception over the carrier who changes the PIC/LPIC
6 designations nationwide. It is not an IXC, it is the LEC. In the case of Supra’s
7 customers, even AT&T cannot request that Bellsouth make this change on the
8 BellSouth switches, Supra must make the change in response to an AT&T or customer
9 request. The same is true for Bellsouth or the customers of any ALEC.

10

11 An LSR must be submitted through the process outlined above and processed
12 by SOCS. BellSouth states they buy CAR and CARE records. But this is
13 disingenuous at best. ILECs and ALECs are the vendors of CARE and CAR data.
14 They are the ones with these records. And BellSouth does not buy, nor have they ever
15 requested to buy CARE records for any of Supra’s nearly 300,000 access lines. There
16 is no other place to purchase this “industry data” other than the LEC serving the end
17 user customer that placed the LSR to convert the line.

18

19 Other than buying these records from Supra, as even AT&T must do, there is
20 no way to purchase this data other than by “monitoring” the orders flowing through
21 SOCS, or accessing the BellSouth CRIS database(s).

1 So how BellSouth knows they left from retail, is key question⁹

2 .

3 What is CAR?

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[Redacted text block]

(Emphasis Added) Supra Exhibit # DAN18

23 What info does CAR contain?

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[Redacted text block]

Supra Exhibit # DAN18

⁹ [Redacted footnote text]

1 CAR does not support local win-back.

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10 (Emphasis Added) Supra Exhibit # DAN18

11 What is CARE?

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26 Supra Exhibit # DAN18

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28 **Q. WHAT INFORMATION IS INDICATIVE OF THE LOCAL SERVICE**
29 **WINBACK SITUATION DESCRIBED ABOVE?**

30 A. For local service, the ONLY information that exists is the ALEC's LSR
31 initiating service. BellSouth now posts Supra lines lost on the PMAP website. Supra
32 make no corresponding disconnect list available to any party. BellSouth doesn't
33 market to the list of customers they post on PMAP, they market to the list of customers
34 that Supra does not post or sell to anyone.

1 Yet Supra Exhibits Supra Exhibit # DAN2, Supra Exhibit # DAN3, Supra
2 Exhibit # DAN4 are all examples of winback promotion letters that were sent to Supra
3 customers in violation of CPNI rules.

4

5 **Q. HOW IS THIS POSSIBLE?**

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

15 The argument that the ALEC's LSR is split into a new ("N") and disconnect
16 ("D") order was all BellSouth had to justify its actions. Supra believes that use of its
17 LSR in any form is a violation of CPNI, but the introduction of the "simple C" puts
18 BellSouth's continued actions in this regard past March 22 in a completely different
19 light. In "simple C" there are no separate pieces to the ALEC order that BellSouth
20 can claim ownership of – there is but one order and it contains Supra CPNI.

21

22 The evidence in its possession proves CPNI violations occur every night in
23 batches via this BellSouth process that affect "simple C" and "D & N" orders alike.

1

2 **Q. WHAT IS THE ISSUE BETWEEN “D” & “N” ORDERS AND “SIMPLE**
3 **C”?**

4 The practice of submitting an "N" and a "D" (New and Disconnect) instead of a
5 single "C" (Change) order has had the effect of this is that a customer's service is
6 actually disconnected during the conversion process, despite the Supreme Court's
7 finding that such should not happen. BellSouth will tell you that the “D” order and the
8 “N” order are, in most cases, provisioned at the same time, and therefore consumers
9 rarely go without service for any length of time. What is wrong with this philosophy
10 is that **no consumer should ever go without service as a result of a conversion,**
11 **ever.** Remember that the conversion is only a **billing change**. Service should remain
12 unaffected. The fact that BellSouth has created its own billing system in a manner
13 which requires a disconnection of service in this process is violative of state and
14 federal law, and is harmful to Florida consumers.

15

16 What makes matters worse is that, when customers go without service as a
17 result of this process, the customer will blame Supra, not BellSouth, for the problem.
18 Supra can speak ONLY to the BellSouth LCSC in order to resolve problems in
19 provisioning service. A customer, whether of BellSouth, of Supra, or in the
20 transitional phase, cannot even locate the number for the LCSC, and it is only under
21 the most extreme situations a three way call can be setup between Supra, LCSC and
22 the customer. If the customer wants to complain to BellSouth, even if it is on behalf of
23 Supra, the only number the public can see is for the BellSouth retail sales center.

1 And BellSouth's retail sales center will invariably tell the customer that the
2 Disconnect order was issued by Supra, and "... I'm so sorry that I can't help you, you
3 are not our customer any more." This is a formula designed for efficient conversion of
4 winback customers.

5
6 Supra is not the only ALEC to encounter these anti-competitive tactics. As
7 stated in the recent IDS complaint (*Complaint of IDS* in Docket 01-0740-TP at ¶ 31),
8 BellSouth has a glaring tendency to allow ALEC LSRs submitted as "C" Change
9 orders to slip through the LEO/LESOG/ Human Intervention cycle in a manner that
10 sometimes generates both a "D" Disconnect and "N" New service order, from the
11 ALEC LSR. However as Supra found, as long ago as June / July 2000, there are
12 issues that can cause the "N" order to subsequently fail in SOCS, while the "D"
13 Disconnect order is completed normally.

14
15 "Simple C" was supposed to reduce CLEC losses due to winback
16 options exercised during conversion periods of lines that had conversion problems, by
17 addressing the cause of the lost dialtone conversion problems.

18

19 **Q. WHAT TYPES OF EVIDENCE DOES SUPRA SEE IN THIS REGARD?**

20

21 **Supra Exhibit # DAN2** is a mailing that was sent to my home on two
22 occasions this year by BellSouth. The first time was when my Supra line of over 4
23 years was converted from resale to UNE combinations. The second time, my home

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

4

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

14

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

19

20 **Supra Exhibit # DAN3** is an example of a letter sent to a Supra attorney
21 within a week of the attorney converting to Supra from BellSouth.

22

1 **Supra Exhibit # DAN4** is the most disturbing of all, and casts doubt on the
2 veracity of BellSouth's October 2002 depositions in light of what is happening right
3 now. **Supra Exhibit # DAN4** clearly begins "We're always disappointed to lose a
4 valued customer like you." Investigating this customer's activity shows that if [REDACTED]
5 is involved in this winback letter, [REDACTED] no longer functions within the limited rules
6 testified to last October.

7

8 This customer line has not had a single change on it, and has not flowed
9 through SOCS for 619 days! This customer name and address information comes
10 directly from CRIS and Bellsouth knows it is an active line – I myself have received
11 no such letters from lines I transferred from BellSouth to Supra and then had
12 disconnected. The only way for BellSouth to know which lines are still in service is to
13 broach the retail / wholesale barrier and freely exchange information.

14

15 **Q. IS THERE ANY SUPPORT FOR THIS IN THE BELLSOUTH**
16 **TESTIMONY?**

17 A. Yes. Ms. Summers goes on to describe how BellSouth populates the Strategic
18 Information Warehouse ("SIW") used by Marketing Information Systems by
19 extracting not only from the SOCS / [REDACTED], but also by direct access to
20 BellSouth's CRIS billing system, the very system containing the customer service
21 records and other SUPRA CPNI information on each and every Supra customer.

22

1 What is SIW? It is a database system which contains retail customer
2 information, product information, billing information, and demographic information.
3 From other testimony it appears to have credit rating and other customer value
4 “scoring” capabilities.

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[REDACTED]

(Emphasis Added) Supra Exhibit # DAN18

17 SIW is populated with Billing information is obtained from CRIS or BOCRIS,
18 and supposedly retail ordering information from SOCS

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[REDACTED]

(Emphasis Added) Supra
Exhibit # DAN18

33 SOCS feeds SIW with order information. Earlier we saw Mr. Pate, as the IT
34 representative on how SOCS works, stating SOCS handles all orders in an identical
35 fashion. Ms. Summers is the director of MKIS – marketing information support which

1 means that she is only interested in order information if the customer is no longer a
2 BellSouth customer. This perspective must be kept in mind when examining her next
answer.

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 (Emphasis Added) Supra Exhibit # DAN18
16 [REDACTED]

17 [REDACTED] **Table,**” then a separate program
18 executes off of the [REDACTED] for local **service win-back.**

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 (Emphasis Added) Supra Exhibit # DAN18
24 [REDACTED]

25
26 The [REDACTED] Table resides in SIW.

27 [REDACTED]
28 [REDACTED]
29 [REDACTED]
30 [REDACTED]
31 [REDACTED]
32 [REDACTED]
33 (Emphasis Added) Supra Exhibit # DAN18

34 [REDACTED] is solely designed to support win-back campaigns. This is an
35 important point when examining her next answer.

36 [REDACTED]
37 [REDACTED]

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[REDACTED]

(Emphasis Added) Supra Exhibit # DAN18

MKIS gets information from [REDACTED]

[REDACTED]

(Emphasis Added) Supra Exhibit # DAN18

**Q. SO BELLSOUTH USES THE [REDACTED] SIW
INFORMATION INTERNALLY. IS IT SUPPLIED TO THIRD PARTIES
AS DEFINED IN ISSUE #2?**

**A. Yes. BellSouth itself supplies this to third party vendors engaged in direct mail
winback campaigns.**

[REDACTED]

[REDACTED]

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[REDACTED]

(Emphasis Added) Supra Exhibit # DAN18

9 **Q. DOES MKIS GET LOCAL SERVICE DISCONNECT INFORMATION**
10 **FROM ANY OTHER SOURCE?**

11 A. No. The only feed is from [REDACTED] / SOCS.

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(Emphasis Added) Supra Exhibit # DAN18

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[REDACTED]
(Emphasis Added) Supra Exhibit # DAN18

6 **Q. DOES ANY CLEC HAVE UNBUNDELD ACCESS TO ANY OF THE**
7 **OPERATION [REDACTED] DATABASE, OR RECEIVE A FEED OF THE**
8 **DISCONNECT DATA USED FOR WINBACK?**

9 A. No.

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13

[REDACTED]
Supra Exhibit # DAN18

14

15 **Q. SHOULD ANY CLEC HAVE UNBUNDELD ACCESS TO ANY OF THE**
16 **OPERATION [REDACTED] DATABASE, OR RECEIVE A FEED OF THE**
17 **DISCONNECT DATA USED FOR WINBACK?**

18 A. Yes, if its operation is not shut down completely by this commission.

19

20 **Q. WHAT OTHER STEPS SHOULD BE TAKEN BY THE COMISSION?**

21 A. One very simple step that could be taken is to require BellSouth to personalize
22 any mailing with the date of printing at the same time the letter is printed for mailing.
23 No such letter, despite having been printed with he customer name and address, has
24 ever been dated in my recollection. This in itself is quite suspicious. A dated letter
25 would help to clearly identify trigger events after the fact and would have an effect on
26 BellSouth's policies to preclude any further violations.

1

2

3 **Q. WHAT PENALTIES SHOULD BE IMPOSED UPON BELLSOUTH FOR**
4 **VIOLATING ISSUE #1 AND #2?**

5 A. The FPSC must send a clear and unequivocal message that this policy will no
6 longer be tolerated by imposing serious penalties for a violation.

7 1. \$25K for each day that violation has been occurring until now. (Statutory
8 option)

9 2. Suspension of certificate. (Statutory option)

10 3. Dismantle the [REDACTED] feed/or order that BST provide direct access to
11 the [REDACTED] feed for when a customer switches away from the CLEC, the CLEC can
12 send a Letter of Acknowledgment.

13 4. Require BST to print a date on the letter at the same time they personalize
14 the customer name / address showing "when" the letter was mailed. This date must
15 not be preprinted, or postdated. It must be the actual date the letter is printed.

16 5. Prohibit a Letter of any sort from being sent to the customers for 90 days -
17 presently Commission policy is 10 days. The [REDACTED] feed takes 7 days for the
18 letter to be generated so 10 days is right on target for when a customer could receive
19 the letter at the earliest. 90 day ban would ensure that if BST continues to use
20 [REDACTED] in the future, the customer is with the competitor for at least three billing
21 cycles.

22 6. Order that BST shall be required to allow a OSS expert to examine BST's
23 system, twice a year at random. The expert shall be chosen by Supra, but paid for by

1 BellSouth. This expert will report back to see if BellSouth is still utilizing this
2 [REDACTED] feed or some other similar system.

3

4 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

5 5. Yes, this concludes my testimony.

1 SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.

2 SUPPLEMENTAL DIRECT TESTIMONY OF DAVID A. NILSON

3 August 12, 2003

4 **Q. PLEASE STATE YOUR NAME AND ADDRESS**5 A. David A. Nilson. My address is 2620 SW 27th Avenue, Miami, Florida 33133.6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**7 A. The Exhibits presented as part of my direct testimony are each a single, complete response
8 by BellSouth to a previous interrogatory. As such each is reproduced in its entirety according to the
9 rules of evidence.10 **Q. WHAT IS THE PURPOSE OF EXHIBIT DAN-1?**11 A. DAN-1 is a letter contained in DAN-7. This letter is identified by BellSouth for use in
12 Operation Sunrise. The "notification" MKIS receives identifying the customer, targeted to receive
13 this letter, is exclusively derived from a CLEC LSR which is transformed into a CLEC service order
14 (i.e. change order).15 **B. Q.PLEASE DEFINE CARRIER-TO-CARRIER INFORMATION?**16 C. A. Carrier-to-carrier information also known as wholesale information includes "notice" of
17 a customer switch. Information regarding a carrier change cannot be used to target that customer, so
18 long as the information or notice or knowledge of the switch was exclusively derived from
19 BellSouth's status as the executing carrier. The FCC stated in Order No. 99-223, ¶77, that: "Where
20 a carrier exploits "**advance notice**" of a customer change by virtue of its status as the underlying
21 network facilities or service provider to market to that customer, it does so in violation of section
22 222(b)." Furthermore, Section 222 defines customer proprietary network information to include:
23 (h)(1)"information that relates to . . . destination, location . . . of use of a telecommunications service

1 ...” Updating CRIS of a completed conversion has absolutely nothing to do with “notifying” internal
 2 retail marketers (i.e. MKIS) that a customer has in fact switched. The knowledge of the switch is
 3 information regarding the “destination” and/or “location” of where the customer now receives
 4 service. The fact that BellSouth may allegedly suppress the name of the new carrier, does not
 5 diminish the fact that BellSouth’s wholesale operations has “shared” with its retail operations that
 6 the customer has changed his “destination” and/or “location” regarding where the customer receives
 7 service. The existence of the “switch order” itself is not only carrier-to-carrier wholesale
 8 information, but can also be separately considered CPNI and the type of proprietary carrier-to-carrier
 9 information Section 222 was designed to protect. Disconnect codes that BellSouth generates, as a
 10 consequence of the CLEC LSR, to identify that the customer has switched is also considered to be
 11 wholesale information. BellSouth agrees with this fact. See DAN-6, Bates Stamp 000079 and
 12 000144. But for the switch, the codes would not have been generated.

