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REDACTED

September 9, 2004

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

**RE: Docket 040301 --TP
SUPRA'S DIRECT TESTIMONY OF DAVID A. NILSON**

Dear Mrs. Bayo:

Pursuant to our Letter of September 8, 2004, enclosed are fifteen (15) redacted copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Direct Testimony of David A. Nilson with exhibits to be filed in the above captioned docket. Portions of the testimony and some of the Exhibits are deemed proprietary and thus are submitted in a sealed envelope.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return it to me.

Sincerely,

Brian Chaiken
Executive V.P. Legal Affairs

DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE

Docket No. 040301-TP

I HEREBY CERTIFY that a true and correct copy of the following was served via Facsimile, E-Mail, Hand Delivery, and/or U.S. Mail this 9th day of September 2004 to the following:

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By: Brian Chaiken

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BEFORE THE FPSC -- DIRECT TESTIMONY OF

DAVID A. NILSON

ON BEHALF OF SUPRA TELECOMMUNICATIONS AND INFORMATION

SYSTEMS, INC.

DOCKET NO. 04-0301-TP

FILED: SEPTEMBER 8, 2004

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1 **I. INTRODUCTION AND SUMMARY OF TESTIMONY**

2

3 **Q. PLEASE STATE YOUR NAME AND ADDRESS**

4 A. **My name** is David A. Nilson. My business address is 2620 SW 27th Avenue, Miami,
5 Florida 33133.

6

7 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

8 A. I am employed by Supra Telecommunications and Information Systems, Inc. (“Supra”)
9 as its Chief Technology Officer.

10

11 **Q. PLEASE DESCRIBE YOUR BACKGROUND AND WORK EXPERIENCE.**

12 A. I have been an electrical engineer for the past 27 years, with the last 23 years spent in
13 management level positions in engineering, quality assurance, and regulatory departments.

14 In 1976, I spent two years working in the microwave industry, producing next generation
15 switching equipment for end customers such as AT&T Long Lines, ITT, and the U.S.
16 Department of Defense. This job involved extensive work with various government agencies. I
17 was part of a three-man design team that produced the world’s first microwave integrated circuit
18 which was placed in production for AT&T within 30 days of its creation. I held jobs at two
19 different companies in quality control management, monitoring and trouble-shooting
20 manufacturing process deviations, and serving as liaison, and auditor regarding our regulatory
21 dealings, with the government.

22 I spent 14 years in the aviation industry designing both airborne and land-based
23 communications systems for various airlines and airframe manufacturers worldwide. This

1 included ASIC and Integrated Circuit design, custom designed hardware originally designed for
2 the Pan American Airlines call centers, and various system controllers used on Air Force One
3 and Two, other government aircraft including that for the Royal Family in England. I designed
4 special purpose systems used by both the FAA and the FCC in monitoring and compliance
5 testing. I was responsible for design validation testing and FAA system conformance testing.

6 Since 1992 I have been performing network and system design consulting for various
7 industry and government agencies, including research and design engineering positions at the
8 Argonne National Laboratories.

9 As a programmer for more than 35 years, I have extensive experience in systems
10 analysis, design, and quality assurance procedures required by various US government agencies.
11 I have designed Internet Service Provider networks and organizations, including Supra's. I have
12 done communications related software consulting for Fortune 500 corporations such as Sherwin
13 Williams, Inc.

14 I have attended extensive management and engineering training programs with Motorola,
15 Lucent, Nortel, Siemens, Alcatel, Ascend, Cisco, Call Technologies, Southwestern Bell
16 Telephone, Verizon (formally known as Bell Atlantic), and others.

17 I joined Supra in the summer of 1997. I am the architect of Supra's network and ISP, and
18 designed its central office deployment and network operations. This includes planning, capacity
19 and traffic analysis to define equipment capacity from market projections for voice services,
20 Class 5 switch design and planning, transmission, data and Internet services, xDSL, voicemail
21 and ILEC interconnection, ordering and billing. Additionally, I have negotiated interconnection
22 agreements with Sprint, Verizon, Ameritech (SBC), SWBT, SWBT (SBC), and BellSouth, and I
23 participate in bill analysis and dispute resolution and am intimately familiar with BellSouth retail

1 and CLEC OSS systems, CRIS and CABS billing systems and standards. I have helped to
2 resolve tens of millions of dollars in over billed charges with BellSouth alone.

3

4 **Q. HAVE YOU EVER TESTIFIED BEFORE?**

5 A. Yes, I testified before the Florida Public Service Commission (“FPSC”) in numerous
6 generic dockets and in various disputes between Supra and BellSouth regarding central office
7 space availability, rates, requirements, and specifications for Collocation, Unbundled Network
8 Elements (“UNEs”), and UNE Combinations. I have participated in settlement procedures
9 before the FPSC staff on matters relating to OSS and OSS performance against BellSouth. I
10 have testified before the Texas Public Utilities Commission (“TPUC”) on matters of collocation
11 regarding disputes with SWBT. I have made ex-parte presentations before the Federal
12 Communications Commission (“FCC”) regarding the Bell Atlantic/GTE merger, the UNE
13 Triennial review in 2002, and the Department of Agriculture regarding Network Design and
14 Expansion policies for CLECs. I have appeared before the FCC staff on several occasions in
15 disputes against BellSouth regarding collocation. I have testified before regulatory arbitrators in
16 Texas, and in Commercial arbitration against BellSouth. I have been deposed numerous times
17 by BellSouth and SWBT. I was qualified as an expert witness in telecommunications by the
18 TPUC in 2000. I have testified in Federal District Court and Federal Bankruptcy Court.

19

20 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

21 A. The purpose of my testimony is to address Supra’s position relative to Issue Nos. 1
22 through 4.

23

1 **Q. WHICH ISSUES DO YOU ADDRESS IN YOUR TESTIMONY?**

2 A. I discuss what nonrecurring rate, if any, applies for a conversion from UNE-P to UNE-L
3 when the UNE-P line is served by copper or UDLC loop (**Issue 1**) or IDLC loop (**Issue 2**), and
4 whether a new nonrecurring rate should be created for a conversion from UNE-P to UNE-L
5 when the UNE-P line is served by copper or UDLC (**Issue 3**), or IDLC (**Issue 4**), and what
6 should be the rate for such a conversion (**Issues 3 and 4**).

7

8 **II. Background / Summary**

9 **Q. ARE ISSUES 1 AND 2 CONTRACTUAL OR REGULATORY ISSUES?**

10 A. They are purely contractual issues because they require the FPSC to make a
11 determination as to whether or not the Current Agreement contains actual rates for these
12 processes.
13 The contractual terms which need to be interpreted do not differ between copper, UDLC or
14 IDLC served loops. The record evidence, and the current testimony of BellSouth proves that the
15 FPSC never considered a rate for UNE-P to UNE-L conversions in the generic UNE Docket
16 990649-TP. This is not surprising since, at 3-5¹ years after the 1996 Telecommunications Act
17 was enacted, **not a single CLEC in Florida was able to order and enjoy UNE-P at TELRIC**
18 **rates.** It was the May 2001 order of this Commission² which made it impossible for BellSouth
19 to continue denying Supra what had already been promised by prior FPSC orders and two
20 previous interconnection agreements. Supra was **first** able to issue UNE-P orders on June 17,

¹ 3+ years to the date the Docket was placed upon the calendar, 5+ years until the first order (PSC-01-1181-FOF-TP) was issued, 6+ years until the September 2002 order set the remaining rates in place.
² See Supra Exhibit # DAN-1-- PSC-01-1181-FOF-TP.

1 2001, the day the ordering procedures were made available to Supra and BellSouth enabled
2 UNE-P OSS (LENS) access³.

