ORIGINAL

CONFIDENTIAL

DECLASSIFIED

MK 9-17-05

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NUMBER 001305-TP

DIRECT TESTIMONY OF OLUKAYODE A. RAMOS

ON BEHALF OF

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.

JULY 27, 2001

Q. PLEASE STATE YOUR NAME AND ADDRESS.

A. My name is Olukayode A. Ramos. My business address is 2620 SW 27th Avenue, Miami, Florida 33133.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT POSITION?

A. I am Founder, Chairman and CEO of Supra Telecommunications & Information Systems, Inc. ("Supra" or the "Corporation").

Q. WHAT ARE YOUR PRESENT RESPONSIBLITIES?

A. As CEO of Supra, I am responsible for all aspects of Supra's operations and financial performance. I am responsible for setting the strategic direction for Supra, including which expansion territories are priorities, what new and innovative products we should be striving to offer our customers, and how best to maximize Supra's resources. Managerial staffs under my direct supervision provide me with operational results, on a daily basis, of BellSouth's performance on all aspects of the Supra/BellSouth Interconnection Agreement ("Agreement"). In an effort to stay tuned to what Supra's customers are experiencing and to keep abreast of Order Processing and other key customer satisfaction issues, I often times work as a Customer Service

decl 9/1/05 (Part 1 of 7)

Representative ("CSR") at one of Supra's operational centers. It gives me great insight to be able to hear directly what our existing customers as well as potential customers have to say.

Q. PLEASE PROVIDE INFORMATION ON YOUR BACKGROUND AND EXPERIENCE.

A. I received a Bachelor of Science Degree, with Honors, in Accounting from the University of Lagos in 1981. In 1982, I became a Certified Public Accountant and a member of the Association of Chartered Certified Accountants (ACCA) in England and Wales. I attended the London School of Accountancy for post-graduate studies. I have attended extensive management training programs with Motorola, Lucent, Nortel, Telcordia (formally known as Bellcore), Alcatel, BellSouth, AT&T, Verizon (formally known as Bell Atlantic), Dialogic, Nokia, Xerox, and others.

I incorporated the Supra group of companies in 1983 while working for the Nigerian government at the Nigerian Sugar Company, Limited. The Nigerian Sugar Company employed over 30,000 employees. I served as the Chief Financial Officer of the Nigerian Sugar Company from 1982 to 1991, after which I resigned to pursue a career in the private sector. While working for the Nigerian Sugar Company, I obtained a great deal of experience working with the Nigerian government and multi-national corporations. I represented the Nigerian government on the boards of directors of the Nigerian National Petroleum Corporation (1986-1987), the National Insurance Corporation of Nigeria (1988-1990), and the Nigerian Telecommunications Corporation (1990-1993). I authored a report that established the basis of a national policy on sugar by the Nigerian government.

In 1994, I incorporated Supra in the State of Florida for the manufacture and sale of telecommunications equipment. Upon certification by the Florida Public Service Commission as an alternative local exchange carrier (ALEC) in April 1997, Supra embarked on the provision of alternative local exchange services.

Q. HAVE YOU TESTIFIED PREVIOUSLY ON TELECOMMUNICATIONS ISSUES BEFORE REGULATORY BODIES, FEDERAL JUDGES AND COMMERCIAL ARBITRATION PANELS? IF SO, BRIEFLY DESCRIBE THE PURPOSE OF YOUR TESTIMONIES.

A. Yes. I have testified on telecommunications issues before the Federal Communications Commission ("FCC"), state regulatory commissions of Florida, California, Georgia, Oklahoma, Illinois, Vermont, Connecticut, Texas and Nevada as well as Commercial Arbitration Panels regarding (i) implementation of the Telecommunications Act of 1996 (the "Act"); (ii) resolution of various interconnection issues between Supra and ILECs; (iii) differences between BellSouth's (a) Retail Department's Operation Support Systems ("OSS") and (b) CLECs' OSS; (iv) BellSouth's bad faith negotiation tactics (v) BellSouth/BIPCO trademark infringement lawsuit against Supra; (vi) "merger conditions" on the acquisition of Ameritech and GTE by Southwestern Bell Telephone Company ("SWBT") and Verizon (formerly known as Bell Atlantic), respectively; and (vii) OSS, Collocation, UNEs as well as other market entry barriers created by ILECs with particular emphasis on BellSouth. I have also made presentations at industry forums. I testified in Docket Numbers 980119 and 980800 before this Commission.

Q. WHAT IS YOUR UNDERSTANDING OF THE SIGNIFICANCE OF THIS PROCEEDING AS IT RELATES TO THE LOCAL TELEPHONE INDUSTRY?

A. This is another historic proceeding in the history of the telecommunications industry. In 1996, the Congress of the United States took steps to remove the statutory monopoly on local telephone service by passing the Act. The preamble to the Act states that this is:

> An Act To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.[1]

The Act contains detailed provisions governing the relationship between ILECs and their new competition. It gives the FCC and state commissions significant responsibilities for implementing the Act. On August 8, 1996, the FCC released its decision discussing and adopting significant regulations to implement the local competition provisions of the Act. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996. CC Docket No. 96-98, First Report and Order (adopted August 1, 1996) (FCC Competition Order). Thereafter, the FCC has released additional rules in its efforts to enforce those established in the First Report and Order and to curb further anti-competitive practices of the ILECs. On November 5, 1999 the FCC released its decision in response to the Supreme Court's January 1999 decision that directed the FCC to reevaluate the unbundling obligations of Section 251 of the Act. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996. CC Docket No. 96-98, Third Report and Order (adopted November 5, 1999) (UNE Remand Order).

According to the FCC at ¶2 of its UNE Remand Order:

> In passing the 1996 Act, Congress overhauled many aspects of federal regulation of telecommunications services by establishing a pro-competitive and deregulatory framework designed to benefit **"all Americans by opening all**

---

[1] Preamble to the TA. Emphasis placed.

telecommunications markets to competition."[2] Two of the fundamental goals of the 1996 Act are to open the local exchange and exchange access markets to competition and to promote innovation and investment by all participants in the telecommunications marketplace.[3] Congress sought to foster this competition by fundamentally changing the conditions and incentives for market entry and by attempting to open any remaining local service bottlenecks.[4] As a result, the provisions of the 1996 Act set the stage for a new competitive paradigm in which carriers in previously segmented markets are able to compete in a dynamic and integrated telecommunications market that promises lower prices and more innovative services to consumers. [5]

The goal of both Florida and Federal laws are the same - to provide consumers with new choices, lower prices, and advanced technologies that fair competition will bring to the local telecommunications market. At the same time, they both recognize that the transition from monopoly to competition will not occur overnight, that the former monopolists will not willingly embrace the new competitive paradigm, and that dispute resolution is necessary to ensure that competition is given a fair chance to develop.

Supra brings a unique perspective to this emerging competitive market because Supra's business is focused on the consumer market. Supra understands that competition does not happen overnight. The development of competition requires oversight and intervention by regulators, courts and arbitrators, particularly when new entrants must rely upon entrenched monopolists possessing market dominance in order to obtain the facilities and services that are vital to their entry into the marketplace.

This proceeding, and others like it, will establish the terms and conditions under which competition will fully develop in the consumer market.

---

[2] Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess., at 1 (1996) (*Joint Explanatory Statement*).

[3] *Joint Explanatory Statement* at 1.

[4] *See BellSouth Corp. v. FCC*, 144 F.3d 58, 61 (D.C. Cir. 1998) ("The 1996 Act rescinded the [Modified Final Judgment] . . . and changed the entire telecommunications landscape.").

[5] ¶2 UNE Remand Order released on November 5, 1999. Emphasis placed.

Q. TODAY, FIVE YEARS AFTER THE PASSAGE OF THE ACT, IS SUPRA ABLE TO COMPETE IN THE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES' MARKET? IF NO, WHY NOT?

A. No. Based on Supra's lower prices, Supra is able to attract customers that are prepared to wait 1-6 weeks to get their services provisioned and/or at times, get nothing at all. However, Supra is unable to truly compete, as it cannot offer a full range of services to customers, and cannot provide the services it can offer as timely as BellSouth does. The reason for Supra's inability to compete is because of BellSouth's willful and intentional breaches of the parties' current Interconnection Agreement ("Current Agreement") and violations of the Act as well as relevant federal and state rules and orders. BellSouth has chosen non-compliance, non-cooperation and litigation tactics over compliance with the parties' agreement and all applicable federal and state laws. **BellSouth has consistently maintained that the Current Agreement is not clear in many pertinent aspects, the resulting effect of which has been arbitration.** This problem is not unique to Supra. Aside from challenges to the Current Agreement, BellSouth has challenged and continues to challenge virtually every important, market-opening order promulgated by the FCC and this Commission as well as other State Commissions. For example, in the appeal of the FCC's landmark *Local Competition Order*[6], BellSouth asked the Eighth Circuit to vacate the **entire** order. (Brief for Petitioner Regional Bell Companies and GTE, No. 96-3221, at 80-81 (8th Cir. Filed Nov. 18, 1996)). Even after the United States Supreme Court upheld the jurisdiction of the FCC to issue UNE pricing and other pro-competitive rules, BellSouth continued to press the 8th Circuit to vacate those rules. (Brief for Petitioners Regional Bell Companies and

---

[6] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, FCC No. 96-325 (Rel. August 8, 1996).

GTE, No. 96-3321 (and consolidated cases)(8th Cir. filed July 16, 1999)). Even now, nearly five years and several steps later in the appellate process, BellSouth still refuses to comply with the Current Agreement as well as numerous federal and state rules.

Q. WHAT HAS BEEN THE EFFECT OF BELLSOUTH'S LITIGATION AND NON-COMPLIANCE TACTICS ON COMPETITIVE PROVIDERS AND CONSUMERS?

A. BellSouth's tactics have made it nearly impossible for CLECs to successfully compete with BellSouth and thus many CLECs have either filed for bankruptcy or withdrawn from the market. See announcements of Covad, Bluestar, Telscape, Teligent, Winstar, Rhythms, ICG, etc. See report titled Annus horribilis? However you ay it, CLECs have had a bad year Published by CLEC.com., attached as **Supra Exhibit OAR 43**. These companies invested billions of dollars on mostly virtual collocation in BellSouth central offices and "CLEC Hotels" as well as on excessive interconnection charges. Between October 1997 and June 1998, BellSouth's sales organization tried to convince Supra to use virtual collocation instead of physical collocation. Marc Cathey, Mike Wilburn, Theresa Gentry and company (of BellSouth's Sales Interconnection Department) explained to Supra at meetings that virtual collocation would afford Supra speed to market. An ALEC that is virtually collocated must purchase BellSouth's Sonet Ring service for the interconnection of its network (i.e. the virtual collocation space and where the switch is physically located in the CLEC Hotel.) The Sonet Ring service costs at least $50,000 per month and by adding the cost of collocating a switch outside BellSouth's central office and virtual collocation arrangement as well as other operational costs, the cost jumps to about $80,000 per month. Whereas, the monthly recurring cost of physically collocating a switch in BellSouth's central office is less than $2,000. Yet at the same time, BellSouth continues to reap tremendous profits from its

local telephone companies and CLECs. BellSouth has effectively used these tactics to forestall and injure competitors in the local telephone market. As a result, if local telephone markets are not opened to competition soon, it may be too late for competition to ever develop. This will result in the continued monopolization of traditional local telephone services as well as the continued anti-competitive rates for same. As a result, a majority of Florida's consumers have not yet obtained the benefits of having the choices for local telephone services and competitive rates that they should have had in the five-plus years since the passage of the Act.

The relevant evidence confirms that BellSouth's anti-competitive tactics have succeeded in forestalling local competition. The most recent market share data from the FCC shows that, five years after the Act, CLECs serve only 6.7 percent of local telephone lines after having invested over $30 Billion in new competitive networks. See attached **Supra Exhibit OAR 1** Trends in Telephone Service released by the FCC on December 21, 2000. In Florida, competition lags behind the national average as CLECs have only 6.1 percent market share in the state. *Competition in Telecommunications Markets in Florida*, FPSC Report at 7 (December 2000).

In short, "[b]y any measure, competition in Florida's local phone market is virtually absent." *Florida Consumers Need Real Local Phone Competition, Fair Access to Monopoly Wires is the Key,* Mark Cooper, Director of Research, Consumer Federation of America, at 1 (Jan. 2001). In fact, earlier this year, the Consumer Federation of America concluded that the "local monopolies have managed to maintain their stranglehold on Florida's local telephone market by continually resisting any attempts to open the market up for new entrants." *Florida Consumers Losing Out Over Failure of*

Local Phone Competition, Press Release (Jan. 23, 2001). Although BellSouth publicly states its intent "to help CLECs" achieve competition, so as to allow BellSouth access into the long-distance market, the statistics and BellSouth's non-compliance, non-cooperation and litigation tactics tell a different story.

Q. IS BELLSOUTH REAPING TREMENDOUS BENEFITS FROM ITS WILLFUL AND INTENTIONAL BREACHES OF THE CURRENT AGREEMENT AS WELL AS VIOLATIONS OF THE ACT AND APPLICABLE FEDERAL AND STATE RULES?

A. Yes. BellSouth's tactics and the resulting lack of competition has a tremendous financial benefit for BellSouth. See attached **Supra Exhibit OAR 2,** BellSouth 2000 EPS Highlights Growth Areas. In that release, BellSouth reported earnings per share increase from 55 cents in the fourth quarter of 1999 to 59 cents in the fourth quarter of 2000. Additionally, BellSouth reported earnings per share in 2000 of $2.23, compared with $1.80 in 1999, and BellSouth continues to forecast earnings per share growth of 7-9 percent. BellSouth also grew its local service revenues in 2000 on a GAAP basis of 3.4 percent. While CLECs struggle to gain each customer, BellSouth increased its total equivalent access lines in service to 25.3 percent from 1999 to 2000. Its annual growth rate in access line equivalents since 1995 has been 14.9 percent. As a result of this windfall, BellSouth has invested heavily in wireless technology (including the acquisition of a 40% share in Verizon Wireless), and telecommunications ventures in Latin America. BellSouth has reaped tremendous benefits from its anti-competitive tactics and will continue to do so unless forced to adhere to its contractual obligations as well as its obligations under the Act, the FCC, and various State Commissions' Orders.

Q. DOES BELLSOUTH HAVE ANY INCENTIVE TO CO-OPERATE WITH SUPRA IN NEGOTIATING A FOLLOW-ON AGREEMENT IN FULIFILLMENT OF ITS STATUTORY OBLIGATIONS UNDER SECTION 251 OF THE ACT AND APPLICABLE FEDERAL AND STATE RULES?

A. No. BellSouth has no incentive whatsoever to comply as it has a much stronger incentive to preserve its local monopoly and prevent its competitors from succeeding in capturing local market share. This is easy for BellSouth to achieve as BellSouth controls the facilities necessary for Supra and other CLECs to provide services. Thus, BellSouth has both the motive and the ability to discriminate in favor of its own retail services by charging anti-competitive rates for access to those facilities, providing those facilities in a nondiscriminatory fashion, and by flat-out refusing to abide by contractual and statutory terms, the Act and relevant Federal and State rules.

Not even the ability to provide long distance services pursuant to Section 271 of the Act can provide enough incentive to secure BellSouth's cooperation. **First**, the long distance market is highly competitive. **Second**, revenues in the long distance market are dropping. **Third**, as much as BellSouth would want this Commission and other regulators to believe, it does not make any business sense for BellSouth to give up any share of its local telephone monopoly market in order to secure approval to compete in the highly competitive long distance market. BellSouth would prefer to have it both ways – maintain its monopoly power on the local telephone market as well as secure approval to provide long distance service.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to provide information to this Commission with regard to this arbitration in order to substantiate Supra's claims enumerated in its Status

and Complaint Regarding BellSouth's Bad Faith Negotiation Tactics, as well as to provide support for Supra's positions regarding a number of the issues outlined in the Commission's Supplemental Order Establishing Procedure, issued July 13, 2001 in this docket.

My testimony is divided into the following areas:

Section I: General Overview of the Relationship Between the Parties and Examples of Tortious Intent, on the part of BellSouth, to Harm Supra.

Section II: BellSouth's Willful and Intentional Bad Faith Negotiation Tactics of a Follow-On Agreement: **(a)** BellSouth's Willful and Intentional Refusal to Provide Information About its Network; **(b)** BellSouth's Willful and Intentional Refusal to Negotiate from the Current Agreement, and **(c)** BellSouth's Willful and Intentional Refusal to Comply with the Procedural Requirements of the Parties' Current, FPSC-Approved Interconnection Agreement before Filing its' Petition for Arbitration so as to Harm Supra.

Section III: Unresolved Issues: a, 1, 4, 5, 9, 16, 17, 18, 26, 35, 38, 44, 46, 47, 51, 52, 55, 57, 59, 60, 61, 62, 65 and 66.

Section IV: Relief Sought By Supra.

I. GENERAL OVERVIEW OF THE RELATIONSHIP BETWEEN THE PARTIES

Q. WHY IS THE PAST RELATIONSHIP OF THE PARTIES RELEVANT TO THIS PROCEEDING?

A. The parties have established a course of dealings over the past 4 and ½ years which cannot simply be ignored when considering a Follow-On Agreement. Obviously, the parties wish to negotiate a new agreement, which will clearly and unambiguously identify each party's rights and obligations, so as to avoid future litigation. In order to

understand the parties' needs in avoiding future litigation, one must first understand the parties' past litigation, so that the Follow-On Agreement will not lead the parties back to issues which have previously been litigated. Furthermore, as Supra has been treated in less than a fair manner throughout its dealings with BellSouth, including the negotiation of this very Follow-On Agreement, Supra seeks affirmative relief from this Commission which will provide incentives for BellSouth's compliance with the Act, the FCC rules and orders, this Commission's rules and orders, as well as the terms of the parties' Follow-On Agreement.

Q. CAN YOU DESCRIBE FROM THE BEGINNING THE RELATIONSHIP BETWEEN THE TWO CORPORATIONS?

A. It has been a difficult relationship for Supra as BellSouth has often acted in bad faith with the tortious intent to harm Supra. Recently, Supra has achieved some vindication, as in the parties' recent, extensive commercial arbitration proceedings before the CPR Arbitral Tribunal, Supra was able to receive a favorable finding regarding **BellSouth's bad faith.** According to the Award of the Arbitral Tribunal in Consolidated Arbitrations, dated June 5, 2001 (the "Award"):

> In the course of these two arbitrations, the Tribunal has reviewed hundreds of pages of pre-filed direct and rebuttal testimony and thousands of pages of exhibits. The Tribunal also has judged the demeanor of witnesses during a total of eight days of live testimony in the hearings and has reviewed the transcripts of that testimony. The evidence shows that BellSouth breached the Interconnection Agreement in material ways and did so with the tortoise intent to harm Supra, an upstart and litigious competitor. The evidence of such tortious intent was extensive, including BellSouth's deliberate delay and lack of cooperation regarding UNE Combos, switching Attachment 2 to the Interconnection Agreement before it was filed with the FPSC, denying access to BellSouth's OSS and related databases, refusals to collocate any Supra equipment, and deliberately cutting-off LENS for three days in May 2000.
>
> The Tribunal does not make this finding of "tortious intent" lightly, but the full record belies BellSouth witnesses' mantra-like testimony that BellSouth's aim

was to profit from Supra's success. BellSouth attempted to give the appearance of cooperating with Supra, while deliberately delaying, obfuscating, and impeding Supra's efforts to compete.

See the Award, **Supra Exhibit OAR 3** at pages 40 and 41.

Q. SINCE SUPRA'S ADOPTION OF THE AT&T/BELLSOUTH INTERCONNECTION AGREEMENT, WHAT HAS BEEN BELLSOUTH'S RESPONSE TO SUPRA'S REQUESTS TO IMPLEMENT THE AGREEMENT?

A. BellSouth has chosen non-compliance over compliance; the effect of which was to force Supra to file at least two complaints to date before the Arbitral Tribunal appointed by the parties. The first Complaint was originally filed on September 20, 2000 and supplemented later. See attached **Supra Exhibit OAR 4.** The Second Complaint was filed on February 20, 2001 in response to BellSouth's Complaint filed on January 31, 2001. See attached **Supra Exhibits OAR 5 and 6.** The Arbitral Tribunal issued its Award on June 5, 2001. See attached **Supra Exhibit OAR 3.** The summary of the Award is contained in Section VIII of the Award and provides as follows:

> This final section summarizes the injunctive relief and damages that the Tribunal orders in these two consolidated arbitrations.
>
> The Tribunal orders that **no later than June 15, 2001**, BellSouth shall:
>
> - Facilitate and provision Supra's requests to provide UNEs and UNE Combos to Supra's customers at the contractually agreed prices in the Interconnection Agreement.
> - Collocate all equipment as Supra has included in prior applications to BellSouth at the rates indicated in Table 2 attached to the July 24, 1998 letter incorporated into the Interconnection Agreement, and cooperate with and facilitate any new Supra applications for collocation, including but not limited to collocating any Class 5 or other switches in BellSouth central offices.
> - Provide Supra nondiscriminatory direct access to BellSouth's OSS and cooperate with and facilitate Supra's ordering of services.

- Provide branded services and elements requested by Supra under the Interconnection Agreement, including but not limited to voice mail, operator services and directory assistance, under the terms and conditions of section 19 of the General Terms and Conditions of the Interconnection Agreement.

- Fully cooperate with and facilitate Supra's audit of BellSouth's billings since October 1999 to the present in accordance with GAAS.

The Tribunal awards the following damages:

- BellSouth Invoices. Supra shall pay BellSouth $6,374, 369.58 on BellSouth's unpaid invoices, subject to the adjustments listed below;

- Audit Adjustments. Any adjustments in BellSouth's invoices found necessary by Supra's audit of BellSouth's billings, including the elimination of late charges, shall be reflected as necessary reductions or increases in those invoices to be paid by Supra; and

- Supra Damages Set-off. The following damages due to Supra will be adjusted according to the amount Supra will be required to pay on BellSouth's invoices **after** the audit adjustments and by the amount that the Tribunal calculates Supra is due in incremental net income operating as a UNE provider for the months of April and May, 2001, based on the number of Supra customers in those months as determined by the audit:

*Incremental net income operating as a UNE provider --	$ 2,103,906.40
*LENS-related lost productivity --	$ 669,153
*LENS cut-off	$ 55,488
Subtotals of Supra's Damages Set-off	$2,828,547.40

To the extent that either Supra or BellSouth has requested any other relief, all such relief is hereby denied.

See *Id* at pages 48-50.

Q. HAS BELLSOUTH COMPLIED WITH THE AWARD OF THE ARBITRAL TRIBUNAL?

A. As of today's date, no. BellSouth is aware that the Award is final, as BellSouth is a signatory to the Current Agreement (see Section 2.1 of Attachment 1), a CPR Sustaining Member Corporation **(see attached Supra Exhibit OAR 44 at page 3 of 13),** and a signatory of CPR Corporate Policy Statement on Alternatives to Litigation **(see attached Supra Exhibit OAR 45 at page 3 of 20).** BellSouth did seek reconsideration of the Award under the guise of Rule 14.6 of the CPR Rules for Non-Administered Arbitration attached as **Supra Exhibit OAR 38 at page 11 of 13.** As a result, the Arbitral Tribunal issued an Order dated July 20, 2001 (the "Order") and directed BellSouth to generally comply with the Award forthwith. See attached **Supra Exhibit OAR 7.** However, Supra has yet to receive the benefits of any of the affirmative obligations imposed upon BellSouth by the Award.

II. BELLSOUTH'S WILLFUL AND INTENTIONAL BAD FAITH NEGOTIATION TACTICS OF A FOLLOW-ON AGREEMENT

Issue A: *Has BellSouth or Supra violated the requirement in Commission Order PSC-01-1180-FOF-TI to negotiate in good faith pursuant to Section 252 (b)(5) of the Act? If so, should BellSouth or Supra be fined $25,000 for each violation of Commission Order PSC-01-1180-FOF-TI, for each day of the period May 29, 2001 through June 6, 2001?*

In this section, I will address the following subjects: **(a)** BellSouth's Willful and Intentional Refusal to Provide Information About its Network; **(b)** BellSouth's Willful and Intentional Refusal to Negotiate from the Current Agreement, and **(c)** BellSouth's Willful and Intentional Refusal to Comply with the Procedural Requirements of the Parties'

Current FPSC-Approved Interconnection Agreement before filing its Petition for Arbitration.

Q. CAN YOU SUMMARIZE SUPRA'S COMPLAINT REGARDING BELLSOUTH'S WILLFUL AND INTENTIONAL BAD FAITH NEGOTIATION TACTICS FILED ON JUNE 18, 2001, IN THIS ARBITRATION PROCEEDING?

A. Yes. Supra's complaint against BellSouth begins with BellSouth's refusal to comply with the unambiguous language of the Act and FCC's Orders regarding one of the obligations owed by BellSouth to Supra – namely, the duty to negotiate in good faith. Specifically, Section 251(c)(1) of the Act provides as follows:

> DUTY TO NEGOTIATE- The duty to negotiate in **good faith** in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements. (Emphasis added.)

Q. WHAT IS YOUR UNDERSTANDING OF THE MEANING OF GOOD FAITH AND BAD FAITH?

A. Section 4 of the General Terms and Conditions of the Current Agreement defines good faith as:

> In the performance of their obligations under this Agreement, the Parties shall act in good faith and consistently with the intent of the Act. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement, (including, without limitation, the obligation of the Parties to further negotiate the resolution of new or open issues under this Agreement) such action shall not be unreasonably delayed, withheld or conditioned.

The FCC First Report and Order provides:

> The Uniform Commercial Code defines "good faith" as "honesty in fact in the conduct of the transaction concerned." When looking at good faith, the question "is a narrow one focused on the subjective intent with which the person in question has acted." Even where there is no specific duty to negotiate in good

> faith, certain principles or standards of conduct have been held to apply. For example, parties may not use duress or misrepresentation in negotiations. Thus, the duty to negotiate in good faith, at a minimum, prevents parties from intentionally misleading or coercing parties into reaching an agreement they would not otherwise have made. We conclude that intentionally obstructing negotiations also would constitute a failure to negotiate in good faith, because it reflects a party's unwillingness to reach agreement. (Emphasis added.)

(See ¶148 of the FCC First Report and Order (adopted August 1, 1996) on the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, (FCC Competition Order).)

According to Black's Law Dictionary, *Bad Faith* is defined as:

> The opposite of "good faith, " generally implying or involving **actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive. Term "bad faith" is not simply bad judgement or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with furtive design or will.** Stath v. Williams, Ind. App., 367 N.E.2d 1120, 1124 (1977). An intentional tort which results from breach of duty imposed as consequence of relationship established by contract. Davis v. Allstate Ins. Co., 101 Wis.2d 1, 303 N.W.2d 596, 599 (1981). (Emphasis added)

BellSouth has ignored Supra's requests for information, has prematurely filed a petition (knowing that it had not followed contractual and statutory procedures), has intentionally obstructed negotiations, and has filed a never-before seen template agreement as its proposed language in this proceeding, all in an attempt to rush Supra and this Commission into an arbitration for a Follow-On Agreement which will substantially favor BellSouth to the detriment of Supra and Florida telephone subscribers who have not benefited from the promotion of competition promised by the Act. BellSouth should not be allowed to benefit from this type of conduct. As will be

demonstrated by the evidence, BellSouth has acted in *bad faith* from the very beginning of the negotiations of the Follow-On Agreement.

(a) BellSouth's Willful and Intentional Refusal to Provide Information About its Network

Q. WHY MUST BELLSOUTH PROVIDE SUPRA INFORMATION ABOUT ITS NETWORK?

A. The Act, particularly Sections 202, 251 and 252, requires that an ILEC has a duty to provide interconnection of its network, to any requesting telecommunications carrier, on conditions that are reasonable and nondiscriminatory in accordance with the Act and the parties' agreement. Supra's complaint against BellSouth begins with BellSouth's refusal to comply with the plain unambiguous language of paragraph 155 of the FCC First Report and Order and 47 CFR §§51.301(c)(8), 51.305(g). Paragraph 155 of the FCC's First Report and Order provides that:

> We agree with incumbent LECs and new entrants that contend that the parties should be required to provide information necessary to reach agreement.[7] Parties should provide information that will speed the provisioning process, and incumbent LECs must prove to the state commission, or in some instances the Commission or a court, that delay is not a motive in their conduct. Review of such requests, however, must be made on a case-by-case basis to determine whether the information requested is reasonable and necessary to resolving the issues at stake. **It would be reasonable, for example, for a requesting carrier to seek and obtain cost data relevant to the negotiation, or information about the incumbent's network that is necessary to make a determination about which network elements to request to serve a particular customer.**[8] It

---

[7] *See National Labor Relations Board v. Truitt Mfg Co.*, 351 U.S. 149, 153 (1956) (the trier of fact can reasonably conclude that a party lacks good faith if it raises assertions about inability to pay without making the slightest effort to substantiate that claim); *see also Microwave Facilities Operating in 1850-1990 MHz (2GHz) Band*, 61 F.R. 29679, 29689 (1996).

[8] *See* discussion of technical feasibility, *infra*, Section IV. In addition, the Commission's federal advisory committee, the Network Reliability Council, has developed templates that summarize and list activities that need to occur when service providers connect their networks pursuant to defined interconnection specifications or when they are attempting to define a new network interface specification. As consensus recommendations from the Council, we presume the elements defined in the templates are "good faith" issues for negotiation. Comments of the Secretariat of the Second Network Reliability Council at 4-5 (*citing Network Reliability: The Path Forward*, (1996), Section 2, pp. 51-56).

would not appear to be reasonable, however, for a carrier to demand proprietary information about the incumbent's network that is not necessary for such interconnection.[9] We conclude that an incumbent LEC may not deny a requesting carrier's reasonable request for cost data during the negotiation process, because we conclude that such information is necessary for the requesting carrier to determine whether the rates offered by the incumbent LEC are reasonable. We find that this is consistent with Congress's intention for parties to use the voluntary negotiation process, if possible, to reach agreements. On the other hand, the refusal of a new entrant to provide data about its own costs does not appear on its face to be unreasonable, because the negotiations are not about unbundling or leasing the new entrants' networks. (Emphasis added)

(See ¶155 FCC's First Report and Order (adopted August 1, 1996) on the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, (FCC Competition Order).)

Furthermore, 47 CFR §51.301(c)(8), provides:

If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following practices, among others, violate the duty to negotiate in good faith:

(8) Refusing to provide information necessary to reach an agreement. Such refusal includes, but is not limited to:

(i) Refusal by an incumbent LEC to furnish information about its network that a requesting telecommunications carrier reasonably requires to identify the network elements that it needs in order to serve a particular customer . . .

Additionally, 47 CRR §51.305(g) provides that:

An incumbent LEC shall provide to a requesting telecommunications carrier technical information about the incumbent LEC's network facilities sufficient to allow the requesting carrier to achieve interconnection consistent with the requirements of this section.

---

[9] This is consistent with previous FCC determinations. *See, e.g., Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, 4 FCC Rcd 468, 472 (1989) (good faith negotiations necessitate that, at a minimum, one party must approach the other with a specific request).

Q. HAS SUPRA REQUESTED THAT BELLSOUTH PROVIDE IT WITH INFORMATION ABOUT BELLSOUTH'S NETWORK?

A. Yes. Several times. Supra's initial request to BellSouth was made on or about June 22, 1998. See page 3 of attached **Supra Exhibit OAR 8.** On or about July 2, 1998, Marcus Cathey, Sales Assistant Vice President of BellSouth CLEC Interconnection Services, replied to Supra and completely ignored Supra's information request. See attached **Supra Exhibit OAR 9.** Due to its limited resources at that time, Supra was unable to pursue the request any further.

Again, on or about April 26, 2000, Supra sent a letter to BellSouth requesting that BellSouth provide Supra with information regarding its network which Supra reasonably required in order to negotiate a new agreement with BellSouth. A true copy of this letter is attached hereto as **Supra Exhibit OAR 10.** Furthermore, on or about August 8, 2000, Supra's Ms. Kelly Kester handed a copy of the same document request to BellSouth's Ms. Parkey Jordan, asking for the responsive documents. Again, BellSouth ignored the request. Thereafter, Supra persistently requested for the responsive documents from BellSouth as evidenced from the following:

- Supra's Motion to Dismiss dated January 26, 2001 filed in this Docket, which alleged among other things, BellSouth's bad faith negotiations tactics as evidenced in BellSouth's refusal to provide Supra information regarding its network. **See Supra Exhibit OAR 11.**

- BellSouth's Response to Supra's Motion to Dismiss, which again ignored Supra's request for information and stated that "if Supra actually had some basis for a claim

to this effect, then it could bring its claim before the FCC."[10] **See Supra Exhibit OAR 12.**

- Letter dated March 2, 2001 from Supra to the FCC regarding BellSouth's intentional and willful violations of Section 251(c)(1) of the Communications Act as amended by the 1996 Act, as well as Section 51.301 of the FCC rules. **See Supra Exhibit OAR 13.** It is Supra's belief that BellSouth has intended to harm Supra by making it impossible for Supra to negotiate a new interconnection agreement on equal footing with BellSouth, and thereby force Supra into an agreement which is one-sided in favor of BellSouth. Given the parties numerous disagreements during their relationship, many of which having ended up in litigation (before the FPSC, Federal District Court, and Commercial Arbitration) which resulted in favorable rulings for Supra, it is obvious now that BellSouth's strategy is to attempt to box Supra into a one-sided agreement, so as to prevent Supra from receiving the full benefits of the Act and its progeny.

- Letter dated April 4, 2001 from Supra to BellSouth demanding the requested information as well as BellSouth's cost studies. See attached **Supra Exhibit OAR 14.**

- Letter dated April 9, 2001 from BellSouth to Supra stating that BellSouth is "not certain what information [Supra is] asking BellSouth to provide." Regarding cost studies, the letter stated that "BellSouth will provide cost studies for the unbundled

---

[10] See BellSouth's Response to Supra's Motion to Dismiss dated February 6, 2001 at ¶14.

network elements set forth in your agreement." See attached **Supra Exhibit OAR 15.** BellSouth has since provided some, but not all, of the requested cost studies.

- Letter dated April 11, 2001 from Supra to BellSouth demanding the requested information. See attached **Supra Exhibit OAR 16.**

- Letter dated April 13, 2001 from BellSouth to Supra directing Supra to BellSouth's Web site for the responsive information. See attached **Supra Exhibit OAR 17.**

- Conference call of April 24, 2001, between Supra, BellSouth and the FCC. On that call, Supra reiterated its demand for the responsive documents.

- Letter dated April 25, 2001 from Supra to the FCC regarding BellSouth's intentional and willful violations Section 251(c)(1) of the Communications Act as amended by the 1996 Act, as well as Paragraph 155 of the FCC First Report and Order and Section 51.301 of the FCC rules. **See Supra Exhibit OAR 18.**

- Letter dated May 1, 2001 from Supra to BellSouth demanding the requested information. **See Supra Exhibit OAR 19.**

- Letter dated May 8, 2001 from Supra to BellSouth demanding the requested information. **See Supra Exhibit OAR 20.**

- Letter dated May 18, 2001 from BellSouth to the FCC in response to Supra's letters dated March 15, 2001 and April 25, 2001. **See Supra Exhibit OAR 21.** At page 9 of that letter, BellSouth wrote that:

> One would logically conclude that if the information was necessary for Supra to negotiate, Supra would have raised this issue before the FPSC. Section 252(b)(4)(B) authorizes the state commission to require the parties "to provide such information as may be necessary for the state commission to reach a decision on the unresolved issues." That section also provides that if either party "fails unreasonably to respond on a timely basis to any reasonable request from the state commission, then the state commission may proceed on the basis of the best information available to it from whatever source derived." **Supra's failure to bring up the alleged request and need for the information before the state commission casts doubt on its request.** (Emphasis added.)

Supra brought this issue before this Commission in its Motion to Dismiss dated January 26, 2001 filed in this Docket. For BellSouth to have stated in a letter to the FCC that Supra never raised this issue before this Commission goes to confirm what most regulatory observers and followers of the Act have noted, that BellSouth will argue anything in any forum.

BellSouth continues to breach its obligations under the Act, as well as federal and state laws by its willful and intentional refusal to provide Supra with information about its network.

Q. WHY DO YOU STATE THAT BELLSOUTH HAS WILLFULLY AND INTENTIONALLY REFUSED TO PROVIDE INFORMATION ABOUT ITS NETWORK?

A. I say this because of the pattern of rejection of Supra's requests for information enumerated above as well as the *"stories"* that have been created by BellSouth to date. **First,** BellSouth's Response to Supra's Motion to Dismiss dated February 6, 2001

ignored Supra's request for information and stated that "if Supra actually had some basis for a claim to this effect, then it could bring its claim before the FCC." **See Supra Exhibit OAR 12. Second**, BellSouth's pattern of rejection and/or complete disregard for Supra's information request. **See Supra Exhibits OAR 8 to 21. Third,** in its response to Supra's Bad Faith Negotiation Tactics Complaint brought against BellSouth, it stated that:

> BellSouth does not believe that Supra requested these documents prior to the first week of April, 2001.
>
> (See paragraph 4, page 2 of BellSouth's Response to Supra's Complaint and Motion to Dismiss dated July 9, 2001.)

The above statement is not only an outright misstatement, it further confirms how BellSouth fears no repercussions for making factually untruthful statements to regulatory bodies. See **Supra Exhibits OAR 8 to 21.**

Fourth, at Section III, page 8 of its Opposition to Supra's Motion to Stay filed on July 18, 2001, BellSouth stated in part that:

> **Despite the fact that Supra formally requested these documents in January 2001** and BellSouth filed its objections in February 2001, Supra has not filed a motion to compel, which would have enabled the Commission to resolve this issue several months ago without delaying the hearing of this matter. (Emphasis placed.)

In one pleading, BellSouth claims that Supra did not request the information until April 2001, while in another pleading, it affirms that Supra requested the information in January 2001. The evidence in this Docket shows that Supra's initial request dates back to June 1998.

BellSouth's refusal to provide information is not only a discriminatory practice in violation of applicable federal and state laws, but also a calculated attempt to assure

that Supra and its customers cannot receive the same quality of services, elements and ancillary functions that BellSouth provides itself and its customers. Furthermore, it should be seen as another effort by BellSouth to assure that the Follow-On Agreement is devoid of **"clarity and parity."**

Q. WHY DO YOU STATE THAT BELLSOUTH'S WILLFUL AND INTENTIONAL REFUSAL TO PROVIDE INFORMATION IS A CALCULATED ATTEMPT TO ASSURE THAT SUPRA AND ITS CUSTOMERS CANNOT RECEIVE THE SAME SERVICES, ELEMENTS AND ANCILLARY FUCNTIONS THAT BELLSOUTH PROVIDES ITSELF AND ITS CUSTOMERS?

A. I say this because BellSouth has acted to create and fortify barriers between Supra and BellSouth's network, thereby making it impossible for Supra to have access to the same services, elements and ancillary functions that BellSouth provides itself and its customers. Supra never truly appreciated the breadth of BellSouth's OSS until it received information on BellSouth's OSS. See attached **Supra Exhibit OAR 22.** Supra was able to use the documents to aid the Arbitral Tribunal in the issuance of its Award dated June 5, 2001. As evidenced from **Supra Exhibit OAR 3**, the Tribunal Ordered BellSouth to provide Supra nondiscriminatory, direct access to all of its OSS, including, but not limited to, RNS and ROS. As Supra uses BellSouth's network to provision services to its end-users, Supra must know what this network's capabilities are in order to design products and packages for its end-users. Supra leases UNEs from BellSouth and entitled to know what those UNEs are currently capable of providing as well as what new-innovative services those UNEs are capable of providing.

Q. DO YOU HAVE AN IDEA OF WHAT BELLSOUTH IS CAPABLE OF PROVIDING ITSELF AND ITS CUSTOMERS FROM THE BELLSOUTH NETWORK?

A. Yes. Although BellSouth has refused to provide Supra with the pertinent information regarding its network, Supra has reviewed BellSouth's Florida Intrastate Tariff as well as its FCC Tariff. These voluminous documents evidence what BellSouth currently makes available to consumers, and Supra believes that even this is not a complete picture as to what BellSouth's network may be capable of.

Q. IS SUPRA ABLE TO PROVIDE THE SAME SERVICES THAT BELLSOUTH IS ABLE TO PROVIDE ITSELF AND ITS CUSTOMERS AS EVIDENCED IN THE BELLSOUTH TARIFFS?

A. Absolutely not. Though the parties agreement, the Act and federal and state rules provide that Supra must have nondiscriminatory access to BellSouth's network, the reality of the situation is that Supra has been limited by BellSouth to very restricted access to BellSouth's network. Attached as **Supra Exhibit OAR 23** is a copy of Supra's Florida tariff. While Supra is only able to provide some form of limited services to certain residential and small business customers, BellSouth is able to provide an array of services to all telecommunications subscribers. In fact, as Section 271 of the Act prohibits BellSouth, but not Supra, from providing interLATA services, Supra should be able to provide even more services than BellSouth. Unfortunately, BellSouth has prevented this from happening.

Q. HAS SUPRA PROVIDED BELLSOUTH WITH ADDITIONAL EXPLANATIONS AS TO THE INFORMATION THAT IT IS SEEKING FROM THE NETWORK RELIABILITY TEMPLATE TO BELLSOUTH?

A. Yes, on several occasions, Supra has provided BellSouth with additional explanations as to the information that it is seeking from the Increased Interconnection Task Group II Report of the Network Reliability Council to BellSouth. See attached **Supra Exhibit OAR 24.** After sending the letter to BellSouth in April 2000, I have had at least six follow-up calls with BellSouth's Pat Finlen and Marcus Cathey. Pat Finlen used to be BellSouth's lead negotiator for Supra and Marcus Cathey is the designated head of BellSouth's account team for Supra. On two of those calls, I went into great details to explain Supra's request. Mr. Finlen directed Supra to BellSouth's Web site for the responsive information. All the items listed on pages 47 to 52 have been explained to BellSouth's Pat Finlen, Marcus Cathey and Parkey Jordan. If it is true that Supra never explained its requirements to BellSouth, then why did BellSouth inform Supra that the responsive information could be obtained off of BellSouth's Web site? Only BellSouth can answer this question. Of course, BellSouth's Web site does not provide the requested information, as it only provides information regarding the CLEC portion of the network which BellSouth makes available. It does not speak to the functions and capabilities of BellSouth's own network.