13 **Q. WHAT SECTIONS OF DAN-6 DOES SUPRA RELY ON?**

14 A. In demonstrating the way in which Operation Sunrise operates with respect for training
 15 purposes for BellSouth employees and supervisors, Supra intends to rely on the following pages in
 16 DAN-6: **Bates Stamp 16-42, 43-89** -- Competitive Operating Requirements, Corporate mandated
 17 re-training module regarding “standards”, “ethics” “integrity” vs. “Negative Selling,” “Competitive
 18 Information and how it is collected” and “Mandatory Guidelines. **Bates Stamp 117-159** –
 19 Instructor training for above, including CAMS and vendors training for handling “Competitive” data.
 20 **Bates Stamp 464-473** – Documentation of the various types, and reasons for disconnect orders and
 21 how they come about.

1 **Q. WHAT IS THE PURPOSE OF EXHIBIT DAN-7?**

2 A. To show the decision-making processes involved in the creation and operation of “Operation
3 Sunrise.” Supra intends to rely upon the following pages: **Bates Stamp 692-711, 841-853** -- Meeting
4 minutes addressing the creation and evolution of policy. Identification of problems that would reduce
5 the number of win-back candidates, and steps taken to increase that number. **Bates Stamp 712-770**
6 -- Operation Sunrise Project charter, January 11, 1996, Purpose (713-715), Scope (716-723) showing
7 the clear emphasis on winback, the source of data being the result of ALEC orders¹, and the
8 dissemination of this data to third parties² (**Bates 717, 719**). It further details the “Service Orders will
9 be generated by the vendors, either manually or through their own interfaces.” **Bates 722** provides
10 documentation for the roles of BellSouth departments and external vendors. **Bates Stamp 746-770**
11 -- Operation Sunrise Winback Analysis Phase. Purpose, goals and Business area strategy model (748-
12 754), including identification of “valuable” customers, and system improvement using “feedback
13 loops)³, the 24 hour execution of winback⁴, Operations model (755-756) showing “holes” in the plan
14 that needed to be addressed for more complete coverage (i.e. calls to BellSouth business office bypass
15 Sunrise⁵ and the workarounds that address them. The use of DMC / Equitel to reinstate service
16 (requiring Equitel to possess CPNI in order to create the winback service order)⁶, and the feedback,
17 through GIMI, to RNS and the retail operation of all “switcher” accounts, even when generated from
18 wholesale orders.⁷ **Bates Stamp 757-770** – Information models defining transactions, triggering

1 SOCS and CARE.

2 DMC(Equitel) and Rapp Collins Worldwide.

3 Bates 753, final paragraph.

4 Bates 754, para 2.

5 Bate 756, para 6.

6 Bate 755 – Diagram. Bate 756, para 5

7 Bate 756, para 1.

1 events, data feeds, data entity relationships diagram⁸, data delivery timing and operational standards
2 necessary to understand the operation and flow of data. **Bates Stamp 771-797 -- Conceptual System**
3 **Design**, documenting the existing, and future the capabilities of the system, on January 11, 1996.

4 **B. Bates Stamp 798-808 --** The low cost of implementing the RNS interface to retail and other
5 project programming, in support of my direct testimony in regard to the ease of implementing the
6 simple programming necessary. **Bates Stamp 809-840 --** Implementation timeline issues.

7 **Q. WHAT IS THE PURPOSE OF EXHIBIT DAN-8?**

8 A. The purpose of Exhibit 8 is to document BellSouth policy and procedures "... to identify,
9 quantify, contact, and track those residential customers who have selected a local service or local toll
10 carrier other than BellSouth."⁹ as it existed on April 27, 2000. This exhibit is an older revision of the
11 same document as DAN-9, to which BellSouth does not object. This document will be used to
12 demonstrate that certain BellSouth activities that did occur. DAN-8 is a snapshot of the policies that
13 led to activities prior to the release of DAN-9 and is essential in understanding the time relationship
14 of BellSouth's activities.

15 **Q. WHAT IS THE PURPOSE OF EXHIBIT 19?**

16 A. To identify specific issues related to the technical design of the Sunrise system that is contrary
17 to BellSouth's position relative to the use of CPNI.

18 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

19 A. Yes, this concludes my testimony.
20

⁸ Entity Relationship Diagrams are used to define the varies data and relationship types, and the delivery of data to 3rd party (lettershop), Equitel, and BellSouth retail (GIMI).

⁹ Exhibit DAN-8, page 1, para 1.

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.

REBUTTAL TESTIMONY OF DAVID A. NILSON

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030349-TP

JULY 25, 2003

1 Q PLEASE STATE YOUR NAME AND ADDRESS

2 A. My name is David A. Nilson. My address is 2620 SW 27th Avenue, Miami,
3 Florida 33133.

4

5 Q BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

6 A. I am the Chief Technology Officer of Supra Telecommunications and
7 Information Systems, Inc. ("Supra").

8

9 Q ARE YOU THE SAME DAVID A. NILSON WHO FILED DIRECT
10 TESTIMONY IN THIS DOCKET?

11 A. I am.

12

13 Q WHAT IS THE PURPOSE OF YOUR TESTIMONY?

14 A. The purpose of my rebuttal testimony is to respond directly to several matters
15 raised in BellSouth's direct testimony filed by Mr. John A. Ruscilli. My rebuttal
16 testimony will address BellSouth's actual practices as opposed to BellSouth's
17 claimed policy positions made in its direct testimony. My rebuttal testimony will

1 directly address Mr. Ruscilli's interpretation of the FCC decisions that this
2 Commission expressly incorporated into Commission Order No.
3 PSC-03-0726-FOF-TP. I will also respond directly to BellSouth's claim that its retail
4 division and/or in-house marketers, in particular its Marketing Information Support
5 ("MKIS") group, does not obtain carrier-to-carrier information for marketing
6 purposes as well as BellSouth's claim that BellSouth does not share carrier-to-carrier
7 information without third-party marketers, in particular outside Letter Shop(s)
8 employed by BellSouth.

9
10 **Q. DO YOU AGREE WITH MR. RUSCILLI'S CONCLUSION, ON PAGE 3**
11 **OF HIS DIRECT TESTIMONY, THAT THE COMMISSION HAS ALREADY**
12 **EXAMINED THE ISSUES, RAISED IN THIS DOCKET, IN A PREVIOUS**
13 **DOCKET AND FOUND BELLSOUTH'S POLICIES TO BE APPROPRIATE?**

14
15 A. No, I do not agree with Mr. Ruscilli's conclusion. First, Docket Nos. 020119-TP,
16 020578-TP, and 021252-TP ("Key Customer Tariff Docket") and this Docket involve
17 two different and distinct matters. The Key Customer Tariff Docket did examine the
18 use of CPNI and Wholesale information. The specific examination, however, was
19 limited to the scenario in which a customer calls into a BellSouth service center to
20 lift a PIC freeze or a request to move or remove DSL. The question posed, in the
21 Key Customer Tariff Docket, to the Commission was whether further marketing
22 restrictions were warranted in regards to in-bound calls to BellSouth service centers.

1 The limitation on the scope of this issue can be found in Commission Order No.
2 PSC-03-0726-FOF-TP, pg. 48, 1st .

3 This Commission stated in its “Conclusion” paragraph of Order No.
4 PSC-03-0726-FOF-TP, pg. 47, 2nd , that the “FCC has sufficiently addressed
5 retention marketing when a customer calls in to lift a carrier freeze.” Given the
6 parameters set by the FCC and incorporated into the Order of the Key Customer
7 Tariff Docket, this Commission chose to place no further marketing restrictions –
8 other than those already imposed by the FCC – on BellSouth’s efforts to engage in
9 marketing retention efforts after the triggering event of “an in-bound” call to lift a
10 carrier freeze or to move or remove DSL.

11 The questions raised in this docket (i.e. Docket No. 030349-TP) are quite different
12 from the Key Customer Tariff Docket. This docket involves a specific admitted
13 “practice” – not addressed in any way in the former docket – in which BellSouth’s
14 Marketing Information Support (“MKIS”) group: (1) utilizes information that
15 originates from a carrier change request (Local Service Request “LSR”) for purposes
16 of triggering market retention efforts, and (2) then shares that same information with
17 an outside third party for market retention efforts. The question is whether this
18 admitted practice is legal. This question was not addressed in any way in the Key
19 Customer Tariff Docket.

1 **Q. HOW DO YOU VIEW MR. RUSCILLI'S INTERPRETATION OF THE**
2 **COMMISSION'S CONCLUSION IN THE KEY CUSTOMER TARIFF**
3 **DOCKET REGARDING BELL SOUTH'S POLICIES?**

4
5 A. Mr. Ruscilli's interpretation of the Commission's conclusion in the Key
6 Customer Tariff Docket is incorrect and out of context. On the bottom of page 3 and
7 on the top of page 4 of Mr. Ruscilli's direct testimony, he states that with respect to
8 the Key Customer Tariff Docket the Commission was "satisfied that BellSouth has
9 the appropriate policies in place."

10 For the purposes of this docket, this Commission has made no findings whatsoever
11 regarding BellSouth's admitted practice of utilizing carrier-to-carrier information,
12 such as switch (a.k.a. conversion) orders, to trigger market retention efforts.
13 Therefore, as I have already pointed out previously in my rebuttal testimony, this
14 statement is out of context with respect to the issues raised in this specific docket.

15
16 **Q. DO YOU AGREE WITH MR. RUSCILLI'S INTERPRETATION OF THE**
17 **THIS COMMISSION'S ORDER PSC-03-0726-FOF-TP AND FCC ORDER**
18 **03-42 WHEN HE CLAIMS THAT SUCH DECISIONS ALLOW BELL SOUTH**
19 **TO PROVIDE CARRIER CHANGE ORDERS (I.E. SWITCH ORDERS)**
20 **FROM ITS WHOLESALE OPERATION TO ITS RETAIL OPERATIONS**
21 **FOR THE PURPOSE OF TRIGGERING MARKET RETENTION EFFORTS?**

1 A. No. I do not agree with Mr. Ruscilli's interpretation. There is an absolute
2 prohibition against the use of carrier-to-carrier information, such as switch orders, to
3 trigger market retention efforts. This statement can be found on page 45 of
4 Commission Order No. PSC-03-0726-FOF-TP, 2nd indented paragraph. The
5 statement regarding the prohibition is from FCC Order No. 99-223, incorporated into
6 Order No. PSC-03-0726-FOF-TP, which also states that: "We [the FCC] conclude
7 that competition is harmed if any carrier uses carrier-to-carrier information, such as
8 switch or PIC orders, to trigger retention marketing campaigns, and consequently
9 prohibit such actions accordingly." (Emphasis added). This quote can also be found
10 on page 45 in Order No. PSC-03-0726-FOF-TP. This FCC decision is clear that the
11 use of switch orders to trigger market retention efforts is a "harm to competition" and
12 as such anti-competitive.

13 Despite the "outright prohibition" and the anti-competitive nature of the use of
14 carrier-to-carrier information, Mr. Ruscilli nevertheless, concludes his direct
15 testimony by admitting that BellSouth's wholesale operations do in fact provide
16 information to its retail division arising out of a carrier switch order. The precise
17 admission is as follows: "It is clear that BellSouth's process for providing disconnect
18 reports to its retail divisions is consistent with rulings of this Commission and the
19 FCC."

1 **Q. ON PAGE 4, LINES 17 THROUGH 19, MR. RUSCILLI TESTIFIES**
2 **THAT “IT IS AGAINST BELLSOUTH POLICY FOR ANY EMPLOYEE OR**
3 **AUTHORIZED REPRESENTATIVE OF BELLSOUTH TO MISUSE**
4 **WHOLESALE INFORMATION,” DO YOU AGREE WITH HIS**
5 **STATEMENT?**

6
7 A. Although Mr. Ruscilli testifies that it is against BellSouth’s policy for any
8 employee to misuse wholesale information, Mr. Ruscilli did not testify that it is
9 against BellSouth’s policy to “harvest” information from ALEC wholesale requests
10 electronically, as is the case with the direct feed from BellSouth’s OSS to its
11 Operation Sunrise program. On the contrary, Mr. Ruscilli admits that BellSouth does
12 “share” information originating in its wholesale operations with its Marketing
13 Information Support (“MKIS”) group.

14 Mr. Ruscilli’s argument is essentially that harvesting of ALEC change information
15 from its wholesale operations is not considered by BellSouth to violate any
16 applicable CPNI laws, or FCC and Commission Orders prohibiting the sharing of this
17 type of information – since the ALEC change information is “harvested” using a
18 direct mechanical computerized feed as opposed to BellSouth personnel actually
19 “system surfing” for the information. BellSouth stated policy prohibits the “system
20 surfing”, but condones and promotes the use of the mechanical computerized feed
21 to “harvest” the wholesale information on a nightly basis for the purpose of triggering
22 marketing efforts targeted at the customer that had just switched away from

1 BellSouth. Frankly, BellSouth's prohibition against "system surfing" is a distinction
2 without a difference as it is just as illegal to have wholesale information fed to
3 BellSouth's retail operations by mechanical means as it is to do so by human means.
4 BellSouth was specifically asked whether apart from the "Harmonize" feed, was
5 there any other method by which the MKIS group was notified that a customer was
6 switching or had switched to another voice competitor. BellSouth said "no." This
7 admission can be found on page 30, lines 21-25 of my direct testimony.

8 The "Harmonize" feed Mr. Ruscilli characterizes as a disconnect report was
9 developed by BellSouth to "harvest" wholesale carrier change information directly
10 from the Service Order Communications System ("SOCS"). This feed removes this
11 proprietary wholesale information from SOCS on a "nightly basis," which in turn
12 flows directly to BellSouth's Marketing Information Support (MKIS) group. See
13 #DAN9, bate stamp 001055.

14 BellSouth personnel in charge of the MKIS group admitted that the specific data
15 elements supplied by SOCS through the mechanical feed known as Harmonize
16 included, but was not limited to, the following: (1) the date an order was generated
17 and (2) order type – whether it was a change order or a new connect order. See my
18 Direct Testimony on page 28, lines 5-15 for the BellSouth admission.

19 Mr. Ruscilli's direct testimony affirms the prior BellSouth admission that the
20 disconnect report contains information identifying when a customer has chosen to
21 drop BellSouth as its voice provider. Mr. Ruscilli is clear in his direct testimony that:
22 "A few examples of possible disconnect reasons are . . . changing local service

1 providers . . .” Page 6, line 22 of Ruscilli Direct Testimony. This information is
2 derived exclusively from BellSouth’ status as the underlying wholesale executing
3 carrier. There can be no dispute as to this fact.

4 Mr. Ruscilli is clear that the information that is shared with its retail operations, from
5 its wholesale operations, is “assumed to be customers that switched to a local service
6 provider other than BellSouth.” Mr. Ruscilli goes on to admit, at the bottom of page
7 6 and the top of page 7 of his direct testimony, that those records that “reflect a
8 non-competitive disconnect reason code are removed and the remaining retail
9 customers are assumed to be customers that switched to a local service provider other
10 than BellSouth.” (Underline added for emphasis).

11 The documentation of Operation Sunrise clearly shows the carrier change orders are
12 removed on a nightly basis from SOCS and funneled directly to the Marketing
13 Information Support (MKIS) group. This information, again, is derived exclusively
14 from BellSouth’ status as the underlying wholesale executing carrier.