3 Neither BellSouth nor the CLEC industry even had a basis to establish a rate for UNE-P
4 to UNE-L conversions in the 1999 – 2001 timeframe because no CLEC had received UNE-P.
5 BellSouth's cost expert, Ms. Caldwell admits that she never prepared, submitted or discussed the
6 conversion of UNE-P to UNE-L in the last generic UNE Docket.

7 Notwithstanding such, significant portions of the cost study which BellSouth now purports
8 represents the FPSC's "prior determination" of this issue may apply to a hot cut, but only when a
9 new UNE-L line needs a truck roll in order to be installed and, as a result, Supra's First
10 Amended Petition requests the establishment of two rates, which are actually tailored to the
11 specific job functions involved in performing conversions of existing, working lines (as opposed
12 to installing new service) so as to allow Supra to choose which services to purchase from
13 BellSouth, and which to self-provision. This is not unlike the decisions which led to the creation
14 of SL1 and SL2 rates, and geographically de-averaged loop rates.

15

16 **Q. ARE ISSUES 3 AND 4 CONTRACTUAL OR REGULATORY ISSUES?**

17 A. They are both. At the outset, it is a contractual issue. The Commission must first decide
18 whether, under the Current Agreement, BellSouth is allowed to charge Supra anything for
19 performing the services requested in this case. Should the Commission find in favor of Supra, it
20 need look no further. However, if the Commission finds in favor of BellSouth on the threshold

Albeit buggy and prone to cause loss of dialtone at conversion for approximately 65% of all orders.

1 **contractual issue**, then the Commission must set an appropriate rate, and thus it becomes a
2 regulatory issue.

3

4 **Q. WHAT OTHER ISSUES NEED TO BE CONSIDERED HERE?**

5 A. The activities for which BellSouth is seeking cost recovery may well have **already been**
6 **paid** for when the line was provisioned to Supra as UNE-P. After all, if the customer being
7 served by UNE-P had no service or warm dialtone at the time Supra ordered UNE-P on their
8 behalf, BellSouth **already** billed and collected the full A.1.1 (\$49.57) NRC⁴ as part of a larger
9 UNE-P NRC⁵ of \$90, or another CLEC (or BellSouth) incurred that larger cost. In either case,
10 Supra should not bear this cost, much less be asked to bear it **twice**, when the majority of UNE-
11 P to UNE-L conversion scenarios avoid most of the work effort which makes up the \$49.57 NRC
12 rate, i.e. the switch-as-is NRC of 10.2 cents, but the provision of new service NRC is ninety
13 dollars (\$90). BellSouth is not entitled to double recovery, or for recovery of costs that could
14 have, and should have been avoided but for provisioning decisions that BellSouth alone is
15 responsible for.

16

17 **III. Issue 1 – Under the Current Agreement, what nonrecurring rate, if any, applies for**
18 **a hot-cut from UNE-P to UNE-L, where the lines being converted are served by**
19 **copper or UDLC, for (a) SL1 loops and (b) SL2 loops?**

20

21 **Q. DOES SUPRA CLAIM THAT THE CURRENT AGREEMENT CONTAINS OR**
22 **REFERENCES A RATE FOR UNE-P TO UNE-L CONVERSIONS?**

⁴ Supra Exhibit # DAN-1 PSC-01-1181-FOF-TP Appendix A.

⁵ See Interconnection agreement pg 161 of 593.

1 A. No. Supra makes no such claim.

2 **Q. DOES BELLSOUTH CLAIM THAT THE CURRENT AGREEMENT CONTAINS**
3 **OR REFERENCES A RATE FOR UNE-P TO UNE-L CONVERSIONS?**

4 A. No. While BellSouth tries to argue that the A.1.1 and A.1.2 non-recurring cost study
5 (“FL-2w.xls”) is appropriate to be used as the non-recurring rate, BellSouth admits that the
6 Current Agreement does **not** contain or even reference a rate for UNE-P to UNE-L conversions.⁶
7 In its pleading before the United States Bankruptcy Court, Southern District of Florida,
8 BellSouth stated:

9 BellSouth agrees that the terms of the Agreement do not explicitly reference a
10 conversion process from the Port/Loop combination Service (i.e. UNE-P) Supra
11 currently uses to the separate 2-Wire Analog Voice Grade Loop Service (i.e.
12 UNE-L) Supra now Seeks to use. BellSouth **believes** that the process and rates
13 detailed in the Present Agreement for conversion of BellSouth’s retail service to
14 UNE-L should be applied to UNE-P to UNE-L conversions because UNE-P is,
15 for the several functions involved in conversion to UNE-L, the functional
16 equivalent of BellSouth’s retail service. BellSouth has been, and continues to be,
17 ready to convert service consistent with the contractual process if it has adequate
18 assurance that the applicable rates will be paid. (Emphasis added.)
19

20 This statement by BellSouth is erroneous, in that the Current Agreement **does** explicitly
21 reference a **process** for hot cuts⁷ but it simply does not define the **rate** to be charged.

22 Interestingly, it is in this pleading⁸ that BellSouth first makes the claim for \$59.31 NRC for
23 A.1.1, increasing its previous demand for \$51.09⁹ by including the \$8.22 “Covad Crossconnect”,

⁶ See Supra Exhibit # DAN-19-- Emergency Motion of BellSouth Telecommunications, Inc. for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions at p. 5, para. 12.

⁷ See Supra Exhibit # DAN-4, PSC-02-0413-FOF-TP, Issue ‘R’, pages 108-114, TOC of order states page 111.

⁸ See Supra Exhibit # DAN-19-- Emergency Motion of BellSouth Telecommunications, Inc. for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions at p. 5, para. 12.

⁹ \$49.57 A.1.1 NRC plus \$1.52 LENS OSS ordering charge. See Supra Exhibit # DAN 13.

1 despite the fact that "...the terms of the Agreement do not explicitly reference a conversion
2 process from the Port/Loop combination Service (i.e. UNE-P)...".

3

4 **Q. DOES BELLSOUTH ASSERT THAT THE RATES FOR UNE, UNE-P, OR**
5 **INTERCONNECTION ARE NOT EXCLUSIVELY TIED TO THE FPSC'S ORDERS**
6 **IN DOCKETS 990649-TP AND 000649-TP?**

7 A. Apparently, as BellSouth is relying on FPSC orders in Docket 001797-TP to justify the
8 billing of a PE1P2 crossconnect (FPSC UNE Element H.1.9) when it performs any UNE-P to
9 UNE-L conversion, in addition to the purported cost of the hot cut claimed as a result of the rates
10 set forth in Dockets 990649-TP and 000649-TP. However this reliance is unfounded, as the
11 FPSC was quite clear in this regard¹⁰. The unbundled rates in the Current Agreement are tied to
12 the FPSC orders in Docket 990649-TP^{11, 12, 13} and, in regard to line splitting only, Docket
13 000649-TP

14 Based on the testimony and post-hearing briefs of the parties it appears that
15 BellSouth and Supra actually have similar views on the rates in this issue. The
16 only exception is the rates which Supra wishes to designate as interim rates
17 subject to true-up. This issue has been substantially narrowed to include the
18 network elements for which we have established rates, and the network elements
19 for which rates have not been established. Since the parties appear to agree on a
20 majority of the "items" in this issue we believe that the rates we established in
21 **Docket Nos. 990649-TP and 000649-TP are the appropriate rates for (B)**

¹⁰ See Supra Exhibit # DAN-4 -- PSC-02-0413-FOF-TP at pg 71-72, identify the source of rates for this agreement.

