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August 10, 2004

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

RE: Docket 040301 –TP
SUPRA'S MOTION FOR RECONSIDERATION OF ORDER NO. PSC-04-0752-PCO-TP - DENYING SUPRA'S REQUEST FOR EXPEDITED RELIEF AND REFORMING THE MATTER TO A COMPLAINT OR, IN THE ALTERNATIVE, MOTION TO SET INTERIM RATE

Dear Mrs. Bayo:

Enclosed are the original and fifteen (15) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Motion For Reconsideration Of Order No. Psc-04-0752-Pco-TP - Denying Supra's Request For Expedited Relief And Reforming The Matter To A Complaint Or, In The Alternative, Motion To Set Interim Rate to be filed in the captioned docket.

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

Sincerely,

Brian Chaiken/JWA

Brian Chaiken
Executive V.P. Legal Affairs

CERTIFICATE OF SERVICE
Docket No. 040301-TP

I HEREBY CERTIFY that a true and correct copy of the following was served via Facsimile and E-Mail this 10th day of August 2004 to the following:

Jason Rojas/Jeremy Susac
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Nancy White
c/o Ms. Nancy H. Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1556

SUPRA TELECOMMUNICATIONS
AND INFORMATION SYSTEMS, INC.
2620 S. W. 27th Avenue
Miami, FL 33133
Telephone: 305/ 476-4248
Facsimile: 305/ 443-1078

Brian Chaiken

By: Brian Chaiken

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-TP Filed: August 10, 2004

SUPRA'S MOTION FOR RECONSIDERATION OF ORDER NO. PSC-04-0752-PCO-TP - DENYING SUPRA'S REQUEST FOR EXPEDITED RELIEF AND REFORMING THE MATTER TO A COMPLAINT OR, IN THE ALTERNATIVE, MOTION TO SET INTERIM RATE

Supra Telecommunications and Information Systems, Inc. ("**Supra**"), pursuant to Rule 25-22.0376, hereby files its Motion for Reconsideration of *Order Denying Supra's Request for Expedited Relief and Reforming the Matter to a Complaint* ("**August 4th Order**"). In the alternative, Supra requests that this Commission set an interim rate for UNE-P to UNE-L conversions which do not require a truck roll at $15.00, subject to true up once a permanent rate is set. The August 4th Order is based on errors in both fact and law, and, most significantly, denies Supra due process. For the reasons more fully set forth below, the Florida Public Service Commission ("**Commission**") should order that this matter be heard on an expedited basis or, at the very least, that the matter be heard within 120 days of the petition date pursuant to Sections 364.161 and 364.162, Florida Statutes. In the alternative, Supra requests that this Commission set an interim rate for UNE-P to UNE-L conversions which do not require a truck roll at $15.00, subject to true up once a permanent rate is set.

BRIEF INTRODUCTION

In its August 4th Order, the Commission cited Rule 28-106.211, Florida Administrative Code, as authority to effectuate discovery, prevent delay, and promote the

just, speedy and inexpensive determination of all aspects of the case. Contrary to this intent, the August 4th Order actually inhibits discovery, causes delay, deters the just, speedy and inexpensive determination of this matter, and violates the specific intent of Sections 364.161 and 364.162, Florida Statutes, under which Supra brought this Petition. Further, in taking such action without any pending motion requesting such relief and without affording Supra an opportunity to respond, the Commission has wrongfully deprived Supra of due process.

PROCEDURAL HISTORY

For over two years, Supra has sought to establish a just and reasonable rate for the conversion of BellSouth UNE-P lines to UNE-L lines in the state of Florida, so as to enable Supra to become a facilities-based provider. In 2002, Supra first had negotiations with BellSouth to discuss the process and associated costs by which such conversions would take place. As it took Supra over six years to force BellSouth to comply with the Commission's rules regarding collocation, once Supra got its facilities in place in 2003, Supra was anxious to move customers to its own facilities. However, as the parties were unable to reach an agreement on the proper procedures or rates, on June 23, 2003, BellSouth raised the issue before the before the United States Bankruptcy Court Southern District of Florida, via BellSouth's *Emergency Motion of BellSouth Telecommunications, Inc. for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions.* (See **EXHIBIT – A**) There, for the first time, BellSouth claimed that it was entitled to charge Supra in excess of $57.00 to perform a UNE-P to UNE-L conversion. Significantly, **BellSouth admitted that the parties' Florida interconnection**

agreement does not reference a conversion process from UNE-P to UNE-L.[1] On July 15, 2003, the Bankruptcy Court issued its *Order Granting Emergency Motion of BellSouth Telecommunications, Inc., for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions.* (**See EXHIBIT - B**) Therein, the Court held:

> Supra should pay the UNE-L Conversion changes on a weekly basis at the rate proposed by BellSouth in its Motion (the "BellSouth Rate") unless BellSouth voluntarily agrees to a lower rate. This rate will be subject to later adjustment if an appropriate regulatory body fixes a lower rate (the "Regulated Rate"). **Although the BellSouth/Supra contract does not specifically set a rate for UNE-P to UNE-L conversions**, BellSouth believes the $59.31 Rate proposed in its motion applies...
> In the interim, to ensure that BellSouth is not charging Supra the BellSouth rate without reasonable justification, the Court is reserving the right to require BellSouth to refund twice the difference between the BellSouth Rate and the ultimately determined Regulatory Rate.