15
16 **Q. DOES MR. RUSCILLI’S DIRECT TESTIMONY CONFLICT WITH ANY**
17 **PRIOR TESTIMONY THAT MR. RUSCILLI HAS MADE TO THIS**
18 **COMMISSION?**

19
20 A. Yes. Mr. Ruscilli’s direct testimony in this docket is exactly the opposite of what
21 Mr. Ruscilli testified to in the Commission’s Key Customer Tariff Docket. The
22 hearing in the docket was held on February 27, 2003. On that day Mr. Ruscilli was

1 asked what BellSouth's policy was "regarding the sharing of wholesale information
2 with its retail division." See Supra Rebuttal Exhibit DAN-RT-1 (Hearing Transcript,
3 pg. 195). In response to this direct question Mr. Ruscilli stated the following:
4 "BellSouth's wholesale operations do not provide leads to its retail operations. Any
5 documentation used by BellSouth's retail operations to develop lists of former
6 customers that are potentially eligible for promotional offerings are obtained from
7 retail information sources - not wholesale sources." See pg. 195 of Ruscilli Direct
8 Testimony in Key Customer Tariff Docket. This statement does not include his new
9 modification that such wholesale information can be used to trigger marketing
10 retention efforts, so long as the marketing efforts are not initiated until after the
11 conversion is complete.

12 I will note the language I quoted from Mr. Ruscilli's direct testimony in the Key
13 Customer Tariff Docket is identical to the statement Mr. Ruscilli included in his
14 direct testimony in this docket. The two sentences, in this docket, can be found at the
15 bottom of page 4 and the top of page 5 of his direct testimony in this docket. The
16 substantive difference between his testimony in the Key Customer Tariff Docket and
17 this docket, however, is his new modification that it is legal to use carrier change
18 information exclusively derived from BellSouth's status as the executing carrier
19 because the marketing retention efforts do not begin until after the conversion is
20 completed.

1 **Q. IS MR. RUSCILLI THE PERSON WITH THE MOST KNOWLEDGE**
2 **OF HOW OPERATION SUNRISE ACTUAL FUNCTIONS?**

3
4 A. No. In another forum Supra had served BellSouth with a Federal Rules of Civil
5 Procedure 30(b)(6) Subpoena for deposition. A 30(b)(6) Subpoena requires the
6 opposing party to produce a witness with knowledge regarding the subject matter so
7 requested. In this case, the subject matter was Operation Sunrise. The witness
8 produced by BellSouth on June 7, 2002, was Mr. John A. Ruscilli. He was asked the
9 following questions:

10 Q Are you familiar with a program entitled Operation Sunrise?

11 A I heard the name for the first time yesterday.

12 Q In what context did you hear the name yesterday?

13 A Matt Brown, an associate of Ned here, asked me the same question you
14 just asked me.

15 Q I don't want to get into conversations between you and counsel. You
16 had a meeting with your counsel yesterday?

17 A Yes, and I heard that term for the first time, and I apologize.

18 Q You had not heard about that program Operation Sunrise prior to
19 yesterday; is that correct?

20 A No, sir, I had not.

21 Q Are you aware that BellSouth has such a program?

22 A Only to the extent that I was asked that question, but I don't know

1 anything about the program.

2 (Exhibit #DAN-RT-2, pg 105 – 106.)

3 Supra raised an objection with BellSouth that Mr. Ruscilli did not satisfy the
4 requirements of Rule 30(b)(6). BellSouth subsequently produced Ms. Michelle N.
5 Summers on October 9, 2003, in order to comply with the federal requirements of
6 Rule 30(b)(6). Ms. Summers is the director of BellSouth's Marketing Information
7 Support ("MKIS") group. This group is charged with, among other things, local
8 service win-back. MKIS is the group that actually utilizes the information that is
9 harvested from SOCS by the Harmonize feed. Mr. Ruscilli is proffered by
10 BellSouth, in this proceeding, as an expert on BellSouth's policies. But the issues
11 before the Commission involve BellSouth's actual practices - not policies - and how
12 the Harmonize feed actually works and what is done with the switch information
13 after it is removed from SOCS and sent to the MKIS marketing group.

14
15 **Q. DO YOU AGREE WITH MR. RUSCILLI'S DIRECT TESTIMONY, ON**
16 **PAGE 7, THAT AN INCUMBENT CARRIER CAN UTILIZE CARRIER**
17 **CHANGE INFORMATION SO LONG AS THE MARKETING RETENTION**
18 **EFFORTS DO NOT BEGIN UNTIL AFTER THE CONVERSION IS**
19 **COMPLETE?**

20
21 A. No. I do not agree with Mr. Ruscilli's interpretation. The FCC does allow
22 incumbents to use carrier-to-carrier information, but only after the incumbent's retail

1 division has “learned” of the conversion from an independent retail source that is
2 available throughout the retail industry and which is also available to competitors at
3 the same time. Let me explain.

4 The Florida Commission states on page 46 of Order No. PSC-03-0726-FOF-TP, that
5 “[t]he FCC made it clear that there is no prohibition against an ILEC initiating
6 retention marketing as long as the information regarding a customer switch is
7 obtained from independent retail means.” (Emphasis added). This Florida
8 Commission's conclusion is supported by a reference to FCC Order 99-223 in which
9 the FCC addresses this issue. FCC Order 99-223 78 reads in part: “. . . section
10 222(b) is not violated if the carrier has independently learned from its retail
11 operations that a customer is switching to another carrier . . . If the information about
12 a customer switch were to come through independent retail means, then a carrier
13 would be free to launch a ‘retention’ campaign under the implied consent conferred
14 by section 222(c)(1).” (Emphasis added).

15 The sole exception, to the outright prohibition, is therefore limited to circumstances
16 where a customer switch is learned from independent retail means.

17
18 **Q. DOES THE EXCEPTION ITSELF HAVE LIMITING LANGUAGE THAT**
19 **WOULD PROVIDE SOME CONCRETE PARAMETERS FOR THE SCOPE**
20 **OF THIS EXCEPTION?**

21
22 A. Yes. The FCC has clarified what it meant by the phrase “independent retail

1 means.” The Florida Commission incorporates by reference FCC Order No. 03-42,
2 27, on page 46 of Order No PSC-03-0726-FOF-TP. The language cited by this
3 Commission provides as follows: “We [the FCC] clarify that, to the extent that the
4 retail arm of an executing carrier obtains carrier change information through its
5 normal channels in a form available throughout the retail industry, . . .” (Emphasis
6 added). The clarifying language is quite specific. The carrier change information
7 that BellSouth obtains from Supra, and all other competitors, by virtue of its status
8 as the underlying wholesale network service provider cannot be used to trigger
9 marketing retention efforts. The only time such change, also known as conversion,
10 information can be used to trigger market retention efforts is if BellSouth’s MKIS
11 group can first learn of this switch “in a form available throughout the retail
12 industry.” My direct testimony includes testimony from BellSouth personnel,
13 supported by documentation, which demonstrates that the MKIS group first learns
14 of a change order through the Harmonize feed connected to SOCS – and not from
15 some outside independent source which compiles this data into a list in a form
16 available throughout the retail industry. In fact, it is impossible for another party to
17 learn this information so as to be able to make it available throughout the retail
18 industry unless that third party is informed of the change by either Supra or
19 BellSouth.

20 Supra makes no such notifications to any carrier.

21 If BellSouth’s MKIS group cannot obtain this information from “independent retail
22 means in a form available throughout the retain industry,” then BellSouth’s MKIS

1 group or any other in-house marketers are prohibited from targeting those customers.

2
3 **Q. MUST THE INDEPENDENT RETAIL INFORMATION THAT**
4 **BELLSOUTH SEEKS TO UTILIZE ALSO BE AVAILABLE TO**
5 **COMPETITORS AS WELL?**

6
7 A. Yes, carrier change information can only be considered to be derived from
8 independent retail means if competitors also have access to the same, or substantially
9 the same, information for use in their own marketing efforts.

10 Within the same paragraph in which the FCC clarifies that “independent retail
11 means” is limited to information obtained “in a form available throughout the retail
12 industry,” the FCC goes on to state the following: “Under these circumstances, the
13 potential for anti-competitive behavior by an executing carrier is curtailed because
14 competitors have access to equivalent information for use in their own marketing and
15 winback operations.” (Emphasis added). This quote can be found on page 47 of
16 Commission Order No. PSC-03-0726-FOF-TP.

17 This language does not necessarily mean that competitors must actually gain access
18 to that information before the information could be considered derived from
19 “independent retail means.” A fair reading of this statement, however, requires at a
20 minimum that wherever BellSouth obtains its carrier change information, that source
21 must also be a source that is available to competitors – whether actually accessed or
22 not - at the time BellSouth obtains the carrier change information. No competitor has

1 direct access on a nightly basis to BellSouth's Service Order Communication System
2 (SOCS). Accordingly, BellSouth cannot be obtaining the information it uses to
3 trigger marketing efforts, to win-back local voice customers, from an independent
4 retail source that is also available to competitors. This fact is undisputed.

5
6 **Q. WHAT ABOUT CAR AND CARE RECORDS? ARE THEY**
7 **"INDEPENDENT RETAIL MEANS"?**

8
9 A. Not at all. CARE and derivative records are a notice to IXC's that a local
10 exchange customer has changed their long distance provider. Such change can only
11 be affected by the LEC that "owns" the customer. Bellsouth cannot and will not
12 change the PIC on a Supra customer, even if requested by the customer of the IXC.
13 All IXC initiated PIC changes must be requested of Supra by the IXC. All customer
14 initiated PIC changes must be requested by the customer to Supra. Upon receipt of
15 such a request Supra must then issue an LSR requesting the change. Thus these
16 records are generated by the ALEC LSR and then fed to the long distance company
17 by BellSouth. It is a bit disingenuous for BellSouth to then claim that they buy back
18 the very same records BellSouth originally sold to the IXC as a result of the ALEC
19 LSR, and then maintain that such a record is "Independent."

1 **Q. HOW DID THE FCC AND THEREFORE THIS COMMISSION DEFINE**
2 **THE PHRASE “INDEPENDENT RETAIL MEANS” AS IT RELATES TO**
3 **BELLSOUTH’S MARKETING RETENTION EFFORTS?**

4
5 A. Commission Order No. PSC-03-0726-FOF-TP, incorporating the FCC decisions,
6 defined “independent retail means” to be information that BellSouth’s MKIS group,
7 or other in-house marketing apparatus, can obtain that (1) is in a form available
8 throughout the retail industry, and (2) competitors have access to this same
9 equivalent information for use in their own marketing and winback operations.
10 Competitors must have access to the information no later than the time in which
11 BellSouth obtains access to it.

12
13 **Q. THANK YOU FOR EXPLAINING THAT CUSTOMER CONVERSION**
14 **INFORMATION MUST BE DERIVED FROM “INDEPENDENT RETAIL**
15 **MEANS” BEFORE AN EXECUTING CARRIER CAN INITIATE**
16 **MARKETING EFFORTS. CAN YOU TELL ME IF THE FCC SET OUT A**
17 **SECOND CONDITION BEFORE AN EXECUTING CARRIER CAN**
18 **INITIATE MARKETING RETENTION EFFORTS?**

19
20 A. Yes, there is a second condition that must occur before the executing carrier can
21 initiate market retention efforts. This second condition is separate and distinct from
22 the first condition, which involved “where” the carrier change information must be

1 obtained from. The second condition involves “when” the marketing retention
2 efforts can begin.

3 The second condition can be found in the same previous sentence I quoted earlier in
4 my rebuttal testimony involving “where” the carrier change information must be
5 obtained before that independently secured information can be used in retention
6 efforts. The sentence can be found on the bottom of page 46 and top of 47 in Order
7 No. PSC-03-0726-FOF-TP, which reads in its entirety as follows: “We [the FCC]
8 clarify that, to the extent that the retail arm of an executing carrier obtains carrier
9 change information through its normal channels in a form available throughout the
10 retail industry, and after the carrier change has been implemented (such as in
11 disconnect reports), we do not prohibit the use of that information in executing
12 carrier’s winback efforts.” I emphasize the term “and.” This word is a conjunctive
13 term requiring those parties obligated to comply with this clarification to understand
14 that both conditions must be met before knowledge of the customer’s conversion can
15 be employed to initiate marketing retention efforts to regain that customer.

16
17 **Q. HOW IS THE PHRASE “DISCONNECT REPORTS” USED IN THE**
18 **CONTEXT OF THE FCC CLARIFICATION?**

19
20 A. The phrase is used to identify “when” the incumbent carrier, in this case
21 BellSouth, can begin to initiate its marketing retention efforts. The words
22 immediately following the conjunctive term - “and” - are very specific. It reads:

1 “after the carrier change has been implemented.” The plain import of the language
2 is that the FCC is setting a benchmark for the incumbents that the FCC, and in turn
3 this Commission, do not want any marketing retention efforts to begin before the
4 conversion process is complete.

5 This condition regarding “when” marketing retention efforts can begin, however,
6 does not obviate or negate the FCC’s legal requirement that carrier change
7 information (i.e. switch orders) may not be relied upon for marketing purposes,
8 unless BellSouth can first secure that customer change information from some
9 “independent retail means available throughout the retail industry that is also
10 available to competitors in an equivalent form.”

11 Mr. Ruscilli, in his direct testimony, also underlines the words “after the carrier
12 change has been implemented.” His direct testimony, however, draws the wrong
13 conclusion regarding the plain import of the sentence.

14 His direct testimony focuses on the claim that his underlined language permits
15 BellSouth to rely solely on carrier change information derived exclusively from
16 BellSouth’s status as the executing carrier (i.e. its wholesale operations), so long as
17 the marketing effort does not begin until after the customer’s conversion is complete.

18 This BellSouth conclusion eviscerates the FCC’s standard that such marketing
19 information must first be derived from independent retail means. To reach this
20 conclusion, Mr. Ruscilli has focused on the two words “disconnect reports” included
21 within the parentheses.

1 **Q. DO YOU AGREE WITH MR. RUSCILLI'S INTERPRETATION OF THE**
2 **TWO WORDS "DISCONNECT REPORTS" THAT ARE INCLUDED**
3 **WITHIN THE PARENTETICALS?**

4
5 A. No. I do not agree with Mr. Ruscilli's direct testimony because it is contrary to
6 the plain reading of the FCC's clarification. The FCC purposely uses parentheticals
7 to set off the phrase "(such as in disconnect reports)." Parentheticals are used to
8 include an illustration for the general principle outside of a parenthetical. In this
9 case, the FCC is providing incumbent executing carriers an objective evidentiary
10 device for determining the demarcation point. The demarcation point establishes
11 "when" the change order "has been implemented." To the extent that some
12 competitor brings an enforcement action claiming that the incumbent initiated market
13 retention efforts prior to the completion of the conversion, the incumbent in defense
14 can proffer an internal report, however characterized (i.e. disconnect reports),
15 identifying all of the carrier switches and the dates upon which those switches were
16 completed. Utilizing the disconnect report to refute a claim that BellSouth has begun
17 marketing efforts prior to the completion of the conversion, is separate and distinct
18 from the FCC condition that information regarding carrier change information must
19 first be learned from independent retail means, available throughout the retail
20 industry that is also available to competitors in a an equivalent form, before such
21 marketing efforts can begin.

