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Holland, Robyn P.

From:	Slaughter, Brenda
Sent:	Wednesday, April 28, 2004 1:39 PM
To:	'filings@psc.state.fl.us'
Cc:	Sims, Nancy H; Holland, Robyn P.; Hobbs, Linda; Foshee, Lisa; Fatool, Vicki; White, Nancy; Bixler, Micheale
Subject:	Docket No. 040301-TP
Importance:	High

A. Brenda Slaughter
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B. Docket No. 040301-TP: Petition of Supra Telecommunications and Information Systems, Inc. for Arbitration with BellSouth Telecommunications, Inc.

C. BellSouth Telecommunications, Inc.
on behalf of Lisa S. Foshee

D. 21 pages total - PDF (filing with signature)
19 pages total - WORD (in lieu of disk)

E. BellSouth Telecommunications, Inc.'s Answer and Response to Petition of Supra Telecommunications and Information Systems, Inc.'s Request for Arbitration

Brenda Slaughter (on behalf of Lisa S. Foshee)
BellSouth Telecommunications, Inc.
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675 W. Peachtree Street
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LISA S. FOSHEE
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April 28, 2004

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

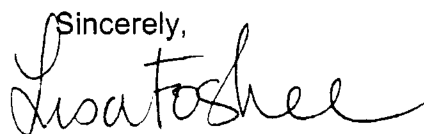
Re: Docket No.: 040301-TP
Petition of Supra Telecommunications and Information Systems, Inc. for Arbitration with BellSouth Telecommunications, Inc.

Dear Ms. Bayó:

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

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



Lisa S. Foshee

Enclosure

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

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CERTIFICATE OF SERVICE
Docket No. 040301-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and Federal Express this 28th day of April, 2004 to the following:

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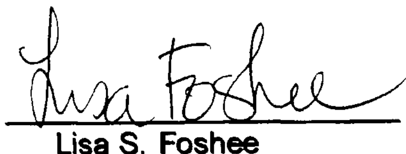

Lisa S. Foshee

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Supra	)	
Telecommunications and Information	)	Docket No. 040301-TP
Systems, Inc. for arbitration	)	
With BellSouth Telecommunications, Inc.	)	Filed: April 28, 2004

ANSWER AND RESPONSE OF BELLSOUTH TELECOMMUNICATIONS, INC.

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

I. Procedural Status

A. The Petition Should Be Reformed As a Complaint Rather Than A Petition For Arbitration.[1]

The parties have an existing and governing interconnection agreement. Until that agreement expires, Section 252(b), the provision governing arbitration of interconnection agreements, does not apply. Supra's dispute is not an arbitration matter – it is a complaint based in part on the existing agreement, as well as a request to establish a new cost proceeding. The Agreement contains a dispute resolution clause that directs the resolution of disputes such as this one that arise out of the existing agreement. Specifically, on August 20, 2002, the parties adopted an amendment to the Agreement that provides in relevant part as follows:

> Except as otherwise stated in the Agreement, i.e. the process for resolving billing disputes as described in Attachment 6, Section 15, the Parties agree that any other dispute that arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, may be taken to the Commission for resolution.

Section 16.1, GTC as amended.

[1] Until such time as the Petition is reformed into a Complaint, the filing deadlines applicable to arbitration petitions apply.

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Pursuant to this provision, Supra has brought its dispute to the Commission. The Petition should thus be treated and resolved by the Commission as a complaint arising out of an interconnection agreement.

B. The Dispute Is Not Appropriate For Expedited Procedures.

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

In the instant Complaint, Supra requests expedited relief even though on June 2, 2003 - the Commission denied Supra's request for expedited review in Docket No. 030349-TP ($75 Cash Back Promotion Complaint) on the grounds that Supra did not allege sufficient grounds as to why expedited treatment was warranted and that the procedures set forth in the internal memorandum were not applicable to Supra's Complaint. *See* Order No. PSC-03-0671-PCO-TP. Identical to that $75 Cash Back Promotion Docket, Supra has not alleged any specific facts in this Complaint why expedited treatment is warranted, especially given Supra's willingness to order hot cuts converting approximately 18,000 Unbundled Network Element-Platform ("UNE-

P") arrangements to unbundled loop ("UNE-L") arrangements over the last five (5) months at the $59.31 rate. In addition, taken on its face,[2] Supra's Petition is not seeking simply a contract interpretation, but rather is seeking the Commission to engage in complex, highly-factual and time-consuming rate setting proceeding. Should the Commission undertake such a rate setting proceeding (which it should not), the Commission should at the very least do so in the setting of a generic proceeding and allow all interested parties to intervene and have their respective views presented. This type of dispute is hardly the type of dispute to which the procedures set forth in the internal Commission memorandum are applicable.

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

II. Legal Analysis[3]

Supra is not entitled to any rate for a UNE-P to UNE-L hot cut other than the nonrecurring hot cut charge ordered by this Commission in Docket No. 990649-TP. In a blatant effort to avoid paying this charge, Supra has initiated this proceeding alleging that it is entitled to a different rate for a UNE-P to UNE-L conversion than for a retail to UNE-L conversion. This argument is without merit for several reasons, not the least of which is that Supra has not alleged one cost difference between the retail to UNE-L conversion and the UNE-P to UNE-L conversion. Every so-called "difference" cited by Supra in its Petition is a difference between hot cuts requiring the dispatch of technicians to the so-called "remote terminal" location in order to effectuate the hot cut and those hot cuts that do not require such a dispatch. The "difference"

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

[3] Certainly BellSouth will fully set forth its case in testimony in this docket if the docket moves forward. In the interest of providing context around this Complaint, however, BellSouth provides this summary of its legal analysis of Supra's claims.

cited by Supra in its Petition is not related to the difference between hot cuts from retail to UNE-L arrangements compared to hot cuts from UNE-P arrangements to UNE-L arrangements. In fact, in another forum, Supra admitted that retail to UNE-P conversions involve the "same basic physical process" as UNE-P to UNE-L conversions.[4]

What Supra really wants is a hot cut rate in which BellSouth recovers no dispatch related costs. Supra does not deny that BellSouth incurs dispatch related costs in certain instances but Supra would have the Commission set those costs aside and thus deny BellSouth the right to recover its costs. To that end, Supra has concocted this interconnection agreement argument to try to get to that artificially lower rate. The Commission should see this tactic for what it is – an effort to relitigate the cost docket and this Commission's decision to order a blended hot cut rate to account for both dispatch and non-dispatch costs over the universe of hot cuts performed.

Specifically, Supra's position is without merit for at least three reasons: first, the Commission-ordered rate applies to retail to UNE-L conversions *and* UNE-P to UNE-L conversions. Second, the rate Supra wants has nothing to do with differences between retail to UNE-L conversions and UNE-P to UNE-L conversions but rather is based solely on the differences between conversions requiring technician dispatches and those conversions that do not require such a dispatch, a difference for which the Commission already has accounted. Finally, Supra is legally barred from relitigating the cost docket via this proceeding, *see* Order PSC-02-0117-PCO-TP at 6, and thus its Petition should be dismissed.

