

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Supra)
Telecommunications and Information)
Systems, Inc.'s for arbitration)
with BellSouth Telecommunications, Inc.)
_____)

Docket No. 040301 - JP

Filed: April 5, 2004

**PETITION OF SUPRA TELECOMMUNICATIONS AND INFORMATION
SYSTEMS, INC., FOR ARBITRATION
WITH BELLSOUTH TELECOMMUNICATIONS, INC.**

Supra Telecommunications and Information Systems, Inc. ("Supra") by and through its undersigned counsel and hereby files this petition with the Florida Public Service Commission ("Commission") pursuant to Florida Statutes § 364.058,¹ and hereby requests Expedited Relief² in resolving a rate dispute in accordance with Sections 364.161(1), 364.162(2), Florida Statutes, as well as Section 252(b) of the Telecommunications Act of 1996 ("Act"), between Supra and BellSouth Telecommunications, Inc.

1. Supra is a competitive local exchange carrier ("ALEC") certificated by the Commission to provide telecommunications services within the State of Florida. Petitioner's name, address and telephone number is as follows:

Supra Telecommunications and Information Systems, Inc.
2620 S. W. 27th Avenue,
Miami, Florida 33133
(305) 476-4200

¹ 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."

² The procedures for expedited processing were set out in the June 19, 2001, Commission memorandum from Noreen S. Davis to then Chairman, E. Leon Jacobs. This memorandum limited such proceedings to a single issue. The process described in the memorandum was originally envisioned as applicable to complaints arising from interconnection agreements - which this would most certainly qualify. It is critical that the Commission use an expedited process to quickly resolve this matter in order to dispose of an existing barrier to competition - which is one component of various that impede competitors from moving to a facilities-based system.

DOCUMENT NUMBER-DATE
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2. The Petitioner's representative's name, address and telephone number is:

Brian Chaiken, Esq.
Legal Department
Supra Telecommunications and Information Systems, Inc.
2620 S.W. 27th Avenue
Miami, Florida 33133
Telephone: 305.476.4248
Facsimile: 305.443.1078

3. BellSouth is a corporation organized and formed under the laws of the state of Georgia, with its principal office at 675 West Peachtree Street, Atlanta, Georgia, 30375. BellSouth is an Incumbent Local Exchange Carrier ("ILEC") certificated by this Commission to provide local exchange telecommunications services in the state of Florida. BellSouth's address in the State of Florida for service of process is:

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

JURISDICTION

4. The Act established three methods by which Competitive Local Exchange Carriers ("CLEC") can enter the local exchange market: resale, leasing of unbundled network elements ("UNE"), and investing in their own facilities.³ Facilities-based CLECs are those that have invested in and built-out their own networks.⁴ Frequently, CLECs enter the market using resale or UNE-P services while investing the financial resources necessary to build a

³ See June 2003 Florida Competition Report, pg. 5.

⁴ Id.

telecommunications network and eventually provide facilities-based services.⁵ This is exactly the three-prong strategy utilized by Supra.

5. 47 U.S.C. §251(c)(2) imposes a duty on the ILECs to provide interconnection with a local exchange carrier. The three methods of interconnection are described above. The Act requires that the rates for these methods of interconnection must be “just, reasonable and non-discriminatory.” See §251(c)(2)(D). The pricing standards for interconnection charges can be found at 47 U.S.C. §252(d)(1). In addition to the rate being “just, reasonable and non-discriminatory,” the rate must also be “based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection.” See §252(d)(1)(A).

Like the Act, Section 364.161(1), Florida Statutes, provides in part:

The parties shall negotiate the terms, conditions, and prices of any feasible unbundling request. If the parties cannot reach a satisfactory resolution within 60 days, either party may petition the commission to arbitrate the dispute and the commission shall make a determination within 120 days...[t]he prices, rates, terms, and conditions for the unbundled services shall be established by the procedure set forth in Section 364.162.

This Florida provision, like the Act, allows a CLEC to petition this Commission to arbitrate a rate with respect to a condition of interconnection (such as a hot-cut charge), if the parties cannot reach a satisfactory resolution within 60 days. Section 364.162(2), Florida Statutes, sets out the procedure for resolving such a dispute:

In the event that the commission receives a single petition relation to either interconnection or resale of services and facilities, it shall vote, within 120 days following such filing, to set nondiscriminatory rates, terms, and conditions, except that the rates shall not be below cost.

