BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint of Supra Telecommunications and Information Systems, Inc. against BellSouth Telecommunications, Inc.	DOCKET NO. 040301-TP ORDER NO. PSC-04-1181-PHO-TP ISSUED: November 30, 2004

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on November 19, 2004 in Tallahassee, Florida, before Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer.

APPEARANCES:

Brian Chaiken, Esquire, 2620 S.W. 27th Avenue, Miami, Florida 33133
On behalf of Supra Telecommunications and Information Systems, Inc. ("SUPRA").

Ms. Nancy White, Esquire; R. D. Lackey, Esquire; E. Edenfield, Esquire; and L. Foshee, Esquire c/o Ms. Nancy H. Sims, Esquire, 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301-1556
On behalf of BellSouth Telecommunications, Inc. ("BST").

JEREMY L. SUSAC, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission ("STAFF").

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

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II. CASE BACKGROUND

On April 5, 2004, Supra Telecommunications & Information Systems, Inc. (Supra) filed a petition for arbitration with BellSouth Telecommunication, Inc. (BellSouth).[1] On June 23, 2004, Supra filed a Motion For Leave to file its First Amended Petition for Arbitration with BellSouth. The Motion was granted and on July 21, 2004, BellSouth filed its Answer and Response to Supra's Amended Petition For Arbitration.

In its Amended Petition, Supra requested expedited relief[2] for the purpose of resolving a rate for an individual hot cut and that an interim rate be established during the pendency of the case. On July 21, 2004, BellSouth filed its Answer and Response to Supra's Amended Petition For Arbitration. This matter has been set for hearing.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

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[1] The full Commission has been assigned to this proceeding in light of the fact that Supra is requesting a new rate that could potentially impact the telecommunications industry.

[2] Order No. PSC-04-0752-TP was issued on August 4, 2004, denying Supra's request for expedited relief, and as a procedural matter, processing the docket as a complaint rather than an arbitration.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.

e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of the Commission Clerk and Administrative Services' confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

Witness	Proffered By	Issues #
Direct & Rebuttal		
David A. Nilson	SUPRA	1, 2, 3, 4
Kenneth L. Ainsworth	BST	1, 2, 3, 4
D. Daonne Caldwell[3]	BST	1, 2, 3, 4

VII. BASIC POSITIONS

SUPRA: Supra seeks the ability to cost-effectively make use of its own facilities-based network to provide service to its end-users in the State of Florida. In order to do so, Supra requires a reasonable means in which to transition or cutover its UNE-P customers to its own network. Supra does not seek anything other than what is already set forth in its contract. To the extent this Commission believes that BellSouth is entitled to charge Supra for the functions at issue, Supra seeks to pay only for the work elements that BellSouth actually performs.

This Commission is vested with the power to both resolve contractual disputes arising under interconnection agreements and to set applicable rates for the provision of services provided under FL Statue 364, the Telecommunications Act of 1996 and its progeny. In this case, Supra asks the Commission to first determine whether or not the parties' Florida interconnection agreement dated July 15, 2002 and as approved by this Commission (the "Current Agreement") provides via its plain and unambiguous language that BellSouth may recover the costs of converting its bundled UNE-P service to its stand-alone UNE-L service. Supra submits that, under the unambiguous terms of the Current Agreement, which was drafted by BellSouth, BellSouth may not recover such.

Should the Commission, however, find that BellSouth is entitled to recover such costs, Supra submits that neither the parties by agreement, nor the Commission in any docket or order, has ever addressed the appropriate rate which BellSouth may charge Supra for performing such conversions.

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[3] Ms. Caldwell will follow Mr. Ainsworth and will more than likely take the stand on December 2, 2004.

Even if the Commission finds that it had previously addressed the appropriate rate for a UNE-P to UNE-L conversion, Supra specifically asks the Commission to set a rate for conversions of lines served via copper or UDLC and a separate rate for those lines served via IDLC. Supra has requested UNE-P to UNE-L conversions in two variants, both of which BellSouth agrees are not addressed by the parties' interconnection agreement, and failing to obtain them from negotiation, petitioned the FPSC for arbitration as provided for by the agreement[4]. Furthermore, in this instance, the FCC anticipated that just such a situation would arise for all new entrants, and placed the burden on the ILEC, not the CLEC, to effectuate such requested elements, whether requested before, or **after** contract arbitration. See *First Report and Order On Local Competition,* FCC 96-325 at ¶297. As is the case with geographically de-averaged UNE loop rates, Supra seeks to serve those customers in which it has an ability to make a profit.

By the Commission's own order[5], any non-recurring costs should be forward-looking reflecting efficient practices and systems. The theory behind developing nonrecurring cost is "fairly simple."[6]

BST: Each of the individually numbered issues in this docket represent a specific dispute regarding the Interconnection Agreement between BellSouth and Supra and the prices for certain network elements Supra seeks to purchase from BellSouth. As to each of these issues, BellSouth's positions are the more consistent with the 1996 Act, the pertinent rulings of the FCC and the rules of this Commission. Therefore, the Commission should sustain each of BellSouth's positions.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

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[4] Arbitration order PSC-02-0413-FOF-TP identified that both parties had argued that rates were missing from the final agreement. The two remedies for effecting change were recently invalidated by the FCC. In FCC 04-164 "Pick and Choose" order. The FCC prohibited the MFN adoption of sections of existing Interconnection agreement. In FCC xx-xxx the FCC prohibited the MFN of entire agreements containing pre-TRO UNE-P provisions. No post TRO agreements are available, as none have yet been negotiated, and made public. Therefore there is no MFN solution, as previously anticipated by this Commission, as viable solution to this problem.

[5] Order No. PSC-01-1181-FOF-TP in Docket 990649.

[6] Id, at pg. 292.

VIII. ISSUES AND POSITIONS

ISSUE 1: **Under the parties' existing interconnection agreement, what nonrecurring rate, if any, applies for a hot-cut from UNE-P to UNE-L, where the lines being converted are served by copper or UDLC, for (a) SL1 loops and (b) SL2 loops?**

SUPRA: There is no such applicable nonrecurring rate in the Current Agreement.