¹¹ See Supra Exhibit # DAN-1 -- PSC-01-1181-FOF-TP.

¹² See Supra Exhibit # DAN-2 -- PSC-01-2051-FOF-TP.

¹³ See Supra Exhibit # DAN-3 -- PSC-02-1311-FOF-TP

1 **Network Elements, (C) Interconnection, (E) LNP/INP, (F) Billing Records¹⁴,**
2 **and (G) Other¹⁵.**

3
4 **(Supra Exhibit # DAN-4 -- PSC-02-0413-FOF-TP at pp 71-72, emphasis added)**
5

6 **Q. HAVE THERE BEEN ANY COURT DETERMINATIONS RELATIVE TO**
7 **WHETHER THE AGREEMENT CONTAINS A RATE FOR UNE-P TO UNE-L**
8 **CONVERSIONS?**

9 A. Yes. On July 15, 2003, the United States Bankruptcy Court, Southern District of Florida,
10 held¹⁶:

11 The Court finds that Supra should pay the UNE-L Conversion changes on a
12 weekly basis at the rate proposed by BellSouth in its Motion (the “BellSouth
13 Rate”) unless BellSouth voluntarily agrees to a lower rate. This rate will be
14 subject to later adjustment if an appropriate regulatory body fixes a lower rate (the
15 “Regulated Rate”). **Although the BellSouth/Supra contract does not**
16 **specifically set a rate for UNE-P to UNE-L conversions, BellSouth believes the**
17 **\$59.31 Rate proposed in its motion applies...**

18
19 (Supra Exhibit # DAN-21, emphasis added).
20

21 **Q. DOES BELL SOUTH CLAIM THAT IT HAS PREPARED, OR FILED FOR FPSC**
22 **REVIEW, A COST STUDY WHICH ADDRESSES THE RETAIL TO UNE-L OR**
23 **UNE-P TO UNE-L CONVERSION COSTS?**

¹⁴ 02-0413 original footnote - Although there is no discussion as to specific billing records, we presume the items intended to be addressed are Access Daily Usage File (ADUF), Optional Daily Usage File (ODUF), and Enhanced Optional Daily Usage File, for which we have established rates in Docket No. 990649-TP.

¹⁵ 02-0413 original footnote - Although there is no discussion as to a specific “other” network element(s) by either party, we presume the item intended to be addressed is line-sharing, for which we established rates in Docket No. 000649-TP.

¹⁶ See Supra Exhibit # DAN-21-- Order Granting Emergency Motion of BellSouth Telecommunications, Inc., for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions (the “Order”), at p. 2.

1 A. No. Although, BellSouth has tried to apply existing rates for different conversions to this
2 conversion and has made unsupportable, self-serving claims about the meaning of previous
3 FPSC orders. Despite BellSouth's arguments to the contrary, BellSouth's director in charge of
4 all of BellSouth's cost studies, Daonne Caldwell, testified under oath that she neither prepared
5 nor was ever requested to prepare a cost study for a retail to UNE-L conversion, much less a
6 UNE-P to UNE-L conversion.¹⁷ At a March 5, 2003 Intercompany meeting between Supra and
7 BellSouth, BellSouth's Greg Follensbee stated exactly the same thing¹⁸.

8

9 **Q. DESPITE THE FACT THAT BELLSOUTH NEVER PREPARED A COST**
10 **STUDY FOR THE FPSC TO REVIEW, DID THE FPSC EXPLICITLY**
11 **CONSIDER, ADDRESS, MENTION OR OTHERWISE ORDER A RATE FOR**
12 **UNE-P TO UNE-L CONVERSIONS?**

13 A. No. Ms. Caldwell further testified that the FPSC has never even **referenced** a retail to
14 UNE-L conversion or hot cut, much less ordered a working UNE-P to UNE-L conversion or hot
15 cut rate, in any of its orders issued in the cost study docket, or any other docket.¹⁹ Supra agrees
16 with Ms. Caldwell in this instance.

17

18 **Q. DOES THE CURRENT AGREEMENT, OR THE FPSC ORDERS FROM WHICH**
19 **THE RATES STEM, ORDER A RATE FOR A UNE-P TO UNE-L CONVERSION,**

¹⁷ See deposition transcript of BellSouth's corporate witness with most knowledge regarding BellSouth's cost studies, **Daonne Caldwell, taken on August 18, 2004 ("Caldwell Deposition")**, at p. 15.

¹⁸ See Supra Exhibit # DAN-14 5/29/2003 letter D. Nilson to G. Follensbee pg 1, para 4.

¹⁹ Id., at p. 22.

1 **WHERE THE LINES BEING CONVERTED ARE SERVED BY COPPER OR**
2 **UDLC, FOR (A) SL1 LOOPS AND (B) SL2 LOOPS?**

3 A. No.

4

1 **IV. Issue 2 – Under the parties’ existing interconnection agreement, what nonrecurring**
2 **rate, if any, applies for a hot-cut from UNE-P to UNE-L, where the lines being**
3 **converted are not served by copper or UDLC, for (a) SL1 loops and (b) SL2 loops?**

4
5 **Q. DOES THE CURRENT AGREEMENT SEPARATELY ADDRESS THE**
6 **CONVERSION OF UNE-P LINES SERVED BY IDLC, OR TREAT IDLC**
7 **SERVED LOOPS ANY DIFFERENT THAN COPPER OR UDLC?**

8 A. No. Supra’s position relative to Issue 1, that, *inter alia*, the Current Agreement lacks an
9 explicit rate, applies equally to Issue 2 as well. I also point the Commission to Supra’s Motion
10 for Partial Summary Final Order on Issues 1 and 2.

11
12 **V. Issue 3 - Should a new nonrecurring rate be created that applies for a hot-cut from**
13 **UNE-P to UNE-L, where the lines being converted are served by copper or UDLC,**
14 **for (a) SL1 loops and (b) SL2 loops? If so, what should such nonrecurring rates be?**

15
16 **Q. WHAT DOES THE CURRENT AGREEMENT STATE REGARDING THE**
17 **RELEVANT OBLIGATION OF THE PARTIES?**

18 A. GT&C § 3.1 establishes an obligation on BellSouth to cooperate in terminating services
19 or elements and transitioning customers to Supra services.

20
21 Furthermore, GT&C § 22.1 says that if a party has an obligation to do something, it is
22 responsible for its own costs in doing it, “except as otherwise specifically stated.” In this case,
23 the language of the contract specifies an explicit process to be used for the hot cut from retail to
24 UNE-P and UNE-L, but no rate for the hot-cut.

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Q. WHAT DOES THE SPECIFIC CONTRACT LANGUAGE SAY ABOUT THE “HOT CUT” PROCESS, AND OBLIGATIONS?

A. The “hot cut” process that BellSouth says applies here is described in the Current Agreement, Attachment #2, Network Elements in Section 3.8. Section 3.8.1, which makes clear that the referenced process applies “when Supra Telecom orders and BellSouth provisions the conversion of *active BellSouth retail end users* to a service configuration by which Supra Telecom will serve such end users by unbundled Loops and number portability (hereinafter referred to as ‘Hot Cuts’).” It is impossible to reconcile the requirement of a “specific statement” that a charge applies, noted above, with the claim that Section 3.8 applies where “active BellSouth retail end users” are involved.

So, under GT&C § 3.1, BellSouth has an obligation; under GT&C § 22.1 that obligation is to be performed at BellSouth’s expense unless “specifically stated” otherwise elsewhere in the Current Agreement; nothing in either GT&C § 3.1 or the UNE attachment “specifically states” a price for the cooperation and coordination required by GT&C § 3.1, and BellSouth has affirmatively stated in federal court that the Current Agreement does not specifically address it. It follows that the obligation in GT&C Section 3.1 is to be fulfilled at BellSouth’s expense.