Supra explained the information it is seeking regarding Interconnection Provisioning information and guidelines, as follows:

- Tariff Identification: Supra requested BellSouth to identify its entire public and private tariff filed at the federal and state levels as well as any and all other rates that are not available publicly. So far, BellSouth has provided some of its cost studies, which are incomplete.
- NOF References: Supra requested BellSouth to identify its references to the Network Operations Forum ("NOF") principles and procedures.

- Interface Specifications: Supra requested BellSouth to identify all the OSS that it uses for the provisioning of services at its central offices as well as to its end-users.
- Network Design: Supra requested BellSouth to provide information regarding design, interconnection and configuration of its network from the end-office level to the LATA and state.

To date, BellSouth has refused to provide Supra with any of this requested information.

Q. WHY DOES SUPRA SEEK CLARITY AND PARITY IN THE FOLLOW-ON AGREEMENT?

A. Supra seeks clarity and parity in the Follow-On Agreement for two reasons. **First**, is the need to avoid litigation regarding the obligations and rights of the parties under the agreement. **Second**, to promote competition and rapid deployment of technology. If Supra cannot offer the same quality and timely services as BellSouth, or if Supra must expend more in order to provide the same quality and timely services, Supra will never be able to successfully compete with BellSouth.

Q. IT IS BELLSOUTH'S POSITION THAT SUPRA'S INFORMATION REQUEST IS A DELAY TACTIC EMPLOYED IN ORDER TO AVOID ENTERING INTO A FOLLOW-ON AGREEMENT. HOW DO YOU RESPOND?

A. This allegation is baseless when one considers that the terms, rates and conditions of the Follow-On Agreement will apply retroactively to the expiration date of the Current Agreement. See Section 2.3, General Terms and Conditions of the Current Agreement. Regardless of when the Follow-On Agreement is executed, the parties will have to true-up their respective obligations to reflect the Follow-On Agreement's terms,

rates and conditions. Supra will not "gain" anything by a delay. Conversely, BellSouth is not prejudiced and loses nothing by a delay, other than the ability to arbitrate an agreement against a party that has less than complete information from which to support its arguments. BellSouth has failed to state why it considers Supra's information request a delay tactic, except to just take a passing shot at Supra for demanding its statutory entitlement and preservation of rights. BellSouth must comply with its statutory and contractual obligations and must make the requested disclosures.

Q. DID BELLSOUTH EVER DENY HAVING THE NETWORK INFORMATION REQUESTED BY SUPRA?

A. Interestingly, BellSouth never denied that it had the information that Supra requested, never bothered to take Supra's request to its Subject Matter Experts ("SMEs"), and never brought a single SME to any conference with Supra, while Supra brought its Network Engineer, fully prepared to discuss interconnection, to the meeting. Instead of providing the information, BellSouth merely offered to send a contract negotiator and an attorney, not even a SME, to Supra's office in Miami to explain the proposed draft of its standard, UNE-P Agreement, filed with the Commission in this arbitration, to Supra. Apparently, BellSouth believes that its draft language document cannot speak for itself.

Supra explained that it is a logical impossibility to use the draft document, alone, to determine if omissions existed. Nor can the draft document be used to illuminate any technical position other than the ONE position that BellSouth puts forward. This prevents Supra from negotiating on an equal footing with BellSouth, and down the road may lead to network instabilities and/or increased costs for Supra customers. That was

what the Increased Reliability Task Force document was intended to eliminate in the first place.

Q. HAS BELLSOUTH PROMISED TO PROVIDE THE REQUESTED INFORMATION TO SUPRA?

A. Yes. On or about June 4, 2001, at an Inter-Company Review Board meeting, BellSouth's Patrick Finlen, reluctantly promised to contact its SMEs for the same information that Supra requested almost three years ago. Certainly, BellSouth must not be allowed to discourage facilities-based competition via use of BellSouth's property.

Q. WHY DO YOU STATE BELLSOUTH MUST NOT BE ALLOWED TO DISCOURAGE FACILITIES-BASED COMPETITION VIA USE OF BELLSOUTH'S PROPERTY?

A. I say this because it is BellSouth's avowed position that the use of "BellSouth's property" by ALECs will "discourage facilities-based competition."

Between August 23 and 30, 1996, several BellSouth witnesses filed their Supplemental Direct and Rebuttal Testimonies in Docket No. 960833-TP; the AT&T/BellSouth arbitration proceeding which resulted in the Current Agreement. Notably, BellSouth's witness, Mr. Robert C. Scheye as Senior Director of Strategic Management, asked himself the following questions and provided the following responses:

> Q. DOES BELLSOUTH PLAN TO APPEAL THE ORDER?
>
> A. Yes. The Company is particularly concerned that the FCC Order usurps the intent of Congress, takes away the power of the states to establish prices, and that the *Order establishes prices for the use of BellSouth's network which will discourage facilities-based competition and possibly result in a taking of BellSouth's property*. BellSouth recommends that, until all challenges to the FCC's Order have been exhausted, the Commission carefully evaluate whether

provisions of the FCC's Order are consistent with Act, and whether the Order requires immediate adoption and implementation by state commissions.

Mr. Scheye continued with the following:

UNBUNDLED NETWORK ELEMENTS

Q. AT&T WITNESS TAMPLIN STATES ON PAGE 17 OF HIS TESTIMONY THAT BELLSOUTH SHOULD NOT BE PERMITTED TO PLACE ANY RESTRICTION ON AT&T OR ANY OTHER CARRIER'S USE OF UNBUNDLED NETWORK ELEMENTS LEASED FROM BELLSOUTH. ARE ANY RESTRICTIONS APPROPRIATE?

A. Yes. While AT&T and other new entrants should be able to combine unbundled network elements purchased from BellSouth with their own capabilities to create unique services, they should not be permitted to purchase only BellSouth's unbundled elements and recombine those elements to create the same functionality and/or service as BellSouth's existing retail service.

Q. PLEASE EXPLAIN WHY THIS RESTRICTION IS NECESSARY

A. If AT&T is permitted to simply order unbundled elements of a BellSouth service (which in reality would not be unbundled) and recreate that service with those elements, and If AT&T prevails in convincing this commission that such unbundled elements should be priced at cost (an issue discussed in more detail later), AT&T will be in a no-lose situation. Such a policy would provide AT&T with the following:

1. The ability to resell BellSouth's retail services, but avoid the Act's pricing standard for resale (assuming the wholesale discount for resale is not established high enough for AT&T's liking);

2. The ability for AT&T (and MCI and Sprint) to avoid the joint marketing restriction specified in the Act, as well as any use and user restriction contained in BellSouth's tariffs:

3. The ability to argue for the retention of access charges by AT&T even though the actual service arrangement is "disguised resale";

4. Assuming a wholesale discount acceptable to AT&T, the ability to maximize its market position by targeting the most profitable form of resale to particular customers; and

5. The ability to foreclose, to a large extent, facilities-based competition and competitors.

AT&T could achieve all of this without investing the first dollar in new facilities or new capabilities.

(See Rebuttal Testimony of Robert C. Scheye in CC Docket No. 960833-TP filed on August 30, 1996 at pages 3, 19-21. Emphasis added. Copy attached as **Supra Exhibit OAR 25.**

It is apparent from Mr. Scheye's testimony above that BellSouth was against the CLECs' purchase of UNEs as it would undermine BellSouth's retail operations. Ironically, one of the core issues in this Arbitration Proceeding is the purchase of UNEs and services in combination and pricing of elements and services.

Q. DOES SUPRA POSSESS BARGAINING POWER TO NEGOTIATE WITH BELLSOUTH ON EQUAL FOOTING?

A. Absolutely not. Perhaps, one of the reasons for BellSouth's willful and intentional refusal to provide Supra with information regarding its network is Supra's lack of bargaining power, as **Supra has nothing that BellSouth desires**. According to the FCC in its First Report and Order (Local Competition Order):

> Congress recognized that, because of the incumbent LEC's incentives and superior bargaining power, its negotiations with new entrants over the terms of such agreements would be quite different from typical commercial negotiations. **As distinct from bilateral commercial negotiation, the new entrant comes to the table with little or nothing the incumbent LEC needs or wants.** The statute addresses this problem by creating an arbitration proceeding in which the new entrant may assert certain rights, including that the incumbent's prices for unbundled network elements must be "just, reasonable and

nondiscriminatory."[11] We adopt rules herein to implement these requirements of section 251(c)(3). ¶15 Emphasis added.

> We find that incumbent LECs have no economic incentive, independent of the incentives set forth in sections 271 and 274 of the 1996 Act, to provide potential competitors with opportunities to interconnect with and make use of the incumbent LEC's network and services. **Negotiations between incumbent LECs and new entrants are not analogous to traditional commercial negotiations in which each party owns or controls something the other party desires. Under section 251, monopoly providers are required to make available their facilities and services to requesting carriers that intend to compete directly with the incumbent LEC for its customers and its control of the local market. Therefore, although the 1996 Act requires incumbent LECs, for example, to provide** interconnection and access to unbundled elements on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, incumbent LECs have strong incentives to resist such obligations. The inequality of bargaining power between incumbents and new entrants militates in favor of rules that have the effect of equalizing bargaining power in part because many new entrants seek to enter national or regional markets. National (as opposed to state) rules more directly address these competitive circumstances. ¶55. Emphasis added.

Because of BellSouth's willful and intentional refusal to provide information about its network, Supra has been unable to identify all of the issues it seeks to raise, much less resolve a number of those which have already been identified. As a result, Supra has been severely disadvantaged in that it does not have the necessary, and required, information from which to even begin negotiations of the issues, as BellSouth has made it impossible for Supra to negotiate on equal-footing with BellSouth. As explained to BellSouth, Supra seeks the responsive information in order to include such information in the Follow-On Agreement so as to ensure **clarity and parity**. Supra wants to avoid excessive litigation which has taken place to date as a result of the lack of parity and clarity in the Current Agreement.

---

[11] *See* 47 U.S.C.§ 251(c)(3)

Q. WHAT HAS THE FCC CONCLUDED WITH RESPECT TO BELLSOUTH'S BAD FAITH NEGOTITION TACTICS?

A. On or about November 2, 2000, BellSouth was fined $750,000 by the FCC for the very act it has committed against Supra. See In the Matter of BellSouth Corporation, File No. EB-900-IH-0134 Acct. No. X32080035 (Adopted October 27, 2000). Copy attached as **Supra Exhibit OAR 26.** According to the FCC:

> In this Order, we terminate an informal investigation into potential violations by BellSouth Corporation (BellSouth) of section 251(c)(1) of the Communications Act of 1934, as amended, and section 51.301 of the Cornmission's rules, in connection with BellSouth's alleged failure to negotiate in good faith the terms and conditions of an amendment to an interconnection agreement with Covad Communications Company (Covad) relating to BellSouth's provision of unbundled copper loops in nine states. ¶1

In the Matter of BellSouth Corporation, File No. EB-900-IH-0134 Acct. No. X32080035 Order (Adopted October 27, 2000).

Q. WHAT ISSUES OUTLINED IN THE COMMISSION'S SUPPLEMENTAL ORDER ESTABLISHING PROCEDURE, ISSUED JULY 13, 2001 IN THIS DOCKET IS SUPRA NOT ABLE TO ADDRESS AS A RESULT OF BELLSOUTH'S WILLFUL AND INTENTIONAL REFUSAL TO PROVIDE INFORMATION ABOUT ITS' NETWORK?

A. Issue numbers 5, 10, 12, 14, 15, 18, 19, 20, 25, 26, 27, 28, 29, 31, 32, 33, 34, 38, 40, 44, 46, 47, 48, 49, 51, 53, 55, 57, 59, 60, 61 and 62.

(b) BellSouth's Willful and Intentional Refusal to Negotiate from the Current Agreement

Q. WHAT IS THE BASIS FOR SUPRA'S CLAIM THAT IT IS ENTITLED TO BEGIN NEGOTIATIONS FROM THE CURRENT AGREEMENT?

A. Several reasons. **First**, the relationship between Supra and BellSouth started in 1997 when BellSouth finally "allowed" Supra to adopt the Current Agreement in October 1999; any follow-on agreement must reflect what has happened to date. **Second**, the parties have been through several commercial arbitration proceedings for the interpretation of the Current Agreement and to know what their specific rights and obligations are based on the agreement in conjunction with applicable federal and state laws. **Third**, based on the Award **Supra Exhibit OAR 3** and Orders dated February 21, 2001 **Supra Exhibit OAR 26** and July 20, 2001 **Supra Exhibit OAR 7**, the rights and obligations of the parties have been interpreted and are now "clear" as to the majority of the issues in this proceeding. **Fourth**, Supra has commenced the implementation of its Business Plan based on the Current Agreement, and should be entitled to some continuity, particularly where the majority of the terms and conditions remain unchanged by any subsequent order or rule. **Fifth**, the Follow-On Agreement should provide Supra's customers with continuity in the both the types of service and the costs of such service. **Sixth,** the Current Agreement has already "passed muster" with the Commission and has been the subject of various Commission and commercial arbitration rulings that clarify various provisions and memorialize current Florida law on the various subjects. **Seventh,** incorporating the terms of the Current Agreement into a Follow-On Agreement, will make the negotiation process quick and simple, as the parties are already familiar with the terms contained therein (there is simply no need to reinvent the wheel); thereby creating a "win-win" situation for everyone. The Commission will spend less time and public funds on arbitrating an entirely new agreement between the parties. **Eighth**, BellSouth had already agreed to this request with MCI. In Docket No. 000649-TP, MCI and BellSouth began their negotiations of a follow-on agreement using their current agreement as the starting point. Supra

requests that this Commission take judicial notice of this fact, as the MCI and BellSouth arbitration proceedings, and the relevant documents, are already in possession of the Commission. In attempting to begin negotiations from an entirely new agreement, rather than the Current Agreement, BellSouth has unfairly sought to place Supra in an unfavorable bargaining position.

BellSouth's stated purpose for beginning negotiations from a completely new agreement is that, because of changes in the law subsequent to the acceptance of the Current Agreement, the Current Agreement is out of date. This flawed, and disingenuous, reasoning fails because the Current Agreement had been amended on numerous occasions to reflect changes in the law, and because it would be simply a matter of inserting or deleting provisions in that agreement to make it reflect the current state of the industry.

Q. HAS SUPRA REQUESTED THAT THE PARTIES BEGIN NEGOTIATIONS FROM THE CURRENT AGREEMENT?

A. Yes. Several times. Despite repeated requests, BellSouth has willfully and intentionally ignored Supra's request to negotiate from the Current Agreement, and instead, has unreasonably insisted on commencing negotiations from its generic template. On or about June 7, 2000, Supra requested for the execution of an agreement, which would retain the exact same terms and conditions as the Current Agreement. In that letter, Supra's counsel stated that:

> As stated above, Supra Telecom wishes to execute an agreement which, except for expiration date, would retain the exact same terms as our current Interconnection Agreement. The time period for this new agreement can be three years. However, after negotiations between AT&T and BellSouth have concluded, Supra Telecom may then choose to opt into that agreement. We do not see why this request should create any problems for BellSouth since the

current agreement was obviously acceptable to BellSouth when originally negotiated with AT&T. Moreover, the current Agreement has already "passed muster" with the Florida Public Service Commission ("FPSC") and has been the subject of various FPSC rulings that clarify various provisions and memorialize current Florida law on the various subject. Moreover, incorporating the terms of the prior agreement into a new agreement will make negotiation of a new agreement quick and simple; thereby creating "win-win" situation for everyone. Although Supra Telecom would prefer entering into the same agreement again, if you believe that there are some terms in the current agreement which require modification or updating to bring the agreement in line with recent regulatory and industry changes, we would be happy to consider any proposed revisions. In any event, to avoid any delay, we can agree to negotiate such revisions by way of an amendment at a later date.

See attached **Supra Exhibit OAR 27.**

On or about June 8, 2000, BellSouth responded that it had proposed the agreement that it would like to execute[12] and never responded to Supra's specific request to begin negotiations from the Current Agreement. See attached **Supra Exhibit OAR 28.** On or about June 9, 2000, Supra again requested that the parties commence negotiations of the Follow-On Agreement from the Current Agreement. **Supra Exhibit OAR 29.**

Q. WHICH ALECS HAS BELLSOUTH ALLOWED TO EXTEND THE TERM OF ITS AGREEMENT OR TO NEGOTIATE FROM A CURRENT AGREEMENT?

A. It is on record that BellSouth extended the term of its interconnection agreements with the following ALECs: IDS, MCI, COVAD, and Intermedia, to mention a few. BellSouth's willful and intentional refusal of Supra's reasonable request, while providing

---

[12] It is interesting to note that Supra never received such agreement until BellSouth filed same in its Petition for Arbitration.

same to Supra's competitors, is a violation of the Act, particularly Section 202(a) which provides that:

> It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.
>
> Additionally, see 47CFR §51.313.

Q. AT PAGE 5 OF BELLSOUTH'S REPSONSE TO SUPRA'S COMPLAINT AND MOTION TO DISMISS FILED BY BELLSOUTH ON JULY 9, 2001, BELLSOUTH STATED THAT:

> **SINCE THE OLD AGREEMENT WAS NEGOTIATED WITH AT&T FIVE YEARS AGO, BELLSOUTH'S PRACTICES HAVE CHANGED, THE CONTROLLING LAW HAS CHANGED, AND THE INTERCONNECTION OFFERINGS, TERMS AND CONDITIONS THAT ARE AVAILABLE HAVE CHANGED. ACCORDINGLY, WHAT BELLSOUTH OFFERS IN THE CURRENT STANDARD INTERCONNECTION AGREEMENT AS A STARTING POINT FOR NEGOTIATION IS DIFFERENT THAN WHAT BELLSOUTH OFFERED AS A STARTING POINT WHEN THE OLD AT&T AGREEMENT WAS DRAFTED.**

PLEASE COMMENT.

A. First, BellSouth's argument that its "practices have changed, the controlling law has changed, and the interconnection offerings, terms and conditions that are available have changed" is without merit. The Act, which is the controlling law in this instance, has neither been changed nor amended since its passage in 1996. What has happened so far is that regulators have broadened the scope of their interpretation of the Act. Supra is not, however, aware of any positive changes that have affected BellSouth's practices and its interconnection offerings, terms and conditions. What Supra is aware of is that the length and breadth of BellSouth's anti-competitive behavior has worsened.

See generally Petitions of ALECs against BellSouth filed before this Commission and in particular:

- Petition by AT&T Communications of the Southern States, Inc., TCG South Florida, and MediaOne Florida Telecommunications, Inc. for structural separation of BellSouth Telecommunications, Inc. into two distinct wholesale and retail corporate subsidiaries. CC Docket No. 010345-TP; and
- Request for arbitration concerning complaint of IDS Telecom, LLC against BellSouth Telecommunications, Inc. regarding breach of interconnection agreement. CC Docket No. 010740-TP.

Additionally, BellSouth's self-serving statement that "what BellSouth offers in the current standard interconnection agreement as a starting point for negotiation is different than what BellSouth offered as a starting point when the old AT&T agreement was drafted" is ridiculous. **AT&T, and not BellSouth** drafted the 1997, Commission approved, AT&T/BellSouth interconnection agreement. Please see **AT&T's Documents Submitted Under the Telecommunications Act of 1996, Volume X, Tabs 259 dated July 17, 1996 in CC Docket 960833-TP.** MCI proposed the draft of the MCI/BellSouth interconnection agreement in CC Docket No. 960846-TP as well as the MCI/BellSouth follow-on agreement in CC Docket No. 000649. This Commission must not sanction this type of discriminatory practice by BellSouth.

BellSouth has failed to state why it does not want to negotiate from the Current Agreement except that its "practices have changed". In any event, to the extent that BellSouth's practices have actually changed in order for BellSouth to comply with its

statutory obligations, BellSouth must make these changes known to Supra so that those practices can be incorporated in the Follow-On Agreement.

(c) BellSouth's Willful and Intentional Refusal to Comply with the Procedural Requirements of the Parties' Current FPSC-Approved Interconnection Agreement before Filing its' Petition for Arbitration so as to Harm Supra.

Q. WHY DO YOU STATE THAT BELLSOUTH WILLFULLY AND INTENTIONALLY REFUSED TO COMPLY WITH CONTRACTUAL REQUIREMENTS BEFORE FILING ITS PETITION FOR ARBITRATION?

A. Section 2.3 of the General Terms and Conditions of the Current Agreement provides, in pertinent part:

> Prior to filing a Petition [with the FPSC] pursuant to this Section 2.3, the Parties agree to utilize the informal dispute resolution process provided in Section 3 of Attachment 1.

Section 3 of Attachment 1 provides that:

> The Parties to this Agreement shall submit any and all disputes between BellSouth and [Supra] for resolution to an Inter-Company Review Board consisting of one representative from [Supra] at the Director-or-above level and one representative of BellSouth at the Vice-President–or-above level (or at such lower level as each Party may designate).

Section 4 of the General Terms and Conditions provides that:

> **Good Faith Performance**
> In the performance of their obligations under this Agreement, the Parties shall act in good faith and consistently with the intent of the Act. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement, (including, without limitation, the obligation of the Parties to further negotiate the resolution of new or open issues under this Agreement) such action shall not be unreasonably delayed, withheld or conditioned.

BellSouth failed to request that the Follow-On Agreement be submitted to an Inter-Company Review Board prior to it filing the present Petition on or about September 1, 2000.

Q. HOW HAS BELLSOUTH EXPLAINED ITS HARMFUL CONDUCT OF FAILING TO CALL AN INTER-COMPANY REVIEW BOARD MEETING BEFORE FILING ITS PETITION?

A. BellSouth characterized the Inter-Company Review Board meeting as an extreme example of form over substance. This, says BellSouth, is because negotiations were held, and they were attended by the same persons who would have constituted an Inter-Company Review Board. See BellSouth's Response in Opposition to Supra's Motion to Dismiss at paragraph 7, page 4. BellSouth, again, misstates the facts. In fact, the negotiations that were held were not attended by the same persons who would have constituted an Inter-Company Review Board.

Q. WHAT DID THE COMMISSION CONCLUDE ABOUT BELLSOUTH'S FAILURE TO CONVENE AN INTER-COMPANY REVIEW BOARD MEETING BEFORE FILING ITS PETITION?

A. The Commission held that:

> We do not believe that this requirement of the agreement is simply form over substance as alluded to by BellSouth. BellSouth's blanket statement that the negotiations which were held would have been attended by the same representatives who would have attended an Inter-Company Review Board meeting, presupposes Supra's decision as to whom it would have sent to said meeting. Further, a meeting clearly designated as an Inter-Company Review Board meeting would entertain all issues in dispute, giving the greatest opportunity to reach agreement on the issues, or in the alternative, clearly delineate what issues would proceed to arbitration.

(See ORDER NO. PSC-01-1180-FOF-TI Issued May 23, 2001 in CC Docket No. 001305-TP)

Parity Provisions

Q. ARE THERE ANY GENERAL OBLIGATIONS WHICH SUPRA WISHES TO BE INCLUDED IN THE FOLLOW-ON AGREEMENT?

A. Yes. The Supreme Court, the Current Agreement, the Act, and FCC rules and orders contain a number of provisions designed to ensure that BellSouth provides CLECs, like Supra, nondiscriminatory access to its OSS at parity with what BellSouth provides itself. These decisional, statutory and contractual provisions are relevant to several of the issues that I will discuss in this proceeding, including, but not limited to, issues 5, 38, 46, 47, 51, 55, 57, 59, 60, 61 and 62.

To avoid duplicating the discussion of these provisions, they will be set out one time in this section, and thereafter referred to as to as the "Parity Provisions."

The relevant Parity Provisions of the Current Agreement are as follows:

> BellSouth shall accept orders for Service and Elements in accordance with the Federal Communications Commission Rules or State Commission Rules. Section 7.2 of the GTC.
>
> In providing Services and Elements, BellSouth will provide [Supra] with the quality of service BellSouth provides itself and its end-users. BellSouth's performance under this Agreement shall provide [Supra] with the capability to meet standards or other measurements that are at least equal to the level that BellSouth provides or is required to provide by law or its own internal procedures. BellSouth shall satisfy all service standard, measurement, and performance requirements as set forth in the Agreement and the measurements specified in Attachment 12 of this Agreement. Any conflict between the standards, measurements and performance requirement set forth in Attachment 12 shall be resolved in favor of the higher standard, measurement and performance. Section 12.1 of the GTC.
>
> **BellSouth will provide [Supra] with at least the capability to provide an [Supra] Customer the same experience as BellSouth provides its own Customers with respect to all Local Services.** The capability provided to

[Supra] by BellSouth shall be in accordance with standards or other measurements that are at least equal to the level that BellSouth provides or is required to provide by law and its own internal procedures. Section 23.3 of the GTC. (Emphasis added.)

BellSouth will provide [Supra] with the capability to provide [Supra] Customers the same ordering, provisioning intervals, and level of service experiences as BellSouth provides to its own Customers, in accordance with standards or other measurements that are at least equal to the level that BellSouth provides or is required to provide by law and its own internal procedures. Section 28.6.12 of the GTC. (Emphasis added.)

The functionalities identified above shall be tested by BellSouth in order to determine whether BellSouth performance meets the applicable service parity requirements, quality measures and other performance standards set forth in this Agreement. BellSouth shall make available sufficient technical staff to perform such testing. BellSouth technical staff shall be available to meet with [Supra] as necessary to facilitate testing. BellSouth and [Supra] shall mutually agree on the schedule for such testing. Section 28.9.2 of the GTC.

BellSouth shall offer Network Elements to [Supra] on an unbundled basis on rates, terms and conditions that are just, reasonable, and non-discriminatory in accordance with the terms and conditions of this Agreement. Section 30.1 of the GTC.

BellSouth will permit [Supra] to interconnect [Supra]'s facilities or facilities provided by [Supra] or by third Parties with each of BellSouth's unbundled Network Elements at any point designated by [Supra] that is technically feasible. Section 30.2 of the GTC.

BellSouth will deliver to [Supra]'s Served Premises any interface that is technically feasible. [Supra], at its option, may designate other interfaces through the Bona Fide Request process delineated in Attachment 14. Section 30.3 of the GTC.

BellSouth shall offer each Network Element individually and in combination with any other Network Element or Network Elements in order to permit [Supra] to provide Telecommunications Services to its Customers subject to the provisions of Section 1A of the General Terms and Conditions of this Agreement. Section 30.5 of the GTC. (Emphasis added.)

Each Network Element provided by BellSouth to [Supra] shall be at least equal in the quality of design, performance, features, functions and other characteristics, including but not limited to levels and types of redundant equipment and facilities for power, diversity and security, that BellSouth provides in the BellSouth network to itself, BellSouth's own Customers, to

a BellSouth affiliate or to any other entity for the same Network Element. Section 30.10.3 of the GTC. (Emphasis added.)

Unless otherwise designated by [Supra], each Network Element and the interconnections between Network Elements provided by BellSouth to [Supra] shall be made available to [Supra] on a priority basis that is equal to or better than the priorities that BellSouth provides to itself, BellSouth's own Customers, to a BellSouth affiliate or to any other entity for the same Network Element. Section 30.10.4 of the GTC.

Until such time as a gateway addressing Pre-Ordering and Provisioning interfaces is established, BellSouth shall provide [Supra] Customers with the same quality of service BellSouth provides itself, a subsidiary, an Affiliate or any other customer. Attachment 2, Section 16.8, in part.

Throughout the term of this Agreement, the quality of the technology, equipment, facilities, processes, and techniques (including, without limitation, such new architecture, equipment, facilities, and interfaces as BellSouth may deploy) that BellSouth provides to [Supra] under this Agreement shall be in accordance with standards or other measurements that are at least equal to the highest level that BellSouth provides or is required to provide by law and its own internal procedures. Attachment 4, Section 1.2.

For all Local Services, Network Elements and Combinations ordered under this Agreement, BellSouth will provide [Supra] and its customers ordering and provisioning, maintenance, and repair and pre-ordering services within the same level and quality of service available to BellSouth, its Affiliates, and its customers. Attachment 15, Section 1.2.

(See also Section 251(c)(2), (3), (4), (5) and (6) of the Act, and 47 CFR §§51.307, 51.309, 51.311, 51.313, 51.315, 51.319, 51.321 and 51.603.) Additionally, BellSouth's Hendrix admitted that:

.....the legal standard for parity set forth by the Federal Communications Commission and the parity requirements agreed to by BellSouth and [Supra] are, in practical effect, identical.

Parity Provisions Continued

Q. WHAT ISSUES PERTAIN, IN WHOLE OR IN PART, TO THE PARITY PROVISIONS IDENTIFIED ABOVE?

A. *Issue 5: Should BellSouth be required to provide to Supra a download of all BellSouth's Customer Service Records ("CSRs")?*

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

Issue 15: What Performance Measurements should be included in the Interconnection Agreement?

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

Issue 18: What are the appropriate rates for the following services, items or element forth in the proposed Interconnection Agreement?

(A) Resale

(B) *Network Elements*

(C) *Interconnection*

(D) *Collocation*

(E) *LNP/INP*

(F) *Billing Records*

(G) *Other*

Issue 21: What does "currently combines" means as that phrase is used in 47 C.F.R. §51.315(B)?

Issue 22: Under what conditions, if any, may BellSouth charge Supra Telecom a "non-recurring charge" for combining network elements on behalf of Supra Telecom?

Issue 23: Should BellSouth be directed to perform, upon request, the

functions necessary to combine unbundled network elements that are ordinarily combined in its network? If so, what charges, if any, should apply?

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

Issues 25A, 25B, 26, 27, 28, 29, 31, 32A, 32B, 33, 34, 35, 40, 41, 44, 45, 48, 49, 52, 53 and 66.

Issue 38: Is BellSouth required to provide Supra with nondiscriminatory access to the same databases BellSouth uses to provision its customers?

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

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

Issue 51: *Should BellSouth be allowed to impose a manual ordering charge when it fails to provide an electronic interface?*

Issue 55: *For purposes of the Follow-On Agreement, should BellSouth be required to provide an application-to-application access service order inquiry process?*

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

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

Issue 60: *When BellSouth rejects or clarifies a Supra LSR or order, should BellSouth be required to identify all errors in the LSR or order that would cause it to be rejected or clarified?*

Issue 61: *Should BellSouth be allowed to drop or purge a Supra LSR or order? If so, under what circumstances and what notice should be given, if any?*

Issue 62: *For purposes of the Follow-On Agreement, should BellSouth be required to provide completion notices for manual LSRs or orders?*

Q. WHAT IS SUPRA'S POSITION ON THESE ISSUES WITH RESPECT TO THE PARITY PROVISIONS AND NONDISCRIMINATORY ACCESS TO BELLSOUTH'S OSS?

A. Under the Current Agreement, as well as both Federal and State law, Supra is entitled to nondiscriminatory, direct access to BellSouth's OSS. On or around September, 2000, Supra and BellSouth, in accordance with the Alternative Dispute Resolution clause contained within the Current Agreement, commenced separate, binding, arbitration proceedings before the CPR Institute for Dispute Resolution Arbitral Tribunal. These intense arbitrations resulted in the Award. See **Supra Exhibit OAR 3.** Pursuant to the Award, BellSouth was required to provide "non-discriminatory direct access to BellSouth's Operations Support Systems" by no later than June 15, 2001. (Award, at 24). Although both parties sought clarification of the Award, BellSouth filed a separate motion seeking to stay that portion of the Award that orders it to "provide Supra nondiscriminatory direct access" to its OSS. After having heard testimony from both parties, on July 20th, 2001, the Arbitral Tribunal entered an Order upon the parties'

respective motions (the "Order") wherein it directed BellSouth to provide access to its OSS "forthwith." (Order, at 4). See **Supra Exhibit OAR 7.** Specifically, the Arbitral Tribunal found that the interface used now by Supra, the Local Exchange Navigation System ("LENS"), provides "nothing close to the direct access to OSS used daily by BellSouth's own customer service representatives," and further that BellSouth's existing Direct Order Entry ("DOE") system is "even worse than LENS because DOE is an antiquated DOS-based system that has none of the user-friendly Windows-based features enjoyed by BellSouth's employees." (Order, at 3).

Q. HAS BELLSOUTH PROVIDED SUPRA WITH NONDISCRIMINARY ACCESS TO ITS OSS?

A. No. BellSouth has intentionally and willfully breached the Current Agreement, the Act, and federal and state rules and orders by failing to provide Supra and its customers with an already-combined OSS, thereby ensuring that Supra and its customers do not receive the same quality of service as BellSouth provides itself and its customers. BellSouth has willfully refused to provide Supra with access to the same pre-ordering and ordering systems used by BellSouth, including RNS and ROS. This alone constitutes a violation of the UNEs, UNE combo and parity provisions. What BellSouth has done with its OSS is to separate already-combined network elements before leasing such elements to Supra. **Supra Exhibits OAR 30 and 31,** (including the video titled "**This Ol' Service Order**"). Instead of providing Supra with the already-combined OSS as requested by Supra, BellSouth has provided Supra with a degraded OSS, which could not possibly allow Supra and Supra's end-users to have the same

pre-ordering and ordering experience as that of BellSouth and BellSouth's end-users.[13] See **Supra Exhibit OAR 32** for a matrix of the ordering experience of a Supra customer compared with that of a similarly situated BellSouth customer.

The FCC defines "nondiscriminatory access" to mean:

> Accordingly, we conclude that the phrase "nondiscriminatory access" in section 251(c)(3) means at least two things: first, the quality of an unbundled network element that an incumbent LEC provides, as well as the access provided to that element, must be equal between all carriers requesting access to that element; second, where technically feasible, **the access and unbundled network element provided by an incumbent LEC must be at least equal-in-quality to that which the incumbent LEC provides to itself.**[14] (Emphasis added.)

(See FCC's First Report and Order, ¶312.)

BellSouth contends that it does not have to provide Supra with access to BellSouth's OSS, but instead, only to the same OSS functions which would allow Supra to provide Supra's service to its end users.

The FCC, in the Third Report and Order at ¶¶ 433, 434 and 523 held otherwise:

> We conclude that the lack of access to the incumbent LEC's OSS impairs the ability of requesting carriers to provide access to key information that is unavailable outside the incumbents' networks and is critical to the ability of other carriers to provide local exchange and exchange access service. **We therefore require incumbent LECs to offer unbundled access to <u>their</u> OSS nationwide.** ¶ 433. (Emphasis added.)
>
> Commentators overwhelmingly agree that the unbundling of OSS satisfies the impair standard of Section 251 (d)(2). OSS is a precondition to accessing other unbundled network elements and resold services, because competitors must utilize the incumbent LEC's OSS to order all network elements and resold services. **Thus, the success of local competition depends on the availability of access to <u>the incumbent LEC's OSS</u>. Without unbundled access to the incumbent LEC's OSS, competitors would not be able to provide**

---

[13] It is interesting to note that, although BellSouth does not physically change other unbundled network elements that it claims to make available to CLECs, such as loops and ports, BellSouth readily admits to physically changing the UNE known as OSS.

[14] We note that providing access or elements of lesser quality than that enjoyed by the incumbent LEC would also constitute an "unjust" or "unreasonable" term or condition.

customers comparable competitive service, and hence would have to operate at a material disadvantage. While we acknowledge that a competitive market is developing for OSS systems, these alternative providers do not provide substitutable alternatives to the incumbent LEC's OSS functionality. Alternative OSS vendors provide requesting carriers with an electronic interface that allow competitive LECs to access the incumbent LEC's OSS and internal customer care systems. These vendors cannot provide a sufficient substitute for the incumbent LEC's underlying OSS, because incumbent LECs have access to exclusive information and functionalities needed to provide service. ¶ 434. (Emphasis added.)

We thus conclude that an incumbent LEC must provide nondiscriminatory access to their operations support systems functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing available to the LEC itself.[15] Such nondiscriminatory access necessarily includes access to the functionality of any internal gateway systems[16] the incumbent employs in performing the above functions for its own customers. For example, to the extent that customer service representatives of the incumbent have access to available telephone numbers or service interval information during customer contacts, the incumbent must provide the same access to competing providers. Obviously, an incumbent that provisions network resources electronically does not discharge its obligation under section 251(c)(3) by offering competing providers access that involves human intervention, such as facsimile-based ordering.[17] ¶ 523.

Thus, the FCC has ordered ILECs to allow CLECs to use the same OSS as used by the ILECs. It is more than simply nondiscriminatory access to OSS functions, as BellSouth would have this Commission believe.

The various CLEC OSS made available by BellSouth to Supra do not give Supra nondiscriminatory access to any of the five OSS functions. For preordering, BellSouth

---

[15] We adopt the definition of these terms as set forth in the *AT&T-Bell Atlantic Joint Ex Parte* as the minimum necessary for our requirements. We note, however, that individual incumbent LEC's OSS may not clearly mirror these definitions. Nevertheless, incumbent LECs must provide nondiscriminatory access to the full range of functions within pre-ordering, ordering, provisioning, maintenance and repair, and billing enjoyed by the incumbent LEC.

[16] A gateway system refers to any electronic interface the incumbent LEC has created for its own use in accessing support systems for providing pre-ordering, ordering, provisioning, repair and maintenance, and billing.

[17] Such access was all that Rochester Telephone provided to AT&T, when AT&T attempted to compete as a reseller of Rochester Telephone service. *See* Letter from Bruce Cox, Government Affairs Director, AT&T to William Caton, Acting Secretary, FCC, July 10, 1996 (AT&T July 10 *Ex Parte*).

uses the following interfaces/databases: IMAT, ZTRK, SOLAR, OASIS[18], CRIS, RNS, ROS, DOE, SONGS, ORBIT, RSAG, ORION, WOLF, CRIS, ATLAS, GIMI, AAND, SWISH, CLUE, DSAP, LIST, QUANTUM, CBI, AMOS, ORBIT, OLD, and CDIA. For Ordering, BellSouth uses OPI, RNS, ROS, DOE, SONGS, SOCS and BOCRIS. BellSouth has provided Supra access to LENS for Pre-Ordering and Ordering.

Although Supra disputes that BellSouth has made any OSS other than LENS available to it, even considering the other interfaces (TAG, RoboTAG and EDI), Supra's LSRs must go through more steps than a BellSouth order. Additionally, LENS, TAG, RoboTAG and EDI were all interim solutions, pursuant to the Current Agreement. (See Sections 28.1, 28.5.3, 28.6.7 and 28.6.10.3 of the GTC; Section 16.8 of Attachment 2, Section 5.1 of Attachment 4, Sections 4.6, 5.2 and 5.3 of Attachment 15.)

Supra's access to the various databases and the information contained therein, is different than BellSouth's access. Oftentimes, Supra does not have any access to those databases/interfaces, either because they are down or because BellSouth intentionally refused to provide Supra with access. This is inherently unequal and discriminatory. As a direct and proximate result, Supra cannot issue service orders (it issues local service requests ("LSRs")) and provision service at a level equal to or better than BellSouth.

Q. HAS BELLSOUTH PROVIDED NONDISCRIMINATORY ACCESS TO ITS OSS IN A MANNER WHICH ALLOWS SUPRA TO PERFORM PRE-ORDERING AND ORDERING IN PARITY WITH BELLSOUTH?

---

[18] OASIS is linked to COFFI, ATLAS, CRIS & FUEL.

A. No. BellSouth's Pate admitted, with respect to the differences between a CLEC LSR and a BellSouth retail operations service order flowing through the OSS made available to each, the following:

> . . . the only difference between the process flows is that the CLEC LSR must be processed by the Local Exchange Ordering ("LEO") system and the Local Exchange Service Order Generator ("LESOG"). These two steps are necessary in order to provide edit formatting and translation of the industry standard LSR format into that of a service order format that can be accepted by the Service Order Communications Systems ("SOCS") for further downstream provisioning by the BellSouth legacy OSS. This is not required of the BellSouth retail interfaces as they were designed to submit the service request in a SOCS compatible format at its initiation.

While Pate erroneously declares that the *only* difference is the flow through of CLEC LSRs (via LENS, TAG, RoboTAG or EDI) to LEO and LESOG, his admission of these discriminatory practices is very significant. What Pate fails to explain is why it is "necessary[19]" for a CLEC to submit a LSR and not a service order as well as the fact that the LSR is submitted in a format which is different than the format which is needed for the order to be provisioned. Supra submits that it is not "necessary" at all. Furthermore, it is evident that BellSouth orders do not require additional systems in order to be edited and formatted. Yet, CLEC LSRs, whether they are placed via LENS, EDI, TAG or RoboTAG do require these additional systems. While LENS, TAG, RoboTAG and EDI are Web-based, BellSouth's systems are based on ANSI-C protocol. While ANSI-C protocol is a robust, stable and reliable language, HTML language is not. It is common knowledge that the Web is unreliable. This is part of the reason for the

---

[19] The FCC has defined "Necessary" to mean a prerequisite for competition. See ¶282, FCC's First Report and Order (adopted August 1, 1996) on the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, (FCC Competition Order).

incessant downtimes of CLEC OSS. Moreover, DOE and SONGS, the systems provided to the LCSC for the reformatting of CLEC LSRs into BellSouth service orders, as admitted by Pate, "are old, very archaic, more of a DOS format systems and more difficult to use than RNS and ROS."

The FCC, in its First Report and Order, paragraph 224, emphasizes the point:

> We conclude that the equal in quality standard of section 251(c)(2)(C) requires an incumbent LEC to provide interconnection between its network and that of a requesting carrier at a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate, or any other party. We agree with MFS that this duty requires incumbent LECs to design interconnection facilities to meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, that are used within their own networks. **Contrary to the view of some commenters, we further conclude that the equal in quality obligation imposed by section 251(c)(2) is not limited to the quality perceived by end users. The statutory language contains no such limitation, and creating such a limitation may allow incumbent LECs to discriminate against competitors in a manner imperceptible to end users, but which still provides incumbent LECs with advantages in the marketplace** (*e.g.*, the imposition of disparate conditions between carriers on the pricing and ordering of services). (Emphasis added.)