As Supra's position is quite simple and straightforward– there is no such rate in the contract – all that is required of BellSouth to contradict this position is a citation to the applicable rate in the contract. However, it is undisputed that BellSouth has failed to do so. Via the direct testimonies of BellSouth's Ms. Caldwell and Mr. Ainsworth, BellSouth fails to identify any contractual citation to a rate for UNE-P to UNE-L conversions, much less a rate for such a conversion on a copper or UDLC line. Furthermore, not one BellSouth witness cites to a Commission ordered rate for UNE-P to UNE-L conversions, much less a rate for such a conversion on a copper or UDLC line. Instead, BellSouth argues that the non-recurring rate for the installation of a new SL1 or SL2 loop (A.1.1 and A.1.2 elements) applies to this situation, but presents absolutely no supporting evidence to substantiate this naked claim.

While BellSouth argues that the A.1.1 and A.1.2 non-recurring cost study ("FL-2w.xls") is appropriate to be used as a type of surrogate non-recurring rate, BellSouth admits that the Current Agreement neither contains nor references a rate for UNE-P to UNE-L conversions.[7] In its pleading before the United States Bankruptcy Court, Southern District of Florida, BellSouth stated:

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. 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 process if it has adequate assurance that the applicable rates will be paid. (Emphasis added.)

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[7] See Supra Exhibit DAN-19 Emergency Motion of BellSouth Telecommunications, Inc. for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions at p. 5, para. 12.

This statement by BellSouth is erroneous, in that the Current Agreement **does** explicitly reference a **process** for hot cuts;[8] however does not define the corresponding **rate** to be charged. Interestingly, it is in this pleading[9] that BellSouth first makes the claim for a $59.31 non-recurring charge for A.1.1, increasing its previous demand for $51.09.[10] This sudden reversal in BellSouth's stated position for its non-recurring charge is nothing more than a last-second effort by BellSouth to include the $8.22 "Covad Crossconnect"; despite the fact that BellSouth's position is that "...the terms of the Agreement do not explicitly reference a conversion process from the Port/Loop combination Service (i.e. UNE-P)..."

On July 15, 2003, the United States Bankruptcy Court, Southern District of Florida, held[11]:

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 Rate proposed in its motion applies...

(Supra Exhibit DAN-21, emphasis added).

Although BellSouth has tried to justify and apply existing rates for different conversions to this conversion, it has provided absolutely no evidence to support its conclusions. Despite BellSouth's arguments to the contrary, BellSouth's director in charge of all of BellSouth's cost studies, Ms. Caldwell, testified under oath that she neither prepared nor was ever requested to prepare a cost study for a

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[8] See Supra Exhibit DAN-4 PSC-02-0413-FOF-TP, Issue 'R', pages 108-114, TOC of order states page 111.

[9] See Supra Exhibit DAN 19 -- Emergency Motion of BellSouth Telecommunications, Inc. for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions at p. 5, para. 12.

[10] $49.57 A.1.1 NRC **plus** $1.52 LENS OSS ordering charge. See **Supra Exhibit # DAN 13**.

[11] See Supra Exhibit DAN-21 -- Order Granting Emergency Motion of BellSouth Telecommunications, Inc., for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions (the "Order"), at p. 2.

retail to UNE-L conversion, much less a UNE-P to UNE-L conversion.[12] Ms. Caldwell further testified that the Commission has never even **referenced** a retail to UNE-L conversion or hot cut, much less ordered a working UNE-P to UNE-L conversion or hot cut rate, in any of its orders issued in the cost study docket, or any other docket.[13] Supra agrees with Ms. Caldwell in this instance.

BST: The Commission has already set non-recurring rates that apply to conversions from UNE-P to UNE-L, retail to UNE-L, and resale to UNE-L. Those rates were set in the Commission's UNE docket and the Covad Arbitration docket. Each of the three rates that comprise the charges for conversions (OSS charge; SL-1 or SL-2 loop rate; collocation cross-connect charge) are found in the Interconnection Agreement between BellSouth and Supra and are applicable when Supra converts a line to a UNE-L, irrespective of the underlying type of facility used (*i.e.*, copper, UDLC or IDLC). Supra either participated, or could have requested to participate, in the dockets in which the rates were set. Therefore, Supra is simply trying (improperly) to collaterally attack lawful rates of the Commission that have been incorporated into the parties' Interconnection Agreement.

STAFF: Staff has no position at this time.

ISSUE 2: Under the parties' existing interconnection agreement, what nonrecurring rate, if any, applies for a hot-cut from UNE-P to UNE-L, where the lines being converted are not served by copper or UDLC, for (a) SL1 loops and (b) SL2 loops?

SUPRA: There is no nonrecurring rate that applies under the Current Agreement. Supra's position relative to Issue 1, that, *inter alia*, the Current Agreement lacks an explicit rate, applies equally to Issue 2 as well.

BST: The Commission has already set non-recurring rates that apply to conversions from UNE-P to UNE-L, retail to UNE-L, and resale to UNE-L. Those rates were set in the Commission's UNE docket and the Covad Arbitration docket. Each of the three rates that comprise the charges for conversions (OSS charge; SL-1 or SL-2 loop rate; collocation cross-connect charge) are found in the Interconnection Agreement between BellSouth and Supra and are applicable when Supra converts

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[12] See deposition transcript of BellSouth's corporate witness with most knowledge regarding BellSouth's cost studies, Daonne Caldwell, taken on August 18, 2004 ("Caldwell Deposition"), at p. 15.

[13] Id., at p. 22.

a line to a UNE-L, irrespective of the underlying type of facility used (*i.e.*, copper, UDLC or IDLC). Supra either participated, or could have requested to participate, in the dockets in which the rates were set. Therefore, Supra is simply trying (improperly) to collaterally attack lawful rates of the Commission that have been incorporated into the parties' Interconnection Agreement.

STAFF: Staff has no position at this time.

ISSUE 3: **Should a new nonrecurring rate be created that applies for a hot-cut from UNE-P to UNE-L, where the lines being converted are served by copper or UDLC, for (a) SL1 loops and (b) SL2 loops? If so, what should such nonrecurring rates be?**

SUPRA: **a. The contract provides that the parties bear their own costs for fulfilling obligations under the** agreement. As the parties have contractually and expressly dealt with the situation in which a rate is not specifically set forth, no new rate need be created under the Current Agreement. Section 3.1 of the General Terms and Conditions ("GT&C") of the Current Agreement establishes an obligation on BellSouth to cooperate in terminating services or elements and transitioning customers to Supra services. Furthermore, Section 22.1 of the GT&C requires that if a party has an obligation to do something, it is responsible for its own costs in doing it, "except as otherwise specifically stated." In this case, the Current Agreement specifies an explicit process to be used for the hot cut from retail to UNE-P and UNE-L, but fails to specify a corresponding rate for such a hot-cut.