Q. WHY DOES THIS MAKE SENSE?

A. Whether UNE-P or UNE-L, the same loop is used. BellSouth avoids providing, and Supra avoids paying for, Unbundled Local Switching, and Unbundled Common Transport. BellSouth still provides, and Supra still pays for, the same loop element. At the time the Current

1 Agreement was negotiated and arbitrated in 1999-2001, there was no indication that the FCC
2 would seek to eliminate UNE-P by eliminating the Unbundled Local Switching UNE.

3 As such, to get a CLEC to abandon the UNE-P method, BellSouth's only motivation
4 would be to make the transition, troublesome as it might be, more attractive. It is fundamentally
5 incorrect to read the Current Agreement in light of the TRO, as the tenets of the TRO were
6 unknown at the time. Instead, the Current Agreement should be read in the light of the *UNE*
7 *Remand Order* (00-238).

8 Nowhere in the *UNE Remand Order*, or the FPSC orders in 990649-TP which stem from
9 it, is a crossconnect element part of

- 10 1) UNE-P
- 11 2) EELS
- 12 3) Point – to – point T1's constructed from UNE's, etc.
- 13

14 In each case, the line side, and network side crossconnects between elements were embedded
15 within the major elements being joined. Yet within each combination of UNE's, the
16 demarcation, both physical and cost is clearly defined and accounted.

17 In this regard, BellSouth is incorrect when it claims that what Supra is seeking is the
18 cessation of the use of one integrated "facility" (the UNE-P arrangement) and the "simultaneous
19 replacement" of that "facility" "with a new facility."²⁰ Any given Supra UNE-P customer is
20 served by a specific unbundled BellSouth loop that is connected to a BellSouth switch (the
21 functionality of which is also being purchased as a UNE). Supra does not want to "replace" the
22 UNE loops serving its customers with new "facilities." To the contrary, it wants to disconnect

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

1 the unbundled local switching element, and keep on using exactly the same “facility” as it is
2 using today, only without also using BellSouth’s UNE switching.

3 After all, if the customer being served by UNE-P had no service or warm dialtone at the
4 time Supra ordered UNE-P on their behalf, BellSouth **already** billed and collected the full A.1.1
5 (\$49.57) NRC²¹ as part of a larger UNE-P NRC²² of \$90, or another CLEC (or BellSouth)
6 incurred that larger cost. In either case, Supra should not bear this cost, much less be asked to
7 bear it **twice**, when the majority of UNE-P to UNE-L conversion scenarios avoid most of the
8 work effort which makes up the \$49.57 NRC rate.

9 Neither the Current Agreement, nor the FPSC’s generic UNE Docket addressed this
10 conversion, although the conversion from retail/resale to UNE-P was explicitly costed. This is
11 understandable, since at the time, no CLEC in Florida was able to order UNE-P, and the
12 regulatory landscape did not indicate that there would be a mechanism that would allow
13 BellSouth to escape its statutory obligation to unbundle its network by eliminating Unbundled
14 Local Switching (and thus eliminating UNE-P). As we are all aware, this is exactly what
15 BellSouth seeks, post TRO. Yet BellSouth now wishes to view yesterday’s proceeding through
16 today’s regulatory environment. The ability to actually order and receive UNE-P service from
17 BellSouth needed to exist before a rational method for conversion could be created. At the time
18 of the FPSC May 2001 order²³ UNE-P was not yet available in Florida²⁴.

19

²¹ Supra Exhibit # DAN-1 PSC-01-1181-FOF-TP Appendix A.

²² See Interconnection agreement pg 161 of 593.

²³ PSC-01-1181-FOF-TP, Dated May 25, 2001

²⁴ Despite it being proscribed by Telecom Act of 1996, FPSC orders, the Supreme Court rulings in AT&T v. Iowa Utilities, and every interconnection agreement Supra had with BellSouth, BellSouth delayed its implementation of UNE-P for over 6 years.

1

2 **Q. HOW DOES BELLSOUTH RESPOND TO THIS?**

3 A. In this docket, that still remains to be seen. But based on past experience, BellSouth
4 fundamentally misreads Supra's contract claim, which is supported by G T & C § 7.1 (requiring
5 each party to do what is necessary to comply with governing law at its own expense) but which
6 does not depend on it²⁵. In a response to the FCC on this matter²⁶, BellSouth puts forth its
7 strained interpretation of GT & C § 22.1. According to BellSouth, the "costs and expenses" it
8 will (supposedly) incur in meeting its obligations under GT & C § 3.1 to assist Supra in
9 terminating the use of UNE switching are not really "costs and expenses" at all; they are really
10 "rates" that are governed by § 22.2. But Supra is not objecting to the rates for UNE loops or
11 UNE switching. Supra is simply noting that BellSouth agreed to do something under the
12 contract for which no rate is "specifically" provided.²⁷ BellSouth has already admitted to such.

13

14 **Q. GIVEN THAT THE CURRENT AGREEMENT'S RATES ARE BASED UPON**
15 **FPSC ORDERS IN 990649-TP, DOES THAT PROCEEDING TAKE**
16 **PRECEDENCE OVER THE TERMS OF THE CURRENT AGREEMENT?**

17 A. Absolutely not. No more than it would be valid if BellSouth wanted to avoid a
18 contractually mandated "bill and keep" provision for reciprocal compensation on the grounds
19 that the FPSC had established an appropriate, cost-based rate for intercarrier compensation.

²⁵ See Supra Exhibit # DAN-20 7/14/2003 BellSouth Letter to FCC at pg. 18.

²⁶ See Supra Exhibit # DAN-20, 7/14/2003 response to the FCC.

²⁷ Of course, BellSouth's claim that granting Supra's interpretation would mean that no rates under the contract would ever apply, see Supra Exhibit # DAN-20 7/14/2003 BellSouth Letter to FCC at pg. 18, is nonsense. Precisely as § 22.1 says, the rates in the contract apply whenever it is "specifically stated" that they do. For precisely this reason, the "hot cut" rate does *not* apply to paring down a an "active *Supra* retail end user's" UNE-P arrangement to a UNE-L arrangement.

1 Here, in the circumstances governed by GT & C § 3.1, BellSouth has agreed to perform certain
2 activities for free. As the language at issue is neither unclear nor ambiguous, this Commission
3 need not look to the intent of the parties in determining what the language means. Even if the
4 Commission was so inclined, as BellSouth was the drafter of such language, any ambiguities
5 should be read in favor of Supra.

6
7

8 **Q. SHOULD A NEW NONRECURRING RATE BE CREATED THAT APPLIES**
9 **FOR A HOT-CUT FROM UNE-P TO UNE-L, WHERE THE LINES BEING**
10 **CONVERTED ARE SERVED BY COPPER, UDLC OR IDLC?**

11 A. No. The terms of the current Supra/BellSouth Florida interconnection agreement (the
12 “Current Agreement”) specifically contemplate the necessity of conversions from retail to resale
13 to UNE-P²⁸ and the FPSC clearly addressed Supra’s issue on **all three types of conversions** in
14 the course of Docket 001305-TP, wherein it ordered:

15 Consequently, based on the record, we find that BellSouth’s coordinated
16 cut-over process should be implemented **when service is transferred from a**
17 **BellSouth switch to a Supra switch.** Alternatively, Supra may choose to adopt
18 the provisions the language agreed to by BellSouth and AT&T regarding
19 coordinated conversions, and approved by us in Order No. PSC-01-2357-FOF-TP
20 in Docket No. 000731-TP, should be incorporated.

