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VOTE SHEET
DECEMBER 15, 1998
DOCKET NO. 980800-TP - Petition for emergency relief by Supra Telecommunications & Information Systems against BellSouth Telecommunications, Inc., concerning collocation and interconnection agreements.

(Continued from previous page)

Issue 5: Pursuant to the Collocation Agreement, what telecommunications equipment can and what telecommunications equipment cannot be physically collocated by Supra in BellSouth's central offices?
Recommendation: The Commission should not require BellSouth to allow the installation of the Ascend TNT equipment or the Cisco Systems equipment known as remote access concentrators. This equipment, however, may be the type of equipment that the FCC is contemplating that competing carriers should be allowed to physically collocate as part of its Memorandum Opinion and Order and Notice of Proposed Rulemaking in FCC 98-188. If the FCC rules that this type of equipment may be collocated, then Supra should be permitted to collocate such equipment at that time in accordance with the parties' agreement.

APPROVED

Issue 6: Should this docket be closed?
Recommendation: The docket should be closed after the time for filing an appeal has run.

APPROVED

VOTE SHEET
DECEMBER 15, 1998
DOCKET NO. 980800-TP - Petition for emergency relief by Supra Telecommunications & Information Systems against BellSouth Telecommunications, Inc., concerning collocation and interconnection agreements.

(Continued from previous page)

Issue 3(c): If there is an obligation to make space available to Supra, how should the costs be allocated?
Recommendation: If the Commission approves staff's recommendations in Issues 3 and 3(a), staff recommends that the Commission need not make a determination on Issue 3(c). If however, the Commission denies staff's recommendations in Issues 3 and 3(a), staff recommends that the Commission find that the agreement does not address the allocation of costs to make space available for collocation.

NO VOTE

Issue 4: In what time frame is BellSouth required to provide physical collocation to Supra pursuant to the Collocation Agreement?
Recommendation: Staff recommends that the Commission find that the agreement does not specify a particular time frame for providing physical collocation, but requires a negotiated availability date. Since the parties cannot agree on a date, staff recommends that the Commission order BST to complete physical collocation within three months of Supra's application, unless BST can demonstrate to the Commission why it is technically infeasible to do so.

APPROVED

VOTE SHEET
DECEMBER 15, 1998
DOCKET NO. 980800-TP - Petition for emergency relief by Supra Telecommunications & Information Systems against BellSouth Telecommunications, Inc., concerning collocation and interconnection agreements.

(Continued from previous page)

Issue 3(a): If so, should Supra's request for physical collocation in the North Dade Golden Glades and West Palm Beach Gardens central offices be granted?
Recommendation: If the Commission approves staff's recommendation in Issue 3, then staff recommends that the Commission grant Supra's request for 200 square feet for physical collocation in the North Dade Golden Glades and West Palm Beach Gardens central offices. Also, staff recommends that the Commission order BST to allocate space for the POT bays and other infrastructure equipment necessary for Supra to interconnect with BST's network.

APPROVED

Issue 3(b): If not, what obligation, if any, does BellSouth have under the Collocation Agreement to make space available at these two central offices to permit physical collocation by Supra?
Recommendation: If the Commission approves staff's recommendations in Issues 3 and 3(a), staff recommends that the Commission need not make a determination on Issue 3(b). If, however, the Commission denies staff's recommendations on Issues 3 and 3(a), the Commission should find, that pursuant to the agreement, BST is not required to alter or add on to the physical structure of the central office where no space currently exists.

NO VOTE

VOTE SHEET
DECEMBER 15, 1998
DOCKET NO. 980800-TP - Petition for emergency relief by Supra Telecommunications & Information Systems against BellSouth Telecommunications, Inc., concerning collocation and interconnection agreements.

(Continued from previous page)

Issue 2: What factors should be considered in determining if there is adequate space for Supra in the North Dade Golden Glades and West Palm Beach Gardens central offices?
Recommendation: The Commission should consider the following factors to determine whether there is adequate space for Supra in the North Dade Golden Glades and West Palm Beach Gardens central offices:

a) The existing building configuration and the process BellSouth uses to evaluate the facility for space availability;
b) Usage of existing space, including administrative space;
c) Space that has been reserved for future use; and
d) Applicable building codes and local regulations.

APPROVED

Issue 3: Is there sufficient space to permit physical collocation for Supra in the North Dade Golden Glades and West Palm Beach Gardens central offices?
Recommendation: Yes. Staff recommends that the Commission find that there is sufficient space to permit physical collocation for Supra in the North Dade Golden Glades and West Palm Beach Gardens central offices.

APPROVED

FLORIDA PUBLIC SERVICE COMMISSION

VOTE SHEET

DECEMBER 15, 1998

RE: DOCKET NO. 980800-TP - Petition for emergency relief by Supra Telecommunications & Information Systems against BellSouth Telecommunications, Inc., concerning collocation and interconnection agreements.

Issue 1: Is BellSouth required to provide physical collocation in the North Dade Golden Glades and West Palm Beach Gardens central offices pursuant to the Collocation Agreement between BellSouth and Supra?
Recommendation: Yes. Staff recommends that the Commission find that BST is required to fill a request by Supra for physical collocation in accordance with the terms and conditions of the agreement, but it must do so only if sufficient space exists in the requested central office.

APPROVED

COMMISSIONERS ASSIGNED: DS CL JC

COMMISSIONERS' SIGNATURES

MAJORITY	DISSENTING

REMARKS/DISSENTING COMMENTS:

PSC/RAR33 (5/90)

DATE: 12/19/98

STATE OF FLORIDA

PUBLIC SERVICE COMMISSION

2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FL 32399-0850

TO:
Angel
Supra

FROM:
Kay Flynn

Fax:

Voice:

RE:

Note:

Vote sheet for Item 41 (980800) attached. Item 40 V.S. will be sent later today.

kf

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BEFORE THE FLORIDA
PUBLIC SERVICE COMMISSION

Petition To Set Aside 2/3/98 Order Approving Resale, Interconnection And Unbundling Agreement Between BellSouth Telecommunications And Supra Telecommunications & Information Systems; And To Approve Agreement Actually Entered Into By The Parties Pursuant to Sections 251, 252 and 271 Of The Telecommunications Act Of 1996	)	Docket No.: 981832-TP Dated: December 9, 1998

Petition Of Supra Telecommunications To Set Aside 2/3/98 Order Approving Resale, Interconnection And Unbundling Agreement Between BellSouth Telecommunications And Supra Telecommunications; And To Approve Agreement Actually Entered Into By The Parties

Petitioner, SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC. ("Supra"), by and through its undersigned counsel, hereby files this its petition for a proceeding seeking to set aside a certain Order previously entered by this Commission on or about February 3, 1998 in Docket No. 971555-TP entitled Order Approving Resale, Interconnection, And Unbundling Agreement (Order No. PSC-98-0206-FOF-TP). Supra also requests that this Commission enter an Order approving the actual Resale, Interconnection and Unbundling Agreement entered into between the parties pursuant to Sections 251, 252 and 271 of the Telecommunications Act of 1996 ("Federal Act') (a copy of which is attached hereto as Exhibit "A"). In support of this Petition, Supra states as follows:

I. Relevant Facts

1. Supra Telecommunications & Information Systems, Inc. is a Florida-based minority-owned corporation certificated by the Florida Public Service Commission as an Alternative

Local Exchange Carrier ("ALEC"). BellSouth Telecommunications, Inc. ("BellSouth") is an Incumbent Local Exchange Carrier ("ILEC") as defined by Section 251(h) of the Federal Act.