The "hot cut" process that BellSouth says applies here is described in Section 3.8 and 3.8.1 of Attachment 2 of the Current Agreement which clearly states that the referenced process 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')." It is impossible to reconcile the requirement of a "specific statement" that a charge applies, noted above, with the claim that Section 3.8 applies where "active BellSouth retail end users" are involved.

Therefore, under Section 3.1 of the GT&C, BellSouth has an obligation; under Section 22.1 of the GT&C that obligation is to be performed at BellSouth's expense unless "specifically stated" otherwise elsewhere in the Current Agreement. Nothing in either Section 3.1 of the GT&C or the UNE attachment

"specifically states" a price for the cooperation and coordination required by Section 3.1 of the GT&C, and BellSouth has affirmatively stated in federal court that the Current Agreement does not specifically address it. It necessarily follows that the obligation in Section 3.1 of the GT&C is to be fulfilled at BellSouth's expense.

Not only is this what the parties contractually agreed to, but it also makes sense because, whether UNE-P or UNE-L, the same loop is used. BellSouth avoids providing, and Supra avoids paying for, Unbundled Local Switching, and Unbundled Common Transport. BellSouth still provides, and Supra still pays for, the same loop element. In this regard, BellSouth is incorrect when it claims that what Supra is seeking is the cessation of the use of one integrated "facility" (the UNE-P arrangement) and the "simultaneous replacement" of that "facility" "with a new facility."[14] Supra simply wants the Bellsouth switch disconnected, and the Supra switch to be re-connected to the **existing** loop, without being compelled to buy a completely new loop[15]. Any given Supra UNE-P customer is served by a specific unbundled BellSouth loop that is connected to a BellSouth switch (the functionality of which is also being purchased as a UNE). Supra does not want to "replace" the UNE loops serving its customers with new "facilities." To the contrary, Supra merely wants to disconnect the unbundled local switching element, while continuing to use exactly the same "facility" as it is currently using,. After all, if the customer being served by UNE-P had no service or warm dialtone at the time Supra ordered UNE-P on their behalf, BellSouth **already** billed and collected the full A.1.1 ($49.57) **NRC**[16] as part of a larger UNE-P NRC[17], or another CLEC (or BellSouth) incurred that larger cost. In either case, Supra should not bear this cost, much less be asked to bear it **twice**, when the majority of UNE-P to UNE-L conversion scenarios avoid most of the work effort which makes up the $49.57 NRC rate. BellSouth should not be allowed to a) recover cost it does not incur, of b) penalize CLECs for network design efficiencies which benefit only BellSouth.

According to BellSouth, the "costs and expenses" it will (supposedly) incur in meeting its obligations under GT & C § 3.1 to assist Supra in terminating the use of UNE switching are not really "costs and expenses" at all; they are really "rates"

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[14] *See* Supra Exhibit DAN-20 7/14/2003 BellSouth Letter to FCC at pg. 10.

[15] The net effect of BellSouth's position.

[16] Supra Exhibit DAN -1 PSC-01-1181-FOF-TP Appendix A.

[17] See Interconnection agreement pg 161 of 593.

that are governed by § 22.2. But Supra is not objecting to the rates for UNE loops or UNE switching. Supra is simply noting that BellSouth agreed to do something under the contract for which no rate is "specifically" provided.[18] BellSouth has already admitted to such. The fact that BellSouth may incur some expense in performing its contractual obligations does not and can not change the plain and unambiguous language the parties' agreed to as contained in the Current Agreement.

In this case, the Current Agreement controls the parties' relationship, and this Commission must follow the plain, unambiguous language of such. As the language at issue is neither unclear nor ambiguous, this Commission need not look to the intent of the parties in determining what the language means. Even if the Commission was so inclined, as BellSouth was the drafter of such language, any ambiguities should be read in favor of Supra.

b. Alternatively, if the Commission believes a new rate should be set, the rate should not exceed $3.84[19],for the first SL1 hot cut, and $17.48 for the first SL2 hot cut, and a disconnect rate of $0.00.
First, it bears noting what the Commission has previously found regarding the non-recurring cost studies which BellSouth claims applies to the present proceeding:

According to BellSouth witness Caldwell, BellSouth used personnel familiar with the provisioning process or subject matter experts (SMEs) to "provide the process flow, the work centers involved, any probabilities that may be required, and the time required by work center." BellSouth's SMEs for the LCSC, UNEC, SSI&M, CO I&M, and Outside Plant Engineering work groups were deposed for this proceeding and provided information on how the work activities and times were developed.

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[18] Of course, BellSouth's claim that granting Supra's interpretation would mean that no rates under the contract would ever apply, *see* Supra Exhibit DAN - 20 7/14/2003 BellSouth Letter to FCC at pg. 18, is nonsense. Precisely as § 22.1 says, the rates in the contract apply whenever it is "specifically stated" that they do. For precisely this reason, the "hot cut" rate does ***not*** apply to paring down an "active ***Supra*** retail end user's" UNE-P arrangement to a UNE-L arrangement.

[19] In the Rebuttal testimony of D. Nilson, supra filed higher numbers of $7.53 (not blended, Copper/UDLC SL1 first, $8.69 SL2 first), but has subsequently learned through deposition of BellSouth witness Ennis, that this cost study still contains avoided work activities which were improperly included as a result of the deposition of Mr. Ainsworth.

In only one of these areas was a time and motion study apparently used, and that was a study from 1993. We note that local competition was signed into law in 1995 in Florida and in 1996 on a federal basis, so this study was not performed for the provision of unbundled network elements.

As described previously, in some instances the SMEs had actually performed the work themselves, in others the SMEs had not. Time estimates were typically provided by the SMEs to the cost group verbally but sometimes were provided via e-mail. Apparently SMEs had the option of reviewing their inputs after the inputs had been placed into the cost study. We are troubled by the lack of a paper trail with regards to SME inputs. It makes it extremely difficult for us and the ALECs to analyze BellSouth's cost studies.

Were the SMEs given instruction on how to proceed? It is difficult to tell, because different SMEs reported different approaches in determining the work activities and work times. In the LCSC the time reported is an average, but in the other areas, the time is simply reported.

Based on the depositions, we believe that BellSouth's SMEs did what they were told to do; that is, they developed or reviewed work activities and times based on their knowledge, experience, and observations. However, we believe that there is a higher standard that these cost studies must presumably meet. According to her testimony, BellSouth witness Caldwell apparently agrees, because she asserts that the same network designed for recurring costs should also be used for nonrecurring costs: "forward-looking, reflect BellSouth's guidelines and practices, should consider potential process improvements, and should be attainable."