⁵ Id.

Supra hereby files this single petition, in accordance with the above referenced provisions, for the purpose of resolving an individual rate with respect to a condition of interconnection.

EXPEDITED RELIEF

6. Supra's Complaint raises several bases for expedited relief. The first is Section 364.058, Florida Statutes. This provision allows the Commission, upon a petition, to conduct an "expedited proceeding to consider and act upon any matter within its jurisdiction." (Emphasis added). It is certainly within the Commission's jurisdiction to set a rate for a condition of interconnection or service of interconnection.

7. The second is the internal Commission memorandum. This directive discusses both disputes arising out of interconnection agreements and when the dispute involves a single issue. In this case, the dispute involves both the parties' interconnection agreement and a single issue. Accordingly, the standards set out in that memorandum has been met and expedited review should be conferred.

8. It is simply not cost effective, for Supra or any CLEC, to pay BellSouth's current unjustified non-recurring charge for an individual hot-cut. The present charge acts as a barrier to facilities based competition. Every month of delay acts to prolong the time in which consumers can realize greater savings. For this reason, Supra respectfully requests that this Commission grants Supra's request for expedited relief and set this single-issue matter for hearing as soon as practical. Supra cites to Order No. PSC-03-0578-FOF-TP as precedent for expedited relief. In that case, AT&T filed a complaint and requested an expedited hearing. The only alleged emergency was that the respondent had allegedly violated a Commission statute and/or rule. AT&T did not cite to Section 364.058, Florida Statutes, nor did they cite to the internal

Commission memorandum regarding expedited hearings. AT&T's initial complaint was void of any reason for the need for expedited relief. On April 15, 2003, the Commission granted AT&T's request for an emergency expedited hearing. The hearing in that matter was set for July 16, 2003 – approximately 90 days from the date the Commission disposed of the respondent's motion to dismiss. Based on this precedent Supra moves for an expedited proceeding in this docket because the existing barrier to competition is preventing Supra from moving customers to its own facilities.

BACKGROUND

9. The parties' present Interconnection Agreement allows Supra to interconnect with BellSouth utilizing all three methods of interconnection.

10. General Terms & Conditions ("GT&C") §3.1 establishes an obligation on BellSouth to cooperate in terminating services and elements and transitioning customers to Supra services.

11. GT&C §22.1 states that if a party has an obligation to do something, it [BellSouth] is responsible for its own costs in doing it, "except as otherwise specifically stated."

12. The "hot-cut" process is described in the Network Elements Attachment in §3.8.

13. Under §3.8.1 it only applies "when Supra Telecom orders and BellSouth provisions the conversion of **active BellSouth retail end users** to a service configuration by which Supra Telecom will serve such end users by unbundled Loops and number portability (hereinafter referred to as 'Hot Cuts')." (Emphasis added).

14. Given that the parties' contract requires a "specific statement" [GT&C §22.1] before a charge will apply, and given that §3.8 only applies to converting "active BellSouth retail

end users” to UNE-L, the rates for the retail-to-UNE-“ conversion process cannot and should not apply to a UNE-P-to-UNE-L conversion.

15. Further support that the current non-recurring rate BellSouth imposes on Supra is a rate associated with an individual hot-cut from BellSouth retail to a CLEC switch can be found in the Commission’s Pre-hearing Order in Docket No. 030851-TP where BellSouth notes that it presently requires CLECs to pay the retail-to-UNE-L rate for a conversion from UNE-P-to-UNE-L, despite the obvious cost differentials. See Order No. PSC-04-0168-PHO-TP (where BellSouth writes: “The nonrecurring costs associated with BellSouth’s existing individual hot cut process are those rates adopted by the Commission in Docket No. 990649A-TP”).

16. Supra submits that it has a strong argument that a strict reading of the arbitrated and agreed upon contractual language which precludes BellSouth from seeking any payments for this service of interconnection. Supra, nevertheless, recognizes BellSouth’s right to be reasonably compensated for the services it renders. Thus, in addition to asking this Commission to enforce the parties’ present contract, Supra also seeks a determination from this Commission of what the just, reasonable and non-discriminatory charge should be.

17. The following are facts that demonstrate the material cost differentials between a retail-to-UNE-L hot cut versus a UNE-P-to-UNE-L hot-cut:

(1) Truck rolls:

Retail-to-UNE-L conversion: For each of these conversions BellSouth charges for a truck roll to the customer’s premises.