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[4] *Supra's Request for Consideration of Supra Telecommunications and Information Systems, Inc.'s Complaint Against BellSouth Telecommunications, Inc. for Inclusion on the Accelerated Docket,* June 16, 2003, at 4 ("The mechanics of transferring a customer from one switch (today, BellSouth's) to another (tomorrow, Supra's) are reasonably straightforward.... This same physical process can occur in a number of circumstances. One is when a CLEC with a collocation arrangement in a central office wins a customer *from the ILEC* and seeks to start serving the ILEC customer using a UNE loop connected to the CLEC's own switching. ...[s]till another situation in which *this same basic physical process* occurs is the situation at issue here, where a customer already served by the CLEC using UNE-P (or perhaps pure resale) begins to be served by the same CLEC using UNE-loops"). (Emphasis added)

A. The Agreement Should Be Construed To Provide For The Recovery of The Commission-Ordered $59.31 Nonrecurring Charge.

The terms of the Agreement and the course of dealing between the parties demonstrate that the Agreement should be read to require the $59.31 nonrecurring charge for a hot cut from a UNE-P arrangement to an unbundled loop. While BellSouth agrees that the Agreement does not specifically set forth a "UNE-P to UNE-L" conversion charge, the Agreement can, and should, be construed to obligate Supra to pay that charge.

For example, Section 3.8, Attachment 2 sets forth the hot cut process for converting "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)." The process set forth in the Agreement, however, is the same process used by BellSouth to convert UNE-P arrangements to UNE loops. The critical component is not the service configuration on the BellSouth switch (because the BellSouth switch providers service whether to a BellSouth retail customer or to a CLEC's customer served by a UNE-P arrangement) or the nomenclature applied but rather the movement of a loop from BellSouth's switch to the CLEC switch. The same work steps are required and are executed regardless of whether the customer whose service will be "hot cut" is currently a BellSouth retail customer or a CLEC's UNE-P arrangement customer.

The Commission recognized that the process incorporated into the Agreement included both retail to UNE-L and UNE-P to UNE-L conversions. In its *Final Order on Arbitration,* Order No. PSC-02-0413-FOF-TP, Docket No. 001305-TP, 3/26/02, the Commission stated the issue before it to be resolved was "which coordinated cut-over process should be followed in the transfer of live local service *from a BellSouth switch* to an ALEC switch." *Order,* at 112. In resolving that issue, the Commission held as follows: "[c]onsequently, based on the record, we

find that BellSouth's coordinated cut-over process should be implemented when a service is transferred *from a BellSouth switch to a Supra switch.*" *Id.* at 117. (Emphasis added) Pursuant to the Commission's Order, BellSouth incorporated its cutover process, designed to transfer service from a BellSouth switch (whether for a BellSouth retail customer or a CLEC's UNE-P arrangement customer) to a Supra switch, into the Agreement. Adopting Supra's argument would be directly contrary to the Commission's understanding of the hot cut process when it ordered the parties to incorporate it into the Agreement to limit the process as well as what it ordered in the arbitration proceeding.

Likewise, the nonrecurring rate set forth in the Agreement for the individual hot cut is the Commission rate applicable to retail to UNE-L conversions as well as UNE-P to UNE-L conversions. The costs provided to the Commission, upon which the Commission relied, constituted the costs to convert from the BellSouth switch to a CLEC switch regardless of the service configuration on the BellSouth switch (that is, regardless of whether the end user is a BellSouth retail customer or a CLEC's UNE-P arrangement customer). There is nothing in the Commission's cost orders that limits the nonrecurring loop charge, specifically to a retail to UNE-L conversion – on the contrary, the nonrecurring loop rate applies every time a hot cut is performed to move a loop from the BellSouth switch to the requesting CLEC's switch.

Moreover, the FCC held that the FPSC's hot cut rates applied to any conversion from BellSouth's switch to a CLEC's switch. *Florida/Tennessee 271 Order,* at ¶¶ 33-44. During the FCC's consideration of BellSouth's Florida 271 application, AT&T challenged the Commission's Service Level 2 ("SL2") hot cut rate. *See Florida/Tennessee Order*, at ¶ 33. Granted, AT&T complained about the rate for SL2 hot cuts and Supra orders SL1 hot cuts, but the cost methodology for the two loops is the same. Notably, the FCC defined the process to

which the FPSC's SL2 hot cut charge applied as "the process of converting a customer from one network configuration served by an incumbent LEC's switch to an UNE-loop served by another carrier's switch." *Id.* at ¶ 34. The key component with respect to the applicability of the rate for the FCC was not whether the starting configuration is BellSouth retail or UNE-P but rather, as the FCC stated, the configuration is "served by an incumbent LEC's switch."

As both the FPSC and the FCC made clear, the nonrecurring loop rate applies whenever a loop is moved from the BellSouth switch to a CLEC switch, irrespective of the service configuration on the BellSouth switch. Thus, the Agreement contains the same rate element even if the term "hot cut" was specifically defined in the Agreement to include UNE-P to UNE-L conversions.

Moreover, even if the nonrecurring hot cut rate for UNE-P to UNE-L conversions was not set forth specifically in the Agreement, Section 22.2, the General Terms and Conditions ("GTC") of the Agreement provide that the applicable rate is the Commission-ordered rate. Specifically, Section 22.2, GTC provides in relevant part that:

> Where the Commission has established rates for the network elements and services described in this Agreement, rates shall be those established by the Commission.

Section 3.8, Attachment 2 describes the "service" of converting a loop from the BellSouth switch to the Supra switch. Thus, pursuant to Section 22.2, GTC, the rate applicable to that service is the Commission-ordered rate of $59.31.

Finally, the parties' course of dealing confirms that the Agreement applies to UNE-P to UNE-L conversions. From November 2003 to March 2004, Supra ordered, and BellSouth provisioned approximately 18,000 UNE-P to UNE-L hot cuts pursuant to the terms of the parties' agreement. Moreover, Supra paid the $59.31 nonrecurring rate for each of those hot

cuts. To the extent the intent of the agreement is vague, the parties' course of dealing demonstrates the intent to include UNE-P to UNE-L conversions within the scope of the parties' contractual arrangement. Under Georgia law,

> it is well settled that "the construction placed upon a contract by the parties thereto, as shown by their acts and conduct, is entitled to much weight and may be conclusive upon them." *Barranco v. Welcom Years, Inc.*, 260 Ga. App. 456, 579 S.E. 2d 866 (2003).

The fact that Supra ordered, paid for, and accepted over 18,000 UNE-P to UNE-L hot cuts (at a total cost of roughly $1.1 Million) under the current contract belies its claim that the agreement didn't provide for such a service.

The inconsistency in Supra's argument should be obvious – either (1) the UNE-P to UNE-L conversion process is contemplated by the Agreement and the rate, therefore, is the Commission-ordered rate; or (2) the conversion process is not in the Agreement and Supra has no right to convert its UNE-P lines to UNE loops, which is flatly refuted by the parties' course of conduct over the last year.

B. If The UNE-P To UNE-L Hot Cut Process Is Not Specifically In The Agreement, Supra Must Follow The Bona Fide Request/New Business Request ("BFR/NBR") Process Set Forth In The Agreement Which Provides For A Nonrecurring Hot Cut Charge Of $59.31.

If the Commission concludes that the Agreement does not contain a process for converting UNE-P lines to UNE loops, the Agreement provides a mechanism by which the parties can develop a new process to address such a scenario, namely the Bona Fide Request/New Business Request ("BFR/NBR") process. First, Section 1.2, GTC provides that

> Subject to the requirements of this Agreement, Supra Telecom may, at any time add, relocate or modify any Services and Elements purchased hereunder. Requests for additions or other changes shall be handled pursuant to the process provided in Attachment 10.

In addition, Section 2.12, Attachment 2 provides in relevant part as follows:

> Attachment 2 of this Agreement describes the Network Elements that Supra Telecom and BellSouth have identified as of the Effective Date of this Agreement and are not exclusive. Either Party may identify additional or revised Network Elements as necessary to improve services to end users, to improve network or service efficiencies or to accommodate changing technologies, or end user demand ***Upon Supra Telecom's identification of a new or revised Network Element, it shall make a r equest pursuant to Attachment 10 of this Agreement, incorporated herein by reference.