(Emphasis added).

On June 16, 2003, Supra filed, a Request for Consideration of this very issue with the Federal Communications Commission ("**FCC**"). Through this filing, Supra requested that it be included in the FCC's Accelerated Docket. On July 14, 2003, BellSouth filed its letter response to Supra's Request. Significantly, therein, BellSouth argued to the FCC that this matter should be heard by the Florida Public Service Commission ("Commission"). The FCC attempted to mediate the matter, and on February 20, 2004, the parties held another meeting in an attempt to resolve their differences. At this meeting, Supra believed that the parties had made progress and, shortly thereafter, requested that BellSouth act in good faith[2] and charge it a lower, reasonable rate on a

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[1] Id at p. 5, para. 12. Of course, because this was drafted by BellSouth in 2001, before a plan for doing such a conversion even existed, one would not have expected the Florida interconnection agreement to have contained such a reference.

[2] In addition to complying with the intent of the Bankruptcy Court's July 15, 2003 *Order Granting Emergency Motion of BellSouth Telecommunications, Inc., for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions.*

going-forward basis and provide Supra with a refund of the difference between the unreasonable amount that was charged (i.e., $59.31) and the lower, reasonable going-forward rate. Thereafter, BellSouth immediately broke off negotiations, claiming that Supra had somehow violated the confidentiality of such negotiations despite admitting that Supra never made any communications with a third party regarding such.

BellSouth has made much of the fact that Supra ordered over 18,000 UNE-P to UNE-L conversions between August 2003 and February 2004. Unfortunately, BellSouth does not tell the whole story as it was BellSouth and not Supra that ultimately paid for the conversions. Supra agreed to order the conversions based on the following three facts: (1) Supra received a settlement credit from BellSouth, (2) Supra could use the credit for the UNE-P to UNE-L conversions so as not to have to pay BellSouth out-of-pocket, and (3) Supra would be entitled to a refund, and possibly double the refund, should the FCC or this Commission set a lower, reasonable rate, pursuant to the July 15, 2003 *Order Granting Emergency Motion of BellSouth Telecommunications, Inc., for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions*. Supra would not have placed the orders unless all three of these facts were in existence, as it would not have been cost-effective to do so at the unreasonably high rates BellSouth seeks to charge.

Yet, after Supra filed this case with the Commission, and after BellSouth argued before both the United States District Court and the FCC that the Commission was the proper venue, on June 21, 2004, BellSouth filed a Motion to Dismiss Supra's Petition in this docket. As more fully set forth in *Supra's Response in Opposition to BellSouth's Motion to Dismiss*, such was filed with absolutely no merit whatsoever, and could only have been filed for purposes of delay.

After attempting, to no avail, to obtain a resolution in this matter through negotiation and hearings before both the United States Bankruptcy Court and the FCC over the past two years, the August 4th Order enables BellSouth to extend this delay even further.

STANDARD OF REVIEW

The proper standard of review on a motion for reconsideration is whether or not the Commission overlooked or failed to consider a point of fact or law in rendering its order. *See* Diamond Cab Co., v. King, 146 So.2d 889, 891 (Fla. 1962); and In re: Complaint of Supra Telecom, 98 FPSC 10, 497, at 510 (October 28, 1998) (Docket No. 980119-TP, Order No. PSC-98-1467-FOF-TP). This standard necessarily includes any mistakes of either fact or law made by the Commission in its order. In re: Investigation of possible overearnings by Sanlando Utilities Corporation in Seminole County, 98 FPSC 9, 214, at 216 (September 1998) (Docket No. 980670-WS, Order No. PSC-98-1238-FOF-WS) ("It is well established in the law that the purpose of reconsideration is to bring to our attention some point that we overlooked or failed to consider or a mistake of fact or law"); see e.g. In re: Fuel and purchase power cost recovery clause and generating performance incentive factor, 98 FPSC 8, 146 at 147 (August 1998) (Docket No. 980001-EI, Order No. PSC-98-1080-FOF-EI) ("FPSC has met the standard for reconsideration by demonstrating that we may have made a mistake of fact or law when we rejected its request for jurisdiction separation of transmission revenues").