UNE-P-to-UNE-L conversion: For this type of conversion, a truck roll charge is unnecessary, if all that is required in a hot-cut is that the copper wires be moved from BellSouth’s switch to Supra’s switch, all within the same building. BellSouth includes this truck

roll charge in each and every instance, regardless of whether a truck roll is required or actually performed.

(2) Work time overstated:

BellSouth includes a cost – in its overall nonrecurring charge - for the labor associated with the hot-cut. The average number of minutes BellSouth claims are involved with the hot-cut are 48.91 minutes incurred for cutover labor. This number stands in stark contrast to BellSouth's testimony in Docket No. 030851-TP in which they claimed that the actual cutover time was 2.39 minutes.

18. Other ILEC rates are substantially lower: On January 26, 2004, Verizon Pennsylvania Inc., issued a tariff reducing its cutover charge to \$1.49, down from the \$3.28 charge contained in its tariff issued in April 2000.

NEGOTIATIONS

19. The parties have attempted to negotiate and reach a resolution on this issue since at least March 5, 2003. On June 16, 2003, Supra filed a Complaint at the Federal Communications Commission ("FCC") and made a request that the FCC consider this very issue on its accelerated docket. The request to place the issue on the accelerated docket was denied. Supra submits that BellSouth has actual knowledge of Supra's dispute: that the non-recurring charge BellSouth is currently charging Supra for an individual hot-cut from UNE-P-to-UNE-L is unjustified. BellSouth has explicitly refused to negotiate this matter any further with Supra.

20. Supra requests this Commission to determine what non-recurring rate, if any, is BellSouth entitled to charge Supra under the parties' present interconnection agreement for a hot-cut from UNE-P to UNE-L. The rate, if applicable, must be just, reasonable and non-discriminatory and must also be "based on the cost (determined without reference to a rate-of-

return or other rate-based proceeding) of providing the interconnection [service].” See §252(d)(1)(A).

STATEMENT OF UNRESOLVED ISSUES

ISSUE 1

Issue: What non-recurring rate, if any, is BellSouth entitled to charge Supra under the parties’ present interconnection agreement for a hot-cut from UNE-P to UNE-L. The rate, if applicable, must be just, reasonable and non-discriminatory and must also be “based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection [service].” See §252(d)(1)(A).

Supra’s position: BellSouth has waived its right to charge for this service under the parties’ present contract; If a rate is applicable, however, then the rate shall equal the actual non-recurring costs associated with this particular conversion (determined without reference to a rate-of-return or other rate-based proceeding) of providing the condition interconnection; and the rate must be just, reasonable and non-discriminatory.

BellSouth’s position: Supra should be required to pay the non-recurring costs, set out in Docket No. 990649A-TP, associated with an individual hot cut from BellSouth retail to UNE-L despite the substantial cost differential that exists when the hot-cut is merely from UNE-P to UNE-L. BellSouth proposes the cost to be \$59.31 per cutover.

INTERIM RATE RELIEF IN ADDITION TO ABOVE REQUESTED RELIEF

21. In addition to the requested relief above, Supra respectfully requests that this Commission grant Supra interim rate relief. This issue has an immediate impact on Supra’s ability to continue moving its customers to its facilities.

Commission Authority

22. The Commission has the authority to grant the interim rate relief utilizing its powers under Florida Statutes § 364.058,⁶ and Florida Administrative Code §28-106.211 which states that the “presiding officer before whom a case is pending may issue orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case, including bifurcating the proceeding.”

23. The administrative regulation allows the presiding officer to fashion discovery on an expedited basis and the statutory provision allows the Commission to set a two (2) hour hearing if the need arises to grant the interim relief.

24. Supra proposes that the Commission immediately order the parties to participate in mediation, within 30 days of so being ordered, with the Commission staff and that this mediation shall be considered confidential.

25. Supra proposes that the Commission order that the parties be permitted to conduct discovery on an expedited basis. Supra proposes to issue Requests for Admissions, at the time mediation is ordered, regarding whether certain costs BellSouth currently associates with retail to UNE-L conversion actually applies to a UNE-P to UNE-L conversion. The parties should be ordered to respond to these Requests for Admission, interrogatories and production, within ten (10) days of receipt. Supra submits that mediation in this matter will be more productive if the answers to the admissions, as well as other discovery, are available at that time.