Section 1, Attachment 10, in turn, provides in relevant part that:

> When applicable, Bona Fide Request/New Business Request ("BFR/NBR") are to be used when Supra Telecom requests and Services and Elements not already provided in this Agreement or the process needed to provide the Services and Elements, which process is not provided in this Agreement..."

Section 1, Attachment 10 further provides that "in the event that Supra requests a product or service that BellSouth has previously offered to another carrier, BellSouth shall make such offering available to Supra on the same rates, terms and conditions" without Supra having to submit a BFR for such services.

As the Commission is aware, BellSouth offers to convert UNE-P lines to UNE loops for all CLECs at the Commission-ordered rate of $59.31. Thus, pursuant to Attachment 10, Supra must pay to that rate to the extent that Supra prevails on its view that the UNE-P to UNE-L process is not specifically addressed in the Agreement.

Notably, Supra has not availed itself of this mechanism because Supra does not want a new process – Supra just does not want to pay the Commission-ordered rate. As evidenced by its Petition, the distinction Supra is trying to draw has nothing to do with conversions from retail to UNE-L or conversions from UNE-P to UNE-L, but rather turns solely on hot cuts requiring dispatch versus hot cuts that do not require a dispatch. As the Commission is aware, however, it already addressed this issue in the cost docket by adopting a blended nonrecurring rate. Supra is not entitled to relitigate that claim here.

C. The Rate For A Retail To UNE-L Conversion Is The Same As For A UNE-P To UNE-L Conversion.

As BellSouth will demonstrate during this case, the work steps involved in a conversion from retail to UNE-L are the same as those involved in a conversion UNE-P to UNE-L and thus the non-recurring cost is the same. The key is moving the working loop from the BellSouth switch (whether used to provide BellSouth's retail service or a CLEC's UNE-P service) to the CLEC's switch. Consequently, the rate set by the FPSC in Docket No. 990649-TP based on the costs incurred when BellSouth moves a loop from the BellSouth switch to the CLEC switch is applicable to both retail to UNE-L conversions and UNE-P to UNE-L conversions. Even if, therefore, the Commission concluded that it needed to set a rate for a UNE-P to UNE-L conversion in this proceeding, the rate would be the same as the hot cut rate established in Docket No. 990649-TP.

Notably, and not surprisingly, Supra does not identify one cost difference between the retail to UNE-L and UNE-P to UNE-L conversion processes. In its Petition, it identifies "truck rolls" and "work time overstated" as "facts that demonstrate the material cost differentials between a retail-to-UNE-L hot cut versus a UNE-P-to-UNE-L hot-cut." *Petition,* at ¶ 17. With respect to truck rolls, however, BellSouth "rolls trucks" (that is, dispatches its technicians) on both retail to UNE-L and UNE-P to UNE-L conversions when Integrated Digital Loop Carrier ("IDLC") equipment is involved. Thus, Supra's allegation is utterly incorrect. With respect to work times, Supra challenges the work times generally, but points to no work time difference between retail to UNE-L and UNE-P to UNE-L (obviously, because none exist). This complete dearth of facts highlights that Supra's "UNE-P to UNE-L" argument is just a smokescreen for

the non-dispatch rate that it really wants but failed to pursue in the cost docket which is closed and cannot be relitigated under the guise of an interconnection agreement dispute.

III. Response to Numbered Paragraphs

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

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

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

4. BellSouth admits that Supra correctly cited the June 2003 Florida Competition Report. BellSouth cannot admit nor deny whether Supra used or is using a three-prong strategy.

5. BellSouth responds that 47 U.S.C. § 251(c)(2), 47 U.S.C. § 252(d)(1) and 47 U.S.C. § 252(d)(1)(A) and Sections 364.161(1) and 364.162(2), Florida Statutes, speak for themselves. BellSouth denies all remaining allegations in Paragraph 5 of the Petition and specifically denies that this Commission needs to "resolve[] an individual rate with respect to a condition of interconnection" in that this Commission has already set an applicable rate in the context of its generic cost docket in Docket No. 990649-TP.

6. BellSouth responds that Section 364.058 speaks for itself. BellSouth denies the remaining allegations in Paragraph 6 of the Petition.

7. BellSouth denies the allegations set forth in Paragraph 7. As set forth in Section I.B, this dispute is not appropriate for expedited procedures, even had those procedures been formally adopted.

8. BellSouth denies the allegations set forth in the first five sentences of Paragraph 8. With respect to the remaining allegations in Paragraph 8, BellSouth denies that the AT&T case cited by Supra is relevant precedent.

9. BellSouth admits that the parties' Interconnection Agreement provides for the purchase of resold services, interconnection and unbundled network elements. BellSouth denies the remaining allegations in Paragraph 9 of the Petition.

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

11. Section 22.1 of the General Terms and Conditions speaks for itself. BellSouth denies that section 22.1, GTC is relevant to this dispute. Section 22.1, GTC applies to "costs and expenses" that must be borne by each company. The rate for a hot cut is not a "cost and expense." Section 22.2, GTC, which is relevant to this dispute, applies to *rates* that may be charged under the Agreement for network elements and services.[5]

12. Section 3.8, Attachment 2 speaks for itself. While the Agreement defines a "hot cut" as "the conversion of active BellSouth retail end users to a service configuration by which Supra Telecom will serve such end users by unbundled Loops...," the FCC has defined the term "hot cut" as "the process of converting a customer from one network, usually a UNE-platform served by an incumbent LEC's switch, to a UNE-loop served by another carrier's switch."[6]

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

[6] Re Application By Verizon New Jersey Inc. *et al*, WC Docket No. 02-67, *Memorandum Opinion and Order*, 17 FCC Rcd 12275 at ¶ 61.

More recently, the FCC defined a "hot cut" as "[t]he physical transfer of a customer's line from the incumbent LEC switch to the competitive LEC switch…." *Triennial Review Order,* at ¶ 465. The key element in a hot cut is the transfer of the loop from one carrier's switch to another carrier's switch.

13. Section 3.8.1, Attachment 2 speaks for itself. BellSouth denies that the hot cut process set forth in the Agreement "only" applies when a BellSouth retail customer is converted to a Supra UNE-L customer. BellSouth denies the remaining allegations in Paragraph 13 of the Petition.

14. Section 22.1, GTC and Section 3.8, Attachment 2 speak for themselves. BellSouth denies that section 22.1, GTC is relevant to this dispute and denies that section 3.8, Attachment 2 is limited to retail to UNE-L conversions. BellSouth states that the conversion process for retail to UNE-L is the same as for UNE-P to UNE-L and thus the Commission's nonrecurring rate applies to both conversions. BellSouth denies the remaining allegations in Paragraph 14 of the Complaint.

15. Order No. PSC-04-0168-PHO-TP speaks for itself. BellSouth denies the remaining allegations in Paragraph 15 of the Petition, and specifically denies that there are "cost differentials" between retail to UNE-L and UNE-P to UNE-L conversions.

16. BellSouth denies the allegations in the first and third sentences of Paragraph 16. With respect to the second sentence, BellSouth admits that it is entitled to be reasonably compensated for performing the hot cuts requested by Supra, and further states that the appropriate rate to charge Supra is the nonrecurring rate established by this Commission in Docket No. 990649-TP. BellSouth denies the remaining allegations in Paragraph 16 of the Petition.