2. In early September 1997, Supra made a request of BellSouth to enter into a mutually acceptable interconnection agreement pursuant to Sections 251 and 252 of the Federal Act in all states in which BellSouth is the ILEC. A true and correct copy of that letter is attached as Exhibit 1 to the Declaration of Olukayode Ramos, which is attached hereto as Exhibit "B". BellSouth then proceeded to provide Supra a copy of a proposed interconnection agreement for Supra's review. The proposed interconnection agreement did not specifically mention Supra as a party, but rather only made reference to "ALEC-1" as the relevant party entering into the agreement.

3. The proposed agreement contained various provisions regarding access to, pricing of and recombination of Unbundled Network Elements ("UNE"), including the following provisions:

(Attachment 2)

2. Unbundled Service Combinations (USC)

2.1.1 Where BellSouth offers to ALEC-1, either through a negotiated arrangement or as a result of an effective Commission order, a combination of network elements priced as individual unbundled network elements, the following product combination will be made available. All other requests for unbundled element combinations will be evaluated via the Bona Fide Request Process, as set forth in Attachment 9.

2.1.2 2-Wire Analog Loop with 2-Wire Analog Port - Residence

2.1.3 2-Wire Analog Loop with 2-Wire Analog Port - Business

2.1.4 2-Wire Analog Loop with 2-Wire Analog Port - PBX

2.1.5 2-Wire Analog Loop with 2-Wire DID or 4-Wire DID

2.1.6 BellSouth will conform to the technical references contained in this Attachment 2 to the extent these requirements are implemented by equipment vendors and consistent with the software generic releases purchased and installed by BellSouth.

(Attachment 11)

1. General Principles

All services provided hereunder (including resold Local Services, Network Elements, Combinations and Ancillary Functions) and all new and additional services to be provided hereunder shall be priced in accordance with all provisions of the Act and

the rules and orders of the Federal Communications Commission and the Florida Public Service Commission.

A true and correct copy of Attachments 2 and 11 (referenced above) can be found in the Interconnection Agreement attached hereto as Exhibit "A". The BellSouth revision dates on each of the above reference paragraphs was 10/15/97. Additionally, Attachment 9 referenced in paragraph 2.1.1 referred to how bona fide requests were to be made for among other items, combinations of UNEs.

4. On or about October 14, 1997, the Eighth Circuit Court of Appeals issued its opinion as Amended on Rehearing in the case of *Iowa Utilities Board v. Federal Communications Commission*, 120 F.3d 753 (8th Cir. 1997). That opinion arguably called into question whether or not it was the responsibility of the ILEC or that of the ALEC to combine UNEs.

5. On or about October 20, 1997, Olukayode Ramos, as President and CEO, executed the proposed agreement and returned the same back to BellSouth.

6. On or about October 21, 1997, Patrick Finlen, the Interconnection Services Manager of BellSouth, advised Mr. Ramos that the proposed agreement was a starting point for negotiations and that if Supra was ready to execute a final version of the agreement, that BellSouth would revise the agreement to replace the words "ALEC" and "ALEC-1" with the words "Supra Telecommunication & Information Systems, Inc." or just plain "Supra". Mr. Finlen also advised that the parties had already entered into a resale agreement and a collocation agreement, and therefore these items did not have to be included in the revised interconnection agreement. Finally, Mr. Finlen stated that no other changes would be made to the proposed agreement.

7. After Mr. Ramos advised Mr. Finlen that he was prepared to execute the proposed

agreement, in the late afternoon of October 21, 1997, Mr. Finlen sent Mr. Ramos (via e-mail) a copy of the revised proposed interconnection agreement. Consistent with the prior telephone conversation, Mr. Finlen stated in his e-mail that the only revisions contained in the enclosed interconnection agreement would be as follows:

(a) *Attachment 1 (Resale) was replaced with "Agreed to under separate agreement".*
(b) *Attachment 4 (Collocation) was replaced with "Agreed to under separate agreement"; and*
(c) *ALEC-1 was "replaced with Supra Telecommunications and Information Systems, Inc."*

8. Finally, Mr. Finlen's e-mail closed with the following statement and request, "The signature page is in the file called TERMCOND.DOC. Once you have reviewed the documents please contact me so we can coordinate our signings and prepare a package for filing with the Commissions." A true and correct copy of Mr. Finlen's e-mail is attached as Exhibit 2 to the Declaration of Olukayode Ramos, which is attached hereto as Exhibit "B".

9. On or about October 27, 1997, Mr. Ramos executed the revised interconnection agreement (hereafter referred to as the "Interconnection Agreement") and returned the same to BellSouth for execution. Thereafter, on or about October 31, 1997, Jerry Hendrix, as Director of Interconnection Services for BellSouth, executed the Interconnection Agreement.

10. Notwithstanding the fact that both BellSouth and Supra had executed the Interconnection Agreement, BellSouth (either through Mr. Finlen or others) removed the attachments which had accompanied the Interconnection Agreement and substituted those attachments with altered attachments that materially altered the Interconnection Agreement. The agreement containing the altered attachments will hereafter be referred to as the "BellSouth Altered Interconnection Agreement."

11. On or about November 24, 1997, BellSouth unilaterally petitioned this Commission on behalf of itself and Supra, to approve the BellSouth Altered Interconnection Agreement. Given the above, BellSouth either knew or should have known that the November 24, 1997, Petition was a fraudulent request upon this Commission since the agreement attached to the Petition was not the agreement entered into between the parties.

12. On or about February 3, 1998, this Commission entered an Order entitled, Order Approving Resale, Interconnection, And Unbundling Agreement, which approved the BellSouth Altered Interconnection Agreement. A true and correct copy of that Order is attached hereto as Exhibit "C". At the time of BellSouth's Petition and this Commission's Order, Supra was unaware of the fact that BellSouth had altered the Interconnection Agreement. Had Supra been made aware of both the alterations and BellSouth's filing of the document, Supra would have objected to such conduct.

13. The most important difference between the Interconnection Agreement and the BellSouth Altered Interconnection Agreement was the deletion of provisions relating to the combination of UNEs. For example, Attachment 2 was modified to delete paragraph 2, entitled "Unbundled Service Combinations (USC)", which had provided Supra access to combined UNEs. Paragraph 1 of Attachment 11 was also modified to delete any reference to BellSouth providing pricing of "Combinations". A true and correct copy of the relevant portions of Attachments 2 and 11 which were filed with the Commission and which reflect the alterations made, is attached hereto as Exhibit "D". Additionally, Attachment 9 (referenced in the original paragraph 2.1.1 of Attachment 2) was also substantially modified. The BellSouth Altered Interconnection Agreement also contained other changes that have not been listed herein. None of the alterations made by

BellSouth in the BellSouth Altered Interconnection Agreement had ever been agreed to by Supra. A non-exclusive list of some of the other alterations made by BellSouth to the Interconnection Agreement is attached hereto and marked as Exhibit "E".

14. The most material alteration made by BellSouth was the deletion of those provisions in Attachment 2 which had provided Supra access to combined UNEs. It is perhaps no coincidence that the alterations were made after BellSouth discovered that a possible issue relating to combining UNEs had arisen as a result of the *Iowa Utilities Board* opinion. Moreover, a cursory review of all of the changes made by BellSouth reveals that BellSouth changed the revision dates on most of the altered pages, with the exception of the changes relating to combined UNEs. Accordingly, it is clear that BellSouth was attempting to hide the material alterations relating to recombined UNEs by failing to change the document revision date on those pages and thus burying the alterations within a large and voluminous document. Even if not deliberate, BellSouth's actions constitute grossly negligent conduct deserving further review and scrutiny by the Commission.

15. In April 1998, Supra requested pricing from Mr. Finlen of BellSouth in reference to various UNEs and combinations thereof. On or about June 22, 1998, Supra made another request of BellSouth's Mr. Marcus Cathey for the purchase of UNEs. A true and correct copy of that letter is attached as Exhibit 3 to the Declaration of Olukayode Ramos, which is attached hereto as Exhibit "B".

