

ORIGINAL

Timolyn Henry

**From:** Slaughter, Brenda [Brenda.Slaughter@BELLSOUTH.COM]  
**Sent:** Wednesday, July 21, 2004 10:34 AM  
**To:** Filings@psc.state.fl.us  
**Cc:** Linda Hobbs; Foshee, Lisa; Fatool, Vicki; Holland, Robyn P; Nancy Sims; Bixler, Micheale  
**Subject:** Docket 040301-TP  
**Importance:** High

- A. Brenda Slaughter  
 Legal Secretary for Lisa Foshee  
 BellSouth Telecommunications, Inc.  
 c/o Nancy Sims  
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[brenda.slaughter@bellsouth.com](mailto:brenda.slaughter@bellsouth.com)
- B. Docket No. 040301-TP: Petition of Supra Telecommunications and Information Systems, Inc. for Arbitration with BellSouth Telecommunications, Inc.
- C. BellSouth Telecommunications, Inc.  
 on behalf of Lisa Foshee
- D. 14 pages total (PDF filing with signature)  
 12 pages (WORD in lieu of disk)
- E. BellSouth Telecommunications, Inc.'s Answer and Response to Supra Telecommunications and Information Systems, Inc.'s First Amended Petition

Brenda Slaughter (sent on behalf of Lisa Foshee)  
 BellSouth Telecommunications, Inc.  
 Suite 4300 - Legal Department

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 Atlanta, GA 30375-0001  
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**CTR** <<040301-TP Answer and Response.pdf>> <<B\_6601!.DOC>>

**ECR** \_\_\_\_\_  
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**GCL** \_\_\_\_\_

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LISA S. FOSHEE  
Senior Attorney  
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July 21, 2004

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

**Re: Docket No.: 040301-TP  
Petition of Supra Telecommunications and Information Systems, Inc. for  
Arbitration with BellSouth Telecommunications, Inc.**

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Answer and Response to Supra Telecommunications and Information Systems, Inc.'s First Amended Petition, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

  
Lisa S. Foshee  
(BLS)

Enclosure

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

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**CERTIFICATE OF SERVICE**  
**Docket No. 040301-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served  
via Electronic Mail and U.S. Mail this 21st day of July, 2004 to the following:

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\_\_\_\_\_  
Lisa S. Foshee  
(BSS)

# ORIGINAL

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Supra )  
Telecommunications and Information ) Docket No. 040301-TP  
Systems, Inc. for arbitration )  
With BellSouth Telecommunications, Inc. ) Filed: July 21, 2004

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### **ANSWER AND RESPONSE OF BELL SOUTH TELECOMMUNICATIONS, INC. TO SUPRA'S FIRST AMENDED PETITION**

BellSouth Telecommunications, Inc. ("BellSouth") hereby files its Answer and Response to the First Amended Petition of Supra Telecommunications and Information Systems, Inc. ("Supra") for arbitration with BellSouth Telecommunications, Inc. ("Petition") and states as follows:

#### **I. Procedural Status**

##### **A. The Petition Should Be Reformed As a Complaint Rather Than A Petition For Arbitration.**

The parties have an existing and governing interconnection agreement. Until that agreement expires, Section 252(b), the provision governing arbitration of interconnection agreements, does not apply. Supra's dispute is not an arbitration matter -- it is at best a complaint based in part on the existing agreement, and, more accurately, a request to relitigate the generic cost docket in the context of a two-party proceeding. If it is a complaint arising out of an interconnection agreement, the Agreement contains a dispute resolution clause that directs the resolution of disputes such as this one that arise out of the existing agreement. Specifically, on August 20, 2002, the parties adopted an amendment to the Agreement that provides in relevant part as follows:

Except as otherwise stated in the Agreement, i.e. the process for resolving billing disputes as described in Attachment 6, Section 15, the Parties agree that any other

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<sup>1</sup> Until such time as the Petition is reformed into a Complaint, the filing deadlines applicable to arbitration petitions apply.

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dispute that arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, may be taken to the Commission for resolution.

Section 16.1, GTC as amended.

Pursuant to this provision, Supra has brought its dispute to the Commission. Thus, to the extent this attempt to overturn the Commission's generic cost docket is not dismissed, the Petition should be treated by the Commission as a complaint arising out of an interconnection agreement.