17. BellSouth denies the allegations in Paragraph 17 of the Petition. There are no cost differences between a retail-to-UNE-L hot cut and a UNE-P to UNE-L hot cut. Moreover, the examples cited by Supra have nothing to do with a distinction between retail to UNE-L conversions and UNE-P to UNE-L conversions; rather, the allegations simply are criticisms of the hot cut rate generally and thus should have been raised in Docket No. 990649-TP. As explained above, Section II, *supra*, Supra is seeking a second bite at the apple to relitigate a rate the Commission already has established.

(1) BellSouth denies that it charges CLECs for a truck roll for each retail-to-UNE-L conversion. First, as this Commission is aware, BellSouth's hot cut charge is a blended rate that melds the costs for hot cuts requiring a technician be dispatched and those hot cuts that do not require such a dispatch.

Second, dispatches are sometimes necessary in both retail to UNE-L conversions and UNE-P to UNE-L conversions. The need for a truck roll does not differ between retail and UNE-P conversions.

Third, while Supra alleges that for a UNE-P to UNE-L conversion truck rolls are "unnecessary," this is only true if all the work necessary to perform the conversion can be done in the central office. The same is true for retail to UNE-L conversions – if all the work can be performed in the central office, no truck roll is necessary.

Fourth, BellSouth's hot cut rate is a blended rate that includes some portion of the cost of a dispatch in every hot cut, and the methodology for setting the rate and the rate itself were established by this Commission in Docket No. 990649-TP, which is a closed proceeding.

(2) BellSouth denies that its hot cut work time is overstated. First, the work times to perform a hot cut were litigated in Docket No. 990649-TP. Supra is not entitled to relitigate that issue in this proceeding. Second, this Commission already reduced BellSouth's work times in Docket No. 990649-TP to account for what it perceived to be overstated work times. Third, Supra's allegation is factually incorrect. The 2.39 minutes cited by Supra was the time measured for activities removing one pair of jumpers at the Main Distributing Frame ("MDF") and then connecting a second pair of jumpers at the MDF. This interval includes the time the end user customer was actually out of service (i.e. the time the loop was disconnected from any switch). The 2.39 minutes obviously is not the entire work time necessary to perform the hot cut as there are other hot cut work steps leading up and following to the disconnection and placing of jumper pairs at the MDF.

18. BellSouth can neither confirm nor deny the allegations set forth in Paragraph 18 of the Petition. BellSouth further states that the Verizon hot cut rates are not relevant to this proceeding. *See Florida/Tennessee 271 Order,* ¶ 43 ("In other section 271 orders, we have not found that a simple comparison of NRC rates in different states demonstrates TELRIC non-compliance").

19. BellSouth admits that it tried to resolve this matter in the context of Supra's FCC complaint. BellSouth further admits that the FCC denied Supra's request for an Accelerated Docket. BellSouth admits that it is aware of Supra's allegation, but denies that Supra's allegation has merit or that Supra is entitled to any rate other than the nonrecurring charge established by this Commission for hot cuts. Finally, BellSouth admits that it terminated negotiations with Supra at the FCC after Supra violated the confidentiality under which the

negotiations were conducted. BellSouth denies the remaining allegations in Paragraph 19 of the Petition.

20. BellSouth admits that the nonrecurring rate for individual hot cuts must comply with Section 252(d)(1)(A). BellSouth further states that Section 252(d)(1)(A) speaks for itself. BellSouth denies that this Commission must set a rate for UNE-P to UNE-L conversions. The FPSC already established a rate for individual hot cuts (whether UNE-P to UNE-L or retail to UNE-L) in Docket No. 990649-TP. BellSouth denies the remaining allegations in Paragraph 20 of the Petition.

With respect to Supra's "Statement of Unresolved Issues," BellSouth admits that Supra has raised issues, but denies that these are the issues to be resolved by the Commission in this docket. BellSouth further states that the issues shall be determined during the Issue Identification for this case. BellSouth denies that Supra accurately characterized its position and denies the statements set forth therein.

21. BellSouth denies the allegations set forth in Paragraph 21 of the Petition and specifically denies that Supra is entitled to any interim relief. During the last few months of 2003, Supra migrated over 13,000 lines from UNE-P to UNE-L without every claiming the need for emergency relief. In total, Supra has migrated over 18,000 of its customer's lines to unbundled loop arrangements. Now, ironically, Supra is claiming it needs interim relief.

22. BellSouth states that Florida Statute § 364.058 and Florida Administrative Code § 28-106.211 speak for themselves. BellSouth denies the remaining allegations in Paragraph 22 of the Petition and specifically denies that Supra is entitled to expedited treatment or interim relief.

23. BellSouth denies that the process described in Paragraph 23 of the Petition is relevant to this case and further denies that Supra is entitled to expedited treatment or interim relief. BellSouth denies the remaining allegations in Paragraph 23 of the Petition.

24. BellSouth denies that the process described in Paragraph 24 of the Petition is relevant to this case and denies that Supra is entitled to expedited treatment or interim relief. BellSouth further denies that Supra is entitled to mediation. BellSouth denies the remaining allegations in Paragraph 24 of the Petition.

25. BellSouth denies that the process described in Paragraph 25 of the Petition is relevant to this case and denies that Supra is entitled to expedited treatment or interim relief. BellSouth further states that this Commission already has established the nonrecurring charge for individual hot cuts and that this charge is applicable to UNE-P to UNE-L conversions as well as to retail to UNE-L conversions. Finally, BellSouth states that the discovery sought by Supra could have been served during the Commission's cost docket and that Supra impermissibly is seeking to relitigate the cost docket in this proceeding. BellSouth denies the remaining allegations in Paragraph 25 of the Petition.

26. BellSouth denies the allegations in Paragraph 26 of the Petition. BellSouth further denies that Supra is entitled to an interim rate, or that the Commission needs to set a rate. To the contrary, the FPSC established the nonrecurring rate for individual hot cuts in Docket No. 990649-TP. Supra impermissibly is trying to relitigate the hot cut rate in this proceeding.

27. BellSouth denies the allegations in Paragraph 27 of the Petition and specifically denies that there is any cost difference between a retail to UNE-L conversion and a UNE-P to UNE-L conversion.

28. BellSouth admits receipt of Confidential Exhibit A but denies the allegations therein and specifically denies that there is a cost difference between a retail to UNE-L conversion and a UNE-P to UNE-L conversion. Moreover, BellSouth states that Supra does not even make a case that there is a difference between retail to UNE-L conversions and UNE-P to UNE-L conversions – the distinction Supra wants to draw is between dispatch and non-dispatch hot cuts. The differences upon which Supra focuses are the differences inherent in hot cuts requiring a dispatch vs. hot cuts that do not require a dispatch --- differences that exist whether or not the conversion to a UNE loop is for a BellSouth retail customer or for a CLEC's UNE-P customer. In Docket No. 990649-TP, the FPSC held that a blended rate (that blended the costs of hot cuts with and without dispatches) was the appropriate methodology --- having not challenged that conclusion in the cost docket, Supra impermissibly is attempting to relitigate it here.

29. BellSouth denies the allegations set forth in Paragraph 29 of the Petition, and specifically denies that Supra is entitled to a $5.28 hot cut rate. BellSouth further states that when Supra first made this claim at the FCC, it claimed it was entitled to a rate of "approximately $1.00." *Supra's Request for Accelerated Docket,* at 1,3,4-5.

30. BellSouth denies the allegations set forth in Paragraph 30 of the Petition and specifically denies that Verizon's tariff from Pennsylvania is in any way relevant to the individual hot cuts Supra purchases from BellSouth in Florida. *See Florida/Tennessee 271 Order,* ¶ 43 ("In other section 271 orders, we have not found that a simple comparison of NRC rates in different states demonstrates TELRIC non-compliance").