A trial court has jurisdiction to reconsider a prior ruling, and may examine several factors in determining the propriety of such reconsideration, including whether a matter is presented in a different light or under different circumstances; there has been change in governing law; a party offers new evidence; manifest injustice will result if the court does

not reconsider its prior ruling; the court needs to correct its own errors; or an issue was inadequately briefed when first contemplated by court. 56 Am. Jur. 2d Motions, Rules, and Orders § 41. In the present case, this Commission should reconsider its August 4th Order because manifest injustice will result if the Commission does not, in the form of undue and harmful delay, as well as to correct an error in the failure to abide by Florida statutory law.

ARGUMENT

1. The Commission has ignored Sections 364.161 and 364.162, Florida Statutes.

It is undisputed that Supra has attempted to negotiate mutually acceptable prices, terms, and conditions of interconnection and for the resale of services and facilities (i.e., a UNE-P to UNE-L hot cut rate) with BellSouth. Supra has attempted to negotiate such a rate since as early as 2002. However, as these negotiations failed as a result of BellSouth's unilateral business decision to cease all efforts to negotiate a resolution, Supra filed the instant petition pursuant to Sections 364.161 and 364.162, Florida Statutes.

These statutory provisions provide the Commission with no discretion in setting a timeframe by which it **must** set a non-discriminatory rate. "In the event that the commission receives a single petition relating 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."[3] The statutory language is clear and unambiguous and, therefore, the legislature's intent is clear and unequivocal – a non-discriminatory rate must be set within 120 days of the filing of a petition – in this case, Supra's Petition.

The legislature's rationale is equally clear and unequivocal, these statutory provisions are designed to enable CLECs to timely obtain a non-discriminatory rate in the event negotiations fail. Moreover, by intentionally removing any discretionary power from the Commission in the setting of a timeframe for the establishment of a non-discriminatory rate, the legislature specifically removed the element of delay from this type of endeavor.

In converting Supra's petition into a complaint with an indefinite time for resolution, the Commission has wholly negated the intent and purpose of these statutory provisions. The legislature's clear and unambiguous 120-day timeframe for the establishment of a non-discriminatory rate has been bypassed through a simple reclassification.

The August 4th Order relied on Supra's argument in its First Amended Petition that it should not be required to pay any amount for a UNE-P to UNE-L conversion as the parties' Florida interconnection agreement does not contain rates, terms or conditions for same. Of course, a decision on this issue, which makes up two of the Staff's four proposed issues, should be made as a matter of law and is not a "complex, highly factually and time-consuming" process. Either the agreement provides for such rates, terms or conditions, or it does not. As Supra is already armed with an admission by

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3 Section 364.162(2), Florida Statutes.

BellSouth as well as a finding by the U.S. Bankruptcy Court that the agreement does not,[4] the two issues relating to the contractual issues should be resolved on summary final order.

This leaves only two issues which need to be decided by the Commission, solely dealing with the establishment of just and reasonable rates, and terms and conditions of interconnection. Surely the intent of this Commission's internal memorandum dated June 19, 2001 applies to such a case. At a maximum, this case should be heard within the 120 time frame set forth by Sections 364.161 and 364.162, Florida Statutes. Supra has sought expedited relief so as to get rates, terms and conditions established before the 120 day deadline.

As a last resort, in order to expedite this proceeding, Supra would be willing to forgo its contractual argument and seek solely to have this Commission arbitrate just and reasonable rates, terms and conditions for the two types of UNE-P to UNE-L conversions identified in Supra's First Amended Petition.

2. Supra has been denied due process.

A participant in a quasi-judicial proceeding is clearly entitled to *some* measure of due process.[5] Although BellSouth did set forth its desire to have this matter treated as a Complaint rather than as a Petition for Arbitration in its Answer and Response to Supra's First Amended Petition, it is clear that such is not an affirmative motion seeking such relief. Rule 28-106.204 provides, in pertinent part:

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[4] See *Emergency Motion of BellSouth Telecommunications, Inc. for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions*, p. 5, para. 12, and the U.S. Bankruptcy Court's *Order Granting Emergency Motion of BellSouth Telecommunications, Inc., for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions*.

[5] See Cherry Communications, Inc. v. Deason, 652 So.2d 803 (Fla. 1995).

(1) All requests for relief shall be made by motion. All motions shall be in writing unless made on the record during a hearing, and shall fully state the action requested and the grounds relied upon.

* * *

(3) Motions, other than a motion to dismiss, shall include a statement that the movant has conferred with all other parties of record and shall state as to each party whether the party has any objection to the motion.

It is undisputed that neither BellSouth[6] nor the Commission has filed a written motion pursuant to the above cited rule requesting the relief ordered by this Commission - processing this matter as a complaint and not as an arbitration for interconnection. As such, Supra has been denied due process of law.