In that same Order, the FCC, at paragraph 312, went on to state:

> We conclude that the obligation to provide "nondiscriminatory access to network elements on an unbundled basis"[20] refers to both the physical or logical connection to the element and the element itself. In considering how to implement this obligation in a manner that would achieve the 1996 Act's goal of promoting local exchange competition, we recognize that new entrants, including small entities, would be denied a meaningful opportunity to compete if the quality of the access to unbundled elements provided by incumbent LECs, as well as the quality of the elements themselves, were lower than what the incumbent LECs provide to themselves. Thus, we conclude it would be insufficient to define the obligation of incumbent LECs to provide "nondiscriminatory access" to mean that the quality of the access and unbundled elements incumbent LECs provide to all requesting carriers is the same. As discussed above with respect to interconnection,[21] **an incumbent LEC could potentially act in a**

---

[20] 47 U.S.C. § 251(c)(3).

[21] *See supra*, Sections IV.G, IV.H.

nondiscriminatory manner in providing access or elements to all requesting carriers, while providing preferential access or elements to itself. Accordingly, we conclude that the phrase "nondiscriminatory access" in section 251(c)(3) means at least two things: first, the quality of an unbundled network element that an incumbent LEC provides, as well as the access provided to that element, must be equal between all carriers requesting access to that element; second, where technically feasible, the access and unbundled network element provided by an incumbent LEC must be at least equal-in-quality to that which the incumbent LEC provides to itself. (Emphasis added.)

BellSouth has never argued that access to RNS and ROS is not technically feasible. However, BellSouth does argue that it has made various OSS available to Supra (LENS, TAG, RoboTAG and EDI), and that Supra has chosen to use an inferior system (LENS) which is the root of Supra's problems. BellSouth admits that CLEC LSRs flowing through any of its CLEC OSS all go through the same BellSouth legacy systems, LEO and LESOG. Finally, BellSouth admits that BellSouth's own orders do not go through these legacy systems, and are not reformatted, as all CLEC LSRs are. Given the language quoted from the FCC's First Report and Order, it is obvious that BellSouth has done exactly what the FCC ordered it not do – provide preferential access to a network element to itself.

BellSouth, instead of providing nondiscriminatory access to its own OSS, has intentionally created ordering systems which could not possibly allow a CLEC to provision services to customers as quickly and easily as BellSouth can, *supra*. This is not simply a case of a party violating a statute or an agreement; this is a case where BellSouth, realizing that it would be more costly to actually comply with the Act and honor its Current Agreement, willfully and intentionally created a system which places its competitors at a severe disadvantage. In fact, LEO and LESOG, as well as the

whole LCSC, were created specifically for CLECs. These systems were never even in existence, much less in use, by anyone prior to the enactment of the Act. Furthermore, these systems, including the LCSC, were meant to be interim solutions under the Current Agreement. Attachment 4, Section 2.5.3; Attachment 15, Section 4.2, 4.5.1; Section 28.6.10.3 of the GTC. It has been 4 years since the Current Agreement was originally entered into, yet these interim solutions still are the only means provided by BellSouth for the submission of LSRs, as opposed to service orders, despite the unambiguous language contained in the Current Agreement and paragraph 525 of the FCC Local Competition Order. Section 28.5.3 of the GTC provides in pertinent part that:

> BellSouth shall provide [Supra] with interactive direct order entry no later than March 31, 1997.

Moreover, the evidence shows that, as stated by Supra, LENS is the least terrible of the CLEC OSS. **Supra Exhibit OAR 33.** BellSouth's "Report: Percent Flow Through Service Requests (Detail) for the period 11/01/00-11/30/00," shows (1) that more LSRs are submitted via LENS than any other interface (by a substantial margin) and (2) that more LSRs flow through LENS, on a percentage basis, than through any of the other CLEC OSS. Of course, when one compares this to the percentage flow through of service orders through BellSouth's retail systems, which is in the high 90s percentile, there truly is no comparison.

Notwithstanding these facts, Supra has attempted to use EDI and TAG, and has spent hundreds of thousands of dollars in an attempt to make these systems work. In October of 1997, Supra established a dial up EDI connection, but Supra's LSRs were not timely or correctly provisioned. In fact, BellSouth's EDI training instructor later confirmed that BellSouth's EDI deployment was not operationally ready at that time.

Supra also attempted to establish a TAG interface. In response to Supra's request, BellSouth claimed it did not have the resources to help Supra establish such, and instead engaged in a strategy to "keep the ball in Supra's court" so as to give the appearance of being helpful, while in reality, doing nothing to help Supra. It is this strategy which Supra has seen BellSouth practice time and again.

Although the data required for both is the same, BellSouth admits that CLECs submit LSRs in a different format than that of BellSouth's service orders. BellSouth admits that CLECs' LSRs must go through additional edit-checking systems and must then be re-formatted, either by a machine or by a hurnan. BellSouth's service orders do not go through this process. BellSouth CSRs perform pre-ordering and ordering at the same time, while a CLEC has to perform these functions separately. The differences and inequalities between the CLEC pre-ordering and ordering experience and the BellSouth pre-ordering and ordering experience do not stop there. When Bellsouth's RNS and ROS are not working, BellSouth orders are submitted via the electronic interfaces DOE and SONGS, and sometimes directly into SOCS. When CLEC OSS, including LEO or LESOG, are not working, a CLEC must submit lengthy manual orders via facsimile.

Furthermore, when a Supra CSR has a problem with an order, its recourse is to call BellSouth's LCSC. When BellSouth has a problem with an order, it may contact a SME (subject matter expert), with direct knowledge in order to solve such. Again, BellSouth's access to personnel with necessary information is different than that of a CLEC. Supra does not have access to BellSouth's SMEs or operational departments,

but instead, to a group of sales people whose job is to increase BellSouth's revenues, while earning commissions in the process.

Moreover, the evidence reflects tremendous differences in the parties' abilities to calculate due dates for the provision of services. According to the RNS training manual, CV517: THE NEW ORDER, Lesson 13-5, dated November 1997, **Supra Exhibit OAR 34,** due dates are calculated in the following manner:

> RNS gives a standard due date; if the customer does not want the standard due date, then the BellSouth rep can negotiate a due date as set forth in (b);
>
> "Service When You Want It": The CSR contacts an electronic database known as CTCF (Due Date Appointment Plan) service when you want it and uses that database to provide the customer a customer desired due date. QuickService orders placed before 3 P.M. will be working before 5 P.M. and orders placed after 3 P.M. will be working by 10 A.M. the next business day.

Additionally, BellSouth's admission as to what "Due Date Appointment Plan/CTCF" is or provides, was:

> The Due Date Appointment Plan/Connect Through Company Facility (CTCF) is a guideline for negotiating due dates to *provide customer service as efficiently and quickly as possible.* (Emphasis added).

Because BellSouth's OSS performs pre-ordering, ordering and provisioning in one simple step, the due date calculation will not change, so the due date can be confidently quoted to the customer on the initial call. See video **"This Ol' Service Order."**

Conversely, Supra CSRs cannot confidently provide due dates to Supra end users. BellSouth has indicated that LENS accesses DOE Support Applications ("DSAP") to calculate due dates. The system has the following ernbedded problems: inability to allow for a customer desired due date; and where the LSRs contain 15 features or more, LENS does not provide a due date whereas BellSouth's retail systems do not

have any such limitations. Additionally, according to the training manual used by BellSouth to train its LCSC CSRs, Desired Due Date of CLECs orders "can not be sooner than the following day." **Supra Exhibit OAR 35.**

Because there is a gap between Supra's use of pre-ordering functions and submission of a Supra LSR into SOCS, the dates calculated in LENS might no longer be available. As a result, Supra cannot reliably quote a due date to its customers. The FCC agreed that BellSouth does not offer nondiscriminatory access to due dates. See In re Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, December 24, 1997, ¶ 167 (FCC South Carolina Order). See also In re Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Louisiana, CC Docket No. 97-231, February 3, 1998, ¶ 56 (FCC Louisiana Order).

As the FCC stated:

> New entrants do not obtain actual due dates from LENS during the pre-ordering stage. Instead, the actual, firm date is assigned once BellSouth processes the order through SOCS. A new entrant therefore will not be informed of the actual due date until it receives a firm order confirmation (FOC) from BellSouth.
>
> FCC South Carolina Order ¶ 168. See also Louisiana Order ¶ 56. The FCC went on to note in the South Carolina case that even though BellSouth representatives do not receive actual due dates, they can be confident of the due dates they quoted customers because their orders are processed without the same delays that ALECs experience. Because of these delays, ALECs cannot give dates to customers with the same confidence. FCC South Carolina Order ¶ 168; FCC Louisiana Order ¶ 57.

Furthermore, BellSouth's Operations Director in charge of CLEC electronic interfaces, Gloria Burr, admitted that BellSouth's retail OSS could handle electronic

orders for complex services such as megalink (including T1s), frame relay, and litegate (type of DS3). She further admitted that CLEC OSS was not capable of handling such complex orders. It is interesting to note that SOCS, the system where all CLEC LSRs and BellSouth retail orders go for provisioning, is designed to handle every type of order. In fact, all orders must go to SOCS, "or it doesn't get provisioned" as admitted by Pate.

When one takes into account BellSouth's ability to provide answers to customers within seconds of taking an order, to electronically order complex services, to easily pick and change due dates, and to perform complex edit checks before submitting orders, it is obvious that Supra's customers do not enjoy a similar ordering experience. Despite BellSouth's statements to the contrary, other CLECs, such as AT&T, also are complaining of BellSouth's intentional degradation of OSS. See Complaint of AT&T against BellSouth, filed March 21, 2001, **Supra Exhibit OAR 36, pg. 11-13** and Complaint of IDS against BellSouth, filed May 11, 2001, **Supra Exhibit OAR 37**.

The FCC, in its First Report and Order, foresaw the problems which would arise should an ILEC provide itself with better quality elements than it provides to CLECs. Therefore, at paragraphs 315 and 316, the FCC ordered:

> The duty to provide unbundled network elements on "terms, and conditions that are just, reasonable, and nondiscriminatory" means, at a minimum, that whatever those terms and conditions are, they must be offered equally to all requesting carriers, and where applicable, they must be equal to the terms and conditions under which the incumbent LEC provisions such elements to itself.[22] We also conclude that, because section 251(c)(3) includes the terms "just" and "reasonable," this duty encompasses more than the obligation to treat carriers equally. Interpreting these terms in light of the 1996 Act's goal of promoting local

---

[22] *See supra,* Sections IV.G, IV.H.

> exchange competition, and the benefits inherent in such competition, we conclude that these terms require incumbent LECs to provide unbundled elements under terms and conditions that would provide an efficient competitor with a meaningful opportunity to compete. Such terms and conditions should serve to promote fair and efficient competition. This means, for example, that incumbent LECs may not provision unbundled elements that are inferior in quality to what the incumbent provides itself because this would likely deny an efficient competitor a meaningful opportunity to compete. We reach this conclusion because providing new entrants, including small entities, with a meaningful opportunity to compete is a necessary precondition to obtaining the benefits that the opening of local exchange markets to competition is designed to achieve.

As is more fully discussed below,[23] to enable new entrants, including small entities, to share the economies of scale, scope, and density within the incumbent LECs' networks, we conclude that incumbent LECs must provide carriers purchasing access to unbundled network elements with the pre-ordering, ordering, provisioning,[24] maintenance and repair, and billing functions of the incumbent LECs operations support systems. Moreover, the incumbent must provide access to these functions under the same terms and conditions that they provide these services to themselves or their customers.

When one considers the total degradation of the OSS and personnel support made available to CLECs, the evidence shows that BellSouth never intended to provide CLECs with the same ordering experience that BellSouth provides itself.

I will further address each OSS related issue, on an individual basis, later in my testimony.

---

[23] *See infra*, Section V.J.

[24] The term "provisioning" includes installation.

Issue 1: *What is the appropriate format for the submission of disputes under the Follow-On Agreement? Should the parties be required to submit disputes under this Agreement to an Alternative Dispute Resolution Process (Commercial Arbitration) or alternatively should the parties be allowed to resolve disputes before any Court of competent jurisdiction and should, at least, mandatory mediation (informal dispute resolution) be required prior to bringing a petition?*

Q. WHAT IS THE PURPOSE OF THE TERMS AND CONDITIONS CONTAINED IN THE CURRENT AGREEMENT REGARDING DISPUTE RESOLUTION?

A. Pursuant to the Current Agreement:

> **Purpose**
>
> Attachment 1 provides for the expeditious, economical, and equitable resolution of disputes between BellSouth and AT&T arising under this Agreement. Section 1, Attachment 1. Emphasis added.

As will be demonstrated later in my Testimony, Supra and BellSouth as well as taxpayers have benefited immensely from the dispute resolution process in the Current Agreement.

Q. WHAT IS THE FORMAT PROVIDED FOR THE SUBMISSION OF DISPUTES UNDER THE CURRENT AGREEMENT?

A. Section 16.1 of the General Terms and Conditions provides that:

> All disputes, claims or disagreements (collectively "Disputes") arising under or related to this Agreement or the breach hereof shall be resolved in accordance with the procedures set forth in Attachment 1, except: (i) disputes arising pursuant to Attachment 6, Connectivity Billing; and (ii) disputes or matters for which the Telecommunications Act of 1996 specifies a particular remedy or procedure. Disputes involving matters subject to the Connectivity Billing provisions contained in Attachment 6, shall be resolved in accordance with the Billing Disputes section of Attachment 6. In no event shall the Parties permit the pendency of a Dispute to disrupt service to any AT&T Customer contemplated by this Agreement. The foregoing notwithstanding, neither this Section nor Attachment 1 shall be construed to prevent either Party from seeking and

obtaining temporary equitable remedies, including temporary restraining orders. A request by a Party to a court or a regulatory authority for interim measures or equitable relief shall not be deemed a waiver of the obligation to comply with Attachment 1. Emphasis added.

Additionally, Attachment 1 provides that:

1.1.1.1.1 Exclusive Remedy

Negotiation and arbitration under the procedures provided herein shall be the exclusive remedy for all disputes between BellSouth and AT&T arising under or related to this Agreement including its breach, except for: (i) disputes arising pursuant to Attachment 6, Connectivity Billing; and (ii) disputes or matters for which the Telecommunications Act of 1996 specifies a particular remedy or procedure. **Except as provided herein, BellSouth and AT&T hereby renounce all recourse to litigation and agree that the award of the arbitrators shall be final and subject to no judicial review, except on one or more of those grounds specified in the Federal Arbitration Act (9 USC §§ 1 et seq.), as amended, or any successor provision thereto.** Section 2.1. Emphasis added.

If, for any reason, certain claims or disputes are deemed to be non-arbitrable, the non-arbitrability of those claims or disputes shall in no way affect the arbitrability of any other claims or disputes. Section 2.1.1

If, for any reason, the Federal Communications Commission or any other federal or state regulatory agency exercises jurisdiction over and decides any dispute related to this Agreement or to any BellSouth tariff and, as a result, a claim is adjudicated in both an agency proceeding and an arbitration proceeding under this Attachment 1, the following provisions shall apply: Section 2.1.2.

To the extent required by law, the agency ruling shall be binding upon the Parties for the limited **purposes of regulation within the jurisdiction and authority of such agency.** Section 2.1.2.1.

The arbitration ruling rendered pursuant to this Attachment 1 shall be binding upon the Parties for purposes of establishing their respective contractual rights and obligations under this Agreement, and for all other purposes not expressly precluded by such agency ruling. Section 2.1.2.2.

The Current Agreement provides for the jurisdiction of the FCC, FPSC and private arbitration. The Current Agreement also renounces all recourse to litigation, as the award of the arbitrators shall be final.

Q. WHAT ARE THE DISPUTE RESOLUTION PROCEDURES CONTAINED IN THE CURRENT AGREEMENT?

A. **First,** there is informal dispute resolution.

1.1.1.1.2 Informal Resolution of Disputes

> The Parties to this Agreement shall submit any and all disputes between BellSouth and AT&T for resolution to an Inter-Company Review Board consisting of one representative from AT&T at the Director-or-above level and one representative from BellSouth at the Vice-President-or-above level (or at such lower level as each Party may designate). Section 3.1, Attachment 1.
>
> The Parties may enter into a settlement of any dispute at any time. Section 3.2

Second, all disputes affecting service must be resolved within 30 days of the initiation of arbitration proceeding.

> **Resolution of Disputes Affecting Service**
>
> **Purpose**
>
> This Section 9 describes the procedures for an expedited resolution of disputes between BellSouth and AT&T arising under this Agreement which directly affect the ability of a Party to provide uninterrupted, high quality services to its customers at the time of the dispute and which cannot be resolved using the procedures for informal resolution of disputes contained in this attachment of the Agreement. Section 9.1.

Additionally, see Sections 9.3 to 9.8 of Attachment 1.

Third, all other disputes must be resolved within 90 days of the initiation of arbitration proceeding. Section 12, Attachment 1 provides in pertinent part that:

> Except for Disputes Affecting Service, the Arbitrators shall make their decision within ninety (90) days of the initiation of proceedings pursuant to Section 4 of this Attachment, unless the Parties mutually agree otherwise

Q. WHAT ARE THE GOVERNING RULES FOR ARBITRATION CONTAINED IN THE CURRENT AGREEMENT?

A. Section 5.1 provides that:

Governing Rules for Arbitration

The rules set forth below and the CPR Rules shall govern all arbitration proceedings initiated pursuant to this Attachment; however, such arbitration proceedings shall not be conducted under the auspices of the CPR Rules unless the Parties mutually agree. Where any of the rules set forth herein conflict with the rules of the CPR Rules, the rules set forth in this Attachment shall prevail. Section 5.1.

A copy of the CPR Rules for Non-Administered Arbitration is attached as **Supra Exhibit OAR 38.**

Q. WHAT DOES THE AGREEMENT PROVIDE FOR THE APPOINTMENT, REMOVAL AND EXPERIENCE OF ARBITRATORS?

A. Section 6.1, Attachment 1 provides that:

Appointment and Removal of Arbitrators for the Disputes other than the Disputes Affecting Service Process

Each arbitration conducted pursuant to this Section shall be conducted before a panel of three Arbitrators, each of whom shall meet the qualifications set forth herein. **Each Arbitrator shall be impartial, shall not have been employed by or affiliated with any of the Parties hereto or any of their respective Affiliates and shall possess substantial legal, accounting, telecommunications, business or other professional experience relevant to the issues in dispute in the arbitration as stated in the notice initiating such proceeding.** The panel of arbitrators shall be selected as provided in the CPR Rules. Section 6.1. Emphasis added.

It is on record that the parties' current Arbitral Tribunal, consisting of three members, were jointly agreed upon by Supra and BellSouth from a list of qualified candidates as provided by the CPR Institute. See CPR Specialized Panels attached as **Supra Exhibit OAR 39** and Why 250 Global Corporations Are Members of CPR attached as **Supra Exhibit OAR 40,** particularly, **page 4 of 4.**

Q. ARE ARBITRATORS DECISION AND AWARD FINAL AND BINDING ON THE PARTIES?

A. Absolutely. According to Section 12 of Attachment 1:

> **Decision**
> **The Arbitrator(s) decision and award shall be final and binding,** and shall be in writing unless the Parties mutually agree to waive the requirement of a written opinion. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. Either Party may apply to the United States District Court for the district in which the hearing occurred for an order enforcing the decision. Except for Disputes Affecting Service, the Arbitrators shall make their decision within ninety (90) days of the initiation of proceedings pursuant to Section 4 of this Attachment, unless the Parties mutually agree otherwise. Section 12. Emphasis added.

Additionally, Section 14.6 of the CPR Rules for Non-Administered Arbitration provides that:

> The award shall be final and binding on the parties, and the parties will undertake to carry out the award without delay. If an interpretation, correction or additional award is requested by a party, or a correction or additional award is made by the Tribunal on its own initiative as provided in Rule 14.5, the award shall be final and binding on the parties when such interpretation, correction or additional award is made by the Tribunal or upon the expiration of the time periods provided in Rule 14.5 for such interpretation, correction or additional award to be made, whichever is earlier.

See **page 11 of 13, Supra Exhibit OAR 38.**

The significance of above cannot be overemphasized. The finality of the award is a very useful tool that could be used by this Commission for the development of competition in the telecommunications industry.

Q. HOW DOES THE CURRENT AGREEMENT PROVIDE FOR THE COST OF ARBITRATION PROCEEDINGS?

A. The losing party pays the cost of the proceeding. Attachment 1 provides that:

> **Fees**

> The Arbitrator(s) fees and expenses that are directly related to a particular proceeding shall be paid by the losing Party. In cases where the Arbitrator(s) determines that neither Party has, in some material respect, completely prevailed or lost in a proceeding, the Arbitrator(s) shall, in his or her discretion, apportion expenses to reflect the relative success of each Party. Those fees and expenses not directly related to a particular proceeding shall be shared equally. In the event that the Parties settle a dispute before the Arbitrator(s) reaches a decision with respect to that dispute, the Settlement Agreement must specify how the Arbitrator(s') fees for the particular proceeding will be apportioned. Section 13.1.
>
> In an action to enforce or confirm a decision of the Arbitrator(s), the prevailing Party shall be entitled to its reasonable attorneys' fees, expert fees, costs, and expenses. Section 13.2.

Again, the importance of the above provisions is significant. Taxpayers are saved from paying for the losing party's anti-competitive behavior and breaches of contractual obligations while the award ensures the development of competition.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth claims that disputes should not be heard by commercial arbitrators, but should instead be heard by this Commission. BellSouth claims that, in its experience, commercial arbitration is not time effective, and is more costly than resolving disputes before the Commission. Furthermore, BellSouth claims that the members of the Commission are in a better position to understand the issues in dispute, as they deal with such on a regular basis.

Q. HOW DO YOU RESPOND?

A. With all due respect to the Commission, Supra's experience with commercial arbitrations has been that the parties were able to find very qualified, telecommunications-knowledgeable persons to serve as arbitrators. Furthermore, Supra has found the commercial arbitration process to be a much more expedient process. To the extent that either party is not in violation of the Agreement, the

commercial arbitration process should be **less** expensive, as the prevailing party shall recover its attorney's fees and costs.

Perhaps as important, is the fact that commercial arbitrators have the ability to assess damages, whereas the Commission does not. If the parties are required to bring all disputes arising under the Follow-On Agreement to the Commission, neither party will be entitled to recover damages, if such are deemed recoverable. In fact, BellSouth has used this very argument in proceedings before the Commission. **See CC Docket No. 981832-TP and 981833-TP.** Supra would be unfairly prejudiced if it were unable to even pursue damages in the event of BellSouth's breach of the Follow-On Agreement. Again, BellSouth would have very little incentive to comply with the terms of the Follow-On Agreement if it knew it would not be subject to claims for damages. Additionally, Supra believes that commercial arbitration in conjunction with no limitation of liability provision or such a provision with the exceptions identified in Issue 65 as well as a punitive damages clause as identified in the Added Issue, will provide a sufficient incentive for BellSouth's compliance.

Issue 4: *Should the Follow-On Agreement contain language to the effect that it will not be filed with the Commission for approval prior to an ALEC obtaining ALEC certification from the Commission?*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. The Follow-On Agreement between Supra and BellSouth need not contain any provision that requires prior certification by an ALEC prior to filing the Interconnection Agreement with the Commission. Since Supra is already certificated in Florida by the Commission, such language is superfluous. However, Supra has reason to believe

that BellSouth may be using its proposed provision to delay the entrance of new carriers into its service territory.

Q. DOES THE COMMISSION IMPOSE A DUTY UPON BELLSOUTH OR ANY ILEC TO REQUIRE CERTIFICATION PRIOR TO THE ADOPTION OF AN INTERCONNECTION AGREEMENT?

A. No. The Commission imposes no such duty upon BellSouth or any ILEC. The Commission only mandates that an ALEC be certificated before it begins providing Telecommunications Services in Florida. FPSC rule 25-4.004 states that:

> Except as provided in Chapter 364, Florida Statute, no person shall begin the construction or operation of telephone lines, plant or systems or extension thereof, or acquire ownership or control thereof, either directly or indirectly, without first obtaining from the Florida Public Service Commission, a certificate that the present or future public convenience and necessity require or will require such construction, operation or acquisition.

If an ALEC violates this rule, it will suffer the consequences according to law. The inclusion of this provision will only serve to delay an ALEC's attempt to provide Telecommunications Services in BellSouth's territory. Moreover, any ALEC, whether certificated or not, has the right to legally conduct test orders in Florida, so long as the ALEC is not selling telecommunications services to consumers. This is consistent with Florida Statutes § 364.33[25]. There are no laws or decisions that support this BellSouth's position.

---

[25] F.S. 364.33 states as follows: A person may not begin the construction or operation of any telecommunications facility, or any extension thereof for the purpose of providing telecommunications services to the public, or acquire ownership or control thereof, in whatever manner, including the acquisition, transfer, or assignment of majority organizational control or controlling stock ownership, without prior approval. This section does not require approval by the commission prior to the construction, operation, or

Q. IS SUPRA PROPOSING AN ALTERNATIVE POSITION THAT WILL SATISFY BELLSOUTH'S CONCERN?

A. Yes. BellSouth is taking the position that if a non-certificated ALEC has an interconnection agreement, it may provide service without first being certificated, thus exposing BellSouth to being penalized by the Commission. Supra does not believe that this is accurate; however, Supra proposes a provision requiring BellSouth to provide service to an ALEC, whether certificated or not in Florida, so long as the ALEC is not providing telecommunications services to the public. Supra's proposed language coupled with the indemnification provisions contained in the Follow-On Agreement afford BellSouth adequate protection with respect to its concerns.

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

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. Please see the discussion regarding Parity Provisions *supra*. Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra requests the right to supplement the record on this issue.

---

extension of a facility by a certificated company within its certificated area nor in any way limit the commission's ability to review the prudency of such construction programs for ratemaking as provided under this chapter.

Issue 9: *What should be the definition of "ALEC"?*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. Supra wishes to keep the listing and definition of ALEC in the Follow-On Agreement as set forth in the Current Agreement. See Attachment 11, wherein the parties agreed that LEC would be as defined by the Act. Supra is at a loss to understand why BellSouth would not want to clearly define the term ALEC. Supra is willing to also include the FCC's definition of ILEC and/or RBOC. Supra is not disputing the definition of ALEC found in Florida Statute 364.02. However, BellSouth should not be allowed to refuse to comply with an interconnection agreement simply because the carrier is not certificated. Consistent with both federal law and Fla. Stat. § 364.33, a non-certificated carrier should be allowed to engage in a test implementation of an interconnection agreement so long as the carrier is not providing telecommunications services to the public.

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

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. Under no circumstances should BellSouth refuse to provide any service under the terms of an interconnection agreement. Under the parties' various agreements, BellSouth would often refuse to provide Supra with requested services, claiming that the agreements did not provide for a certain rate, and therefore, until the parties agreed to a rate or the parties reached an arbitrated rate, BellSouth would continue to deny the

requested services. Supra had offered to retroactively apply the negotiated or arbitrated rate, to the time when BellSouth first supplied the service, but BellSouth refused, claiming it had no obligation to do so. Supra seeks language in the Follow-On Agreement which would obligate BellSouth to immediately provision requested services for which the Agreement did not specify a rate, such rate, once determined, to be applied retroactively.

Of course, the Follow-On Agreement should be a substantially complete agreement, subject only to amendments negotiated by the parties or mandated by law and regulatory authorities. Supra will apply its best efforts to identify all services and elements for which no rate has been established, and urge BellSouth to do the same. However, to the extent that some rates are left out or not determined at the time the Follow-On Agreement is implemented, Supra's request is not unreasonable, and would be in the best interests of Florida's consumers, as they would not have to wait for the parties to arbitrate additional rates before being provided with a competitive service.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth does not believe that the Current Agreement is a complete agreement. Such is articulated by BellSouth's position that if a rate for service or an element is not specifically identified in the Agreement, then it has no obligation to provide it. BellSouth believes that the Agreement must be amended upon its request if its internal procedure requires that a rate or a condition is necessary for the provision of telecommunication services.

Q. WHAT IS THE EFFECT OF SUCH A POSITION ON SUPRA?

A. BellSouth's position is unreasonable and hinders real competition because of the ever-changing nature of the telecommunications environment. Moreover, this position will unreasonably delay the implementation of the Follow-On Agreement and the provision of Telecommunications Services to consumers.

Q. WHAT SHOULD BE THE PROCEDURE FOR RATES, ITEMS OR ELEMENTS NOT IDENTIFIED IN THE FOLLOW-ON AGREEMENT PRIOR TO EXECUTION?

A. If a rate is not provided in the Follow-On Agreement for a service, item or element, and that service, item or element could not reasonably be identified prior to execution, then BellSouth must provide that service, item or element without additional compensation. This includes components of any service, item or element for which there are cost studies or for which it can be reasonably concluded that BellSouth is compensated for the component within the cost of the entire service, item or element.

If the Follow-On Agreement does not directly address a service, item or element, but that service, item or element is necessary to provide a service, item or element directly addressed by the Follow-On Agreement, then BellSouth must provide that service, item or element without additional compensation if cost studies show or one could reasonable conclude that the cost of the service, item or element not addressed is included in the cost of the service, item or element addressed in the Follow-On Agreement.

Finally, if the Follow-On Agreement does not address a new service, item or element and new contract terms are necessary, then BellSouth must still provide that service, item or element; but, if the parties cannot expediently negotiate a new amendment, and must proceed according to the dispute resolution process in the Follow-On Agreement to resolve the terms of the new amendment. However, absent a Commission order, BellSouth should not be able to refuse to provide the service, item or element while the parties are resolving the new amendment. The new amendment should be applied retroactively to the date the service is first provisioned.

Issue 17: *Should Supra be allowed to engage in truthful, legal comparative advertising using BellSouth's name and marks?*

Q. ARE THERE ANY LAWS THAT RESTRICT THE USE OF BELLSOUTH'S NAME AND MARKS IN COMPARATIVE ADVERTISING?

A. No. The federal trademark law and its progeny do not impose any restrictions on the use of marks in truthful comparative advertising. Under federal law, Supra can, and is, allowed to use BellSouth's name and marks (i.e. trademarks, tradename, service marks and service names) in comparative advertising, which is truthful. The purpose of such law is to promote education of the consumers and foster competition, purposes in line with those contemplated in the Act.

Q. HAVE THERE BEEN ANY PROCEEDINGS BETWEEN SUPRA AND BELLSOUTH REGARDING THE USE OF BELLSOUTH'S MARKS?

A. BellSouth has sought to enjoin Supra from using its name and marks in all of Supra's advertisement[26]. Although these proceeding have not been fully adjudicated, the United States District Court of the Southern District of Florida has conclusively stated that Supra is allowed to use the BellSouth's names and marks in truthful and comparative advertising.

Q. WHAT DOES SUPRA WISH TO DO BY SEEKING THE RIGHT TO ENGAGE IN TRUTHFUL, COMPARATIVE ADVERTISING?

A. Supra seeks to inform consumers that they now have a choice in a local telephone service provider, and that Supra can offer similar services at competitive prices.

Q. HAS BELLSOUTH GIVEN OTHER ALECS THE RIGHT TO USE THE BELLSOUTH'S NAMES AND MARKS IN ADVERTISING?

A. Yes. On or about June 21, 2000, BellSouth entered into an Interconnection Agreement with MGC Communications d/b/a Mpower Communications Corporation ("Mpower.") The Mpower Interconnection Agreement, in paragraph 9.1 of the General Terms and Conditions - Part A, a true copy of which is attached hereto as **Supra Exhibit OAR 40**, provides:

> No License. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. Unless otherwise mutually agreed upon, neither Party shall publish or use the other Party's logo, trademark, service mark, name, language, pictures, or symbols or words from which the Party's name may reasonably be inferred or implied in any product,

---

[26] The case is ongoing in the Southern District of Florida, Miami, Florida. Case No. 00-4205-CIV-Graham/Turnoff

service, advertisement, promotion, or any other publicity matter, except that nothing in this paragraph shall prohibit a Party from engaging in valid comparative advertising. . . . (Emphasis added)

Q. DID SUPRA SEEK TO ADOPT THIS PORTION OF THE MPOWER AGREEMENT?

A. Yes. Supra requested the right to adopt that provision in a letter dated October 6, 2000, under the non-discriminatory provision of the Act, attached herein **as Supra Exhibit OAR 41.**

Q. HAS BELLSOUTH AGREED TO THE ADOPTION?

A. No. BellSouth never responded and has ignored Supra's request. Instead, BellSouth used its sister company, BellSouth Intellectual Property Corporation, to file a lawsuit against Supra.

Supra has yet to be given a valid reason why it may not adopt the referenced provision from the Mpower Agreement, nor has Supra been provided with a valid reason why it should not have the same right of virtually every other business in the United States to engage in truthful, comparative advertising. Specifically, 15 U.S.C.A. § 1125(c)(4) provides, in pertinent part:

The following shall not be actionable under this section:

(A) Fair use of a famous mark by another person in comparative commercial advertising or promotion to identify the competing goods or services of the owner of the famous mark. (Emphasis added.)

Furthermore, the Federal Trade Commission's policy encourages comparative advertising, and "to make the comparison vivid, the Commission 'encourages the

naming of, or reference to competitors.' " *August Storck K.G. v. Nabisco, Inc.*, 59 F.3d 616, 618 (7th Cir.1995) (quoting 16 C.F.R. § 14.15(b))(Emphasis added). The Follow-on Agreement should provide that Supra has the unfettered right to engage in truthful, comparative advertising.

Issue 18: *What are the appropriate rates for the following services, items or element forth in the proposed Interconnection Agreement?*

(H) Resale

(I) *Network Elements*

(J) *Interconnection*

(K) *Collocation*

(L) *LNP/INP*

(M) *Billing Records*

(N) *Other*

Q. SHOULD BELLSOUTH BE ALLOWED TO UNILATERALLY SET THE RATES FOR SERVICES AND ELEMENTS IN THE FOLLOW-ON AGREEMENT?

A. No. BellSouth cannot set the rates for services and elements it provides to Supra under any circumstances. Otherwise, BellSouth will establish exorbitant rates for services, items and elements as it has in its UNE-P Agreement. Supra agrees to incorporate the rates as set forth in FPSC Docket Number 990649 TP.

Q. HOW SHOULD THE RATES FOR SERVICES AND ELEMENTS BE ESTABLISHED?

A. The rates set forth in the Follow-On Agreement should be those already established by the FCC and the Commission in current and/or prior proceedings. To the extent neither the FCC nor the Commission has established such rates, the rates should be those set forth in the Current Agreement.

Q. WHAT SERVICES, NETWORK ELEMENTS, INTERCONNECTION, COLLOCATION, LNP/INP, BILLING RECORDS AND OTHER IS SUPRA SEEKING RATES TO BE INCLUDED IN THE INTERCONNECTION AGREEMENT?

A. See attached **Supra Exhibit OAR 42.**

Issue 26: *Under what rates, terms and conditions may Supra purchase network elements or combinations to replace services currently purchased from BellSouth tariffs?*

Q. HAS THIS ISSUE BEEN NARROWED?

A. Yes. This issue has been narrowed to the following: *Should the TELRIC cost to do a record change in BellSouth's OSS, plus the recurring price of the appropriate network elements or combinations, be the non-recurring price to purchase network elements and combinations in such situations.*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. The TELRIC cost to do a record change in BellSouth's OSS, plus the recurring price of the appropriate network elements or combinations, should be the non-recurring price to purchase network elements and combinations in such situations.

Q. HAS THE COMMISION RULED ON THIS MATTER?

A. Yes. The Commission ruled on this matter in docket PSC-FOF-98-0810-TP in which it equated the labor required to effect this change to be no different than that required to effect a change of a customer's long distance carrier (PIC change). The Commission stated:

> We also find that in cases not involving designed services, where fallout does not occur, and when electronic recent change translation is available, the time to migrate an existing BellSouth customer to an ALEC, that is to say, changing the presubscribed local carrier (PLC) code, is equal to the time it takes BellSouth to migrate a customer to an IXC by changing the PIC code. Upon review of the evidence in this record, we approve the non-recurring work times and direct labor rates shown in Table 1 for each loop and port combination in issue in this proceeding for the migration of an existing BellSouth customer to AT&T or MCIm without unbundling. We furthermore approve the resultant NRCs shown in Table II.

Table II

Commission-Approved Non-recurring Charges for Loop and Port Combinations

Network Element Combination	First Installation	Additional Installations
2-wire analog loop and port	$1.4596	$0.9335
2-wire ISDN loop and port	$3.0167	$2.4906
4-wire analog loop and port	$1.4596	$0.9335
4-wire DS1 loop and port	$1.9995	$1.2210

As such, the rates set forth in the Commission's Table II, *supra*, are the rates which should be included in the Follow-On Agreement.

Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

Issue 35: *Is conducting a statewide investigation of criminal history records for each Supra employee or agent being considered to work on a BellSouth premises a security measure that BellSouth may impose on Supra?*

Q. WHAT RESTRICTIONS HAS BELLSOUTH PROPOSED ON SUPRA'S ABILITY TO ALLOW ITS EMPLOYEES AMD AGENTS TO ACCESS ITS COLLOCATION SPACE?

A. BellSouth demands that Supra certify that criminal background checks have been conducted on each person who accesses the collocation space. Apparently, any person with a criminal conviction (felony or misdemeanor) would either be precluded from entry and/or Supra would be required to obtain permission to allow said person to work in the collocation space.

Q. IS THIS A REASONABLE REQUEST?

A. No. This requirement is unreasonable, excessive and discriminatory. Essentially, BellSouth would require all of Supra's field technicians to undergo a criminal background check, since any such technician may be called upon to work in our collocation space at any time. It is unreasonable and unnecessary because for each and every Supra employee, Supra already conducts an open-ended, county-by-county

criminal background search that encompasses the entire state of Florida. Anyone found to have been convicted of a felony or non-traffic related misdemeanor is terminated from or not offered employment. In fact, Supra's security measures are much more stringent than those BellSouth has in place for its own employees, vendors and agents. BellSouth requires only a seven (7) year criminal background check for all of its employees prior to hiring, and a five (5) year criminal background check for vendors and agents, while Supra's criminal background check is open-ended.

There have been no reported incidents of a Supra employee intentionally damaging any part of the BellSouth network. BellSouth has not and cannot show that the existing security arrangement is inadequate, or why the proposed security scheme is needed.

Q. WHY IS THE REQUIREMENT EXCESSIVE?

A. It increases Supra's expenses without any concomitant increase in the security purported to be sought by BellSouth. Supra has no reason to believe that its employees are criminals. Supra's current hiring and security practices seek to protect customers, employees and vendors and are more stringent that what BellSouth has in place. These security practices of Supra are intended to provide a safe and healthy work environment for all employees and contractors. There is no indication that a person convicted of a felony or misdemeanor has any more of an incentive to damage BellSouth's property as opposed to Supra's property.

Q. WOULD BELLSOUTH'S PROPOSED CRIMINAL BACKGROUND CHECK PROVIDE ANY ADDITIONAL SECURITY GUARANTEES?

A. No. The criminal background check proposed by BellSouth does nothing to limit or restrict a worker from harming or damaging property. Thus, it adds nothing to the current security arrangements. BellSouth has not provided any data demonstrating the usefulness of the proposed security restrictions in mitigating harm and damage to its network from Supra's employees and agents. If BellSouth's concern is about the destruction of network property, this can be alleviated through monitoring via cameras, electronic security locks, special identification badges and other preventative means, some of which have already been implemented. Moreover, Supra is willing to provide indemnification for loss or damage that occurs to BellSouth's property at a BellSouth premise as a result of the activities of a Supra employee. BellSouth's onerous proposal is nothing more than a tactic to stall competition and increase Supra's costs of and slow Supra's collocation efforts.

Q. IS BELLSOUTH'S PROPOSAL CONSISTENT WITH THE FCC'S RULES?

A. No. While the FCC stated In the Matters of Deployment of Wireline Services Offering Advanced Telecomrnunications Capability, issued on March 31, 1999 (FCC 99-48 in CC Docket No. 98-147), that incumbent LECS "may impose reasonable security arrangements to protect their equipment and ensure network security and reliability," additional security and background checks are not "reasonable security arrangements" as envisioned by the FCC. BellSouth's proposed criminal background check, necessarily importing increased expenses, is a bar for Supra collocation, is violative of the Act's allowance for non-discriminatory competition, and flies in the face of the FCC rule. In paragraph 48 of FCC 99-48, the FCC determined that:

> Incumbent LECs may establish certain reasonable security measures that will assist in protecting their networks and equipment from harm...We permit incumbent LECs to install, for example, security cameras or other monitoring systems, or to require competitive LEC personnel to use badges with computerized tracking systems...We further permit incumbent LECs to require competitors"employees to undergo the same level of security training, or its equivalent, that the incumbent's own employees, or third party contractors providing similar functions, must undergo. (FCC 99-48, paragraph 48)

Based upon the FCC ruling, it is apparent that an ILEC's security arrangement that includes electronic monitoring systems and computerized badges is adequate and provides "reasonable security measures" that would protect the ILEC's "networks and equipment from harm." Accordingly, the FCC warned that "the incumbent LEC may not impose discriminatory security requirements that result in increased collocation costs without the concomitant benefit of providing necessary protection of the incumbent LEC's equipment," and found that "alternative security measures, like those outlined above, adequately protect incumbent LEC networks..."(FCC 99-48, paragraphs 47, 49)

Issue 38: *Is BellSouth required to provide Supra with nondiscriminatory access to the same databases, so that Supra performs the same functions as BellSouth?*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. Please see the discussion regarding Parity Provisions *supra*. Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should

Supra discover relevant information as a result, Supra requests the right to supplement the record on this issue.