26. Supra proposes that the agreed upon mediated interim rate be submitted to the Commission for approval.

⁶ 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.”

Rationale for Relief

27. After reviewing BellSouth's Commission approved cost study relating to the retail to UNE-L cut over process, Supra has identified various costs that apply and do not apply to the UNE-P to UNE-L hot cut process.

28. On January 8, 2004, Supra submitted a letter to BellSouth outlining its position. A copy of this letter is attached hereto as a **Confidential Exhibit A**.

29. As evidenced by this letter, based on BellSouth's own Commission approved cost study and the activities Supra has identified in BellSouth's cost study as necessary for the UNE-P to UNE-L conversion process, the rate which BellSouth should properly be charging Supra should not exceed \$5.28. It is important to note that Supra did not modify any of the BellSouth stated and Commission approved costs.

30. Supra believes that this rate is still high, in light of, *inter alia*, the \$1.49 cut over charge for Customer-Specified Signaling (2-wire) (a rarer and more expensive cut over than what Supra is seeking) contained in Verizon Pennsylvania Inc.'s tariff issued January 26, 2004. A copy of the relevant portions is attached hereto as **Exhibit B**.

31. This \$1.49 charge reduces the previous charges of \$3.28 and \$12.25, depending on whether a premise visit is required, contained in Verizon Pennsylvania Inc.'s tariff effective May 12, 2001. A copy of the relevant portions is attached hereto as **Exhibit C**.

32. Supra submits that given BellSouth's own documentation a \$5.28 interim rate is appropriate pending a final determination on this issue.

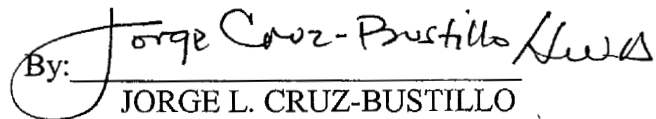
REQUEST FOR RELIEF

WHEREFORE, Supra respectfully requests that the Commission:

- (1) Order an Expedited hearing in this docket to set a permanent rate;
- (2) Establish an interim rate;
- (3) Grant such other relief as deemed appropriate.

Respectfully submitted this 5th day of April 2004.

SUPRA TELECOMMUNICATIONS
AND INFORMATION SYSTEMS, INC.
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Telephone: 305.476.4252
Facsimile: 305.443.1078

By: 
JORGE L. CRUZ-BUSTILLO

**PETITION OF SUPRA TELECOMMUNICATIONS AND INFORMATION
SYSTEMS, INC., FOR ARBITRATION
WITH BELLSOUTH TELECOMMUNICATIONS, INC.**

EXHIBIT – A

CONFIDENTIAL

UNBUNDLED SERVICES

C. RATES (Cont'd)

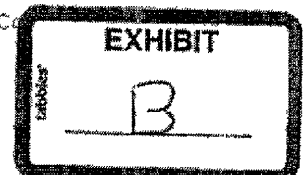
1. Unbundled Loop (Cont'd)

	Rate		
	Recurring	Nonrecurring	
<u>c. Customer-Specified Signaling (2-Wire)</u>			
Service Order Processing Charge.....		\$ 0.00(D)	(C)
Installation Charge, no premises visit (initial and each additional loop).....		1.44	
Installation Charge, premises visit required (initial loop).....		1.44	
Installation Charge, premises visit required (each additional loop).....		1.44	
Disconnect, per loop.....		1.30	
Coordinated Cutover, per order, no premises visit.....		1.49	
Coordinated Cutover, per order, premises visit.		1.49	
CSS Design, per order.....		0.00	
Density Cell, per loop, per month			
Cell 1.....	\$ 14.28(I)		
Cell 2.....	17.14		
Cell 3.....	20.43		
Cell 4.....	29.65		
<u>d. Customer-Specified Signaling (4-Wire)</u>			
Service Order Processing Charge.....		0.00(D)	
Installation Charge, no premises visit (initial and each additional loop).....		9.96(I)	
Installation Charge, premises visit required (initial loop).....		9.96(D)	
Installation Charge, premises visit required (each additional loop).....		9.96	
Disconnect, per loop.....		8.01(I)	
Coordinated Cutover, per order, no premises visit		19.73	
Coordinated Cutover, per order, premises visit.		19.73	
CSS Design, per order.....		0.00(D)	
Density Cell, per loop, per month			
Cell 1.....	32.73(I)		
Cell 2.....	38.56		
Cell 3.....	45.09		
Cell 4.....	62.74		

ISSUED JANUARY 26, 2004

EFFECTIVE MARCH 26, 2004

In compliance with the Order of the Pennsylvania Public Utility Commission
entered December 11, 2003 in Docket No. R-00016883



UNBUNDLED SERVICES

C. RATES

1. Unbundled Loop

(NOTE: Installation charges not applicable if existing loop and port UNEs are ordered together.)