16. On July 2, 1998, Marcus Cathey, as Senior Assistant Vice President of BellSouth, replied to Supra's requests stating that BellSouth had no contractual or statutory obligation to provide combined UNEs. Moreover, that any agreement to combine such elements would be at "market price" and not subject to the jurisdiction of the Florida Public Service Commission. A true and

correct copy of that letter is attached as Exhibit 4 to the Declaration of Olukayode Ramos, which is attached hereto as Exhibit "B".

17. Shortly thereafter, Supra investigated the matter and discovered that the Interconnection Agreement had been altered, and that the BellSouth Altered Interconnection Agreement (which Supra had never agreed to) had been filed with the Public Service Commission. When confronted with this situation, BellSouth offered to amend the BellSouth Altered Interconnection Agreement to restore some (but not all) of the provisions which BellSouth had previously altered without Supra's permission or agreement. BellSouth further stated that even if the provisions providing access to recombined UNEs were restored, that BellSouth would not provide such UNEs without a so-called "glue charge", which BellSouth has yet to establish.

18. BellSouth's position regarding this so-called "glue charge" is in conflict with this Commission's Order No. PSC-98-0810-FOF-TP (June 12, 1998) in CC Docket No. 971140-TP, which states in pertinent part as follows:

> *We find that BellSouth's requirement that an ALEC must be collocated in order to receive access to UNEs is in conflict with the Eighth Circuit. As we have already noted, the court stated held that a requesting carrier may achieve the capability to provide telecommunications services completely through access to the unbundled elements of an incumbent LEC's network and has no obligation to own or control some portion of a telecommunications network before being able to purchase unbundled elements. Iowa Utilities Bd. I, 120 F.3d at 814. BellSouth's collocation proposal would impose on an ALEC seeking unbundled access the very obligation the court held to be inappropriate under the Act, i.e., to own or control some portion of the network.*
>
> *Upon review of the evidence in this record, we approve the non-recurring work times and direct labor rates shown in Table I for each loop and port combination in issue in this proceeding for the migration of an existing BellSouth customer to AT&T or MCI without unbundling. We furthermore approve the resultant NRCs shown in Table II.*

Table I

Commission-Approved
Non-recurring Work Times and Direct Labor Rates
for
Loop and Port Combinations

Function	JFC	Installation First (Hour)	Installation Add'l (Hour)	Direct Labor Rate
LCSC	2300	0.0125	0.0000	$42.09
RCMAG[1]	4N1X	0.0250	0.0250	$37.34
ACAC[2]	471X	0.0019	0.0019	$38.26
CPG[2]	470X	0.0040	0.0000	$36.25
SSIM[2]	411X	0.0075	0.0050	$42.96

[1]For the 2-wire ISDN loop and port combination we approve an RCMAG work time of 0.0667 hour for first and additional installations.
[2]These functions are pertinent only to the DS1 4-wire loop and port combination.

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*

19. Although BellSouth conceded that the wrong attachments were used in preparing the

agreements, BellSouth's offer does not correct the fact that the agreement filed with the Commission was erroneous, nor does it remedy the situation which allowed the problem to occur in the first instance. To date, BellSouth has failed to offer a substitution of the original Interconnection Agreement in whole or to otherwise inform this Commission of BellSouth's misconduct in reference to the filing of the BellSouth Altered Interconnection Agreement. At a minimum, this swapping constitutes gross negligence on BellSouth's part.

20. BellSouth has since conceded that Patrick Finlen swapped the attachments attached to the Interconnection Agreement. However, BellSouth claims that the swapping of attachments was inadvertent and unintentional. Notwithstanding BellSouth's contentions, Supra believes that the swapping of attachments and the filing of the BellSouth Altered Interconnection Agreement was a fraud perpetrated on Supra, this Commission and telephone subscribers. Given the circumstances referenced above, BellSouth's motives, means and opportunity, it is difficult to believe that the swapping of attachments was anything but intentional and deliberate.

21. In any event, BellSouth's filing of the BellSouth Altered Interconnection Agreement with this Commission was erroneous, since the parties had never agreed to the provisions of that agreement and filing. In particular, the filing is in violation of Sections 251(c)(1) and 252(a)(1) of the Federal Act. Section 251(c)(1) states in pertinent part 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.*

Likewise, Section 252(a)(1) states in pertinent part as follows:

> *VOLUNTARY NEGOTIATIONS- Upon receiving a request for interconnection,*

services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section.

22. Although BellSouth disputes its motives and intentions in filing the BellSouth Altered Interconnection Agreement, it is undisputed that Supra never agreed to the agreement, which has been filed and approved. It is also undisputed that the documents attached hereto are true and correct.

II. Statement Of Jurisdiction & Affected Rights

23. Supra's rights are affected by this petition since BellSouth has filed and has sought to enforce the BellSouth Altered Interconnection Agreement; an agreement which Supra never approved of or otherwise executed. Indeed in Docket No. 980155, Supra sought a generic proceeding in which to establish rates, terms and conditions of an interconnection agreement with BellSouth. BellSouth successfully moved to dismiss that petition based upon the contention that a filed interconnection agreement already existed between the parties. In short, BellSouth was arguing that the BellSouth Altered Interconnection Agreement was a valid and binding agreement between the parties; an assertion which Supra has now discovered is false.

24. BellSouth will also be affected by a Commission decision in this matter since the filed BellSouth Altered Interconnection Agreement will obviously be impacted if said agreement is declared to be void.

25. Pursuant to Section 252(e)(1) of the Federal Act and Fla. Stat. § 364.07, every

telecommunications company shall file with the Public Service Commission, and for its ultimate approval, any contract, agreement, or arrangement in writing with any other telecommunications company. On or about November 24, 1997, BellSouth filed the BellSouth Altered Interconnection Agreement with this Commission pursuant to this statute. Pursuant to Fla. Stat. § 364.07(2), the "[C]ommission is also authorized to adjudicate disputes among telecommunications companies regarding such contracts or the enforcement thereof." Accordingly, this Commission has the authority to adjudicate any matter relating to the BellSouth Altered Interconnection Agreement.

26. Pursuant to Fla. Stat. §§ 364.185, 364.18 and 364.183, this Commission has the authority to conduct investigations into the records of all telecommunications companies within this Commission's jurisdiction. *See Southern Bell Telephone & Telegraph Co. v. Deason, et al.*, 632 So.2d 1377, 1388-89 (Fla. 1994) (Commission has the authority to inspect the records of telephone companies); *In re: Initiation of show cause proceedings against Commercial Ventures, Inc. for failure to comply with Commission rules*, 91 FPSC 3:67; FPSC Order No. 24197 (March 5, 1991) (Docket No. 880240-TC) (Commission has authority pursuant to Fla. Stat. § 364.185 to make investigations, inspections, examinations and tests of private property of a telephone company).

28 Pursuant to Fla. Stat. § 364.285, this Commission has the authority to impose monetary sanctions (of up to $25,000) upon any entity subject to its jurisdiction which is found to have willfully violated any provision of Chapter 364, Florida Statutes. In this instance, BellSouth has willfully violated at least Fla. Stat. § 364.07 by failing to file the true agreement entered into between Supra and BellSouth and/or by not filing the correct agreement upon receipt of Supra's protest. Supra believes that this Commission should impose monetary sanctions upon BellSouth to deter this behavior in the future. *See e.g. In re: Initiation of show cause proceedings against*

Commercial Ventures, Inc. for failure to comply with Commission rules, 91 FPSC 3:67; FPSC Order No. 24197 (March 5, 1991) (Docket No. 880240-TC) (Commission can impose monetary sanctions on telephone company for failing to comply with Commission rules).

III. Relief Requested

29. Supra requests a hearing on this matter before the full Commission pursuant to Fla. Stat. § 350.01(6).

30. Supra requests that this Commission conduct a full investigation and determine why the attachments were changed, how the attachments were changed, who at BellSouth was responsible, what procedures does BellSouth have in place to prevent agreements from being altered, and what will BellSouth do to prevent a repeat occurrence.