Issue 44. A. *What are the appropriate criteria under which rates, terms and conditions may be adopted from other filed and approved Interconnection Agreements?*

B. *What should be the effective date of such an adoption?*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. Supra should be entitled to adopt any single rate, term or condition from other filed and approved interconnection agreements. Under the Current Agreement, Supra has made numerous requests to adopt single rates, terms or conditions from other filed and approved interconnection agreements. In virtually every circumstance, BellSouth has refused such an adoption without incorporating additional rates, terms or conditions in a proposed amendment. Often times, BellSouth will propose such additional rates, terms or conditions which have nothing to do with the adopted language which Supra originally sought. In other circumstances, BellSouth has refused such an adoption unless Supra adopted the entire attachment from which the single rate, term or condition was pulled. These BellSouth practices have served to make the FCC's "pick and choose" rule meaningless. AT&T v. Iowa Utilities Board, 525 U.S. 366 (1999). According to the Supreme Court of the United States, Supra can pick and choose which terms it wishes to adopt, and need not adopt an entire agreement in order to get the terms it wishes.

Q. SHOULD THE FOLLOW-ON AGREEMENT REFLECT THE SUPREME COURT'S "PICK AND CHOOSE" RULING IN AT&T V. IOWA UTILITIES BOARD?

A. Yes. Currently this is the law of the land. A provision must be inserted in the Follow-On Agreement to reflect the ruling of the Supreme Court to permit Supra to substitute more favorable rates, terms and conditions effective as of the date of Supra's request.

Q. WHAT SHOULD BE THE EFFECTIVE DATE OF SUCH AN ADOPTION OR SUBSTITUTION?

A. The date of Adoption should be retroactive to the date Supra first requested the affected service, items, elements, conditions, or obligations. As the rate, term or condition has already been filed and approved by the Commission, there is no reason to delay the effective date of the adoption. Supra understands that the Commission must approve all adoptions to an interconnection agreement. However, any delay in the effective date of the adoption will serve to benefit only one party – BellSouth. If the Commission sets a time frame for BellSouth to refuse or accept a request for adoption, BellSouth assuredly will use the full time allotted before taking action. If the Commission makes the effective date retroactive to the date of the request, BellSouth will no longer have an incentive to delay the process. As the Award indicates, BellSouth will abuse its former monopoly status. If there is one thing that must be taken from this Award, it is that an ILEC must have an incentive to comply with the Act, federal and state rules and orders, and its agreements.

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

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. Please see the discussion regarding Parity Provisions supra. Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

Issue 47: *When, if at all, should BellSouth be allowed to manually intervene with an electronically submitted order?*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. Please see the discussion regarding Parity Provisions supra. Furtherrnore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

Issue 51: *Should BellSouth be allowed to impose a manual ordering charge when it fails to provide an electronic interface?*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. Please see the discussion regarding Parity Provisions *supra*. Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. Manual ordering charges apply when Supra places an order manually, either for its own business reasons or because BellSouth does not have an electronic interface that will allow Supra to place orders electronically. BellSouth is not required to provide electronic ordering for all UNE's. BellSouth has proposed cost-based rates to recover the manual labor costs associated with both manual and electronic ordering in Docket No. 990649-TP. Recovery of costs associated with the development and ongoing maintenance of BellSouth's electronic interfaces is being addressed in a generic OSS interface cost docket. BellSouth proposes that the rates the Commission establishes in these dockets be incorporated into the Agreement. BellSouth has agreed to charge Supra electronic ordering charges for complete and accurate LSRs that Supra must submit manually when BellSouth's existing electronic interfaces utilized by Supra are unavailable for reasons other than scheduled maintenance, provided the down time does not occur outside the scheduled maintenance window or for other reasonable scheduled activities for which reasonable advance notification is provided by Bell South, and provided the activities do not occur outside the schedule window.

Q. WHAT IS SUPRA'S RESPONSE TO BELLSOUTH'S POSITION?

A. As BellSouth's own retail systems are automated BellSouth should not be allowed to impose a manual ordering charge where BellSouth does not provide an electronic means for ordering the product or service. If BellSouth were to provide Supra with non-discriminatory, direct access to the same OSS used by BellSouth's retail side, this issue would moot..

Q. SHOULD BELLSOUTH BE PERMITTED TO CHARGE SUPRA FOR MANUAL OSS PROCEESSING, WHEN BELLSOUTH'S OWN RETAIL SYSTEMS ARE AUTOMATED, AND WHEN BELLSOUTH DOES NOT MAKE ELECTRONIC OSS INTERFACES AVAILABLE TO ITS COMPETITORS?

A. No. This is, by definition, not based on forward-looking economic principles, and is unreasonable and discriminatory and thus violates the Act. If BellSouth uses electronic processes for its own OSS and does not provide electronic processes to its competitors to obtain what amounts to substantially the same elements or services, it is not providing parity. In its *First Report and Order,* FCC 96-325, In the matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Released August 8, 1996 (the "Local Competition Order"), the FCC stated, at paragraph 523, that "(o)bviously, an incumbent that provisions network resources electronically does not discharge its obligations under section 251(c)(3) by offering competing providers access that involves human intervention." Certainly that access must be provided within the same time frames enjoyed by the incumbent. Additionally, Section 10.1 of Attachment 15 of the Current Agreement is a reservation of rights with respect to Supra's right to nondiscriminatory, access to BellSouth's OSS.

In fact, where BellSouth has an electronic means to place an order for a specific service or element, and where BellSouth does not make an electronic means available for Supra, Supra should not be charged anything, either an electronic or a manual charge. Furthermore, BellSouth should have to issue a credit to Supra for every manual LSR submitted by Supra as a result of BellSouth's failure to provide an electronic means to order the applicable service and/or element. This would provide BellSouth with plenty of incentive to make the electronic ordering system available as well as to comply with its contractual and parity obligations. Please see the discussion regarding Parity Provisions *supra*.

Q. ARE THERE PUBLIC POLICY REASONS WHY BELLSOUTH SHOULD NOT BE ABLE TO CHARGE SUPRA FOR MANUAL OSS WHEN IT PROVIDES ELECTRONIC OSS TO ITSELF?

A. Yes. BellSouth should not be encouraged to use inefficient, costly systems to serve Supra when it provides substantially the same elements or services to its own customers using electronic processes. Indeed, BellSouth should be strongly encouraged to do just the opposite.

Q. CURRENTLY, ARE THERE CERTAIN SERVICES FOR WHICH SUPRA MUST SUBMIT MANUAL ORDERS?

A. Yes. The following are examples of services for which Supra must submit manual LSRs: (1) Off Premise Extensions; (2) T-1; (3) PR1; (4) BR1; (5) Megalink; (6)

Frame Relay; (7); Trunks; (8) Essex; (9) Foreign Exchange; (10) Foreign Central Office; (11) PBX; (12) Centrex; and, (13) virtually all other complex services.

Q. WHERE BELLSOUTH HAS PROVIDED SUPRA WITH ELECTRONIC INTERFACES, AND THE INTERFACES ARE NOT FUNCTIONING, SHOULD AN ELECTRONIC OR MANUAL ORDERING CHARGE APPLY?

A. If, at the time the LSR is submitted, the electronic interfaces provided by BellSouth are not functioning through no fault of Supra, then no charge should apply, as Supra would be forced to use the slower, more costly (to Supra) rnanual ordering process. In fact, BellSouth should have to provide Supra a credit as compensation for Supra's waste of additional time.

Q. WHERE BELLSOUTH HAS PROVIDED, AND SUPRA HAS IN PLACE ELECTRONIC INTERFACES, AND THE INTERFACES ARE NOT FUNCTIONING THROUGH NO FAULT OF SUPRA, SHOULD SUPRA RECEIVE SOME TYPE OF COMPENSATION AS A RESULT OF THIS DOWNTIME?

A. Yes. I believe Supra should receive some type of credit that should be established by the Commission. After all, Supra incurs an additional cost in manpower as a result of BellSouth's non-compliance. Please see the discussion regarding Parity Provisions *supra*.

Q. HAS SUPRA PROPOSED ANY LANGUAGE IN CONNECTION WITH THIS ISSUE?

A. Yes. Supra has proposed the following language, assuming Supra does not have the ability to submit orders as does BellSouth's retail departments:

> LSRs submitted by means of an electronic interface will incur the per LSR nonrecurring OSS electronic ordering charge associated with electronically ordered facilities as specified in _____. Provided that the electronic interface which performs the submission of the LSR is functioning. LSRs submitted by means other than the electronic interface which performs the submission of the LSR (mail, fax, courier, etc.), while said interface is functioning, will incur a nonrecurring manual ordering charges associated with manually ordered facilities as specified in _____. An individual LSR will be identified for billing purposes by its Purchase Order Number (PON). If the applicable electronic interface is not available or not functioning at the time when the LSR is submitted, the manual ordering nonrecurring charge does not apply. In such cases, BellSouth will provide Supra with a credit of $___ per manually submitted LSR. Each LSR and all its supplements or clarifications issued, regardless of their number, will count as a single LSR for nonrecurring charge billing purposes. Nonrecurring charges will not be refunded for LSRs that are canceled by Supra Telecom.

Issue 52: *Should the resale discount apply to all telecommunications services BellSouth provides to end users, regardless of the tariff in which the service is contained?*

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth is only obligated by Section 251 (c)(4) of the 1996 Act and the FCC's Rule 51.605 (a) to offer a resale discount on telecommunications service that BellSouth

provides at retail to subscribers who are not telecommunications carriers. Exchange access services are generally not offered at retail to subscribers who are not telecommunications carriers. Consequently, the resale discount does not apply to services in the access tariffs.

Q. HAS THE COMMISSION ADDRESSED AND ISSUED AN ORDER ON THIS ISSUE?

A. Yes. The Commission on page 29 of its Order dated March 30, 2001, (Order No. PSC-01-0824-FOF-TP)(Docket No. 000649-TP) concerning the follow-on interconnection agreement between BellSouth and MCI, held that "...BellSouth shall offer Worldcom a resale discount on all retail telecommunications services BellSouth provides to end-user customers, regardless of the tariff in which the service is contained." Notwithstanding that this issue has been resolved, I would like to address this issue in greater detail.

Q. WHAT CONTRACT LANGUAGE HAS SUPRA PROPOSED CONCERNING THE SERVICES BELLSOUTH MUST PROVIDE ON A RESALE BASIS?

A. Supra has proposed the following language :

> Local Resale shall include all Telecommunications Services offered by BellSouth to parties other than telecommunications carriers, regardless of the particular tariff or other method by which such Telecommunications Services are offered. For example, Local Resale shall include Telecommunications Services offered in BellSouth's access tariffs and made available to parties other than telecommunications carriers, regardless of whether or not such Telecommunications Services are offered in other tariffs, too. Local Resale shall be subject only to the limitations and restrictions set forth in this Agreement.

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. Offering a retail service under a tariff other than the private line or GSST tariffs does not preclude a company from the wholesale discount.

Q. WHAT DOES THE ACT AND FCC RULES REQUIRE CONCERNING SERVICES THAT MUST BE PROVIDED ON A RESALE BASIS?

A. The Act requires BellSouth "not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services." 47 USC Section 251 (b)(1). BellSouth is required to "offer to any requesting telecommunications carrier any telecommunications service that [BellSouth] offers on a retail basis to subscribers that are not telecommunications carriers for resale at wholesale rates." 47 C.F.R. Section 51.605 (a).

Q. DOES BELLSOUTH'S POSITION COMPLY WITH THOSE PROVISIONS?

A. No. BellSouth seeks to discriminate against Supra by denying it the right to resell services included in BellSouth's Federal and State Access Tariffs, even when BellSouth offers those services to end users. Thus, under BellSouth's position it would be free to include retail services in its access tariffs and offer such services to its end users, while prohibiting Supra from reselling those services at prices that would enable it to compete with BellSouth. Such a result would not be consistent with the requirements of the Act.

Issue 55: *Should BellSouth be required to provide an application-to-application access service order inquiry process?*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. Please see the discussion regarding Parity Provisions *supra*. Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

Q. WHAT DO YOU UNDERSTAND BELLSOUTH'S POSITION TO BE IN REGARD TO THIS ISSUE?

A. Supra's claim that it needs the Access Service Request ("ASR") interface to obtain pre-order information electronically for UNEs ordered via access service request is wrong. The national standard for ordering UNEs is the Local Service Request ("LSR"), not the ASR. BellSouth contends that it provides electronic pre-ordering functionality for UNEs and resale services via the Local Exchange Navigation System ("LENS"), Robo TAG, and TAG interfaces. Thus, the electronic pre-ordering functionality that Supra seeks is available through the LSR process.

Q. WHAT IS SUPRA'S RESPONSE TO BELLSOUTH'S POSITION?

A. BellSouth should provide Supra with nondiscriminatory, direct access to the same OSS that BellSouth's retail divisions use to obtain pre-order information

electronically for UNEs or services ordered via ASR. In the alternative, BellSouth should develop an application-to-application electronic interface to process service inquiries (pre-ordering) for its ASR. Such a process is required to obtain pre-order information electronically for UNEs ordered via an ASR.

Q. WHAT LANGUAGE HAS SUPRA PROPOSED CONCERNING AN APPLICATION-TO-APPLICATION ACCESS SERVICE ORDER INQUIRY INTERFACE?

A. Assuming Supra does not have direct access to the same OSS that BellSouth retail has, Supra has proposed the following language:

> In addition, at Supra's request, BellSouth shall design, develop, implement, test, and maintain an Application-to-Application access service order inquiry interface.
>
> BellSouth shall provide the following transaction sets for access order inquiry:
>
> Service Address Validation - - G1.0. This function allows Supra to query BellSouth's systems for address validation using CUST PREM, working ECCKT, CLLI code. BellSouth shall respond with found, not found, alternatives, or restricted. BellSouth shall provide SWC/LSO and/or address, when appropriate. If ATIS/OBF adopts the US Postal Publication 28 Standard for Service Address, BellSouth and Supra will base their Access Inquiry implementation on that standard.
>
> Service Availability - - G2.0: This function allows Supra to determine service availability or validate the earliest date of product service availability requested between two (2) SWC locations.
>
> CFA (Channel Facility Assignment) Inquiry – G3.0. This function allows Supra to query the current status of facility channels or slots.

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

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. Please see the discussion regarding Parity Provisions *supra*. Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth provides Supra access to the RSAG database on a per transaction basis, through the LENS, TAG, and Robo TAG pre-ordering interfaces. Since the RSAG is updated nightly, Supra has real-time access to this database. A download of RSAG is unnecessary for Supra to provide local service to its end users and BellSouth should not be required to provide downloads of RSAG without a charge and without a license agreement since Supra has real-time access to RSAG through BellSouth's robust electronic interfaces. BellSouth will, upon request, provide a flat file extraction of the P/SIMS, which also includes PIC information, for all nine states on a monthly basis and Supra should submit the request for these downloads via its BellSouth account team. Moreover, if Supra is referring to BellSouth's plat records that are stored electronically for its eastern states which includes Florida, BellSouth will not provide a download of PLAT information as this information is considered to be proprietary, with no legitimate business reason for obtaining this download.

Q. WHAT IS SUPRA'S RESPONSE TO BELLSOUTH'S POSITION?

A. First, Supra should be provided with nondiscriminatory, direct access to these databases that BellSouth's retail departments enjoy. Anything less is discriminatory. There is no legitimate business reason why Supra should be provided with a different access. When the CLEC pre-ordering interfaces are malfunctioning, Supra presently has no way to access any of the relevant databases. When BellSouth's internal OSS is malfunctioning, BellSouth retail departments have direct access to these databases. Supra should have the same. BellSouth is failing to provide parity in accordance with the Act and should be required to provide downloads of the relevant databases as this would allow Supra to operate, albeit in a limited fashion, when the interfaces are down. Additionally, BellSouth's substitution of PLATS for LFACS is an attempt to mislead the Commission as to the actual substance of this issue.

Issue 59: *Should Supra be required to pay for expedited service when Bellsouth provides services after the offered expedited date, but prior to Bellsouth's standard interval?*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. Please see the discussion regarding Parity Provisions *supra*. Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth asserts that it is under no obligation to expedite service for Supra or any other ALEC. If BellSouth does so, however, Supra should be required to pay expedite charges when BellSouth expedites a service request and completes the order before the standard interval expires.

Q. WHAT IS SUPRA'S RESPONSE TO BELLSOUTH'S POSITION?

A. There is nothing which leads Supra to believe that its requests for expedited service are any different than BellSouth's requests. If BellSouth is able to expedite orders for its customers, it must also do so for Supra's customers, when requested and where reasonable. There is nothing which suggests that BellSouth's expedited orders cost any more than BellSouth's "standard" orders. As such, BellSouth is merely trying to increase Supra's cost of competing with BellSouth. BellSouth should not receive additional payment when it fails to perform in accordance with the specified expedited time frame. In fact, BellSouth should have to give Supra a credit in the instances where it fails to comply with its obligations.

Issue 60: *When BellSouth rejects or clarifies a Supra LSR or order, should BellSouth be required to identify all errors in the LSR or order that would cause it to be rejected or clarified?*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. Please see the discussion regarding Parity Provisions *supra*. Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its

position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth contends that it is the responsibility of Supra to subrnit complete and accurate LSRs such that rejections and/or clarifications are not necessary. Additionally, the type and severity of certain errors may prevent some LSRs from being processed further once the error is discovered by BellSouth's system. Without first correcting the error in question and then resubmitting for further processing, other errors on the LSR cannot be identified.

Q. WHAT IS SUPRA'S RESPONSE TO BELLSOUTH'S POSITION?

A. Identifying all errors in the LSR or order will prevent the need for submitting the LSR or order multiple times. For example, there is a field on some LSRs or orders that contains four alphanumeric characters. Each character means something different to the circuit configuration and although the characters could have been setup as four separate fields, they were not. If there is an error in this four-character field, BellSouth refuses to identify which field contains the error. As BellSouth's OSS notifies itself of ordering errors, through its real-time, edit-checking capabilities, its failure to provide Supra with similar notification fails to achieve parity in accordance with the Act and the Current Agreement.

Additionally, if any LSR or order has been clarified, BellSouth should be required to immediately notify Supra of this fact. There have been numerous instances where

Supra has had to track LSRs or orders in order to obtain clarifications. Although the clarifications are resulting from BellSouth's internal errors, BellSouth nevertheless fails to notify Supra of the clarifications and if not for Supra's repeated efforts to obtain this information, BellSouth will allow the LSR or order to sit until purged by its system, thus denying Florida consumers from converting their service to Supra and enjoying dramatic savings over BellSouth's service. Another example of BellSouth's hinderance of competition and its resulting impact on Florida consumers.

Q. WHAT LANGUAGE HAS SUPRA PROPOSED CONCERNING THIS ISSUE?

A. Assuming Supra does not have direct access to BellSouth's retail OSS, Supra has proposed the following language:

> BellSouth shall reject and return to Supra any service request or service order that BellSouth cannot provision, due to technical reasons, or for missing, inaccurate or illegible information. When a LSR or order is rejected, BellSouth shall, in its reject notification, specifically describe all of the reasons for which the LSR or order was rejected. BellSouth shall review the entire LSR or order, and shall identify all reasons for rejection in a single review of the current version (e.g., ver 00, 01, etc.) of the LSR.

The foregoing language is similar to the language that was incorporated in the Interconnection Agreement entered into between BellSouth and MCI and is similar to the language agreed upon by BellSouth and MCI in their follow-up Interconnection Agreement, which is currently being negotiated.

Issue 61: *Should BellSouth be allowed to drop a LSR or order after ten days (or any other time period), when the LSR or order has been accepted by the front-end ordering system (such as LENS) but sent back into clarification by BellSouth?*

Alternatively, if BellSouth drops any LSR or order, should it be required to notify Supra the same day of the drop?

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. Please see the discussion regarding Parity Provisions *supra*. Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth will return any LSR to Supra when incomplete, incorrect or conflicting information results in BellSouth's inability to issue the orders as requested on the LSR. According to BellSouth, "BellSouth Business Rules" have established a maximum of ten (10) business days to respond to the request for clarification by submitting a supplemental LSR. Ten days is ample time for an efficient ALEC operation to resolve clarifications returned by BellSouth. Orders unresolved beyond ten business days, that are canceled by BellSouth's system, may be resubmitted as a new service request and the provisioning time will essentially be the same as having supplemented the original LSR with correct information. In the event Supra does not respond to a request for clarification within ten business days of notification, BellSouth will not provide additional notification to Supra prior to canceling the LSR. Pursuant to BellSouth, Supra has the primary responsibility to its end-user and is therefore responsible for the overall ordering and tracking of its service requests.

Q. WHAT IS SUPRA'S RESPONSE TO BELLSOUTH'S POSITION?

A. BellSouth should not be allowed to purge LSRs or orders when the LSR or order passes through the front-end ordering interface (such as LENS). Once a LSR or order has been accepted, BellSouth should not be allowed to skirt its responsibility to complete the LSRs or orders simply by letting them sit until purged. Upon acceptance, completion of the LSR or order is the responsibility of BellSouth and such LSRs or orders should remain on BellSouth's system until their personnel resolve the clarification problems. Alternatively, if any LSRs or orders are dropped, BellSouth should be under an obligation to affirmatively notify Supra (electronically or in writing) within twenty-four (24) hours of the LSR or order being dropped.

Of course, if Supra were provide with nondiscriminatory, direct access to BellSouth's retail OSS, this would be a moot issue. BellSouth does not purge its own retail orders after 10 days. To purge Supra's LSRs or orders after 10 days is discriminatory, and should not be allowed.

Issue 62. *For purposes of the Follow-On Agreement between Supra and BellSouth, should BellSouth be required to provide completion notices for manual LSRs or orders?*

Q. WHAT IS SUPRA'S POSITION ON THIS ISSUE?

A. Please see the discussion regarding Parity Provisions *supra*. Furthermore, as BellSouth has refused to provide Supra with any information regarding its network, Supra is unsure as to whether it has provided a complete response in support of its

position. Should it be found that Supra is entitled to additional information, and, should Supra discover relevant information as a result, Supra request the right to supplement the record on this issue.

Q. WHAT LANGUAGE HAS SUPRA PROPOSED CONCERNING BELLSOUTH'S PROVISION OF COMPLETION NOTICES FOR MANUAL LSRS OR ORDERS?

A. Supra has developed the following language:

> Completion Notification. Upon completion of a local service request or service order submitted electronically, BellSouth shall submit to Supra via the same electronic interface used to submit the LSR or order, a LSR or order completion notification that complies with the OBF/LSOG business rules and ATIS models, as modified by the CCP. For manual LSRs or orders, the completion notification shall be sent manually to the Supra ordering center designated on the LSR or order.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. While BellSouth cannot provide the same kind of completion notification to Supra as when the order is submitted electronically, BellSouth does provide information regarding the status of an order, including completion of the order, through its CLEC Service Order Tracking System ("CSOTS").

Q. WHAT IS SUPRA'S RESPONSE TO BELLSOUTH'S POSITION?

A. A completion notice notifies Supra that BellSouth has provisioned a LSR or order and that the customer has been switched over from BellSouth to Supra. Without a completion notice, Supra cannot accurately and efficiently know whether or when BellSouth has switched over service for a Supra customer. Supra must have knowledge of the date that it begins providing service to the customer so Supra can bill

the customer correctly and provide maintenance and repair services. Providing Supra with a FOC (Firm Order Commitment) and failing to provide service on the date requested coupled with a lack of notice, can only lead to a number of billing issues, including the potential of double-billing customers. Additionally, as Supra's prices to its customers are dramatically lower than BellSouth's, any delay in the conversion is to the detriment of the Florida consumer. The result of this double billing is to harm Supra's reputation and its ability to generate revenue. Moreover, since BellSouth service technicians report all completions to BellSouth for correct billing purposes, BellSouth is clearly failing to provide Supra with OSS parity on this issue. Similarly, since Supra is forced to submit manual LSRs or orders, BellSouth should be required to submit completion notices when Supra does so.

Q. DOES BELLSOUTH'S CLEC SERVICE ORDER TRACKING SYSTEM ("CSOTS") PROVIDE A SATISFACTORY ALTERNATIVE TO ACTUAL COMPLETION NOTICES?

A. No. Although providing completion notification via CSOTS might be convenient for BellSouth, it is costly and inefficient for Supra. Supra's representatives would be required to rnonitor CSOTs on a regular basis for completion indications (with the attendant errors that would flow from using such a process). A process in which BellSouth provides an electronic or manual completion notice as directed on Supra's LSR or order would be simpler and result in few errors and therefore fewer problems for Florida consumers and both parties. BellSouth should therefore be required to provide completion notices for manual LSRs or orders.

Issue 65: *For purposes of the Follow-On Agreement between Supra and BellSouth, should the parties be liable in damages, without a liability cap, to one another for their failure to honor one or more material respects of one or more of the material provisions of the Follow-On Agreement?*

Issue 66: *Should Supra be able to obtain specific performance as a remedy for BellSouth's breach of contract?*

Added Issue: *Should the Follow-On Agreement provide for punitive damages where the parties are found to have acted in a grossly negligent, malicious or otherwise willful manner?*

Q. WHICH OF THE DISPUTED ISSUES ADDRESSES THE REMEDIES AVAILABLE TO A PARTY IN THE EVENT OF A PARTY'S NON-COMPLIANCE WITH THE PROVISIONS CONTAINED IN THE FOLLOW-ON AGREEMENT?

A. Issues sixty-five (65), sixty-six (66) and the added issue set forth above, address remedies available to a party in the event of a party's non-compliance with the provisions contained in the Follow-On Agreement.

Q. WHAT IS SUPRA'S POSITION REGARDING REMEDIES AND LIMITATIONS OF LIABLITY?

A. Supra believes that the Follow-On Agreement should not contain any limitation of liability, unless the limitation contains specific, unambiguous exceptions. Basically, Supra's position is one of all or nothing – either there is a limitation of liability section with exceptions as set forth by Supra, or there should be no limitation of liability section.

Furthermore, as Supra has been confronted with specific instances of BellSouth's bad faith intent to harm Supra, Supra believes that, absent significant penalties for intentional and willful non-compliance, or gross negligence, BellSouth will find it financially beneficial not to comply with the Act as well as its many contractual terms. Therefore, Supra seeks provisions which would allow it to recover punitive damages, or, in the alternative, that Supra be entitled to liquidated damages should BellSouth refuse to comply with its obligations.

Q. HAS SUPRA PROPOSED ANY LANGUAGE IN REFERENCE TO ISSUES SIXTY-FIVE (65), SIXTY-SIX (66) AND THE ADDED ISSUE?

A. Yes. Supra has proposed the following language for issues sixty-five (65), sixty-six (66), and the added issue, respectively:

10.4 **Consequential Damages.**

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PROVISION OF SERVICE HEREUNDER. **NOTWITHSTANDING THE FOREGOING LIMITATION, A PARTY'S LIABILITY SHALL NOT BE LIMITED BY THE PROVISIONS OF THIS SECTION 10 OR ANY OTHER PROVISIONS OF THIS AGREEMENT IN THE EVENT OF ITS WILLFUL OR INTENTIONAL MISCONDUCT, INCLUDING GROSS NEGLIGENCE, OR CLAIMS FOR DAMAGES BY ANY PARTY RESULTING FROM THE FAILURE OF EITHER PARTY TO HONOR IN ONE OR MORE MATERIAL RESPECTS ANY ONE OR MORE OF THE MATERIAL PROVISIONS OF THIS AGREEMENT.** A PARTY'S LIABILITY SHALL NOT BE LIMITED TO ITS INDEMNIFICATION OBLIGATIONS.

10.4.1 **Specific Performance.**

Nothing in this agreement shall prevent any party from obtaining specific performance of any term, rate or condition contained in this Agreement.

10.4.2 **Punitive Damages.**

Should either party be found to have acted in a grossly negligent, malicious or otherwise willful manner, the other party may recover punitive damages.

Q. WHAT IS SUPRA'S POSITION ON THESE ISSUES?

A. The language Supra has proposed is not only reciprocal and commercially reasonable, it provides proper incentive for BellSouth to comply with the provisions of the Agreement and should be adopted. In connection with issue sixty-five (65), the Current Agreement contained language similar to Supra's proposed language with the noted exception of Supra's desired addition of an exception to the limitation of liability section for material breach. Without an exception to the liability cap for material breaches, BellSouth would have an incentive to breach the contract when the benefit to BellSouth exceeded its possible liability. This same logic applies to the inclusion of the "specific performance" and "punitive damages" provisions referenced herein as these serve as a deterrent to BellSouth from failing to abide by the terms of the Follow-On Agreement or otherwise from committing egregious acts when the benefit to BellSouth exceeds its potential liability.

Q. WHAT DO YOU BELIEVE IS THE POSITION TAKEN BY BELLSOUTH IN CONNECTION WITH THESE ISSUES?

A. My understanding is that BellSouth believes that the limitation of liability and specific performance provisions are not an appropriate subject for arbitration under Sections 251 and/or 252 of the Act. Moreover, it is BellSouth's position that each party's liability arising from any breach of contract should be limited to a credit for the actual cost of the services or functions not performed or performed improperly.

Q. DO YOU AGREE WITH BELLSOUTH'S POSITION?

A. No. The Commission (acting as an arbitrator under the Act) is the appropriate forum for the resolution of these unresolved issues. In fact, in his recent order, Judge Hinkle in WORLDCOM TELECOMMUNICATION CORP. v. BELLSOUTH TELECOMMUNICATIONS, INC., Order On the Merits, issued June 6th, 2000 in case no. 4:97cb141-RH, ruled that the Commission is required to address every "open issue" presented to it for arbitration. The Commission in its Order No. PSC-01-0824-FOF-TP in regards to the Arbitration of a follow-on agreement between MCI and BellSouth dated March 30, 2001, (Docket No. 000649-TP at pages 173-174 and 178) specifically found that the liability and specific performance provisions at issue here were such "open issues" thus imposing upon the Commission the authority and obligation to arbitrate these pending matters.

Q. HAS THE COMMISSION ADDRESSED THE ISSUE OF INCLUDING A LIMITATION OF LIABILITY AND/OR SPECIFIC PERFORMANCE PROVISION IN DOCKET No. 000649-TP?

A. Yes. In that case, the Commission found that pursuant to Section 252 (c) of the Act, a state commission in resolving any open issue and imposing conditions upon the parties to the agreement, shall ensure that the resolution and conditions meet the requirements of Section 251.

Although the Commission therein found, based upon record evidence, that the "specific performance" and "liquidated provisions" were not necessary to implement the requirements of Sections 251 or 252 of the Act, based upon the analysis set forth herein

as well as the findings in the Award, the language proposed by Supra should be included in the Follow-On Agreement.

If the Commission were to find that such provisions do not meet the requirements of Section 251 or 252 of the Act, then Supra requests that there be no mention of a limitation of liability or any limitation of remedies.

Q WHAT SPECIFIC RELIEF IS SOUGHT BY SUPRA?

A: Supra requests the following relief:

(a) To mediate this arbitration proceeding pursuant to § 252 (a)(2) of the Communications Act of 1934, as amended by the 1996 Act (codified at 47 U.S.C § 201, *et seq.*);

(b) Ordering BellSouth to immediately tender information responsive to Supra's requests;

(c) Finding that BellSouth acted in Bad Faith with the intent to inflict harm on Supra;

(d) Finding that the parties' should begin the negotiations of the follow-on agreement from the parties' current agreement;

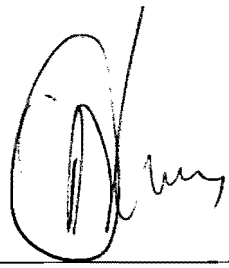
(e) Finding that the follow-on agreement should include the Award and Orders of the Arbitral Tribunal;

(f) Finding that Supra is entitled to supplement the record after receipt of information regarding BellSouth's network

(g) For all such further relief as is deemed equitable and just.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does at this time.

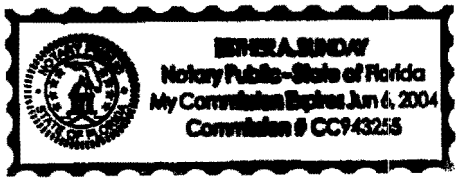


Olukayode A. Ramos

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The execution of the foregoing instrument was acknowledged before me this _____ day of July, 2001, by Olukayode A. Ramos, who [] is personally known to me or who [] produced _____ as identification and who did take an oath.

My Commission Expires:



NOTARY PUBLIC
State of Florida at Large

Print Name:

CERTIFICATE OF SERVICE
FPSC Docket No. 001305

I HEREBY CERTIFY that a true and correct copy of the forgoing was served by U.S. Mail this 27th day of July, 2001 to the following:

Nancy B. White, Esq.
Museum Tower
150 West Flagler Street, Suite 1910
Miami, Florida 33130

Douglas R. Lackey, Esq.
Phillip J. Caver, Esq.
BellSouth Center, Suite 4300
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375

SUPRA TELECOMMUNICATIONS
& INFORMATION SYSTEMS, INC.
2620 S.W. 27th Avenue
Miami, Florida 33133
Telephone: (3050 476-4248
Facsmile: (305) 443-1078

By: _____
BRIAN CHAIKEN

BEFORE THE CPR INSTITUTE FOR DISPUTE RESOLUTION ARBITRAL TRIBUNAL

SUPRA TELECOMMUNICATIONS
& INFORMATION SYSTEMS, INC.,

Claimant,

v. Arbitration I

BELLSOUTH
TELECOMMUNICATIONS INC.,

Respondent.

****

BELLSOUTH
TELECOMMUNICATIONS INC.,

Claimant and
Counterclaim Respondent,

v. Arbitration II

SUPRA TELECOMMUNICATIONS
& INFORMATION SYSTEMS, INC.,

Respondent and
Counterclaimant.

AWARD OF THE TRIBUNAL IN CONSOLIDATED ARBITRATIONS

ARBITRAL TRIBUNAL

M. SCOTT DONAHEY
JOHN L. ESTES
CAMPBELL KILLEFER

SUPRA

EXHIBIT: OAR-3

TABLE OF CONTENTS

PAGE NO.

AWARD OF THE TRIBUNAL IN CONSOLIDATED ARBITRATIONS

I. Introduction

This Award resolves two arbitration proceedings arising out of and relating to the Interconnection Agreement between Supra Telecommunications & Information Systems, Inc. ("Supra") and BellSouth Telecommunications, Inc. ("BellSouth") effective on October 5, 1999. In accordance with the dispute resolution provisions of the Interconnection Agreement, Supra and BellSouth appointed three neutral arbitrators to decide various disputes: M. Scott Donahey of the law firm Tomlinson Zisko Morosoli & Maser LLP; John L. Estes of the law firm Locke Liddell & Sapp; and Campbell Killefer of the law firm Venable, Baetjer, Howard & Civiletti, LLP. The three arbitrators designated Mr. Donahey to serve as chairman.

This award begins with a summary of the procedural history of the two arbitration proceedings. The award then provides a description of the legal authorities that govern the arbitration proceedings, including the Telecommunications Act of 1996, relevant federal court decisions, and rulings by the Federal Communications Commission ("FCC") and Florida Public Service Commission ("FPSC"). A short description of the relationship between Supra and BellSouth before the effective date of the Interconnection Agreement is provided to give context to the discussion of the arbitration issues. The majority of this award covers the many claims and counterclaims between Supra and BellSouth in the two arbitrations and then concludes with a discussion of damages and other relief.

II. Procedural History

This section summarizes the procedural history of the two arbitrations, including descriptions of rulings by the Tribunal that governed both arbitrations. Some rulings also may govern possible future disputes between Supra and BellSouth (e.g., whether

consequential damages may be recovered under the Interconnection Agreement). Both Supra and BellSouth vigorously litigated the many issues between them, which led to many discovery rulings by the Tribunal as well as legal rulings on various provisions of the Interconnection Agreement. The arbitrations were conducted under the Rules for Non-Administered Arbitration of the CPR Institute for Dispute Resolution.

A. Arbitration I

Supra initiated the first arbitration with its Notice of Arbitration and Complaint served on October 25, 2000. Supra's Complaint argued that the disputes between the parties were "disputes affecting service" within the meaning of Section 9.1 of Attachment 1 – Alternative Dispute Resolution – to the Interconnection Agreement and therefore must be resolved on an even more expedited basis than a "normal" dispute, which must be decided within 90 days of the filing of the Complaint. After the parties served legal memoranda and a conference call for oral argument was conducted, the Tribunal unanimously ruled by Order dated November 16, 2000 (attached hereto as Annex A and incorporated herein by reference), that Supra had failed to carry its burden to show that its claims were "disputes affecting service" and the arbitration would therefore proceed on a normal schedule. Then BellSouth timely filed its Answer to Supra's Complaint.

The Tribunal set a schedule for written discovery, depositions and the filing of direct and rebuttal testimony in advance of the arbitration hearing. The hearing in Arbitration I was originally scheduled to occur on January 18-20 and 22-23, 2001. By agreement of both parties to waive the 90-day decision requirement under the Interconnection Agreement (*see,* Revised Memorandum Re: Scheduling dated January 17, 2001, at 2, ¶1, attached hereto as Annex B and incorporated herein by reference), the dates for the hearing were extended several times. The first extension of the hearing schedule was in connection with Supra's motion for leave to file an amended complaint

to add a claim expressly asserting a contractual breach concerning BellSouth's providing nondiscriminatory access to its Operational Support Systems ("OSS") for Supra's pre-ordering and ordering of telecommunications services from BellSouth. Supra's motion was granted and Supra duly served its Amended Complaint and BellSouth served its Answer.

The parties presented many discovery disputes to the Tribunal, which were briefed by the parties and ruled upon after conference calls for oral argument. One major discovery dispute related to Supra's request to conduct a videotape deposition of knowledgeable BellSouth witnesses while operating the OSS and related databases. A simulated demonstration was conducted at the suggestion of the Tribunal to settle the discovery dispute without intruding in the BellSouth OSS and databases operating in a production environment. The Tribunal understands that the demonstration by BellSouth and for the benefit of Supra included the OSS, various electronic interfaces to databases, and related functionality.

A major legal issue decided before the hearing in Arbitration I was whether Supra could recover consequential damages, including alleged future lost profits, under the Interconnection Agreement. BellSouth served a motion to strike Supra's demand for consequential damages. The parties were directed to serve simultaneous opening and reply memoranda on the issue. In preparation for a conference call on the damages issue, Arbitrator Killefer prepared and served a four-page legal memorandum on the damages issues on February 14 to help focus the paries' arguments. The conference call was conducted as scheduled on February 19, 2001.

The Tribunal unanimously ruled on February 21, 2001, that consequential damages are recoverable under the Interconnection Agreement if a party can prove that a contractual breach is "willful or intentional misconduct," i.e., with tortious intent to harm

the other party (the Order Re: Damages, dated February 21, 2001, is attached hereto as Annex C and is incorporated herein by reference). BellSouth served a Motion for Reconsideration and for Preservation of Error on March 2 , 2001. The parties were directed to file simultaneous briefs on the issue and a conference call for oral argument was conducted on March 13, 2001. The Tribunal unanimously issued a "Clarification of Order re: Damages" on March 15, 2001, that held as follows:

> The Panel concludes that "willful or intentional misconduct" is broad terminology which embraces willful or intentional breach of contract to the extent that it is done with the tortious intent to inflict harm on the other party to the contract. The panel's interpretation of this phrase is supported by judicial authority, including *Metropolitan Life Insurance Co. v. Noble Lowndes Int'l, Inc.,* 643 N.E.2d 504, 506-508 (N.Y. 1994) and *Wright v. Southern Bell Tel. & Tel. Col., Inc.,* 313 S.E.2d 150 (Ga. App 1984).
>
> Accordingly the Tribunal unanimously finds that **to the extent that Supra can prove that BellSouth intentionally or willfully breached the Agreement at issue in this case with the tortious intent to inflict harm on Supra, at least in part through the means of such breach of contract**, and that as a direct and foreseeable consequence of that breach Supra suffered damages in an amount subject to proof, Supra can recover consequential damages in this action.

March 15 Order at ¶¶ 1-2 (emphasis added). (The Clarification of Order Re: Damages is attached hereto as Annex D and is incorporated herein by reference).

The parties timely filed their respective direct and rebuttal testimony with exhibits as well as Prehearing Statements. Page and line designations of deposition testimony were also served by Supra and BellSouth.

The hearing in Arbitration I was scheduled for six days, but was concluded in four days on April 16-19, 2001, at the Westin Peachtree Plaza Hotel in Atlanta, Georgia. Post-hearing briefs were served by the parties on May 14, 2001.

B. Arbitration II

On January 31, 2001, BellSouth initiated a second arbitration regarding billing and payment disputes under the parties' Interconnection Agreement. On February 20, 2001, Supra timely filed its Notice of Defense and Counterclaim.

On March 12, 2001, BellSouth filed a motion to dismiss Supra's Counterclaim. Supra filed its opposition on March 19, 2001, and BellSouth filed its reply in support of the motion on March 26, 2001. On March 29, 2001, a conference call was held to discuss various issues in Arbitration II, including BellSouth's motion to dismiss Supra's counterclaim.

During the March 29 conference call, the Tribunal ordered that Supra and BellSouth submit legal memoranda on the issue of the Tribunal's jurisdiction to decide certain disputes relating to the parties' Interconnection Agreement in light of ongoing proceedings between Supra and BellSouth in (1) federal district court in Miami, Florida in Case No. 99-1706-CIV-SEITZ, and (2) before the Florida Public Service Commission. Supra and BellSouth timely filed their legal memoranda on April 2, 2001.

On April 5, 2001, the Tribunal unanimously ruled in a seven-page Order that the Tribunal has jurisdiction to decide issues only as expressly authorized by the terms of the Interconnection Agreement and well settled case law under the Federal Arbitration Act, 9 U.S.C. §1, *et seq*. The Tribunal was very concerned that Supra and BellSouth notify the Tribunal of any legal proceedings that conflict or overlap with the jurisdiction being exercised by the Tribunal:

> This tribunal is not aware of any such FPSC proceeding relating to post-October 5, 1999 billing disputes, but the parties are ordered immediately to notify this tribunal in writing of such FPSC proceedings if any exist presently or arise in the future. This tribunal will scrupulously avoid exercising jurisdiction that would conflict or overlap with FPSC, federal district court, or other legal proceedings.