21
22 **With respect to UNE-P conversions,** BellSouth witness Kephart admits
23 that no physical disconnection of service occurs during a UNE-P conversion.
24 However, he explains that in a UNE-P conversion, BellSouth is “effectively
25 turning over a portion of (its) plant on the UNE basis to another company.” He
26 contends that there are “billing issues” that are associated with the conversion and
27 that BellSouth has to address those issues within its system. (TR 410) Witness

²⁸ Supra Exhibit # DAN-4 – Order PSC02-0413-FOF-TP, Issue R. Coordinated Cut-Over Process pages 113-114.

1 Kephart states that the “D” and “N” order process is the most effective method
2 BellSouth has come up with to accomplish UNE-P conversions, and that this
3 process has an error rate of “somewhere around 1% or less.”
4

5 While there is no evidence in the record disputing BellSouth’s claim that
6 the process results in an error rate of 1% or less, we note that when customers go
7 without service as a result of this process, the customer will likely blame Supra,
8 not BellSouth, for the problem. Furthermore, we agree with Supra witness Nilson
9 that the conversion process is a “billing change” and consequently, a customer
10 should not experience a disconnection of service during a conversion. As such,
11 BellSouth shall be required to implement a single “C” (Change) order instead of
12 two separate orders, a “D” (Disconnect) order and an “N” (New) order, **when**
13 **provisioning UNE-P conversions.** BellSouth’s coordinated cut-over process
14 should be implemented **when service is transferred from a BellSouth switch to**
15 **a Supra switch. Alternatively, the language agreed to by BellSouth and**
16 **AT&T, and approved by us in Order No. PSC-01-2357-FOF-TP, in**
17 **resolution of this issue, should be incorporated.**
18

19 (Emphasis Added - Supra Exhibit # DAN-4 – Order PSC02-0413-FOF-TP, Issue R. Coordinated
20 Cut-Over Process pages 113-114.).
21

22 The Current Agreement clearly anticipated the work activities would and should take
23 place, yet no effort was ever made, under the former regulatory rules and framework, to establish
24 a rate for such activities. Under such conditions the Current Agreement states that the parties are
25 to bear their own costs of complying with their respective contractual obligations. The fact that
26 the TRO has potentially given BellSouth a different view of a future without UNE-P should not
27 now cause new rates to be established where none were previously contemplated.

28 Furthermore the terms of the Current Agreement, General Terms and Conditions state
29 that the parties shall bear their own costs of complying with their obligations under the Current
30 Agreement, absent specific rates. It is undisputed that there are **no** rates for UNE-P to UNE-L
31 conversions in the Current Agreement or in the, either stemming from the FPSC’s orders in
32 Docket 990649-TP, or the Current Agreement between the parties.
33

1 **Q. IN THE ALTERNATIVE, SHOULD THIS COMMISSION RULE AGAINST**
2 **SUPRA ON THE CONTRACTUAL ISSUE, SHOULD A NEW NONRECURRING**
3 **RATE BE CREATED THAT APPLIES FOR A HOT-CUT FROM UNE-P TO**
4 **UNE-L, WHERE THE LINES BEING CONVERTED ARE SERVED BY**
5 **COPPER, UDLC OR IDLC?**

6 A. Yes. A plain reading of the Current Agreement states that the parties shall bear their own
7 costs of complying with their obligations under the agreement, absent specific rates. Should the
8 Commission rule against Supra regarding its contractual interpretation, than the Commission
9 should set a new, reasonable rate for a hot cut wherein the line involved is served via copper or
10 UDLC (i.e. non-IDLC lines), as well as a new, reasonable rate for a hot cut wherein the line
11 involved is served via IDLC.

12
13 **Q. IN A PURE ANALYSIS – WHAT IS A HOT-CUT?**

14 A. It is quite simply, exactly what BellSouth witnesses testified that it is during testimony in
15 Docket 03-0381TP. That is:

16 A hot cut, simply defined, is moving a jumper from one location to another. The
17 hot cut itself involves basic network functions and skills that are used repeatedly
18 in BellSouth's Network every day. The extensive number of customers being
19 served in Florida by a combination of a BellSouth loop and a CLEC switch
20 demonstrates that BellSouth has a hot cut process that works.

21
22 (Supra Exhibit # DAN-23 Direct Testimony of Kenneth Ainsworth in Docket 030851-TP
23 at page 3)
24

1 The hot cut case is simple because it involves a process that has been around for
2 100 years – moving a jumper from one location to another. BellSouth can do it,
3 AT&T can do it, and MCI can do it.²⁹
4

5 A hot cut is no less, but most importantly by BellSouth's sworn testimony, it is no more, either.
6

7 **Q. IS THIS AN OVERSIMPLIFICATION OF THE ACTUAL BELLSOUTH**
8 **PROCESS?**

9 **A.** Perhaps, but if so the confusion is caused by BellSouth in pursuing the mutually
10 exclusive goals of TRO simplicity, and achieving a maximum rate in this Docket. On the one
11 hand, BellSouth asserts that each and every one of the steps costed in the A.1.1 and A.1.2 NRC
12 cost study³⁰ are actually performed and properly costed before this commission **even though the**
13 **exact process was developed and revised much later.** All told, this cost study accumulates
14 the **thirty four (34)** individual work activities, performed by **nine (9)** different paygrades, in
15 **seven (7)** separate departments. BellSouth now claims that such is a true and accurate
16 assessment of its work activity in this docket where BellSouth is seeking the maximum possible
17 rate. Yet, in the TRO proceeding, where the burden of proof is unequivocally on BellSouth, the
18 hot-cut is defined by just **five (5)** work activity steps performed by three (3) departments.
19

20 **Q. IGNORING THE CONTESTED TERMS OF THE CURRENT AGREEMENT,**
21 **WOULD A HOT-CUT CONVERSION FROM UNE-P TO UNE-L DEVELOPED**
22 **IN THIS PROCEEDING DIFFER FROM A TRO HOT-CUT?**

²⁹ See Direct Testimony of BellSouth's John A. Ruscilli in Docket No. 030851-TP, pg. 13, filed December 4, 2003.

³⁰ Indeed, BellSouth asserts that the August 16, 2000 cost study (Supra Exhibit # DAN-6, file FL-2w.xls) is the appropriate cost study (even though it does **not** reflect FPSC ordered adjustments which lowed BellSouth's \$71+ estimate to the \$49.57 rate we have today for a new A.1.1 loop.

A. It should not, either in method or cost. Both would have to be developed at TELRIC cost, plus a reasonable profit, based on the various interpretations of CFR §51.505 and its subsections. The process would have to avoid unnecessary disconnections whose sole purpose would be to raise the costs to Supra. In *AT&T Corporation v. Iowa Utilities Board*, 525 U.S. 366, 394 (1999), the Supreme Court ruled that the ILEC could not mandate provisioning which effected disconnection of elements unnecessarily raising the cost to new entrants:

Rule 315(b) forbids an incumbent to separate already-combined network elements before leasing them to a competitor. As they did in the Court of Appeals, the incumbent objects to the effect of this rule when it is combined with others before us today. TELRIC allows an entrant to lease network elements based on forward-looking costs, Rule 319 subjects virtually all network elements to the unbundling requirement, and the all-elements rule allows requesting carriers to rely on the incumbents network in providing service. When Rule 315(b) is added to these, a competitor can lease a complete, preassembled network at (allegedly very low) cost-based rates... The reality is that §251(c)(3) is ambiguous on whether leased network elements may or must be separated, and the rule the Commission has prescribed is entirely rational, finding its basis in §251(c)(3) nondiscrimination requirement. As the Commission explains, it is aimed at preventing incumbent LECs from “disconnect[ing] connected elements, over the objection of the requesting carrier, not for any productive reason, but just to impose wasteful reconnection costs on new entrants.” Reply Brief for Federal Petitioners 23. It is true that Rule 315(b) could allow entrants access to an entire preassembled network. In the absence of Rule 315(b), however, incumbents could impose wasteful costs on even those carriers who requested less than the whole network. It is well within the bounds of the reasonable for the Commission to opt in favor of ensuring against an anticompetitive practice.

