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1311 Executive Center Drive, Suite 200  
Tallahassee, FL 32301-5027

June 3, 2003

030482-TP

COMMISSION  
CLERK

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Mrs. Blanca Bayo, Director  
Division of Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**RE: EMERGENCY COMPLAINT OF SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC., AGAINST BELL SOUTH TELECOMMUNICATIONS, INC. FOR FILING FALSE USAGE DATA NUMBERS WITH THE COMMISSION IN DOCKET NO. 990649A-TP**

Dear Mrs. Bayo:

Enclosed is the original and seven (7) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Emergency Complaint against BellSouth for filing False Usage Data Numbers with the Commission in Docket No. 990649A-TP.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return it to me.

Sincerely,

*Jorge Cruz-Bustillo / ghs*

Jorge Cruz-Bustillo  
Assistant General Counsel

- AUS \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM \_\_\_\_\_
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04939 JUN-3<sup>8</sup>

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was served via Facsimile, Hand Delivery, U.S. Mail and/or Federal Express this 3<sup>rd</sup> day of June 2003 to the following:

Beth Keating, Esq. for:  
Staff Counsel  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Nancy B. White, Esq.  
c/o Nancy H. Sims  
150 South Monroe Street, Suite 400  
Tallahassee, FL. 32301  
(850) 222-1201 (voice)  
(850) 222-8640 (fax)

Florida Competitive Carrier Association (FCCA)  
c/o Vicki Gordon Kaufman  
McWhirter, Reeves, McGlothlin, Davidson, Decker,  
Kaufman, Arnold, & Steen, P.A.  
117 South Gadsden Street  
Tallahassee, FL 32301

Charles J. Beck  
Deputy Public Counsel  
Office of the Public Counsel  
111 West Madison Street  
Room 812  
Tallahassee, FL 32399-1400

Matthew Feil  
Florida Digital Network, Inc.  
390 North Orange Avenue  
suite 2000  
Orlando, FL 32801

The Honorable Jeb Bush  
Office of the Governor  
The Capitol  
Tallahassee, Florida 32399

The Honorable Charlie Crist  
Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, Florida 32399-1050

By: Jorge Cruz-Bustillo  
Jorge Cruz-Bustillo

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of Supra	)	
Telecommunications & Information Systems,	)	
Inc., against BellSouth	)	Docket No.: _____
Telecommunication, Inc.'s for filing false	)	
Usage Data Numbers with the Commission	)	
In Docket No. 990649A-TP	)	Filed: June 3, 2003
_____	)	

**EMERGENCY COMPLAINT**  
**OF SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.,**  
**AGAINST BELLSOUTH TELECOMMUNICATIONS, INC.**  
**FOR FILING FALSE USAGE DATA NUMBERS WITH THE COMMISSION**  
**IN DOCKET NO. 990649A-TP**

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC. ("Supra"), by and through its undersigned counsel and pursuant to Florida Statutes § 364.058,<sup>1</sup> and Rules 25-2.036(2), 25-22.036(3)(b), and 28-106.201 of the Florida Administrative Code, files this Complaint and request Expedited Relief against BellSouth Telecommunications, Inc. ("BellSouth") for filing false usage costs data in both of its filings on April 12, 2002 and August 26, 2002 in Docket No. 990649A-TP. In April 2002, BellSouth charged Supra, Florida's largest CLEC, an average of \$28.05 per residential UNE-P line for usage, yet in its April 12, 2002 cost filing, BellSouth claimed the TELRIC cost of the average usage of its residential UNE-P line was \$3.41 and in its August 26, 2002 cost filing, BellSouth claimed the TELRIC cost of the average usage of its residential UNE-P line was only \$2.00.

The Commission has exclusive jurisdiction to ensure that all providers of telecommunications services are treated fairly, by preventing anti-competitive behavior. The filing of false usage cost data in Docket No. 990649A-TP mislead this Commission into

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<sup>1</sup> Section 364.058, Florida Statutes, provides: "(1) Upon petition or its own motion, the commission may conduct a limited or expedited proceeding to consider and act upon any matter within its jurisdiction."

believing that the usage cost of UNE-P service is lower than what BellSouth is actually charging Supra Telecom and other CLECs. Anytime BellSouth misleads this Commission, on the actual costs of competition in the State of Florida, BellSouth obtains a competitive advantage through subterfuge – as opposed to accepted competitive business practices such as lowering the price of its retail services or increasing the quality of its service.