1 **Q. IS IT YOUR POSITION THAT THE WORDS EMPHASIZED BY MR.**
2 **RUSCILLI SIMPLY ESTABLISH A DEMARCATION POINT?**

3
4 A. Yes. As I just stated, the language BellSouth seeks to rely upon does nothing
5 more than establish a demarcation point regarding “when” marketing retention efforts
6 can begin. Support for this plain reading of the language can be found in 28 of Order
7 03-42, found on page 47 of Commission Order PSC-03-0726-FOF-TP, which reads
8 as follows: “Executing carriers may not at any time in the carrier marketing process
9 rely on specific information they obtained from submitting carriers due solely to their
10 position as executing carrier.” (Emphasis added). This statement dovetails with and
11 substantively supports the FCC’s insistence that executing carriers seeking to market
12 to customers that have switched voice providers only utilize information regarding
13 a customer switch that is first secured from an independent retail source available
14 throughout the retail industry that is also available to competitors.

15 BellSouth documentation establishes, and Mr. Ruscilli’s direct testimony admits, that
16 the carrier change information that originates with its wholesale operations is filtered
17 so that BellSouth can market to the customers who have just switched to other
18 providers. The FCC language I quoted just a moment ago states clearly that this
19 carrier change information cannot be solely relied upon as the basis for targeting the
20 switched customer(s). Mr. Ruscilli offers no independent retail source for the
21 origination of the customer switch information. On the contrary, Mr. Ruscilli admits
22 that BellSouth utilizes a mechanical computerized feed to obtain the marketing

1 information. Accordingly, Mr. Ruscilli's direct testimony is substantive evidence,
2 alone, that BellSouth is violating Commission Orders, Section 364.01(4)(g), Florida
3 Statutes and 47 USC §222.

4
5 **Q. WHAT DID THE FCC MEAN BY THE PHRASE "WE DO NOT**
6 **PROHIBIT THE USE OF THAT INFORMATION?"**

7
8 A. The use of "that information" refers back to the information that is secured from
9 independent retail means. In examining the sentence relied upon by BellSouth the
10 FCC does include the phrase ". . . we do not prohibit the use of that information . .
11 ."

12 Let me identify, again, the sentence in its entirety which reads as follows: "We clarify
13 that, to the extent that the retail arm of an executing carrier obtains carrier change
14 information through its normal channel in a form available throughout the retail
15 industry, and after the carrier change has been implemented (such as in disconnect
16 reports), we do not prohibit the use of that information in executing carrier's winback
17 efforts."

18 After the parentheticals the FCC states specifically: "we do not prohibit the use of
19 that information . . ." The question that immediately leaps forth is "what
20 information?" Are we talking about (1) the carrier change information that must be
21 obtained from independent retail means in a form available throughout the retail
22 industry and also available to competitors in equivalent form from the same source

1 or (2) are we discussing, as claimed by BellSouth, the internal disconnect reports –
2 identifying the completion date, among other information, of a competitive switch
3 – exclusively derived from BellSouth status as the executing carrier.

4 The only reasonable conclusion that can be drawn from the operative phrase “that
5 information” is that the FCC was referring to the first of the two choices I have just
6 outlined.

7 This conclusion is evident from the very next sentence, of the FCC order,
8 immediately following the sentence including the words “that information.” The
9 FCC writes:

10 “This is consistent with our finding in the Second Report and Order that an executing
11 carrier may rely on its own information regarding carrier changes in winback
12 marketing efforts, so long as the information is not derived exclusively from its status
13 as an executing carrier.” (Emphasis added).

14 The key language in this sentence that reads: “so long as the information is not
15 derived exclusively from its status as an executing carrier.” This language dovetails
16 and strengthens the proposition that the “information” being referred to that can be
17 used is the independent retail information available throughout the retail industry that
18 is also available to competitors - and not the disconnect report simply setting out
19 “when” the customer conversion was completed.

20 Mr. Ruscilli’s direct interpretation is further undermined by the very next sentence
21 found in the same FCC paragraph included on page 47 of Order No.
22 PSC-03-0726-FOF-TP, which reads as follows:

1 “Under these circumstances [i.e. the circumstances where the incumbent is required
2 to obtain information on the customer switch from an independent retail source
3 available throughout the retail industry], the potential for anti-competitive behavior
4 by an executing carrier is curtailed because the competitors have access to equivalent
5 information for use in their own marketing and winback operations.” (Emphasis
6 added).

7 The language is straight forward, namely, that competitors must also have access to
8 the customer switch information in an equivalent form. Mr. Ruscilli’s direct
9 testimony totally ignores this legal pre-requisite in justifying his conclusion that
10 BellSouth can use carrier change information for marketing purposes, so long as the
11 marketing effort is initiated after the completion of the conversion. BellSouth’s
12 conclusion is wrong and their admitted practice is a violation of the law.

13 The disconnect report as described by Mr. Ruscilli that allegedly only tracks the dates
14 that a conversion or change order was completed is a report, by Mr. Ruscilli’s own
15 admission, that is derived exclusively from BellSouth’s status as the underlying
16 wholesale executing carrier. If BellSouth were able to use such a report to trigger
17 market retention efforts, then that act alone would emasculate and absolutely abolish
18 the FCC’s careful articulation and clarification that carrier change information
19 triggering marketing retention efforts must, without exception, be derived from
20 independent retail means in a form available throughout the retail industry that is also
21 available to competitors, in an equivalent form from the same source, for use in their
22 own competitive marketing efforts.

1 **Q. SHOULD THE COMMISSION ACCEPT MR. RUSCILLI'S**
2 **INTERPRETATION OF THIS COMMISSION'S ORDER?**

3
4 A. No. This Commission should reject Mr. Ruscilli's interpretation of the language
5 in Commission Order No. PSC-03-0726-FOF-TP. There is a rule of statutory
6 construction that provides that courts should disfavor interpretations of statutes, and
7 presumably Commission orders, that render the language superfluous and
8 meaningless. In this docket, should the Commission accept BellSouth's
9 interpretation of the FCC language, incorporated into Order No.
10 PSC-03-0726-FOF-TP, this Commission will in fact negate, undermine and make
11 meaningless the FCC's emphasis as well as the Commission's emphasis that
12 customer switch information used for market retention purposes must be derived
13 from independent retail means.

14
15 **Q. ON PAGES 4, LINE 23 THROUGH PAGE 5, LINE2, MR. RUSCILLI**
16 **TESTIFY THAT "ANY INFORMATION USED BY BELLSOUTH'S RETAIL**
17 **OPERATIONS TO DEVELOP LISTS OF FORMER CUSTOMERS THAT**
18 **ARE POTENTIALLY ELIGIBLE FOR PROMOTIONAL OFFERINGS ARE**
19 **OBTAINED FROM RETAIL INFORMATION SOURCES - NOT**
20 **WHOLESALE SOURCES." DO YOU AGREE WITH HIM?**

21
22 A. No, I do not agree with him. Again Mr. Ruscilli is mistaken to believe that when

1 BellSouth's marketing information support group is directly fed ALEC end user
2 change information from SOCS as the ALEC's LSR is processed by BellSouth's
3 OSS, that such information is not wholesale information, and therefore not obtained
4 through wholesale activities.

5 BellSouth is of the mindset that so long as wholesale information is fed to its retail
6 operations via mechanical feed (i.e. BellSouth's OSS) as opposed to BellSouth
7 personnel, that this "activity" - of sharing information between wholesale and retail
8 operations - is not in violation of Commission policies, as well as state and federal
9 law, with respect to the handling of wholesale information. Again the FCC is clear
10 as it reiterates that change information submitted by an ALEC in order to effectuate
11 end user conversion is proprietary to the ALEC and is subject to the protection of
12 CPNI pursuant to Section 222 of the Act. As noted by this Commission, the FCC
13 stated that:

14 We emphasize that when engaging in such [winback] marketing, an executing carrier
15 [i.e., BellSouth] may only use information that its retail operations obtain in the
16 normal course of business. Executing carrier [i.e. BellSouth] may not at any time in
17 the carrier marketing process rely on specific information they obtained from
18 submitting carriers due solely to their position as executing carriers. We reiterate our
19 finding in the Second Reconsideration Order that carrier change request information
20 transmitted to executing carriers in order to effectuate a carrier change cannot be used
21 for any purpose other than to provide the service requested by the submitting carrier.
22 (FCC 03-42, 28) (Emphasis added)

1 Indeed, according to 28, it is safe to conclude that an ALEC's LSR submitted to an
2 ILEC primarily for the purpose of converting an end user to that ALEC is considered
3 proprietary to the ALEC. Thus, any such use of CPNI information (information
4 extracted from an ALEC's LSR and fed to BellSouth's retail operation) is a violation
5 of Commission Orders, Section 364.01(4)(g), Florida Statutes, and Section 222 of the
6 Act.

7
8 **Q. ON PAGE 6, LINES 15 THROUGH 17, MR. RUSCILLI TESTIFIES**
9 **THAT: "THE INFORMATION BELLSOUTH'S RETAIL DIVISION USES**
10 **TO TARGET POSSIBLE "WINBACK" ACTIVITY IS OBTAINED FROM**
11 **THE RETAIL CUSTOMER'S RECORDS AFTER THE DISCONNECTION**
12 **OF THE RETAIL CUSTOMER'S BELLSOUTH LOCAL SERVICE." IS**
13 **THIS TRUE TO YOUR KNOWLEDGE? PLEASE EXPLAIN.**

14
15 A. No, this is not true. BellSouth's marketing information used to target local voice
16 customers is obtained exclusively from carrier change orders. Mr. Ruscilli's
17 testimony appears to suggest that its retail operations obtained its marketing
18 information from "retail" sources. But as I noted in my rebuttal testimony earlier, the
19 source of the marketing information must be derived from "independent retail
20 means" available throughout the retail industry that is also available to competitors.
21 Mr. Ruscilli's testimony does not meet this test. Oddly enough, Mr. Ruscilli seems
22 to make a distinction that if its retail operations obtain marketing data from internal

1 BellSouth “retail” records instead of internal BellSouth “wholesale” records, that
2 some how by taking this information from retail records BellSouth has met the
3 requirement that such information be derived from “independent retail means.”

4 There is no legal authority to substantiate this BellSouth theory.

5 Presumably, BellSouth believes that if its wholesale division “populates” its retail
6 records with a date that a switch order was completed, that the “retail” record some
7 how becomes “available” for use in marketing retention efforts. Under this theory,
8 however, the internal BellSouth “retail” record is still not available to other
9 competitors. Nor is it a record that is “available throughout the retail industry.” If
10 the information is not available to other competitors and is not available throughout
11 the retail industry, then it is not information that was obtained from independent
12 retail sources. The FCC was absolutely specific when it stated that competitors must
13 also have access to the same carrier change information in an equivalent form,
14 available throughout the retail industry, before the information can be considered to
15 obtained from “independent retail means. See Page 47 of Commission Order No.
16 PSC-03-0726-FOF-TP.

17 Although BellSouth insists that it is not using wholesale information in a manner that
18 violates Commission policy, Florida Statutes and Federal law, there is ample
19 documentation from BellSouth itself demonstrating otherwise. BellSouth’s
20 Operation Sunrise illustrates that as the ALEC’s LSR is processed for local service,
21 the change information is electronically fed directly to Operation Sunrise via SOCS
22 (an integral part of the BellSouth’s OSS that is utilized in processing ALECs’ LSRs).

1 My direct testimony, page 13, lines 5-12, outlines in detail that an ALEC LSR is
2 processed through two interfaces which provide edit formatting and translation of the
3 industry standard LSR format into that of a service order format that can be accepted
4 by the Service Order Communications Systems (“SOCS”) for further downstream
5 provisioning. Once an LSR is translated into a service order, page 12, lines 7-13, the
6 ALEC order and BellSouth retail order follow the same provisioning process. My
7 direct testimony – page 30, lines 29-39 and page 31, lines 1-3 - also demonstrates that
8 the Harmonize feed cannot distinguish between an ALEC order and a BellSouth
9 order.

10 The evidence is that SOCS cannot discriminate between a BellSouth retail order and
11 wholesale ALEC order. The law requires that BellSouth must maintain a firewall
12 between wholesale information and retail information. BellSouth does not maintain
13 that firewall. There is no authority to support BellSouth's contention that it may use
14 internal BellSouth retail records, populated with information from its wholesale
15 operation, to trigger marketing retention efforts. The retail division must learn of
16 carrier change information from independent outside sources. If the retail record
17 contains an entry that the customer switched his voice service on a certain date, this
18 information could not have been known but for BellSouth’s status as the underlying
19 executing wholesale carrier. To allow BellSouth’s theory to prevail is to undermine
20 and negate the entire prohibition preventing incumbents from utilizing wholesale
21 information to trigger market retention efforts.

22 BellSouth should not be utilizing a computerized feed to harvest wholesale

1 information for marketing purposes. This process is prohibited under the law.

2
3
4 **Q. ON PAGE 6, LINES 18 THROUGH 20, MR. RUSCILLI TESTIFIES THAT**
5 **“WHEN A BELLSOUTH END USERS’ LOCAL SERVICE IS**
6 **DISCONNECTED A “DISCONNECT REASON” CODE (“DCR”) IS**
7 **REFLECTED ON THE DISCONNECT ORDER. THIS DCR PROVIDES AN**
8 **INDICATION AS TO WHY THE END USERS’ SERVICE IS BEING**
9 **DISCONNECTED.” PLEASE COMMENT.**

10
11 A. This testimony reflects a practice that is utilized by BellSouth retail customer
12 service representatives (“CSRs”) who may process a disconnect order through RNS
13 (residential retail) or ROS (business retail). This testimony does not address switch
14 orders from ALECs. In those cases a DCR would not be entered by a BellSouth
15 retail CSR. This information would not, and could not, be entered by an ALEC as
16 the ATIS / OBF format LSR does not make any provision of fields wherein this
17 information is captured.

18 If a BellSouth customer representative did take an in-bound call from a retail
19 customer, that hypothetically informed the BellSouth CSR that the customer was
20 leaving to another competitor, then presumably the CSR could theoretically enter a
21 DCR stating that the customer was changing local providers, but only if the customer
22 was requesting that their service be disconnected (and inoperative) for a period before

1 the ALEC was able to provide service. This scenario is unrealistic and would almost
2 never happen. Virtually every customer that switches voice providers calls the newly
3 chosen local service provider directly. The competitor then submits an LSR. If
4 BellSouth has a “disconnect report” that reflects a category entitled “changing local
5 service providers” (i.e. page 6, line 22 Ruscilli testimony), then that category must
6 have been exclusively derived from BellSouth’s status as the executing wholesale
7 carrier. In either case, BellSouth has already acknowledged that the Harmonize feed
8 cannot distinguish between an ALEC order and a BellSouth order.

9 While Mr. Ruscilli may be correct that BellSouth retail CSRs have the ability to enter
10 a DCR for a customer switch where the information is learned from an in-bound call,
11 the reality is that in almost every switch the BellSouth retail CSR will not be in a
12 position to know of this information until informed of the switch by the ALEC.
13 Accordingly, the code will not be entered by the BellSouth retail CSR. As previously
14 noted, the only remaining source for the switch is the ALEC LSR and harvested
15 through the Harmonize feed.

16
17
18 **Q. DO YOU AGREE WITH MR. RUSCILLI, PAGE 5, LINES 11-15, WHEN**
19 **HE TESTIFIES THAT BELLSOUTH DOES NOT SHARE INFORMATION**
20 **WITH THIRD PARTIES?**

21
22 A. BellSouth’s own documentation – Supra Exhibit DAN9, bate stamp 001055 –

1 demonstrates that BellSouth harvests switch orders from SOCS on a nightly basis.
2 This information is then provided to outside third party vendors known as Letter
3 Shops. I have detailed prior BellSouth testimony in which the Director of the
4 Marketing Information Support group stated explicitly that: “We send information
5 from the Sunrise Table to outside vendors for the purpose of mailing direct mail
6 pieces. So they don’t – they are not able to go get. We push information to them.
7 Does that make sense?” See my direct testimony, page 29, lines 23-30.