Were the SMEs told that this was to be a forward-looking cost study? If they were, it is not readily apparent from the depositions; the SMEs typically referred to the work as it is done today. We acknowledge that the definition of "forward-looking" is not easily discernable. Is manual work required? Why? How much? Under what circumstances? Will some type of manual work always be necessary? Are certain activities always required and will they always be required? Admittedly, there are no simple answers to these questions, and we believe that any answers that currently exist may well change in the future.

Should BellSouth have performed time and motion studies for nonrecurring activities? We believe the answer is "perhaps," because time and motion studies imply that the activities to be studied are already known and agreed upon and that

the parties are comfortable with BellSouth performing the time and motion studies.

Was BellSouth's methodology for determining required work activities and times forward-looking? BellSouth apparently used the work activities and times currently in place based on the information available to the current SME. **Neither BellSouth witnesses nor BellSouth SMEs testified to any directive given to the SMEs of how a forward-looking study should be done.**

An example of problems in BellSouth's nonrecurring cost study methodology is how a change in SME can alter a cost study. On August 16, 2000, approximately one month prior to the September 19, 2000 hearing, BellSouth filed its revised cost study. **One of the changes to the SL1 loop nonrecurring cost study was an increase in the field dispatch rate from 20 percent to 38 percent - an almost 100 percent increase. BellSouth did not file any supporting documentation for this increase; however, BellSouth did provide documentation as a late-filed deposition exhibit just prior to the hearing. The 20 percent rate was asserted to have been an estimate, but the 38 percent dispatch rate was based on a regional BellSouth report on service orders and dispatches. The reason this report came to light was that a new SME knew of the report and used it. Leaving aside whether the report is sufficient documentation for the dispatch rate, we are concerned about the adequacy of other work activities, times, and probabilities. If a simple change in SME can produce such a dramatic change, then additional questions arise as to the overall validity of the study.**

These difficulties in determining the appropriate way to decide nonrecurring activities and times are not confined to Florida alone. In considering nonrecurring studies and ILEC employee estimates of times involved, the Massachusetts Department of Telecommunications and Energy (MDTE) stated its concerns about how Bell Atlantic (n/k/a Verizon) had determined nonrecurring charges in an arbitration with AT&T, WorldCom, Sprint, and other ALECs, citing as a "flaw" the fact that:

. . . employees were not always informed of and instructed to assume forward-looking technologies in making their assessments. These flaws introduce an element of bias into the estimation process and impair its reliability. . . . There is also a strong likelihood of bias when employees are instructed to provide estimates that they are told will be used to derive charges for their employer's competitors.

In this particular case the MDTE was unhappy with both Bell Atlantic's and the competitors' nonrecurring cost models. However, Bell Atlantic provided "minimum," "maximum," and "most likely" time frames. The MDTE concluded:

We could choose to send Bell Atlantic back to the drawing board to conduct new studies, but we are reluctant to do so because we are not convinced that such studies would be a productive use of company time or the regulatory process or that they could be completed in a period frame appropriate for these proceedings. Accordingly, we are left with no choice but to modify the numbers presented by Bell Atlantic to offset, to the extent possible, the biases in its approach. We choose to do so by adopting a set of numbers produced by Bell Atlantic that is least likely to be biased, the 'minimum' figures produced by its employees.

We share the MDTE's concerns that the reliability of cost studies can be impaired if employees are not instructed to assume a forward-looking perspective. We also believe that it is completely natural for some bias to be introduced into a study where employees provide work times for activities that they know will be performed for a competitor. **Similarly, we believe that BellSouth's nonrecurring cost study methodology may have flaws, and that any such flaws are likely to create an upward bias in any resulting numbers**.

Summarizing the above analysis, we believe that BellSouth's nonrecurring cost studies have not provided complete documentation that permits this Commission and the ALECs to perform an exhaustive analysis. We also believe that BellSouth's nonrecurring cost study methodology may have flaws, and that any such flaws are likely to create an upward bias in an resulting numbers. **Additionally, the ALEC parties' dispute which activities are even required.**

See PSC Order No. PSC-01-1181-FOF-TP, May 25, 2001, pgs. 333-336 (Emphasis added.)

In light of these conclusions by the FPSC, BellSouth's purported cost studies cannot be relied upon, even if they addressed the services at issue in this case (which Supra submits they do not). Furthermore, BellSouth has submitted absolutely no evidence supporting a finding that work times and probabilities listed in its October 2001 cost study took into consideration the processes involved for a hot cut involving lines served by copper or UDLC. Neither Ms. Caldwell nor Mr. Ainsworth has any personal knowledge of the work times or probability factors assigned. Mr. Ainsworth testified that of the 10 department / paygrades comprising some 34 "steps" identified by the cost study, for which costs are being recovered in the FL-2w.XLS cost study, **only 3 department**

paygrades, comprising 5 "steps" are actually performed by BellSouth in a UNE-P to UNE-L hotcut. Additionally, BellSouth's subject matter expert for at least one BellSouth work group listed in the cost study, Mr. James Ennis (CWINS), testified that **none of the work elements**, attributing 104.4 minutes worth of work time per individual conversion, listed in the CWINS section is **not even performed** when a non-coordinated[20] hot cut is ordered. Yet, unbelievably, BellSouth continues to maintain that Supra be required to pay for such when it orders a non-coordinated hot cut!

Simply put, there is no evidence to substantiate that (a) BellSouth's cost study addresses a UNE-P to UNE-L conversion for lines served via copper or UDLC, (b) the Commission considered BellSouth's cost study as a cost study for a UNE-P to UNE-L conversion for lines served via copper or UDLC, or (c) that BellSouth's cost study accurately portrays the appropriate work elements, times and probabilities for a UNE-P to UNE-L conversion for lines served via copper or UDLC. In fact, BellSouth's Mr. Ainsworth even admitted that the majority of the costs contained in BellSouth's cost study did not apply to UNE-P to UNE-L conversions for lines served via copper or UDLC. As such, Supra provides the following methodology be used in this case:

As such, Supra believes the evidence in this case will show that for copper/UDLC UNE-P to UNE-L hot cuts, the rate should not exceed $3.84 for the first SL1 hot cut, and $17.48 for the first SL2 hot cut, and a disconnect rate of $0.00. Based on the testimonies, transcripts and other discovery taken in this case, at most, using only facts and figures obtained from BellSouth, the rates should not exceed $8.36 for the first SL1 hot cut, and $48.69 for the first SL2 hot cut, and a disconnect rate of $0.00. These figures are subject to change, based on the fact that Supra is still waiting to take the depositions of BellSouth's subject matter experts who provided the SSIM and CO Forces work element cost inputs.