31. Pursuant to the above, within seven days of filing of this petition by Supra, the Commission and Supra should visit the Interconnection Department of BellSouth (especially the unit responsible for negotiating contracts with ALECs) to determine which computer(s) was/were used to change Supra's agreement with BellSouth.

32. Supra requests that this Commission find that BellSouth either in gross negligence, or in willful fraud, substituted the attachments in the Interconnection Agreement and thus materially changed and altered the agreement originally executed by the parties. Moreover, Supra also requests that this Commission find that BellSouth has violated Sections 251 and 252 of the Telecommunications Act of 1996 and Chapter 364, Florida Statutes. This Commission should also find that contrary to Sections 251(b)(1) and 251(c)(4(A)) of the Telecommunications Act, BellSouth has imposed unreasonable, discriminatory conditions and limitations on the provision of telecommunications services by Supra.

33. Supra requests that this Commission vacate its Order of February 3, 1998, entitled Order Approving Resale, Interconnection And Unbundling Agreement in Docket No. 971555-TP (Order No. PSC-98-0206-FOF-TP).

34. Supra requests that this Commission also find that the Interconnection Agreement attached hereto as Exhibit "A", was the true and correct agreement entered into between the parties.

35. Supra requests that this Commission enter an Order approving the Interconnection Agreement attached hereto as Exhibit "A" as the true agreement entered into between the parties.

36. Supra requests that upon conclusion of this matter, this Commission should contact the Commissions in all of the states in which BellSouth is certificated and advise such sister-state Commissions that BellSouth has engaged in the above referenced conduct and that these sister-states should scrutinize similar agreement filings made by BellSouth.

37. Finally, Supra requests that this Commission reprimand BellSouth and impose monetary sanctions upon BellSouth for its conduct in this matter.

Respectfully Submitted this _____ day of December, 1998.

GUNSTER, YOAKLEY, VALDES-FAULI &
STEWART, P.A.
215 South Monroe Street
Suite 830
Tallahassee, Florida 32301
(850) 222-6660
FAX (850) 222-1002

By: _____
William L. Hyde
Florida Bar No. 265500
Rebecca A. O'Hara
Florida Bar No. 0015802

CERTIFICATE OF SERVICE

I HEREBY Certify that the original and fifteen copies of the foregoing have been hand delivered to the Clerk, Public Service Commission, 2540 Shmard Oak Boulevard, Tallahassee, Florida 32399-0850 and a true and correct copy has been furnished by U.S. Mail or hand-delivery upon BELLSOUTH TELECOMMUNICATIONS, INC. c/o Nancy H. Sims, 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301, this _____ day of December, 1998.

By: _____
William L. Hyde

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

Petition To Set Aside 2/3/98 Order Approving Resale, Interconnection And Unbundling Agreement Between BellSouth Telecommunications And Supra Telecommunications & Information Systems; And To Approve Agreement Actually Entered Into By The Parties Pursuant to Sections 251, 252 and 271 Of The Telecommunications Act Of 1996	)	Docket No.: 981832-TP Dated: December 9, 1998

DECLARATION OF OLUKAYODE A. RAMOS

1. This declaration is based upon direct and personal knowledge.

2. I am the Chairman and CEO of Supra Telecommunications & Information Systems, Inc. ("Supra"); an Alternative Local Exchange Carrier ("ALEC") headquartered in Miami, Florida. My business address is 2620 SW 27th Avenue, Miami, FL 33133.

3. I have reviewed the instant petition of Supra and am intimately familiar with all the problems enumerated in that document.

4. I am familiar with the Telecommunications Acts of 1934 and 1996 as well as the FCC First Report and Order No. 96-325. According to the preamble of the Telecommunications Act of 1996, that Act 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.*

Likewise, paragraph 3 of the FCC's First Report and Order No. 96-325 states in pertinent

part as follows:

> *Three principal goals established by the telephony provisions of the 1996 Act are: (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. . . The Act directs us and our state colleagues to remove not only statutory and regulatory impediments to competition, but economic and operational impediments as well. We are directed to remove these impediments to competition in all telecommunications markets, while also preserving and advancing universal service in a manner fully consistent with competition.*

See FCC 96-325, at page 1, ¶ 3.

5. Supra views the local loop as the key to all forms of telecommunications service. It is our desire to bring the benefits of competition, as envisioned in the Telecommunications Act of 1996, to American telephone subscribers who have suffered and endured the pains of dealing with a monopolistic service provider for over 100 years. Competition in the local loop is the key to any form of competition in the telecommunications industry. All of the service providers, including long distance, wireless, ISPs, CAPs, advanced services, depend upon local service for their existence.

6. On or about September 1997, I contacted BellSouth in order to enter into a mutually acceptable local interconnection agreement with BellSouth pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 and for all of the states in which BellSouth is the Incumbent Local Exchange Carrier ("ILEC"). Copy of the letter is attached as Exhibit ----.

7. On or about October 20, 1997, I executed two copies of an interconnection

agreement that had been proposed by BellSouth and returned the same to BellSouth. The interconnection agreement did not reference Supra, but rather only "ALEC-1" as the party entering into the agreement with BellSouth.

8. On or about October 21, 1997, Patrick Finlen, the Interconnection Services Manager of BellSouth, advised me that the agreement I executed was intended as a starting point for negotiations, but that if Supra was ready to execute a final version of the agreement, that BellSouth would revise the agreement to replace the words "ALEC" and "ALEC-1" with the words "Supra Telecommunication & Information Systems, Inc." or just plain "Supra". Mr. Finlen also advised me that the parties had already entered into a resale agreement and a collocation agreement, and therefore these items did not have to be included in the revised interconnection agreement. Mr. Finlen stated that no other changes would be made to the agreement which I had recently signed and confirmed our discussions via e-mail. A copy of Mr. Finlen's e-mail is attached as Annex 1.

9. On or about October 27, 1997, I executed two copies of the revised interconnection agreement (hereafter referred to as the "Interconnection Agreement") sent to me by Pat Finlen and returned both copies to BellSouth for execution. Thereafter, on or about October 31, 1997 Jerry Hendrix, as Director of Interconnection Services for BellSouth, executed the Interconnection Agreement.

10. I reviewed the Interconnection Agreement before executing the signature page to insure that the paper copy of the agreement was the same as the e-mailed version previously sent to me by Pat Finlen.

11. After executing the Interconnection Agreement, Supra requested

Unbundled Network Elements ("UNEs") from BellSouth on a number of occasions. However, BellSouth has consistently refused to provide Supra with UNEs.

12. On or about June 12, 1998, the Florida Public Service Commission ("FPSC") entered Order No. PSC–98–0810–FOF-TP. On or about June 22, 1998, I wrote a letter to BellSouth's Mr. Marcus Cathey requesting to purchase UNEs as a result of that FPSC Order. A copy of that letter is attached hereto and marked as Annex 2.

13. On or about July 2, 1998, Mr. Cathey replied to my June 22nd letter stating that BellSouth has no contractual or statutory obligation to combine UNEs on behalf of Supra. A copy of that letter is attached hereto and marked as Annex 3.

14. Since the receipt of Mr. Cathey's July 2, 1998 letter, my colleagues and I have reviewed our files and determined that the Interconnection Agreement which I had signed did in fact, include a provision requiring BellSouth to provided recombined UNEs. Thereafter, Supra attempted to advise BellSouth on several occasions that BellSouth had a contractual obligation to recombine UNEs on behalf of Supra. Moreover, Supra then began to suspect that the interconnection agreement filed by BellSouth, was not in fact, the Interconnection Agreement executed between the parties.

