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April 8, 2005

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

**DOCKET NOS. 040301-TP AND 041338-TP –
SUPRA'S EMERGENCY MOTION FOR AN ORDER TO
ESTABLISH A HEARING SCHEDULE**

Dear Mrs. Bayo:

Enclosed is the original and fifteen (15) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Emergency Motion For An Order To Establish A Hearing Schedule to be filed in the above captured 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
Executive V.P for Legal Affairs

DOCUMENT NUMBER: 03477
DATE: APR-08 08
FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE

Docket Nos. 040301-TP & 041338-TP

I HEREBY CERTIFY that a true and correct copy of Supra's Emergency Motion was served by US. Mail, Overnight Mail, E-Mail and/or Facsimile this 8th day of April 2005 to the following:

Felicia Banks/Jeremy Susac
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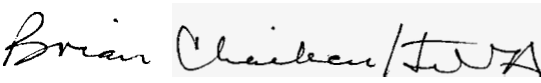
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BRIAN CHAIKEN

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Generic Proceeding to Set)
Rates, Terms, and Conditions for Batch Hot) Docket No. 041338-TP
Cuts for UNE-P to UNE-L Conversions and for)
ILEC to UNE-L Conversions in the BellSouth)
Telecommunications, Inc. Service Area)

In Re: Petition of Supra)
Telecommunications and Information) Docket No. 040301-TP
Systems, Inc.'s for arbitration)
With BellSouth Telecommunications, Inc.) Filed: April 8, 2005
)

SUPRA'S EMERGENCY MOTION FOR AN ORDER TO
ESTABLISH A HEARING SCHEDULE

Supra Telecommunications and Information Systems, Inc., ("Supra") by and through its undersigned counsel and pursuant to Florida Statutes § 364.058,¹ and Rules 25-2.036(2) and 25-22.036(3)(b), Florida Administrative Code, files this Emergency Motion and requests for an Expedited Order Setting a hearing schedule in this matter. In support thereof, Supra states as follows:

BRIEF INTRODUCTION

1. The Federal Communications Commission ("FCC") has de-listed mass market unbundled switching as an unbundled network element under Section 251 of the Telecom Act, and provided for a twelve month transition period for Supra, and other CLECs, to make alternate plans to serve their customers. This Commission, on April 5, 2005, voted to allow BellSouth to immediately stop processing new orders for UNE-P service,

¹ Chapter 364.058, Florida Statutes, provides in pertinent part: "Upon petition or its own motion, the commission may conduct a limited or expedited proceeding to consider and act upon any matter within its jurisdiction."

thereby abrogating the parties' contractual "change of law provisions." As such, in order for Supra to (a) add new customers, or (b) provide service to its existing customers, Supra must provide service via a method other than purchasing Section 251 unbundled local switching from BellSouth. To make matters worse, this Commission has not required BellSouth to unbundle mass market switching under Section 271 of the Telecommunications Act of 1996, as ordered by the FCC in its *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking* at pg. 410, ¶659² or pursuant to Chapter 364, Florida Statutes. Supra seeks, and has been seeking for over two years, the ability to transition its customers to its own facilities, consistent with what this Commission and BellSouth have been advocating for since the enactment of the Telecommunications Act of 1996.

2. This matter has risen to the level of an emergency because Supra is no longer able to service new customers at competitive prices based on the recent regulatory rulings set forth in paragraph 1 hereinabove.

3. Despite having filed its petition over 12 months ago, and requesting expedited relief at that time, and despite having this matter set for hearing over 4 months ago, this matter remains to date without even a schedule for a hearing. As such, Supra respectfully requests that this Commission immediately set a hearing schedule to resolve the pending issues in this docket.

² *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, CC Docket No. 96-98, CC Docket No. 98-147, FCC 03-236 (FCC released August 21, 2003)

ARGUMENT

4. On April 5, 2004, Supra filed a petition for arbitration with BellSouth. On June 23, 2004, Supra filed a Motion For Leave to file its First Amended Petition for Arbitration with BellSouth. In its Amended Petition, Supra requested expedited relief for the purpose of a.) setting an interim rate for UNE-P to UNE-L conversions; and b.) resolving what the appropriate rate, if any, for a UNE-P to UNE-L conversion should be.