These rates are the result of (1) only including the appropriate work elements associated with actually performing the necessary functions to perform such hot cuts; (2) assigning a reasonable and appropriate time to complete such work elements; and (3) assigning a reasonable and appropriate probability factor to such work elements.

Finally, at the deposition of BellSouth's witness with most knowledge regarding BellSouth's processes for effectuating hot cuts taken on November 3, 2004, Supra

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[20] SL1 loops may be ordered with, or without coordination. SL2, for some reason, is only available with coordination.

learned, for the first time, that the parties have a genuine issue of material fact as it relates to the application of the "Covad Cross-connect" charge, regarding an incorrect BellSouth assumption as to which, of several, collocation arrangements Supra elected to construct. Specifically, the issue centers around whether Supra has purchased and maintained cabling from its switch(s) or other voice equipment to blocks on BellSouth's MDF located within BellSouth central offices in the state of Florida. Supra will show that it has purchased and maintained such, in no less than 18 BellSouth central offices.[21] As a result, Supra will show that the additional $8.22 which BellSouth seeks to charge Supra for performing a "Covad Cross-connect" is inapplicable, based on the specific implementation of Supra's collocation arrangements, as BellSouth does not perform any additional work on top of what is performed to justify the non-recurring costs for performing a UNE-P to UNE-L hot cut.

BST: No. The current rates that comprise the components of a conversion (OSS charge; SL-1 or SL-2 loop rate; collocation cross-connect charge) have all been set in the context of generic dockets wherein all CLECs were given the opportunity to participate. Specifically, the OSS charge and the SL-1 / SL-2 loop rates were set in the Commission's Generic UNE Docket and the collocation cross-connect charge was recently set in the Commission's Generic Collocation Docket, which modified the previous rate set by the Commission in the Covad Arbitration. Of particular importance, is the fact that the SL-1 / SL-2 loop rates were established using a blended rate of probabilities of whether a dispatch would be required. This blended rate insures that conversions are affordable for all CLECs, irrespective of the underlying facilities (*i.e.*, copper, UDLC or IDLC) used to serve the end-user customer. Supra's suggestion that the conversion rate be bifurcated into dispatch (IDLC) and non-dispatch (copper and UDLC) will result in a rate structure that will be a disincentive for CLECs to compete for customers that are served via any facility that will require a dispatch to convert, as such a conversion will be significantly higher than the current rate. Such a distinction will harm competition in Florida, not stimulate it; thus, the Commission should not modify the current rates.

STAFF: Staff has no position at this time.

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[21] On November 8, 2004, Supra sought to serve additional requests for admission upon BellSouth which go to the heart of this issue.

<u>ISSUE 4:</u> **Should a new nonrecurring rate be created that applies for a hot-cut from UNE-P to UNE-L, where the lines being converted are not served by copper or UDLC, for (a) SL1 loops and (b) SL2 loops? If so, what should such nonrecurring rates be?**

<u>SUPRA:</u> **a. The contract provides that the parties bear their own costs for fulfilling obligations under the agreement.** Supra's position relative to Issue 3, that, *inter alia*, the Current Agreement lacks an explicit rate and therefore BellSouth is obligated to bear its own costs for disconnecting all other UNEs except the loop, applies equally to Issue 4 as well.

b. Alternatively, if the Commission believes a new rate should be set, the rate should not exceed $59.63 for the first SL1 hot cut, and $62.81 for the first SL2 hot cut, and a disconnect rate of $0.00.

Supra believes the evidence in this case will show that for IDLC UNE-P to UNE-L hot cuts, the rate should not exceed $59.63 for the first SL1 hot cut, and $62.81 for the first SL2 hot cut, and a disconnect rate of $0.00. These figures are subject to change, based on the fact that Supra is still waiting to take the depositions of BellSouth's subject matter experts who provided the SSIM and CO Forces work element cost inputs. .

These rates are the result of (1) only including the appropriate work elements associated with actually performing the necessary functions to perform such hot cuts; (2) assigning a reasonable and appropriate time to complete such work elements; and (3) assigning a reasonable and appropriate probability factor to such work elements.

Other than the inflated work times and probability factors in BellSouth's proposed cost study, there are three major issues with BellSouth's proposed eight alternatives for performing IDLC conversions. At the heart of all of these issues is the fact that BellSouth's implementation of IDLC is not forward-looking, as it is designed to solely lower BellSouth's costs at the expense of wholesale costs. Under TELRIC rules, BellSouth is not entitled to recover the costs of such inefficiencies.

First, BellSouth requires, for what otherwise would be the most efficient and least problematic two methods (alternatives 2 and 4), that it must run the signal through a channel bank, as opposed to providing a digital handoff directly to the CLEC in exactly the same manner it provides it to the channel bank. This increases costs, at several departments' worth of labor, decreases reliability and degrades high

speed modem speeds, as compared to what BellSouth provides to itself. BellSouth has stated no reason for deviating from the Telcordia recommendation as to how this technically feasible unbundling method could be implemented. Should BellSouth comply with Supra's recommendation and Telcordia's specification, the costs for implementing alternatives 2 and 4 would eliminate all connect and test, as well as travel and dispatch related activities.

Second, BellSouth claims that it will only provide alternatives 4, 5 and 6 at SL2 rates, while what it is providing may actually be an SL1 loop without order coordination. BellSouth makes this business decision based simply on the fact that such alternatives must be reviewed by the same department (that must review SL2 orders.) Supra receives no benefits of order coordination or test points, yet pays a substantially higher price for no apparent reason.

Third, BellSouth refuses to implement FPSC ordered loop concentration orders for digital loop carrier equipment unless that equipment is located in a BellSouth central office. Stated another way, BellSouth will not allow Supra to lease an entire digital loop carrier system merely because of where it is located (i.e. if it is located remotely, BellSouth will not allow Supra to lease it). Supra is unaware of any record evidence in Docket 990649-TP which indicates this to be the intention of this Commission and believes this to be solely a business decision of BellSouth designed to increase the costs to competitors.[22] Should Supra be able to lease an entire digital loop carrier system, this would provide a ninth alternative for conversion of IDLC loops that would be more cost efficient and further prevent degrading of loop quality to Supra en-users.

c. Alternatively, if the Commission believes a blended rate should be set for all UNE-P to UNE-L conversions, the rate should not exceed $5.27[23],[24] for the first SL1 hot cut, and a disconnect rate of $0.00.