In furtherance of such, the FPSC previously refuted BellSouth's position finding:

Based on the evidence in the record, we conclude that BellSouth’s collocation proposal is unnecessary for the migration of an existing BellSouth customer. **We conclude further that BellSouth’s proposal to break apart loop and port combinations that are currently connected**, requiring AT&T or MCI to establish a collocation facility where the unbundled loop and the unbundled port would be recombined, **is in conflict with the terms of the parties’ agreements and the Act as interpreted by the Eighth Circuit. Iowa Utilities Bd. I, 120**

1 **F.3d at 814. Moreover, we find that BellSouth’s proposal does not address**
2 **the migration of an existing BellSouth end user. Hence, we reject it.**³¹

3
4 (Emphasis added).

5
6 The issue was never adjudicated in the last generic UNE cost setting docket, and
7 BellSouth allegedly generated, but failed to present its cost studies during the Florida TRO
8 hearings.³² However it is quite obvious that BellSouth seeks, via the TRO process, to escape its
9 obligation to offer UNE-P at TELRIC rates. In order for this to be considered, BellSouth’s TRO
10 hot-cut procedure, track record, and cost must be reviewed.

11 In the TRO proceeding³³, a hot-cut was a simple, straightforward, and quick process,
12 performed by a single group. In this Docket³⁴, it is complex, detailed, confusing, time-
13 consuming process, involving a number of departments, each with one (or often more) people
14 involved in a carefully orchestrated, time consuming and expensive process which does exactly
15 the same thing. Supra requests that the FPSC hold BellSouth responsible for a single hot-cut
16 process/cost in both the TRO proceeding,³⁵ and this proceeding.

17
18
19 **Q. PLEASE EXPLAIN BELLSOUTH’S INDIVIDUAL HOT CUT PROCESS.**
20

³¹ PSC-98-0810-FOF-TP at pg 66.

³² BellSouth was at that time defending itself on this matter both before the FCC and in Federal Court in Miami where this cost study that Mr. Ainsworth testified was “lower” than the A.1.1 and A.1.2 would have been detrimental to BellSouth’s ability to charge Supra the \$59.31 it currently seeks.

³³ Of course, in the TRO proceeding, BellSouth was seeking to relieve itself of the obligation to provide unbundled switching at TELRIC prices.

³⁴ Of course, in this Docket, BellSouth is seeking to keep the rate for performing hot cuts as high as possible.

³⁵ It is inevitable that this Commission will ultimately sit in judgment upon a TRO compliant hot-cut as the FCC is currently barred by statute from setting such a rate. That is the obligation of the state commission(s).

1 A. BellSouth has a seamless individual hot cut process that ensures minimal end-user
2 service outage. A flow chart of the individual hot cut process is attached to my testimony
3 as Exhibit KLA-1³⁶. BellSouth's process provides for the following:

- 4 1. Pre wiring and pre-testing of all wiring prior to the due date.
- 5 2. Verification of dialtone from the CLEC switch.
- 6 3. Verification of correct telephone number from the BellSouth and
7 CLEC switch using a capability referred to as Automatic Number
8 Announcement ("ANAC")
- 9 4. Monitoring of the line prior to actual wire transfer to ensure end-user
10 service is not interrupted
- 11 5. Notification to the CLEC that the transfer has completed.

12
13 (Supra Exhibit # DAN-23 Direct Testimony of Kenneth Ainsworth in Docket 030851-TP
14 at p. 10)

15
16 All told, 5 worksteps, (three of which are buried in the 15 minutes allocated for

17 INPUTS_CONNECT& TEST – Central Office Forces) from 3 departments. This tracks

18 favorably with the three (3) departments Mr. Ainsworth identifies in exhibit KLA-1 (*See Supra*

19 **Exhibit # DAN-31**): CWINS, Central Office (CO) Forces, and Outside Technician (I&M or

20 SSI&M) department. FL-2W.xls makes no mention whatsoever CWINS being involved in the

21 A.1.1 or A.1.2 NRC rate, and assumes³⁷ that **both** Central Office Forces **and** Outside Technician

22 (I&M or SSI&M) are involved in a UNE-L order³⁸.

23 However Mr. Ainsworth's hot cut **clearly** identifies that **one or the other, not both**

24 departments are to be involved. *See Supra Exhibit # DAN-31, Flowchart at the rightmost*

25 diamond³⁹. The effect of this substantial difference should be enough to **halve** the FPSC ordered

26 A.1.1 and A.1.2 NRC rates by itself.

³⁶ See Supra Exhibit # DAN-31 for Exhibit KLA-1 to Mr. Ainsworth's testimony.

³⁷ At least in the manner which BellSouth interprets the cost study.

³⁸ These two work activities are the **majority** of the \$49.57 rate!

³⁹ Labeled "On Due Date, Inside or Outside Cut?"

1 Clearly, Mr. Ainsworth's TRO hot cut **is not** contemplated by the workflow process, and
2 hence the rate, established for A.1.1 and A.1.2 based upon FL-2w.xls in Docket 990649-TP. The
3 workflows are just not the same, and there are even different departments involved.

4 **Q. WHAT DID THE FPSC ACTUALLY USE THE A.1.1 AND A.1.2 NRC COST**
5 **STUDY (FL-2W.XLS) FOR.?**

6 A. A staggering variety of disparate tasks. But, importantly, not a UNE-P to UNE-L
7 conversion. Since FL-2W.xls is the sole 2-wire cost study⁴⁰, it was used for all 2 wire rates,
8 except the retail/resale to UNE-P conversion rate. Thus it is used for:

- 9 • The construction of new SL1 and SL2 (A.1.1 and A.1.2) loops to locations which do
10 **not** already have it, and does not distinguish such from a retail to UNE-L conversion,
11 or a UNE-P to UNE-L conversion.⁴¹
- 12 • The provisioning of UNE-P service to a location that does not currently have service,
13 or warm-dialtone (i.e.. loop construction/provisioning NRC rates)
- 14 • ADSL loop construction/provisioning NRC rates
- 15 • HDSL loop construction./provisioning NRC rates
- 16 • ISDN BRI construction/provisioning NRC rates⁴².

17
18 To that disparate list, BellSouth now claims, without being able to cite to any record evidence,
19 and in contradiction of its own cost study expert that the following rates were also adjudicated
20 based upon this single cost study:

- 21 • Retail to UNE-L conversion
- 22 • Resale to UNE-L conversion
- 23 • UNE-P to UNE-L conversion.

24
25 This contention is simply unsupported by the record evidence. Furthermore, BellSouth has
26 refused to provide or even point to any record evidence in Docket 990649-TP, whether it be

⁴⁰ With the exception of the retail/resale to UNE-P conversion cost study which led to a non-recurring rate of 10.2 cents to re-use the retail/resale A1..1 loop for UNE-P.

⁴¹ Id., at p. 19.

⁴² While a cost study for this 2-wire circuit was not located, neither is the record evidence crystal clear that the FL-2W.xls study was used to set this rate. However unless and until shown otherwise, Supra believes this cost study was used for this rate as well.