8 The “Sunrise Table” resides in the Strategic Information Warehouse where all
9 information regarding every customer can be found. The Harmonize feed takes
10 carrier change order information from SOCS and populates the Sunrise Table. There
11 is a program that then executes off of that Table for local service win-backs. It is this
12 process that feeds the switch order information to the Marketing Information Support
13 group. Supra Exhibit DAN9, date stamp 001055, demonstrates that every Friday the
14 switch order information is “pushed” out to the Letter Shop for the purpose of
15 mailing direct mailing pieces.

16 When the Director of the MKIS group was asked explicitly whether BellSouth
17 pushes data out to third parties related to local service win-back, she responded:
18 “Yes, we do.” This admission can be found on page 29, lines 33-37 of my Direct
19 Testimony.

20 The evidence demonstrates that BellSouth does indeed share its wholesale
21 information with its retail operations as well as with outside third party marketers.
22

1 **Q DOES THIS CONCLUDE YOUR TESTIMONY?**

2 Yes, this concludes my rebuttal testimony.

3

4

5

6 Exhibits

7 Supra Exhibit # DAN-RT-1 Direct Testimony of John A. Ruscilli – in Key

8 Customer Tariff Docket.

9 Supra Exhibit # DAN-RT-2 Deposition Testimony of John Ruscilli.

10

1 BY MR. CRUZ-BUSTILLO:

2 Q Mr. Nilson, will you please -- Mr. Nilson, do you have
3 a summary of your testimony today?

4 A Yes, I do.

5 Q Please provide it for the Commission.

6 A Good morning, Commissioners. I'm here today to give
7 testimony that will prove BellSouth is improperly using its
8 knowledge that a telephone customer has requested to convert his
9 service from BellSouth to an ALEC to initiate marketing and
10 winback activities on that customer. Such change information
11 acquired solely from BellSouth's wholesale division as the
12 executing carrier in the transaction is prohibited.

13 My testimony concerns the operation of a BellSouth OSS
14 heretofore unknown to this Commission, Operation Sunrise. My
15 testimony shows that despite numerous ALEC and BellSouth
16 interfaces to OSS, all orders eventually flow through to the
17 service order communication system, known as SOCS, and it is from
18 SOCS that BellSouth improperly extracts its knowledge of a
19 wholesale order representing a competitive loss and communicates
20 this information to its retail division, which in turns initiates
21 a winback of that customer. This is undisputed by BellSouth.

22 Project Sunrise has the ability to target marketing
23 campaigns to customers who disconnect from various BellSouth
24 retail services. These include local toll service, local
25 residential service, local business service, and high revenue

1 features such as complete choice and area plus plans are all
2 targeted through Operation Sunrise. Prior to August 2001,
3 BellSouth directly extracted competitive disconnect orders.
4 After that date BellSouth put all orders in a bin and pulled out
5 the ones which were not competitive disconnects, assuming that
6 what was left was now legal for marketing purposes. To me this
7 is a distinction without a difference.

8 The FCC is unequivocal in its requirements regarding
9 winback marketing. And in Order 99-233, the FCC defines
10 retention marketing to be a subset of winback marketing. In
11 99-233 and also in 03-42, the FCC clearly places a requirement
12 that marketing leads be generated solely from data that is
13 available in the retail industry. But Order 03-42 further limits
14 BellSouth within Paragraph 28 with an outright prohibition placed
15 upon BellSouth as an executing carrier. It states, "Executing
16 carriers may not at any time in the carrier marketing process
17 rely on specific information they obtained from submitting
18 carriers due solely to their position as executing carriers."

19 The FCC further states, "We reiterate our finding in
20 the second reconsideration order, the carrier change request
21 information transmitted to executing carriers in order to
22 effectuate a carrier change cannot be used for any purpose other
23 than to provide the service requested by the submitting carrier.
24 BellSouth fails miserably in this comparison. In fact,
25 BellSouth's entire case in this regard will attempt to persuade

1 this Commission that the FCC created loopholes in their orders on
2 winback and retention marketing that somehow justified
3 BellSouth's actions. The fact that a record exists in the
4 permanent Sunrise Table proves it was a competitive disconnect,
5 and use of that knowledge for marketing is a violation of law.

6 We ask that you see these justifications for what they
7 are, an attempt to justify after-the-fact that BellSouth's
8 actions were actually okay. We ask you to look past these feeble
9 defenses and rule in favor of the people of Florida, and forever
10 bar BellSouth from using data feeds from its wholesale operations
11 to its marketing department in any present or future form. Thank
12 you.

13 MR. CRUZ-BUSTILLO: I tender Mr. Nilson for cross
14 examination.

15 COMMISSIONER DEASON: Mr. Meza.

16 MR. MEZA: Thank you.

17 CROSS EXAMINATION

18 BY MR. MEZA:

19 Q Good morning, Mr. Nilson.

20 A Good morning.

21 Q You would agree with me that Supra engages in limited
22 customer winback efforts, correct?

23 A I think when we discussed this at deposition I said we
24 occasionally did it.

25 MR. MEZA: And, Commissioner Deason, this will flow

1 tremendously faster if we could abide by the yes or no answer and
2 then explanation. I have had many experiences with Mr. Nilson,
3 and he is -- he's a tough one.

4 COMMISSIONER DEASON: That's a compliment, Mr. Nilson.

5 We routinely require witnesses to answer yes or no to
6 questions that are so phrased, and I would request that you do
7 the same. And then once you answer, you may expand upon that.
8 You may clarify any of the details of that answer. But yes or
9 questions, please answer it. And it makes it easier for the
10 Commissioners to follow.

11 THE WITNESS: Could you repeat the question?

12 MR. MEZA: Yes.

13 BY MR. MEZA:

14 Q Isn't it a fact that Supra engages in limited customer
15 winback efforts?

16 A No. I believe I testified earlier that we occasionally
17 have attempted to marketing winback, but it is not a regular
18 process.

19 Q So, is it not true today that Supra uses direct
20 mailings and outbound telemarketing to conduct these winback
21 activities?

22 A No.

23 Q That is not correct?

24 A No. Any of our current outbound marketing campaigns
25 are directed at acquiring new customers, and they have no

1 connection with winning back existing or old customers.

2 COMMISSIONER DAVIDSON: Let me ask just so I am clear.
3 Has Supra ever tried to win back prior customers?

4 THE WITNESS: There were probably two attempts in the
5 last three or four years where we went through our billing
6 database and contacted customers which had disconnected from us
7 to try to determine why they had left us and see if they were
8 interested in returning, but there is no formalized program to do
9 that.

10 COMMISSIONER DAVIDSON: Well, through a program or not,
11 has it been done?

12 THE WITNESS: Twice, yes.

13 BY MR. MEZA:

14 Q Mr. Nilson, do you have your deposition transcript with
15 you?

16 A I do.

17 MR. MEZA: And if the Commissioners would please look
18 at the transcript, Page 7, Lines 19 to 23, following on Page 8,
19 Lines 1 through 7.

20 BY MR. MEZA:

21 Q And I believe I took your deposition this past Tuesday,
22 would you agree with that?

23 A That's correct.

24 Q Okay. And on Page 7, Line 19, I asked you, "Now does
25 Supra engage in customer winback efforts?"

1 A I'm sorry, are you talking about Page 7 on the paper,
2 or Page 7 in the deposition itself?

3 Q In the deposition.

4 A I don't see that question.

5 COMMISSIONER DAVIDSON: What line are you looking at?

6 MR. MEZA: Okay. Page 7, and it is the page number on
7 the left-hand side, not the one on the bottom for reference.
8 Starting with Line 19, following to the next page to Line 7.

9 COMMISSIONER DAVIDSON: I am completely unclear. What
10 page are you on?

11 MR. MEZA: I'm sorry. If you look, the page numbers of
12 the transcript that Supra provided are actually on the left-hand
13 side, not on the bottom.

14 COMMISSIONER DAVIDSON: So Page 7 of the depo.

15 MR. MEZA: Yes, sir.

16 BY MR. MEZA:

17 Q Are you there, Mr. Nilson?

18 A No, I am afraid I'm not.

19 COMMISSIONER DAVIDSON: Page 3 at the bottom. It is
20 the third page of the stack in the deposition.

21 MR. MEZA: Do you see it now?

22 THE WITNESS: On Page 3 I have deposition Pages 3 and
23 4.

24 MR. MEZA: May I approach the witness? It would
25 expedite.

1 COMMISSIONER DEASON: Yes, sir.

2 MR. MEZA: Thank you.

3 BY MR. MEZA:

4 Q And, again, Mr. Nilson, it is Page 7, starting on Line
5 19. Do you see that?

6 A Yes.

7 Q And I asked you, "Now, does Supra engage in customer
8 winback efforts?" And your answer was, "Yes."

9 The next question was, "How?" "Periodically we contact
10 customers, former customers who we are no longer billing and send
11 offers to them."

12 "Question: Okay. What means -- what means do you use
13 to contact these customers?"

14 "Answer: Until very recently it was direct mail. The
15 last few months we have done some outbound telemarketing."

16 Is that testimony that you provided on Tuesday now
17 inaccurate?

18 A I believe this testimony I gave you last Friday, in my
19 opening statements on Tuesday I did change that testimony and
20 identified that all of our outbound telemarketing that was going
21 on at the time was done from a list of residential customers that
22 we purchased, and it was not a winback activity, that it is
23 strictly acquisition of new customers.

24 COMMISSIONER DAVIDSON: I would like to jump in here,
25 because when I saw this it seemed to be contradictory to what you

1 just testified to, and that concerns me. If you can take those
2 lines and just line-by-line with your answers tell us what is no
3 longer correct, and what changed between the time you gave this
4 testimony and now that makes that incorrect.

5 MR. CRUZ-BUSTILLO: Commissioner, can I --

6 COMMISSIONER DAVIDSON: No, I would actually like an
7 answer to that question, and then you can -- at the presiding
8 officer's discretion, of course --

9 COMMISSIONER DEASON: I think there is a question
10 pending, and we will let the witness answer it.

11 THE WITNESS: I will be glad to answer that. At the
12 deposition Mr. Meza asked me who was the person that had direct
13 knowledge --

14 COMMISSIONER DAVIDSON: First what I would like to do
15 is just go line-by-line and tell me what is not accurate about
16 your testimony and why that is not accurate so that I understand
17 when you are reading this what is not correct.

18 THE WITNESS: All right. I would refer to my Friday
19 testimony on lines -- Page 8, Lines 6 and 7, which state that we
20 are doing winback activities with outbound telemarketing. That I
21 determined was incorrect on Monday when I spoke to the man that
22 was responsible for the activity.

23 COMMISSIONER DAVIDSON: Is the general answer now does
24 Supra engage in customer winback efforts, yes, is that still
25 correct?

1 THE WITNESS: We have done it approximately twice based
2 on our billing records. I would not change that part of my
3 testimony. But the fact that we are currently doing outbound
4 telemarketing for winback is not correct. All of our outbound
5 telemarketing is done to acquire new customers.

6 COMMISSIONER DAVIDSON: Thank you.

7 BY MR. MEZA:

8 Q Now, Mr. Nilson, Supra uses data from its billing
9 system to identify customers that left Supra for winback
10 purposes, is that correct?

11 A That is correct.

12 Q And in your opinion you believe that it is important
13 that carriers should contact former customers who had a bad
14 experience and try to win them back, is that correct?

15 A That's what I said, yes.

16 Q Now, Supra also engages in outbound telemarketing calls
17 to solicit new customers, is that correct?

18 A We have recently begun that over the last 60 days.

19 Q And it has been ongoing for -- correct, 60 days. And
20 it is performed by Supra employees located outside of the United
21 States, is that correct?

22 A That's correct.

23 Q And would you agree with me that currently Supra has
24 approximately 1,200 of these employees?

25 A I have no basis to confirm or dispute that number.

1 Q Okay. Now, you are familiar with the PMAP line loss
2 report that BellSouth's makes available to CLECs on the Internet,
3 is that accurate?

4 A Yes.

5 Q And the information on PMAP changes daily, would you
6 agree with that statement?

7 A Yes, with a modifier that it is not necessarily the
8 previous day's information that is updated.

9 Q But it is updated daily?

10 A Yes.

11 Q Okay. And you would agree with me that the PMAP line
12 loss report provides Supra with a list of customers that have
13 disconnected service from Supra?

14 A Yes.

15 Q But Supra doesn't use the PMAP line loss report to
16 identify potential winback targets, does it?

17 A No. As a matter of fact we don't use PMAP in any
18 automated fashion at all at this time.

19 Q Okay. Now, you have seen Mr. Ruscilli's Exhibit JAR-1,
20 is that correct?

21 A Yes.

22 Q And you don't dispute that this exhibit is Supra's PMAP
23 line loss report for July 23rd, 2002, is that correct?

24 A I have no reason to.

25 Q Do you have that exhibit?

1 A No, probably not.

2 MR. MEZA: May I approach the witness?

3 COMMISSIONER DEASON: Yes.

4 MR. MEZA: And I would ask that the Commissioners, if
5 they have it available, to refer to Mr. Ruscilli's exhibit for
6 this next line of questioning.

7 BY MR. MEZA:

8 Q Now, there is a section of this report on Page 104 that
9 is entitled or deals with requests to transfer. Do you see that?

10 A Yes.

11 Q Okay. You would agree with me that the request to
12 transfer section identifies Supra customers who leave Supra and
13 go to another carrier?

14 A Yes.

15 Q You would also agree with me that the PMAP line loss
16 report provides Supra in the request to transfer section a
17 telephone number and name of a customer that left Supra to go to
18 another carrier?

19 A Yes.

20 Q And you would also agree that the PMAP report has the
21 ability to inform Supra of customers who leave for marketing
22 purposes?

23 A Yes.

24 Q I'm finished with that exhibit, Mr. Nilson. Now, Supra
25 didn't present any evidence in this proceeding that Supra has, in

1 fact, lost any customers as a result of Operation Sunrise, has
2 it?

3 MR. CRUZ-BUSTILLO: Objection, relevance.

4 COMMISSIONER DEASON: There has been an objection as to
5 relevance.

6 MR. MEZA: Yes, sir. My response to Mr.
7 Cruz-Bustillo's objection is that in order for Supra to maintain
8 an action before this Commission it needs to prove that there has
9 been anticompetitive behavior. Absent any evidence of
10 anticompetitive behavior, I believe that there is no jurisdiction
11 for this proceeding to proceed.

12 MR. CRUZ-BUSTILLO: Commissioner Deason, let me just
13 say that this Commission doesn't award damages. That is a
14 question that you would have in a trial for damages. This
15 Commission does have subject matter jurisdiction to enforce a
16 rule, and the question is are they doing this? Yes. Is it a
17 violation of the rule, or this Commission policy, and that
18 question has no relevance. I mean, the fact that I produce no
19 evidence has nothing to do with whether or not BellSouth can be
20 found in violation.