**B. As The Pre-Hearing Officer Correctly Concluded, The Dispute Is Not Appropriate For Expedited Procedures.**

Consistent with its previous Complaints against BellSouth, Supra requests that the Commission address the Complaint on an expedited basis. See Complaint at n.1. Apparently in Supra's view, every complaint initiated by Supra is an emergency or requires expedited treatment. The tired argument Supra raises again and again in support of its claim to expedited procedures is that expedited consideration is warranted pursuant to a June 19, 2001 internal memorandum provided to the former chairman of the Commission. This Memorandum establishes an internal process for the Commission to resolve "complaints arising from interconnection agreements approved by the Commission under Section 252 of the Telecommunications Act" in approximately 99 days. Keeping with its intent to only govern disputes arising out of interconnection agreements, the expedited complaint process is limited to issues of contract interpretation. *Id.*

In the instant Complaint, Supra requests expedited relief even though on June 2, 2003 - the Commission denied Supra's request for expedited review in Docket No. 030349-TP (\$75 Cash Back Promotion Complaint) on the grounds that Supra did not allege sufficient grounds as to why expedited treatment was warranted and that the procedures set forth in the internal

memorandum were not applicable to Supra's Complaint. *See* Order No. PSC-03-0671-PCO-TP. Identical to that \$75 Cash Back Promotion Docket, Supra has not alleged any specific facts in this Complaint why expedited treatment is warranted, especially given Supra's willingness to order hot desks converting approximately 18,000 Unbundled Network Element-Platform ("UNE-P") arrangements to unbundled loop ("UNE-L") arrangements over the last five (5) months at the \$59.31 rate. In addition, taken on its face,<sup>2</sup> Supra's Petition is not seeking simply a contract interpretation, but rather is seeking the Commission to engage in complex, highly-factual and time-consuming rate setting proceeding. Should the Commission undertake such a rate setting proceeding (which it should not), the Commission should at the very least do so in the setting of a generic proceeding and allow all interested parties to intervene and have their respective views presented. This type of dispute is hardly the type of dispute to which the procedures set forth in the internal Commission memorandum are applicable.

Supra's continued claim for expedited treatment is particularly disingenuous given that Supra itself imposed significant delay in the resolution of this matter by filing an Amended Petition. Supra cannot be heard to demand expedited treatment from the Commission when Supra itself could not even correctly plead its issues.

Therefore, consistent with Order No. PSC-03-0671-PCO-TP, BellSouth requests that the Commission reject Supra's request for expedited consideration.

## **II. Response to Numbered Paragraphs**

1. BellSouth admits the allegations in Paragraph 1 of the Amended Petition upon information and belief.

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<sup>2</sup> As this Response demonstrates, BellSouth disputes virtually everything in the Petition, including the alleged relief to which Supra claims it is entitled. For purposes of determining entitlement to expedited relief, however, the allegations should be viewed on their face.

2. BellSouth admits the allegations in Paragraph 2 of the Amended Petition upon information and belief.

3. BellSouth admits the allegations in Paragraph 3 of the Amended Petition.

4. <sup>2</sup> BellSouth admits that Supra correctly cited the June 2003 Florida Competition Report and correctly sets forth three market entry mechanisms in the Act. BellSouth cannot admit nor deny whether Supra used or is using a three-prong strategy.

5. BellSouth responds that 47 U.S.C. § 251(c)(2), 47 U.S.C. § 252(d)(1) and 47 U.S.C. § 252(d)(1)(A) speak for themselves. BellSouth denies all remaining allegations in Paragraph 5 of the Amended Petition.

6(a).<sup>3</sup> BellSouth responds that the Supreme Court's decision in *Iowa Utilities Board* speaks for itself. BellSouth further states that the work functions and the costs associated with the conversion of a BellSouth retail customer to UNE-L and a UNE-P to UNE-L are identical. BellSouth denies the remaining allegations in Paragraph 6(a) to the Amended Petition.

6(b). BellSouth responds that Section 364.161(1) speaks for itself. BellSouth denies the remaining allegations in Paragraph 6(b) of the Amended Petition.

7. BellSouth responds that Section 364.162(2), Florida Statutes, speaks for itself. BellSouth denies the remaining allegations in Paragraph 7 of the Amended Petition.

8. BellSouth admits that Supra filed a single petition, but denies the remaining allegations in Paragraph 8 of the Amended Petition.