April 5 Order, at 5. Accordingly, the Tribunal granted in part and denied in part BellSouth's Motion to Strike Supra's counterclaim in Arbitration II:

> (1) No recovery may be awarded for pre-October 5, 1999 acts or omissions;
> (2) No recovery may be awarded for claims over which the FPSC or any federal district court retains jurisdiction;
> (3) No recovery may be awarded in Arbitration II for those Supra claims that are presented for the Arbitration I hearing on April 16-21, 2001; and
> (4) The parties agree, and the tribunal orders, that lost profits might be recoverable as consequential damages, but "lost revenues" is an improper measure of damages.

April 5 Order, at 6. The Tribunal also ruled that, as the Tribunal had forewarned the parties, "[b]asic fairness suggests that the tribunal's award in Arbitration I either be issued before Arbitration II or be set off against the Arbitration II award if warranted by the evidence." *Id.* (The Order Regarding BellSouth's Motion to Dismiss Supra's Counterclaims and Related Issues, dated April 5, 2001, is attached hereto as Annex E and incorporated herein by reference). In a conference call held on April 10, 2001, the parties agreed to waive the provision in the Interconnection Agreement that requires an award to be issued within 90 days of filing, and agreed that the award in Arbitration II would be issued no later than June 5, 2001. (A copy of a letter dated April 11, 2001, confirming the new agreed schedule is attached hereto as Annex F and incorporated herein by reference).

In advance of the hearing in Arbitration II, the Tribunal ruled on various discovery disputes. Less than a week before the scheduled start of the Arbitration II hearing, on April 26, 2001, the Tribunal conducted a conference call regarding various issues. The Tribunal issued an unanimous order that same day. That order denied Supra's motion to strike the rebuttal damages testimony of BellSouth expert witness Freeman and allowed Supra to file sur-rebuttal damages testimony of Supra expert

witness Wood under specified conditions. The April 26, 2001 Order also ruled that a "reasoned award" as opposed to a "naked award" would be issued in both arbitrations pursuant to the Rules for Non-Administered Arbitrations of the CPR Institute for Dispute Resolution. (A copy of the Order Regarding Supra's Motion to Strike Rebuttal Testimony of Professor Freeman and Other Matters Discussed During April 26 Conference Call is attached hereto as Annex G and is incorporated herein by reference).

The hearing in Arbitration II was scheduled to be conducted over six days. In fact, the hearing concluded in only four days beginning Sunday, April 29, 2001, and finishing Wednesday, May 2, 2001, at the Georgian Terrace Hotel in Atlanta, Georgia. The parties served simultaneous post-hearing memoranda on May 14, 2001. The Tribunal committed to a June 5, 2001 deadline for issuance of an award in both arbitrations.

III. The Radical Revision of Telecommunications Law

In 1996, the United States Congress passed the Telecommunications Act of 1996 (the "1996 Act"), a statute which was intended to revolutionize the telecommunications industry. In its First Report and Order, released August 8, 1996, FCC 96-325, the Federal Communications Commission ("FCC") characterized the sweeping changes heralded by the Act in the following language:

> The Telecommunications Act of 1996 fundamentally changes telecommunications regulation. In the old regulatory regime government encouraged monopolies. In the new regulatory regime, we and the states remove the outdated barriers that protect monopolies from competition and affirmatively promote efficient competition using tools forged by congress. Historically, regulation of this industry has been premised on the belief that service could be provided at the lowest cost to the maximum number of consumers through a regulated monopoly network. State and federal regulators devoted their efforts over many decades to regulating the prices and practices of these monopolies and protecting them against competitive entry. The 1996 Act adopts precisely the opposite approach. Rather than shielding telephone

> companies from competition, the 1996 Act requires telephone companies to open their networks to competition.

Id., at 7.

The effect of this legislation was to require the existing monopolistic regional telecommunications providers, now known as Incumbent Local Exchange Carriers ("ILECs") to assist would-be competitors to compete against them in the telecommunications marketplace, in part by providing potential competitors with access to the monopolists' equipment and services. The 1996 Act has three principal goals:

> (1) Opening the local exchange and exchange access markets to competitive entry; (2) promoting increased competition in telecommunications markets that are already open to competition, including the long distance services market; and (3) reforming our system of universal service so that universal service is preserved and advanced as the local exchange and exchange access markets move from monopoly to competition.

Id.

In its first Report and Order the FCC established numerous rules to promote entry and competition in the telecommunications marketplace. This order was promptly challenged by ILECs and state utility commissions on the grounds that the FCC had exceeded its jurisdiction. These actions were consolidated in the United States Court of Appeals for the Eighth Circuit. That appellate court agreed with those who argued that the primary authority to implement the 1996 Act resided in the individual state commissions, and it vacated the FCC's order. *Iowa Utilities Board v. FCC*, 120 F. 3d 753, 800, 804, 805-806 (8th Cir. 1997). The case was thereafter appealed to the Supreme Court.

In *AT&T Corp., et al. v. Iowa Utilities Board, et al.*, 525 U.S. 366, 119 S. Ct. 721, 142 L. Ed. 834 (1999), the United States Supreme Court largely reversed the appellate court and remanded the case. While the Supreme Court generally upheld the FCC's rule-

making powers and the rules that the FCC had established in its First Report and Order, the Court was not satisfied that the FCC had properly applied the "necessary and impair" standards in its promulgation of Rule 319.

Section 251(a)(2) of the 1996 Act provides:

> In determining what network elements should be made available for purposes of subsection (c)(3) of this section, the [FCC] shall consider, at a minimum, whether --
>
> (A) Access to such network elements as are proprietary in nature is **necessary**; and
>
> (B) The failure to provide access to such network elements would **impair** the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.

Emphasis added. The statutory provision and Rule 319 deal with the obligation of the ILEC to make network elements available to Competitive Local Exchange Carriers ("CLECs").

Ultimately, the FCC set out to comply with the instructions of the United States Supreme Court in the Federal Communications Commission Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, Released November 5, 1999 ("Third Report and Order"). The FCC determined that "without access to unbundled network elements, a [CLEC] may choose not to enter a particular market because the cost and delays associated with deploying its own facilities would be too high given the revenues obtainable from the market and the relative attractiveness of other potential new markets." Third Report and Order, §13 at 8. The FCC defined a "necessary element" as "if, taking into consideration the availability of alternative elements outside the incumbent's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element would, as a practical, economic, and operational matter, **preclude** a requesting

carrier from providing the services it seeks to offer." *Id.*, at 9 (emphasis added). The FCC defined "impairs" as "if, taking into consideration the availability of alternative elements outside the [ILEC's] network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of that element **materially diminishes** a requesting carrier's ability to provide the service it seeks to offer. *Id.*, at 9-10 (emphasis in original).

Applying those definitions, the FCC determined that ILECs must unbundle and make available the following network elements: 1) Loops, including high-capacity, xDSL-capable loops, dark fiber, and inside wire owned by [ILECs]; 2) subloops, or portions thereof; 3) Network Interface Devices ("NIDs"); 4) local circuit switching, except for local circuit switching used to serve end users with 4 or more lines in access density zone 1 in the top 50 Metropolitan Statistical Areas ("MSAs"), provided that ILECs provide non-discriminatory, cost-based access to the enhanced extended link throughout zone 1; 5) Packet Switching, only in the limited circumstances in which ILECs have placed digital loop carrier systems in the feeder section of the loop or have DSLAM in a remote terminal; 6) dedicated interoffice transmission facilities, or transport; 7) signaling links and signaling transfer points; and 8) Operations Support Systems ("OSS"). Id., at 11-13.

Focusing on one key unbundled network element, the ILEC's OSS, the FCC found that "[ILECs] must offer unbundled access to their operations support systems. OSS consists of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an [ILEC's] databases and information. The OSS element includes access to all loop qualification information contained in any of the [ILEC's] databases or other records, including information on whether a particular loop is capable of providing advanced services." *Id.*, at 13. *See, also, id.*, §425 at 189. The FCC

determined that OSS is not proprietary, and therefore it did not have to be analyzed under the "necessary" standard. In performing the "impair" analysis required by the Supreme Court, the FCC concluded that "lack of access to the [ILEC's] OSS impairs the ability of requesting carriers to provide the services they seek to offer." Id., §433 at 192.

IV. Supra's and BellSouth's Relationship Before the October 5, 1999 Effective Date of the Interconnection Agreement

Supra and BellSouth had experienced over two years of dealing with one another by the time they entered into their Agreement effective October 5, 1999, which adopted and incorporated by reference the Agreement between BellSouth and AT&T Communications of the Southern States, Inc. effective on June 10, 1997 ("Interconnection Agreement"). The Tribunal already has ruled that "[n]o recovery may be awarded for pre-October 5, 1999 acts or omissions" in these arbitrations (April 5, 2001 Order, at 6), but a summary of the parties' relationship leading up to the Interconnection Agreement will provide helpful context for the discussion of both liability and damages issues.

As set forth in greater detail in the preceding Section III regarding the "Radical Revision of Telecommunications Law," Supra and BellSouth may have been pre-ordained to suffer an inherently adversarial relationship. In accordance with the 1996 Act and implementing orders of the FCC, BellSouth was forced to allow Supra and other CLECs to lease equipment, facilities and services owned by BellSouth and use those very telecommunications elements to compete against BellSouth. At least in the early stages of the parties' relationship, essentially every new Supra telephone customer was won away from BellSouth, with a resulting decrease in BellSouth's revenues.

BellSouth and other ILECs exercised their legal rights and challenged the 1996 Act and implementing FCC orders. BellSouth won some litigation fights and lost others, most notably being compelled against its wishes to lease unbundled network elements ("UNEs") and UNE combinations ("UNE Combos") by the FCC First Report and Order, the United States Supreme Court's decision in *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366 (1999), and the ensuing FCC Third Report and Order.

Supra's 1997 business plan (Arb. II, Supra Ex. 90) and hearing testimony show that Supra's competitive strategy involved beginning its telecommunications services as a reseller of BellSouth services, which enabled Supra to lease equipment with discounts off BellSouth's retail prices. After establishing a market presence, Supra planned to become what is known as a facilities-based UNE provider, which would enable Supra to lease UNEs and UNE Combos from BellSouth and to collect long distance telephone access and other charges not available to Supra while operating as a reseller of BellSouth services. Supra planned eventually to collocate Supra's own switches in BellSouth central offices and other facilities and offer Digital Subscriber Line ("DSL") and other advanced services. The final competitive stage, once Supra had gained sufficient residential and business customers and perhaps become a "carrier's carrier" -- providing services to other CLECs -- would be for Supra to build its own telecommunications network and expand operations into other states beyond Florida.

Testimony and exhibits in the two arbitration hearings show that Supra's and BellSouth's business relationship started on the wrong foot from the outset. Supra entered into a Resale Agreement with BellSouth effective May 19, 1997, that was executed on a take-it-or-leave-it basis. Mr. Olukayode Ramos, CEO of Supra, became aware of the Interconnection Agreement between AT&T and BellSouth during the summer of 1997. Ramos requested that BellSouth send a copy of the AT&T/BellSouth

Interconnection Agreement for Supra to opt into that agreement. Through miscommunication or by design, Mr. Patrick Finlen of BellSouth sent Ramos a "generic" Interconnection Agreement that did not reflect the terms negotiated by AT&T. Ramos promptly executed the "generic" agreement without the benefit of expert review by a telecommunications lawyer or consultant or of even checking the public files of the FPSC to ensure that Supra actually had the AT&T/BellSouth Agreement.

It is undisputed that, before the executed agreement was filed with the FPSC, Finlen compiled a different version with an Attachment 2 that deleted BellSouth's obligation to provide UNE Combos and a new signature page with mis-aligned paragraphs. It also cannot be disputed that the replaced Attachment 2 in Supra's agreement appeared only days after the Eighth Circuit Court of Appeals had ruled in *AT&T v. Iowa Utilities Board*, 124 F. 3d 934 (8th Cir. 1997) calling into question an ILEC's duty to provide UNE Combos to CLECs such as Supra.

Finlen of BellSouth testified that the replaced pages were an honest mistake and immaterial. Ramos of Supra testified that the switch was deliberate and intended to deprive Supra of the benefits of the "true" AT&T/BellSouth agreement.

In any event, the "switched" agreement episode led to an atmosphere of distrust and adversarial relations that is reflected in the contemporaneous documents submitted as exhibits and in the personal *animus* that was apparent during testimony of some witnesses at the hearings in these two arbitrations. Cathey of BellSouth described the relationship with Supra as "always tempered with suspicion and fear of reprisal." Arb. II, Tr., at 958, lines 16-17. "Of all the relationships, while none [were] completely perfect with the CLECs, not one approaches the awkwardness of the BellSouth/Supra relationship." *Id.* at lines 18-20.

Supra's and BellSouth's adversarial business relationship led to extensive battles in almost every conceivable forum even before these two arbitrations. Supra has pursued enforcement proceedings before the FCC, a variety of proceedings before the FPSC and one before the Georgia Public Service Commission, and antitrust and other claims against BellSouth in federal district court. *Supra Telecommunications & Information Services, Inc. v. BellSouth Telecommunications, Inc.*, No. 99-1706-CIV-SEITZ (S.D. Fla.).

While neither company can be faulted for zealously pursuing its available legal rights, the long running legal battles have contributed to a poisonous business relationship. That unfortunate relationship has contributed to poor communications between the companies and to both companies' adopting some extreme, unreasonable positions in these arbitrations.

V. Liability Issues

A. UNE Provider

Among the many claims between the parties, the most important may be whether Supra requested and BellSouth impeded Supra's operation as a facilities-based provider of UNEs and UNE Combos. Supra clearly stated its intent to order UNEs and UNE Combos as early as September 1997 and continuing to the present. Arb. II, Supra Ex. 96, 29, 32. Based on the 8th Circuit's 1997 decision in *Iowa Utilities Board*, BellSouth initially took the position that Supra was not entitled to order UNE Combos (Arb. II, BellSouth Ex. 30, 31, 34) despite the clear provisions to the contrary in General Terms and Conditions ("GTC") Sections 1, 1A, 1.1, 1.2, 29, and 30, and Attachment 2 to the Interconnection Agreement.

The United States Supreme Court reversed the Eighth Circuit, making clear as an FCC regulatory matter that CLECs such as Supra could order UNEs and UNE Combos. BellSouth then changed its position to argue that, although Supra **could** order UNEs and

UNE Combos, Supra had failed properly to request UNEs and UNE Combos. BellSouth maintained that position through testimony of its employees Finlen and Cathey at the second arbitration hearing.

The Tribunal finds that BellSouth failed for well over a year to provide Supra with the necessary instructions and information to order UNEs and UNE Combos using the Local Exchange Navigation System ("LENS") interface to BellSouth's ordering systems. In late 1999 and early 2000, BellSouth considered the UNEs and UNE Combos available to Supra to be "obsolete" because the Interconnection Agreement was due to expire at the end of its three-year term in June 2000. Arb. II, Tr., at 967, lines 18-25. AT&T had negotiated a separate so-called "UNE-P" agreement covering different UNEs and UNE combinations and different prices and BellSouth was focusing its marketing and service resources on the UNE-P marketplace. Arb. II, Tr., p. 968, lines 2-23.

BellSouth's ordering "profile" for Supra did not recognize a UNE-provider order for UNEs and UNE Combos under the Interconnection Agreement. There were no BellSouth written procedures in early 2000 for Supra to submit UNEs and UNE Combo orders through LENS. Arb. II, Tr., at p. 963, lines 13-19. After repeated requests from Supra, BellSouth processed four "test" orders for UNEs that were typed by BellSouth "directly into the system. There was no mechanical way we could determine for them to do that." Arb. II, Tr., p. 964, lines 21-23. Even the BellSouth team worked 5-6 days to complete the test orders. Arb. II, Tr., p. 983, lines 15-17.

Neither Cathey nor other BellSouth witnesses could satisfactorily answer the Tribunal's inquiry "[w]hy is it that when the AT&T interconnection agreement had an effective date of 1997, procedures had not been written by early 2000 to allow the ordering of UNE Combos?" Arb. II, Tr., p. 966, lines 3-6. In addition, BellSouth dragged its feet in providing Universal Service Ordering Code ("USOC") numbers for

ordering UNEs and UNE Combos. Arb. II, Supra Ex. 49 and 50. In fact, it took until October 2000 for Supra to be able to order a UNE successfully, and that was essentially by accident. An order to switch a customer "as is" to Supra was successfully processed electronically rather than manually because the customer was switched from IDS, another CLEC. Arb. II, Tr., p. 987, lines 6-19.

Cathey of BellSouth conceded at the second arbitration hearing, as he must, that "[j]ust because we don't have a particular procedure doesn't mean we don't have an obligation to help and assist a customer getting an order placed." Arb. II, Tr., p. 969, lines 11-13. Supra was far from perfect in the documentation of its inability to submit Local Service Requests ("LSRs") to order UNEs and UNE Combos electronically. But BellSouth took too long in responding to Supra's requests for assistance, rarely provided critical information or practical assistance, and repeatedly fell back on advice that would **not** work -- to wit, that Supra must submit a LSR.

BellSouth knew internally that a LSR from Supra would **not** work in summer 2000 because BellSouth "had no idea of how long it would take to get the USOC codes and I had no idea how long it would take to modify the LENS programming so that the LSRs could be submitted electronically." Arb. II, Supra Ex. 49. Yet BellSouth advised Supra in writing on July 14, 2000, that Supra must submit a LSR to convert the UNE Combos. Arb. II, Supra Ex. 50. Apropos of a dispute on a separate, but related, TAG interface issue, BellSouth was evasive and uncooperative because for "[t]his customer of all customers to communicate this lack of resource issue to [us] is very inopportune. Supra is so litigious, we endeavor to keep the ball in their court as much as possible." Arb. II, Supra Ex. 51. In the view of the Tribunal, BellSouth attempted to give the impression of responding to Supra in a substantive manner, without actually doing so, until just before the hearing in the second arbitration in April 2001.

In summary, the Tribunal finds that BellSouth breached the Interconnection Agreement in not cooperating with and facilitating Supra's ordering of UNEs and UNE Combos.

B. Collocation

Supra contends that BellSouth has breached its obligations to allow Supra to collocate its equipment and unbundled elements to BellSouth's own network elements.

BellSouth initially took the position that insufficient space was available in BellSouth's central offices to provide for collocation. Nilson DT, Arb. II, at 28, line 1; Tr., Arb. II, 584, lines 3-13; Ex. S0234 Arb. II. The Florida Public Service Commission ultimately required BellSouth to collocate.

Next BellSouth took the position that Supra had been unable over a period of a year and a half to complete the necessary forms accurately, this despite the fact that a number of Supra's applications had been previously approved. Subsequent applications by Supra were routinely rejected by BellSouth.

Among other equipment, Supra wishes to collocate class 5 switches. BellSouth takes the position that Supra is required to produce evidence that Supra **owns** such switches. The Tribunal disagrees. Supra has presented evidence that it leases the switch. In any event, if BellSouth provides space for collocation of a switch, and Supra cannot produce a switch to collocate, BellSouth's obligation would be fulfilled.

A dispute has arisen between BellSouth and Supra as to the pricing of "make-ready" construction by BellSouth and of BellSouth services attendant to collocation.

Finally, BellSouth again objects to the Tribunal's jurisdiction over the collocation claims, despite two prior rulings by the Tribunal that it had jurisdiction of such claims that were based on events on or after October 5, 1999, the effective date of the Interconnection Agreement. The gravamen of BellSouth's objection is that since Supra

first raised this issue pursuant to the 1997 Collocation Agreement, which agreement has expired and been entirely replaced by the Interconnection Agreement, that the Tribunal is divested of jurisdiction to resolve claims concerning collocation for which applications were submitted prior to the effective date of the Interconnection Agreement.[1] Once again, the Tribunal disagrees and reasserts its proper jurisdiction over the collocation claims.

Attachment 3 of the Interconnection Agreement deals with collocation. It provides in pertinent part that

> BellSouth **shall** provide space, as requested by [Supra] to meet [Supra's] needs for placement of equipment, interconnection, or provision of service.

Interconnection Agreement, Attach. 3, §2.3.1 (emphasis added).

> 2) BellSouth **shall** provide interoffice facilities . . . as requested by [Supra] to meet [Supra's] need for placement of equipment, interconnection or provision of service.

Id., at §2.22 (emphasis added).

> 3) [Supra] may collocate the amount and type of equipment **[Supra] deems necessary** in its collocated space . . . . BellSouth shall not restrict the types of equipment or vendor of equipment to be installed. . . .

Id., at §2.2.4 (emphasis added).

The Interconnection Agreement grants to this Tribunal very broad jurisdiction:

---

[1] The Tribunal believes BellSouth's objection to be disingenuous. By BellSouth's own logic, since Supra had objected to BellSouth's billing procedures prior to the effective date of the Interconnection Agreement, the Tribunal should be barred from deciding such disputes, which should proceed under one of the prior agreements that does not contain an arbitration provision. However, BellSouth aggressively pursues its billing claims before this tribunal. Moreover, in January 2000, when rejecting Supra firm orders for collocation, BellSouth stated: "[T]he Interconnection Agreement under which Supra operates does not contain an expedited dispute resolution process for space preparation charges assessed for physical collocation. The billing procedures for physical collocation are found in Attachment 6, Section 4 of the Interconnection Agreement." Ex. S0075, Arb. II.

Supra would have the Tribunal sanction BellSouth for their repetition of the same jurisdictional objections overruled twice previously, especially in light of BellSouth's admission that the Interconnection Agreement governs the dispute. While the Tribunal acknowledges that Section 7 of Attachment 1 empowers the Tribunal to issue such sanctions, the Tribunal declines to do so.

> Negotiation and arbitration under the procedures provided herein shall be the exclusive remedy for all disputes between BellSouth and [Supra] arising under or related to this Agreement including its breach, except for: (i) disputes arising pursuant to Attachment 6, Connectivity Billing; and (ii) disputes or matters for which the Telecommunications Act of 1996 specifies a particular remedy or procedure. Except as provided herein, BellSouth and [Supra] hereby renounce all recourse to litigation and agree that the award of the arbitrators shall be final and subject to no judicial review, except on one or more of those grounds specified in the Federal Arbitration Act (9 USC §§1, et seq.), as amended, or any successor provision thereto.

Interconnection Agreement, Attach. 1, §2.1.

> If, for any reason, the Federal Communications Commission or any other federal or state regulatory agency exercises jurisdiction over and decides any dispute related to this Agreement or to any BellSouth tariff and, as a result, a claim is adjudicated in both an agency proceeding and an arbitration proceeding under this Attachment 1, the following provisions shall apply:
>
> To the extent required by law, the agency ruling shall be binding upon the Parties for the limited purposes of regulation within the jurisdiction and authority of such agency.
>
> The arbitration ruling rendered pursuant to this Attachment 1 shall be binding upon the Parties for purposes of establishing their respective contractual rights and obligations under this Agreement, and for all other purposes not expressly precluded by such agency ruling.

Id., at §§2.1.2, 2.1.2.1, and 2.1.2.2.

> The Arbitrators shall receive complaints and other permitted pleadings, oversee discovery, administer oaths and subpoena witnesses pursuant to the United States Arbitration Act, hold hearings, issue decisions, and maintain a record of proceedings. The Arbitrators shall have the power to award any remedy or relief that a court with jurisdiction over this Agreement could order or grant, including, without limitation, the awarding of damages, pre-judgment interest, specific performance of any obligation created under the Agreement, issuance of an injunction, or imposition of sanctions for abuse or frustration of the arbitration process, except that the Arbitrators may not: (i) award punitive damages; (ii) or any remedy rendered unavailable to the Parties pursuant to Section 10.3 of the General Terms and Conditions of the Agreement; or (iii) limit, expand, or otherwise modify the terms of this Agreement.

Id., at §7.

The contractual obligations concerning collocation are broad and far reaching. The disputes raised by Supra regarding denial of collocation arise under or are related to the Interconnection Agreement. Accordingly, this Tribunal properly takes jurisdiction of these claims.

BellSouth next interposes an objection to the Tribunal's jurisdiction over pricing of collocation to Supra.[2] Supra argues BellSouth could have taken the collocation rate dispute to the Florida Public Service Commission (the "FPSC"). However, BellSouth fails to argue or to demonstrate that Supra was obligated to take such disputes to the FPSC or that the FPSC has exclusive jurisdiction over such disputes. The Interconnection Agreement indicates that the Tribunal's jurisdiction may be concurrent with that of the FPSC. Interconnection Agreement, Attach. 1, §2.1.2.

Rates for certain collocations are set out in Table 2, pages 60 and 61, attached to the letter amendment of July 24, 1998, which AT&T and BellSouth incorporated into the Interconnection Agreement that Supra later adopted. To the extent that Supra objects to rates for "make-ready" work that are not covered by Table 2, the Interconnection Agreement provides that Supra may retain a contractor on BellSouth's certified list to perform such work at Supra's expense. Interconnection Agreement, Attach. 3, §7.4.4.

The Tribunal orders that BellSouth collocate forthwith all such equipment as Supra has included in all prior applications to BellSouth at the rates indicated in Table 2 attached to the July 24, 1998, letter incorporated into the Interconnection Agreement. To

---

[2] In making this second jurisdictional objection, BellSouth states: "There is no dispute that Supra is entitled to collocation. There is also no dispute that BellSouth has offered collocation to Supra. The only dispute between the parties is Supra's allegation that the rates that BellSouth proposes to charge for collocation space were unreasonable." In light of BellSouth's repeated rejection of Supra's collocation applications and the fact that Supra has been unable to collocate a single piece of equipment in any BellSouth facility over a period of some four years, BellSouth's statement is nothing short of breathtaking.

the extent that the collocation involves "make-ready" work that may not be covered by Table 2, Supra may retain a contractor of its choosing from BellSouth's approved contractor list to perform such work at Supra's expense. To the extent that work or services by BellSouth are necessary to collocation and that such work or services are not covered by the rates set out in Table 2, the Tribunal instructs the parties to consult the Interconnection Agreement for guidance and to meet and confer regarding the applicable rates for such work or services. To the extent that the parties are unable to agree on such rates, the parties are to submit their differences over such rates to the Tribunal for resolution.

C. Access to OSS

Supra contends that it is entitled to direct access to BellSouth's OSS, because the FCC has mandated such access in its First Report and Order and in its Third Report and Order, because BellSouth's LENS was unable to perform the ordering function in real time and is inherently unreliable, suffering numerous malfunctions and excessive downtime, and because the contract effectively requires access to BellSouth's OSS.

In contrast, BellSouth argues that Supra, by adopting the Interconnection Agreement, effectively negotiated away the rights and interests it may have been entitled to under the 1996 Act. *See,* 1996 Act, §252(a)(1). BellSouth argues that Supra's rights under the 1999 agreement are not as broad as the rights granted under federal law. The Tribunal disagrees.

The evidence presented shows that Supra must submit local service requests through LENS, an electronic interface supplied by BellSouth. LENS cannot submit local service orders in real time. A local service request is processed through several interfaces (including manual introduction) before the local service request can be processed as an order and provisioned. Ramos DT, Arb. I, at 23, lines 1-15. The orders are subject to

"edit checks" which generate "clarification requests" which delay the process even further. Id., at lines 20-22; at 25, lines 16-18. LENS does not provide Supra with the capability to perform pre-ordering, ordering, provisioning, maintenance and repair and billing functions in real time or in a manner consonant with BellSouth's performance of the process. Arb. I, Exhibit 531; BellSouth Videotape, "This Ol' Service Order."

BellSouth witness Pate admitted that Supra could not place orders in the same manner as BellSouth. Testimony of Ronald Pate, Arb. I, Tr., at 570, line 10, to 573, line 8; at 577, line 24, to 578, line 9; at 578, lines 10-17; at 579, line 2, to 580, line 13; at 586, lines 11-19.

To establish a new account through LENS, Supra is required to first view the Firm Order Menu Screen and obtain the information from the customer and from various BellSouth databases to enable Supra to complete the screen. Supra must validate the customer's service address. If for any reason, Supra is unable to validate the address, Supra cannot complete the pre-ordering process. Supra thereafter selects a telephonic number for the customer. Because of the delay which ensues between the time Supra begins the pre-ordering process and the provisioning of the order (usually several days), Supra must wait to notify the customer of the telephone number assigned.

Next, Supra identifies the features and services the customer wants. However, LENS is frequently inaccurate in the feature selection process. Because of LENS system errors and system failures, the identification of class and services will fall out, resulting in the need to "clarify" the order causing additional delay. A "clarified" order is put on hold, and it must be resubmitted manually.

Following successful completion of identification of services, Supra must identify the type of directory listing selected by the customer. This requires accessing a separate database. In BellSouth's OSS, the database is integrated into the ordering process.

After all pre-ordering information has been entered, LENS will automatically calculate a due date. Supra has no ability to negotiate a due date. Frequently BellSouth overrides the due date provided, and returns the order at a later date with a different due date acceptable to BellSouth. Therefore, Supra has no ability to communicate to a customer a definite due date for the provisioning of service.

Once complete, the order enters BellSouth's Local Exchange Ordering System, a system which serves to edit the LENS generated orders. If errors are found, the order will be sent back to Supra. If the order is error free, it will be sent to be reformatted into a format acceptable to BellSouth's systems. If errors are found, the order is again sent back to Supra. If the orders are error-free, BellSouth representatives re-enter the information into the order entry system for provisioning. Ramos DT, Arb. I, at 26-34.

The time required and the number of possible interventions in this process are profoundly different from the BellSouth ordering process, where all information is entered into one system by the representative taking the call, where due date and telephone number can be provided on line, and where service can be provisioned the **same day**. It is literally impossible for Supra to provision service the same day an order is received, due to the unreliable systems made available to Supra by BellSouth.

The evidence is overwhelming that BellSouth has not provided Supra with Operations Support Systems that are equal to or better than those which BellSouth provides itself. Interconnection Agreement, GTC §30.10.4 ("[E]ach Network Element . . . provided by BellSouth to [Supra] shall be made available to Supra on a priority basis . . . that is equal to or better than the priorities that BellSouth provides to itself . . . .") The Interconnection Agreement provides that "BellSouth shall provide **real time** electronic interfaces for transferring and receiving service orders and provisioning data . . . ." Interconnection Agreement, Attach. 4, §5.1 (emphasis added). The evidence is

clear that LENS does not provide real time service order capability. The Interconnection Agreement provides that "BellSouth shall provide **real time** ability (i) to obtain information on all features and services available, in end-office where customer is provisioned; (ii) to establish if a service call is needed to install the line or service; (iii) to determine the due date and provide information regarding service dispatch/installation schedule, if applicable; (iv) . . . to provide an assigned telephone number; and (v) . . . to obtain a customer profile, including customer name, billing and residence address, billed telephone numbers, and identification of features and services subscribed to by customer." Id., §5.2 (emphasis added). The evidence is overwhelming that LENS does not provide all these capabilities in real time.

The Interconnection Agreement further provides that

> BellSouth shall provide the ability to enter a service order via Electronic Interface as described in Subsection 5.1 of this Section. The service order shall provide [Supra] the ability to: (i) establish service and order desired features; (ii) establish the appropriate directory listing; and (iii) order intraLATA toll and interLATA toll when applicable in a single, unified order.

Id., at §5.3. The evidence is clear beyond cavil that neither LENS, nor any of the other electronic interfaces offered by BellSouth has such ability. Only BellSouth's OSS has the capabilities set out above.

Because BellSouth has failed to meet its contractual obligations regarding electronic interfaces, and because BellSouth is obligated to provide Supra "network elements equal to or better than BellSouth provides to itself or its customers" (BellSouth's Post-Hearing Memorandum, at 15), the Tribunal finds that BellSouth is obligated to provide Supra nondiscriminatory direct access to BellSouth's OSS and orders that such access be provided by BellSouth to Supra no later than June 15, 2001.

D. LENS

1. LENS Downtime

The electronic interface chosen by Supra from those offered by BellSouth in order to perform the pre-ordering and ordering functions, among others, was the LENS. In the Interconnection Agreement, BellSouth undertakes an obligation to provide Supra with the same quality of services and elements as BellSouth provides itself and its end-users. Interconnection Agreement, GTC §12.1. Regarding the capability to input orders, the Interconnection Agreement provides:

> BellSouth shall provide [Supra] with the capability to have [Supra's] Customer orders input to and accepted by BellSouth's Service Order systems outside of normal business hours, twenty-four (24) hours a day, seven (7) days a week, the same as BellSouth's Customer orders received outside of normal business orders are input and accepted.

GTC, §28.6.10.1.

BellSouth witness Hendrix testified that BellSouth cannot place orders on a twenty-four hours a day, seven days a week basis, but he failed to testify as to how much downtime, if any, is scheduled for BellSouth's OSS. Arb. I, Hendrix DT, at 24. BellSouth's witnesses testified that LENS was down for scheduled maintenance three hours a day, Monday through Saturday from 1:00 a.m. to 4:00 a.m. and six hours on Sunday from 12:00 a.m. to 6:00 a.m. Arb. I, Pate DT, at 32; Arb. I, Pate Testimony, Tr., at 558. Thus, the scheduled downtime for the LENS system is twenty-four hours per week, an amount the Tribunal considers to be more than excessive.

In addition to the twenty-four hours each week for scheduled maintenance in which LENS is unavailable, LENS was down additional time due to malfunctions and failures. Arb. I, Mariki Testimony, Tr., at 154, lines 8 - 21; Arb. I, Pate Testimony, Tr., at 649, line 22, to 650, line 5; Arb. I, Supra Ex. 90.

It is clear that the LENS electronic interface is unstable and unreliable. The provision of such a system for pre-ordering and ordering of services is a breach of BellSouth's obligations under the Interconnection Agreement. The Tribunal believes that its order giving Supra direct access to BellSouth's OSS should render this issue moot in the future.

2. Cut Off of Supra's Access to LENS

On May 16, 2000, BellSouth disconnected Supra's access to LENS because Supra had failed to pay disputed billings. It is undisputed that Section 1.2 of the General Terms and Conditions prohibits BellSouth from "discontinu[ing] any Network Element, Ancillary Function, or Combination provided hereunder without the express prior written consent of Supra." Moreover, Section 16.1 of the General Terms and Conditions provides in pertinent par that "[i]n no event shall the Parties permit the pendency of a Dispute to disrupt service to any [Supra] Customer contemplated by this Agreement." BellSouth later acknowledged that "the Interconnection Agreement between BellSouth and Supra does not permit BellSouth to refuse Supra's orders for non-payment of undisputed charges." Arb. II, Ex. S0098. BellSouth's contention that it believed it was proceeding under a prior agreement which had long since expired and which had been entirely superceded by the Interconnection Agreement is not credible. Accordingly, the Tribunal regards BellSouth's act of cutting off Supra's access to LENS a deliberate breach done with the intent to harm Supra.

E. Dedicated Transport and Tandem Switching

Supra argues that BellSouth has breached various sections of the Interconnection Agreement in failing to provision dedicated transport lines between BellSouth tandem switches both between Local Access Transport Areas ("LATA") and within individual

LATAs. These two issues are related – inter-LATA and intra-LATA transport – but require different analysis and can best be discussed separately.

1. Inter-LATA Transport

BellSouth argues that it may not lease UNEs to Supra that would enable Supra to provide inter-LATA (i.e., long distance) telephone service to Supra's customers when section 271(a) of the 1996 Act bars BellSouth from providing inter-LATA service. BellSouth also argues that, if Supra wishes to provide certain specified DSI Interoffice Transport facilities that are in fact available under the Interconnection Agreement in a manner which would cross LATA boundaries, then Supra will need to order intra-LATA trunking from BellSouth and also order inter-LATA trunking from an IXC (long distance provider).

Supra argues at considerable length that, regardless of the fact that BellSouth cannot itself provide inter-LATA service, Supra can lease the UNEs and dedicated transport from BellSouth and then Supra, as a certificated IXC, would be deemed to provide the inter-LATA service rather than BellSouth. The major problem with Supra's argument is that Supra cites no convincing FCC or federal court authority in support of Supra's argument that Supra can lease UNE Combos and tariffed services from BellSouth which BellSouth cannot provide directly to its customers. The Tribunal therefore finds that Supra has failed to carry its burden of proof on the issue of inter-LATA service.

2. Intra-LATA Transport Between Tandem Switches

Supra devoted nine pages to the issue of "Feature Group-D Switched Access Service Between BellSouth Access Tandems" as described by Supra at pages 62-71 of its Post-Hearing Brief. BellSouth claims that Supra mis-describes both the service Supra seems to be seeking and the issues presented by its requests, which have not been submitted to BellSouth via a LSR. Unfortunately, the parties' testimony at the arbitration

hearing and their respective Post-Hearing Briefs provided scant assistance to the Tribunal's assessment of this issue.

The Tribunal finds that "Feature Group-D" is a switched access service provided by BellSouth to interexchange carriers ("IXCs") that can be ordered from the BellSouth Access Services tariffs filed with the FCC and the FPSC. BellSouth argues that "Feature Group D" is inherently a long-distance service, not local service available to Supra under the Interconnection Agreement.

To the extent Supra may be requesting interoffice trunking between BellSouth switches, Supra has failed to show that it owns and operates a local switch connected to BellSouth's network. BellSouth made the better arguments on this issue, including citations to relevant provisions of the Interconnection Agreement referring to the need for switches. The Tribunal therefore finds that Supra failed to carry its burden of proof.

F. Regional Street Address Guide ("RSAG") Download

Supra contends that BellSouth is contractually obligated to provide it with a download of RSAG, citing Attachment 15, Sections 7.2.1 and 7.2.2. Because of the incessant downtimes of LENS (*see*, Section V.D.1, above), Supra argues that without a download it does not have the same access to information as does BellSouth, which violates the Interconnection Agreement's "parity" provisions. *See, e.g.*, Interconnection Agreement, GTC, §30.10.4. Supra argues that BellSouth's Hendrix admitted that AT&T was entitled to receive a batch feed of the RSAG database as part of a unique interface that was to be created. Supra seeks an initial download of the RSAG database, followed by daily updates.

There is no dispute that the "unique interface" contemplated by the Interconnection Agreement was never developed. The burden for the development of the electronic interface falls equally on Supra and BellSouth. (*See,* Attach. 15, §§7.1.1 and

7.1.2) ("BellSouth and [Supra] agree to develop an interface . . ."; "[Supra] and BellSouth will establish a transaction-based electronic communications interface. . . ."). The provision of batch feeds was dependent on the unique interface which had not been developed. ("**When the interface is operational**, BellSouth will transmit the initial batch feed of the data . . . ." Interconnection Agreement, Attach. 15, §7.2.2 (emphasis added).)

The Tribunal finds that the obligation to develop the unique interface fell jointly on Supra and BellSouth. Supra produced no evidence which would suggest that the failure to develop the unique interface was entirely due to BellSouth's actions or inactions. Since the joint development of the unique electronic interface was a condition precedent to the obligation to provide the initial batch feed of RSAG, and since the condition precedent never occurred, the Tribunal finds that BellSouth had no contractual obligation to provide Supra with a download of RSAG. In any event, since the Tribunal has ordered BellSouth to provide nondiscriminatory direct access to the BellSouth OSS, Supra should have real time access to RSAG, including all updates.

G. 100 Number Blocks of Telephone Numbers

Supra argues that the Interconnection Agreement requires BellSouth to reserve up to 100 telephone numbers per NPA-NXX for Supra's exclusive use. Interconnection Agreement, GTC, §28.1.1.4. BellSouth does not dispute this. BellSouth contends that since LENS enables Supra to reserve up to 25 numbers in a single session, Supra can reserve 100 numbers in four such sessions. BellSouth contends that this satisfies the contractual requirement.

Supra argues that this sequential ordering is inadequate in that Supra is unable to use the 25 numbers in any manner of Supra's choosing. However, Supra also states that "[s]hould BellSouth be ordered to provide Supra with access to BellSouth's retail OSS

this issue becomes moot." Supra's Post-Hearing Brief, at 62. As the Tribunal has found that Supra is entitled to nondiscriminatory direct access to BellSouth's OSS (*see*, Section V.C, above), this issue is now moot.

H. QuickServe

QuickServe is the BellSouth name for the provision of expedited service in situations where the phone line at the customer's location is already connected for service (*i.e.*, has "soft dial tone") and only requires electronic intervention, as opposed to having to dispatch a service technician to the location. Pate DT, Arb. I, at 27.

BellSouth acknowledges that LENS could not in the past provide same-day service at QuickServe locations, but that a work around, executed at some unstated time, had been put in place. Pate, DT, Arb. I, at 29. Now, BellSouth asserts that LENS has been "recently updated" to provide QuickServe capability. Pate, Reb.T., Arb. I, 53-54.

The Tribunal finds that its order requiring BellSouth to provide Supra with nondiscriminatory direct access to BellSouth's OSS provides Supra with the same ability to provide QuickServe as has BellSouth. Thus, this issue is effectively moot.

I. Branding

General Terms and Conditions, Section 19, sets out BellSouth's obligations to brand services offered by Supra that incorporate services and elements made available under the Interconnection Agreement.

> The Parties agree that the services offered by [Supra] that incorporate Services and Elements made available to [Supra] pursuant to this Agreement shall be branded as [Supra] services, unless BellSouth determines to unbrand such Services and Elements for itself, in which event BellSouth may provide unbranded Services and Elements. [Supra] shall provide the exclusive interface to [Supra] Customers, except as [Supra] shall otherwise specify. In those instances where [Supra] requires BellSouth personnel or systems to interface with [Supra] Customers, such personnel shall identify themselves as representing [Supra], and shall not identify themselves are representing BellSouth. Except for

> material provided by [Supra], all forms, business cards or other business materials furnished by BellSouth to [Supra] Customers shall be subject to [Supra's] prior review and approval. In no event shall BellSouth, acting on behalf of [Supra] pursuant to this Agreement, provide information to [Supra] local service Customers about BellSouth products or services. BellSouth agrees to provide in sufficient time for [Supra] to review and provide comments the methods and procedures, training and approaches to be used by BellSouth to assure that BellSouth meets [Supra's] branding equipment. For installation and repair services, [Supra] agrees to provide BellSouth with branded material at no charge for use by BellSouth ("Leave Behind Material"). [Supra] will reimburse BellSouth for the reasonable and demonstrable costs BellSouth would otherwise incur as a result of the use of the generic leave behind material. BellSouth will notify [Supra] of material supply exhaust in sufficient time that material will always be available. BellSouth may leave a generic card if BellSouth does not have [a Supra] specific card available. BellSouth will not be liable for any error, mistake or omission, other than intentional acts or omissions or gross negligence, resulting from the requirements to distribute [Supra's] Leave Behind Material.