15. On or about August 17, 1998, Supra's immediate past General Counsel, Ms. Suzanne Summerlin, wrote a letter to BellSouth's Mary Jo Peed on this issue. A copy of that letter is attached as Annex 4. On or about August 21, 1998, Ms. Peed replied to Ms. Summerlin's letter offering to reinstate the deleted provisions back into the contract on the condition that the reinstatement would be treated as an amendment to the filed agreement. A copy of the letter is attached as Annex 5. Even after the amendment,

the letter stated further that Supra would still be denied access to UNEs.

16. Paragraph 12 of the FCC's First Report and Order states in pertinent part as follows:

> *The Act contemplates three paths of entry into the local market -- the construction of new networks, the use of unbundled elements of the incumbent's network, and resale. The 1996 Act requires us to implement rules that eliminate statutory and regulatory barriers and remove economic impediments to each. We anticipate that some new entrants will follow multiple paths of entry as market conditions and access to capital permit. Some may enter by relying at first entirely on resale of the incumbent's services and then gradually deploying their own facilities. This strategy was employed successfully by MCI and Sprint in the interexchange market during the 1970's and 1980's. Others may use a combination of entry strategies simultaneously -- whether in the same geographic market or in different ones. Some competitors may use unbundled network elements in combination with their own facilities to serve densely populated sections of an incumbent LEC's service territory, while using resold services to reach customers in less densely populated areas. Still other new entrants may pursue a single entry strategy that does not vary by geographic region or over time. Section 251 neither explicitly nor implicitly expresses a preference for one particular entry strategy. Moreover, given the likelihood that entrants will combine or alter entry strategies over time, an attempt to indicate such a preference in our section 251 rules may have unintended and undesirable results. Rather, our obligation in this proceeding is to establish rules that will ensure that all pro-competitive entry strategies may be explored. As to success or failure, we look to the market, not to regulation, for the answer.*

FCC 96-325, at page 5, ¶ 12.

17. The purchase of UNEs from BellSouth in combination with Supra's facilities is a very important part of Supra's plans of providing telecommunications services to subscribers.

18. By denying Supra UNEs, BellSouth has done incalculable damage to Supra, its employees, the morale of the company, Supra's business plan, competition and

the telephone subscribers who have been denied the benefits of dealing with a competing provider like Supra.

19. Pursuant to Florida Statute § 92.525, I, OLUKAYODE A. RAMOS, under the pains and penalties of perjury, hereby declares that I have read the foregoing declaration and that the facts stated herein are true and correct.

_____
OLUKAYODE A. RAMOS

_____
EXECUTED ON (DATE)

10

Mary Jo Peed
General Attorney

BellSouth Telecommunications, Inc.
Legal Department - Suite 4300
675 West Peachtree Street
Atlanta, Georgia 30375-0001
Telephone: 404-335-0705
Facsimile: 404-625-5360

August 21, 1998

Via Facsimile

Suzanne Fannon Summerlin, Esq.
1311-B Paul Russell Road, #201
Tallahassee, Florida 32301

Re: Your letter of August 17, 1998

Dear Ms. Summerlin:

Pursuant to your letter of August 17, 1998, this is BellSouth's response to Issues 2 and 3 delineated therein. As I stated in my voice mail earlier this week, Nancy White will be responding to your Issue 1 under separate cover.

With regard to Issue 2 and the type of equipment that may be placed in physical collocation space occupied by Supra, you and I had a detailed conversation regarding this matter at the end of July. Contrary to your assertion, BellSouth has never approved the placement of the equipment listed in Supra's applications for physical collocation space.

Supra's physical collocation applications request that Supra be allowed to place ATM nodes (Cisco Systems Model No. IGX-16-RM); Digital switches (Lucent Tech Model No. 5ESS); Digital Loop Carrier equipment (Lucent Tech Model No. SLC2000); and Cisco Systems equipment Model No. AS5248-56K-CH (identified by Supra as Remote Access Concentrators). Section III(A) of Supra's Collocation Agreement, executed by Mr. Ramos on July 21, 1998, states that "BellSouth shall permit Interconnector to place, maintain, and operate in the Collocation Space any equipment that Interconnector is authorized by BellSouth and by Federal or State regulators to place, maintain and operate in collocation space and that is used by Interconnector to provide services which Interconnector has the legal authority to provide." In an effort to be perfectly clear and to finally put this issue to rest, **BellSouth does not authorize the placement of the remote access concentrators in the physical collocation space occupied by Supra. BellSouth does, however, authorize the placement of the ATM nodes, the digital switches, and the digital loop carrier equipment identified by the model**

numbers in Supra's applications in the physical collocation space occupied by Supra.

BellSouth's position regarding Supra's equipment requests is consistent with the BellSouth policy sent to Mr. Ramos from Marc Cathey on July 14, 1998 and is consistent with our discussions at the end of July and the portions of the FCC's First Report and Order that I cited in those discussions.[1] ATM nodes, digital switches and digital loop carrier equipment are all capable of providing telecommunications services and information services through the same arrangement. The remote access concentrator equipment is not. BellSouth administers its policy regarding equipment placed by Interconnectors in physical collocation arrangements in a non-discriminatory manner.

With regard to Issue 3, I have researched the issue of the language regarding network element combinations cited in Mr. David Nilson's letter to Marc Cathey dated August 3, 1998. That language was not contained in the interconnection agreement executed by BellSouth and Mr. Ramos and filed with the Florida Public Service Commission. The language was contained in the e-mailed agreement sent to Mr. Ramos by Pat Finlen. Mr. Finlen did not know of the inconsistencies between the two documents when he prepared the final version of the agreement to be executed and did not become aware of the inconsistency until Mr. Nilson's letter of August 3rd. I am enclosing an amendment to the filed agreement to be executed by Mr. Ramos so that the language may be incorporated within the filed and approved document. On behalf of BellSouth, I apologize to Supra for this error.

NOT Supra

As to the intent of the language of sections 2.1.1 through 2.1.6, this language does not give Supra authority to obtain these combinations. The language of section 2.1.1 is conditional upon two discreet events, neither of which have occurred. As you know section 2.1.1 states the following:

> Where BellSouth offers to Supra Telecommunications and Information Systems, Inc., either through a negotiated arrangement or as a result of an effective Commission order, a combination of Network elements priced as individual unbundled network elements, The following product combination will be made available. All other requests for unbundled element combinations will be evaluated via the Bona Fide Request Process, as set forth in Attachment 9.

(Emphasis added). This language is consistent with BellSouth's position in regards to providing combinations of network elements to new entrants. At present, there is no effective Commission order that requires BellSouth to offer to Supra a combination of

[1] In the recently issued Memorandum Opinion and Order and Notice of Proposed Rulemaking in CC Docket No. 98-147 et. al., the FCC "tentatively concluded that we should decline to require collocation of equipment used to provide enhanced services." FCC 98-188 at para. 132.

Open colocation to perform telecom services

network elements. BellSouth is willing, however, to negotiate with Supra and, if negotiations are successful, to provide such combinations for the price of the network elements and a negotiated professional service fee, commonly referred to as "a glue charge." If Mr. Ramos is interested in negotiating such an arrangement, Mr. Finlen would be happy to discuss this with him. In any event, the language of sections 1.3, 1.4 and 1.5 of Attachment 2 that sets forth the price of combinations of network elements where Supra does the combining and duplicates a service identical to a BellSouth retail offering will continue to apply. In those circumstances the price paid by Supra would be the retail price of the duplicated service less the wholesale discount.

Lastly, at the end of July, I sent to you, at your request, both electronically and through hand delivery, the documents necessary for Supra to adopt the MCImetro agreement. I have never received any further communication from you regarding this matter. Could you please let me know what Supra intends to do regarding the adoption of another agreement?

If you have further questions or would like to discuss the matters contained within this correspondence, please feel free to call me.