31. BellSouth denies the allegations set forth in Paragraph 31 of the Petition and specifically denies that Verizon's tariff from Pennsylvania is in any way relevant to the

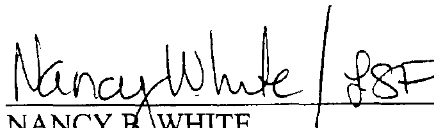
individual hot cuts Supra purchases from BellSouth in Florida. *See Florida/Tennessee 271 Order,* ¶ 43 ("In other section 271 orders, we have not found that a simple comparison of NRC rates in different states demonstrates TELRIC non-compliance").

32. BellSouth denies the allegations in Paragraph 32 of the Petition. BellSouth further denies that Supra is entitled to an interim rate, or that Supra is entitled to any rate other than the nonrecurring rate established for hot cuts by this Commission in Docket No. 990649-TP.

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

Respectfully submitted this 28th day of April, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.



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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Supra Telecommunications and Information Systems, Inc. for arbitration With BellSouth Telecommunications, Inc.	Docket No. 040301-TP Filed: April 28, 2004

ANSWER AND RESPONSE OF BELLSOUTH TELECOMMUNICATIONS, INC.

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

I. Procedural Status

A. The Petition Should Be Reformed As a Complaint Rather Than A Petition For Arbitration.[1]

The parties have an existing and governing interconnection agreement. Until that agreement expires, Section 252(b), the provision governing arbitration of interconnection agreements, does not apply. Supra's dispute is not an arbitration matter – it is a complaint based in part on the existing agreement, as well as a request to establish a new cost proceeding. The Agreement contains a dispute resolution clause that directs the resolution of disputes such as this one that arise out of the existing agreement. Specifically, on August 20, 2002, the parties adopted an amendment to the Agreement that provides in relevant part as follows:

> Except as otherwise stated in the Agreement, i.e. the process for resolving billing disputes as described in Attachment 6, Section 15, the Parties agree that any other dispute that arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, may be taken to the Commission for resolution.

Section 16.1, GTC as amended.

[1] Until such time as the Petition is reformed into a Complaint, the filing deadlines applicable to arbitration petitions apply.

Pursuant to this provision, Supra has brought its dispute to the Commission. The Petition should thus be treated and resolved by the Commission as a complaint arising out of an interconnection agreement.

B. The Dispute Is Not Appropriate For Expedited Procedures.

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

In the instant Complaint, Supra requests expedited relief even though on June 2, 2003 - the Commission denied Supra's request for expedited review in Docket No. 030349-TP ($75 Cash Back Promotion Complaint) on the grounds that Supra did not allege sufficient grounds as to why expedited treatment was warranted and that the procedures set forth in the internal memorandum were not applicable to Supra's Complaint. *See* Order No. PSC-03-0671-PCO-TP. Identical to that $75 Cash Back Promotion Docket, Supra has not alleged any specific facts in this Complaint why expedited treatment is warranted, especially given Supra's willingness to order hot cuts converting approximately 18,000 Unbundled Network Element-Platform ("UNE-

P") arrangements to unbundled loop ("UNE-L") arrangements over the last five (5) months at the $59.31 rate. In addition, taken on its face,[2] Supra's Petition is not seeking simply a contract interpretation, but rather is seeking the Commission to engage in complex, highly-factual and time-consuming rate setting proceeding. Should the Commission undertake such a rate setting proceeding (which it should not), the Commission should at the very least do so in the setting of a generic proceeding and allow all interested parties to intervene and have their respective views presented. This type of dispute is hardly the type of dispute to which the procedures set forth in the internal Commission memorandum are applicable.

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

II. Legal Analysis[3]

Supra is not entitled to any rate for a UNE-P to UNE-L hot cut other than the nonrecurring hot cut charge ordered by this Commission in Docket No. 990649-TP. In a blatant effort to avoid paying this charge, Supra has initiated this proceeding alleging that it is entitled to a different rate for a UNE-P to UNE-L conversion than for a retail to UNE-L conversion. This argument is without merit for several reasons, not the least of which is that Supra has not alleged one cost difference between the retail to UNE-L conversion and the UNE-P to UNE-L conversion. Every so-called "difference" cited by Supra in its Petition is a difference between hot cuts requiring the dispatch of technicians to the so-called "remote terminal" location in order to effectuate the hot cut and those hot cuts that do not require such a dispatch. The "difference"

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

[3] Certainly BellSouth will fully set forth its case in testimony in this docket if the docket moves forward. In the interest of providing context around this Complaint, however, BellSouth provides this summary of its legal analysis of Supra's claims.

cited by Supra in its Petition is not related to the difference between hot cuts from retail to UNE-L arrangements compared to hot cuts from UNE-P arrangements to UNE-L arrangements. In fact, in another forum, Supra admitted that retail to UNE-P conversions involve the "same basic physical process" as UNE-P to UNE-L conversions.[4]

What Supra really wants is a hot cut rate in which BellSouth recovers no dispatch related costs. Supra does not deny that BellSouth incurs dispatch related costs in certain instances but Supra would have the Commission set those costs aside and thus deny BellSouth the right to recover its costs. To that end, Supra has concocted this interconnection agreement argument to try to get to that artificially lower rate. The Commission should see this tactic for what it is – an effort to relitigate the cost docket and this Commission's decision to order a blended hot cut rate to account for both dispatch and non-dispatch costs over the universe of hot cuts performed.

Specifically, Supra's position is without merit for at least three reasons: first, the Commission-ordered rate applies to retail to UNE-L conversions *and* UNE-P to UNE-L conversions. Second, the rate Supra wants has nothing to do with differences between retail to UNE-L conversions and UNE-P to UNE-L conversions but rather is based solely on the differences between conversions requiring technician dispatches and those conversions that do not require such a dispatch, a difference for which the Commission already has accounted. Finally, Supra is legally barred from relitigating the cost docket via this proceeding, *see* Order PSC-02-0117-PCO-TP at 6, and thus its Petition should be dismissed.

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[4] *Supra's Request for Consideration of Supra Telecommunications and Information Systems, Inc.'s Complaint Against BellSouth Telecommunications, Inc. for Inclusion on the Accelerated Docket,* June 16, 2003, at 4 ("The mechanics of transferring a customer from one switch (today, BellSouth's) to another (tomorrow, Supra's) are reasonably straightforward.... This same physical process can occur in a number of circumstances. One is when a CLEC with a collocation arrangement in a central office wins a customer *from the ILEC* and seeks to start serving the ILEC customer using a UNE loop connected to the CLEC's own switching. ...[s]till another situation in which *this same basic physical process* occurs is the situation at issue here, where a customer already served by the CLEC using UNE-P (or perhaps pure resale) begins to be served by the same CLEC using UNE-loops"). (Emphasis added)

A. <u>The Agreement Should Be Construed To Provide For The Recovery of The Commission-Ordered $59.31 Nonrecurring Charge.</u>

The terms of the Agreement and the course of dealing between the parties demonstrate that the Agreement should be read to require the $59.31 nonrecurring charge for a hot cut from a UNE-P arrangement to an unbundled loop. While BellSouth agrees that the Agreement does not specifically set forth a "UNE-P to UNE-L" conversion charge, the Agreement can, and should, be construed to obligate Supra to pay that charge.