Supra produced evidence that it raised the branding issue with BellSouth concerning the Memory Call service (Arb. II, Ex. S0117) and in a more general context (Arb. II, Ex. S0119). There is no evidence that BellSouth ever concretely responded to these concerns. *See, e.g.*, Cathey Testimony, Arb. II, Tr., at 992, line 23, to 995, line 6.

The Tribunal finds that BellSouth breached it obligation to brand the services and elements provided under the Interconnection Agreement, and that such breach was willful and is continuous. Accordingly, the Tribunal orders that BellSouth shall provide by June 15, 2001, branding of services and elements provided to Supra under the Interconnection Agreement, including, but not limited to voice mail, operator services, and directory assistance, under the terms and conditions of and as required by General Terms and Conditions Section 19 of the Interconnection Agreement. The Tribunal further orders that such branding by BellSouth is to continue until such time as Supra is able to reproduce such elements and services with unbundled network elements and combinations thereof. To the extent that Supra seeks damages for such breaches, Supra

has failed to offer any proof as to the damages that resulted from these breaches by BellSouth. Accordingly, Supra's claim for damages is denied.

J. TAG Interface Development

Supra alleges that it suffered damages in attempting to establish an interface to the TAG electronic interface provided by BellSouth. However, outside of bare assertions by Mariki in his rebuttal testimony, Supra produces no convincing evidence that BellSouth is responsible for Supra's failure to complete the interface. The exhibits cited by Supra wholly fail to establish that BellSouth is responsible for the failure of this project. Accordingly, Supra fails to carry its burden of proof on this issue.

K. Toll Free Number Database

Supra claims that BellSouth has failed to provide access to the BellSouth Toll Free Number Database as required under Section 13.5 of Attachment 2 to the Interconnection Agreement. BellSouth responds that it would be willing to provide access to Supra, but Supra does not own and operate a local switch that meets the interface technical requirements of § 13.5.1.2 and § 13.5.1.2 of Attachment 2 to the Interconnection Agreement. While there was conflicting evidence at the arbitration hearings on whether Supra has leased a local switch, there is no dispute that Supra does not presently operate its own local switch connected to BellSouth's network.

The Tribunal finds that Supra has failed to carry its burden of proof that it meets the contractual interface requirements for gaining access to the BellSouth Toll Free Number Database. In light of the Tribunal's order that BellSouth collocate Supra's equipment, including switches in BellSouth central offices (see Section V.B, above) and Supra's testimony that it has leased at least one switch, Supra's claim regarding the Toll Free Number Database may well become moot.

L. Same Services as BellSouth

Supra claims that BellSouth has failed to provide the same features, functions, and capabilities that BellSouth provides itself through its local switches in breach of Section 7 of Attachment 2 to the Interconnection Agreement. BellSouth responds that Supra failed to order the services properly as required under the Interconnection Agreement. The contested services are the following:

- Centrex
- ACD
- Data switching
- Frame relay services
- Basic and primary rate ISDN
- Dialing parity
- Voice service
- Fax transmissions
- Operator Services
- Switched and non-switched digital data services
- Video Services
- Coin (pay phone) services
- Frame relay and ATM
- Private line services

The only service listed above that Supra clearly requested from BellSouth was Centrex. Arb. II, Supra Ex. 113; BellSouth Ex. PCF-18. BellSouth faults Supra for not requesting Centrex or other services via a LSR, but as made clear in the section of this Award regarding UNE Provider (*see,* Section V.A, above), BellSouth impeded and

frustrated Supra's ability to order services via a LSR submitted through LENS. Regarding the Centrex service, however, Supra failed to prove any damages resulting from BellSouth's failure to lease Centrex services. As to all the other services listed above, Supra failed to carry its burden of proof that it had unequivocally requested the services. In any event, this claim should become moot in light of the Tribunal's order that BellSouth provide direct access to its OSS and that Supra be permitted to lease UNE and UNE Combos as required under the Interconnection Agreement.

M. Alleged Breach of 1996 Act

Supra seeks from the Tribunal a determination that BellSouth's conduct constitutes a breach of the Telecommunications Act of 1996. Supra contends that Paragraph 7 of Attachment 1 to the Interconnection Agreement creates the Tribunal's jurisdiction and constitutes the Tribunal's authority to make such a determination. That section provides:

> Duties and Powers of the Arbitrators
>
> The Arbitrators shall receive complaints and other permitted pleadings, oversee discovery, administer oaths and subpoena witnesses pursuant to the United States Arbitration Act, hold hearings, issue decisions, and maintain a record of proceedings. The Arbitrators shall have the power to award any remedy or relief that a court with jurisdiction over this Agreement could order or grant, including, without limitation, the awarding of damages, pre-judgment interest, specific performance of any obligation created under the Agreement, issuance of an injunction, or imposition of sanctions for abuse or frustration of the arbitration process, except that the Arbitrators may not: (i) award punitive damages; (ii) or any remedy rendered unavailable to the Parties pursuant to Section 10.3 of the General Terms and Conditions of the Agreement; or (iii) limit, expand, or otherwise modify the terms of this Agreement.

Nothing in this section expressly grants to the Tribunal the authority to determine breaches of the 1996 Act.

BellSouth contends that this Tribunal has no jurisdiction to determine that BellSouth has violated any provision of the 1996 Act, and states that such determinations might lead to inconsistent outcomes, citing Sections 2.1.2, 2.1.2.1, and 2.1.2.2 of Attachment 1. These sections provide:

> If, for any reason, the Federal Communications Commission or any other federal or state regulatory agency exercises jurisdiction over and decides any dispute related to this Agreement or to any BellSouth tariff and, as a result, a claim is adjudicated in both an agency proceeding and an arbitration proceeding under this Attachment 1, the following provisions shall apply:
>
> To the extent required by law, the agency ruling shall be binding upon the Parties for the limited purposes of regulation within the jurisdiction and authority of such agency.
>
> The arbitration ruling rendered pursuant to this Attachment 1 shall be binding upon the Parties for purposes of establishing their respective contractual rights and obligations under this Agreement, and for all other purposes not expressly precluded by such agency ruling.

It is clear from these sections that the parties anticipated that the Tribunal's jurisdiction could be co-extensive with that of regulatory agencies, and that the Tribunal's ruling would bind the parties with respect to their respective contractual obligations under the Interconnection Agreement. However, these sections neither establish nor preclude arbitral jurisdiction to determine breaches of the 1996 Act.

Neither party addresses section 2.1 of Attachment 1 which provides, in pertinent part:

> Negotiation and arbitration under the procedures provided herein shall be the exclusive remedy for all disputes between BellSouth and [Supra] arising under or related to this Agreement including its breach, **except for: . . (ii) disputes or matters for which the Telecommunications Act of 1996 specifies a particular remedy or procedure.**

Emphasis added. Clearly, if a provision of the 1996 Act specifies a particular remedy or procedure, the Tribunal has no jurisdiction.

The Tribunal has grave doubts as to whether it has jurisdiction to determine that BellSouth has violated the 1996 Act. However, it need not determine that issue. Supra has not cited any particular provision that it alleges BellSouth has violated, nor what conduct by BellSouth violated the terms of such provision. The Tribunal cannot and will not proceed in a vacuum. Even assuming, *arguendo*, that the Tribunal has jurisdiction to determine particular violations of the 1996 Act, no violations have been alleged with sufficient specificity to permit the Tribunal to do so.

N. BellSouth Invoices

With respect to the claim of BellSouth on its unpaid invoices, BellSouth submitted evidence that the sum of $6,374,369.58 has been invoiced by BellSouth to Supra, and that Supra has failed to pay this amount.

The Tribunal finds that BellSouth presented a *prima facie* case as to this claim and this amount, subject to various offset claims and further subject to the results of the audit requested by Supra and ordered by the Tribunal elsewhere herein.

Accordingly, the Tribunal awards BellSouth the amount of $6,374,369.58, subject to offset in the amounts awarded Supra elsewhere in this Award and further subject to the results of the Audit ordered elsewhere herein (including the elimination of late charges).

O. Supra's Audit Request

Supra's claim that it be permitted to audit BellSouth's invoices, which was presented in Arbitration I, is closely tied to BellSouth's claim for unpaid invoices, which was presented in Arbitration II. In short, Supra has consistently challenged BellSouth's invoices since October 1999 and has refused payment since that time. Supra has demanded both Bill Accuracy Certification from BellSouth in accordance with section 12 of Attachment 6 of the Interconnection Agreement and an "audit" of BellSouth's billings

in accordance with Sections 11.1.1 and 11.1.3 of the General Terms and Conditions of the Interconnection Agreement.

The billing audit dispute boils down to the proper scope of documents and information reasonably necessary to assess the accuracy of BellSouth's invoices. Two sections of the General Terms and Conditions of the Interconnection Agreement provide clear guidance:

> Subject to BellSouth's reasonable security requirements and except as may be otherwise specifically provided in this Agreement, **[Supra] may audit BellSouth's books, records and other documents once in each Contract Year for the purpose of evaluating the accuracy of BellSouth's billing and invoicing.** [Supra] may employ other persons or firms for this purpose. Such audit shall take place at a time and place agreed on by the Parties no later than thirty (30) days after notice thereof to BellSouth.

Section 11.1.1 (emphasis added). The breadth of material subject to an audit is further explained:

> BellSouth shall cooperate fully in any such audit providing **reasonable access to any and all appropriate BellSouth employees and books, records and other documents reasonably necessary to assess the accuracy of BellSouth's bills.**

Section 11.1.3 (emphasis added).

BellSouth argues that its detailed monthly invoices transmitted both on paper and electronically in a Disk Analyzer Billing ("DAB") format are more than sufficient to allow Supra to audit BellSouth's billings. The Tribunal disagrees and finds BellSouth's position that Supra can "audit" BellSouth's invoices by intensively reviewing the bills themselves to be patently unconvincing.

The language quoted above from the parties' Interconnection Agreement contemplates access to "any and all appropriate BellSouth employees and books, records and other documents reasonably necessary to assess the accuracy of BellSouth's bills," which is a very broad audit provision. This conclusion is supported by the expert

testimony of Supra's certified public accountant, Stuart Rosenberg. He testified convincingly at the Arbitration I hearing that Supra must be permitted to conduct its requested audit in accordance with Generally Accepted Auditing Standards ("GAAS"). BellSouth utterly failed to rebut his testimony or Supra's commonsense position that Supra must be permitted to review sufficient records and information, including access to knowledgeable BellSouth employees, to evaluate the facts that give rise to BellSouth's billing (*e.g.*, verify that BellSouth's bill correctly starts on the date service actually began for each Supra customer, which cannot be determined by Supra from its local service requests).

Accordingly, the Tribunal orders BellSouth to fully cooperate with and to facilitate Supra's audit of BellSouth's invoices from October 1999 to the present under GAAS. The audit shall begin within ten (10) calendar days of this award (*i.e.*, no later than June 15, 2001) and be completed by July 31, 2001, which date may only be extended for good cause shown. Failure of BellSouth to timely cooperate in the audit process may be considered good cause. Supra will bear its own costs of the audit, unless the audit identifies adjustments greater than the two percent (2%) threshold set forth in Section 11.1.5 of the General Terms and Conditions of the Interconnection Agreement, in which case BellSouth will reimburse Supra's expenses of the audit.

Once the audit is completed and the necessary adjustments to BellSouth's invoices are identified (both reductions and increases), then the resulting adjustments will be offset against the amount to be recovered by BellSouth on its claim for unpaid invoices in Arbitration II. Copies of the audit report and calculations will be served on BellSouth and on the Tribunal.

VI. Damages

A. Introduction

This introduction to the Tribunal's assessment of damages makes three necessary points about the parties' approaches to alleged damages.

First, both parties pursued risky strategies on damages through their respective expert witnesses – Wood for Supra and Freeman for BellSouth. On the one hand, Supra's damages expert relied on unverified factual underpinnings (*e.g.*, a list of "lost customers" that was repudiated by Supra's fact witness), explained his damages assumptions and methodology only cryptically, and calculated extraordinarily high and speculative lost future profits of Supra through 2004 and in many states beyond Supra's existing service area of south Florida. BellSouth's expert witness Freeman correctly characterized Supra's alleged damages as "breathtaking."

On the other hand, BellSouth adopted an equally high-risk damages strategy of attacking Supra's methodology and numbers, but not providing any alternative calculations to the Tribunal. That damages approach was made infamous in the *Pennzoil v. Texaco* state court litigation in Texas regarding the takeover of Getty Oil to the tune of a $7 billion judgment against Texaco. Although BellSouth's expert effectively attacked large elements of Supra's damages, BellSouth's failure to provide alternative damages figures in the areas in which Supra prevailed on liability left the Tribunal with little choice but to grant Supra's requested damages in some areas.

Second, Supra failed to tie any damages to certain liability claims. For example, as described in Section V.L above, Supra **could** have recovered damages for BellSouth's failure to lease Centrex services, but Supra did not tie any damages specifically to that claim and therefore failed to carry its burden of proof.

Third, as discussed above in Section II regarding procedural history, the Tribunal ruled that consequential damages, including lost profits, could be recovered upon a particular showing:

> The Panel concludes that "willful or intentional misconduct" is broad terminology which embraces willful or intentional breach of contract to the extent that it is done with the tortious intent to inflict harm on the other party to the contract. The panel's interpretation of this phrase is supported by judicial authority, including *Metropolitan Life Insurance Co. v. Noble Lowndes Int'l, Inc.*, 643 N.E.2d 504, 506-508 (N.Y. 1994) and *Wright v. Southern Bell Tel. & Tel. Col., Inc.* 313 S.E. 2d 150 (Ga. App. 1984).
>
> Accordingly the Tribunal unanimously finds that **to the extent that Supra can prove that BellSouth intentionally or willfully breached the Agreement at issue in this case with the tortious intent to inflict harm on Supra, at least in part through the means of such breach of contract,** and as a direct and foreseeable consequence of that breach Supra suffered damages in an amount subject to proof, Supra can recover consequential damages in this action.

March 15 Order, at ¶¶ 1-2 (emphasis added). (The Clarification of Order Re: Damages is attached hereto as Annex D and is incorporated herein by reference).

In the course of these two arbitrations, the Tribunal has reviewed hundreds of pages of pre-filed direct and rebuttal testimony and thousands of pages of exhibits. The Tribunal also has judged the demeanor of witnesses during a total of eight days of live testimony in the hearings and has reviewed the transcripts of that testimony. The evidence shows that BellSouth breached the Interconnection Agreement in material ways and did so with the tortious intent to harm Supra, an upstart and litigious competitor. The evidence of such tortious intent was extensive, including BellSouth's deliberate delay and lack of cooperation regarding UNE Combos, switching Attachment 2 to the Interconnection Agreement before it was filed with the FPSC, denying access to BellSouth's OSS and related databases, refusals to collocate any Supra equipment, and deliberately cutting-off LENS for three days in May 2000.

The Tribunal does not make this finding of "tortious intent" lightly, but the full record belies BellSouth witnesses' mantra-like testimony that BellSouth's aim was to profit from Supra's success. BellSouth attempted to give the appearance of cooperating with Supra, while deliberately delaying, obfuscating, and impeding Supra's efforts to compete.

The major elements of Supra's damages are discussed in the following sections.

B. Supra's Damages

1. Incremental Net Income Operating As UNE Provider

As discussed in Section V.A, above, the Tribunal finds that BellSouth breached the Interconnection Agreement in not cooperating with and facilitating Supra's ordering of UNEs and UNE Combos. Supra's damages tied to this breach are set forth in two exhibits in Arbitration II of Supra damages expert Wood -- DJW-5 and DJW-6. Those exhibits show incremental net income to Supra for its residential and business customers, but must reflect the following necessary revisions: (1) the calculations of monthly damages for October 1997 through September, 1999 must be **deleted** to reflect the Tribunal's prior ruling that no recovery may be awarded for acts or omissions before the October 5, 1999 effective date of the Interconnection Agreement; and (2) the damages for October 1999 must be pro-rated to remove any October 1-4, 1999 recovery, which damages occurred prior to the effective date of the Interconnection Agreement. With those necessary revisions, Supra's damages for residential customers is $1,586,840.27 and for business customers is $517,066.26, for a sub-total of $2,103,906.40 of incremental net income if Supra had been permitted to operate as a UNE provider. No prejudgment interest is appropriate because Wood already included a present value calculation in the damages figure.

As part of the audit process, the auditor is directed to determine the number of Supra customers in April, 2001, and the number of the Supra customers in May, 2001, and to report those numbers to the parties and to the Tribunal. The Tribunal will thereafter calculate a revised damages calculation that includes April and May 2001 damages.

2. Supra's Alleged Lost Profits

There are two major areas of alleged lost profits that Supra seeks: (1) lost profits on allegedly "lost customers" who purportedly would have ordered advanced services such as DSL from Supra (described by Supra as Arbitration 2, Category 1 Damages); and (2) lost profits as far out as 2004 for BellSouth's impeding Supra's operations as a facilities based UNE provider by expanding throughout the remaining counties in Florida and using a "cookie cutter" approach into 17 additional states (described by Supra as Arbitration II, Categories 3, 4 and 6 Damages). For the following reasons, none of these alleged damages are awarded to Supra because they have insufficient factual support, are too speculative, and would lead to an unwarranted windfall to Supra.

Considerable fact and expert testimony focused on Supra's original list of allegedly "lost customers" (Supra Ex. 87A) produced in Arbitration I and then the updated list (Supra Ex. 87B) produced in Arbitration II. Supra's damages tied to "lost customers" rely on Supra Ex. 87A, which was repudiated by Supra witness Bentley. Supra expert witness Wood disclaimed any reliance on Supra Ex. 87B, which had almost as many infirmities as the initial "lost customer" list. For all of the reasons set forth at pages 88-93 of BellSouth's Post-Hearing Brief and the total lack of credibility surrounding Supra's Ex. 87A, no damages are awarded based on the Supra alleged "lost customers."

An appreciation of the "breathtaking" nature of Supra's alleged lost profits totaling over $510 million and running through the year 2004 should start with the fact that Supra has enjoyed only modest success as a CLEC operating in south Florida. Its financial survival may well have been due to the fact that Supra has not been paying its bills from BellSouth since October 1999. Based on its 1997 Business Plan and its proffered evidence of many BellSouth breaches of the Interconnection Agreement, Supra would have the Tribunal believe that, if BellSouth had only cooperated, then Supra would have become a telecommunications juggernaut, operating as a facilities-based UNE provider with its own switches, with an expanding network and facilities, and with increasingly profitable operations in 18 states. But nothing in Supra's actual track record suggests such meteoric success and the alleged $510 million in lost profits.

The Tribunal will not award damages based on wishful speculation. The Tribunal cannot grant hundreds of millions of dollars in damages tied to BellSouth's behavior from June 2001 until the end of 2004, when the reasonable assumption should be that BellSouth will forthwith comply with the Interconnection Agreement and this Tribunal's award. In addition, a new agreement that will govern the parties' future relationship is being arbitrated before the FPSC. The Tribunal cannot credibly accept Wood's speculative and unrealistically high "lost profit" dollar numbers for the reasons set forth above, and those set forth in the testimony of BellSouth expert witness Freeman and summarized at pages 95-108 of BellSouth's Post-Hearing Brief.

3. LENS Damages

a. LENS Downtime

Supra damages expert Wood testified to and calculated the damages suffered by Supra as a result of the excessive down time experienced by LENS. Wood's damages

calculation was based on the costs incurred by Supra to maintain its customer support staff in place during those times in which LENS was unavailable.

While this approach was criticized by BellSouth expert witness Freeman, he furnished no alternative damages calculation. Because the Tribunal is certain that Supra suffered damage and because no alternative damages calculation was offered by BellSouth, the Tribunal accepts the calculation offered by Wood (DJW-2) and awards Supra $669,153 in damages directly resulting from this breach by BellSouth.

b. Cut Off of Supra's Access

The Tribunal believes that the calculations of Supra's damages expert as to this issue was reasonable. *See,* DJW-24, and DJW-3, 2 of 2. Accordingly, the Tribunal awards Supra $55,488 as a direct result of the deliberate Cut Off of Supra's access to LENS, which the Tribunal finds was done with the intent to harm Supra.

C. BellSouth Invoices

BellSouth is awarded $6,374,369.58, less any sum awarded Supra herein and subject to the results of the Audit ordered herein.

VII. Other Relief

A. Supra's Request for Audit

As discussed in Section V.O above, the Tribunal orders BellSouth to fully cooperate with and facilitate Supra's audit of BellSouth's billings since October 1999. The audit will be conducted in accordance with GAAS, commence no later than June 15, 2001, and be completed by July 31, 2001, which may only be extended for good cause shown. The results of the audit (reductions or increases) will be offset against the amount of $6,374,369.58 to be recovered by BellSouth after offsets for Supra's damages awarded herein.

The auditor is also directed to determine the number of Supra customers in the month of April, 2001, and in the month of May, 2001, and report those figures to the parties and to the Tribunal. *See*, Section VI.B.1, above.

Finally, the Auditor is directed to remove all late charges assessed by BellSouth in its invoices. *See*, Section VII. E., below.

B. BellSouth's Request for an Injunction for Future Supra Non-Payment

Even with the Supra damages awarded herein and awaiting the results of the audit of BellSouth's billings, it appears likely that Supra will end up owing some net amount to BellSouth. In anticipation of that possible result, BellSouth has requested that the Tribunal order that BellSouth may terminate service provided to Supra if the net amount is not paid by Supra within 30 days of the net amount being calculated.

The Tribunal declines to issue such an injunction for several reasons. First, BellSouth's request has the flavor of an advisory opinion to be issued now about some future unknown scenario. Second, although the Tribunal may have the **authority** to issue an injunction, it is premature. Third, once this award is final and the net amount due to BellSouth is calculated with precision, should Supra fail to pay, then the proper enforcement mechanism is for BellSouth to file an action in a court of competent jurisdiction to enforce the Tribunal's award. The Tribunal therefore denies BellSouth's requested injunction.

C. Liquidated Damages

With respect to Supra's request that the Tribunal assess liquidated damages against BellSouth in the event BellSouth fails to comply with any order of the Tribunal, the Tribunal finds no authority in the Interconnection Agreement or in law to assess liquidated damages.

Liquidated damages are those agreed to by the parties where it is difficult, if not impossible, to assess actual damages. The Tribunal does not find any potential damages that may result from BellSouth's non-compliance with this Award to be impossible or difficult to assess.

Furthermore, Supra is essentially requesting the Tribunal to re-write or add to the Interconnection Agreement which the Tribunal is prohibited from doing by Section 7 of Attachment 1 of the Interconnection Agreement. Supra's request for liquidated damages is denied.

D. Pre- and Post-Judgment Interest

1. Pre-Judgment Interest

No pre-judgment interest is awarded to BellSouth because the gross amount awarded herein already includes interest. Furthermore, all setoffs awarded Supra herein already include interest.

2. Post-Judgment Interest

The ultimate net award shall bear interest at the post-judgment interest rate as provided under Florida law.

E. Late Charges

Pursuant to §14.2 of Attachment 6 of the Interconnection Agreement, late charges are not to be assessed in the event that a Party disputes charges and such dispute is resolved in favor of such Party. One of the disputes concerned Supra's claim that it was entitled to lease UNEs and UNE Combos and to be billed at those rates, rather than at resale rates. As Supra prevailed on that claim, late charges are inappropriate.

The Tribunal orders the Auditor (as ordered elsewhere herein) to remove such charges in the process of the Audit.

F. Special Master

Supra's request for the appointment of a Special Master is denied, as the Tribunal sees no necessity for such an appointment at this time.

G. Arbitration Costs and Expenses

Section 13.1 of Attachment 1 provides in pertinent part:

> The Arbitrator(s) fees and expenses that are directly related to a particular proceeding shall be paid by the losing Party. In cases where the Arbitrator(s) determines that neither Party has, in some material respect, completely prevailed or lost in a proceeding, the Arbitrator(s) shall, in his or her discretion, apportion expenses to reflect the relative success of each Party. Those fees and expenses not directly related to a particular proceeding shall be shared equally.

Moreover, the parties have agreed on the application of the CPR Institute for Dispute Resolution Rules for Non-Administered Arbitration. Interconnection Agreement, Attach. 1, §4. Rule 16.2 requires the Tribunal to fix in its award the costs of the arbitration, including the fees and expenses of the arbitrators, travel and expenses of witnesses, legal fees and costs, charges paid to CPR, and the costs of the transcript and any meeting and hearing facilities.

The Tribunal has determined that in a case such as this, where each side has prevailed on particular issues and where the value of the declaratory and injunctive relief granted is impossible to determine, the Tribunal cannot determine a "prevailing" party or a "losing" party, or even determine "the relative success" of each party. Accordingly, the Tribunal determines that each side shall bear the costs that each incurred in conjunction with this arbitration, including the specific categories of costs set out above.

H. All Other Relief Denied

To the extent that the parties have made additional claims and/or requested other relief than that which the Tribunal has expressly addressed in other portions of this Award, all such claims and requests for relief are hereby expressly denied.

I. Retention of Jurisdiction

The Tribunal expressly retains jurisdiction to insure completion of the audit ordered by the Tribunal, to calculate the final damages to be awarded based on the results of the audit, and to issue its Final Award on Damages.

VIII. Summary of Award

This final section summarizes the injunctive relief and damages that the Tribunal orders in these two consolidated arbitrations.

The Tribunal orders that **no later than June 15, 2001**, BellSouth shall:

- Facilitate and provision Supra's requests to provide UNEs and UNE Combos to Supra's customers at the contractually agreed prices in the Interconnection Agreement.
- Collocate all equipment as Supra has included in prior applications to BellSouth at the rates indicated in Table 2 attached to the July 24, 1998 letter incorporated into the Interconnection Agreement, and cooperate with and facilitate any new Supra applications for collocation, including but not limited to collocating any Class 5 or other switches in BellSouth central offices.
- Provide Supra nondiscriminatory direct access to BellSouth's OSS and cooperate with and facilitate Supra's ordering of services.
- Provide branded services and elements requested by Supra under the Interconnection Agreement, including but not limited to voice mail, operator

services and directory assistance, under the terms and conditions of section 19 of the General Terms and Conditions of the Interconnection Agreement.

- Fully cooperate with and facilitate Supra's audit of BellSouth's billings since October 1999 to the present in accordance with GAAS.

The Tribunal awards the following damages:

- BellSouth Invoices. Supra shall pay BellSouth $6,374, 369.58 on BellSouth's unpaid invoices, subject to the adjustments listed below;
- Audit Adjustments. Any adjustments in BellSouth's invoices found necessary by Supra's audit of BellSouth's billings, including the elimination of late charges, shall be reflected as necessary reductions or increases in those invoices to be paid by Supra; and
- Supra Damages Set-off. The following damages due to Supra will be adjusted according to the amount Supra will be required to pay on BellSouth's invoices **after** the audit adjustments and by the amount that the Tribunal calculates Supra is due in incremental net income operating as a UNE provider for the months of April and May, 2001, based on the number of Supra customers in those months as determined by the audit:

* Incremental net income operating as a UNE provider --	$ 2,103,906.40
* LENS-related lost productivity --	$ 669,153
* LENS cut-off	$ 55,488
Subtotals of Supra's Damages Set-off	$2,828,547.40

To the extent that either Supra or BellSouth has requested any other relief, all such relief is hereby denied.

DATED: June 5, 2001

John L. Estes	M. Scott Donahey	Campbell Killefer

BEFORE THE CPR INSTITUTE FOR
DISPUTE RESOLUTION ARBITRAL TRIBUNAL

SUPRA TELECOMMUNICATIONS &
INFORMATION SYSTEMS, INC., a
Florida corporation,

Claimant,

v.

BELLSOUTH
TELECOMMUNICATIONS, INC., a
corporation,

Respondent.
_____/

NOTICE OF ARBITRATION AND COMPLAINT

Claimant SUPRA TELECOMMUNICATIONS & INFORMATIONS SYSTEMS, INC. ("Supra"), through its undersigned counsel, hereby provides notice of arbitration, pursuant to the Agreement between the parties and Rule 3 of CPR Rules for Non-Administered Arbitration ("Rules"), to Respondent BELLSOUTH TELECOMMUNICATIONS, INC. ("BellSouth"), and in support hereof states as follows:

1. The full names, descriptions and addresses of the parties.

A. Supra Telecommunications & Information Systems, Inc. ("Supra")
2620 S.W. 27th Ave.
Miami, Florida 33133-3001

Supra, a Florida corporation, is an Alternative Local Exchange Carrier ("ALEC") certificated and authorized to provide telecommunications services within the State of Florida.

B. BellSouth Telecommunications, Inc.
General Attorney – COU
675 W. Peachtree St., Suite 4300
Atlanta, GA 30375

BellSouth, a corporation, is the Regional Bell Operating Company ("RBOC") and also the Incumbent Local Exchange Carrier ("ILEC") through Miami-Dade County, and the primary provider of telecommunications services throughout the State of Florida.

2. Supra hereby demands that this dispute be referred to arbitration pursuant to the Rules.

3. The arbitration clause governing this dispute. Attached hereto as **Exhibit A** is Attachment 1 of the Agreement between BellSouth and AT&T Communications of the Southern States, Inc., dated June 10, 1997, which has been adopted by Supra pursuant to the Telecommunications Act of 1996. Supra states that this is a dispute affecting service, pursuant to Section 9 of Attachment 1, and therefore demands that this arbitration proceed according to the schedule imposed by Section 9; to wit: BellSouth is to serve its response to this Complaint within five (5) business days and the Arbitrator is to schedule a hearing on this Complaint within twenty (20) business days after service of the Complaint. See Paragraphs 9.4 and 9.7.1 of Attachment 1.

Supra has complied with Section 4 of Attachment 1 by faxing and mailing letters to BellSouth setting forth the issues in dispute and requesting that an Inter-Company Review Board meet in an attempt to resolve such, true copies of which are attached hereto as **Composite Exhibit B**. As of the date of serving this Complaint, the parties have been unable to settle their dispute.

4. A statement of the general nature of Supra's claims.

I. Failure to provide Supra and its customers with the same quality service as BellSouth provides itself and its customers. Paragraph 12.1 of the General Terms and

Conditions of the parties' Interconnection Agreement ("General Terms"), provides, in pertinent part:

> In providing Services and Elements, BellSouth will provide [Supra] with the quality of service BellSouth provides itself and its end-users. BellSouth's performance under this Agreement shall provide [Supra] with the capability to meet standards or other measurements that are at least equal to the level that BellSouth provides or is required to provide by law or its own internal procedures.

Furthermore, paragraph 4 of the General Terms provides:

> In the performance of their obligations under this Agreement, the Parties shall act in good faith and consistently with the intent of the Act. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement, (including, without limitation, the obligation of the Parties to further negotiate the resolution of new or open issues under this Agreement) such action shall not be unreasonably delayed, withheld or conditioned.

BellSouth has made it impossible for Supra to pre-order, order, provision and otherwise serve its customers in a manner equal to that which BellSouth is able. BellSouth, as more specifically outlined below, has either failed or flat-out refused, in violation of the parties' Interconnection Agreement, to provide Supra with the performance and services BellSouth provides its own customers.

A. <u>Refusal to Provide Regional Street Address Guide and Updates.</u>

Paragraph 7.2.1 of Attachment 15 to the Agreement, a true copy of which is attached hereto as **Exhibit C**, provides, in pertinent part:

> BellSouth will accept [Supra's] request for initial batch feeds of Service/Feature Availability and Regional Street Address Guide (or an equivalent).

Paragraph 7.2.2 of Attachment 15 to the Agreement provides, in pertinent part:

> [Supra] and BellSouth will establish a mutually agreeable format for the exchange of batch data no later than 90 days following the adoption of this agreement. When the interface is operational, BellSouth

> will transmit the initial batch feed of the data, relating to the geographic area specified by [Supra] pursuant to a mutually agreed upon schedule. In addition, BellSouth will provide complete refreshes of the data, for the geographic areas cumulatively encompassed by requests from [Supra], on a mutually agreeable monthly schedule.

Supra has made numerous oral and written (letters dated May 22 and June 13, 2000) requests for the initial batch feeds of the Regional Street Address Guide ("RSAG"). In a letter dated July 11, 2000, BellSouth claimed that Supra already has access to BellSouth's RSAG through the Local Exchange Navigation System ("LENS"). Supra, however, is entitled to more than just access to RSAG through LENS; it is entitled to an initial batch feed of the data plus monthly updates, pursuant to the Agreement. Because LENS is extremely slow and unreliable, Supra and its customers are forced to deal with unacceptable delays in the processing of service requests and change orders. Some of these delays would be avoided if BellSouth would provide Supra with the download and monthly updates of RSAG.

The failure of BellSouth to provide Supra with RSAG is adversely affecting Supra's ability to provide uninterrupted, high quality service to its customers, and, importantly, making it impossible for Supra to provide services to its customers at the same level as is BellSouth to its customers.

B. <u>Failure to Meet Performance Standards.</u> Paragraph 1.1 of Attachment 12 to the Agreement provides, in pertinent part:

> BellSouth, in providing Services and Elements to [Supra] pursuant to this Agreement, shall provide [Supra] the same quality of service that BellSouth provides itself and its end-users.

Section 2 of Attachment 12 to the Agreement provides for specific performance standards for certain services. A true and correct copy of Attachment 12 is attached hereto as **Exhibit D**. BellSouth has failed to provide Supra with the same quality of service that BellSouth provides itself and its end-users, and BellSouth has failed to meet the specific performance standards set forth in Section 2 of Attachment 12.

As a direct result of BellSouth's violation of these performance standards, Supra is unable to provide uninterrupted, high quality service to its customers and, importantly, it is impossible for Supra to provide services to its customers at the same level as is BellSouth to its customers. In fact, Supra has lost and continues to lose customers, potential customers and goodwill as a result of delays caused by BellSouth's failure to comply with these performance standards.

C. Failure to Provide Supra with 100 Numbers per NPA-NXX. Paragraph 28.1.1.4 of the General Terms of the Agreement, a true copy of which is attached hereto as **Exhibit E**, provides, in pertinent part:

> BellSouth will reserve up to 100 telephone numbers per NPA-NXX at [Supra's] request, for [Supra's] sole use. BellSouth will provide additional numbers at [Supra's] request in order that [Supra] have sufficient numbers available to meet expected needs. . . . BellSouth agrees to implement an electronic interface to improve this process . . .

Supra has, on numerous occasions, requested that BellSouth provide it with reserved NPA-NXX numbers. BellSouth has refused every request, in violation of the Agreement. Moreover, BellSouth has often given Supra a number which Supra would then give to a Supra customer, only to have BellSouth thereafter give the same number to a BellSouth customer. Of course, the adverse impact of this type of interference is severe.

Although Supra does realize that NPA-NXX is subject to Number Pooling for the 954, 561 and 904 prefixes, pursuant to recent FCC and FPSC mandates, Supra expects that BellSouth will share existing and new NPA-NXX blocks. Supra also expects to be assigned numbers in the 305 area code, and not just the 786 area code for Dade County. Our participation in the Florida Number pooling committee has provided us with BellSouth documents indicating that while the blocks are assigned, there remain large numbers of 305 numbers available in BellSouth's assigned blocks.

D. Failure to make Toll Free Number Database available. Paragraphs 13.5.1.1 and 13.5.1.2 of Attachment 2, true copies of which are attached hereto as **Exhibit F**, provide:

> BellSouth shall make BellSouth Toll Free Number Database available for [Supra] to query with a toll-free number and originating information.
>
> The Toll Free Number Database shall return carrier identification and, where applicable, the queried toll free number, translated numbers and instructions as it would in response to a query from a BellSouth switch.

BellSouth has failed to make this database available to Supra. As a result, Supra is unable to provide services to its customers in the same manner BellSouth does.

E. Failure to provide QuickService. Paragraph 23.3 of the General Terms of the parties' Interconnection Agreement provides:

> BellSouth will provide [Supra] with at least the capability to provide a [Supra] customer the same experience as BellSouth provides its own Customers with respect to all Local Services. The capability provided to [Supra] by BellSouth shall be in accordance with standards or other measurements that are at least equal to the level that BellSouth provides or is required to provide by law and its own internal procedures.

QuickService allows BellSouth to provision service "by 6:00 PM today," by testing lines for customers to see if telephone service had previously been provided to an

existing address, so that service could be re-established on an expedited basis. Supra customers get no such speedy service. Supra customers often go without any service for a number of days, and, after calling the BellSouth Local Customer Service Center, are told that in order to have their service immediately activated, they need to switch back to BellSouth. It is Supra's understanding that this is a simple process which BellSouth provides its own customers, yet, for some reason, BellSouth is unwilling to provide to Supra's customers in the same fashion.

F. LENS (pre-ordering and ordering electronic interface) Shutdowns and Malfunctioning. Pursuant to paragraph 3 of Section VI (page 28) of Attachment 7 of the parties' Interconnection Agreement, BellSouth is to give Supra 120 days notice of any software changes which *impact* the format or content of structure of the usage data feed to [Supra]. A true copy of this paragraph 3 of Section VI of Attachment 7 is attached hereto as **Exhibit G.** BellSouth's website, on August 30, 2000, provided:

> Release 7.1 of the electronic interfaces, initially scheduled for implementation on September 16, 2000, **will now be implemented on September 30, 2000**. This Release includes Telecommunications Access Gateway (TAG) Releases 7.1.1 and 7.1.2. Please be advised that Electronic Data Interchange (EDI), Local Exchange Navigator System (LENS) and TAG will be unavailable to process orders on Saturday, September 30, 2000, from 12:01 AM EDT until 11:00 AM EDT. (Emphasis in original.)

Not only was notice of this action untimely, but it was also inaccurate, as Supra was without access to LENS all day Saturday, September 30, 2000 and Sunday, October 1, 2000. Furthermore, Supra was not merely unable to process orders, but was also unable to even view a single customer service record. This is especially troubling in light of the fact that just two weeks earlier, on September 16 and 17, 2000, Supra was also denied access to LENS without proper notice.

Although Supra does appreciate that there are problems with LENS that BellSouth is working to solve, these periods of inaccessibility, coupled with inadequate notice and workaround procedures that are untenable, has tremendous adverse consequences on Supra's ability to service its customers. Supra has asked BellSouth to explain why LENS is down for such lengthy periods when "maintenance" to LENS occurs. As of the date of this letter, BellSouth has not provided adequate explanations.

Moreover, whenever BellSouth makes unilateral software changes, Supra customer service representatives experience a slowdown in their ability to submit orders through LENS coupled with an increase in the number of clarifications which are system errors. Again, BellSouth has not responded to requests for an explanation of these problems. These problems may be indicative of BellSouth's failure to adequately test software changes before implementing them. BellSouth's response to Supra's problems has often been to blame them on "bugs" in the new releases and "patches" that are installed within 24-48 hours after the original installation.

Paragraphs 28.6.10.1 and 28.6.10.2 of the General Terms of the Interconnection Agreement, true copies of which are attached hereto as **Exhibit H,** provide:

> BellSouth shall provide [Supra] with the capability to have [Supra's] Customer orders input to and accepted by BellSouth's Service Order Systems outside of normal business hours, twenty-four (24) hours a day, seven (7) days a week, the same as BellSouth's Customer orders received outside of normal business orders (sic) are input and accepted.
>
> Such ordering and provisioning capability shall be provided via an electronic interface, except for scheduled electronic interface downtime. Downtime shall not be scheduled during normal business hours and shall occur during times where systems experience minimum usage.

BellSouth has not provided, nor is it providing, Supra with the capability to have Customer orders input and accepted by BellSouth's Service Order Systems 24

hours a day and 7 days a week via an electronic interface. Supra believes that BellSouth has this capability, or, at the very least, that BellSouth's capability is much greater than that of Supra. Supra demands that BellSouth provide Supra with a system which provides Supra with the same capability as BellSouth provides itself.

G. Refusal to provision Feature Group-D Switched Access Service between BellSouth Access Tandems and to provision DS1 interoffice transport facilities across interLATA boundaries.

1. Feature Group-D. Supra has ordered three Feature Group-D trunks between the BellSouth Access Tandems at WPBHFLGR02T, NDADFLGG01T and NDADFLGG03T. BellSouth has refused to provision these services on the sole basis that Section 6 of the BellSouth Access Service Tariff states that Feature Group-D services "provides a two-point electrical communications path between an I[X]C's terminal location and an end user's premises." BellSouth's refusal to provision such services violates the parties' interconnection agreement, violates federal statutory law, and is inconsistent with the BellSouth Access Tariff.

First, Paragraph 23.3 of the General Conditions of the parties' Interconnection Agreement provides:

> BellSouth will provide [Supra] with at least the capability to provide a [Supra] customer the same experience as BellSouth provides its own Customers with respect to all Local Services. The capability provided to [Supra] by BellSouth shall be in accordance with standards or other measurements that are at least equal to the level that BellSouth provides or is required to provide by law and its own internal procedures.

As BellSouth uses the same Feature Group-D configuration to service its own customers with respect to Local Services, Supra is merely requesting the ability to provide the same services to its customers. Furthermore, Paragraph 14.2.2 of Attachment 2 of the parties'

Interconnection Agreement, a true copy of which is attached hereto as **Exhibit I**, provides:

> Tandem Switching shall accept connections (including the necessary signaling and trunking interconnections) between end offices, **other tandems**, IECs, ICOs, CAPs and CLEC switches. (Emphasis added.)

Clearly, BellSouth's refusal to provision Supra's order for Feature Group-D lines between the three tandem offices violates the Interconnection Agreement.