Sincerely,

Mary Jo Peed

Cc: Nancy White
Pat Finlen

Attachment

AMENDMENT

TO

INTERCONNECTION AGREEMENT BETWEEN
SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.
BELLSOUTH TELECOMMUNICATIONS, INC. DATED OCTOBER 23, 1997

Pursuant to this Agreement (the "Agreement"), Supra Telecommunications and Information Systems, Inc. ("Supra") and BellSouth Telecommunications, Inc. ("BellSouth") hereinafter referred to collectively as the "Parties" hereby agree to amend that certain Interconnection Agreement between the Parties dated October 23, 1997 ("Interconnection Agreement").

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Supra and BellSouth hereby covenant and agree as follows:

1. Attachment 2 shall be amended to include a new section 2 entitled Unbundled Service Combinations (USC). The section shall read as follows:

2. **Unbundled Service Combinations (USC)**

2.1.1 Where BellSouth offers to Supra Telecommunications and Information Systems, Inc., either through a negotiated arrangement or as a result of an effective Commission order, a combination of network elements priced as individual unbundled network elements, the following product combination will be made available. All other requests for unbundled element combinations will be evaluated via the Bona Fide Request Process, as set forth in Attachment 9.

2.1.2 2-Wire Analog Loop with 2-Wire Analog Port - Residence

2.1.3 2-Wire Analog Loop with 2-Wire Analog Port - Business

2.1.4 2-Wire Analog Loop with 2-Wire Analog Port - PBX

2.1.5 2-Wire Analog Loop with 2-Wire DID or 4-Wire DID

2.1.6 BellSouth will confirm to the technical references contained in this Attachment 2 to the extent these requirements are implemented by equipment vendors and consistent with the software generic releases purchased and installed by BellSouth.

2. The Parties agree that all of the other provisions of the Interconnection Agreement, dated October 23, 1997, shall remain in full force and effect.

3. The Parties further agree that either or both of the Parties is authorized to submit this Amendment to the Florida Public Service Commission or other regulatory body having jurisdiction over the subject matter of this Amendment, for approval subject to Section 252(e) of the federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

SUPRA TELECOMMUNICATIONS and INFORMATION SYSTEMS, INC.	BELLSOUTH TELECOMMUNICATIONS, INC.
By:_____	By:_____
DATE:_____	DATE:_____

BEFORE THE FLORIDA
PUBLIC SERVICE COMMISSION

Petition Of Supra Telecommunications & Information Systems, Inc. To Initiate Investigation Into The Unfair Practices Of BellSouth Telecommunications, Inc. In Negotiating Agreements With ALECs And Filing Such Agreements With The Florida Public Service Commission	)	Docket No.: 981833-TP Dated: December 9, 1998

Petition Of Supra Telecommunications & Information Systems, Inc. To Initiate Investigation Into The Unfair Practices Of BellSouth Telecommunications, Inc. In Negotiating Agreements With ALECs And Filing Such Agreements With The Florida Public Service Commission

Petitioner, SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC. ("Supra"), by and through its undersigned counsel, hereby files this its petition for a proceeding seeking to initiate an investigation into the unfair practices of BELLSOUTH TELECOMMUNICATIONS, INC. ("BellSouth") in negotiating agreements with Alternative Local Exchange Carriers ("ALECs") and the filing such agreements with the Florida Public Service Commission. Supra asks this Commission to seek and allow the intervention of other Florida ALECs who may have also suffered from an incorrect and erroneous BellSouth agreement filing. In support of this Petition, Supra states as follows:

I. Relevant Facts

1. Supra Telecommunications & Information Systems, Inc. is a Florida-based minority-owned corporation certificated by the Florida Public Service Commission as an ALEC. BellSouth is an Incumbent Local Exchange Carrier ("ILEC") as defined by Section 251(h) of the

Telecommunications Act of 1996 ("Federal Act").

2. In early September 1997, Supra made a request of BellSouth to enter into a mutually acceptable interconnection agreement pursuant to Sections 251 and 252 of the Federal Act in all states in which BellSouth is the ILEC. A true and correct copy of that letter is attached as Exhibit 1 to the Declaration of Olukayode Ramos, which is attached hereto as Exhibit "B". BellSouth then proceeded to provide Supra a copy of a proposed interconnection agreement for Supra's review. The proposed interconnection agreement did not specifically mention Supra as a party, but rather only made reference to "ALEC-1" as the relevant party entering into the agreement.

3. The proposed agreement contained various provisions regarding access to, pricing of and recombination of Unbundled Network Elements ("UNE"), including the following provisions:

(Attachment 2)

2. Unbundled Service Combinations (USC)

2.1.1 Where BellSouth offers to ALEC-1, either through a negotiated arrangement or as a result of an effective Commission order, a combination of network elements priced as individual unbundled network elements, the following product combination will be made available. All other requests for unbundled element combinations will be evaluated via the Bona Fide Request Process, as set forth in Attachment 9.

2.1.2 2-Wire Analog Loop with 2-Wire Analog Port - Residence

2.1.3 2-Wire Analog Loop with 2-Wire Analog Port - Business

2.1.4 2-Wire Analog Loop with 2-Wire Analog Port - PBX

2.1.5 2-Wire Analog Loop with 2-Wire DID or 4-Wire DID

2.1.6 BellSouth will conform to the technical references contained in this Attachment 2 to the extent these requirements are implemented by equipment vendors and consistent with the software generic releases purchased and installed by BellSouth.

(Attachment 11)

1. General Principles

All services provided hereunder (including resold Local Services, Network Elements, Combinations and Ancillary Functions) and all new and additional services to be provided hereunder shall be priced in accordance with all provisions of the Act and the rules and orders of the Federal Communications Commission and the Florida

Public Service Commission.

A true and correct copy of Attachments 2 and 11 (referenced above) can be found in the Interconnection Agreement attached hereto as Exhibit "A". The BellSouth revision dates on each of the above reference paragraphs was 10/15/97. Additionally, Attachment 9 referenced in paragraph 2.1.1 referred to how bona fide requests were to be made for among other items, combinations of UNEs.

4. On or about October 14, 1997, the Eighth Circuit Court of Appeals issued its opinion as Amended on Rehearing in the case of *Iowa Utilities Board v. Federal Communications Commission*, 120 F.3d 753 (8th Cir. 1997). That opinion arguably called into question whether or not it was the responsibility of the ILEC or that of the ALEC to combine UNEs.

5. On or about October 20, 1997, Olukayode Ramos, as President and CEO, executed the proposed agreement and returned the same back to BellSouth.

6. On or about October 21, 1997, Patrick Finlen, the Interconnection Services Manager of BellSouth, advised Mr. Ramos that the proposed agreement was a starting point for negotiations and that if Supra was ready to execute a final version of the agreement, that BellSouth would revise the agreement to replace the words "ALEC" and "ALEC-1" with the words "Supra Telecommunication & Information Systems, Inc." or just plain "Supra". Mr. Finlen also advised that the parties had already entered into a resale agreement and a collocation agreement, and therefore these items did not have to be included in the revised interconnection agreement. Finally, Mr. Finlen stated that no other changes would be made to the proposed agreement.

7. After Mr. Ramos advised Mr. Finlen that he was prepared to execute the proposed agreement, in the late afternoon of October 21, 1997, Mr. Finlen sent Mr. Ramos (via e-mail) a copy

of the revised proposed interconnection agreement. Consistent with the prior telephone conversation, Mr. Finlen stated in his e-mail that the only revisions contained in the enclosed interconnection agreement would be as follows:

(a) Attachment 1 (Resale) was replaced with "Agreed to under separate agreement".
(b) Attachment 4 (Collocation) was replaced with "Agreed to under separate agreement"; and
(c) ALEC-1 was "replaced with Supra Telecommunications and Information Systems, Inc."