Expedited relief<sup>2</sup> is necessary to compel BellSouth to file true and accurate usage cost data to provide this Commission with a true and accurate reflection of the costs of providing UNE-P service to CLECs in the State of Florida.

In support of its Complaint, Supra states the following:

1. Supra is a Competitive Local Exchange Carrier (“CLEC”) certified by the Florida Public Service Commission (“Commission”) to provide telecommunications services in Florida.

Supra’s service of process address is

Jorge L. Cruz-Bustillo, Assistant General Counsel  
Supra Telecommunications & Information Systems, Inc.  
2620 SW 27<sup>th</sup> Ave  
Miami, FL 33133-3005

2. Pursuant to Rule 25-22.036(3)(b)(3), Florida Administrative Code, this Complaint is being lodged against BellSouth an incumbent local exchange carrier certificated by the Commission to provide local exchange telecommunications services in Florida. BellSouth is a corporation organized and formed under the laws of the State of Georgia, having an office at 675 West Peachtree Street, Atlanta, Georgia 30375. BellSouth’s service of process address is

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<sup>2</sup> In filing this Complaint, Supra has followed the procedures for expedited processing set out in the June 19, 2001, Commission memorandum from Noreen S. Davis to then Chairman, E. Leon Jacobs. The primary purpose of this Complaint is to evaluate whether BellSouth has violated Commission orders and Florida Statutes and whether to impose a penalty therefore. Supra has filed its Complaint and exhibits together, and this matter is limited to a single issue. Though the process described in Ms. Davis’ memorandum was originally envisioned as applicable to complaints arising from interconnection agreements (which this would also qualify), it is equally useful in the context of this single issue complaint. It is critical that the Commission use an expedited process to quickly resolve this matter.

Nancy B. White, General Counsel  
c/o Nancy H. Sims, Director of Regulatory Affairs  
BellSouth Telecommunications, Inc.  
150 South Monroe Street, Suite 400  
Tallahassee, FL 32301

### FACTUAL ALLEGATIONS

3. Pursuant to Rule 25-22.036(3)(b)(1), Florida Administrative Code, the statute that has been violated is Section 364.01(4)(g), Florida Statutes, which grants the Commission exclusive jurisdiction to ensure that all providers of telecommunications services are treated fairly, by preventing anti-competitive behavior. Pursuant to Section 364.337(5), Florida Statutes, the Commission has continuing regulatory oversight over the provision of basic local service provided by a CLEC for purposes of ensuring the fair treatment of all telecommunications providers in the telecommunications marketplace.

4. Supra purchases services and unbundled network elements from BellSouth, including UNE-P lines and UNE-P usage, in order to provide local exchange telecommunications services to its customers in the State of Florida in direct competition with BellSouth.

5. On April 12, 2002, BellSouth filed a Post Hearing Brief in Docket No. 990649A-TP in which BellSouth asserted that the "average usage cost" per UNE access line, serving residential customers, in Zone 1, 2 and 3 was \$3.41. See Pg. 20 of that document attached hereto as Exhibit A.

6. BellSouth never sought to amend or correct its April 12, 2002 filing.

7. Zone 1 and 2 account for 97% of all access lines in BellSouth's Florida service territory: 29% in Zone 1; 68% in Zone 2; and 3% in Zone 3.

8. The \$3.41 dollar figure is materially misleading.

9. BellSouth included in its Schedule 8, filed with the Commission, that in April 2002 it had only 192,924 residential access lines in its territory. BellSouth claimed, in that same Schedule 8, to have 311,919 total (residential and business) UNE access lines for this same period.

10. It is unclear from BellSouth's access line count whether BellSouth counted billable lines or numbers. Whichever count is utilized should be consistent and understood by all parties. BellSouth has not done this. BellSouth's only justification for its \$3.41 figure is the following vague reference: "BellSouth calculated the average usage cost for FL using the FCC's usage characteristics." See Pg. 20, footnote 8, of Exhibit A.