Notwithstanding the fact that Supra believes it is entitled to separate rates for UNE-P to UNE-L conversions when different work elements are involved in

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[22] See FPSC rate element A.3.x for the elements in this category.

[23] In the Rebuttal testimony of D. Nilson, supra filed higher numbers of $7.45 (blended), but has subsequently learned through deposition of BellSouth witness Ennis, that this cost study still contains avoided work activities which were improperly included based upon the deposition of Mr. Ainsworth.

[24] This is based upon the following revised table:

effectuating such, should the Commission choose to order a blended rate, as BellSouth argues for, the blended rate should be set at a rate no greater than $5.27. How do we get to this rate? Simply, using the "geographic" weighting derived from the BellSouth discovery responses relative to the actual network equipment deployed[25], the resulting Supra cost is multiplied by the percentage of that equipment deployed statewide to achieve a weighted average rate show in Table 1.

	% deploy	% INA	Group	Rate	Statewide weighted
Copper	**53.46%**		**1**	**$3.87**	**$2.07**
IDLC - Not NGDLC Capable	**19.70%**	**75%**			
IDLC - Not NGDLC Capable - INA capable		**14.8%**	**3**	**$0.10**	**$0.02**
IDLC - Not NGDLC Capable, Not INA capable		**4.9%**	**2**	**$59.63**	**$2.94**
IDLC - NGDLC Capable	**18.23%**		**4**	**$0.10**	**$0.02**
UDLC - Not NGDLC	**5.85%**		**1**	**$3.87**	**$0.23**
UDLC - NGDLC Capable	**2.75%**		**4**	**$0.10**	**$0.00**
IDLC _ Switch Side-door	**0.00%**		**5**	**$0.10**	**$0.00**
	100.00%				**$5.27**

Table 1 – Supra calculation of the statewide blended rate for SL1 first install.

[25] i.e. Supra Exhibit DAN-44 with the recently updated cost information.

Based on the information provided by BellSouth in discovery in this case and based on Ms. Caldwell's revised cost study set forth in her rebuttal testimony, the blended rate should not exceed $13.53. The following chart shows how this was calculated:

	% deploy	% INA	Group	Rate	Statewide weighted
Copper	53.46%		1	$4.46	$2.39
IDLC - Not NGDLC Capable	19.70%	75%			
IDLC - Not NGDLC Capable - INA capable		14.8%	3	$50.49	$7.46
IDLC - Not NGDLC Capable, Not INA capable		4.9%	2	$50.49	$2.49
IDLC - NGDLC Capable	18.23%		4	$4.46	$0.81
UDLC - Not NGDLC	5.85%		1	$4.46	$0.26
UDLC - NGDLC Capable	2.75%		4	$4.46	$0.12
IDLC _ Switch Side-door	0.00%		5	$50.49	$0.00
	100.00%				$13.53

Table 2 -- Supra calculation of most costly statewide blended rate based upon Rebuttal of Caldwell

While Supra does not agree with the BellSouth process limitations regarding the use of a channel bank to raise the cost IDLC/NGDLC conversions, or the specifics of Ms. Caldwell's cost studies, the weighting of BellSouth's rebuttal figures represents a ceiling figure which is substantially more realistic than the current rate charged Supra of $59.31!

BST: No. The current rates that comprise the components of a conversion (OSS charge; SL-1 or SL-2 loop rate; collocation cross-connect charge) have all been set in the context of generic dockets wherein all CLECs were given the opportunity to participate. Specifically, the OSS charge and the SL-1 / SL-2 loop rates were set in the Commission's Generic UNE Docket and the collocation cross-connect charge was recently set in the Commission's Generic Collocation Docket, which modified the previous rate set by the Commission in the Covad Arbitration. Of particular importance, is the fact that the SL-1 / SL-2 loop rates were established using a blended rate of probabilities of whether a dispatch would be required. This blended rate insures that conversions are affordable for all CLECs, irrespective of the underlying facilities (*i.e.*, copper, UDLC or IDLC) used to serve the end-user customer. Supra's suggestion that the conversion rate be bifurcated into dispatch (IDLC) and non-dispatch (copper and UDLC) will result in a rate structure that will be a disincentive for CLECs to compete for customers that are served via any facility that will require a dispatch to convert, as such a conversion will be significantly higher than the current rate. Such a distinction

will harm competition in Florida, not stimulate it; thus, the Commission should not modify the current rates.

STAFF: Staff has no position at this time.

IX. EXHIBIT LIST

Witness	Proffered By	I.D. No.	Description
Direct			
Nilson	SUPRA	DAN-1	Order No. PSC-01-1181-FOF-TP, issued May 25, 2001, Docket No. 990649-TP
Nilson	SUPRA	DAN-2	Order No. PSC-01-2051-FOF-TP, issued October 18, 2001, Docket No. 990649-TP.
Nilson	SUPRA	DAN-3	Order No PSC-02-1311-FOF-TP, issued September 27, 2002, Docket No. 990649-TP
Nilson	SUPRA	DAN-4	Order No. PSC-02-0413-FOF-TP, issued March 26, 2002, Docket No. 001305-TP.
Nilson	SUPRA	DAN-5	Supra-BellSouth Interconnection Agreement dated July 15, 2002.
Nilson	SUPRA	DAN-6	CONFIDENTIAL: BellSouth August 16, 2000 cost study filing in Docket No. 990649-TP.
Nilson	SUPRA	DAN-7	CONFIDENTIAL: BellSouth October 8, 2001, Revision 1 Supplemental 120 Compliance filing Cost Study.
Nilson	SUPRA	DAN-8	CONFIDENTIAL: BellSouth cost study filing in Docket 001797-TP.
Nilson	SUPRA	DAN-9	CONFIDENTIAL: Supra A.1.1 and A.1.2 NRC cost study for loops served by Copper/UDLC.