5. BellSouth argued that Supra's Amended Petition should be dismissed because the Commission had allegedly already set a rate for UNE-P to UNE-L conversions, and therefore no new rates needed to be created.

6. Thereafter, Docket No. 040301-TP was set for hearing commencing December 1, 2004. The parties proceeded with their preparations for the hearing, taking numerous depositions and discovery. BellSouth argued that its existing cost studies, originally filed in generic UNE Docket No. 990649-TP before this Commission, provided support for the rates that BellSouth sought to charge Supra for UNE-P to UNE-L conversions on a going forward basis, and therefore new rates need not be ordered.

7. On November 29, 2004, just two days before the scheduled hearing, BellSouth filed an Emergency Motion For Continuance, arguing that Supra's petition should be consolidated with the Joint CLEC's petition [in Docket No. 041338-TP] since the Joint CLECs issues were inclusive of Supra's Issues 3 and 4. Despite Supra's objections, on November 30, 2004, the Pre Hearing Officer granted BellSouth's Motion For Continuance, thereby canceling the hearing scheduled for the very next day. On February 1, 2005, two months after canceling the scheduled hearing, this Commission voted to consolidate the dockets.

8. An initial Preliminary Issues Identification and procedural meeting was held on February 17, 2005. Several informal meetings occurred until March 17, 2005, when Staff requested that all parties file Proposed Procedural Schedule and Proposed Issues List with the Clerk's Office. In what appears to be a complete 180 degree turnaround from what BellSouth previously told this Commission in Supra's docket, BellSouth argued that it now needed to create an entirely new cost study and would therefore require an additional six (6) months of time in order to be prepared to merely file its initial positions in this consolidated docket.

9. It should be noted that BellSouth's latest position is directly contrary to the position BellSouth took in successfully obtaining an emergency order from this Commission to continue the scheduled hearing of December 1, 2004 in Docket No. 040301-TP. In Docket No. 040301-TP, BellSouth argued that its existing cost studies were sufficient to support the rates which BellSouth sought to charge for UNE-P to UNE-L conversions (in excess of \$59.00). Presumably, BellSouth was prepared to go to hearing on December 1 and 2, 2004, under these arguments. **However, after BellSouth was granted its emergency continuance, it has changed its argument, now claiming that its existing cost studies were outdated and no longer could be used to support a UNE-P to UNE-L conversion rate, despite having already argued that Supra's Issues 3 and 4 from Docket No. 040301-TP were subsumed in the issues in this Generic Docket.** Supra should not be forced to suffer any further delay in obtaining a final adjudication of this matter, based on BellSouth's flip-flopping arguments. Furthermore, BellSouth should not be allowed extra time in order to impeach its own

witnesses' previously sworn testimony by submitting an entirely new cost study at this late date.

10. Despite having initial issue identification meetings over seven weeks ago, and all parties having proposed schedules over three weeks ago, to date, no final procedural schedule has been set, nor has a final issues list been established.

11. Section 364.161 Florida Statutes provides that:

(1) Upon request, each local exchange telecommunications company shall unbundle all of its network features, functions, and capabilities, including access to signaling databases, systems and routing processes, and offer them to any other telecommunications provider requesting such features, functions or capabilities for resale to the extent technically and economically feasible. The parties shall negotiate the terms, conditions, and prices of any feasible unbundling request. **If the parties cannot reach a satisfactory resolution within 60 days, either party may petition the commission to arbitrate the dispute and the commission shall make a determination within 120 days.** (emphasis added)

12. Supra's initial petition for arbitration has been pending before this Commission for more than 360 days. Consistent with Chapter 364.161, this Commission should set for hearing, at a minimum, Issues 3 and 4 from Docket No. 040301-TP within the next 30 days, as Supra continues to be severely prejudiced by any delay.

WHEREFORE, for the foregoing reasons, Supra respectfully requests that this Commission grant Supra's motion and set an expedited schedule for hearing in Docket No. 041338-TP or alternatively, move to set an expedited schedule for hearing on Supra's Issues 3 and 4 from Docket No. 040301-TP, and for such other relief as is equitable and just.

RESPECTFULLY SUBMITTED this 8th day of April 2005.

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INFORMATION SYSTEMS, INC.
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