11. The context in which BellSouth made this claim involved BellSouth's argument that "ALECs can make a profit serving residential customers in Florida at the current UNE-P rates." See Pg. 20 Exhibit A. The logical conclusion is that BellSouth's calculation of "average usage costs" involved only residential UNE access lines.

12. Based on the average UNE usage cost per line reported by BellSouth, the maximum amount of revenue BellSouth could have collected for the month of April 2002 for usage costs on "residential" UNE access lines could not exceed \$657,870.84. Taking it a step further, the maximum amount of revenue BellSouth could have collected for the month of April 2002 for usage costs on "all" UNE access lines could not exceed \$1,063,643.70.

13. In April 2002, for UNE usage, BellSouth invoiced Supra a total amount of **\$2,364,138.10**. The amount billed to Supra for the month of April is \$1,300,494.40 greater than the maximum amount of revenue BellSouth could have collected from "all" UNE competitors in that month. The \$2,364,138.10 invoice is the product of 84,283 Supra UNE access lines multiplied by \$28.05 that BellSouth billed Supra per line. This Complaint, however, is not about over-billing by BellSouth, which is self-evident, but rather BellSouth's anti-competitive actions.

14. Given what BellSouth was actually charging Supra per month, it is simply impossible for BellSouth's usage numbers - filed in April 2002 - to be a true and accurate reflection of the cost of doing business in either the residential or total UNE market in the State of Florida, in BellSouth's territory.

15. On August 26, 2002, BellSouth filed a Response to AT&T's Petition for Interim Rates in Docket No. 990649A-TP in which BellSouth asserted that the "average usage cost" per UNE access line, serving residential customers, in Zone 1, 2 and 3 was \$2.00. See Pg. 14 of that document attached hereto as Exhibit B.

16. BellSouth never sought to amend or correct its August 26, 2002 filing.

17. The \$2.00 dollar figure is materially misleading.

18. BellSouth included in its Schedule 8, filed with the Commission, that for August 2002 it had only 318,767 residential access lines in its territory. BellSouth claimed, in that same Schedule 8, to have 459,865 total (residential and business) UNE access lines for this same period.

19. As noted earlier herein, it is unclear from BellSouth's access line count whether BellSouth counted billable lines or numbers. Whichever count is utilized should be consistent and understood by all parties. BellSouth has not done this. BellSouth's only justification for its newly downward revised \$2.00 figure is the following vague reference: "Average usage cost for Florida calculated using state specific usage characteristics." See Pg. 14, footnote 7, of Exhibit B.

20. BellSouth never explains the difference between the phrase "state specific usage characteristics" used in its August 26, 2002 filing and the phrase "using the FCC's usage characteristics" BellSouth used in its April 12, 2002 filing.

21. Like with BellSouth's analysis of its \$3.41 average cost, BellSouth's newly revised downward figure of \$2.00 was artfully targeted at the costs of usage in the residential UNE market.

22. BellSouth writes: “. . . the fact is that AT&T and other ALECs can earn a sizeable profit by providing *residential* service at the lowered UNE rates the Commission set just last year.” See Pg. 13 Exhibit B. (Italicize in the original). The logical conclusion of this BellSouth assertion is that BellSouth’s calculation of “average usage costs” of \$2.00 involved only residential UNE access lines.

23. The maximum amount of revenue BellSouth could have collected for UNE usage for the month of August 2002 for usage costs on “residential” UNE access lines could not exceed \$637,534.00. Taking it a step further, the maximum amount of revenue BellSouth could have collected for the month of August 2002 for usage costs on “all” UNE access lines could not exceed \$919,730.00.

24. In August 2002, for UNE usage, BellSouth invoiced Supra a total amount of \$1,860,790.20. The amount billed to Supra for the month of August is \$941,060.20 greater than the maximum amount of revenue BellSouth could have collected from “all” UNE competitors in that month.

25. The \$1,860,790.20 invoice is the product of 267,574 Supra UNE access lines multiplied by \$6.95 (average UNE usage per line) that BellSouth billed Supra.

26. Given what BellSouth was actually charging Supra per month, it is simply impossible for BellSouth’s numbers - filed in August 2002 - to be a true and accurate reflection of the cost of doing business in the residential or total UNE market in the State of Florida in BellSouth’s territory.