3. BellSouth's own arguments show that this matter is ripe for an expedited hearing.

BellSouth, in its Motion to Dismiss, argues that it has already filed and received an approved cost study for the very conversions which Supra seeks. As such, Supra would expect BellSouth's evidence to be the exact same cost study and testimony it filed with the Commission back in 2000. Of course, if such is not the case, and BellSouth seeks to introduce new evidence, such would be an admission that the legal position it took in its Motion to Dismiss was knowingly false. Assuming that BellSouth makes such an admission, this proceeding is **still not a complex one – determining the proper** procedures necessary to effectuate **a conversion from UNE-P to UNE-L and allocating**

[6] BellSouth never even requested, in the "Wherefore" clause of its Answer and Response filed on July 21, 2004, that the Commission reform Supra's Petition into a Complaint so as to avoid the 120 day statutory requirement.

appropriate non-recurring costs to such procedures. Either way, this is exactly the type of proceeding which should be resolved in an expedited fashion.

4. Expedited treatment is warranted in light of existing law and new circumstances.

In light of the unrest and speculation caused by the recent D.C. Circuit Court decision regarding the UNE-P related provisions in the FCC TRO Order, expedited treatment shortening the 120 day period is warranted. This uncertainty is harmful to both customer and investor confidence in the CLEC industry. The establishment of a reasonable conversion cost so as to allow for facilities-based competition via UNE-L would go a long way to creating certainty, increasing confidence in this industry, and ensuring competition remains. Furthermore, as UNE-P prices may soon be raised or as UNE-P may soon sunset, Supra needs to be able to quickly transfer its customers to its own facilities, so as to provide the least cost impact on its customer base. Delays in the establishment of the UNE-P to UNE-L conversion costs will only serve to delay Supra's ability to make these transfers as soon as possible.

If the Commission is considering a finding of non-impairment as it relates to elements included in UNE-P, Supra's costs of providing service could be significantly impacted as early as January 1, 2005 – less than five months away. Either way, Supra needs to begin converting its lines to UNE-L today, to ensure that it is not materially adversely affected by any future changes to UNE pricing and begin getting a return on its facilities-based investments.

CONCLUSION

In issuing its August 4th Order, this Commission has violated the intent of Rule 28-106.211, Florida Administrative Code, as well as that of Sections 364.161 and 364.162, Florida Statutes. Furthermore, the Commission violated Supra's due process rights in entering an order without affording Supra an opportunity to present any argument on the issue. The facts of this case clearly show that the issues involve the arbitration of new rates, terms and conditions of interconnection, and should be governed by Sections 364.161 and 364.162, Florida Statutes. Furthermore, the facts show that expedited treatment is warranted in light of (1) Supra's extensive attempts to negotiate and BellSouth's outright refusal to do so; (2) BellSouth's legal arguments and admissions before the FCC and the United States Bankruptcy Court that the parties' agreement is silent as to the issues presented and that this Commission is the proper venue for the dispute; and (3) the regulatory environment in which the rates, terms and conditions of UNE-P is in limbo and may soon sunset. For all of these reasons, this Commission should reconsider its order and grant Supra expedited relief and/or follow the explicit procedures set forth in Sections 364.161 and 364.162, Florida Statutes. As a last resort, Supra would agree to forgo its contractual based arguments so as to focus the issues solely on the establishment of new rates, terms and conditions of UNE-P to UNE-L conversions.

ALTERNATIVE MOTION TO SET INTERIM RATE

Should this Commission fail to abide by the time frame for the setting of rates, terms and conditions of interconnection pursuant to Sections 364.161 and 364.162, Florida Statutes, Supra requests that, in the alternative, the Commission set an interim rate for UNE-P to UNE-L conversions which do not involve a truck roll at no greater than

$15.00, subject to true up once a permanent rate is established. The establishment of such an interim rate would allow Supra to mitigate its damages by immediately beginning to convert its large UNE-P customer base[7] over to UNE-L.

Supra justifies the $15.00 rate for such conversions as being the most BellSouth could possibly recover for converting already in-existence UNE-P lines served via copper or UDLC. Should this Commission grant Supra's Alternative Motion to Set an Interim Rate, Supra will file an affidavit, using BellSouth's own costs studies as its basis, which details how the $15.00 figure is reached.

WHEREFORE, Supra Telecommunications and Information Systems, Inc. respectfully requests that this Commission reconsider its August 4th Order and grant Supra (1) an expedited hearing date sooner than that required under Sections 364.161 and 364.162, Florida Statutes; (2) order that this matter be heard under the procedures proscribed by Sections 364.161 and 364.162, Florida Statutes; or, in the alternative, set a hearing to establish an interim rate no greater than $15.00 for UNE-P to UNE-L conversions which do not involve a truck roll.