For example, Section 3.8, Attachment 2 sets forth the hot cut process for converting "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)." The process set forth in the Agreement, however, is the same process used by BellSouth to convert UNE-P arrangements to UNE loops. The critical component is not the service configuration on the BellSouth switch (because the BellSouth switch providers service whether to a BellSouth retail customer or to a CLEC's customer served by a UNE-P arrangement) or the nomenclature applied but rather the movement of a loop from BellSouth's switch to the CLEC switch. The same work steps are required and are executed regardless of whether the customer whose service will be "hot cut" is currently a BellSouth retail customer or a CLEC's UNE-P arrangement customer.

The Commission recognized that the process incorporated into the Agreement included both retail to UNE-L and UNE-P to UNE-L conversions. In its *Final Order on Arbitration,* Order No. PSC-02-0413-FOF-TP, Docket No. 001305-TP, 3/26/02, the Commission stated the issue before it to be resolved was "which coordinated cut-over process should be followed in the transfer of live local service *from a BellSouth switch* to an ALEC switch." *Order,* at 112. In resolving that issue, the Commission held as follows: "[c]onsequently, based on the record, we

find that BellSouth's coordinated cut-over process should be implemented when a service is transferred *from a BellSouth switch to a Supra switch.*" *Id.* at 117. (Emphasis added) Pursuant to the Commission's Order, BellSouth incorporated its cutover process, designed to transfer service from a BellSouth switch (whether for a BellSouth retail customer or a CLEC's UNE-P arrangement customer) to a Supra switch, into the Agreement. Adopting Supra's argument would be directly contrary to the Commission's understanding of the hot cut process when it ordered the parties to incorporate it into the Agreement to limit the process as well as what it ordered in the arbitration proceeding.

Likewise, the nonrecurring rate set forth in the Agreement for the individual hot cut is the Commission rate applicable to retail to UNE-L conversions as well as UNE-P to UNE-L conversions. The costs provided to the Commission, upon which the Commission relied, constituted the costs to convert from the BellSouth switch to a CLEC switch regardless of the service configuration on the BellSouth switch (that is, regardless of whether the end user is a BellSouth retail customer or a CLEC's UNE-P arrangement customer). There is nothing in the Commission's cost orders that limits the nonrecurring loop charge, specifically to a retail to UNE-L conversion – on the contrary, the nonrecurring loop rate applies every time a hot cut is performed to move a loop from the BellSouth switch to the requesting CLEC's switch.

Moreover, the FCC held that the FPSC's hot cut rates applied to any conversion from BellSouth's switch to a CLEC's switch. *Florida/Tennessee 271 Order,* at ¶¶ 33-44. During the FCC's consideration of BellSouth's Florida 271 application, AT&T challenged the Commission's Service Level 2 ("SL2") hot cut rate. *See Florida/Tennessee Order*, at ¶ 33. Granted, AT&T complained about the rate for SL2 hot cuts and Supra orders SL1 hot cuts, but the cost methodology for the two loops is the same. Notably, the FCC defined the process to

which the FPSC's SL2 hot cut charge applied as "the process of converting a customer from one network configuration served by an incumbent LEC's switch to an UNE-loop served by another carrier's switch." *Id.* at ¶ 34. The key component with respect to the applicability of the rate for the FCC was not whether the starting configuration is BellSouth retail or UNE-P but rather, as the FCC stated, the configuration is "served by an incumbent LEC's switch."

As both the FPSC and the FCC made clear, the nonrecurring loop rate applies whenever a loop is moved from the BellSouth switch to a CLEC switch, irrespective of the service configuration on the BellSouth switch. Thus, the Agreement contains the same rate element even if the term "hot cut" was specifically defined in the Agreement to include UNE-P to UNE-L conversions.

Moreover, even if the nonrecurring hot cut rate for UNE-P to UNE-L conversions was not set forth specifically in the Agreement, Section 22.2, the General Terms and Conditions ("GTC") of the Agreement provide that the applicable rate is the Commission-ordered rate. Specifically, Section 22.2, GTC provides in relevant part that:

> Where the Commission has established rates for the network elements and services described in this Agreement, rates shall be those established by the Commission.

Section 3.8, Attachment 2 describes the "service" of converting a loop from the BellSouth switch to the Supra switch. Thus, pursuant to Section 22.2, GTC, the rate applicable to that service is the Commission-ordered rate of $59.31.

Finally, the parties' course of dealing confirms that the Agreement applies to UNE-P to UNE-L conversions. From November 2003 to March 2004, Supra ordered, and BellSouth provisioned approximately 18,000 UNE-P to UNE-L hot cuts pursuant to the terms of the parties' agreement. Moreover, Supra paid the $59.31 nonrecurring rate for each of those hot

cuts. To the extent the intent of the agreement is vague, the parties' course of dealing demonstrates the intent to include UNE-P to UNE-L conversions within the scope of the parties' contractual arrangement. Under Georgia law,

> it is well settled that "the construction placed upon a contract by the parties thereto, as shown by their acts and conduct, is entitled to much weight and may be conclusive upon them." *Barranco v. Welcom Years, Inc.*, 260 Ga. App. 456, 579 S.E. 2d 866 (2003).

The fact that Supra ordered, paid for, and accepted over 18,000 UNE-P to UNE-L hot cuts (at a total cost of roughly $1.1 Million) under the current contract belies its claim that the agreement didn't provide for such a service.

The inconsistency in Supra's argument should be obvious – either (1) the UNE-P to UNE-L conversion process is contemplated by the Agreement and the rate, therefore, is the Commission-ordered rate; or (2) the conversion process is not in the Agreement and Supra has no right to convert its UNE-P lines to UNE loops, which is flatly refuted by the parties' course of conduct over the last year.

B. If The UNE-P To UNE-L Hot Cut Process Is Not Specifically In The Agreement, Supra Must Follow The Bona Fide Request/New Business Request ("BFR/NBR") Process Set Forth In The Agreement Which Provides For A Nonrecurring Hot Cut Charge Of $59.31.

If the Commission concludes that the Agreement does not contain a process for converting UNE-P lines to UNE loops, the Agreement provides a mechanism by which the parties can develop a new process to address such a scenario, namely the Bona Fide Request/New Business Request ("BFR/NBR") process. First, Section 1.2, GTC provides that

> Subject to the requirements of this Agreement, Supra Telecom may, at any time add, relocate or modify any Services and Elements purchased hereunder. Requests for additions or other changes shall be handled pursuant to the process provided in Attachment 10.

In addition, Section 2.12, Attachment 2 provides in relevant part as follows:

> Attachment 2 of this Agreement describes the Network Elements that Supra Telecom and BellSouth have identified as of the Effective Date of this Agreement and are not exclusive. Either Party may identify additional or revised Network Elements as necessary to improve services to end users, to improve network or service efficiencies or to accommodate changing technologies, or end user demand ***Upon Supra Telecom's identification of a new or revised Network Element, it shall make a request pursuant to Attachment 10 of this Agreement, incorporated herein by reference.

Section 1, Attachment 10, in turn, provides in relevant part that:

> When applicable, Bona Fide Request/New Business Request ("BFR/NBR") are to be used when Supra Telecom requests and Services and Elements not already provided in this Agreement or the process needed to provide the Services and Elements, which process is not provided in this Agreement..."

Section 1, Attachment 10 further provides that "in the event that Supra requests a product or service that BellSouth has previously offered to another carrier, BellSouth shall make such offering available to Supra on the same rates, terms and conditions" without Supra having to submit a BFR for such services.