27. This Complaint is not about over-billing by BellSouth, which is self-evident. This Complaint involves BellSouth’s anti-competitive actions in making material misrepresentations to this Commission. In August 2002, BellSouth claimed that Supra owed millions of dollars for the

time period of June 2001 through June 2002. On May 22, 2003, the actual amounts that BellSouth should have billed Supra, for the period of June 2001 through June 2002, was determined. The amount determined was less than one-half of the amounts claimed by BellSouth for that period: a reduction of approximately \$67,000,000.00. Additionally, the amount that BellSouth should have billed to Supra over that period is still subject to Supra's claims for damages associated with BellSouth's breach of the parties' interconnection agreement whereby BellSouth failed to provide Supra with the complete and necessary records to bill other carriers for inter-carrier compensation (e.g., access revenues) for which Supra was entitled. Accordingly, Supra expects to receive a considerable amount in the tens-of-millions-of-dollars in addition to the substantial reductions already awarded with respect to BellSouth's bills. This caveat was noted to add support for the proposition that the usage data numbers filed by BellSouth are very likely incorrect.

28. BellSouth's actions have been nothing less than a fraud, not only towards Supra, but towards consumers as well.

29. There is a very strong likelihood that BellSouth is engaged in the same massive over billing practice with all CLECs in the State of Florida.

30. Given that BellSouth was actually charging Supra \$28.05 per month for usage on each UNE-P line, it is simply impossible for BellSouth's usage numbers - \$3.41 filed in April or \$2.00 filed in August 2002 - to be a true and accurate reflection of the cost of doing business in the residential or total UNE market in the State of Florida in BellSouth's territory.

31. Pursuant to Rule 25-22.036(3)(b)(2), Florida Administrative Code, the filing of the false usage data was the act that is in direct violation of Florida's anti-competitive statutes.

32. Accordingly, pursuant to Rule 25-22.036(3)(b)(4), Florida Administrative Code, Supra respectfully requests that this Commission impose a penalty in accordance with Section

364.285(1), Florida Statutes, of Twenty-Five Thousand (\$25,000.00) Dollars for each day that BellSouth's false usage data has remained filed with this Commission.

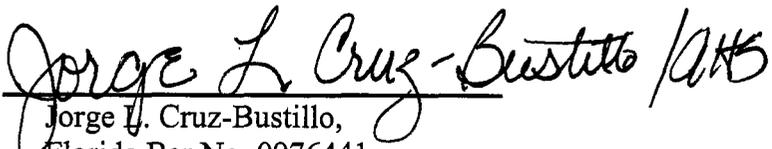
33. Pursuant to Section 364.285(1), Florida Statutes, Supra also respectfully requests that this Commission consider, suspending or revoking any certificate(s) BellSouth must maintain in order to operate in the State of Florida.

WHEREFORE, Supra respectfully requests that this Commission enter an order against BellSouth as follows:

- 1.) Ordering BellSouth to pay penalties and/or suspend or revoke its certificate to operate for violating Chapter 364, Florida Statutes and for its continued anticompetitive behavior resulting in a barrier to competition;
- 2.) For all other relief deemed appropriate under the law.

RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of June 2003.

SUPRA TELCOMMUNICATIONS &  
INFORMATION SYSTEMS, INC.  
2620 S.W. 27<sup>th</sup> Ave.  
Miami, Florida 33133  
Telephone: 305.476.4252  
Facsimile: 305.443.9516

By:  /AKB  
Jorge L. Cruz-Bustillo,  
Florida Bar No. 0976441

ANDREW D. SHORE  
Attorney

Exhibit A

BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(404) 335-0711

April 12, 2002

Mrs. Blanca S. Bayó  
Director, Division of the Commission  
Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Docket No. 990649A-TP (UNE Docket)

Dear Mrs. Bayó:

Enclosed is an original and fifteen copies of BellSouth's Post-Hearing Brief which we ask that you file in the above-captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

  
Andrew D. Shore (LH)

cc: All Parties of Record  
Marshall M. Criser III  
R. Douglas Lackey  
Nancy B. White

DOCUMENT NUMBER-DATE  
04119 APR 12 8  
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into pricing of unbundled) Docket No.: 990649A-TP  
network elements )  
\_\_\_\_\_ ) Filed: April 12, 2002