Witness	Proffered By	I.D. No.	Description
Nilson	SUPRA	DAN-10	CONFIDENTIAL: BellSouth FL–2w.xls A.1.1 and A.1.2 October 8, 2001, NRC cost study (120 day compliance filing).
Nilson	SUPRA	DAN-11	Composite Exhibit – testimonies, Direct, Rebuttal and Surrebuttal of Mark Neptune and David A. Nilson in Docket No. 030851-TP
Nilson	SUPRA	DAN-12	Composite Exhibit of Intercompany meeting minutes UNE-P to UNE-L conversion project(s): (A) $49.57 UNE-L NRC rate – March 5, 2003, Intercompany meeting minutes D. Smith to Supra. BellSouth promised response on UNE-L NRC rate demand; and (B) $49.57 UNE-L NRC rate – March 5, 2003, Intercompany meeting No. 2 re: Implementation of UNE-P to UNE-L conversion project.
Nilson	SUPRA	DAN-13	$51.09 UNE-L NRC Rate – March 21, 2003, Letter G. Follensbee to D. Nilson re: Adequate assurance adjustment.
Nilson	SUPRA	DAN-14	May 29, 2003 Response D. Nilson to F. Follensbee re: Adequate assurance adjustment, challenging both the recurring and non-recurring rates BellSouth seeks to charge, and requesting promised support for BellSouth's position (which was to date, never provided).

Witness	Proffered By	I.D. No.	Description
Nilson	SUPRA	DAN-15	$51.09 UNE-L NRC rate – June 5, 2003, response, G. Follensbee to D. Nilson explaining how BellSouth aggregated the UNE-L recurring charges above FPSC ordered rates, and making for the first time, the claim that the FPSC order in 990649-TP was indeed inclusive of a UNE-P to UNE-conversion.
Nilson	SUPRA	DAN-16	June 16, 2003 Supra request to the FCC for consideration of Supra's complaint for inclusion in the Accelerated Docket.
Nilson	SUPRA	DAN-17	June 18, 2003 e-mail A. Starr to C. Savage, esq. of the FCC enforcement division regarding BellSouth's failure to respond to the contractual arguments raised in Supra' AD letter of June 16, 2003.
Nilson	SUPRA	DAN-18	June 18, 2003 Supra supplement to the June 1, 2003 request for consideration in response to the FCC's June 17, 2003, request for supplemental information
Nilson	SUPRA	DAN-19	$59.31 UNE-L NRC rate – June 23, 2003 – Emergency Motion of BellSouth Telecommunications, Inc. for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions. BellSouth's motion for interim relief now includes an $8.22 crossconnect charge for the first time, along with an admission that the contract does not specify a process.

Witness	Proffered By	I.D. No.	Description
Nilson	SUPRA	DAN-20	July 14, 2004, Letter: L. Foshee (BST) to A. Starr (FCC) in response to Supra's request that its complaint against BellSouth (re: UNE-P to UNE-L conversion costs) be included in the Accelerated Docket.
Nilson	SUPRA	DAN-21	July 15, 2003, United States Bankruptcy Court Order in Case 02-41250-BKC-RAM, granting a temporary award to BellSouth of $59.31[26] after finding that the interconnection agreement did ". . . specifically set a rate for UNE-P to UNE-L conversions..." not provide for this rate, deferring judgment upon such a rate to the FCC or FPSC.
Nilson	SUPRA	DAN-22	July 23, 2003, Letter: C. Savage Esq. to A. Starr (FCC) in response to BellSouth's position(s) before the FCC.
Nilson	SUPRA	DAN-23	Direct Testimony of Kenneth Ainsworth filed December 4, 2003 in Docket 030851-TP.
Nilson	SUPRA	DAN-24	Surrebuttal Testimony of John A. Ruscillli, filed January 28, 2004, in Docket 030851-TP.

[26] Based upon BellSouth's belief that it would ultimately receive authorization to charge that rate.

Witness	Proffered By	I.D. No.	Description
Nilson	SUPRA	DAN-25	BellSouth Spreadsheet file (filename BellSouth Network Statistics.xls) available from http:www.bellSouth.com/investor/xls/ir_businessprofile_statistics.xls showing 65.8% of all loop feeder routes contain fiber in the entire nine state regions, and 70% of homes qualify for DSL. BST Technology and Deployment Statistics_ir_businessprofile_statistics.xls.
Nilson	SUPRA	DAN-26	Excerpt from the Testimony of Kenneth Ainsworth filed December 4, 2003, in Docket 030851-TP at pg. 21
Nilson	SUPRA	DAN-27	September 16, 2003, BellSouth Document "Fiber Loops," author Peter Hill. Presentation to Florida Public Service Commission in Docket 030851-TP.
Nilson	SUPRA	DAN-28	May 5, 2003, BellSouth Letter to AT&T (L. MacKenzie to D. Berger) documenting IDLC penetration levels by state.
Nilson	SUPRA	DAN-29	April 18, 200, Coordinated Hot Cut Process Flow (as defined by the parties Interconnection agreement). Exhibit NDT-3 to Testimony in FPSC Docket 001305-TP.
Nilson	SUPRA	DAN-30	August 15, 2003, UNE-P to UNE-L Conversion Process document.

Witness	Proffered By	I.D. No.	Description
Nilson	SUPRA	DAN-31	BellSouth Provisioning Process Flow (Coordinated cuts), Exhibit KLA-1 to the testimony of Kenneth Ainsworth in FPSC Docket 030851-TP.
Nilson	SUPRA	DAN-32	March 5, 2003 high level BellSouth IDLC Document identifying the 8 methods by which BellSouth agrees to convert IDLC served UNE-P lines to UNE-L.
Nilson	SUPRA	DAN-33	March 26, 2003 BellSouth UNE-Port/Loop Combination (UNE-P) to UNE-Loop (UNE-L) Bulk Migration – CLEC Information Package, Version 2. BellSouth's process documentation to CLECs for this conversion.
Nilson	SUPRA	DAN-34	February 18, 2003 BellSouth UNE-Port/Loop Combination (UNE-P) to UNE-Loop (UNE-L) Bulk Migration – CLEC Information Package, Version 2. BellSouth's process documentation to CLECs for this conversion.
Nilson	SUPRA	DAN-35	July 26, 2004 BellSouth UNE-Port/Loop Combination (UNE-P) to UNE-Loop (UNE-L) Bulk Migration – CLEC Information Package, Version 3. BellSouth's process documentation to CLECs for this conversion.
Ainsworth	BST	KLA-1	Provisioning Process Flow Chart

Witness	Proffered By	I.D. No.	Description
Rebuttal			
Nilson	SUPRA	DAN-36	CONFIDENTIAL: BellSouth's UNEP to UNEL Bulk Migration Process Flow, PFUNEP21L.ppt dated June 6, 2002.
Nilson	SUPRA	DAN-37	CONFIDENTIAL: BellSouth's "Outside Plant Engineering Methods and Procedures for Provisioning Network Elements" document, Issue $, dated May 7, 2004 provided in response to Supra's Second Request for Production of Documents.
Nilson	SUPRA	DAN-38	CONFIDENTIAL: Composite – Deposition Testimony(ies) of Daonne Caldwell.
Nilson	SUPRA	DAN-39	CONFIDENTIAL: Partial Deposition Testimony of Kenneth Ainsworth.
Nilson	SUPRA	DAN-40	Direct testimony of David A. Nilson in Docket 990649-TP, filed August 1, 2000.
Nilson	SUPRA	DAN-41	Rebuttal testimony of David A. Nilson in Docket 990649-TP filed June 9, 2000.
Nilson	SUPRA	DAN-42	BellSouth response to Supra interrogatory 20-24 regarding lines in service served via various loops service methods.