As the Commission is aware, BellSouth offers to convert UNE-P lines to UNE loops for all CLECs at the Commission-ordered rate of $59.31. Thus, pursuant to Attachment 10, Supra must pay to that rate to the extent that Supra prevails on its view that the UNE-P to UNE-L process is not specifically addressed in the Agreement.

Notably, Supra has not availed itself of this mechanism because Supra does not want a new process – Supra just does not want to pay the Commission-ordered rate. As evidenced by its Petition, the distinction Supra is trying to draw has nothing to do with conversions from retail to UNE-L or conversions from UNE-P to UNE-L, but rather turns solely on hot cuts requiring dispatch versus hot cuts that do not require a dispatch. As the Commission is aware, however, it already addressed this issue in the cost docket by adopting a blended nonrecurring rate. Supra is not entitled to relitigate that claim here.

C. The Rate For A Retail To UNE-L Conversion Is The Same As For A UNE-P To UNE-L Conversion.

As BellSouth will demonstrate during this case, the work steps involved in a conversion from retail to UNE-L are the same as those involved in a conversion UNE-P to UNE-L and thus the non-recurring cost is the same. The key is moving the working loop from the BellSouth switch (whether used to provide BellSouth's retail service or a CLEC's UNE-P service) to the CLEC's switch. Consequently, the rate set by the FPSC in Docket No. 990649-TP based on the costs incurred when BellSouth moves a loop from the BellSouth switch to the CLEC switch is applicable to both retail to UNE-L conversions and UNE-P to UNE-L conversions. Even if, therefore, the Commission concluded that it needed to set a rate for a UNE-P to UNE-L conversion in this proceeding, the rate would be the same as the hot cut rate established in Docket No. 990649-TP.

Notably, and not surprisingly, Supra does not identify one cost difference between the retail to UNE-L and UNE-P to UNE-L conversion processes. In its Petition, it identifies "truck rolls" and "work time overstated" as "facts that demonstrate the material cost differentials between a retail-to-UNE-L hot cut versus a UNE-P-to-UNE-L hot-cut." *Petition,* at ¶ 17. With respect to truck rolls, however, BellSouth "rolls trucks" (that is, dispatches its technicians) on both retail to UNE-L and UNE-P to UNE-L conversions when Integrated Digital Loop Carrier ("IDLC") equipment is involved. Thus, Supra's allegation is utterly incorrect. With respect to work times, Supra challenges the work times generally, but points to no work time difference between retail to UNE-L and UNE-P to UNE-L (obviously, because none exist). This complete dearth of facts highlights that Supra's "UNE-P to UNE-L" argument is just a smokescreen for

the non-dispatch rate that it really wants but failed to pursue in the cost docket which is closed and cannot be relitigated under the guise of an interconnection agreement dispute.

III. Response to Numbered Paragraphs

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

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

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

4. BellSouth admits that Supra correctly cited the June 2003 Florida Competition Report. BellSouth cannot admit nor deny whether Supra used or is using a three-prong strategy.

5. BellSouth responds that 47 U.S.C. § 251(c)(2), 47 U.S.C. § 252(d)(1) and 47 U.S.C. § 252(d)(1)(A) and Sections 364.161(1) and 364.162(2), Florida Statutes, speak for themselves. BellSouth denies all remaining allegations in Paragraph 5 of the Petition and specifically denies that this Commission needs to "resolve[] an individual rate with respect to a condition of interconnection" in that this Commission has already set an applicable rate in the context of its generic cost docket in Docket No. 990649-TP.

6. BellSouth responds that Section 364.058 speaks for itself. BellSouth denies the remaining allegations in Paragraph 6 of the Petition.

7. BellSouth denies the allegations set forth in Paragraph 7. As set forth in Section I.B, this dispute is not appropriate for expedited procedures, even had those procedures been formally adopted.

8. BellSouth denies the allegations set forth in the first five sentences of Paragraph 8. With respect to the remaining allegations in Paragraph 8, BellSouth denies that the AT&T case cited by Supra is relevant precedent.

9. BellSouth admits that the parties' Interconnection Agreement provides for the purchase of resold services, interconnection and unbundled network elements. BellSouth denies the remaining allegations in Paragraph 9 of the Petition.

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

11. Section 22.1 of the General Terms and Conditions speaks for itself. BellSouth denies that section 22.1, GTC is relevant to this dispute. Section 22.1, GTC applies to "costs and expenses" that must be borne by each company. The rate for a hot cut is not a "cost and expense." Section 22.2, GTC, which is relevant to this dispute, applies to *rates* that may be charged under the Agreement for network elements and services.[5]

12. Section 3.8, Attachment 2 speaks for itself. While the Agreement defines a "hot cut" as "the conversion of active BellSouth retail end users to a service configuration by which Supra Telecom will serve such end users by unbundled Loops...," the FCC has defined the term "hot cut" as "the process of converting a customer from one network, usually a UNE-platform served by an incumbent LEC's switch, to a UNE-loop served by another carrier's switch."[6]

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

[6] Re Application By Verizon New Jersey Inc. *et al*, WC Docket No. 02-67, *Memorandum Opinion and Order,* 17 FCC Rcd 12275 at ¶ 61.

More recently, the FCC defined a "hot cut" as "[t]he physical transfer of a customer's line from the incumbent LEC switch to the competitive LEC switch…." *Triennial Review Order,* at ¶ 465. The key element in a hot cut is the transfer of the loop from one carrier's switch to another carrier's switch.

13. Section 3.8.1, Attachment 2 speaks for itself. BellSouth denies that the hot cut process set forth in the Agreement "only" applies when a BellSouth retail customer is converted to a Supra UNE-L customer. BellSouth denies the remaining allegations in Paragraph 13 of the Petition.

14. Section 22.1, GTC and Section 3.8, Attachment 2 speak for themselves. BellSouth denies that section 22.1, GTC is relevant to this dispute and denies that section 3.8, Attachment 2 is limited to retail to UNE-L conversions. BellSouth states that the conversion process for retail to UNE-L is the same as for UNE-P to UNE-L and thus the Commission's nonrecurring rate applies to both conversions. BellSouth denies the remaining allegations in Paragraph 14 of the Complaint.

15. Order No. PSC-04-0168-PHO-TP speaks for itself. BellSouth denies the remaining allegations in Paragraph 15 of the Petition, and specifically denies that there are "cost differentials" between retail to UNE-L and UNE-P to UNE-L conversions.

16. BellSouth denies the allegations in the first and third sentences of Paragraph 16. With respect to the second sentence, BellSouth admits that it is entitled to be reasonably compensated for performing the hot cuts requested by Supra, and further states that the appropriate rate to charge Supra is the nonrecurring rate established by this Commission in Docket No. 990649-TP. BellSouth denies the remaining allegations in Paragraph 16 of the Petition.

17. BellSouth denies the allegations in Paragraph 17 of the Petition. There are no cost differences between a retail-to-UNE-L hot cut and a UNE-P to UNE-L hot cut. Moreover, the examples cited by Supra have nothing to do with a distinction between retail to UNE-L conversions and UNE-P to UNE-L conversions; rather, the allegations simply are criticisms of the hot cut rate generally and thus should have been raised in Docket No. 990649-TP. As explained above, Section II, *supra*, Supra is seeking a second bite at the apple to relitigate a rate the Commission already has established.

(1) BellSouth denies that it charges CLECs for a truck roll for each retail-to-UNE-L conversion. First, as this Commission is aware, BellSouth's hot cut charge is a blended rate that melds the costs for hot cuts requiring a technician be dispatched and those hot cuts that do not require such a dispatch.

Second, dispatches are sometimes necessary in both retail to UNE-L conversions and UNE-P to UNE-L conversions. The need for a truck roll does not differ between retail and UNE-P conversions.