1 BellSouth testimony, exhibits or any other type of document, which supports BellSouth's
2 contention, despite Supra's discovery requests seeking such.⁴³

3

4 **Q. DID BELLSOUTH EVER ACTUALLY PREPARE A HOT CUT COST STUDY?**

5 A. According to BellSouth's Mr. Ruscilli, it did.^{44, 45} Although BellSouth had proposed a
6 bulk UNE-P to UNE-L conversion process in Docket No. 030851-TP, and although BellSouth
7 claimed that it had prepared a cost study for such, no such cost study was ever filed with the
8 FPSC or provided to Supra or any other CLEC in Florida.^{46, 47, 48}

9 Instead Mr. Ruscilli asks us to make the following leaps of faith:

- 10 • A bulk hot cut cost study was prepared⁴⁹
- 11 • The A.1.1 and A.1.2 NRC costs are assumed to be from the August 16, 2000⁵⁰
- 12 rejected by this Commission in 990640-TP, as BellSouth simply does not agree with
- 13 what the FPSC previously ordered.
- 14 • That without the FPSC factors the bulk rate was "less than the original filed costs"⁵¹
- 15 (i.e. the August 16 2000 cost study at approx \$71), but "higher than the ordered loop
- 16 rates set by this Commission"⁵² (\$49.57). Obviously there are errors in the bulk
- 17 study at this point.
- 18 • That **the FPSC factors alone result a \$24 reduction** from BellSouth's claim. (i.e.
- 19 The August 16, 200 cost study minus October 2001 FPSC order.)

⁴³ See Supra's 1st Request for Production of Documents (seeking any testimonies, exhibits or any other documents in support of BellSouth's claims that the FPSC already set a UNE-P to UNE-L conversion rate), BellSouth's Response, Supra's Motion to Compel (Filed August 27, 2004), and BellSouth's Response to Supra's Motion to Compel (Filed September 2, 2004).

⁴⁴ Direct Testimony of John Ruscilli, Docket 030851-TP, pg 18.

⁴⁵ See Exhibit Supra Exhibit # DAN-24 030851-TP Direct surebuttal of John Ruscilli at page 17.

⁴⁶ See **Supra Exhibit # DAN-24**—Surebuttal Testimony of John A. Ruscilli, filed January 28, 2004, at p. 17.

⁴⁷ See Rebuttal Testimony Van De Water, Docket 030851-TP pages 27-28.

⁴⁸ See Rebuttal Testimony Gallagher, Docket 030851-TP, pg 14.

⁴⁹ Whether it addresses any of the 8 methods of conversion, or just the BellSouth practice of tearing down the old loop and building a new copper or UDLC loop (whether necessary or not), cannot be determined until BellSouth actually produces its cost study, produces discovery, and allows its author(s) to be deposed.

⁵⁰ i.e. the cost study BellSouth has provided in **this** Docket, and before the FCC, rather than the October 8, 2001 or subsequent studies reflecting the corrections and adjustments ordered by the FPSC.

⁵¹ See **Supra Exhibit # DAN-24**—Surebuttal Testimony of John A. Ruscilli, filed January 28, 2004, at p. 17.

⁵² *Id.*

- 1 • That when BellSouth then applied what it “understood”⁵³ were the Commission
2 factors, the batch hot cut rate fell “approximately 10% below the ordered loop
3 rate”⁵⁴, (even though that makes no sense.)
4 • As a result, Mr. Ruscilli asserts the **higher priced** A.1.1 NRC was used, instead of
5 the **lower priced** bulk hotcut study which BellSouth has heretofore kept buried in its
6 archives.
7

8
9 **Q. ACCORDING TO MR. AINSWORTH’S SWORN TESTIMONY IN THE TRO**
10 **SWITCHING DOCKET, 030851-TP, WHAT PORTIONS OF THE FL-2W.XLS**
11 **COST STUDY⁵⁵ ARE NOT LEGITIMATELY INCLUDED IN A HOT CUT NON-**
12 **RECURRING COST?**

13 A. There are numerous worksteps of the **thirty four (34)** individual work activities,
14 performed by **nine (9)** different paygrades, in **seven (7)** departments which are NOT included in
15 Mr. Ainsworth’s **five (5)** individual work activities, performed by **three (3)** departments. This
16 alone should prove Supra’s case, however to be specific and precise, the following issues which
17 **are contained** within the NRC rate set for A.1.1 and A.1.2 elements **are not contained** within
18 Mr. Ainsworth’s hot cut definition⁵⁶, or flowchart⁵⁷ :

⁵³ Despite Mr. Ruscilli’s testimony, the deposition of Ms. Caldwell in this Docket revealed that BellSouths premier cost expert is unable to positively reproduce the rates ordered by this Commission. As a result, Ms. Caldwell, in live testimony and discovery responses, testified that she is not certain exactly what the FPSC did in adjusting the final ordered rates, and that the October 8, 2001 Compliance filing does not duplicate the rate. With this uncertainty it **is essential** that this cost study be reviewed by the industry.

⁵⁴ See **Supra Exhibit # DAN-24**—Surebuttal Testimony of John A. Ruscilli, filed January 28, 2004, at p. 17.

⁵⁵ **Supra Exhibit # DAN-9**, the OCTOBER 8, 2001 Compliance filing study

⁵⁶ **Supra Exhibit # DAN-23** Direct Testimony of Kenneth Ainsworth in Docket 030851-TP at page 10

⁵⁷ See **Supra Exhibit # DAN-31** for Exhibit KLA-1 to Mr. Ainsworth’s testimony.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
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[REDACTED]

[REDACTED]

⁵⁹ As opposed to the October 8 cost study which documents the FPSC intent.
⁶⁰ i.e. this item addresses the portion of the August 16, 2000 cost study which BellSouth states they are seeking in this case, despite having the FPSC order these times removed. These times are all set to zero by the October 8, 2001 cost study per FPSC order.

[REDACTED]

⁶² A.1.2 (SL2) loops only.
⁶³ A.1.2 (SL2) loops only.

[REDACTED]

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[REDACTED]

19 None of these worktimes are addressed by Mr. Ainsworth’s testimony or his flowchart (KLA-1,
20 Supra Exhibit # DAN-31) and as such are improperly being sought by BellSouth in its
21 application of the full A.1.1 and A.1.2 NRC rates.

22

23 **Q. HOW DOES THE PROCESS THAT IS DEFINED BY THE CURRENT**
24 **INTERCONNECTION AGREEMENT MATCH UP WITH THE A.1.1 AND A.1.2**
25 **(FL-2W.XLS) COST STUDY?**

26 A. It does not. The flow chart that BellSouth created for the Current Agreement is as set
27 forth in Supra Exhibit # DAN-29 “Coordinated Hotcut” as presented by Bellsouth in the Supra –
28 BellSouth contract arbitration (Docket 001305-TP), which led to the current agreement language
29 in Attachment 2, Section 3.8. There are substantial discrepancies between the two processes.

30 Supra’s Cost study, discussed below, makes an informed effort to conform the 990649-
31 TP cost study to the real world process f UNE-P to UNE-L conversion.

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Q. WHY IS IT THAT THIS HOT-CUT PROCEDURE SPECIFIED BY THE CURRENT AGREEMENT IS NOT PROPERLY BILLED BY THE RATE STRUCTURE OF 990649-TP?