Second, BellSouth's refusal to provision Supra's order for Feature Group-D lines is violative of 47 U.S.C. § 251(c)(2) (The Telecommunications Act of 1996), which provides that ILECs have:

> The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network –
>
> (A) for the transmission and routing of telephone exchange service and exchange access;
> (B) at any technically feasible point within the carrier's network;
> (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
> (D) on rates, terms and conditions that are just, reasonable, and nondiscriminatory basis, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.

Third, paragraph 6.2.4(5) of the BellSouth Access Service Tariff, effective June 12, 1999, a true copy of which is attached hereto as **Exhibit J**, provides:

> The Telephone Company **will establish** a trunk group or groups for the customer at end office switches, access **or TOPS tandem switches** where BellSouth SWA FGD switching is provided and where technically feasible. (Emphasis added.)

This provision makes it clear that there is no limitation on BellSouth's ability to provide the Feature Group-D service between two access tandems. BellSouth's refusal to

provision these services adversely affects Supra's ability to provide its customers with the same uninterrupted, high quality service, as does BellSouth to its customers.

2. DS1 facilities across interLATA boundaries. BellSouth has refused to provision DS1 interoffice transport facilities between BellSouth offices across interLATA boundaries, on the sole basis that BellSouth itself is prohibited from providing such services to end-users.

If BellSouth is relying solely on § 271 of the Act, such reliance is misplaced. Section 271 is intended to apply only to Bell operating companies', such as BellSouth's, ability to provide interLATA services to end-users. This is evident in that this section does not prohibit CLECs, such as Supra, from providing interLATA services to end-users. BellSouth, once it complies with the provisions of § 271, and gains proper approval, will then be able to provide interLATA services to end-users.

The intent of Congress in enacting this section was to prevent ILECs from competing in the long-distance market until it allowed competition in its own local market. It was not intended as a means to deny CLECs the ability to interconnect with already existing facilities to provide services, which they have a right to provide, to end-users. BellSouth's wrongful refusal to provide the DS1 facilities has impaired Supra's ability to provide uninterrupted, high quality service to its customers.

II. Refusal to allow audit of books, records and other documents. Paragraph 11.1.1 of the General Terms of the Agreement, a true copy of which is attached hereto as **Exhibit K**, provides:

> Subject to BellSouth's reasonable security requirements and except as may be otherwise specifically provided in this Agreement, AT&T may audit

> BellSouth's books, records and other documents once in each Contract Year for the purpose of evaluating the accuracy of BellSouth's billing and invoicing. AT&T may employ other persons or firms for this purpose. Such audit shall take place at a time and place agreed on by the Parties no later than thirty (30) days after notice thereof to BellSouth.

Supra has made numerous requests of BellSouth to audit BellSouth's books, records and other documents. BellSouth has denied all such requests claiming that such requests have been overbroad. Paragraph 11.1.3 of the General Terms of the Agreement provides:

> BellSouth shall cooperate fully in any such audit, providing reasonable access to any and all appropriate BellSouth employees and books, records and other documents reasonably necessary to assess the accuracy of BellSouth's bills.

BellSouth, in violation of the Agreement, has failed to cooperate fully in any such audit, instead choosing to argue over the scope of such. Supra is entitled to reasonable access to any and all appropriate BellSouth employees and books, records, and other documents reasonably necessary to assess the accuracy of BellSouth's bills.

5. The relief or remedy sought. Supra requests that BellSouth, on both a temporary and a permanent basis, be ordered to comply with the terms of the Agreement and specifically perform its obligations thereunder. Supra requests that it be awarded a judgment in its favor, against BellSouth, for the damages it has incurred as a result of BellSouth's violations of the parties' Agreement, including pre-judgment interest. Supra further requests that BellSouth be ordered to reimburse Supra for its costs and attorney's fees incurred in bringing this Arbitration, pursuant to Rule 16.3 of the Rules.

5. Arbitrators. The arbitrators selected by the parties are as follows;

a. M. Scott Donahey, Esq.
Tomlinson Zisko Morosoli & Maser LLP
200 Page Mill Road

Suite 200
Palo Alto, CA 94306
TEL: 650/325-8666
FAX: 650/324-1808

b. Campbell Killefer, Esq.
Venable, Baetjer and Howard
1201 New York Avenue NW
Suite 1000
Washington, DC 20005
TEL: 202/216-8196
FAX: 202/962-8300

c. John L. Estes, Esq.
Locke Liddell & Sapp
2200 Ross Avenue, Suite 2200
Dallas, TX 75201-6776
TEL: 214/740-8460
FAX: 214/740-8800

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Federal Express upon PARKEY D. JORDAN, ESQ., BellSouth Telecommunications, Inc., Legal Department – Suite 4300, 675 W. Peachtree St., Atlanta, Georgia 30375, CLEC Account Team, BellSouth Telecommunications, Inc., 9th Floor, 600 North 19th Street, Birmingham, Alabama 35203, General Attorney – COU, BellSouth Telecommunications, Inc., Suite 4300, 675 W. Peachtree Street, Atlanta, GA 30375, as well as the Arbitrators listed in paragraph 5 hereinabove, this __ day of October, 2000.

SUPRA TELCOMMUNICATIONS & INFORMATION SYSTEMS, INC.
2620 S.W. 27th Ave.
Miami, Florida 33133
Telephone: 305/443-3710
Facsimile: 305/443-9516

By:_____
BRIAN CHAIKEN, ESQ.

BEFORE THE CPR INSTITUTE FOR
DISPUTE RESOLUTION ARBITRAL TRIBUNAL

SUPRA TELECOMMUNICATIONS &
INFORMATION SYSTEMS, INC., a
Florida corporation,

Claimant,

v.

BELLSOUTH
TELECOMMUNICATIONS, INC., a
corporation,

Respondent.
_____/

AMENDMENT TO NOTICE OF ARBITRATION AND COMPLAINT

Claimant SUPRA TELECOMMUNICATIONS & INFORMATIONS SYSTEMS, INC. ("Supra"), through its undersigned counsel, files this, its Amendment to its Notice of Arbitration and Complaint, as follows:

4. A statement of the general nature of Supra's claims.

I. Failure to provide Supra and its customers with the same quality service as BellSouth provides itself and its customers. Paragraph 12.1 of the General Terms and Conditions of the parties' Interconnection Agreement ("General Terms"), provides, in pertinent part:

> In providing Services and Elements, BellSouth will provide [Supra] with the quality of service BellSouth provides itself and its end-users. BellSouth's performance under this Agreement shall provide [Supra] with the capability to meet standards or other measurements that are at least equal to the level that BellSouth provides or is required to provide by law or its own internal procedures.

Furthermore, paragraph 4 of the General Terms provides:

> In the performance of their obligations under this Agreement, the Parties shall act in good faith and consistently with the intent of the Act. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement, (including, without limitation, the obligation of the Parties to further negotiate the resolution of new or open issues under this Agreement) such action shall not be unreasonably delayed, withheld or conditioned.

BellSouth has made it impossible for Supra to perform pre-ordering, ordering, provisioning, maintenance and repair and billing functions in a manner equal to that which BellSouth is able. BellSouth, as more specifically outlined below, has either failed or flat-out refused, in violation of the parties' Interconnection Agreement, as well as in violation of the 47 U.S.C. § 201 *et seq.* (Communications Act of 1934 and the Telecommunications Act of 1996) to provide Supra with the performance and services BellSouth provides its own customers.

H. Failure to provide nondiscriminatory access to OSS which allows Supra to perform the pre-ordering, ordering, provisioning, maintenance and repair, and billing functions, in a manner which is equal to that in which BellSouth is capable.

Pursuant to Section 23.3 of the General Terms and Conditions, and Attachment 15, Section 1.2 and 10.2 of the parties' Interconnection Agreement, as well as the Telecommunications Act of 1996, and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order 96-325 (adopted August 1, 1996) ¶¶ 224 and 970 BellSouth is obligated to provide nondiscriminatory access to its OSS which would allow Supra to perform the same pre-ordering, ordering, provisioning, maintenance and repair, and billing functions which BellSouth performs. Furthermore, pursuant to such, BellSouth must provide access to its OSS which will allow Supra and its customers the same experience in the performance of such functions as enjoyed by BellSouth and its customers.

Specifically, the parties' Interconnection Agreement contains the following provisions:

> BellSouth will provide [Supra] with at least the capability to provide an [Supra] Customer the same experience as BellSouth provides its own Customers with respect to all Local Services. The capability provided to [Supra] by BellSouth shall be in accordance with standards or other measurements that are at least equal to the level that BellSouth provides or is required to provide by law and its own internal procedures. General Terms and Conditions, Section 23.3.
>
> BellSouth will provide [Supra] with the capability to provide [Supra] Customers the same ordering, provisioning intervals, and level of service experiences as BellSouth provides to its own Customers, in accordance with standards or other measurements that are at least equal to the level that BellSouth provides or is required to provide by law and its own internal procedures. General Terms and Conditions, Section 28.6.12.
>
> The functionalities identified above shall be tested by BellSouth in order to determine whether BellSouth performance meets the applicable service parity requirements, quality measures and other performance standards set forth in this Agreement. BellSouth shall make available sufficient technical staff to perform such testing. BellSouth technical staff shall be available to meet with [Supra] as necessary to facilitate testing. BellSouth and [Supra] shall mutually agree on the schedule for such testing. General Terms and Conditions, Section 28.9.2.
>
> Unless otherwise designated by [Supra], each Network Element and the interconnections between Network Elements provided by BellSouth to [Supra] shall be made available to [Supra] on a priority basis that is equal to or better than the priorities that BellSouth provides to itself, BellSouth's own Customers, to a BellSouth affiliate or to any other entity for the same Network Element. General Terms and Conditions, Section 30.10.4.
>
> Until such time as a gateway addressing Pre-Ordering and Provisioning interfaces is established, BellSouth shall provide [Supra] Customers with the same quality of service BellSouth provides itself, a subsidiary, an Affiliate or any other customer. Attachment 2, Section 16.8, in part.
>
> Throughout the term of this Agreement, the quality of the technology, equipment, facilities, processes, and techniques (including, without limitation, such new architecture, equipment, facilities, and interfaces as BellSouth may deploy) that BellSouth provides to [Supra] under this Agreement shall be in accordance with standards or other measurements that are at least equal to the highest level that BellSouth provides or is

required to provide by law and its own internal procedures. Attachment 4, Section 1.2.

For all Local Services, Network Elements and Combinations ordered under this Agreement, BellSouth will provide [Supra] and its customers ordering and provisioning, maintenance, and repair and pre-ordering services within the same level and quality of service available to BellSouth, its Affiliates, and its customers. Attachment 15, Section 1.2.

This Attachment 15 reflects compromises on the part of both AT&T and BellSouth. By accepting this Attachment 15, AT&T does not waive its right to non-discriminatory access to Operations Support Systems of BellSouth. Attachment 15, Section 10.1.

BellSouth has intentionally and willfully refused to provide Supra with nondiscriminatory access to its OSS. BellSouth has intentionally and willfully refused to provide Supra and its customers ordering and provisioning, maintenance, and repair and pre-ordering services within the same level and quality provided to BellSouth, its Affiliates, and its customers. BellSouth has refused to make available each Network Element and the interconnections between Network Elements that BellSouth provides to Supra on a priority basis that is equal to or better than the priorities that BellSouth provides to itself, BellSouth's own Customers, to a BellSouth affiliate or to any other entity for the same Network Element.

Pursuant to FCC Order 93-325 (First Report and Order), paragraph 516 and FCC Order 99-238 (Third Report and Order) page 12, OSS has been defined as a Network Element which must be unbundled by an ILEC, and indeed the U.S. Supreme Court has affirmed the FCC's definition of OSS functions as UNEs in AT&T Corp. v. Iowa Utilities Board, 525 U.S. at 386-87; 119 S.Ct. at 733-734. Also, pursuant to 47 CFR §§ 51.307, 51.309, 51.311 and 51.313, BellSouth must provide nondiscriminatory access to its network elements on an unrestricted basis. BellSouth has refused to do so.

As a direct and proximate result of BellSouth's willful and intentional breaches of the parties' agreement, Supra has been unable to provide service to its customers in the same time and manner that BellSouth provides to its customers. As a direct and proximate result, Supra has lost customers, lost potential customers, lost goodwill, and has been forced to expend hundreds of thousands of dollars in order to be able to provide any services to its customers. But for BellSouth's intentional breaches of the parties' agreement, Supra would not have been forced to expend significant amounts of time and money to test, implement and troubleshoot the faulty OSS which BellSouth has made available to Supra.

5. **The relief or remedy sought.** Supra seeks the following relief:

1. Nondiscriminatory access, in BellSouth's entire service area, to the following operations support functions: pre-ordering, ordering, provisioning, maintenance and repair, and billing and any internal gateway systems and personnel that BellSouth employs in performing the above-referenced functions for its customers. Specifically, Supra seeks nondiscriminatory access to an interface which:

a. Allows Supra to submit orders in the same format as does BellSouth;

b. Allows Supra the same edit-checking capability as does BellSouth;

c. Allows Supra to submit its orders directly into SOCS, as does BellSouth;

d. Allows Supra to provide service to customers in the same timely manner as does BellSouth, including the ability to provision same-day service to customers who have QuickService capability at their

address;

e. Allows Supra to access the same databases as does BellSouth in the same manner in which BellSouth does, including downloads of the following databases: RSAG, LFACS, CRIS, BOCRIS, COSMOS and MARCH, so that Supra may have access to such whenever the BellSouth electronic interface is down;

f. Allows Supra to reserve up to 100 telephone numbers per NPA-NXX at Supra's request, for Supra's sole use, as does BellSouth;

g. Allows Supra to access BellSouth's Toll Free Number Database in the same manner in which BellSouth has such access;

2. That BellSouth provision to Supra Feature Group D Trunks or their equivalent between the BellSouth Access Tandems at WPBHFLGR02T, NDADFLGG01T and NDADFLGG03T, and all other locations as requested in the future.

3. That BellSouth provision DS1 interoffice transport facilities to Supra between BellSouth offices across intraLATA and interLATA boundaries.

4. That BellSouth cooperate and provide the necessary records, books and documents to allow Supra to audit for the purpose of evaluating the accuracy of BellSouth's billing and invoicing.

5. That Supra be awarded a judgment in its favor, against BellSouth, for the actual, consequential and special damages it has incurred as a result of BellSouth's willful and intentional violations of the parties' Agreement, as well as pursuant to 47 U.S.C. § 202, including pre-judgment interest. Supra further requests that BellSouth be

ordered to reimburse Supra for its costs and attorney's fees incurred in bringing this Arbitration, pursuant to Rule 16.3 of the CPR Rules.

6. That an efficient enforcement mechanism be put into place to ensure BellSouth's compliance with the Order of this panel. Supra suggests that a liquidated damages provision be set forth in the Order providing for damages in the amount of $10,000 a day for each day BellSouth refuses to allow Supra the items requested in this proceeding and set forth in the contract between the parties; $100,000 for each intentional act, including when an act is but one of a series of acts, to inhibit competition, engage in fraud or otherwise intentionally cause harm to Supra, including harm to reputation; and allow Supra to recover from BellSouth all costs incurred in any effort to enforce this panel's order. If BellSouth is not in full compliance of the panel's order within 30 days, aforesaid charges shall be retroactive to the date the agreement between the parties was originally signed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was served by e-mail and facsimile upon Parkey D. Jordan, Esq. (404) 658-9022, Phillip Carver, Esq. (404) 614-4054, and Nancy White, Esq. (305) 375-0209 on this 25 day of July, 2001.

SUPRA TELCOMMUNICATIONS & INFORMATION SYSTEMS, INC.
2620 S.W. 27th Ave.
Miami, Florida 33133
Telephone: 305/443-3710
Facsimile: 305/443-1078

By:_____
BRIAN CHAIKEN, ESQ.

BEFORE THE CPR INSTITUTE FOR
DISPUTE RESOLUTION ARBITRATION TRIBUNAL

In re: Complaint of BellSouth Telecommunications, Inc., against Supra Telecommunications and Information Systems, Inc., for Resolution of Payment Dispute	Filed: January 30, 2001

NOTICE OF ARBITRATION AND COMPLAINT

BellSouth Telecommunications, Inc., ("BellSouth") pursuant to an agreement between the Parties and Rule 3 of the CPR Rules for Non-Administered Arbitration ("Rules"), hereby provides notice to Supra Telecommunications and Information Systems, Inc., ("Supra") of its complaint and request for binding arbitration and an order from the arbitration panel (the "Tribunal") selected by BellSouth and Supra pursuant to their agreement, to require Supra to pay its delinquent and future bills for services provided to Supra by BellSouth. In support of its request, BellSouth alleges as follows:

Background

1. BellSouth is an incumbent local exchange company (ILEC) incorporated in the state of Georgia lawfully doing business in the state of Florida and eight other states.

2. BellSouth's principal place of business in the state of Florida is 150 West Flagler Street, Suite 1910, Miami Florida, 33130.

3. Pleadings and process in this matter shall be served on:

Harry O. Thomas
Patrick K. Wiggins
Karen Asher-Cohen
Katz, Kutter, Haigler, Alderman, Bryant & Yon, P.A.
106 East College Avenue, 12th Floor
Tallahassee, Florida 32301
Telephone 850 224 9634
Facsimile 850 222 0103
Email pamelak@katzlaw.com

And

Nancy B. White
BellSouth Telecommunications, Inc.
Legal Department
Museum Tower, Suite 1910
150 West Flagler Street
Miami, Florida 33130
Email nancy.white@bellsouth.com

4. Supra is a competitive local exchange company ("CLEC") incorporated in Florida, certified by the Florida Public Service Commission (the "Commission") to provide local exchange service within Florida. Upon information and belief, Supra is not certified to provide local exchange service in any other state in BellSouth's region. Supra's principal place of business in Florida is 2620 S.W. 27th Avenue, Miami, Florida 33133. Supra's registered agent for service of process is Olukayode Ramos, 2620 S.W. 27th Avenue, Miami, Florida 33133.

5. Under the Telecommunications Act of 1996 (the "1996 Act"), BellSouth has the duty to provide "wholesale" services to its competitors. In general, BellSouth provides to CLECs discounted "end-to-end" services, *i.e.*, services available for resale, and facilities called unbundled network elements ("UNEs"), which are priced using a cost-based methodology.

6. CLECs use these discounted end-to-end services and UNEs in competing with BellSouth and other CLECs for customers. The terms and conditions for purchasing services for resale or leasing UNEs, or both, are provided in individual interconnection agreements between BellSouth and the various CLECs.

7. The 1996 Act requires CLECs and ILECs to negotiate interconnection agreements and submit such agreements to state public service commissions for approval. In the alternative, a CLEC may adopt as its own the existing interconnection agreement of another CLEC. Supra adopted the AT& T agreement[1], with an effective date of October 5, 1999. The adoption agreement was filed with the Florida Public Service Commission on November 10, 1999, and approved by the Commission on November 30, 1999. Supra's adoption agreement (the AT&T agreement) shall be referred to as the "Agreement" for purposes of this complaint. Portions of the Agreement relevant to this complaint are attached as Exhibit 1.

8. On information and belief, for all periods pertinent to this complaint, Supra competes with BellSouth and other CLECs primarily through the resale of BellSouth end-to-end services under the Agreement. Under a resale arrangement, BellSouth is obligated to provide underlying service. While the end user is obligated to pay Supra for the retail service, Supra is obligated to pay BellSouth for provisioning the underlying service.

Material Breach of Agreement

9. Under the Agreement, specifically Sections 23 and 24 of the General Terms and Conditions, BellSouth provides services available for resale to Supra at the prices set forth in

[1] The AT&T agreement contains both negotiated and arbitrated provisions. It was approved by the Commission in Order No. PSC-97-0724-FOF-TP, issued June 19. 1997.

Part IV of the Agreement's General Terms and Conditions. Supra has violated Attachment 6, Section 13 of the Agreement by refusing to pay non-disputed sums.

10. Supra currently owes BellSouth a past due amount of $2,891,362.51 for resale services ordered by Supra, properly rendered and billed by BellSouth through December 2000. In addition, Supra owes BellSouth a current amount of $907,728.58. Since December 1999, Supra has made no payments whatsoever, while continuing to accept and profit from BellSouth's services. A spreadsheet summarizing bills as well as correspondence regarding BellSouth's attempts to obtain payment from Supra for the services it has received are attached as Exhibit 2. BellSouth continues to provide service to Supra pursuant to the Agreement, despite Supra's failure to make the payments it owes.

11. Pursuant to Attachment 6, Section 14, of the Agreement, BellSouth followed the appropriate escalation procedures in an attempt to resolve the parties' billing dispute.

12. Pursuant to Attachment 1, section 3.1 of the Agreement, BellSouth submitted this dispute to the Inter-Company Review Board for resolution on November 16, 2000. The Board convened to discuss the dispute on December 7, 2000, but was unable to resolve the dispute.

13. Pursuant to Attachment 1, section 4 of the Agreement, BellSouth, therefore, initiates this arbitration and requests that the Tribunal order Supra to pay all amounts due on its account within 30 days and to timely make payments against BellSouth's future bills and determine that, in the event of Supra's failure to comply with the Tribunal's order in favor of BellSouth, BellSouth may rightfully terminate Supra's service.

14. BellSouth further requests that pursuant to the Rules the Tribunal award it attorney's fees and costs incurred in this arbitration.

Demand for Relief

WHEREFORE, BellSouth requests that the Tribunal find in BellSouth's favor on its complaint, order Supra to pay its delinquent bills within 30 days, and timely pay its future bills. Further, BellSouth requests that the Tribunal determine that, in the event of Supra's failure to comply with the Tribunal's order in favor of BellSouth, BellSouth may rightfully terminate Supra's service. BellSouth also requests that pursuant to the Rules, the Tribunal award it attorney's fees and costs incurred in this arbitration.

Respectfully submitted this 30th day of January, 2001.

Harry O. Thomas
Patrick K. Wiggins
Karen Asher-Cohen
Katz, Kutter, Haigler, Alderman, Bryant & Yon, P.A.
106 East College Avenue, 12th Floor
Tallahassee, Florida 32301
Telephone 850 224 9634
Facsimile 850 222 0103

Attorneys for BellSouth Telecommunications, Inc.

CONFIDENTIAL

DECLASSIFIED

9.17.05

BEFORE THE CPR INSTITUTE FOR DISPUTE RESOLUTION ARBITRATION TRIBUNAL

In re: Complaint of BellSouth Telecommunications, Inc., against Supra Telecommunications and Information Systems, Inc., for Resolution of Payment Dispute and Counterclaim of Supra Telecommunications and Information Systems, Inc. against BellSouth Telecommunications, Inc. for violations of the parties' Interconnection Agreement, Communications Act, as amended by the Telecommunications Act of 1996 (codified at 47 U.S.C.) and Florida Statutes.	Filed: February 20, 2001

NOTICE OF DEFENSE AND COUNTERCLAIM

NOW COMES Supra Telecommunications & Information Systems, Inc. ("Supra"), by and through its undersigned counsel, pursuant to Rule 3 of the CPR Rules for Non-Administered Arbitration, and for its Notice of Defense and Counterclaim, denying all allegations of BellSouth Telecommunications, Inc.'s ("BellSouth") Complaint not specifically admitted, states as follows:

I. NOTICE OF DEFENSE

1. Supra admits the allegations contained in paragraphs 2 and 3.

2. Supra denies the allegations contained in paragraph 8, and affirmatively states that it competes with BellSouth primarily through the use of Unbundled Services and Elements ("UNEs"), combined to provide telephone services to end users. Supra does not compete with other Competitive Local Exchange Carriers ("CLECs") as BellSouth has made it impossible by its refusal to provide Supra with access to the customer service records of those CLEC customers in the same manner that BellSouth is able to view and review every competitors customer service records.

SUPRA

EXHIBIT: OAR 6

(Part 5 of 7)
DN 09249-01)

3. Supra denies the remaining allegations contained in the Complaint, except as to those allegations which are the same as those set forth in Supra's Counterclaim hereinbelow.

II. AFFIRMATIVE DEFENSES

1. For its First Affirmative Defense, Supra claims that to the extent that it is found to be liable for any amounts, Supra is entitled to a set-off, as Supra has overpaid BellSouth as a result of BellSouth's wrongfully charged end user common line charges, wrongfully charged switching charges, and wrongfully billed services and elements. Furthermore, Supra is entitled to a set-off as a result of BellSouth's having wrongfully collected access charge revenues and reciprocal compensation belonging to Supra from other carriers. Additionally, Supra is entitled to a corrective payment and adjustments pursuant to Part IV of the General Terms and Conditions and Attachment 6 of the agreement and Supra's claims more fully set forth in its Counterclaim.

2. For its Second Affirmative Defense, Supra claims BellSouth is barred from receiving the requested relief due to the *doctrine of unclean hands*.

WHEREFORE, Supra Telecommunications & Information Systems, Inc. respectfully requests that this Honorable Arbitral Panel deny BellSouth all of the relief it requested in its Complaint.

III. COUNTERCLAIM

A. STATEMENT OF THE GENERAL NATURE OF SUPRA'S CLAIMS

The following is a summary of Supra's claims. Each point will be discussed in greater detail hereinbelow and in written testimonies to be filed in this proceeding. In addition to the specific statutory, decisional and contractual provisions set forth herein, BellSouth's willful and intentional, bad faith violations of the requirements and purposes of Sections 251 and 252 of the

Telecommunications Act, as well as the Good Faith Performance requirements of Section 4 of the General Terms and Conditions of the Interconnection Agreement 2, are applicable to every claim set forth herein.

I. BellSouth's willful and intentional refusal to provide Supra and its customers with a) the same services (including personnel), b) unbundled network (elements) and combinations, and c) ancillary functions (including collocation and rights of way) on a priority that is at least equal in quality or better than the priorities that BellSouth provides in the BellSouth network to itself, BellSouth's own customers, to a BellSouth affiliate, to a BellSouth subsidiary or to any other party (including wrongfully overpriced collocation start-up charges).

II. BellSouth's wrongful billing for services and unbundled access (elements), and BellSouth's refusal to reimburse Supra for wrongfully billed amounts, and late charges owing to Supra.

III. BellSouth's wrongful denial of Supra's access to OSS during the pendency of a billing dispute.

IV. BellSouth's violations of the Communications Acts of 1934 and the Telecommunications Act of 1996.

B. BRIEF INTRODUCTION – BACKGROUND FACTS

1. Supra is a minority-owned alternative local exchange carrier incorporated in the state of Florida lawfully doing business in 46 other states with applications pending in 4 states. Supra is certified to provide telecommunications services in the state of Florida and 21 other states including Georgia, Kentucky and Mississippi with applications pending in 7 states. Supra's principal place of business in Florida is 2620 S.W. 27th Ave., Miami, Florida 33133. Supra's

registered agent for service of process is Esther Sunday, 2620 S.W. 27th Ave., Miami, Florida 33133.

2. BellSouth is an incumbent local exchange carrier as defined by Section 251(h) of the Telecommunications Act of 1996. BellSouth claims its principal place of business in the state of Florida to be 150 W. Flagler Street, Suite 1910, Miami, Florida 33130. BellSouth remains the monopoly provider of telecommunications services throughout its service territories of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. Furthermore, BellSouth has maintained its relationship with other Incumbent Local Exchange Carriers ("ILECs") - SBC, Verizon and QWest/USWest. Sometime in 1999, BellSouth purchased a 10% stake in Interexchange Carrier (IXC) Qwest and recently, merged its wireless assets with those of SBC to form Cingular Wireless.

3. Pleadings and process in this matter shall be served upon:

Brian Chaiken
Adenet Medacier
Paul D. Turner
Supra Telecom
Legal Department
2620 S.W. 27th Ave.
Miami, Florida 33133
Telephone: 305/476-4248
Facsimile: 305/443-1078
Email: bchaiken@stis.com
Amedacier@stis.com
Pturner@stis.com

4. Pursuant to Attachment 1, section 3.1 of the Agreement, Supra submitted the disputes contained herein to the Inter-Company Review Board for resolution. The Board convened to discuss the disputes set forth herein on December 7, 2000, but was unable to resolve them.

5. The separate arbitration agreement that is involved in this proceeding is contained in Attachment 1 of the AT&T/BST Interconnection Agreement, adopted by Supra, a true copy of which has previously been provided to this Tribunal.

6. In 1996, the United States Congress passed the 1996 Telecommunications Act ("1996 Act")(47 U.S.C. § 151, *et seq.*), which, states in its preamble, that this is:

> An Act to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.

The Communications Act as amended by the 1996 Act (codified at 47 U.S.C. Sec. 151 *et seq.*) contains detailed provisions governing the relationship between incumbent local exchange carriers, their new competition and telecommunications market-opening provisions. It gives the Federal Communications Commission ("FCC") and state commissions significant responsibilities for implementing the 1996 Act. The goal of the State and Federal laws are the same - to secure for consumers new choices, lower prices, and advanced telecommunications services that fair competition will bring to the telecommunications market.

Since the passage of the 1996 Act, the FCC, state Public Service Commissions and the courts have engaged in numerous proceedings for the implementation of the market-opening provisions of the Communications Act as amended by the 1996 Act as "the result (of competition) is often lower prices for the consumer. Of course, competition can lead to disputes over how, when and where parties may compete". According to the FCC:

> [A]t the core of the Act's market-opening provisions is section 251. In section 251, Congress sought to open local telecommunications markets to competition by, among other things, reducing economic and operational advantages possessed by incumbents.[1]

[1] See Advanced Services Order (ASO). CC Docket No. 98-147, (adopted March 18, 1999) at ¶ 13.

Furthermore, the FCC stated in that Order that:

> **Section 251 requires incumbent LECs to share their networks in a manner that enables competitors to choose among three methods of entry – the construction of new networks, the use of unbundled elements of the incumbent's network, and resale of the incumbent's retail services.** Section 251(a) requires all "telecommunications carriers" to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Section 251(c)(3) requires incumbent LECs to provide nondiscriminatory access to unbundled network elements. In addition, section 251(c)(6) imposes an obligation on incumbent LECs "to provide, on rates, terms and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements. . . ." Finally, for competitors that seek to compete by reselling the incumbent LEC's services, section 251(c)(4) requires incumbent LECs to offer for resale at wholesale rates "any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."

See Advances First Report and Order. CC Docket No. 98-147, (adopted March 18, 1999) at ¶14. (Emphasis added.)

7. Since January 1997, Supra has tried unsuccessfully to secure nondiscriminatory access to BellSouth's services, unbundled network elements, facilities, combinations, interconnection, personnel and ancillary functions including collocation and rights of way, in order to enter the telecommunications services market and begin the provision of national new innovative advanced telecommunications services.

8. Supra's Chief Executive Officer, Mr. Ramos, in or about January 1997, first contacted BellSouth's Mr. Greg Beck regarding the signing of a mutually acceptable Interconnection Agreement between the two companies. At that time, BellSouth presented "a must accept" Resale Agreement and stated that Supra was not allowed to change a single word in the proposed agreement. This same "take it or leave it" approach was used by BellSouth in subsequent agreements that were executed in 1997. The Resale Agreement was grudgingly executed by Supra on May 19, 1997 covering BellSouth's service territories of Alabama, Florida, Georgia,

Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. The Resale Agreement is attached as **Supra Exhibit 1**. BellSouth petitioned all the state Public Service Commissions in its service areas for approval of the Resale Agreement. Such approvals have value to BellSouth as BellSouth uses such agreements to demonstrate that it has fulfilled its obligations under the Communications Act as amended by the 1996 Act, so that BellSouth may seek approval from federal and state regulators, including the Department of Justice, to enter the long-distance market.

9. On or about June 10, 1997, BellSouth entered into an Interconnection Agreement with AT&T Communications of the Southern States, Inc. (AT&T Agreement).

10. Supra and BellSouth subsequently entered into a collocation agreement, dated July 24, 1997 also covering BellSouth's service territories of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. A true copy of this agreement is attached hereto as **Supra Exhibit 2.**

11. In or about September 1997, Mr. Ramos requested of Mr. Patrick Finlen, one of BellSouth's negotiators, that Supra be allowed to adopt the AT&T Agreement pursuant to Section 252(i) of the Communications Act as amended by the 1996 Act. The AT&T Interconnection Agreement is inclusive of Resale, Collocation and Interconnection.

12. In response to Mr. Ramos' request, in or about October 1997, Mr. Finlen sent Supra a completely different agreement. Mr. Finlen, at that time, stated that the agreement he sent to Supra was, in fact, the AT&T Agreement.

13. In reliance on Mr. Finlen's statement that the agreement he sent to Supra was the AT&T Agreement, Mr. Ramos executed the different agreement on or about October 23, 1997.

A true copy of this agreement, which will be referred to as the "Interconnection Agreement 1," is attached as **Supra Exhibit 3.**

14. Not only did BellSouth fail to provide Supra with the true BellSouth/AT&T Interconnection Agreement, but it also *materially altered* the agreement *before* filing it with the state Commissions in its service areas for approval. The most significant alteration made by BellSouth was the deletion of those provisions in Attachment 2 which imposed the obligation on BellSouth to provide Supra with Unbundled Network Element Combinations. Paragraph 1 of Attachment 11 was also modified to delete any reference to BellSouth providing pricing of "Combinations". A true copy of the pertinent portion of this agreement, which will be referred to as the "Fraudulent Agreement" is attached as **Supra Exhibit 4.** None of the alterations made by BellSouth in the "Fraudulent Agreement" had ever been agreed to by Supra. It is no coincidence that the fraudulent alterations were made after the October 14, 1997 opinion in Iowa Utilities Board v. Federal Communications Commission, 120 F. 3d 753 (8th Cir. 1997). That opinion arguably called into question whether an ILEC was obligated to provide combined UNEs to a CLEC. Although the United States Supreme Court has since reversed the Eight Circuit on this issue, at that time BellSouth would not have been under an obligation to provide UNEs unless it had agreed to do so by contract.

15. Since November 1997, BellSouth has flat out refused to allow Supra to order UNEs. Not unsurprisingly, up until Supra discovered that BellSouth materially altered their 1997 interconnection agreement, BellSouth claimed that it had no contractual obligation to provide Supra with UNEs. Even after the corrected version was filed with the state Commissions, BellSouth still refused to allow Supra to order UNEs, or to provision UNEs to Supra. This will be discussed in greater detail hereinbelow.

16. When Supra eventually discovered that the interconnection agreement between the two companies had been fraudulently altered before it was brought to the six state Commissions for approval by BellSouth, Supra contacted these Commissions and filed a petition to set aside those Commissions' Orders approving the Fraudulent Agreement. See Florida PSC Docket No. 981832-TP, Louisiana PSC Docket No U-24098, Kentucky Case No. 99-133, Georgia Docket No. 10331-U and 8338-U, Mississippi Docket #1999-AD-374 and South Carolina Docket No. 1999-200-2. The Florida Commission stated in its Order No. PSC-99-1092-FOF-TP that "matters of contract fraud and gross negligence in contracts are matters for the courts, not this Commission" and directed the parties "to bring a corrected agreement to the Commission." The Georgia Commission Order issued on March 16, 1999 was substantially similar to the FPSC Order. Due to its limited resources, Supra was forced to withdraw the actions in Mississippi, South Carolina, Kentucky and Louisiana.

17. Pursuant to the FPSC Order No. PSC-99-1092-FOF-TP dated June 1, 1999 and other state PSC Orders, on or about August 1999, the parties executed and filed a correct version of the Interconnection Agreement, the terms of which were the same as those set forth in the proposed interconnection agreement. This correct version of the interconnection agreement was dated as being effective October 23, 1997. The correct version is the parties Interconnection Agreement 1 marked as **Supra Exhibit 3.** It was at this point that Supra first learned that BellSouth did not provide it with the AT&T/BellSouth Agreement.

18. On or about October 5, 1999, BellSouth *finally* allowed Supra to adopt the BellSouth/AT&T Interconnection Agreement pursuant to Section 252(i) of the Telecommunications Act. This agreement will hereafter be referred to as the parties Interconnection Agreement 2 and has been previously provided to BellSouth and the Arbitral

Tribunal as part of the previous proceeding.

C. SPECIFIC CLAIMS

I. BellSouth's willful and intentional refusal to provide Supra with the same services, unbundled access (elements) and combinations, and ancillary functions (collocation and rights of way) that BellSouth provides itself.

(A) Same Services.

19. Supra made several written requests to BellSouth for the provision of services, specifically, CENTREX, ISDN BRI, Dialing Parity, Pay Phone and Branding pursuant to Sections 1, 19, 23.1, 23.2, 23.2.1, 23.3, 24.3.1.1, 25.1, 25.1.1, and 25.12 of the General Terms and Conditions.

20. With respect to Supra's request for CENTREX, Section 25.1 of the General Terms and Conditions requires BellSouth to provide ". . .the entire set of features, any single feature, or any combination of features which BellSouth has the capability to provide . . ."

21. With respect to Supra's request for ISDN BRI, Section 23.1 of the General Terms and Conditions requires BellSouth to " . . . make available to [Supra] for resale . . . any Telecommunications Service that BellSouth currently provides, or may offer hereafter."

22. BellSouth has continually refused to provide and/or make available any of these services, CENTREX, ISDN BRI, Dialing Parity, Pay Phone, and Branding.

23. BellSouth's actions in refusing to provide Supra with contractual services is a violation of not only the parties' Interconnection Agreement 2, but also 47 USC Sections 251 and 252 and FCC and FPSC rules.

24. As a direct and proximate result of BellSouth's refusal to provide Supra with such

services, Supra has been damaged.

(B) Unbundled Network Elements and Combinations.

25. Supra made several written requests to BellSouth for the provision of UNE Combos, including access to loop qualification information, pursuant to Section 1 and Part II of the General Terms and Conditions; Attachment 2 of the Interconnection Agreement 2; and 47 CFR Section 51.307. True copies of two such letters, dated September 9, 1997 and June 22, 1998 are attached hereto as **Supra Exhibits 5a and 5b.**

26. 47 CFR Section 51.307(a), entitled "Duty to provide access on an unbundled basis to network elements," provides:

> An incumbent LEC shall provide, to a requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of any agreement, the requirements of sections 251 and 252 of the Act, and the Commission's rules.

In addition, the Act, the FCC rules, and the Interconnection Agreement 2 all require BellSouth to provide UNEs as discussed in greater detail hereinbelow.

27. On or about June 25, 1998 and July 2, 1998, Mr. Marcus Cathey, as Senior Assistant Vice President of BellSouth, replied to Supra stating that BellSouth had no contractual or statutory obligation to provide Supra with UNE Combos. True copies of the June 25 and July 2, 1998 letters are attached hereto as **Supra Exhibits 6a and 6b.** Moreover, Mr. Cathey's letters stated that any future agreement to combine such elements would include charges not authorized by either the FCC or the FPSC. On August 3, 1998, Mr. David Nilson of Supra responded to Mr. Cathey's letter **(Supra Exhibit 7)** detailing specific contract language from section 2 of Supra's signed copy of the Interconnection agreement **(Supra Exhibit 3)** and to Florida Public Service

Commission Order PSC-98-0810-FOF-TP which ordered that the UNE combinations must be provided, set modified rates for the non-recurring charges, and required BellSouth to perform the re-combinations. Telephone calls with Mr. Cathey at or around that time indicated that his section 2 was different than Supra's section 2. After requesting a copy of the agreement BellSouth filed, the alterations were suddenly obvious to Supra.

28. When confronted with the evidence of alteration and fraud, BellSouth admitted that the agreement filed did not reflect the parties' agreement. Please see a true copy of Ms. Summerlin's letter dated July 10, 1998 attached hereto as **Supra Exhibit 8,** and a true copy of Ms. Peed's letter dated August 21, 1998 attached hereto as **Supra Exhibit 9**. BellSouth further stated that *even if* the provisions providing access to recombined UNEs were restored, it would not provide such UNEs without payment of certain fees which the FCC and the FPSC[2] had ruled could not be charged, such ruling having been recently affirmed by the United States Supreme Court, AT&T vs. Iowa Utilities Board, 525 U.S. 366 (1999). Despite BellSouth's claim that the switching of agreements was inadvertent and unintentional, Supra contends that the switching of agreements was intentional and for the purpose of (1) delaying Supra's ability to provision telecommunication services through the use of UNEs and UNE Combos pursuant to the parties' Interconnection Agreement, specifically Section 1 and Part II of the General Terms and Conditions as well as Attachment 2; (2) subverting the FPSC's ruling on non-recurring conversion costs, thereby charging CLECs additional, unwarranted amounts and creating an unnecessary barrier to entry; and (3) preventing Supra from being classified as a facilities-based provider entitled to cost based products, access line charges[3] from long distance companies, and EUCL charges, each one a substantial revenue source that Supra has been illegally deprived of.

[2] PSC-98-0810-FOF-TP pages 30-43 with FPSC conclusion on pages 39 and 43.
[3] PSC-98-0810-FOF-TP pages 26-30 with FPSC conclusion on pages 29 and 30.

BellSouth was aware of the loss of this revenue to CLECs and fought a losing battle to retain these revenues from CLECs purchasing UNE combinations.[4]

29. With respect to Supra's request for UNEs, Section 30.1 of the General Terms and Conditions requires BellSouth to " . . . offer Network Elements to [Supra] on an unbundled basis . . ." additionally, Section 30.9 of the General Terms and Conditions not only indicates that the parties " . . . agree that the Network Elements identified in Attachment 2 are not exclusive . . ." but also indicates that if " . . . BellSouth provides any Network Element that is not identified in this Agreement, to itself, to its own Customers, to a BellSouth affiliate or to any other entity, BellSouth will provide the same Network Element to [Supra]. . . " and pursuant to Section 30.10.4,

> Unless otherwise designated by [Supra], each Network Element and the interconnections between Network Elements provided by BellSouth to [Supra] shall be made available to [Supra] on a priority basis that is equal to or better than the priorities that BellSouth provides to itself, BellSouth's own Customers, to a BellSouth affiliate or to any other entity for the same Network Element.