[7] Supra is the largest UNE-P based CLEC in the state of Florida, with over 240,000 UNE-P lines.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

In re:	)	CASE NO. 02-41250-BKC-RAM
	)	CHAPTER 11
SUPRA TELECOMMUNICATIONS, d/b/a SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS,	)	
Debtor.	)	

ORDER GRANTING EMERGENCY MOTION OF BELLSOUTH TELECOMMUNICATIONS, INC., FOR INTERIM RELIEF REGARDING OBLIGATION TO PERFORM UNE-P TO UNE-L CONVERSIONS

The Court conducted a hearing, on June 25, 2003, on the Emergency Motion of BellSouth Telecommunications, Inc., for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions ("Motion") (CP# 617) and the Response of Supra Telecommunications and Information Systems, Inc. To BellSouth Telecommunications, Inc.'s Emergency Motion for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions ("Opposition") (CP# 626). The Court heard argument of counsel, reviewed the Motion and Opposition, and is otherwise fully advised in the premises. The Court also reviewed BellSouth's July 3, 2003 supplement to its original Motion and reviewed the parties' proposed Orders, portions of which are incorporated in this Order.

The Motion relates to certain non-recurring charges for the conversion of UNE-P lines to UNE-L lines (the "UNE-L Conversions"), a process that is part of Supra's efforts to convert its customers from BellSouth switches to Supra switches.

The parties do not agree on the correct charge for effectuating the conversions. BellSouth filed the Motion because (1) these charges may be substantial if Supra begins to order thousands of UNE-L Conversions as it stated it intends to do; and (2) the cost of these UNE-L Conversions was not considered when the Court established the amount of Supra's weekly adequate assurance payments to BellSouth in its November 13, 2002 Order Determining Adequate Assurance (the "366 Order").

The Court finds that Supra should pay the UNE-L Conversion changes on a weekly basis at the rate proposed by BellSouth in its Motion (the "BellSouth Rate") unless BellSouth voluntarily agrees to a lower rate. This rate will be subject to later adjustment if an appropriate regulatory body fixes a lower rate (the "Regulated Rate"). Although the BellSouth/Supra contract does not specifically set a rate for UNE-P to UNE-L conversions, BellSouth believes the $59.31 BellSouth Rate proposed in its Motion applies since (1) that is the contract rate for the conversion of a BellSouth retail line to UNE-L service; and (2) BellSouth asserts that the procedures necessary to do a retail to UNE-L conversion are substantially the same as the procedures for converting a UNE-P line to UNE-L.

The rate that should apply to UNE-P to UNE-L conversions should be determined by the FCC or Florida PSC, not by this Court. In the interim, to ensure that BellSouth is not charging Supra the BellSouth Rates without reasonable justification, the

Court is reserving the right to require BellSouth to refund twice the difference between the BellSouth Rate and the ultimately determined Regulatory Rate.

The Court is not finding nor implying that BellSouth is intentionally overcharging Supra, nor is it indicating that sanctions will be imposed simply because the regulators fix a lower rate. The purpose of announcing a "twice the difference" refund possibility is simply to induce BellSouth to charge a lower rate now if it has substantial reason to believe that the Regulatory Rate will be materially lower than the $59.31 BellSouth Rate it presently proposes to charge. This "twice the difference" refund may be imposed even if BellSouth has a colorable argument for charging the BellSouth Rate under the contract. This may occur, for example, if the FCC or Florida PSC find that BellSouth's costs for converting UNE-P to UNE-L are significantly less than its costs for converting retail lines to UNE-L, or, if the regulators otherwise make findings in the rate proceedings that cast substantial doubt on BellSouth's justification for using the retail to UNE-L rates for the UNE-L Conversions requested by Supra.

For the foregoing reasons, it is -

ORDERED as follows:

1. The Motion is granted.

2. Commencing with the date of the entry of this Order, in the weekly line count report that BellSouth issues to the Debtor,

and which is delivered to the Debtor every Tuesday under the present adequate assurance procedures, BellSouth shall also report the total number of UNE-L conversions completed during the prior week, and shall calculate the total weekly payment due to BellSouth, including the amounts due for completed conversions, based on the BellSouth Rates set forth in paragraphs 8 and 14 of the Motion. The Debtor shall have until Thursday (of the same week) to remit payment to BellSouth for UNE-L conversions completed during the prior week based on the prices provided for in the BellSouth Rates, in the same manner as it does under the current adequate assurance mechanism.[1]

3. The Debtor has disputed the BellSouth Rates and has filed an action with the Federal Communications Commission ("FCC") seeking a determination of the appropriate amounts that BellSouth may charge the Debtor (as defined earlier, the "Regulated Rates"). If an appropriate regulatory body determines that (1) the Regulated Rates are materially lower than the BellSouth Rates and (2) BellSouth had substantial reason to believe that the Regulated Rates would be materially lower, then, as more fully discussed earlier in this Order, the Court may consider sanctions against BellSouth. At the Court's discretion, these sanctions may consist of a refund in an amount equal to twice the difference between the BellSouth Rates and the

[1]BellSouth's rights under the 366 Order and related Orders shall also be applicable under this Order.

