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 Sent: Friday, June 25, 2004 3:23 PM
 To: Filings@psc.state.fl.us
 Cc: Foshee, Lisa; Linda Hobbs; Fatool, Vicki; Nancy Sims; Holland, Robyn P.; Bixler, Micheale; Nancy White
 Subject: Docket 040301-TP
 Importance: High

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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 Foshee
- D. 10 pages total
- E. BellSouth Telecommunications, Inc.'s Response and Objections to Supra's Motion for Partial Summary Final Order on Issue of Connect and Test Related Charges

Brenda Slaughter (sent on behalf of Lisa Foshee)
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 TR _____ <<040301-TP BellSouth Response & Obj to Supra Motion.pdf>>
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June 25, 2004

Mrs. Blanca S. Bayó
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Administrative Services
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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 Response and Objections to Supra Telecommunications and Information Systems, Inc.'s Motion for Partial Summary Final order on Issue of Connect and Test Related Charges, which we ask that you file in the captioned docket.

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

Sincerely,


Lisa S. Foshee (BSS)

Enclosure

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

DOCUMENT NUMBER-DATE

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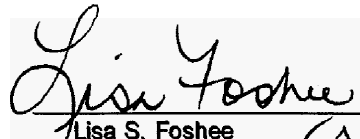
CERTIFICATE OF SERVICE
Docket No. 040301-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served
via Electronic Mail and U.S. Mail this 25th day of June, 2004 to the following:

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Supra)	
Telecommunications and Information)	Docket No. 040301-TP
Systems, Inc.'s for arbitration)	
With BellSouth Telecommunications, Inc.)	Filed: June 25, 2004
_____)	

RESPONSE AND OBJECTION TO SUPRA'S MOTION FOR PARTIAL SUMMARY FINAL ORDER ON ISSUE OF CONNECT AND TEST RELATED CHARGES

BellSouth Telecommunications, Inc. ("BellSouth") hereby responds and objects to Supra's Motion for Partial Summary Final Order On Issue of Connect and Test Related Charges ("Motion") on the grounds that the Motion is factually inaccurate and thus there is a genuine issue of material fact; on the grounds that the Motion is legally improper; and the Motion directly conflicts with the Commission's cost order in Docket No. 990649-TP. For these reasons, as more fully set forth below, the Commission should deny the Motion.

A. The Commission Should Deny The Motion Because The Factual Predicates Underlying The Motion Are Inaccurate.

- BellSouth did not admit that connect and test charges are inapplicable to a UNE-P to UNE-L conversion.

In its so-called "Statement of Undisputed Facts" that constitutes the basis for Supra's Motion, Supra alleges that "[t]he following facts are either admitted or undisputed by BellSouth...[c]onnect and test charges do not exist for UNE-P to UNE-L conversions." (Motion, at 2). As evidence of this statement, Supra points to BellSouth's responses to Supra Requests for Admissions nos. 14, 16, 17, and 18. To get to the result it wanted, however, Supra utterly mangled the facts as is evident from the face of BellSouth's responses and from the attached Declaration of Daonne Caldwell.

By way of background, "connect and test" refers to the connect and test activities that must be undertaken to provision an unbundled network element. *Declaration of Daonne*

Caldwell, at ¶ 3, attached hereto as Exhibit A. In BellSouth's Commission-approved cost study, there is no separate rate element for "connect and test" activities – rather, the activities associated with connect and test functions are incorporated in other rate elements such as Service Level 1 Loops and Cross-Connects. *Caldwell Declaration*, at ¶ 4. As the Commission correctly recognized by adopting BellSouth's cost study (with certain adjustments not related to connect and test), there are connect and test charges applicable to a conversion of a loop from a BellSouth switch to another switch. Indeed, in its May 25, 2001 Order the Commission specifically analyzed ADSL Loop Connect & Test and Travel Work Times (*see* pgs. 343-349). *Caldwell Declaration*, at ¶ 5. Consequently, those charges apply to a conversion from a UNE-P to a UNE-L.

Armed with this understanding of the Commission's decision in the cost docket, BellSouth responded to Supra's Requests for Admissions. Contrary to Supra's representation in the Motion that BellSouth admitted that connect and test charges do not apply to a UNE-P to UNE-L conversion, BellSouth denied each of the cited admission requests. On Request No. 14, for example, BellSouth denied the request because one of the work times was incorrect. On Request No. 16, BellSouth denied the request because there is no separate "connect and test" charge that applies "in addition to" the \$8.22 as Supra stated – rather, the \$8.22 includes the connect and test activities associated with the work function. *Caldwell Declaration*, at ¶ 6. The fact that BellSouth denied that a separate connect and test charge applied in addition to the \$8.22 does not in any way equate to an admission that connect and test activities do not apply to a UNE-P to UNE-L conversion. On Request No. 17, BellSouth denied the request because there is no separate connect and test charge in that the connect and test activities are incorporated into other cost elements, and because no charges in BellSouth's cost study are "partially duplicative."

Caldwell Declaration, at ¶ 7. These denials can in no way be construed to be an admission that connect and test activities are not involved in a UNE-P to UNE-L conversion. Supra's inference is particularly misguided given that Request 17 does not even reference a UNE-P to UNE-L conversion. (Motion, Att. B). Finally, BellSouth denies Request 18 on the same grounds as it denied Request 16, namely that there is no separate connect and test charge, and that no charges in BellSouth's cost study are "wholly duplicative." *Caldwell Declaration*, at ¶ 7.