8. Finally, Mr. Finlen's e-mail closed with the following statement and request, "The signature page is in the file called TERMCOND.DOC. Once you have reviewed the documents please contact me so we can coordinate our signings and prepare a package for filing with the Commissions." A true and correct copy of Mr. Finlen's e-mail is attached as Exhibit 2 to the Declaration of Olukayode Ramos, which is attached hereto as Exhibit "B".

9. On or about October 27, 1997, Mr. Ramos executed the revised interconnection agreement (hereafter referred to as the "Interconnection Agreement") and returned the same to BellSouth for execution. Thereafter, on or about October 31, 1997, Jerry Hendrix, as Director of Interconnection Services for BellSouth, executed the Interconnection Agreement.

10. Notwithstanding the fact that both BellSouth and Supra had executed the Interconnection Agreement, BellSouth (either through Mr. Finlen or others) removed the attachments which had accompanied the Interconnection Agreement and substituted those attachments with altered attachments that materially altered the Interconnection Agreement. The agreement containing the altered attachments will hereafter be referred to as the "BellSouth Altered Interconnection Agreement."

11. On or about November 24, 1997, BellSouth unilaterally petitioned this Commission

on behalf of itself and Supra, to approve the BellSouth Altered Interconnection Agreement. Given the above, BellSouth either knew or should have known that the agreement attached to the November 24, 1997, Petition was not the agreement entered into between the parties.

12. On or about February 3, 1998, this Commission entered an Order entitled, Order Approving Resale, Interconnection, And Unbundling Agreement, which approved the BellSouth Altered Interconnection Agreement. A true and correct copy of that Order is attached hereto as Exhibit "C". At the time of BellSouth's Petition and this Commission's Order, Supra was unaware of the fact that BellSouth had altered the Interconnection Agreement. Had Supra been made aware of both the alterations and BellSouth's filing of the document, Supra would have objected to such conduct.

13. The most important difference between the Interconnection Agreement and the BellSouth Altered Interconnection Agreement was the deletion of provisions relating to the combination of UNEs. For example, Attachment 2 was modified to delete paragraph 2, entitled "Unbundled Service Combinations (USC)", which had provided Supra access to combined UNEs. Paragraph 1 of Attachment 11 was also modified to delete any reference to BellSouth providing pricing of "Combinations". A true and correct copy of the relevant portions of Attachments 2 and 11 which were filed with the Commission and which reflect the alterations made is attached hereto as Exhibit "D". Additionally, Attachment 9 (referenced in the original paragraph 2.1.1 of Attachment 2) was also substantially modified. The BellSouth Altered Interconnection Agreement also contained other changes that have not been listed herein. None of the alterations made by BellSouth in the BellSouth Altered Interconnection Agreement had ever been agreed to by Supra. A non-exclusive list of some of the other alterations made by BellSouth to the Interconnection

Agreement is attached hereto and marked as Exhibit "E".

14. The most material alteration made by BellSouth was the deletion of those provisions in Attachment 2 which had provided Supra access to combined UNEs. It is perhaps no coincidence that the alterations were made after BellSouth discovered that a possible issue relating to combining UNEs had arisen as a result of the *Iowa Utilities Board* opinion. Moreover, a cursory review of all of the changes made by BellSouth reveals that BellSouth changed the revision dates on most of the altered pages, with the exception of the changes relating to combined UNEs. Accordingly, it is clear that BellSouth was attempting to hide the material alterations relating to recombined UNEs, by failing to change the document revision date on those pages and thus burying the alterations within a large and voluminous document. Even if not deliberate, BellSouth's actions constitute grossly negligent conduct deserving further review and scrutiny by the Commission.

15. In April 1998, Supra requested pricing from Mr. Finlen of BellSouth in reference to various UNEs and combinations thereof. On or about June 22, 1998, Supra made another request of BellSouth's Mr. Marcus Cathey for the purchase of UNEs. A true and correct copy of that letter is attached as Exhibit 3 to the Declaration of Olukayode Ramos, which is attached hereto as Exhibit "B".

16. On July 2, 1998, Marcus Cathey, as Senior Assistant Vice President of BellSouth, replied to Supra's requests stating that BellSouth had no contractual or statutory obligation to provide combined UNEs. Moreover, that any agreement to combine such elements would be at "market price" and not subject to the jurisdiction of the Florida Public Service Commission. A true and correct copy of that letter is attached as Exhibit 4 to the Declaration of Olukayode Ramos, which is attached hereto as Exhibit "B".

17. Shortly thereafter, Supra investigated the matter and discovered that the Interconnection Agreement had been altered, and that the BellSouth Altered Interconnection Agreement (which Supra had never agreed to) had been filed with the Public Service Commission. When confronted with this situation, BellSouth offered to amend the BellSouth Altered Interconnection Agreement to restore some (but not all) of the provisions which BellSouth had previously altered without Supra's permission or agreement. BellSouth further stated that even if the provisions providing access to recombined UNEs were restored, that BellSouth would not provide such UNEs without a so-called "glue charge", which BellSouth has yet to establish.

18. BellSouth's position regarding this so-called "glue charge" is in conflict with this Commission's Order No. PSC-98-0810-FOF-TP (June 12, 1998) in Docket No. 971140-TP, which states in pertinent part as follows:

> *We find that BellSouth's requirement that an ALEC must be collocated in order to receive access to UNEs is in conflict with the Eighth Circuit. As we have already noted, the court stated held that a requesting carrier may achieve the capability to provide telecommunications services completely through access to the unbundled elements of an incumbent LEC's network and has no obligation to own or control some portion of a telecommunications network before being able to purchase unbundled elements. Iowa Utilities Bd. I, 120 F.3d at 814. BellSouth's collocation proposal would impose on an ALEC seeking unbundled access the very obligation the court held to be inappropriate under the Act, i.e., to own or control some portion of the network.*
>
> *Upon review of the evidence in this record, we approve the non-recurring work times and direct labor rates shown in Table I for each loop and port combination in issue in this proceeding for the migration of an existing BellSouth customer to AT&T or MCI without unbundling. We furthermore approve the resultant NRCs shown in Table II.*

Table I

Commission-Approved
Non-recurring Work Times and Direct Labor Rates
for
Loop and Port Combinations

Function	JFC	Installation First (Hour)	Installation Add'l (Hour)	Direct Labor Rate
LCSC	2300	0.0125	0.0000	$42.09
RCMAG[1]	4N1X	0.0250	0.0250	$37.34
ACAC[2]	471X	0.0019	0.0019	$38.26
CPG[2]	470X	0.0040	0.0000	$36.25
SSIM[2]	411X	0.0075	0.0050	$42.96

[1]For the 2-wire ISDN loop and port combination we approve an RCMAG work time of 0.0667 hour for first and additional installations.
[2]These functions are pertinent only to the DS1 4-wire loop and port combination.

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

19. Although BellSouth conceded that the wrong attachments were used in preparing the agreements, BellSouth's offer does not correct the fact that the agreement filed with the Commission was erroneous, nor does it remedy the situation which allowed the problem to occur in the first instance. To date, BellSouth has failed to offer a substitution of the original Interconnection Agreement in whole or to otherwise inform this Commission of BellSouth's misconduct in reference to the filing of the BellSouth Altered Interconnection Agreement.

20. BellSouth has since conceded that Patrick Finlen swapped the attachments attached to the Interconnection Agreement. However, BellSouth claims that the swapping of attachments was inadvertent and unintentional. Notwithstanding BellSouth's contentions, Supra believes that the swapping of attachments and the filing of the BellSouth Altered Interconnection Agreement was a fraud perpetrated on Supra, this Commission and telephone subscribers. Given the circumstances referenced above, BellSouth's motives, means and opportunity, it is difficult to believe that the swapping of attachments was anything but intentional and deliberate. At a minimum, this swapping constitutes gross negligence on BellSouth's part.