Regulated Rates for each converted line.

ORDERED in the Southern District of Florida, this 15th day of July, 2003.

ROBERT A. MARK
Chief U.S. Bankruptcy Judge

COPIES FURNISHED TO:
Paul Singerman, Esq.
Michael Budwick, Esq.

(Attorney Budwick is directed to serve a copy of this Order on all other interested parties herein)

EXHIBIT – A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

In re:

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.,

Debtor.
_____/

Chapter 11
Case No. 02-41250-BKC-RAM

EMERGENCY MOTION OF BELLSOUTH TELECOMMUNICATIONS, INC. FOR INTERIM RELIEF REGARDING OBLIGATION TO PERFORM UNE-P TO UNE-L CONVERSIONS

Compliance with Local Rule 9075-1
Basis for Exigency

At the June 18, 2003 hearing, the Court invited the filing of the instant Motion on an emergency basis to address BellSouth's obligations to incur substantial up-front non-recurring charges that were not dealt with in the Court's previous adequate assurance orders. In light of Supra's proffer at the June 18, 2003 hearing that it intends to place approximately 28,000 UNE-L orders in the near future, and the monetary scope of this issue (approximately $1.66 million), BellSouth may suffer direct, immediate and substantial harm in the absence of the immediate resolution of this issue.

BellSouth Telecommunications, Inc. ("BellSouth"), by and through undersigned counsel, submits this *Emergency Motion of BellSouth Telecommunications, Inc. for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions* (the "Motion"). In support of this Motion, BellSouth states:

1. On October 23, 2002 (the "Petition Date"), Supra Telecommunications & Information Systems, Inc. ("Supra"), filed its voluntary petition under Chapter 11, title 11 of the United States Code (the "Bankruptcy Code").[1]

[1] For the sake of brevity, BellSouth will recite only those facts relevant to the instant Motion. A detailed recitation of the facts and procedural history of the parties' relationship and the litigation that preceded the filing of Supra's chapter 11 case is set forth in the Motion of BellSouth Telecommunications, Inc. for Abstention or, in the Alternative, to Dismiss Case (C.P. #19).

2. Supra continues to operate its business and manage its affairs as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

3. On November 13, 2002, this Court entered an *Order Determining Adequate Assurance for BellSouth under Section 366 of the Bankruptcy Code and Setting Further Hearing* (the "366 Order") (C.P. # 84), requiring Supra to make weekly adequate assurance payments to BellSouth for the continuation of post-petition utility service by BellSouth to Supra. The 366 Order set forth the formula (the "Formula") by which the adequate assurance number is calculated on a weekly basis. The Formula is as follows:

- 10,400 resale lines at $400,000 per month
- (x) UNE lines at $25/line = (y)
- (y) + 400,000 = (z)
- (z) / 30 x 7 = weekly adequate assurance payment

4. On November 26, 2003, this Court entered its *Preliminary Injunction* (C.P. # 26), which provided, among other things, that BellSouth will be entitled to seek an appropriate adjustment to the Formula to the extent collocation access results in additional charges.

5. On December 2, 2002, this Court entered its *Further Adequate Assurance Order (i) Providing Formula Adjustment Procedures; (2) Requiring Debtor to Provide Additional Financial Information; and (3) Preliminary Ruling* (the "Adequate Assurance Order") (C.P. # 138).

6. The Adequate Assurance Order approved and adopted the adequate assurance adjustment procedure described in paragraphs 9, 10, and 11 of BellSouth's adequate assurance proposals (the "Adjustment Procedures").[2] The Adjustment Procedures set forth in these paragraphs permits either party to send in writing a request to modify the Formula, along with an explanation of the request and an example of the modified formula. The other party shall have

[2] A true and correct copy of BellSouth's *Supplemental Adequate Assurance Proposals* is attached hereto as Exhibit "A."

10 calendar days to respond to the party making the request, and include in its response an explanation of its response. The parties shall then have 10 days to attempt to negotiate a resolution of the proposed modification. If after the 10 day negotiation period resolution cannot be reached, the requesting party may seek a determination from the Court by motion on at least 10 day notice.

7. On May 21, 2003, BellSouth issued written notice to Supra requesting an adjustment to the Formula to address the issue of Supra's ordering of UNE-Loops ("UNE-L").[3] By ordering UNE-L, Supra is attempting to convert Supra customers from BellSouth switches to Supra switches. Such conversions will result in substantial up-front non-recurring charges that were not contemplated by the Court when it entered the 366 Order and the Adequate Assurance Order. Based on the significant costs involved and Supra's declining cash reserves, BellSouth submits that it is necessary for Supra to pay the non-recurring portion of any and all UNE-P to UNE-L conversions within one week following such conversions, as well as to adjust the Formula to reflect the recurring UNE-L costs. The need for adequate assurance is particularly acute in light of Supra's proffer at the June 18, 2003 hearing that it intends to place approximately 28,000 UNE-L orders in the near future.