**BELLSOUTH'S POST-HEARING BRIEF**

**INTRODUCTION**

The Commission less than one year ago established final cost-based unbundled network element ("UNE") rates for BellSouth pursuant to a methodology the Commission concluded complied with the FCC's TELRIC rules. The Commission-approved methodology employed "in-plant" loading factors to calculate the costs to engineer and install BellSouth's outside plant. The Commission, however, required BellSouth to re-file its cost study explicitly modeling the cost of engineering and installing its outside plant (a so-called "bottoms-up" approach) in order to determine the magnitude of any discrepancies in loop costs between using that bottoms-up approach versus using in-plant loading factors. It is no surprise that the two different costing methods produced different cost estimates. Indeed, the bottoms-up study using appropriate BellSouth specific Florida inputs resulted in higher loop costs in most instances. BellSouth is not, however, asking the Commission to increase UNE rates on that basis. In-plant factors, which are based on BellSouth's actual accounting records, produce valid and accurate cost estimates and are no less reliable than using bottoms-up inputs. Moreover, factors other than cost that the ALECs argue demonstrate a need for lower UNE rates, such as the amount of profit ALECs can make, are irrelevant and have no place in determining rates that are required to be cost-based. Consequently,

profit by entering the market.” Memorandum Opinion and Order, CC Docket No. 00-217, at ¶ 92 (emphasis added).<sup>5</sup>

2. ALECs can make a profit at the current UNE rates in any event. Even if profitability were a legitimate factor to consider in setting UNE rates, which it is not, the fact is that the ALECs can make a profit serving residential customers in Florida at the current UNE-P rates.<sup>6</sup> The following table compares an ALEC’s cost of providing residential service using UNE-P with the revenues it can expect to receive from providing such service.<sup>7</sup>

<b>Costs</b>	<b>Zone 1</b>	<b>Zone 2</b>	<b>Zone 3</b>	<b>Statewide Average</b>
UNE-P	\$12.94	\$17.06	\$31.87	\$16.39
Usage <sup>8</sup>	\$ 3.41	\$ 3.41	\$ 3.41	\$ 3.41
Features per port	\$ 2.26	\$ 2.26	\$ 2.26	\$ 2.26
ODUF <sup>9</sup>	\$ .98	\$ .98	\$ .98	\$ .98
<b>Platform-Recurring Cost</b>	<b>\$19.59</b>	<b>\$23.71</b>	<b>\$38.52</b>	<b>\$23.04</b>
<b>Estimated Revenues</b>				
BST’s-Complete Choice – FL	\$30.00	\$30.00	\$30.00	\$30.00

<sup>5</sup> Counsel for FDN suggested during his cross-examination of BellSouth witness Ruscilli that the D.C. Circuit Court of Appeals decision in *Sprint Communications Company v. FCC*, 274 F.3d 549 (D.C. Cir. Dec. 28, 2001), somehow alters this conclusion. It does not. The D.C. Circuit did not overturn the FCC’s decision.

<sup>6</sup> The ALEC testimony claiming an inability to serve customers profitably focuses on using UNE-P to serve residential customers. See, e.g., Tr. at 394. While it is true that ALECs have, for the most part, ignored residential customers in Florida, they have targeted and won significant numbers of business customers in Florida. They do not make any arguments regarding their ability to serve business customers.

<sup>7</sup> It is appropriate to use BellSouth’s retail price for its Complete Choice® Plan as the reference for anticipated local revenue, because an ALEC can provide all of the features included in that Plan using the UNE-P.

<sup>8</sup> BellSouth calculated the average usage cost for FL using the FCC’s usage characteristics.

<sup>9</sup> Estimates of ODUF messages used in calculation of ODUF costs and Access revenues per line per month based on AT&T Witness Lieberman’s Affidavit Exhibit D-6 filed March 8, 2002, in BellSouth’s FCC GA/LA 271 proceeding. ODUF rates used in calculation of ODUF costs are the rates BellSouth is proposing in this proceeding. See Issue 2 below.