Third, while Supra alleges that for a UNE-P to UNE-L conversion truck rolls are "unnecessary," this is only true if all the work necessary to perform the conversion can be done in the central office. The same is true for retail to UNE-L conversions – if all the work can be performed in the central office, no truck roll is necessary.

Fourth, BellSouth's hot cut rate is a blended rate that includes some portion of the cost of a dispatch in every hot cut, and the methodology for setting the rate and the rate itself were established by this Commission in Docket No. 990649-TP, which is a closed proceeding.

(2) BellSouth denies that its hot cut work time is overstated. First, the work times to perform a hot cut were litigated in Docket No. 990649-TP. Supra is not entitled to relitigate that issue in this proceeding. Second, this Commission already reduced BellSouth's work times in Docket No. 990649-TP to account for what it perceived to be overstated work times. Third, Supra's allegation is factually incorrect. The 2.39 minutes cited by Supra was the time measured for activities removing one pair of jumpers at the Main Distributing Frame ("MDF") and then connecting a second pair of jumpers at the MDF. This interval includes the time the end user customer was actually out of service (i.e. the time the loop was disconnected from any switch). The 2.39 minutes obviously is not the entire work time necessary to perform the hot cut as there are other hot cut work steps leading up and following to the disconnection and placing of jumper pairs at the MDF.

18. BellSouth can neither confirm nor deny the allegations set forth in Paragraph 18 of the Petition. BellSouth further states that the Verizon hot cut rates are not relevant to this proceeding. *See Florida/Tennessee 271 Order,* ¶ 43 ("In other section 271 orders, we have not found that a simple comparison of NRC rates in different states demonstrates TELRIC non-compliance").

19. BellSouth admits that it tried to resolve this matter in the context of Supra's FCC complaint. BellSouth further admits that the FCC denied Supra's request for an Accelerated Docket. BellSouth admits that it is aware of Supra's allegation, but denies that Supra's allegation has merit or that Supra is entitled to any rate other than the nonrecurring charge established by this Commission for hot cuts. Finally, BellSouth admits that it terminated negotiations with Supra at the FCC after Supra violated the confidentiality under which the

negotiations were conducted. BellSouth denies the remaining allegations in Paragraph 19 of the Petition.

20. BellSouth admits that the nonrecurring rate for individual hot cuts must comply with Section 252(d)(1)(A). BellSouth further states that Section 252(d)(1)(A) speaks for itself. BellSouth denies that this Commission must set a rate for UNE-P to UNE-L conversions. The FPSC already established a rate for individual hot cuts (whether UNE-P to UNE-L or retail to UNE-L) in Docket No. 990649-TP. BellSouth denies the remaining allegations in Paragraph 20 of the Petition.

With respect to Supra's "Statement of Unresolved Issues," BellSouth admits that Supra has raised issues, but denies that these are the issues to be resolved by the Commission in this docket. BellSouth further states that the issues shall be determined during the Issue Identification for this case. BellSouth denies that Supra accurately characterized its position and denies the statements set forth therein.

21. BellSouth denies the allegations set forth in Paragraph 21 of the Petition and specifically denies that Supra is entitled to any interim relief. During the last few months of 2003, Supra migrated over 13,000 lines from UNE-P to UNE-L without every claiming the need for emergency relief. In total, Supra has migrated over 18,000 of its customer's lines to unbundled loop arrangements. Now, ironically, Supra is claiming it needs interim relief.

22. BellSouth states that Florida Statute § 364.058 and Florida Administrative Code § 28-106.211 speak for themselves. BellSouth denies the remaining allegations in Paragraph 22 of the Petition and specifically denies that Supra is entitled to expedited treatment or interim relief.

23. BellSouth denies that the process described in Paragraph 23 of the Petition is relevant to this case and further denies that Supra is entitled to expedited treatment or interim relief. BellSouth denies the remaining allegations in Paragraph 23 of the Petition.

24. BellSouth denies that the process described in Paragraph 24 of the Petition is relevant to this case and denies that Supra is entitled to expedited treatment or interim relief. BellSouth further denies that Supra is entitled to mediation. BellSouth denies the remaining allegations in Paragraph 24 of the Petition.

25. BellSouth denies that the process described in Paragraph 25 of the Petition is relevant to this case and denies that Supra is entitled to expedited treatment or interim relief. BellSouth further states that this Commission already has established the nonrecurring charge for individual hot cuts and that this charge is applicable to UNE-P to UNE-L conversions as well as to retail to UNE-L conversions. Finally, BellSouth states that the discovery sought by Supra could have been served during the Commission's cost docket and that Supra impermissibly is seeking to relitigate the cost docket in this proceeding. BellSouth denies the remaining allegations in Paragraph 25 of the Petition.

26. BellSouth denies the allegations in Paragraph 26 of the Petition. BellSouth further denies that Supra is entitled to an interim rate, or that the Commission needs to set a rate. To the contrary, the FPSC established the nonrecurring rate for individual hot cuts in Docket No. 990649-TP. Supra impermissibly is trying to relitigate the hot cut rate in this proceeding.

27. BellSouth denies the allegations in Paragraph 27 of the Petition and specifically denies that there is any cost difference between a retail to UNE-L conversion and a UNE-P to UNE-L conversion.

28. BellSouth admits receipt of Confidential Exhibit A but denies the allegations therein and specifically denies that there is a cost difference between a retail to UNE-L conversion and a UNE-P to UNE-L conversion. Moreover, BellSouth states that Supra does not even make a case that there is a difference between retail to UNE-L conversions and UNE-P to UNE-L conversions – the distinction Supra wants to draw is between dispatch and non-dispatch hot cuts. The differences upon which Supra focuses are the differences inherent in hot cuts requiring a dispatch vs. hot cuts that do not require a dispatch --- differences that exist whether or not the conversion to a UNE loop is for a BellSouth retail customer or for a CLEC's UNE-P customer. In Docket No. 990649-TP, the FPSC held that a blended rate (that blended the costs of hot cuts with and without dispatches) was the appropriate methodology --- having not challenged that conclusion in the cost docket, Supra impermissibly is attempting to relitigate it here.

29. BellSouth denies the allegations set forth in Paragraph 29 of the Petition, and specifically denies that Supra is entitled to a \$5.28 hot cut rate. BellSouth further states that when Supra first made this claim at the FCC, it claimed it was entitled to a rate of "approximately \$1.00." *Supra's Request for Accelerated Docket,* at 1,3,4-5.

30. BellSouth denies the allegations set forth in Paragraph 30 of the Petition and specifically denies that Verizon's tariff from Pennsylvania is in any way relevant to the individual hot cuts Supra purchases from BellSouth in Florida. *See Florida/Tennessee 271 Order,* ¶ 43 ("In other section 271 orders, we have not found that a simple comparison of NRC rates in different states demonstrates TELRIC non-compliance").

31. BellSouth denies the allegations set forth in Paragraph 31 of the Petition and specifically denies that Verizon's tariff from Pennsylvania is in any way relevant to the

individual hot cuts Supra purchases from BellSouth in Florida. *See Florida/Tennessee 271 Order,* ¶ 43 ("In other section 271 orders, we have not found that a simple comparison of NRC rates in different states demonstrates TELRIC non-compliance").

32. BellSouth denies the allegations in Paragraph 32 of the Petition. BellSouth further denies that Supra is entitled to an interim rate, or that Supra is entitled to any rate other than the nonrecurring rate established for hot cuts by this Commission in Docket No. 990649-TP.

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

Respectfully submitted this 28th day of April, 2004.

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