21 COMMISSIONER DEASON: The objection is overruled. I
22 will allow the question.

23 BY MR. MEZA:

24 Q Would you like me to repeat it?

25 A Please.

1 Q Yes, sir. Supra did not present any evidence in this
2 proceeding that Supra has, in fact, lost any customer as a result
3 of Operation Sunrise, has it?

4 A No, sir. We made the decision going into this case
5 that since the Public Service Commission was unable to award
6 damages, that that would not be a fundamental portion of our
7 case.

8 Q Okay. Now, you would admit that Supra does
9 infrequently prepare reports on why customers leave Supra, is
10 that accurate?

11 A Yes.

12 Q And these reports show that customers leave Supra
13 because of billing problems or because they received better
14 offers from another carrier?

15 A Yes.

16 Q And you don't know if all the customers identified in
17 the study I just referenced left Supra to go to BellSouth, do
18 you?

19 A No, I do not.

20 Q And you would admit that Supra customers leave Supra
21 for carriers other than BellSouth, wouldn't you?

22 A Well, if I can't confirm that those customers left for
23 BellSouth, I don't think I can confirm that they left for another
24 CLEC, either.

25 Q Okay. And Supra loses customers because they move, is

1 that correct?

2 A Yes. Let me amend my last statement. You asked if I
3 had any knowledge that any of those customers had left to go to
4 BellSouth. And I would like to change my answer on that, because
5 certainly I get involved in some cases working with Ms. Shelfer
6 regarding Public Service Commission complaints. And in that
7 context, yes, I am aware that some of the customers who left to
8 go back to BellSouth for a better offer, I have been made aware
9 of that.

10 Q Okay. But in relation to the study that Supra prepares
11 as to why certain customers leave, you don't know whether the
12 customers that were identified left to go to BellSouth, do you?

13 A No. If you are asking me if the report identifies
14 separately customers that went to BellSouth from other carriers,
15 the answer is no.

16 Q Okay. Now, would you agree with me that BellSouth uses
17 Operation Sunrise to target local service reacquisition
18 customers?

19 A Yes.

20 Q Would you also agree that under your understanding of
21 how Operation Sunrise works, the service order data that is used
22 in Sunrise has to move to the temporary table and then the
23 permanent table before a marketing lead can even be considered.
24 Would you agree with that statement?

25 A That is my understanding of the depositions I heard.

1 Q And you also don't know for a fact if the same service
2 order information from SOCS that is used in Operation Sunrise is
3 also used by BellSouth's OSS to notify BellSouth's retail billing
4 systems that it lost a customer as a result of a CLEC LSR?

5 A Repeat that question. I think my answer to it is going
6 to be no.

7 Q You don't know if the service order information that is
8 used in Sunrise is also used by BellSouth's OSS to notify retail
9 to stop billing a customer because retail lost a customer as a
10 result of a CLEC LSR?

11 A No, I am quite certain that is incorrect. The
12 notification that goes to CRIS comes directly through SOCS, and
13 is not part of Operation Sunrise.

14 Q But you would agree that both Operation Sunrise and the
15 notification to CRIS originate from service orders that reside in
16 SOCS?

17 A I would agree to that.

18 Q Now, you are not a lawyer, are you, Mr. Nilson?

19 A No, sir.

20 Q You have never attended a seminar in CPNI or on the use
21 of wholesale information, have you?

22 A I am not aware any have ever been held.

23 Q Is that a no?

24 A No.

25 Q You don't reference any specialized training or

1 education regarding CPNI or wholesale information in your
2 testimony, do you?

3 A No, I do not.

4 Q And you have never worked at the FCC, have you?

5 A No, I have not.

6 Q In this proceeding you provided testimony wherein you
7 state that Operation Sunrise violates FCC orders and this
8 Commission's orders regarding the use of wholesale information,
9 is that accurate?

10 A Yes.

11 Q And you base your testimony on your interpretation of
12 Section 222 of the Act, is that correct?

13 A Yes.

14 Q The key customer order that was recently issued by this
15 Commission?

16 A Yes.

17 Q FCC Order 03-42?

18 A Yes.

19 Q And FCC Order 99-223, is that accurate?

20 A Is it 223 or 233?

21 Q 233.

22 A Thank you.

23 Q Is that accurate?

24 A Yes.

25 Q Okay. And you did not look at any other information, is

1 that correct?

2 A No, other than my participation in this industry over
3 the last seven or eight years.

4 Q So my statement is correct?

5 A Yes.

6 Q So even though you are not a lawyer, you have no
7 specialized training or education in CPNI, and you never worked
8 for the FCC, you testify about why the FCC purposefully used
9 parentheticals to set up a certain phrase in FCC Order 03-42,
10 Paragraph 27, is that right?

11 A Well, I think that has more -- yes. I think that has a
12 lot more to do with English grammar than any FCC order.

13 Q Okay. And you also testify -- I'm sorry, I didn't mean
14 to interrupt you.

15 A I just wanted to say, you know, that is strictly a rule
16 of English grammar.

17 Q You also testify as to what the FCC meant when it used
18 the phrase, quote, that information, in that same order at the
19 same paragraph cite, Paragraph 27, is that correct? And I refer
20 you to your rebuttal testimony on Page 21.

21 A Yes, we had this discussion before.

22 Q And you would also concede that your lawyers drafted
23 your rebuttal testimony on Page 24 when you referred to, quote,
24 rules of statutory construction, end quote?

25 MR. CRUZ-BUSTILLO: Objection.

1 COMMISSIONER DEASON: What is your objection?

2 MR. CRUZ-BUSTILLO: He has previously testified, that
3 is his testimony.

4 MR. MEZA: He also testified in the deposition that
5 this specific sentence regarding rules of statutory construction
6 that he did not draft it.

7 MR. CRUZ-BUSTILLO: Mr. Meza is correct. I will
8 withdraw the objection.

9 THE WITNESS: Well, actually I think he is a bit
10 incorrect. What I said was that I wrote a sentence that wasn't
11 as artfully worded as this and it was changed.

12 BY MR. MEZA:

13 Q Right. But the sentence as it appears in your rebuttal
14 testimony on Page 21, Line -- excuse me, on Page 24 of your
15 rebuttal testimony is not the sentence that you wrote regarding
16 rules of statutory construction?

17 A No. I wrote a sentence regarding this idea, but it
18 wasn't worded as nicely as this.

19 Q Now, it's your interpretation of FCC law that BellSouth
20 cannot use service order information from SOCS that is generated
21 from a CLEC LSR to identify and market customers who leave
22 BellSouth's retail service, is that correct?

23 A That's correct. I further go to say that the FCC order
24 says you cannot use that order for any purpose whatsoever except
25 to effectuate the order itself. And in effectuating that order,

1 it is implicit that you stop billing our new customer.

2 Q So you would agree with me that BellSouth can use that
3 same service order information generated from a CLEC LSR to
4 notify BellSouth's retail billing systems and to update CRIS?

5 A Well, I would agree that you can update CRIS. I would
6 not necessarily agree that in this context CRIS is being used as
7 a retail billing system. In this case -- well, it is. Okay. It
8 is being used as a retail billing system. We are asking you to
9 stop billing the customer on a retail basis and start billing
10 Supra on a wholesale basis.

11 Q So the answer to my question is yes?

12 A Yes. CRIS can be notified as a result of a CLEC
13 conversion order.

14 Q Okay. You also recognize that there has to be some
15 exchange of information between the wholesale and retail side
16 when you win a customer?

17 A Outside of telling you to stop billing the customer,
18 I'm not clear what else there is that needs to be exchanged.

19 Q Under your interpretation of the applicable FCC rules
20 and orders, it is your position that Supra can use the fact that
21 it received notice that it lost a customer for winback purposes,
22 but BellSouth can't, is that accurate?

23 A The FCC regulations do not address --

24 COMMISSIONER DEASON: I'm sorry, could you answer that
25 yes or no.

1 THE WITNESS: Can you repeat the question?

2 BY MR. MEZA:

3 Q The question is -- and if you want the answer I'll tell
4 you that, too.

5 A Start with the question.

6 Q Sure. Under your interpretation of the applicable FCC
7 rules and orders, Supra can use the fact that it received notice
8 that it lost a customer for winback purposes, but BellSouth
9 can't, is that correct?

10 A Yes. I do not see that the FCC places any restriction
11 on Supra such as it has placed on BellSouth. And I would further
12 go on to state that we do not use that PMAP information for
13 marketing purposes.

14 Q But you could?

15 A It contains enough information that we could, but we
16 don't do it.

17 Q Now, you also believe that BellSouth can use disconnect
18 reports, such as Sunrise, to defend against the claim that
19 BellSouth violated CPNI laws, but BellSouth cannot use those same
20 reports for marketing purposes, is that correct?

21 A Yes.

22 Q Now, you do mention an exception to this rule of using
23 service order information that is generated from a CLEC LSR, and
24 that is if the information is commercially available information
25 in a form available throughout the retail industry. Is that

1 accurate?

2 A That's correct.

3 Q Now, do you have FCC Order 03-42 before you?

4 A I have Paragraphs 27 and 28. If we need more than
5 that, you will have to provide me with a copy.

6 Q That's all you will need, but I would like to pass this
7 out to the Commission.

8 MR. MEZA: And for the record, this is not the entire
9 order. It is excerpts of relevant paragraphs that I will be
10 addressing in my cross.

11 BY MR. MEZA:

12 Q Mr. Nilson, I would like to focus you on Paragraphs 27
13 and 28 of that order.

14 A Yes, sir.

15 Q Now, you would agree with me that these paragraphs
16 address the use of carrier change information for winback
17 efforts, wouldn't you?

18 A Yes.

19 Q Now, the phrase commercially available information,
20 that does not appear in Paragraph 27, does it?

21 A No. What appears in Paragraph 27 is the statement in a
22 form available throughout the retail industry.

23 Q So you equate commercially available information to
24 information in a form available throughout the retail industry,
25 is that accurate?

1 A Yes, and let me explain why. Because Paragraph 27 goes
2 on to state at the bottom of Paragraph 27 that competitors --
3 plural competitors -- have access to equivalent information for
4 use in their own marketing winback operations. And to me
5 information that is available solely to Supra does not meet the
6 requirement that competitors plural have access to that
7 information. Information that is strictly available to Supra,
8 such as PMAP, I don't see as qualifying according to this
9 paragraph.

10 Q Okay. But I think we can agree that the phrase that
11 you use in your testimony, commercially available information,
12 does not appear in Paragraph 27. Can we agree on that?

13 A That's correct, and it was not set off within quotation
14 marks, either.

15 Q Okay. And you would also agree with me that that same
16 phrase did not appear in Paragraph 28, does it?

17 A No, but I didn't represent what was in my testimony as
18 being a citation. It wasn't set off by quotation marks.

19 Q Okay. Now, I believe it is also your opinion that
20 another exception to the rule set forth regarding BellSouth's --

21 COMMISSIONER DEASON: Mr. Meza, I'm going to interrupt
22 for just a second. Mr. Nilson, on Paragraph 27, in the first
23 sentence there is a phrase there -- let me find it. On the third
24 line, "available throughout the retail industry." How do you
25 interpret that, what does that mean to you?

1 THE WITNESS: Sir, in order for it to be available
2 throughout the retail industry it would have to be available to
3 anyone who wanted to either acquire it or purchase it if there
4 was a charge for acquiring it and not be something that was
5 available only to one carrier like Supra.

6 COMMISSIONER DEASON: Well, let me ask you this: If
7 BellSouth engages in a practice of providing information to you
8 that you have lost a customer, is that information available?
9 Would that be information available throughout the retail
10 industry?

11 THE WITNESS: No, sir, because it stems from our
12 specific order to convert the service. And Paragraph 28
13 prohibits that type of information from being used for any
14 purpose other than effectuating the order. Paragraph 28 severely
15 limits Paragraph 27.

16 COMMISSIONER DAVIDSON: Commissioner, I have a
17 follow-up to that question. Sir, just by your estimates, what is
18 your largest market in Florida, what geographic area?

19 THE WITNESS: We provide service in both BellSouth and
20 Sprint territories. BellSouth is the larger of the two, it
21 contains more potential customers and we have more customers in
22 the BellSouth territory.

23 COMMISSIONER DAVIDSON: To your knowledge, to the
24 extent you can answer this, is the type of data, not necessarily
25 the exact form, but is the type of data to which Supra has access

1 accessible to other carriers based on their relationships with
2 the ILECs or in their particular markets?

3 THE WITNESS: Let me see. The specific data that we
4 have access to is available to no one but us. The type of data
5 that we receive from BellSouth is provided to other carriers
6 containing the specific data that is relevant to them. In the
7 Sprint territory, I'm not aware of any such equivalent to PMAP,
8 which is largely the reason why, when we determine that we need
9 to discontinue billing to a customer, we do that off of the ILEC
10 bills themselves and not off the on-line systems.

11 COMMISSIONER DAVIDSON: Thank you. I've got one more
12 follow-up question on that same Paragraph 27. If you jump down
13 to the last line that focuses on, "because competitors have
14 access to equivalent information for use in their own marketing
15 and winback operations".

16 THE WITNESS: Yes, sir.

17 COMMISSIONER DAVIDSON: With regard to just that
18 portion, or with regard to that last sentence, could you explain
19 how the type of data to which Supra has access is equivalent to
20 or not equivalent to the type of data to which BellSouth has
21 access? And I am focused on data that could be used for
22 marketing and winback operations. So if you could just go
23 through and sort of describe how it is either equivalent to or
24 not equivalent to in terms of marketing and winback.

25 THE WITNESS: And you are asking me to ignore the

1 portion of -- the beginning of Paragraph 27 which --

2 COMMISSIONER DAVIDSON: Right. I understand that that
3 language is there. I'm focusing just on the nature of the data
4 itself; really comparing, focusing on the equivalency aspect of
5 that last sentence.

6 THE WITNESS: Because when we looked at this, if the
7 information is available in the retail industry, anybody that
8 purchases it is actually acquiring identical information. But
9 you are asking for that limited subset that is only available to
10 Supra.

11 COMMISSIONER DAVIDSON: Well, I'm focused right now
12 just on the data that -- right, the data that Supra has access
13 to, the data that BellSouth has access to. And while it may not
14 be identical, I'm trying to get your assessment of how the data
15 is equivalent or not equivalent.

16 THE WITNESS: Both data feeds contain the customer
17 telephone number, both data feeds contain the date the service
18 order was effectuated. Before BellSouth brings in their data
19 into the permanent Sunrise Table from CRIS they don't have the
20 customer name, Supra does have the customer name. And that is
21 the most direct comparison I can make.

22 COMMISSIONER DAVIDSON: Thank you.

23 COMMISSIONER DEASON: Mr. Nilson, let me ask you a
24 question about Paragraph 28. And about middleways in that
25 paragraph, there is a phrase that states, "due solely to their

1 position as executing carriers." And what it is indicating is
2 that a company such as BellSouth should not be able to rely on
3 information due solely to their position as an executing carrier
4 for these change orders. I'm going to ask you for a moment to
5 assume that BellSouth is not the entity which is the entity which
6 executes these orders. Assuming there is some type of a
7 clearinghouse out there, and I know this is kind of a step from
8 reality, but if there were some independent clearinghouse out
9 there that takes all of these orders in and then disseminates the
10 information, what information would BellSouth have to have or
11 they would get that you are indicating that they are presently
12 using in an inadmissible way because they are the entity that
13 executes these orders?