Subscriber-Line Charge	\$ 5.00	\$ 5.00	\$ 5.00	\$ 5.00
Access <sup>b</sup>	\$ 0.90	\$ 0.90	\$ 0.90	\$ 0.90
<b>Total</b>	<b>\$35.90</b>	<b>\$35.90</b>	<b>\$35.90</b>	<b>\$35.90</b>
Margin-Complete Choice Residence	\$16.31	\$ 12.19	-\$2.62	\$12.86
% (Margin divided by Total Revenue)	45%	34%	-7%	36%
% of BellSouth access lines	29%	68%	3%	

This table illustrates that in Zones 1 and 2, which encompass 97% of the access lines in Bellsouth's Florida service territory, there is a significant positive margin. Indeed, using the statewide average UNE-P cost, which is what ALEC witnesses Darnell and Ford discussed in their testimony, produces a profit margin of \$12.86, or 36%. The ALECs' claim that current UNE prices do not allow them to make a profit serving residential customers are, in reality, pleas for the Commission to ensure that they can make an even greater profit. While not surprising, their greed should not factor into the Commission's consideration.

**3. Dr. Ford's "sanity test" does not apply.** Dr. Ford's self-described "sanity test," which he claims will aid the Commission in "determining whether the [existing] rates meet the required TELRIC standard," likewise does not justify this Commission retreating from its current rates. What Dr. Ford dubbed a "sanity test" and/or "TELRIC test" is a secondary analysis the FCC has employed in 271 proceedings. The FCC has *never* concluded that any UNE rate failed to comply with TELRIC based on its secondary comparison test. Tr. at 411.

In describing its procedure, the FCC stated: "The Commission has stated that when a state commission does not apply TELRIC or does so improperly (e.g., it made a

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Legal Department

Andrew D. Shore  
Senior Regulatory Counsel

Exhibit B

BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(404) 335-0743

August 26, 2002

RECEIVED-FPSC  
AUG 26 PM 4:33  
COMMISSION  
CLERK

Mrs. Blanca S. Bayó  
Director, Division of the Commission  
Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Docket No. 990649A-TP (UNE Docket)

Dear Mrs. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to AT&T's Petition for Interim Rates which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

*Andrew D. Shore*

Andrew D. Shore  
(2L)

AUS \_\_\_\_\_  
CAF \_\_\_\_\_  
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Enclosures

cc: All Parties of Record  
Marshall M. Criser III  
R. Douglas Lackey  
Nancy B. White

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*RDM*  
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into Pricing of Unbundled ) Docket No.: 990649A-TP  
Network Element )  
\_\_\_\_\_ ) Filed: August 26, 2002

**BELLSOUTH'S RESPONSE TO  
AT&T'S PETITION FOR INTERIM RATES**

**INTRODUCTION**

BellSouth Telecommunications, Inc. ("BellSouth"), hereby responds to the pleading AT&T calls a "Petition for Interim Rates," but which is really at best an unauthorized supplemental brief on the underlying merits of this proceeding and, more accurately, a last-ditch illicit effort to improperly persuade the Commission into establishing ludicrously and illegally low UNE rates that would be tantamount to giving AT&T a mint with the Commission's seal of approval emblazoned on the cover. As an initial matter, the Commission should strike AT&T's brief, because it would be unjust to allow AT&T to unilaterally establish a briefing schedule that unfairly allows it to get the last word in arguing the merits of a matter on the eve of the Commission's vote, especially in a case such as this one where AT&T has had ample opportunity to present evidence and to plead its case.

If the Commission refuses to strike AT&T's unauthorized brief, then the Commission should deny the "interim" relief AT&T purports to seek for two simple reasons. First and foremost, AT&T's brief is filled with misinformation and is premised upon the erroneous contention that there is "virtually no" local competition in BellSouth's Florida service area. While it is true that AT&T has chosen not to compete for residential customers in Florida, AT&T's allegation that ALECs cannot effectively compete in the local exchange market with current UNE pricing is belied by the facts. Numerous ALECs *are* competing and winning

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FPSC-COMMISSION CLERK

the price ceiling the State established for BellSouth, but far in excess of the prices ALECs are required to pay for the UNEs needed to provide service. The enormous profit available is the reason ALECs have focused primarily on serving business customers, and why ALECs serve almost one-third of the business lines in BellSouth's Florida service area today. BellSouth is in favor of rebalancing retail rates to remove the implicit subsidies that are a relic of an era of a regulated monopoly that operated under rate-of-return regulation. That, however, is an issue for another day and, perhaps, another forum. The relevant point now is that the historical social pricing structure mandated by the State does not change the legal requirement that UNE prices be cost-based.

