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September 8, 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 Response to Supra's Motion for Partial Summary Final Order on Contractual Issues, 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,

E. Earl Edenfield, Jr.

Enclosure

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

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 8th day of September, 2004 to the following:

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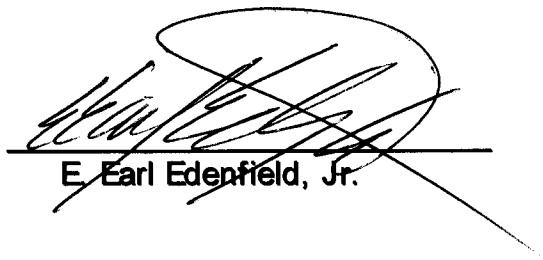

E. Earl Edenfield, Jr.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Supra Telecommunications and Information Systems, Inc.'s for arbitration With BellSouth Telecommunications, Inc.	)	Docket No. 040301-TP
	)	Filed: September 8, 2004

BELLSOUTH'S RESPONSE TO SUPRA'S MOTION FOR PARTIAL SUMMARY FINAL ORDER ON CONTRACTUAL ISSUES

BellSouth Telecommunications, Inc. ("BellSouth") files this response to the Motion for Partial Summary Final order on Contractual Issues ("Motion") filed by Supra Telecommunications and Information Systems, Inc. ("Supra") on September 1, 2004. For the reasons set forth below, the Florida Public Service Commission ("Commission") should deny Supra's Motion.

I. SUPRA'S MOTION DOES NOT MEET THE LEGAL STANDARD FOR A SUMMARY FINAL ORDER.

Rule 206.106.204(4), *Florida Administrative Code* provides that "[a]ny party may move for summary final order whenever there is no genuine issue of material fact." Recently, the Commission, in In re: Verizon Florida, Inc., Order No. PSC0-3-1460-FOF-TL (Dec. 24. 2003), articulated the standard for granting a request for a summary final order:

> The standard for granting a summary final order is **very high**. The purpose of summary judgment, or in this instance summary final order, is to avoid the expense and delay of trial when no dispute exists concerning the material facts. The record is reviewed in the **light most favorable to the party against whom the summary judgment is to be entered**. When the movant presents a showing that no material fact on any issue is disputed, the burden shifts to his opponent to demonstrate the falsity of the showing. If the opponent does not do so, summary judgment is proper and should be affirmed. The question for determination on a motion for summary judgment is the existence or nonexistence of a material factual issue. There are two requisites for granting summary

> judgment: first, there must be no genuine issue of material fact, and second, one of the parties must be entitled to judgment as a matter of law on the undisputed facts. See, Trawick's Florida Practice and Procedure, § 25-5, Summary Judgment Generally, Henry P. Trawick, Jr. (1999).
>
> Further, under Florida law, "the party moving for summary judgment is required to **conclusively demonstrate the nonexistence of an issue of material fact**, and . . . **every possible inference must be drawn in favor of the party against whom a summary judgment is sought**." Green v. CSX Transportation, Inc., 626 So. 2d 974 (Fla. 1st DCA 1993) (citing Wills v. Sears, Roebuck & Co., 351 So. 2d 29 (Fla. 1977). Furthermore, "A summary judgment should not be granted unless the **facts are so crystallized that nothing remains but questions of law**." Moore v. Morris, 475 So. 2d 666 (Fla. 1985); City of Clermont, Florida v. Lake City Utility Services, Inc., 760 So. 1123 (5th DCA 2000). (emphasis added).

As discussed in greater detail below, Supra does not satisfy this "very high" standard because genuine issues of material fact exist and, therefore, Supra is not entitled to judgment as a matter of law.

II. THERE ARE GENUINE ISSUES OF MATERIAL FACT THAT MUST BE RESOLVED BY THE COMMISSION.

Supra's entire Motion is based upon two primary (and misguided) assertions: (1) that the parties' Interconnection Agreement ("ICA") does not contain rates that are applicable to a UNE-P to UNE-L conversion (or hot cut); and, (2) that the BellSouth cost studies upon which the Commission approved various non-recurring rates are inapplicable to a UNE-P to UNE-L conversion. BellSouth addresses both of Supra's assertions below and demonstrates that record evidence exists to rebut (and completely discredit) these assertions. Thus, the Commission should deny Supra's Motion because the Commission has been presented with genuine issues of material fact that cannot be ruled upon in a summary fashion.