**EXPEDITED RELIEF**

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<sup>2</sup> Supra incorrectly included two paragraphs numbered "6" in its Amended Petition. Rather than re-number all of the remaining paragraphs, BellSouth has labeled them 6(a) and 6(b).

9. BellSouth admits that the FPSC and the FCC encourage facilities-based competition. BellSouth denies the remaining allegations in Paragraph 9 of the Amended Petition and further states that the Commission already has denied Supra's claim for expedited relief.

10. BellSouth admits that the D.C. Circuit vacated the switching portions of the FCC's Triennial Review Order and further states that as of the date of this Answer there are no unbundling rules with respect to switching. BellSouth denies the remaining allegations in Paragraph 10 of the Amended Petition and further states that the Commission already has denied Supra's claim for expedited relief.

11. BellSouth admits that it will not negotiate with Supra regarding the charges for the hot cut services for SL1 and SL2 loops, but denies the remaining allegations in Paragraph 11 of the Amended Petition and further states that the Commission already has denied Supra's claim for expedited relief.

12. BellSouth responds that Section 364.058 speaks for itself. BellSouth denies the remaining allegations in Paragraph 12 of the Amended Petition and further states that the Commission already has denied Supra's claim for expedited relief.

13. BellSouth denies the allegations in Paragraph 13 of the Amended Petition.

14. BellSouth admits that the parties' Interconnection Agreement provides for the purchase of resold services, interconnection and unbundled network elements. BellSouth denies the remaining allegations in Paragraph 14 of the Amended Petition.

15. Section 3.1 of the General Terms and Conditions speaks for itself. BellSouth denies that section 3.1, GTC or any provision in the Agreement relating to the termination of services is relevant to this dispute. Supra is not seeking to "terminate" service; on the contrary, Supra is seeking to convert its UNE-P lines to UNE-L lines via a process called a hot cut.



16. Section 22.1 of the General Terms and Conditions speaks for itself. BellSouth denies that section 22.1, GTC is relevant to this dispute. Section 22.1, GTC applies to “costs and expenses” that must be borne by each company. The rate for a hot cut is not a “cost and expense.”<sup>4</sup> Section 22.2, GTC, which is relevant to this dispute, applies to *rates* that may be charged under the Agreement for network elements and services.<sup>4</sup>

17. Section 3.8, Attachment 2 speaks for itself. While the Agreement defines a “hot cut” as “the conversion of active BellSouth retail end users to a service configuration by which Supra Telecom will serve such end users by unbundled Loops...,” the FCC has defined the term “hot cut” as “the process of converting a customer from one network, usually a UNE-platform served by an incumbent LEC’s switch, to a UNE-loop served by another carrier’s switch.”<sup>5</sup> More recently, the FCC defined a “hot cut” as “[t]he physical transfer of a customer’s line from the incumbent LEC switch to the competitive LEC switch....” *Triennial Review Order*, at ¶ 465. The key element in a hot cut is the transfer of the loop from one carrier’s switch to another carrier’s switch.

18. Section 3.8.1, Attachment 2 speaks for itself. BellSouth denies that the hot cut process set forth in the Agreement “only” applies when a BellSouth retail customer is converted to a Supra UNE-L customer. BellSouth denies the remaining allegations in Paragraph 18 of the Amended Petition.

19. Section 22.1, GTC and Section 3.8, Attachment 2 speak for themselves. BellSouth denies that section 22.1, GTC is relevant to this dispute and denies that section 3.8,

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<sup>4</sup> Section 22.2, GTC provides that “[w]here the [FPSC] has established rates for network elements and services described in this Agreement, rates shall be those established by the Commission. For those network elements and services for which rates have not been established by the [FPSC], the Parties shall negotiate a rate for such network elements or services.”

<sup>5</sup> Re Application By Verizon New Jersey Inc. et al, WC Docket No. 02-67, *Memorandum Opinion and Order*, 17 FCC Rcd 12275 at ¶ 61.

Attachment 2 is limited to retail to UNE-L conversions. BellSouth states that the conversion process for retail to UNE-L is the same as for UNE-P to UNE-L and thus the Commission's nonrecurring rate applies to both conversions. BellSouth denies the remaining allegations in Paragraph 19 of the Amended Petition.