AT&T's profitability argument is irrelevant in establishing cost-based rates. Consequently, even if AT&T's contention that it is unable to earn a profit using UNE-P to serve residential customers was true, which as shown below it certainly is not, it would not be a justifiable reason for this Commission to throw out UNE rates its determined recently were cost-based and replace them with radically lower rates that have not been shown to be cost-based and are nowhere in the range of the Commission-approved cost-based rates.

**C. ALECs Can Make a Profit at the Current UNE Rates.**

Even if an ALEC's profit margin was relevant in determining appropriate UNE rates, which it is not, the fact is that AT&T and other ALECs can earn a sizeable profit by providing *residential service*<sup>6</sup> at the lowered UNE rates the Commission set just last year. In its "Petition," AT&T compares the cost of purchasing a UNE loop and port with no features from BellSouth with BellSouth's retail rate for *basic* residential service in zone 2, and concludes that

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<sup>6</sup> Even AT&T does not contend ALECs cannot make large profits serving business customers. The costs to serve them are the same as those for serving residential customers set forth below and the revenues are significantly higher due to the historical State-mandated retail pricing structure of subsidizing residential service with retail revenue.

“[o]bviously, an ALEC cannot compete with BellSouth to provide local service.” First, as set forth above, many ALECs are providing competitive local service in Florida today using UNE-P’s purchased from BellSouth. Moreover, it is misleading to compare the cost of UNE-P based service offerings with only *basic* residential service. The *fact* is that most customers purchase some vertical features in addition to just plain dial tone, and ALECs make a substantial profit on vertical features, not to mention the other revenue components absent from AT&T’s unrealistic “analysis.” The following table illustrates the profit AT&T could generate today if it chose to offer local service in Florida. It compares the cost to AT&T (and other ALECs) with the revenues it can expect to receive from providing such service. The estimated local service revenues are based on the AT&T Call Plan Deluxe plan AT&T offers to residential customers in Georgia (where BellSouth is competing with AT&T in the long-distance market) and advertises on its website, [www.local.att.com](http://www.local.att.com), among other places. AT&T’s local service plan includes unlimited local calling and up to 16 vertical features. In Georgia, AT&T does not market any residential local calling plan that does not include vertical features. It is, therefore, disingenuous for AT&T to claim that it is appropriate to use the retail price for *basic* service as an appropriate point of comparison.

<u>Costs - Based on current rates</u>	<u>Zone 1</u>	<u>Zone 2</u>	<u>Zone 3</u>
UNE-P (loop/port combination)	\$12.94	\$17.06	\$31.87
Usage <sup>7</sup>	\$2.00	\$2.00	\$2.00
Features <sup>8</sup>	\$1.24	\$1.24	\$1.24
DUF <sup>9</sup>	\$1.04	\$1.04	\$1.04
<b>Total Cost of UNE-P</b>	<b>\$17.22</b>	<b>\$21.34</b>	<b>\$36.15</b>

<sup>7</sup> Average usage cost for Florida calculated using state specific usage characteristics.

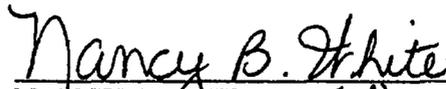
<sup>8</sup> 55% take rate applied to vertical features rate of \$2.26, for which ALEC receives all features.

<sup>9</sup> DUF costs and estimated access revenue are based on calculations set forth in Exs. 6 and 7 to the Affidavit of AT&T witness Lieberman filed with the FCC on March 4, 2002, in BellSouth’s GA/LA 271 proceeding.

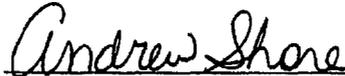
issues demonstrates convincingly not only that ALECs can make a profit serving residential customers at the current UNE prices, but also that they are doing so and that they are continuing to increase their market share. Consequently, the Commission should deny AT&T's request for interim rates and it should leave the cost-based UNE rates set last year at their current levels.

Respectfully submitted this 26th day of August, 2002.

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