	<u>Rate</u>	
	<u>Recurring</u>	<u>Nonrecurring</u>
<u>a. POTS (Analog 2-Wire)</u>		
Service Order Processing Charge.....		\$ 1.06
Installation Charge, no premises visit (initial and each additional loop).....		3.01
Installation Charge, premises visit required... (initial loop).....		67.66
Installation Charge, premises visit required (each additional loop).....		22.86
Disconnect, per loop.....		1.34
Density Cell, per loop, per month		
Cell 1.....	\$10.25	
Cell 2.....	11.00	
Cell 3.....	14.00	
Cell 4.....	16.75	(R)
<u>b. ISDN</u>		
Service Order Processing Charge.....		1.06
Installation Charge, no premises visit (initial and each additional loop).....		13.06
Installation Charge, premises visit required (initial loop).....		77.71
Installation Charge, premises visit required (each additional loop).....		32.91
Disconnect, per loop.....		1.34
Density Cell, per loop, per month		
Cell 1.....	11.71	
Cell 2.....	12.42	
Cell 3.....	15.42	
Cell 4.....	18.73	
<u>c. Customer-specified Signaling (2-Wire)</u>		
Service Order Processing Charge.....		1.06
Installation Charge, no premises visit (initial and each additional loop).....		3.01
Installation Charge, premises visit required (initial loop).....		67.66
Installation Charge, premises visit required (each additional loop).....		22.86
Disconnect, per loop.....		1.34
Coordinated Cutover, per order, no premises visit.....		3.28

ISSUED MAY 11, 2001

EFFECTIVE MAY 12, 2001

In compliance with the Order of the Pennsylvania Public Utility Commission of
September 30, 1999 in Docket Nos. P-991648 and P-991649



UNBUNDLED SERVICES

C. RATES (Cont'd)

1. Unbundled Loop (Cont'd)

c. Customer-specified Signaling (2-Wire) (Cont'd)

	Rate	
	<u>Recurring</u>	<u>Nonrecurring</u>
Coordinated Cutover, per order, premises visit.		\$12.25
CSS Design, per order.....		41.42
Density Cell, per loop, per month		
Cell 1.....	\$ 10.25	
Cell 2.....	11.00	
Cell 3.....	14.30	
Cell 4.....	16.75	

(R)

d. Customer-specified Signaling (4-Wire)

Service Order Processing Charge.....		1.06
Installation Charge, no premises visit (initial and each additional loop).....		3.01
Installation Charge, premises visit required (initial loop).....		67.66
Installation Charge, premises visit required (each additional loop).....		22.86
Disconnect, per loop.....		1.34
Coordinated Cutover, per order, no premises visit		3.28
Coordinated Cutover, per order, premises visit.		12.25
CSS Design, per order.....		41.42
Density Cell, per loop, per month		
Cell 1.....	19.93	
Cell 2.....	22.81	
Cell 3.....	28.69	
Cell 4.....	34.43	

e. DS1

Service Order Processing Charge.....		1.06
Installation Charge, no premises visit (initial and each additional loop).....		3.01
Installation Charge, premises visit required (initial loop).....		67.66
Installation Charge, premises visit required (each additional loop).....		22.86
Disconnect, per loop.....		1.34
Coordinated Cutover, per order, no premises visit		3.28
Coordinated Cutover, per order, premises visit.		12.25
CSS Design, per order.....		41.42
Density Cell, per loop, per month		
Cell 1.....	117.90	
Cell 2.....	120.62	
Cell 3.....	146.42	
Cell 4.....	191.17	

ISSUED MAY 11, 2001

EFFECTIVE MAY 12, 2001

In compliance with the Order of the Pennsylvania Public Utility Commission of
September 30, 1999 in Docket Nos. P-991648 and P-991649.