8. BellSouth and Supra have reached an agreement as to the appropriate adjustment to the Formula regarding the recurring UNE-L costs, pursuant to which the recurring payments would depend on the particular SL1s provisioned.[4] Added to the specific SL1 loop rate is $.31 for special directory listings and $.57 for Operator Services and Directory Assistance Services,

[3] A true and correct copy of the May 21 Letter is attached hereto as Exhibit "B."

[4] The prices charged by BellSouth for a loop varies according to whether it is located in zone 1 (generally high population density), zone 2 (medium population density) and zone 3 (low population density).

all of which are services that Supra currently purchases from BellSouth and that Supra has agreed it will continue to purchase with UNE-L.[5] The formula is illustrated in the table below:

Line Count Numbers for Week Ending:			6/27/2003
Gains:	4000		
Losses:	3000		
Net gain:	1000		
Total Of Lines:	275000		
PAYMENT:			
10,400 DSL Lines			400,000.00
Remaining	255000	UNE P Lines @ $25 each:	6,375,000.00
	2500 SL1 (zone 1)	Lines @ $11.60 each	28,994.00
	6000 SL1 (zone 2)	Lines @ $16.11 each	96,645.60
	500 SL1 (zone 3)	Lines @ $27.88 each	13,938.80
Total Monthly			6,914,578.40
Daily (Monthly / 30)			230,485.95
Weekly (Daily * 7):			1,613,401.63
Total Payment for Week			1,613,401.63

However, the parties are unable to reach an agreement regarding the non-recurring cost associated with effectuating such conversions.

9. In its May 29 Letter, Supra objects to the amount of BellSouth's non-recurring charge for converting an SL1 Loop ($51.09).[6] The May 29 letter states that there is no support for the $51.09 rate in the parties' interconnection agreement dated July 15, 2002 (the "Present Agreement") or any relevant FPSC order, and that such conversion should in fact cost less than $1 per loop.

[5] Supra has requested that BellSouth provide voice mail service to Supra when a line is converted from UNE-P to UNE-L. BellSouth is still researching this request. If BellSouth elects to offer such service, the monthly recurring cost for each loop will need to be adjusted accordingly.

[6] BellSouth's May 21 Letter inadvertently failed to include the $8.22 cross-connect charge.

10. CLECs have been ordering UNE-L from BellSouth for several years. BellSouth developed a process to convert lines from its switches to CLEC switches through extensive negotiations with AT&T and other CLECs. This "hot cut" process has been used and continues to be used to provision CLEC orders for stand-alone loops.

11. The public service commissions in BellSouth's region, including the FPSC, have considered this process in extensive administrative litigation concerning UNE costs, BellSouth's applications to provide in-region long distance services and other dockets. In fact, the Florida PSC in its UNE cost docket adopted the rates for the components of BellSouth's hot cut process initially in its May 25, 2001 order in Docket No. 990649-TP, and later revised the rates in its October 18, 2001 order on motions for reconsideration of its May 2001 order. It later reaffirmed these rates in its September 27, 2002 order in Docket No. 990649A-TP, where it established new recurring rates for loops. These rates are incorporated in the Present Agreement and are the rates that BellSouth seeks to collect from Supra for the conversions in question. Moreover, the cost studies filed by BellSouth and approved by the FPSC reflect the rates to convert UNE-P loops to UNE-L. There can be no doubt that Supra must pay for the cost of converting Supra's customers to its switching facilities. BellSouth believes that its conversion process, which has been accepted by all CLECs (until now) and all PSCs, is the proper method of implementing Supra's conversions. Against this background, BellSouth has asserted that Supra is required to pay the approximately $58 in charges for each hot cut.

12. BellSouth agrees that the terms of the Agreement do not explicitly reference a conversion process from the Port/Loop Combination Service (i.e., UNE-P) Supra currently uses to the separate 2-Wire Analog Voice Grade Loop Service (i.e., UNE-L) Supra now seeks to use.[7]

[7] The fact that the Present Agreement is silent on this specific conversion is not unusual, as all the other interconnection agreements between BellSouth and other CLECs similarly do not address this issue. Evidently, all other CLECs understand that the FPSC rates would apply and thus have not disputed the charges.

BellSouth believes that the process and rates detailed in the Present Agreement for conversion of BellSouth's retail service to UNE-L should be applied to UNE-P to UNE-L conversions because UNE-P is, for the several functions involved in conversion to UNE-L, the functional equivalent of BellSouth's retail service. BellSouth has been, and continues to be, ready to convert service consistent with the contractual processes if it has adequate assurance that the applicable rates will be paid.