21. In any event, BellSouth's filing of the BellSouth Altered Interconnection Agreement with this Commission was erroneous, since the parties had never agreed to the provisions of that agreement and filing. In particular, the filing is in violation of Sections 251(c)(1) and 252(a)(1) of the Federal Act. Section 251(c)(1) states in pertinent part 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.*

Likewise, Section 252(a)(1) states in pertinent part as follows:

VOLUNTARY NEGOTIATIONS- Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section.

22. Although BellSouth disputes its motives and intentions in filing the BellSouth Altered Interconnection Agreement, it is undisputed that Supra never agreed to the agreement, which has been filed and approved. It is also undisputed that the documents attached hereto are true and correct.

II. Statement Of Jurisdiction & Affected Rights

23. Supra's rights are affected by this petition since BellSouth has filed and has sought to enforce the BellSouth Altered Interconnection Agreement; an agreement which Supra never approved of or otherwise executed. Indeed, in Docket No. 980155, Supra sought a generic proceeding in which to establish rates, terms and conditions of an interconnection agreement with BellSouth. BellSouth successfully moved to dismiss that petition based upon the contention that a filed interconnection agreement already existed between the parties. In short, BellSouth was arguing that the BellSouth Altered Interconnection Agreement was a valid and binding agreement between the parties; an assertion which Supra has now discovered is false.

24. BellSouth will also be affected by a Commission decision in this matter as a result of any potential Commission investigation into BellSouth's practices.

25. In addition to the above, Supra notes the gross uneven bargaining power between

BellSouth and ALECs in general. Moreover, if BellSouth has deliberately altered an agreement entered with Supra, then perhaps this conduct has been repeated in the past. In this regard Supra requests that this Commission invite other ALECs to participate in this proceeding and permit them to review and question the validity and authenticity of agreements which they have executed, but which BellSouth was allowed to file with this Commission.

26. Supra asks that all ALECs certificated in this state should be made aware of these proceedings and invited to join in and provide their input and comments. This is warranted because the BellSouth agreements are often in excess of 500 pages in length and contain only one signature page. Since BellSouth will always be the last party to sign the agreement, the ALEC must trust BellSouth to return and file an accurate copy of the negotiated agreement. Clearly this situation is one that is open for abuse by BellSouth. Perhaps procedures should be established which insure that agreements are not changed by BellSouth prior to filing.

27. Pursuant to Section 252(e)(1) of the Federal Act and Fla. Stat. § 364.07, every telecommunications company shall file with the Public Service Commission, and for its ultimate approval, any contract, agreement, or arrangement in writing with any other telecommunications company. Pursuant to Fla. Stat. § 364.07, all agreements between ALECs and ILECs for service in this State must be filed so that the Commission can either approve or reject the agreement in the public interest. Additionally, since the filed agreements are made part of the public record, all ALECs have the right to inspect those agreements and under the relevant telecommunications rules and/or statutes may opt into such agreements. Therefore, unless a true and accurate copy of the parties' agreements are on file, the public interest can be impacted by a failure to disclose favorable terms and conditions in various agreements (particularly BellSouth agreements). In the

circumstances of Supra, the public interest was compromised by BellSouth hiding from the public an interconnection agreement which allowed for recombined UNEs.

28. Pursuant to Fla. Stat. §§ 364.185, 364.18 and 364.183, this Commission has the authority to conduct investigations into the records of all telecommunications companies within this Commission's jurisdiction. Given the critical public interest and concern in insuring that accurate agreements between telecommunications companies are on file with this Commission, this Commission should initiate an appropriate investigation and inform all other ALECs in this state that their BellSouth agreements may have been altered. This Commission should also open for investigation all of BellSouth's records in its interconnection department to determine if other agreements filed in Florida have also been altered. *See generally In re: Investigation into the integrity of Southern Bell Telephone and Telegraph Company's repair service activities*, FPSC Docket 910163-TL (general investigation into BellSouth's unfair practices); *In re: Investigation into the integrity of Southern Bell Telephone and Telegraph Company's compliance with Rule* 25-4.110(2), F.A.C., Rebates, FPSC Docket No. 910727-TL (general investigation into BellSouth's unfair practices); *See also Southern Bell Telephone & Telegraph Co. v. Deason, et al.*, 632 So.2d 1377, 1388-89 (Fla. 1994) (Commission has the authority to inspect the records of telephone companies); *In re: Initiation of show cause proceedings against Commercial Ventures, Inc. for failure to comply with Commission rules*, 91 FPSC 3:67; FPSC Order No. 24197 (March 5, 1991) (Docket No. 880240-TC) (Commission has authority pursuant to Fla. Stat. § 364.185 to make investigations, inspections, examinations and tests of private property of a telephone company).

29. Pursuant to Fla. Stat. § 364.285, this Commission has the authority to impose monetary sanctions (of up to $25,000) upon any entity subject to its jurisdiction which is found to

have willfully violated any provision of Chapter 364, Florida Statutes. In this instance, BellSouth has willfully violated at least Fla. Stat. § 364.07 by failing to file the true agreement entered into between Supra and BellSouth. Supra believes that this Commission should impose monetary sanctions upon BellSouth for at least two reasons. First, to deter this behavior in the future; and second, to help defray the cost of any such investigation into BellSouth's practices. *See, e.g., In re: Initiation of show cause proceedings against Commercial Ventures, Inc. for failure to comply with Commission rules*, 91 FPSC 3:67; FPSC Order No. 24197 (March 5, 1991) (Docket No. 880240-TC) (Commission can impose monetary sanctions on telephone company for failing to comply with Commission rules).

III. Relief Requested

30. Supra requests a hearing on this matter before the full Commission pursuant to Fla. Stat. § 350.01(6).

31. Supra requests that this Commission conduct a full investigation and determine why the attachments were changed, how the attachments were changed, who at BellSouth was responsible, what procedures does BellSouth have in place to prevent agreements from being altered, what will BellSouth do to prevent a repeat occurrence, the extent of this conduct and what other abuses have been perpetuated against Supra and other ALECs.

32. Supra requests that this Commission find that BellSouth either in gross negligence, or in willful fraud, substituted the attachments in the Interconnection Agreement and thus materially changed and altered the agreement originally executed by the parties.

33. Supra requests that within thirty (30) days, this Commission establish procedures for investigating BellSouth's agreement preparation and practices, which permit Florida certificated

ALECs to participate, submit comments, and determine whether their filed agreements conform to the agreements previously executed by such ALECs with BellSouth.

34. Supra requests that upon conclusion of this matter, this Commission should contact the Commissions in all of the states in which BellSouth is certificated and advise such sister-state Commissions that BellSouth has engaged in the above referenced conduct and that these sister-states should scrutinize similar agreement filings made by BellSouth.

35. Supra requests that if it is determined that BellSouth has defrauded Supra and or other ALECs in the filing of agreements, that this Commission contact the Florida Attorney General so that a determination can be made as to whether BellSouth's conduct warrants an antitrust investigation under Chapter 542 of the Florida Statutes.

36. Finally, Supra requests that this Commission reprimand BellSouth and impose monetary sanctions upon BellSouth for having perpetrated a fraud upon both Supra and this Commission in its filings in Docket No. 9715555-TP.

Respectfully Submitted this _____ day of December, 1998.

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By: _____
William L. Hyde
Florida Bar No. 265500
Rebecca A. O'Hara
Florida Bar No. 0015792

CERTIFICATE OF SERVICE

I HEREBY Certify that the original and fifteen copies of the foregoing have been hand delivered to the Clerk, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850 and a true and correct copy has been furnished by U.S. Mail or hand-delivery upon BELLSOUTH TELECOMMUNICATIONS, INC. c/o Nancy H. Sims, 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301, this ____ day of December, 1998.

By: _____
William L. Hyde