20. BellSouth denies the allegations in Paragraph 20 of the Amended Petition.

21. BellSouth responds that the parties' Interconnection Agreement speaks for itself. BellSouth further responds that its June 23, 2003 Emergency Motion to the Bankruptcy Court speaks for itself. BellSouth denies the remaining allegations in Paragraph 21 to the Amended Petition.

22. BellSouth admits that it is entitled to be reasonably compensated for services it renders, and further states that the appropriate rate to charge Supra are the nonrecurring rates established by the Commission in Docket No. 990649-TP. BellSouth denies the remaining allegations in Paragraph 22 of the Amended Petition.

23. BellSouth denies the allegations in Paragraph 23 of the Amended Petition. There is no cost difference between a retail to UNE-L hot cut and a UNE-P to UNE-L hot cut.

24. BellSouth admits that the cost is different for a UNE loop for which a dispatch is required and a UNE loop for which no dispatch is required. BellSouth further states that the Commission took these cost differentials into account through the use of probabilities used to calculate the nonrecurring costs for SL1 and SL2 loops in Docket No. 990649-TP. BellSouth denies the remaining allegations in Paragraph 24 of the Amended Petition and further states that Supra is attempting to undo the Commission's generic cost docket through a two-party complaint proceeding.

25. BellSouth denies the allegations in Paragraph 25 of the Amended Petition.

26. BellSouth denies the allegations in Paragraph 26 of the Amended Petition. BellSouth further states that the Verizon rates are not relevant to this proceeding. See *Florida/Tennessee 271 Order*, ¶ 43 (“In other section 271 orders, we have not found that a simple comparison of NRC rates in different states demonstrates TELRIC non-compliance”).

27. BellSouth admits that it tried to resolve this matter in the context of Supra’s FCC complaint. BellSouth further admits that the FCC denied Supra’s request for an Accelerated Docket. BellSouth admits that it is aware of Supra’s allegation, but denies that Supra’s allegation has merit or that Supra is entitled to any rate other than the rates established by this Commission for hot cuts. Finally, BellSouth admits that it terminated negotiations with Supra at the FCC. BellSouth denies the remaining allegations in Paragraph 27 of the Amended Petition.

With respect to Supra’s “Statement of Unresolved Issues,” BellSouth admits that Supra has raised issues, but denies that these are the issues to be resolved by the Commission in this docket. BellSouth further states that the issues shall be determined during the Issue Identification for this case. BellSouth’s proposed issues are as follows:

**BELLSOUTH’S STATEMENT OF ISSUES**

- Issue 1: Did the Commission establish hot cut rates, including the nonrecurring rates for SL1 and SL2 loops, in Docket No. 990649-TP?
- Issue 2: If so, do those Commission-approved hot cut rates, including nonrecurring rates for SL1 and SL2 loops, apply both in cases in which a dispatch is required to provision the loop and in cases in which no dispatch is required to provision the loops?
- Issue 3: Do the Commission-approved rates from Docket No. 990649-TP apply to Supra?

Issue 4: If the answer to either Issue 1, Issue 2 or Issue 3 is in the negative, what are the appropriate nonrecurring rates for SL1 and SL2 loops?

28. BellSouth denies the allegations set forth in Paragraph 28 of the Amended Petition and specifically denies that Supra is entitled to any interim relief. During the last few months of 2003, Supra migrated over 13,000 lines from UNE-P to UNE-L without ever claiming the need for emergency relief. In total, Supra has migrated over 18,000 of its customer's lines to unbundled loop arrangements. Now, ironically, Supra is claiming it needs interim relief. BellSouth further states that the Commission previously denied Supra's request for interim relief.

29. BellSouth states that Florida Statute § 364.058 and Florida Administrative Code § 28-106.211 speak for themselves. BellSouth denies the remaining allegations in Paragraph 29 of the Amended Petition and specifically denies that Supra is entitled to expedited treatment or interim relief.

30. BellSouth denies that the process described in Paragraph 30 of the Amended Petition is relevant to this case and further denies that Supra is entitled to expedited treatment or interim relief. BellSouth denies the remaining allegations in Paragraph 30 of the Amended Petition.

31. BellSouth denies that the process described in Paragraph 31 of the Amended Petition is relevant to this case and denies that Supra is entitled to expedited treatment or interim relief. BellSouth further denies that Supra is entitled to mediation. BellSouth denies the remaining allegations in Paragraph 31 of the Amended Petition.