13. Based on the entire record of Supra letters to BellSouth and its argument to the Court, it is unclear to BellSouth whether Supra seeks to use the conversion process and rates of the Present Agreement, or whether Supra prefers a new conversion process separate from the Present Agreement. If Supra seeks a new process, BellSouth stands ready to negotiate its rates, terms, and conditions consistent with its incumbent local exchange company obligations.[8]

14. If Supra, however, desires to proceed under the Present Agreement, it should, as a debtor and debtor-in-possession, provide adequate assurance of payment, particularly in light of its declining cash flow. As a certificated CLEC, it should pay the same price for the establishment of UNE-L service that scores of other BellSouth Region CLECs pay. In Florida, those rates are: (i) Service Order: pursuant to Attachment 2, Exhibit A to the Present Agreement, the charge for submitting an electronic service order is $1.52 per order;[9] (ii) Service Provisioning: pursuant to Attachment 2, Exhibit A to the Present Agreement, the charge for

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[8] The Interconnection Agreement between BellSouth and Supra provides a process for the addition of services and elements or processes not included in the Agreement at the time of execution. Attachment 10 of the Agreement sets for the Bona Fide Request/New Business Request Process. The process contemplates Supra submitting to BellSouth its request, BellSouth processing that request pursuant to certain timeframes and then culminating in an amendment to the Agreement.

[9] The $1.52 service order charge is inadvertently identified in the box above its proper location; however, BellSouth believes that this amount is not disputed. A true and correct copy of Attachment 2, Exhibit A, Page 142 is attached hereto as Exhibit "C."

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provisioning a SL1 loop is $49.57;[10] and (iii) Cross-Connect: pursuant to Attachment 2, Exhibit A to the Present Agreement, the charge for to cross-connect a 2-wire loop is $8.22.[11] Accordingly, the total charge for converting to UNE-L is $59.31.

15. Supra has elected to take its dispute regarding the applicable rate to the FCC. BellSouth believes the Florida Public Service Commission is the correct forum for the issues Supra is now raising. Regardless, it is apparent that one or the other regulatory agency will resolve the underlying substantive dispute. Neither agency, however, can currently provide BellSouth with the appropriate adequate assurances of payment -- only this Court can. The existing formula simply does not contemplate the Supra's incurring an additional $1.66M (28,000 lines x $59.31) in conversion charges. Accordingly, the Court should adopt the adequate assurance proposal that is set forth in detail below.

16. By this Motion, BellSouth requests that this Court adopt the following procedure with respect to all UNE-P to UNE-L conversions. In its weekly line count report to Supra, which is delivered to Supra every Tuesday under the present adequate assurance procedures, BellSouth will report the number of UNE-L conversions completed during the prior week, and shall calculate the total weekly payment due to BellSouth, including the amounts due for completed conversions, based on the rates set forth in paragraphs 8 and 14. Supra shall have until Thursday (of the same week) to remit payment to BellSouth, as it does under the current adequate assurance mechanism. If the FCC, or any other regulatory agency, ultimately determines that the appropriate rate for effectuating a UNE-P to UNE-L conversion is less than $59.31, BellSouth will issue Supra a credit to be applied against future conversions. Likewise, if

[10] A true and correct copy of Attachment 2, Exhibit A, Page 142 is attached hereto as Exhibit "D."

[11] A true and correct copy of Attachment 4, Exhibit A, Page 350 is attached hereto as Exhibit "E."

the FCC, or any other regulatory agency, ultimately determines that the conversion rate is higher than $59.31, Supra shall immediately remit payment to BellSouth for all completed conversions.

17. BellSouth has made a bona fide effort to resolve this matter without the necessity of a hearing.

WHEREFORE, BellSouth respectfully requests this Court enter an Order:

A. Granting the Motion;

B. Modifying the Formula in the manner specified above; and

C. Granting such other and further relief as may be just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the *foregoing* was served via hand delivery on Michael Budwick, Esq. 200 S. Biscayne Blvd., 30th Floor, Miami, Fl 33131; the Office of the U.S. Trustee, 51 Southwest First Avenue, Room 1204, Miami, FL 33130; Robert Charbonneau, Esq., Kluger Peretz Kaplan & Berlin, P.A., Miami Center, 17th Floor, 201 South Biscayne Blvd., Miami, FL 33131; Kevin S. Neiman, Esq., 550 Brickell Avenue, PH2, Miami, FL 33131; and by first class mail, postage prepaid, without exhibits, to all other parties on the attached Master Service List this 23 day of June, 2003.

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and that I am in compliance with all additional qualifications to practice before this Court as set forth in Local Rule 2090-1(A).

Respectfully submitted,

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