14 It just seem to me that BellSouth as an entity is going
15 to have to have some basic information that their operations are
16 going to have to be made aware of, and that it is information
17 that could be used for a winback program, but it is not
18 information that is due strictly to their being the executing
19 carrier. And I know that is an extremely long question and I
20 will try to rephrase it if you need clarification.

21 THE WITNESS: Well, let me try to answer the different
22 pieces of it. First of all, were there a clearinghouse that held
23 this information and disseminated it to any party that requested
24 it, I think that would probably meet the test of available
25 throughout the retail industry. As you reflected, we don't think

1 such a clearinghouse exists today.

2 Secondly, to the issue that certainly when a CLEC wins
3 a customer from BellSouth, we wish BellSouth would stop billing
4 the customer any further. And I don't see that that is separated
5 from the requirement in Paragraph 28 that it be used solely to
6 effectuate a carrier change, because ceasing billing is part of
7 effectuating a carrier change. It is the sharing of that
8 information with the marketing department which crosses the
9 boundary.

10 COMMISSIONER DEASON: But you do agree that the FCC
11 agrees that entities such as BellSouth can engage in winback
12 efforts as long as they are not relying upon information
13 exclusive to their position as an executing -- executing the
14 change order?

15 THE WITNESS: Yes, I agree, sir.

16 COMMISSIONER DAVIDSON: I have a follow-up, Chairman.

17 In your opinion, sir, does BellSouth have any access to
18 data relating to customers in its service territory that could be
19 used for marketing and winback where Supra would not have access
20 to a similar type of data for purposes of customer retention,
21 marketing, winback in that same service territory, assuming Supra
22 is in the territory?

23 THE WITNESS: Are we talking about data that is not the
24 result of a competitor's order, or -- I'm sorry.

25 COMMISSIONER DAVIDSON: I'm talking more generally.

1 I'm trying to get at whether, in your opinion, BellSouth has or
2 does not have access to a type of data for marketing and winback
3 that Supra does not have in a particular service area.

4 THE WITNESS: Yes, I think the wholesale orders are
5 information that we don't necessarily have an equivalent to.

6 COMMISSIONER DAVIDSON: Thank you.

7 MR. MEZA: Thank you.

8 BY MR. MEZA:

9 Q Now, Mr. Nilson, I also believe that you state in your
10 direct and rebuttal testimony that BellSouth's retail side can
11 use information that is generated as a result of a CLEC LSR for
12 marketing purposes if the retail side learns of that information
13 from an dependent retail source. Is that accurate?

14 A No, I think it is only partially accurate. And the
15 part I have a problem with is information learned from the CLEC
16 LSR. I don't believe I ever made that statement. What I would
17 agree with you on is that should one of your customers call you
18 and notify you that they wanted their service disconnected, thus
19 forcing us to issue an order for new service, not a change order
20 to convert the customer, that that is allowable information under
21 the FCC order. The fact that the customer called you and gave
22 you notification, you can use that information. You are not
23 using it in Sunrise, but you could.

24 Q Okay. The phrase that you use independent retail
25 source or independent retail means, does that appear anywhere in

1 Paragraphs 27 or 28 of FCC Order 03-42?

2 A No. And, again, I did not enclose that portion of my
3 testimony in quotation marks indicating a direct citation. It's
4 my words.

5 Q Do you have FCC Order 99-223 before you?

6 A No, I don't.

7 MR. MEZA: May I approach the witness?

8 COMMISSIONER DEASON: Yes, you may.

9 MR. MEZA: I would focus your attention to Paragraph
10 79. Again, for the record, this is not a complete portion of the
11 order, but excerpts relevant to my cross.

12 BY MR. MEZA:

13 Q Have you read it, sir?

14 A I have.

15 Q You would agree with me that the phrase independent
16 retail means appears in Paragraph 79 of FCC Order 99-223,
17 wouldn't you? I refer you to the last sentence of Paragraph 79.

18 A Yes.

19 Q And you would also agree that Paragraph 79 deals with
20 retention marketing, wouldn't you?

21 A It is under the heading of retention of customers. And
22 as we discussed in the deposition, this order also defines
23 retention as being a subset of winback.

24 Q Yes. But you would -- I'm sorry, I did not mean to
25 interrupt you.

1 A So the FCC has characterized retention as winback
2 activities, as well.

3 Q Correct. But you would agree with me that when the FCC
4 uses the word retention, it is referring to marketing efforts
5 that occur prior to a customer leaving the ILEC to go to a CLEC,
6 wouldn't you?

7 A Yes.

8 Q Yes?

9 A Yes.

10 Q And Operation Sunrise does not target, to the best of
11 your knowledge, customers that have not -- well, Operation
12 Sunrise does not target pending customers or customers who have
13 yet to leave BellSouth as far as local service reacquisition
14 goes, is that accurate?

15 A I don't know that we have heard any testimony on that.
16 I do know that when in that limited number of customers that
17 actually call you and notify you to disconnect their service
18 before a transfer, and you sign the CO order, that that order
19 does flow down into the temporary table, but it is deleted before
20 it gets to the permanent table. So on the basis of that I would
21 say no. You have an allowance that you could use that
22 information, but you are throwing it away before it gets to the
23 permanent table, therefore, you can't do any marketing on it.

24 Q You are not contending that BellSouth targets customers
25 or targets pending orders in Operation Sunrise, are you?

1 A I'm not sure how to break that question up. I know in
2 Mr. Wolfe's depositions he included the harmonized database
3 within his definition of Operation Sunrise. That contains
4 pending orders. If you're asking me if you actually act upon
5 pending orders, I would say no, we are not making that claim.

6 Q Okay. So you are not saying that BellSouth targets
7 through direct mailings or through leads customers who have
8 pending orders, or customers with pending orders, are you?

9 A Not in this docket, sir.

10 COMMISSIONER DAVIDSON: I have a question, counsel, if
11 I may. Chairman, thank you.

12 What is your understanding, sir, of what is permitted
13 in terms of winback compared to what is permitted in terms of
14 retention? I should state under the FCC orders.

15 THE WITNESS: That the information of either a pending
16 change has to either be communicated -- this is in retention --
17 has to be communicated directly from the customer to BellSouth,
18 or has to be available through commercial means. And I don't
19 think any of us can envision what commercial means would identify
20 a customer that is about to switch.

21 In terms of winback, again, there must be some sort of
22 public, or commercially, or available throughout the retail
23 industry data that identifies that the customer has moved before
24 they can use that for marketing purposes.

25 COMMISSIONER DAVIDSON: Thank you.

1 BY MR. MEZA:

2 Q Mr. Nilson, I would like to refer you back to FCC
3 03-42, Paragraph 27. And I apologize for not being finished with
4 that order.

5 A Not at all.

6 Q And I want to focus you on the first sentence of that
7 paragraph, Paragraph 27, wherein the FCC states, "We clarify that
8 to the extent that the retail arm of an executing carrier obtains
9 carrier change information through its normal channels in a form
10 available throughout the retail industry, and after the carrier
11 changes, when implemented, such as in disconnect reports, we do
12 not prohibit the use of that information in executing carriers'
13 winback efforts." Do you see that?

14 A Yes.

15 Q And it is your position that the PMAP line loss report
16 isn't carrier change information that would be included in the
17 parenthetical such as in disconnect reports as stated in that
18 sentence, is that correct? Is that correct?

19 A Are you done?

20 Q Yes.

21 A No, I do not believe the PMAP meets the test of in a
22 form available throughout the retail industry, nor is it
23 available to anyone other than Supra.

24 Q All right. So the PMAP line loss report is not one of
25 the disconnect reports that the FCC is referencing in Paragraph

1 27, because it is only available to Supra, is that your position?

2 A Yes.

3 Q Now, I believe I asked you this question in your
4 deposition, and I asked you what would be an appropriate
5 disconnect report. Do you remember that question?

6 A Yes.

7 Q And you said it would be -- an appropriate disconnect
8 report would contain information in a limited situation where the
9 customer calls BellSouth and notices BellSouth directly.

10 Do you remember your answer? Do you remember that
11 answer?

12 A I remember that discussion. Is there a question?

13 Q Yes. Do you remember providing the answer?

14 MR. CRUZ-BUSTILLO: Could you show him the --

15 MR. MEZA: Absolutely. Thank you, counselor, for
16 suggesting that.

17 Commissioners, you were provided Mr. Nilson's
18 deposition. It is actually two different days, and the copy I
19 have -- there is a yellow sticky separating it. I will be
20 referring to the second portion of Mr. Nilson's depo that
21 occurred this past Tuesday. It would be Page 98, and the page is
22 on the right-hand side, it is not the page number at the bottom.

23 THE WITNESS: I understand.

24 MR. MEZA: Lines 8 through 10, and the question in
25 response to that answer is on Page 98. The question starts with

1 Page 97, Lines 20 through 25 and continues on Page 98 from 1 to
2 Line 10.

3 MR. CRUZ-BUSTILLO:

4 COMMISSIONER DAVIDSON: Nice four-page minuscpts
5 would be wonderful.

6 MR. MEZA: And I apologize, but given the compressed
7 time frames we are dealing with this is the best we have.

8 BY MR. MEZA:

9 Q Did you find it, Mr. Nilson?

10 A Yes.

11 Q And your answer is, "Let me amend that last answer."
12 And this is on Page 98 beginning on Line 8. "In that limited --
13 in that limited avenue where the customer calls you and notifies
14 you directly, that would be one example.

15 "Question: Okay.

16 "Answer: That is probably the only -- the one that I
17 actually have been able to identify."

18 Is that your testimony today, as well?

19 A Yes. When you receive a call from the customer, that
20 complies with the requirements of both Paragraph 27 and 28 that
21 you receive it through the normal channels in a form available
22 throughout the retail industry because you received the call, you
23 put it into your retail systems with the C0 disconnect code, and
24 it is not in any way, shape, or form colored by the fact that
25 that information was provided via a CLEC LSR, or any other

1 activities that's performed by your wholesale division.

2 Q Okay. You would agree with me, though, that even if a
3 disconnect report is generated solely because a customer calls up
4 BellSouth retail side and tells BellSouth that it is no longer
5 going to be its customer, that that information isn't available
6 to other carriers, is it?

7 A Well, that would depend on the nature of the disconnect
8 report that is published. I don't think we have identified a
9 specific disconnect report here.

10 Q Well, today BellSouth gathers data, wouldn't you agree,
11 on the number of customers that leave it by submitting or calling
12 the retail side. Would you agree with that statement?

13 A I didn't understand it.

14 Q Would you agree that BellSouth currently receives
15 notice when a customer calls the retail side to disconnect its
16 service with BellSouth?

17 A Yes. And that's, you know, the allowance that you are
18 given as an exception in Paragraph 79 of Order 99-223.

19 Q All right. Does BellSouth provide that information to
20 Supra today?

21 A No.

22 Q Is BellSouth obligated to provide that information to
23 Supra today?

24 A I'm not aware of any obligation, but it is codified as
25 an exception in the FCC order.

1 Q So if BellSouth is not obligated to produce it,
2 BellSouth, in fact, does not produce it, under your
3 interpretation of this opinion or this requirement, Paragraph 27,
4 BellSouth could use that retail disconnect report even though it
5 would not be obligated to give it to Supra, is that correct?

6 A No. I think what my testimony would be is that the
7 requirements of Paragraph 79 of Order 99-223 grant you an
8 exception in that case.

9 Q But I thought you said that in order for the exception
10 to take effect the information has to be available to everyone in
11 the industry, and that is simply not the case with the retail
12 disconnect report, is it?

13 A In the example where the customer calls you, no, that
14 information is not available throughout the industry nor does
15 Paragraph 79 require it to be.

16 Q So what was the FCC referring to when it used the
17 phrase "such as in disconnect reports"?

18 A I wish they had been more clear on that, because I'm
19 not aware of the specific mechanism that would meet these
20 qualifications.

21 COMMISSIONER DAVIDSON: I have a question on the FCC
22 03-42 going to Paragraph 27. With regard to that first sentence,
23 is BellSouth the executing carrier in the types of transactions
24 we are talking about?

25 THE WITNESS: Absolutely.

1 COMMISSIONER DAVIDSON: Does Supra agree or disagree --
2 and I am going to parcel out the sentence -- but agree or
3 disagree that the retail arm of BellSouth is obtaining carrier
4 change information through its normal channels? Just that
5 portion. Do you agree with that statement or disagree with that
6 statement?

7 THE WITNESS: You would have to define the
8 circumstances.

9 COMMISSIONER DAVIDSON: No, I just -- well, tell me.
10 Tell me as you sit here, the statement is the retail arm of
11 BellSouth obtains carrier change information through its normal
12 channels. I'm just focusing on that segment of the sentence, not
13 the rest of the language at this point.

14 THE WITNESS: In terms of the marketing department,
15 which is a subset of all BellSouth retail, the only normal course
16 notification that I am aware of is when the customer actually
17 calls BellSouth and asks for their service to be disconnected.
18 We had a discussion with Commissioner Deason about a public
19 clearinghouse, and while that doesn't exist, that might also be a
20 qualifying entity.

21 COMMISSIONER DAVIDSON: I'm not talking about making
22 something available in the industry. I'm trying to find out
23 whether or not Supra is contending that BellSouth is not
24 obtaining information through the normal channels. Not how they
25 use it, but just how they obtain it at this point. And if

1 BellSouth is not, in Supra's opinion, obtaining carrier change
2 information through its normal channels, what is not normal about
3 the channels in Supra's opinion?

4 THE WITNESS: I think they are. And what is not normal
5 about the way the marketing department or the MKIS department is
6 notified is the fact that an order is executed by the wholesale
7 division and it is fed into the marketing division on the retail
8 side of the fence.

9 COMMISSIONER DAVIDSON: All right. Moving on to the
10 next part of the sentence. What is the form in which Supra has
11 information that it may use for winback purposes? What is the
12 essential nature of the form of that information, what are the
13 core components?

14 THE WITNESS: Well, what we have to operate on is every
15 month we receive a bill from BellSouth, and on that bill there is
16 a list of all customers who receive service. If we were billing
17 a customer last month and they disappear from the bill this
18 month, we know to stop billing that customer. Therefore, the
19 data that we would rely on in those winback activities, if they
20 occurred with any regularity, would be the information that we
21 took from the customer when they signed up for service from us,
22 and the fact that they were no longer our customers because
23 BellSouth had stopped billing us for that line.

24 COMMISSIONER DAVIDSON: You had testified earlier, and
25 I don't recall exactly on what line of questions you were

1 testifying, but you had testified, I believe, that Supra had
2 information with regard to customers that included the NPA, the
3 NXX, the line, the customer code.

4 THE WITNESS: Yes, sir. In that regard I was speaking
5 of the BellSouth PMAP report which we are not using today.

6 COMMISSIONER DAVIDSON: But do you have -- even though
7 Supra is not using it, do you have access to that information?

8 THE WITNESS: Yes, sir, we do.

9 COMMISSIONER DAVIDSON: Moving on to the next portion
10 of Paragraph 27 that states, "in a form available throughout the
11 retail industry," assuming for purposes of this question that the
12 information itself is not available throughout the retail
13 industry, does Supra contend that BellSouth is using a form, a
14 type of information, some category which category or form is not
15 available throughout the industry? And, again, I understand that
16 the information itself may not be, but is there something unique
17 about the form of the information that makes it unavailable
18 throughout the industry?