A. The Interconnection Agreement has Rates Applicable to a UNE-P to UNE-L conversion.

In typical fashion, Supra's arguments for summary disposition are directed towards an issue that does not even exist in this case. Specifically, Supra spends a great deal of time and effort discussing the fact that the parties' ICA does not contain language expressly detailing a conversion (or hot cut) process specifically for migrating a UNE-P to a UNE-L.[1] BellSouth agrees; however, the debate over whether the ICA contains a UNE-P to UNE-L ***conversion process*** is not the issue that is before the Commission. Simply stated, the issue before the Commission is whether the ICA has non-recurring ***rates*** that apply to a UNE-P to UNE-L conversion.

As discussed in the direct testimony of BellSouth witness Daonne Caldwell, there are three Commission-approved non-recurring rates that are applicable to a hot cut; an electronic OSS charge, the SL1 (or SL2 depending on the loop being requested) loop rate; and a cross-connect charge. (Caldwell Direct at 3) Each of these rates can be found in the parties' ICA:[2]

Electronic OSS charge	$ 1.52
2-Wire Analog Voice Grade Loop – Service Level 1	$ 49.57
Physical Collocation – 2-Wire Cross-Connect	$ 8.22

Supra's assertions that rates applicable to a UNE-P to UNE-L conversion cannot be found in the ICA are wrong and, at a minimum, give rise to a genuine issue of material fact.

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[1] Supra's arguments and actions are in direct conflict as Supra has actually converted many thousands of UNE-P lines to UNE-L. At the same time, however, Supra appears to argue that the ICA does not allow such conversions. BellSouth submits that Supra cannot have it both ways.

[2] The OSS charge and SL1 Loop rates are in the Attachment 2 Rate Sheets (at page 142) and the Cross-Connect charge is in the Attachment 4 Rate Sheets (at page 350). BellSouth's asks that the Commission take administrative notice of the parties' ICA, which was effective on July 15, 2002 and is on file at the Commission.

B. The Commission-Approved, Non-Recurring Rates Upon Which BellSouth Relies are Equally Applicable to All Types of Hot Cuts.

In its Motion, Supra also argues that BellSouth never filed a cost study that contained the work times and activities applicable to a UNE-P to UNE-L conversion. Again, Supra is wrong. As discussed in the direct testimony of BellSouth witness Ken Ainsworth, the work times and activities for a hot cut process (except for coordination activities, if requested) are identical regardless of whether the conversion is from retail to UNE-L, resale to UNE-L, or from UNE-P to UNE-L. (Ainsworth Direct at 2-3) There are varying levels of hot cut coordination that can be purchased, but the actual process of moving the wires from BellSouth's switch to Supra's switch is identical. (*Id.* at 23-24)

Based on Mr. Ainsworth's assertions regarding the hot cut process, Ms. Caldwell testifies that the cost studies (and subsequent non-recurring rates) approved by the Commission do contain exact work times and activities applicable to a UNE-P to UNE-L hot cut. (Caldwell Direct at 4) Supra contends (incorrectly) that the processes in the Commission-approved cost studies are different from those necessary to effectuate conversions of working UNE-P lines served by copper, UDLC or IDLC. (Motion at 6) In her testimony, Ms. Caldwell disagrees with Supra's assertions and points out that the cost studies are built upon averages that certain work activities will be required and probabilities that certain facility types (copper, UDLC, or IDLC) will be present. (Caldwell Direct at 5-7) Again, the Commission approved the use of these averages in setting a single rate that is universally applicable. If Supra wanted separate rates based on each type of facility (copper, UDLC, or IDLC), then Supra should have pursued that in the cost docket (instead of withdrawing from the docket a couple of weeks before the hearing).

C. Supra's Motion is an Improper Collateral Attack on Prior Commission Orders.

Apparently, Supra is dissatisfied with the Commissions methodology and is attempting to use this complaint proceeding to launch a collateral attack against prior Commission Orders. Clearly, any challenge to these rates (including the methodology behind the rates) should have been raised as an issue in the docket in which the rates were established. 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.

III. CONCLUSION

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

Respectfully submitted this 8th day of September 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.

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