In short, there simply are no grounds from which Supra or this Commission can or should conclude that connect and test activities are not applicable to UNE-P to UNE-L conversions based on BellSouth's responses to the requests for admissions. In each case, BellSouth denied the requests, and for the three that even dealt with connect and test charges BellSouth denied them because Supra implied that there is a separate cost element for connect and test charges when, in reality, connect and test activities are included in other rate elements.

2. When it purchased UNE-P arrangements, Supra did not pay the non-recurring charge for a conversion from UNE-P to UNE-L.

BellSouth charges the Commission-approved non-recurring charges for a conversion from BellSouth retail to UNE-P and from a UNE-P to a UNE-L. There are separate non-recurring charges for these types of conversions, which were established by the Commission. As evidenced by the fact that the Commission set non-recurring rates for these types of conversions, the payment of the non-recurring charge for conversion from retail to UNE-P does not compensate BellSouth for the costs incurred in converting a service from UNE-P to UNE-L. *Caldwell Declaration*, at ¶ 8.

B. The Commission Should Deny The Motion Because It Is A Legally Improper Attempt To Relitigate The Cost Docket.

1. Supra is not entitled to relitigate the cost docket in this proceeding.

In Docket No. 990649-TP, the Commission established non-recurring rates for UNE loops. It is the non-recurring rates for UNE loops that constitute the “hot cut” charges in Florida in that to provision a UNE loop, the loop must be moved from the BellSouth switch (whether configured as a BellSouth retail customer or a UNE-P customer) to the CLEC switch. As part of its consideration of the correct rates, the Commission adopted BellSouth’s cost model with certain adjustments to the inputs. The non-recurring rates charged today by BellSouth in Florida are the rates that resulted from the Commission’s cost docket.

The Commission approved the inclusion of connect and test activities in the BellSouth cost model in the cost docket. *Caldwell Declaration*, at ¶¶ 4-5. While the connect and test activities are not a separate cost element, as explained above, the activities associated with connect and test are captured in other cost elements that the Commission adopted. *Id.* at ¶ 4. Consequently, any challenge to the applicability of connect and test activities should have been raised as an issue in the cost docket or in a timely-filed motion for reconsideration. No party, including Supra, pursued either of these avenues and thus the issue is closed. To remedy the fact that it did not pursue this claim in the cost docket, Supra is trying to relitigate the cost-docket through the back door. Supra is not entitled to challenge the findings in the cost docket now that the period for reconsideration and appeals has long since run.

There is no legal or procedural vehicle by which Supra can pursue this collateral attack on the Commission’s cost docket. Moreover, as a practical matter, granting the Motion would render the Commission’s procedural rules meaningless.

2. Granting the Motion Would Directly Conflict With The Commission’s Order In The Cost Docket.

Granting this Motion would result in a finding that directly contradicts the Commission’s conclusions in the cost docket in that the Commission already approved the inclusion of connect

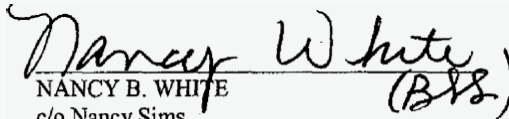
and test activities in the non-recurring charges for UNE loops. Notably, and not surprisingly, Supra did not provide any citations to the Commission's Cost Order in which the Commission rejected connect and test activities. On the contrary, the Commission included such activities in its cost analysis and rejecting them now would directly conflict with the Commission's decision.

CONCLUSION

For the reasons set forth herein, BellSouth respectfully requests that the Commission deny Supra's Motion.

Respectfully submitted this 25th day of June, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.

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542378

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Supra)
Telecommunications and Information) Docket No. 040301-TP
Systems, Inc.'s for arbitration)
With BellSouth Telecommunications, Inc.) Filed: June 25, 2004
_____)

DECLARATION OF DAONNE CALDWELL

Comes now the declarant, and swears under oath as follows:

1. My name is Daonne Caldwell. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375. I am a Director in the Finance Department of BellSouth Telecommunications, Inc. ("BellSouth"). My area of responsibility relates to the development of economic costs, testifying in cost-related dockets, cost methodology, and the coordination of cost study filings.

2. The purpose of my Declaration is to respond to the allegation of Supra Telecom that BellSouth admitted that connect and test charges do not apply in a UNE-P to UNE-L conversion. As my Declaration will show, BellSouth has made no such admission because connect and test activities do apply in a UNE-P to UNE-L conversion.

3. The phrase "connect and test" refers to the connect and test activities that must be undertaken to provision an unbundled network element.

4. In BellSouth's Commission-approved cost study, there is no separate rate element for "connect and test" activities – rather, the activities associated with connect and test functions are incorporated in other rate elements such as Service Level 1 Loops and cross connects.

5. The Commission correctly recognized, by approving BellSouth's cost study (with certain revisions that are not at issue here), that connect and test charges are applicable to a

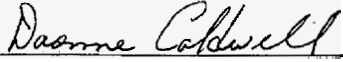
conversion of a loop from a BellSouth switch to another switch. Indeed, in its May 25, 2001 Order the Commission specifically analyzed ADSL Loop Connect & Test and Travel Work Times (see pgs. 343-349). This was just one category of activities reviewed by the Commission for just one element.

6. The \$8.22 referenced in Supra Request for Admission 16 includes connect and test activities in conjunction with the provisioning of cross connects. Moreover, the Commission approved the rate in Docket No. 001797-TP – the Covad arbitration.

7. No cost elements in BellSouth's cost study are partially or wholly duplicative of other cost elements in the study.

8. The Commission established stand-alone non-recurring charges for a conversion from BellSouth retail to UNE-P, and separate charges to go from a BellSouth switch to a CLEC switch. The non-recurring charge for the first does not cover the costs incurred in the second.

This 25th day of June, 2004.



Daonne Caldwell