19 THE WITNESS: Absolutely.

20 COMMISSIONER DAVIDSON: Okay. And distinguish the type
21 of information in that, the types in categories that BellSouth
22 might have in your answer. I didn't mean to cut you off. For
23 example, what Supra might have for purposes of its winback
24 efforts.

25 THE WITNESS: What they have is as we went through the

1 description of how the system worked in Mr. Cruz's opening
2 statement, the fact that a record arrives in the Sunrise Table is
3 notification to the MKIS department that a CLEC has actually won
4 that customer back from BellSouth. I think answer the first part
5 of your question?

6 COMMISSIONER DAVIDSON: Well, it does. And what I'm
7 trying to get at -- I understand there are differences in the
8 type of information. One form of information may be white,
9 another may be blue, another may be yellow, there may be
10 differences in categories. What I'm trying to get at is, in
11 essence, is there a form of information in terms of
12 identification of a customer that switched, or identification of
13 NPA, line, customer code, et cetera, that Supra would not have
14 available to it, noting that there are differences in the form of
15 information, but is the form, itself, generally available
16 throughout the industry?

17 THE WITNESS: I think that might actually be two
18 different questions. In terms of your question regarding form,
19 the information that is available to us in PMAP is not
20 substantially different information on a technical basis than
21 what BellSouth has testified to is available to them in their
22 Sunrise Table.

23 COMMISSIONER DAVIDSON: Thank you.

24 BY MR. MEZA:

25 Q Mr. Nilson, I would like to refer you to Paragraph 26

1 of FCC Order 03-42, and specifically the sentence following
2 Footnote 85, with a reference to Footnote 85.

3 A I'm sorry, where are we?

4 Q Paragraph 26.

5 A Of what document?

6 Q FCC Order 03-42, the sentence following the reference
7 to Footnote 85. Please let me know when you finish reading.

8 A What paragraph is that in?

9 Q Paragraph 26.

10 A The sentence following Footnote 85, I have read that.

11 Q Okay. Have you ever read SBC's petition for
12 reconsideration?

13 MR. CRUZ-BUSTILLO: I would like to make an objection
14 here and say that, just for the record, that the sentence in
15 Paragraph 26 is the FCC simply characterizing one of the party's
16 position, and that -- so that is my objection. And that it's not
17 the FCC's holding, and I wanted to place that objection on the
18 record and object to the line of questioning, I guess.

19 COMMISSIONER DEASON: Objection overruled.

20 BY MR. MEZA:

21 Q Mr. Nilson, have you ever read SBC's motion for
22 reconsideration?

23 A I have not.

24 MR. MEZA: May I approach the witness?

25 COMMISSIONER DEASON: Yes, you may.

1 BY MR. MEZA:

2 Q I would like to focus your attention to Page 13,
3 Section F, the section of the motion entitled executing carrier.
4 Please read that.

5 A This would be SBC's definition of executing carrier,
6 not the FCC's.

7 Q That's correct. (Pause.) Have you finished reading
8 it?

9 A I was giving my attorney a chance to look at it.

10 MR. CRUZ-BUSTILLO: Okay. Go ahead.

11 THE WITNESS: I have.

12 BY MR. MEZA:

13 Q Okay. Would the statement that SBC made and asked the
14 Commission to clarify, and specifically the statement that the
15 same type of code is transmitted to IXCs as part of the CARE
16 transaction and is available to CLECs on a disconnect report,
17 would those statements modify or revise your position as to what
18 the FCC was referring to when it referenced disconnect reports in
19 Paragraph 27?

20 MR. CRUZ-BUSTILLO: Objection to speculation regarding
21 what the FCC meant when it said disconnect reports.

22 COMMISSIONER DEASON: Mr. Cruz, we are all here today
23 speculating on what the FCC wants, or says or does. The
24 objection is overruled.

25 THE WITNESS: Well, I will make a few comments to that.

1 First of all, obviously this is SBC's opinion and not the FCC's.
2 Secondly, I note the date of this report, March 18th, 1999. As
3 we discussed in my deposition testimony, that at that point in
4 history the disconnect reports were being fed through CARE in a
5 way that caused Supra's customers to lose long distance service
6 and lose their preferential pricing plans. So in an effort to
7 reduce the number of Public Service Commission complaints,
8 changes were made in that system. So I don't necessarily think
9 that this paragraph is reflective of what goes on today.

10 BY MR. MEZA:

11 Q So it doesn't change your opinion?

12 A Well, you are asking me to reflect on a statement that
13 was made in 1999 as being reflective of what the FCC meant in a
14 2003 order, when I know for certain the industry has made changes
15 in the CARE notification process within that period. So I'm not
16 sure it does.

17 Q Okay. Now, Mr. Nilson, one of the remedies that Supra
18 is requesting in this docket is to give Supra access to the
19 Sunrise database, is that correct?

20 A That was one of the options, yes.

21 Q And the reason you want access is so that Supra can
22 market to customers who leave BellSouth, is that accurate?

23 A No, I don't think it is. As I indicated in my opening
24 statement, I would like this Commission to rule that you must
25 disconnect the wholesale feeds into Project Sunrise, and I did

1 not further that request that we be given access to it.

2 MR. CRUZ-BUSTILLO: I don't know if this helpful. In
3 our motion in response to the motion to dismiss, we included in
4 there -- or, no, in our amended complaint, sorry, in the remedies
5 we included in there, because I wrote it, that we want it shut
6 down, and that in the alternative give us a feed. But I wrote in
7 there that if you gave us a feed it would still be illegal.
8 So --

9 MR. MEZA: I object to his attempt to rehabilitate his
10 witness on my cross-examination. I mean, that is in his
11 testimony, the request for relief specifically.

12 COMMISSIONER DEASON: It says what it says. Let's
13 proceed.

14 MR. MEZA: Okay.

15 BY MR. MEZA:

16 Q Mr. Nilson, let me refer you to Page 70 of your
17 deposition, the second day.

18 A Thank you.

19 Q Starting on Page 70, Line 21.

20 A Which line, sir?

21 Q Line 21.

22 MR. CRUZ-BUSTILLO: Page 7 on the right-hand side or
23 the bottom?

24 MR. MEZA: Right-hand side.

25 BY MR. MEZA:

1 Q Did you read it?

2 A Yes.

3 Q Okay. And didn't you state in your deposition when I
4 asked you if you were going to market a customer who had just
5 left BellSouth and went to a CLEC, didn't you state that your
6 answer was -- or wasn't your answer, sure?

7 A Yes, but you are taking that out of context. Your
8 prior question to that is, "And my question to you is what would
9 a CLEC do with a list of customers that left BellSouth and went
10 to another CLEC?" And I was answering what I thought was your
11 hypothetical question, because at the point in which you asked
12 it, as far as I know all Supra was seeking is that the data feed
13 from the wholesale side be shut down.

14 Q You didn't write your testimony specifically requesting
15 in the remedy section that you have access to Sunrise?

16 A Yes. One of the questions framed in the issues of this
17 case were what should the penalties be if BellSouth was detected
18 to be improperly using the information.

19 Q Why did you include that specific request for relief in
20 your testimony?

21 A Because at the time, you know, thinking in the world of
22 parity between carriers, that was a possible decision this
23 Commission could have taken. I think we have moved away from
24 that position since the time that the testimony was written.

25 Q So you are no longer requesting for access to Sunrise?

1 A I think you would have to ask my attorney about that
2 because they framed the specific requests.

3 MR. MEZA: I have no further questions.

4 COMMISSIONER DEASON: Staff, how much do you have for
5 this witness?

6 MS. DODSON: We only have two questions.

7 COMMISSIONER DEASON: Please proceed.

8 MS. DODSON: Three questions, I apologize.

9 CROSS EXAMINATION

10 BY MS. DODSON:

11 Q During your August 22nd, 2003, deposition when
12 discussing retention and winback rules, you stated that in
13 winback you have a prohibition on not contacting the customer
14 within a certain time frame. That was on Page 14, Lines 16 to 18
15 of your deposition.

16 A Help me. Was August 22nd Tuesday or Friday?

17 Q I believe that was the first day.

18 A All right. And what page was that again, please,
19 ma'am?

20 Q Page 14, Lines 16 through 18 on Page 14.

21 MR. MEZA: Linda, if I may help, if we are not using
22 the same transcript you will have to reconcile it.

23 MS. DODSON: That may be.

24 THE WITNESS: Sorry, I'm having difficulty locating
25 that.

1 MS. DODSON: Yes. I believe that our copy had a
2 different page number. We are trying to locate the correct one.

3 THE WITNESS: All right.

4 MS. DODSON: We would like to come back to this
5 question and go on with asking the others.

6 BY MS. DODSON:

7 Q Please refer to Exhibit DAN-2 in staff's second set of
8 interrogatories question Number 16. Do you have copies of those?

9 A No, ma'am.

10 Q We can provide you with copies.

11 MR. CRUZ-BUSTILLO: Do they intend to give us the
12 interrogatory that Mr. Ruscilli answered versus an interrogatory
13 that Mr. Nilson answered? Okay. You intend to do that, okay.

14 BY MS. DODSON:

15 Q Okay. Do you have a copy of that?

16 A Yes, ma'am.

17 Q DAN-2 in our second set of interrogatories, question
18 Number 16. Okay. According to BellSouth, Exhibit DAN-2 is a
19 notice generated by BAPCO for directories. Given BellSouth's
20 response, do you believe the mailing is in violation of CPNI
21 rules? And if so, please elaborate?

22 A Well, first of all, let me state that I have personal
23 knowledge of the mailing. It was sent to me at my home. It was
24 sent to me as a result of my home phone number being converted
25 from resale billing with BellSouth to UNE-P billing with

1 BellSouth. And under those circumstances there is no particular
2 reason for any of these mailings to have occurred. There is no
3 particular reason for BellSouth to have taken notice of a change
4 in the service, because really all that occurred was the line
5 went from its configuration being billed as resale to its same
6 configuration with no changes being billed as a UNE-P.

7 Unfortunately, because of the way BellSouth forces us
8 to structure ordering codes, we have what is known as operating
9 company number that identifies Supra Telecom. We have separate
10 operating company -- we are required to have a separate operating
11 company number for a resale billed line and a UNE-P billed line.
12 I believe that in their system -- we have learned that at the
13 time they were taking no special consideration that operating
14 company numbers 7011 and 7012, which both belong to Supra, were
15 all operating company numbers that belonged to the same carrier.
16 Instead, this appeared to them as a change from one CLEC customer
17 to another CLEC customer and the mailing went out on that basis
18 alone.

19 Q So do you consider that to be a violation of CPNI
20 rules?

21 A Yes.

22 Q I would like to come back to our first question. And I
23 apologize, that was the deposition from day two, on Page 14,
24 Lines 16 through 18.

25 A All right. Yes, ma'am.

1 Q Do you believe that the PSC placed a waiting period
2 prohibition on BellSouth or that the PSC acknowledged BellSouth's
3 voluntary 10-day waiting period before BellSouth initiates any
4 winback activity?

5 A It is my belief from reading the documentation in the
6 key customer tariff that the PSC not make a finding other than to
7 say that they believe from the evidence that was before them at
8 the time that BellSouth's policies in this regard were adequate.
9 I might make a statement that I think the closer or the shorter
10 that period of restriction is the more likely it is going to be
11 that these kind of contentious issues regarding when winback was
12 done legally and when winback was not done legally were to arise.
13 Supra obviously favors a longer period, somewhere in the vicinity
14 of 90 days prohibition on winback activities so that there not be
15 a question that the generation of a wholesale order actually led
16 to any marketing campaign at all.

17 Q Thank you. Mr. Meza asked you whether it was
18 appropriate for BellSouth retail to be notified when it loses a
19 customer. Other than updating the CRIS system for billing
20 purposes, what other BellSouth software or retail personnel need
21 to be informed of the customer migration from BellSouth?

22 A None whatsoever, ma'am.

23 MS. DODSON: Thank you very much. That concludes our
24 questions.

25 COMMISSIONER DEASON: Redirect.

REDIRECT EXAMINATION

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BY MR. CRUZ-BUSTILLO:

Q Mr. Nilson, is Supra an executing carrier?

A Not at all. Supra has no facilities that need to be changed. We just receive notification of loss.

Q Mr. Meza had you read certain sentences out of Paragraph 27 and Paragraph 28 of Order 03-42.

A Yes.

Q Is it your position that the burden established by the FCC is on executing carriers and only executing carries?

A Only on executing carriers and in this particular case only on BellSouth and not on Supra.

Q Staff just showed you DAN-2, or actually a portion of --

A Part of DAN-2.

Q Part of DAN-2. Could you read me the first sentence of the paragraph there on the right-hand side of the exhibit?

A Sure. And that is the paragraph that concerned me at the time. It says, "Our records indicate that you recently had a change in your telephone service. If you need directories at this time as a result of this change, please contact us." There was no change in my telephone service. There was only a change in the billing to Supra.

Q When you say a change in the billing to Supra, do you mean your line was changed from resale to UNE?

1 A That is correct.

2 Q Would it be reasonable to conclude that BellSouth's
3 wholesale operations notified BAPCO of a change in your service
4 from resale to UNE?

5 MR. MEZA: I object. I'm sorry to be so loud.

6 MR. CRUZ-BUSTILLO: In your opinion.

7 MR. MEZA: No, I have a pending objection. Leading,
8 beyond the scope of my cross, and he is trying to rehabilitate
9 his witness improperly with leading questions.

10 COMMISSIONER DEASON: The objection is overruled as it
11 being beyond the scope of the cross, but it does appear to me to
12 be a leading question. So, Mr. Cruz, I am going ask you to
13 rephrase your question.

14 BY MR. CRUZ-BUSTILLO:

15 Q By reading this letter or this exhibit, in your
16 opinion, do you believe that BAPCO received notification from
17 BellSouth's wholesale operations?

18 A No, I don't. I believe that, based on the testimony I
19 heard Mr. Wolfe give in his deposition, that this change order
20 flowed into Sunrise and notification flowed in that manner.
21 Without question in my mind that this conversion order made it to
22 the permanent Sunrise Table.

23 Q So then your answer would be yes, because actually you
24 started off your answer with no. My question was, okay, do you
25 believe that this letter was the product of an order flowing

1 through to the permanent Sunrise Table?

2 A Yes.

3 Q Thank you. The staff just asked you a question
4 regarding this letter. Is it your position that any letter
5 mailed by BellSouth to a former customer where that letter is the
6 product of a CLEC service order that flows to the permanent
7 Sunrise Table that it makes that letter illegal?

8 A Yes.

9 MR. CRUZ-BUSTILLO: Okay. I have no further questions.

10 COMMISSIONER DEASON: Okay. We're going to take a
11 lunch break, and when we get back we will address exhibits for
12 this witness. There is some clarification needed on the prefiled
13 direct exhibits. We will reconvene at 2:00 o'clock.

14 (Lunch recess.)

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1
2 STATE OF FLORIDA)

3 : CERTIFICATE OF REPORTER

4 COUNTY OF LEON)

5
6 I, JANE FAUROT, RPR, Chief, Office of Hearing
7 Reporter Services, FPSC Division of Commission Clerk and
8 Administrative Services, do hereby certify that the foregoing
9 proceeding was heard at the time and place herein stated.

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

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

20
21 DATED THIS 8th day of September, 2003.

22
23
24
25


JANE FAUROT, RPR
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