32. BellSouth denies that the process described in Paragraph 32 of the Amended Petition is relevant to this case and denies that Supra is entitled to expedited treatment or interim

relief. BellSouth further states that this Commission already has established the rates for individual hot cuts and that this rate is applicable to both dispatch and nondispatch hot cuts. Finally, BellSouth states that the discovery sought by Supra could have been served during the Commission's cost docket and that Supra impermissibly is seeking to relitigate the cost docket in this proceeding. BellSouth denies the remaining allegations in Paragraph 32 of the Amended Petition.

33. BellSouth denies the allegations in Paragraph 33 of the Amended Petition. BellSouth further denies that Supra is entitled to an interim rate, or that the Commission needs to set a rate. To the contrary, the FPSC established the individual hot cut rates in Docket No. 990649-TP. Supra impermissibly is trying to relitigate the nonrecurring costs for SL1 and SL2 loops in this proceeding. Finally, the Commission already has denied Supra's request for an interim rate

34. BellSouth denies the allegations in Paragraph 34 of the Amended Petition and specifically denies that there is any cost difference between a retail to UNE-L conversion and a UNE-P to UNE-L conversion.

35. BellSouth admits receipt of Confidential Exhibit B but denies the allegations therein and specifically denies that there is a cost difference between a retail to UNE-L conversion and a UNE-P to UNE-L conversion. Moreover, BellSouth states that Supra does not even make a case that there is a difference between retail to UNE-L conversions and UNE-P to UNE-L conversions – the distinction Supra wants to draw is between dispatch and non-dispatch hot cuts. The differences upon which Supra focuses are the differences inherent in hot cuts requiring a dispatch vs. hot cuts that do not require a dispatch --- differences that exist whether or not the conversion to a UNE loop is for a BellSouth retail customer or for a CLEC's UNE-P

customer. In Docket No. 990649-TP, the FPSC held that a blended rate (that blended the costs of hot cuts with and without dispatches) was the appropriate methodology --- having not challenged that conclusion in the cost docket, Supra impermissibly is attempting to relitigate it here. ~~4~~

36. BellSouth denies the allegations set forth in Paragraph 36 of the Amended Petition, and specifically denies that Supra is entitled to a \$5.28 hot cut rate. BellSouth further states that when Supra first made this claim at the FCC, it claimed it was entitled to a rate of "approximately \$1.00." *Supra's Request for Accelerated Docket*, at 1,3,4-5.

37. BellSouth denies the allegations set forth in Paragraph 37 of the Amended Petition and specifically denies that Verizon's tariff from Pennsylvania is in any way relevant to the individual hot cuts Supra purchases from BellSouth in Florida. *See Florida/Tennessee 271 Order*, ¶ 43 ("In other section 271 orders, we have not found that a simple comparison of NRC rates in different states demonstrates TELRIC non-compliance").

38. BellSouth denies the allegations set forth in Paragraph 38 of the Amended Petition and specifically denies that Verizon's tariff from Pennsylvania is in any way relevant to the individual hot cuts Supra purchases from BellSouth in Florida. *See Florida/Tennessee 271 Order*, ¶ 43 ("In other section 271 orders, we have not found that a simple comparison of NRC rates in different states demonstrates TELRIC non-compliance").

39. BellSouth denies the allegations in Paragraph 39 of the Amended Petition. BellSouth further denies that Supra is entitled to an interim rate, or that Supra is entitled to any rate other than the nonrecurring rate established for SL1 and SL2 loops by this Commission in Docket No. 990649-TP.<sup>6</sup>

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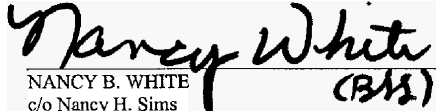
<sup>6</sup> The arbitrariness of Supra's analysis is highlighted by the fact that its proposed interim rates for loops for which a dispatch is involved is only 10 cents more than non-dispatch loops.

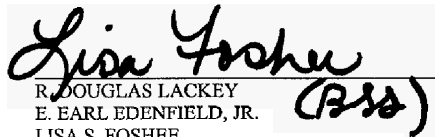
**WHEREFORE**, BellSouth respectfully requests that the Commission deny Supra all relief sought in this Amended Petition and dismiss the Amended Petition.

Respectfully submitted this 21st day of July, 2004.

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BELLSOUTH TELECOMMUNICATIONS, INC.

  
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