As such, BellSouth's refusal to provide UNEs that are specifically identified or currently available or provided to any other entity on a priority basis that is *equal to or better than* the priority to any other entity is a violation of not only the parties' Interconnection Agreements 1 and 2, but also the Communications Act as amended by the 1996 Act (as interpreted by the FCC, the FPSC and Supreme Court). Meanwhile, BellSouth continues to represent to the FCC that it provides UNEs and UNE Combos contained in its contracts. In response to the FCC DA 99-532 released on March 17, 1999, BellSouth stated in part that:

> *Until such time that as the FCC adopts new definitions of unbundled network elements, BellSouth will continue to provide every unbundled network element in its contracts, which affords access to all those currently listed in Section 51.319 of the Commission's Rules.*

[4] Id.

A true copy of that letter is attached hereto as **Supra Exhibit 10.**

30. It should be noted that the difference between a carrier providing services via resale versus providing services via UNEs is merely a billing difference. Absolutely no physical changes are required to be made to the network in order to switch from resale to UNEs. See FPSC Order No. 98-0810 - FOF – TP, pages 53 – 60 with FPSC ruling on pages 57-60.

31. Loop qualification information allows a telephone service provider to know what types of services and features may be made available to a customer at a certain location. It is necessary in order to easily determine availability of advanced services, such as xDSL. Supra has made several written requests to BellSouth for loop qualification information as well as other information pertaining to central office records. Please see **Supra Exhibit 11** (letter dated 01/14/00 to M. Cathey).

32. BellSouth's response to this request was to inform Supra that it has no statutory or contractual obligation to provide such information to Supra.

33. With respect to BellSouth's position, Section 30.10.3.2 of the General Terms and Conditions requires BellSouth " . . . to work cooperatively with [Supra] to provide Network Elements that will meet [Supra's] needs in providing services to its Customers[,]" and 47 CFR Section 51.307(e) requires that ". . . BellSouth shall provide to a requesting telecommunications carrier technical information about . . . [BellSouth's] network facilities sufficient to allow the requesting carrier to achieve access to [UNEs]. . ." As such, Supra has requested certain information from BellSouth that will help Supra in identifying UNEs with respect to providing services to its customers, and BellSouth has refused to assist. Additionally, should these Network Elements be new or revised Network Elements, Section 30.9 requires BellSouth to ". . . notify [Supra] of the existence of and the technical characteristics of the new or revised Network

Element." In either event, BellSouth's actions are violations of the Good Faith requirements of the Act and FCC rules as well as the Good Faith Performance requirements of Section 4 of the General Terms and Conditions.

34. Meanwhile, BellSouth is providing the information requested by Supra to BellSouth's xDSL affiliate. In fact, BellSouth has requested that Supra enter into a separate contract which would require Supra to pay excessive fees in order to obtain such information. This is a direct violation of the parties Interconnection Agreement 2 as well as federal and state rules, and as a direct and proximate result of BellSouth's refusal to provide loop qualification information, Supra is unable to provide enhanced telecommunications services, including, but not limited to, fast access to the Internet – xDSL, and is placed at a competitive disadvantage.

35. Furthermore, BellSouth has refused to make the cost-based xDSL transport UNE[5] available to Supra. Instead, the transport portion, alone, of the product sold by BellSouth's affiliate BellSouth.Net is being sold to CLECs for only approximately $10.00 less. To create a comparable product, the CLEC must add BellSouth ATM facilities, internet bandwidth, equipment such as routers, web and email servers, customer and technical support and profit to the minute difference between transport cost and the affiliate price. Such pricing makes it economically infeasible for a CLEC to compete with BellSouth.Net. This disparity is too huge for BellSouth to economically justify the UNE as cost-based without violating affiliate relationship laws.

(C) Ancillary Functions (Collocation and Rights of Way).

36. In order to bring down its operational costs, reduce its over-dependence on BellSouth's network and provide advanced telecommunications services, utilize cost-based

elements Supra has attempted to deploy a facilities-based network for over three years by collocating its equipment in BellSouth Central Offices. Currently, Supra has applied and secured space in approximately 23 of BellSouth's central offices, but has been unable to proceed with the collocation arrangement because of BellSouth's unreasonable, unjust, discriminatory charges, terms and conditions.

37. Pursuant to Sections 1, 32, 32.2, 33.2, 33.3.1, 33.4, 38.1 of the General Terms and Conditions; Attachment 3, Sections 2.2.1 and 2.2.6 of the Interconnection Agreement 2; 47 CFR Section 51.323; FPSC Order Nos. PSC-98-1417-PCO-TP and PSC-99-0060-FOF-TP in CC Docket No. 980800-TP (issued on January 6, 1999); and other applicable Federal and State law, Supra has the right to collocate its equipment in BellSouth's Central Offices.

38. In or about April 1998, Supra submitted its first requests to collocate equipment in BellSouth's Central Offices pursuant to Section 1 of the General Terms and Conditions which states that ". . . BellSouth agrees to provide . . . Ancillary Functions to [Supra]. . ." with Ancillary Functions defined in Section 32.1 of the General Terms and Conditions to include Collocation, and 47 CFR Section 51.323(a) which requires that "[a]n incumbent LEC shall provide physical collocation and virtual collocation to requesting telecommunications carriers." Since that date, BellSouth has engaged in a pattern of unwarranted and unexplained rejections, excuses including space exhaustion, claimed FPSC exemptions which never existed, over-pricing, and undue delay, all aimed at preventing Supra from collocating its equipment. Supra has been forced to expend its limited resources to litigate virtually every issue against BellSouth regarding collocation beginning with space exhaustion, priority issue and provisioning timeline. Eventually Supra was able to obtain Commission Orders granting it the right to collocate equipment in various BellSouth Central Offices. See FPSC Docket No. 98-0800, Order Nos.

[5] *UNE Remand Order* FCC order 99-238 at page 12

PSC-98-1417-PCO-TP (Priority Order) and PSC-99-0060-FOF-TP issued on January 6, 1999 (space availability Order).

39. Despite the FPSC's rulings, Supra has nothing to show for its work but a trail of excuses and abusive practices employed by BellSouth which have effectively precluded Supra from becoming a facilities-based carrier[6], either by collocation or by UNEs as set forth above. During that time period, Supra has been forced to delay its business plans as BellSouth refused collocation based upon obstructive practices relating to "caged" collocation, that have since been struck down by the FCC. BellSouth, not to be deterred, has turned its focus to other discriminatory practices relating to "cageless" collocation and the imposition of unreasonably high collocation costs in violation of both the contract and the newly released collocation Tariff, which are greatly in excess of prices quoted pursuant to Section 38.1 and Table 2 of the General Terms and Conditions.[7] As a result of BellSouth's practices, Supra has lost credibility with suppliers and has had to endure three very expensive and morale-shattering employee layoffs.

40. Supra currently has equipment worth several millions of dollars "gathering dust" in warehouses which have no place to be installed because of BellSouth's refusal to act in good faith in allowing "cageless" collocation to Supra. Time and delay only benefit BellSouth since vendors eventually lose their patience wondering why equipment, which has already been shipped, cannot be installed; while the company cannot generate sufficient revenue to continue its operations. Supra's business plan has been set back several years as a result of BellSouth's tactics, and threatens to be set back even more as a result of BellSouth's current obstructive and discriminatory practices.

[6] BellSouth rejected Supra's collocation applications on the basis that they were improperly filled out. When Supra re-submitted the same, unchanged applications several months later, BellSouth accepted them.

41. Pursuant to 47 CFR Section 51.323(j), Supra has requested that BellSouth allow Supra to subcontract the construction of collocation arrangements with contractors approved by BellSouth.

42. Although BellSouth did provide Supra with a list of its approved subcontractors, BellSouth has steadfastly refused to allow Supra to subcontract the construction of such collocation arrangements, absent an additional separate contract which would impose additional liability upon Supra.

43. As a direct and proximate result of BellSouth's willful and intentional actions, Supra has been denied the opportunity to (1) implement its business plan; (2) provide services and elements to itself and its customers via Supra's own facilities, (3) provide Supra branded services and elements to its customers and carriers.

44. As a direct and proximate result of BellSouth's violation of the parties' agreements, as well as Federal and State law, in refusing to provide services, provision UNEs, and provide ancillary functions (i.e., collocation) to Supra, Supra has suffered damages as follows:

a. Supra has been billed at BellSouth's unreasonably high resale rates, instead of at the more competitive UNE combo rate, as set forth above.

b. Supra has been unable to receive revenues in the form set forth in Part IV of the General Terms and Conditions and Attachments 6 and 7 of the agreement. BellSouth is liable for the payment of lost revenues to Supra. Indeed, Interconnection Agreement 1 makes this specific point in its General Terms and Conditions, Section 7.1, which provides:

BellSouth Liability. BellSouth shall take financial responsibility for its own actions in causing, or its lack of action in preventing, unbillable or

[7] See **Supra Exhibits 12a and 12b**, December 6 (with exhibit) and December 30, 1999 letters from David Nilson to Peggy McKay

uncollectible Supra Telecommunications and Information Systems, Inc. revenues.

c. Supra has not been able to provide enhanced telecommunications services, including, but not limited to, fast access to the Internet – xDSL, and is placed at a competitive disadvantage.

d. Supra has been forced to pay higher than necessary operational costs, has been unable to provide services and elements to itself and its customers, and has been unable to provide Supra branded services and elements to its customers and carriers as a result of BellSouth's refusal to permit Supra to collocate its equipment at BellSouth Central Offices.

e. Supra has not been able to deploy its business plan.

f. BellSouth owes Supra several millions of dollars in unbillable and uncollectible revenues, access charges collected by BellSouth from interexchange carriers, and reciprocal compensation, that can only be determined by Supra through an audit of BellSouth's books and records and at trial.

g. Supra has lost goodwill.

II. BellSouth's wrongful billing for services and unbundled access (elements), and BellSouth's refusal to reimburse Supra for wrongfully billed amounts.

45. BellSouth has knowingly and intentionally billed and continues to bill Supra for amounts to which BellSouth had no right and which are specifically prohibited pursuant to Attachment 6, Sections 2 and 2.2 of the Interconnection Agreement 2; 47 CFR Section 51.617; and FPSC Order No. PSC-96-1579-FOF-TP. CC Docket Nos. 960833-TP, 960846-TP, and

960916-TP (issued on December 31, 1996) and FPSC Order No. PSC-98-0810-FOF-TP. CC Docket No. 971140-TP (issued on June 12, 1998). Specifically, BellSouth claims it has the right to bill Supra for End User Common Line Charges ("EUCLs") and unauthorized switching charges that are not authorized by the parties' Interconnection Agreement 2. Supra states that pursuant to Attachment 6, Section 2 of the Interconnection Agreement 2 which requires that "BellSouth will bill and record in accordance with this Agreement those charges [Supra] incurs as a result of [Supra] purchasing from BellSouth Network Elements, Combinations, and Local Services, as set forth in this Agreement[,]" that BellSouth does not have the authority to bill Supra for any charges incurred as a result of activities not specifically set forth in said Agreement.

(A) End User Common Line Charges

Section XVI, paragraph F of the 1997 Resale Agreement, provides that:

> In the event that --
>
> > Reseller accepts a deemed offer of an Other Resale Agreement or other terms, then BellSouth or Reseller, as applicable, shall make a corrective payment to the other party to correct for the difference between the rates set forth herein and the rates in such revised agreement or Other Terms for substantially similar services for the period from the effective date of such revised agreement or Other Terms until the date that the parties execute such revised agreement or Reseller accepts such Other Terms, plus simple interest at a rate equal to the thirty (30) day commercial paper rate for high, grade, unsecured notes sold through dealers by major corporations in multiples of $1,000.00 as regularly published in The Wall Street Journal.

Additionally, Sections VI (F) and VII (L) of the expired Resale specifically provided for EUCLs, whereas, Interconnection Agreement 2 does not. Because BellSouth could not charge AT&T for such, BellSouth has no right to charge Supra for such.

46. 47 CFR Section 51.617(b) provides:

> When an incumbent LEC provides telephone exchange service to a requesting carrier at wholesale rates for resale, the incumbent LEC shall continue to assess the interstate access charges provided in part 69 of this chapter, **other than the end user common line charge**, upon interexchange carriers that use the incumbent LEC's facilities to provide interstate or international telecommunications services to the interexchange carriers' subscribers. (Emphasis added.)

Supra is a certified interexchange carrier in the State of Florida. As such, BellSouth has no right to charge Supra for EUCLs.

47. Even more troubling is the fact that had BellSouth properly provided and billed Supra for services and elements instead of for resale, BellSouth would not have been entitled to end user common line charges. However, notwithstanding that violation, BellSouth was still not entitled to bill Supra for end user common line charges, pursuant to the statutory language set forth above.

48. As a direct and proximate result of BellSouth's wrongful billing for EUCLs, Supra paid BellSouth a total of $224,287.79. Pursuant to Attachment 6, Section 15 of the Interconnection Agreement 2, Supra is entitled to a late payment charge and pursuant to Attachment 6, Section 16, Supra is entitled to reimbursement for ". . . incorrect billing charges [and] overcharges. . ."

(B) Switching Charges

49. BellSouth wrongfully billed Supra in the amount of $82,272.25 for switching lines from BellSouth to Supra, and for switching unauthorized customers back to BellSouth. There is nothing in Interconnection Agreement 2 that allows BellSouth to charge for changes in service and secondary service charges. As the parties are operating under the more favorable terms of Interconnection Agreement 2, BellSouth is not entitled to bill for charges under the Resale Agreement.

50. Of course, had BellSouth been properly billing Supra at UNE rates instead of resale rates, BellSouth would not have been able to charge for such in the first place. As Supra has paid BellSouth these wrongfully charged amounts, Supra is entitled to a late payment charge and reimbursement for these amounts pursuant to Attachment 6, Sections 15 and 16, respectfully.

III. BellSouth's wrongful disconnection of Supra's access to OSS during the pendency of a billing dispute.

51. During the pendency of the parties' current billing dispute, BellSouth's Pat Finlen wrote a letter to Supra dated May 16, 2000 where BellSouth informed Supra, that "as of May 16th BellSouth will no longer accept any orders for telecommunications services from Supra." A true copy of that letter is attached hereto as **Supra Exhibit 13**.

52. That same day, BellSouth disconnected Supra's access to LENS in violation of Section 1.2 of the General Terms and Conditions which specifically states that "BellSouth shall not discontinue any Network Element, Ancillary Function, or Combination provided hereunder without the prior written consent of [Supra,]" and Section 16.1 of the General Terms and Conditions which specifically states that "[i]n no event shall the Parties permit the pendency of a Dispute to disrupt service to any [Supra] Customer contemplated by this Agreement[,]"as well as Attachment 1, Section 2.1 of the Interconnection Agreement 2 which specifically states that "[n]egotiation and arbitration under the procedures provided herein shall be the exclusive remedy for all disputes between BellSouth and [Supra] arising under or related to this Agreement including its breach. . .", and Attachment 6, Section 14.1.3 which specifically states that "[i]f the [billing] dispute is not resolved within one hundred and fifty (150) days of the Bill Date, the dispute will be resolved in accordance with the procedures set forth in the Section 16 of the General Terms and Conditions of this Agreement and Attachment 1."

53. Supra's Assistant General Counsel, Ms. Colleen Wilson wrote BellSouth's General Attorney, Ms. Jordan, a letter dated May 17, 2000. A true copy of that letter is attached hereto as **Supra Exhibit 14.**

54. Thereafter, the parties held a conference call on May 18, 2000 to discuss the issues. BellSouth agreed that it was wrong and restored Supra's access to LENS by the evening of that day.

55. That disconnection caused turmoil among Supra's customers and seriously damaged Supra's reputation for reliable service. As a direct and proximate result, Supra was irreparably damaged by BellSouth during that three-day ordeal and experienced lost profits and loss of goodwill.

IV. Violations of the Communications Act of 1934 and the Telecommunications Act of 1996.

56. Supra Telecom realleges and incorporates by reference paragraphs 1 through 41, 44 through 46, and 48 through 54, as if fully set forth herein.

57. BellSouth is a common carrier engaged in the business of providing wireline telecommunications services among several states and within interstate commerce. Accordingly, BellSouth is subject to and governed by the provisions of the Communications Act of 1934 and the Telecommunications Act of 1996 (codified as 47 U.S.C. § 151 et seq.).

58. Pursuant to federal common law and 47 U.S.C. §§206 and 207, a common carrier subject to the Communications Act of 1934 as amended by the Telecommunications Act of 1996, may be sued in a federal district court for damages caused by the carrier's actions. This claim is proper before the Arbitral Tribunal by operation of Attachment 1 of the AT&T/BST Interconnection Agreement as adopted by Supra on October 5, 1999.

59. As set forth previously, the Defendant BellSouth has violated numerous provisions of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, including but not limited to the following actions:

(a) BellSouth willfully and intentionally refuses to provide Supra and its customers with the same services, unbundled access (elements), facilities, notifications, personnel and combinations on a priority that are at least equal in quality or better than the priorities that BellSouth provides in the BellSouth network to itself, BellSouth's own customers, to a BellSouth affiliate, to a BellSouth subsidiary or to any other party, in violation of the Telecommunications Act of 1996 and the Interconnection Agreement of 1997 as adopted by Supra Telecom.

(b) BellSouth willfully and intentionally retained access service charges and reciprocal compensation which rightfully belongs to Supra.

(c) BellSouth willfully and intentionally refuses to provide Supra and its customers with nondiscriminatory access to loop qualification information and cost based xDSL UNE transport on a priority that is at least equal in quality or better than the priorities that BellSouth provides in the BellSouth network to itself, BellSouth's own customers, to a BellSouth affiliate, to a BellSouth subsidiary or to any other party.

(d) BellSouth wrongfully billed for services and unbundled access (elements), and refused to reimburse Supra for the wrongfully billed amounts and late payment charges.

(e) BellSouth willfully and intentionally refuses to allow Supra to collocate its equipment on rates, terms and conditions that are just, reasonable and nondiscriminatory and on a priority that is at least equal in quality or better than the priorities that BellSouth provides in the BellSouth network to itself, BellSouth's own customers, to a BellSouth affiliate, to a BellSouth subsidiary or to any other party, in violation of the Interconnection Agreement and the Telecommunications Act of 1996.

(f) BellSouth engaged in unfair business practices against Supra, including (1) denial of the use of BellSouth facilities for the provision of telecommunications services, and (2) other discriminatory practices including but not limited to (i) "AT&T Exceptions", (ii) downgrade of network elements, (iii) refusal to provide notifications changes to technological and service offerings, (iv) repair/installation scheduling system, directory listing and (v) non-discrimatory access to customer service records.

(g) BellSouth illegally blocked Supra's access to other CLEC service records, while reserving itself the right to access such records.

(h) BellSouth negotiated and implemented each and every agreement between the parties in bad faith.

(i) BellSouth implemented a marketing strategy to regain customers that converted to Supra by accessing their customer records without giving notice to Supra, contacting them, and making disparaging and defaming remarks regarding Supra.

60. According to 47 U.S.C. § 206, any common carrier that commits any act prohibited by these statutes or omits to do any act required under the statutes shall be liable for the full amount of the damages sustained by the injured party as a result of the violations, together with costs and reasonable attorney's fees.

61. Supra Telecom has suffered damages as a direct and proximate result of the Defendant BellSouth's numerous and persistent violations of the Communications Act of 1934 as amended by the Telecommunications Act of 1996.

CONCLUSION

62. Consumers, and Supra, continue to be harmed and may suffer irreparable damage as a result of BellSouth's conduct, while BellSouth continues to reap tremendous profits. Please see BellSouth's recent press release announcing its favorable **Third Quarter Earnings Report**, a true copy of which is attached hereto as **Exhibit 15.**

63. The collective actions of BellSouth over the last four years have undermined the development of local exchange and telecommunications services competition in Florida, BellSouth's entire serving area as well as throughout the United States. Only a monopolist could do what BellSouth has been able to do to Supra and telecommunications services subscribers. BellSouth's current *modus operandi* is to refuse to honor or comply with its agreements or federal and state law, thereby presenting a huge barrier to entry, which gives BellSouth virtual *carte blanche* to decide how and when competitors can implement their business plan as well as obtain service for their end users. BellSouth's economic self-interest may be understandable, but its effect on telephone subscribers is contrary to the purposes of the Communications Act as amended by the 1996 Act. It is interesting to note that several CLECs have either gone out of

business or are about to go out of business. Please see **Supra Exhibit 16,** "Dead Companies Walking", an article in the Business Week of January 22, 2001. Companies mentioned in that article as going out of business are Covad, Rhythms NetConnections, Intermedia Communications, Northpoint Communications, RSL Communications and ICG Communications. All these companies have either filed complaints or participated in proceedings against BellSouth before several regulatory agencies. It appears that BellSouth is winning its battle to prevent competition in the local telephone industry.

64. As a result of BellSouth's violation of the parties' agreements, as well as applicable Federal and State Law, Supra has suffered damages as set forth in the following categories:

a. the difference between unbundled network element rates (UNEs) and resale rates, as well as lost revenues from access charges which would result from provisioning services on a UNE basis;

b. wrongfully billed end user common line charges (EUCLs) (this amount would be included in number 1);

c. wrongfully billed switching charges (this amount would be included in number 1);

d. damages as a result of BellSouth's wrongful disconnection of OSS;

e. damages as a result of preventing Supra from collocating equipment at various BellSouth central offices;

f. damages as a result of hindering and thus delaying Supra's business plan of being a one-stop shop provider of New-Innovative telecommunications services in BellSouth's serving area;

g. damages as a result of hindering and thus delaying Supra's business plan of being a one-stop shop provider of New-Innovative telecommunications services throughout the United States;

h. damages as a result of hindering and thus delaying Supra's business plan of being a

one-stop shop provider of National New-Innovative Telecommunications Services;

i. damages as a result of hindering and thus delaying Supra's business plan of being a carrier's carrier;

j. damages as a result of Supra having been denied access to necessary working capital as well as capital for the deployment of its network; and

k. the loss of Supra's goodwill.

WHEREFORE, Supra prays that this Honorable Arbitral Panel grant it the following relief:

(a) order BellSouth to act in good faith in the performance of its obligations under the agreement and Communications Act as amended by the 1996 Act and all federal and state rules;

(b) order BellSouth to accept orders for services and elements in accordance with the agreement, Communications Act as amended by the 1996 Act, FCC Rules and State Commission Rules;

(c) order BellSouth to provide Supra with nondiscriminatory access to its entire network including facilities, services, unbundled access (elements), personnel and OSS for the provision of telecommunications services (as defined by the Communications Act and interpreted by federal and state rules) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of Sections 251 and 252 of the Communications Act as amended by the 1996 Act, federal and state rules that is at least equal in quality to that provided by BellSouth to itself, its subsidiaries, affiliates or any other party;

(d) order BellSouth to provide Supra with collocation in its central offices and remote terminals in accordance with the agreement, Communications Act as amended by the 1996 Act, federal and state rules on rates, terms, and conditions that are just, reasonable, and nondiscriminatory;

(e) order BellSouth to allow Supra to select its contractor for collocation work;

(f) order BellSouth to reimburse Supra with interest for incorrect billing charges; overcharges; Local Services Elements, or any Combination thereof, ordered or requested but not delivered; interrupted Local Services associated with any Element, or combination thereof, ordered or requested; Local Services, Elements, or Combination thereof, of poor quality; and installation problems caused by BellSouth;

(g) award damages to Supra for BellSouth's actions resulting from BellSouth's violations of the Communications Act as amended by the 1996 Act, particularly Sections 202, 206, 251 and 252;

(h) order BellSouth to reimburse Supra with interest for IXC access charges, reciprocal compensation, charges associated with end office switching, local transport, RIC and CCL as appropriate;

(i) award damages to Supra's for BellSouth's actions resulting in delay in the implementation of Supra's business plan;

(j) award damages to Supra for BellSouth's willful and intentional actions causing Supra to be unable to collocate its equipment;

(k) award Supra its attorney's fees and costs pursuant to the CPR Rules;

(l) appoint a Special Master, the cost of which to be borne by BellSouth, to oversee the implementation of the relief granted in this proceeding; and

(m) Supra requests this Arbitral Panel to grant Supra such other and further preliminary and/or permanent relief as this Commission deems just and proper.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been served via facsimile and e-mail (the exhibits having been served via Federal Express) upon Harry O. Thomas, Esq., Patrick K. Wiggins, Esq., Karen Asher-Cohen, Esq., Katz, Kutter, Haigler, Alderman, Bryant & Yon, P.A., 106 East College Avenue, 12th Floor, Tallahassee, Florida 32301 and Nancy White, Esq., BellSouth, 150 West Flagler Street, Suite 1910, Miami, Florida 33130, this 20th day of February, 2001.

SUPRA TELCOMMUNICATIONS & INFORMATION SYSTEMS, INC.
2620 S.W. 27th Ave.
Miami, Florida 33133
Telephone: 305/476-4248
Facsimile: 305/443-1078
By:_____
BRIAN CHAIKEN, ESQ.
Florida Bar No. 0118060

BEFORE THE CPR INSTITUTE FOR DISPUTE RESOLUTION ARBITRAL TRIBUNAL

SUPRA TELECOMMUNICATIONS
& INFORMATION SYSTEMS, INC.,

Claimant,

v. Arbitration I

BELLSOUTH
TELECOMMUNICATIONS INC.,

Respondent.

****

BELLSOUTH
TELECOMMUNICATIONS INC.,

Claimant ,

v. Arbitration II

SUPRA TELECOMMUNICATIONS
& INFORMATION SYSTEMS, INC.,

Respondent and
Counterclaimant.

ORDER REGARDING SUPRA'S AND BELLSOUTH'S MOTIONS FOR INTERPRETATION OF THE JUNE 5, 2001 AWARD IN CONSOLIDATED ARBITRATIONS

ARBITRAL TRIBUNAL

M. Scott Donahey
John L. Estes
Campbell Killefer

SUPRA

EXHIBIT: OAR 7

A. Introduction

The two arbitrations conducted to date between Supra Telecommunications & Information Systems, Inc. ("Supra") and BellSouth Telecommunications, Inc. ("BellSouth") resulted in a single Award of the Tribunal in Consolidated Arbitrations, dated June 5, 2001 (the "Award"). By motions entitled Supra's Request For Clarification of Award of the Tribunal in Consolidated Arbitrations and Default Damages as a Result of BellSouth's Non-Compliance With Same, dated June 20, 2001, and BellSouth's Motion for Reconsideration and Interpretation, dated June 20, 2001, the parties sought to clarify, to interpret, and to modify many of the Tribunal's liability and damages findings in the Award. In addition, BellSouth filed its Motion for Partial Stay on June 21, 2001, to stay that portion of the Award that orders BellSouth to "provide Supra nondiscriminatory direct access" to BellSouth's Operations Support Systems ("OSS").

The Tribunal's powers to deal with an Award after it is issued are circumscribed by the CPR Rules, the rules which the parties have agreed govern the conduct of the arbitration. Interconnection Agreement, Attach. 1, § 4. CPR Rules, Rule 14.5 expressly limits the Tribunal's powers as follows:

> Within 15 days after receipt of the award, either party, with notice to the other party, may request the Tribunal to interpret the award; to correct any clerical, typographical or computation errors, or any errors of a similar nature in the award; or to make an additional award as to claims or counterclaims presented in the arbitration but not determined in the award. The Tribunal shall make any interpretation, correction or additional award requested by either party that it deems justified within 30 days after receipt of such request. Within 15 days after delivery of the award to the parties or, if a party requests an interpretation, correction or additional award, within 30 days after receipt of such request, the Tribunal may make such corrections and additional awards on its own initiative as it deems appropriate. All interpretations, corrections, and additional awards shall be in writing, and the provisions of this Rule 14 shall apply to them.

By Order dated June 22, 2001, the Tribunal set a briefing schedule on the motions and directed various questions to the parties. In addition, at the request of both parties, the Tribunal scheduled an in person hearing, as opposed to telephonic hearing, for oral argument on the motions for July 16, 2001.

In accordance with the Tribunal's scheduling Order, Supra and BellSouth served their responsive briefs on June 27, 2001. Supra filed its opposition to BellSouth's motion for partial stay on June 29, 2001. Both parties filed reply briefs on the motions on July 10, 2001.

The hearing for oral argument was conducted on July 16, 2001, in the Piedmont Ballroom at the Georgian Terrace Hotel in Atlanta, Georgia. The hearing lasted approximately five hours. The transcript of that hearing is incorporated by reference and made a part of this Order regarding the parties' motions.

B. Supra's Nondiscriminatory Direct Access to BellSouth's OSS

BellSouth's major argument in its motion is that the Tribunal erred in ordering "nondiscriminatory direct access to BellSouth's OSS" by no later than June 15, 2001. Award, at 24. By far the most briefing and oral argument were devoted to this issue over the many other issues raised. Many, if not all, of the arguments BellSouth raised in the papers and orally at the hearing that were directed to access to OSS were made for the first time and had not been raised prior to the issuance of the Award, despite the fact that BellSouth was clearly on notice that Supra was seeking direct access to the BellSouth OSS. *See, e.g.*, Supra Prehearing Statement, dated April 10, 2001, at § IV,F(c), at page 21.

BellSouth argued that in requiring **direct** access to BellSouth's OSS, the Award violates contractual provisions in the Interconnection Agreement concerning electronic interfaces, principally in Attachment 15, and the regulatory guidelines set forth by the FCC in

its Third Report and Order and Fourth Further Notice of Proposal Rulemaking, FCC 99-238, released November 5, 1999 ("Third Report and Order"). BellSouth concedes that nondiscriminatory access to the BellSouth OSS is a necessary prerequisite to Supra's and other Competitive Local Exchange Carriers' ("CLEC") ability to pre-order, order, provision, and repair telecommunication elements in a competitive marketplace. BellSouth challenges the need, however, for **direct** access and argues that the spirit of the Award and the Interconnection Agreement can be achieved by the Award being modified to require either (1) Supra's use of BellSouth's existing Direct Order Entry ("DOE") system, or (2) a new, so-called "permanent" or unique interface to BellSouth's OSS be created jointly by Supra and BellSouth. The Tribunal disagrees with BellSouth.

BellSouth's attempt to create a false dichotomy – Supra must choose either DOE or a new interface to be developed – conflicts with the fundamental basis of the OSS ruling in the Award. None of the proffered interfaces are at parity with BellSouth's own systems. The interface used now by Supra, the Local Exchange Navigation System ("LENS"), provides nothing close to the direct access to OSS used daily by BellSouth's own customer service representatives. BellSouth's DOE is even worse than LENS because DOE is an antiquated DOS-based system that has none of the user-friendly Windows-based features enjoyed by BellSouth's employees. Moreover, BellSouth argued at the July 16 hearing, but submitted no evidence, that another ILEC's interface with only a four second delay was found to provide parity service. There is no evidence that BellSouth's LENS, DOE, or other interfaces offer anywhere near comparable performance to that which BellSouth described.

Faced with the overwhelming deficiencies in DOE and its other interfaces offered to Supra and other CLEC's, BellSouth argues the second part of its false dichotomy – that Supra must jointly develop a new interface with BellSouth. The record shows that both AT&T and

Supra attempted to create their own interfaces to BellSouth's OSS and abandoned their projects. Even Attachment 15 to the Interconnection Agreement, while providing detailed provisions concerning interfaces, expressly provided that "[t]his Attachment 15 reflects compromises on the part of both [Supra] and BellSouth. By accepting this Attachment 15, [Supra] does not waive its right to non-discriminatory access to Operations Support Systems of BellSouth." Interconnection Agreement, Attachment 15, § 10.1. In addition, the same Attachment 15 on which BellSouth so heavily relies indicates in its "Purpose" section that:

> For all Local Services, Network Elements and Combinations ordered under this Agreement, BellSouth will provide [Supra] and its customers ordering and provisioning, maintenance, and repair and pre-ordering services within the same level and quality of service available to BellSouth, its Affiliates, and its customers.

Id., at Attachment 15 § 1.2 (emphasis added). Finally, the FCC's Third Report and Order found that "lack of access to [BellSouth's and other ILEC's] OSS impairs the ability of requesting carriers to provide the services they seek to offer." Third Report and Order § 433, at 192.

For all of these reasons, the only relief that will provide Supra with OSS access at parity with the access enjoyed by BellSouth, which is what is called for in the Interconnection Agreement, is nondiscriminatory **direct** access by Supra. Such access must be provided while accommodating BellSouth's legitimate concerns regarding network security and customer privacy. Supra assured the Tribunal at the July 16 hearing that it would abide by reasonable security and privacy measures. The Award directs BellSouth to provide such access forthwith.

C. Interpretation of Collocation Section of Award

The Tribunal issues the following interpretation of the portion of the Award on collocation. Collocation is discussed at pages 17-21 and 48 of the Award. The Award states in pertinent part: "The Tribunal orders that BellSouth collocate forthwith all such equipment as Supra has included in all prior applications to BellSouth at the rates indicated in Table 2 attached to the July 24, 1998, letter incorporated into the Interconnection Agreement. To the extent that the collocation involves 'make-ready' work that may not be covered by Table 2, Supra may retain a contractor of its choosing from BellSouth's approved contractor list to perform such work at Supra's expense. To the extent that work or services by BellSouth are necessary to collocation and that such work or services are not covered by the rates set out in Table 2, the Tribunal instructs the parties to consult the Interconnection Agreement for guidance and to meet and confer regarding the applicable rates for such work or services. To the extent that the parties are unable to agree on such rates, the parties are to submit their differences over such rates to the Tribunal for Resolution."

By this language, it was and is the intent of the Tribunal that collocation begin forthwith and continue apace while the parties attempt to agree on the cost thereof. If the parties fail to agree on the cost, the parties can bring their dispute concerning such cost to the Tribunal for resolution. In no event is the failure to agree on costs to be used as an excuse for failing to collocate or for slowing the progress of collocation.

D. Audit

Supra has requested that the deadline for completion of the audit be extended to thirty (30) days following the receipt of all documents requested by Supra. BellSouth opposes this request and argues that Supra has requested documents not relevant to the scope of the audit ordered by the Tribunal. BellSouth has requested that it be given 14 business days following

completion of the audit in order to audit the results and prepare a response. Supra did not oppose this request.

The Award defines the scope of the audit at the following places in the Award: Section V,O at pages 36-38; Section VI,B,1 at pages 41-42; Section VII,A at pages 44-45; and Section VII,E at page 46.

As ordered at the July 16 hearing, Supra was directed to notify BellSouth by 5:00 p.m. July 17, 2001, as to the requests it is withdrawing as calling for documents outside the scope of the subject matter of the audit and to identify any additional documents it requires. BellSouth is ordered to use its best efforts to complete the production of all requested documents by July 31, 2001.

The date for the completion of audit is extended to August 31, 2001. The auditor shall issue his report on that date to BellSouth, Supra, and the Tribunal.

BellSouth will have until September 21, 2001, to audit the results of the audit and submit its response to Supra and to the Tribunal. If necessary, a hearing on the audit results will be held on October 2, 2001. The parties will advise the Tribunal no later than September 10, 2001, whether they require a telephonic or an in-person hearing.

E. Confidentiality

Supra seeks clarification of the confidentiality obligations of the parties insofar as those obligations may affect Supra's ability to disclose the Award to the Florida Public Service Commission ("FPSC") and the Federal Communications Commission ("FCC) in ongoing proceedings. Supra enumerates three such proceedings: (1) In re: Petition by BellSouth Telecommunications, Inc. for arbitration of certain issues in interconnection agreement with Supra Telecommunications, Inc., FPSC Docket No. 001305-TI; (2) Complaint filed by Supra with the FCC, currently under consideration on the FCC's

accelerated docket; and (3) proceedings pursuant to Section 271 of the Telecommunications Act in which BellSouth seeks FPSC approval to provide long distance (interLATA) service to end users in Florida, In re: Petition of BellSouth Telecommunications, Inc., FPSC Docket No. 96-0786.

The parties have agreed to conduct their arbitration pursuant to the CPR Institute for Dispute Resolution Rules for Non-Administered Arbitration (the "CPR Rules"). Interconnection Agreement, Attach. 1, § 4. CPR Rules, Rule 17 provides for confidentiality in the following manner:

> Unless the parties agree otherwise, the parties, the arbitrators and CPR shall treat the proceedings, any related discovery and the decisions of the Tribunal, as confidential, except in connection with judicial proceedings ancillary to the arbitration, such as a judicial challenge to, or enforcement of, an award, and unless otherwise required by law or to protect a legal right of a party. To the extent possible, any specific issues of confidentiality should be raised with and resolved by the Tribunal.

Supra acted within the scope and spirit of Rule 17 by bringing this matter to the Tribunal for resolution.

Initially it should be noted that disclosure of the Award is permitted (1) "in connection with judicial proceedings ancillary to the arbitration" or (2) "to protect a legal right of a party." CPR Rules, Rule 17. In addition, the parties are free to agree on other standards of confidentiality or disclosure ("[u]nless the parties otherwise agree . . ."). *Id.*

In the parties' arbitration agreement the parties expressly agreed on standards of confidentiality. Interconnection Agreement, Attach. 1, §14. As to any "arbitration proceeding, including the hearings and conferences, discovery, or other related events," such "proceeding" is to be treated as confidential "except as necessary in connection with a judicial challenge to, or enforcement of an award or unless otherwise required by an order or lawful process of a court or governmental body." Interconnection Agreement, Attach. 1, § 14.1.

An arbitration award is not an "arbitration proceeding," as the contrast between the use of "proceeding" and "a challenge to the enforcement of an award" in Section 14.1 clearly indicates. However, the Award may contain proprietary or confidential information of the parties. Interconnection Agreement, Attach. 1, § 14.3 (which references GTC § 18). Such information is denominated "Confidential Information" in the Interconnection Agreement. Interconnection Agreement, GTC, § 18.1. Assuming, without deciding, that the Award contains Confidential Information, the parties have agreed that such information "shall be safeguarded in accordance with Section 18 of the General Terms and Conditions of the Agreement." Interconnection Agreement, Attach.1, § 14.3.

Section 18 imposes a general duty on the parties to safeguard confidential and proprietary information for a period of five years from the receipt thereof. Interconnection Agreement, GTC, §§ 18.1 - 18.4. However this duty is subject to exceptions, one of which provides that "either party shall have the right to disclose Confidential Information to any mediator, arbitrator, state or federal regulatory body, the Department of Justice, or any court in the conduct of any mediation, arbitration, or approval of this Agreement or in any proceedings concerning the provision of interLATA services by BellSouth that may be required by the Act." Interconnection Agreement, GTC, § 18.5.

Moreover, the parties' agreement provides in pertinent part:

> If for any reason, the Federal Communications Commission or any other federal or state regulatory agency exercises jurisdiction over and decides any dispute related to this Agreement or to any BellSouth tariff and, as a result, a claim is adjudicated in both an agency proceeding and an arbitration proceeding under this Attachment 1, the following provisions shall apply:
>
> To the extent required by law, the agency ruling shall be binding upon the Parties for the limited purposes of regulation within the jurisdiction and authority of such agency.

> The arbitration ruling rendered pursuant to this Attachment 1 shall be binding upon the Parties for purposes of establishing their respective contractual rights and obligations under this Agreement, and for all other purposes not expressly precluded by [any] agency ruling.

Interconnection Agreement, Attach. 1, §§ 2.1.2 - 2.1.2.2.

The nature of the overlapping jurisdiction between this Tribunal and the federal and state regulatory agencies that is described in these provisions both contemplates and requires that the Tribunal and the involved agencies be made aware of any actions of either that may affect the parties' contractual rights and obligations.

Accordingly, the Tribunal finds that either party may disclose the award in the regulatory proceedings previously described before the FPSC and the FCC, subject to all applicable confidentiality provisions of those regulatory bodies, either to protect the legal rights of the disclosing party (CPR Rules, Rule 17) or as expressly provided in the parties' agreement. Interconnection Agreement, GTC, § 18.5.

To the extent Supra and BellSouth have raised additional requests for clarification, interpretation, modification or stay of the Award in their motions that are not covered in this Order, all such requests for relief are denied. The Award is effective by its terms and as expressly interpreted by this Order.

Dated: July 20, 2001

John L. Estes	M. Scott Donahey	Campbell Killefer

BEFORE THE CPR INSTITUTE FOR DISPUTE RESOLUTION ARBITRAL TRIBUNAL

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC., a Florida Corporation, Claimant, v. BELLSOUTH TELECOMMUNICATIONS, INC., a corporation, Respondent.	**ORDER RE DAMAGES**

On February 19, 2001, a conference call was held to discuss various issues in this Arbitration, including the issue of the availability of consequential damages which is the subject of this order. The matters discussed in that conference call which are not the subject of this or prior orders will be the subject of a subsequent order of the Tribunal. BellSouth was represented by Patrick K. Wiggins, Esq., Charles J. Pellegrini, Esq. and Karen Asher-Cohen, Esq. of Katz, Kutter, Haigler, Alderman, Bryant & Yon, P.A., among others. Supra Telecommunications and Information Systems, Inc. ("Supra") was represented by Brian Chaiken, Esq., and Adenet Medacier, Esq., among others. All the arbitrators participated. The Tribunal orders as follows:

1. The Tribunal agrees with the parties that Section 10.4 of the Interconnection

Agreement is unambiguous and subject to interpretation by the Tribunal without reference to extrinsic evidence. The Tribunal notes that the provision deals with the subject of consequential damages. It begins with a broad exclusion of consequential damages "whether in contract" or in any other type of action, no matter how framed. However the final sentence excepts from the broad exclusion previously set out liability for "willful or intentional misconduct." The panel concludes that "willful or intentional misconduct" is broad terminology which embraces willful or intentional breach of contract. The panel's interpretation of this phrase is supported by judicial authority, including *Metropolitan Life Insurance Co. v. Noble Lowndes Int'l, Inc.,* 643 N.E.2d 504, 506-508 (N.Y. 1994) and *Wright v. Southern Bell Tel. & Tel. Col., Inc.,* 313 S.E.2d 150 (Ga. App. 1984).

2. Accordingly the Tribunal unanimously finds that to the extent that Supra can prove that BellSouth intentionally or willfully breached the Agreement at issue in this case, and that as a direct and foreseeable consequence of that breach, Supra suffered damages in an amount subject to proof, Supra can recover consequential damages in this action.

IT IS SO ORDERED.

Dated: February 21, 2001

M. Scott Donahey
On behalf of the Tribunal