Witness	Proffered By	I.D. No.	Description
Nilson	SUPRA	DAN-43	Supra modified version of BellSouth response to Supra interrogatory 20-24 (Supra Exhibit # DAN-42) with subtotals calculating statewide percentage of various loops service technologies, and making adjustment for the fact that BellSouth's NGDLC counts were also included in IDLC/UDLC counts.
Nilson	SUPRA	DAN-44	Supra high level analysis, showing the statewide weighted cost of the various supra cost study groups, weighted by the actual network deployment data provided by BellSouth. Based upon Supra Exhibit # DAN-42, Supra Exhibit # Dan-43, Supra Exhibit # DAN-45, Supra Exhibit # DAN-46, Supra Exhibit # Dan 47, Supra Exhibit # Dan-48, Supra Exhibit #DAN-49.
Nilson	SUPRA	DAN-45	Supra Group 1 Cost Study – Copper UDLC UNE-P to UNE-L FL-2w.xls. Revised version of Supra Exhibit # DAN-9, Supra's A.1.1 and A.1.2 cost study for loops served by Copper UDLC, includes disconnect and SL2 rates not previously defined by Supra Exhibit # DAN-9, which should now be considered obsolete. Date October 8, 2004.

Witness	Proffered By	I.D. No.	Description
Nilson	SUPRA	DAN-46	Supra Group 2 Cost Study – IDLC served UNE-P to Copper UDLC UNE-L Cost Study FL-2w.xls. Dated October 8, 2004.
Nilson	SUPRA	DAN-47	Supra Group 3 Cost Study – NGDLC UNE-P to NGDLC Virtual Terminal UNE-L Cost Study FL-2w.xls. Dated October 8, 2004.
Nilson	SUPRA	DAN-48	Supra Group 4 Cost Study – INA or other DCS served IDLC UNE-P to UNE-L Cost Study FL-2w.xls. (Similar to Group 3 Supra Exhibit # Dan-47) Dated October 8, 2004.
Nilson	SUPRA	DAN-49	Supra Group 5 Cost Study – IDLC UNE-P to Switch Side Dorr UNE-L Cost Study FL-2w.xls. (Similar to Group 3 Supra Exhibit # DAN-47) Dated October 8, 2004.

Witness	Proffered By	I.D. No.	Description
Nilson	SUPRA	DAN-50	October 8, 2004, BellSouth WORST CASE NRC cost study – Created by Supra from the October 8, 2001 A.1.1 and A.1.2 NRC cost study for loops served by Copper/UDLC – Based upon elimination of avoided work-steps from the October 8, 2001 FL-2w.xls cost study as agreed to by BellSouth at the September 24, 2004 deposition of K. Ainsworth. May yet contain excessive work-times for times not avoided, as discovery is not yet complete. This document demonstrates BellSouth's agreement that the $9.57 is closer to $11.22, or less, based upon the deposition testimonies in Supra Exhibit # DAN-38 and Supra Exhibit # DAN-39.
Nilson	SUPRA	DAN-51	November 22, 2000, BellSouth UNE-P Loop Concentration document for CLECs "Unbundled Loop Concentration CLEC Information Package," Version 1.
Caldwell	BST	DDC-1	Dispatch/Non-Dispatch cost Analysis

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

None.

XII. PENDING CONFIDENTIALITY MATTERS

BST: BellSouth's Request for Specified Confidential Classification dated October 6, 2004.
BellSouth's Request for Specified Confidential Classification dated October 28, 2004.
BellSouth's Request for Specified Confidential Classification to be filed November 10, 2004.
BellSouth's Request for Specified Confidential Classification to be filed November 23, 2004.

XIII. DECISIONS THAT MAY IMPACT COMMISSION'S RESOLUTION OF ISSUES

Parties have stated in their prehearing statements that the following decisions have a potential impact on our decision in this proceeding:

SUPRA: See DAN Exhibit 21 -- Order Granting Emergency Motion of BellSouth Telecommunications, Inc., for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions (the "Order"), at p. 2, which states: "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 re: Supra Telecommunications, d/b/a/ Supra Telecommunications & Information Systems, Ch. 11 Case No., 02-41250-BKC-RAM (Bankr. S.D. Fl).

XIV. RULINGS

A. Opening statements, if any, shall not exceed twenty (20) minutes per party.

B. Motion in Limine To Prevent BellSouth Telecommunication, Inc. from Introducing Hearsay Evidence and Unsupported Testimony is denied.

C. BellSouth's Unopposed Motion for Extension of Time to File a Response to Supra's Motion in Limine is granted.

D. Supra's Motion for Leave to File Discovery One Day Late is denied.

It is therefore,

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission. It is further

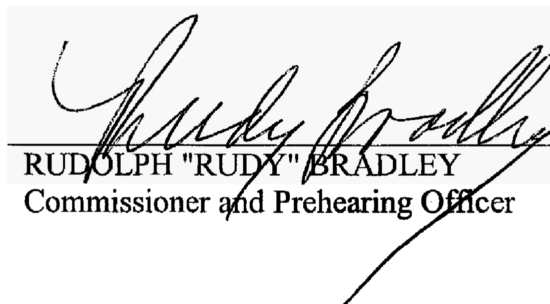
ORDERED that opening statements, if any, shall not exceed twenty (20) minutes per party. It is further

ORDERED that Supra Telecommunications and Information Systems, Inc.'s Motion in Limine To Prevent BellSouth Telecommunication, Inc. from Introducing Hearsay Evidence and Unsupported Testimony is denied. It is further

ORDERED that BellSouth Telecommunication, Inc. (BellSouth). BellSouth's Unopposed Motion for Extension of Time to File a Response to Supra's Motion in Limine is granted. It is further

ORDERED that Supra Telecommunications and Information Systems, Inc.'s Motion for Leave to File Discovery One Day Late is denied.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 30th day of November, 2004



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(S E A L)

JLS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.