A. There are numerous reasons:

1. The hot-cut defined by the Current Agreement is significantly newer than the proceedings of 990649-TP. The substance of the A.1.1 and A.1.2 NRC cost study / elements were filed on August 16, 2000.
2. The hot cut defined by the Current Agreement was arrived at after testimony filed by AT&T and Supra led to modifications of BellSouth's original position, filed on September 1, 2000 in its petition for arbitration.
3. The final process was not arrived at prior to the Commission's Order of May 25, 2001⁶⁵.
4. At the time of the hearings on September 26-27, 2001, the remaining issue between Supra and the AT&T/BellSouth negotiated process concerned the CLEC notification process, post cut, to ensure that LNP number porting requests to NPAC could be accomplished timely.
5. The manual phone call procedure which was ultimately ordered by the FPSC has subsequently been significantly modified⁶⁶, at Supra's request, to a simpler and significantly less costly email notification.

⁶⁵ Supra Exhibit # DAN-1, Order PSC-01-1181-FOF-TP in Docket 990649-TP.

⁶⁶ **Replacing a highly costly, and error prone manual phone call with an automated email "go-ahead" notice.** BellSouth has yet to even acknowledge that such cost savings should be passed on to Supra, much less publicly acknowledge the magnitude of the worktimes reduction.

1 6. There are worksteps, and worktimes embedded in the FL-2w.xls cost study which
2 are avoided **for the vast majority of UNE-P to UNE-L conversions**, which are
3 charged on 100% of all orders, as they would be for new construction, but which
4 are totally avoided in the conversion of a working UNE-P line.

5 7. The cost study does not address loops served by IDLC at all.⁶⁷

6 **Q. WHAT SHOULD THE RATE BE FOR NON-IDLC LINES?**

7 A. The rate should not exceed \$5.27.

8
9 **Q. HOW DID SUPRA COME UP WITH THE \$5.27 RATE? WHAT PROCESS DID**
10 **SUPRA ESTABLISH FOR ITS COST STUDY AND THE HOT CUT PROCESS**
11 **ITSELF?**

12 A. Supra looked to the Generic UNE cost Docket 990649-TP as a starting point. In that
13 docket there is but one non-recurring cost study for 2-wire loops, be they analog, SL1⁶⁸, SL2⁶⁹,
14 Copper Loop (undesigned)⁷⁰, ADSL⁷¹, HDSL⁷², ISDN BRI, Copper Loop (long⁷³ short⁷⁴).
15 According to BellSouth, all 2-wire Non recurring rates come from this all-inclusive cost study.

16 Supra's approach was to modify the study to zero, or reduce worktimes for activities that
17 are avoided altogether during a UNE-P to UNE-L conversion.

67 See BellSouth's Response to Supra's First Request for Admissions (Nos. 1-20), No. 4(k), dated June 8,
2004.

68 A.1.1

69 A.1.2

70 A..13.12

71 With (A.6.1wLMU) or without (A.6.1woLMU) Loop Makeup ("LMU").

72 With (A.7.1wLMU) or without (A.7.1woLMU) Loop Makeup ("LMU").

73 With (A.13.7wLMU) or without (A.13.7woLMU) Loop Makeup ("LMU").

74 With (A.13.1wLMU) or without (A.13.1woLMU) Loop Makeup ("LMU").

1 Q. DOES BELLSOUTH SUPPORT THE METHODS EMPLOYED BY SUPRA'S
2 MODIFIED COST STUDY?

3 A. No. BellSouth witness Caldwell stated at her deposition that she would prefer that the
4 worktimes that were set to zero be restored, and instead the probability factor be reduced as
5 appropriate. Since the results will be identical, Supra has no problem with this change.
6

7 Q. WHAT SPECIFIC CHANGES WERE MADE TO THE BELLSOUTH COST
8 STUDY?

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17
18 [REDACTED]

⁷⁵ And the affidavit of Mr. Keith Milner in the Florida / Tennessee 271 proceeding.
⁷⁶ As opposed to time specific coordination which is the primary difference between SL1 and SL2 loops (and
the inclusion of test capability) – the cost of the manpower to coordinate.
⁷⁷ And hence the Supra Cost Study.
⁷⁸ **And possibly anti-competitive, since the UNEC center is exclusively for CLEC wholesale orders.**
⁷⁹ **This center, and all of its worktimes are not mentioned in Mr. Ainsworth's direct testimony in 030851-TP,
or Exhibit KLA-1 thereto.**

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 [REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 [REDACTED]
12 [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 [REDACTED]

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 [REDACTED]
28 [REDACTED]
29 [REDACTED]
30 [REDACTED]
31 [REDACTED]
32 [REDACTED]

33 [REDACTED]
34 [REDACTED]
35 [REDACTED]
36 [REDACTED]

⁸⁰ Again, whether this is done via setting either the worktime, or the probability, to zero does not matter to
Supra.
⁸¹ Which may still be too high.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] \$5.27 [REDACTED]

[REDACTED]

**Q. WHAT RATE DOES THE SUPRA COST STUDY INDICATE FOR A UNE-P TO
UNE-L CONVERSION WHERE THE UNE-P LOOP IS SERVED BY COPPER
OR UDLC?**

A. At a maximum, \$5.27 cents if Bellsouth is constrained by Mr. Ainsworth's testimony that the Central Office Forces take just 2:39 to actually perform a hot cut. To date BellSouth has not provided any substantive responses to Supra's discovery requests to document precisely what work activities the BellSouth claim of [REDACTED] consist of except a list of work activities⁸² which contain duplicative and avoided tasks⁸³ and a more recent list⁸⁴

⁸² But no times.

⁸³ Per Deposition of Daonne Caldwell.

⁸⁴ Created last February at my request but never sent to Supra until last weekend.

1 containing activities and times which amount to [REDACTED] BellSouth claims
2 for a SL1 Conversion.

3
4 **Q. ARE THERE ISSUES WHERE BELLSOUTH DOES NOT AGREE WITH THE**
5 **SUPRA COST STUDY.**

6 A. According to Ms. Caldwell, Bellsouth does not agree that the use of 2:39 (2.65 min) for
7 Central Office Forces to move the jumper is appropriate, in lieu of the 10/15 mins that Bellsouth
8 has requested. This despite Mr. Ainsworth's testimony In the TRO proceeding. Supra has
9 attempted to resolve this issue through 3 rounds of admissions and interrogatory, and a
10 deposition. The only substantive information that comes from BellSouth on this issue indicates
11 they now wish to recover [REDACTED] for a SL1 Loop instead of the [REDACTED] they previously
12 requested from this Commission. As the various motions to compel are ruled upon, I hope this
13 issue gets resolved.

14 Currently this issue, between the [REDACTED] BellSouth sought to recover, and the 2:39
15 that Mr. Ainsworth testified to represents a variance of [REDACTED] than potential could be added back
16 to Supra's \$5.27 cost study if BellSouth were to prevail with its [REDACTED] claim.

17
18 **Q. ARE THERE ANY OTHER ISSUES BETWEEN BELLSOUTH AND SUPRA**
19 **REGARDING SUPRA'S COST STUDY.**

20 A. A couple. First, Ms. Caldwell objects to the very concept of Supra taking a BellSouth
21 cost study, considering the actual processes involved, and then making the appropriate
22 corrections although this is the **very same process** that the FPSC and the industry used in
23 Docket 990649-TP. Because of that, this concern should be ignored.

1 BellSouth objected to the separation of copper/UDLC from IDLC, but since the
2 Commission ruled on the issues in this Docket, that concern should be moot at this point until the
3 final determination.

4 During Ms. Caldwell's deposition (which is not yet complete) there arose differences on
5 the worktimes for SAC, which amount to [REDACTED]

6 That said, the issues surrounding the CO Forces and the outside plant (I&M and SSI&M)
7 represent the lions share of the dispute between the parties regarding the ultimate rate.

8

9 **Q. IS \$5.27 / \$4.50 THE LOWEST RATE(S) THE COMMISSION SHOULD**
10 **CONSIDER?**

11 A. No. There are substantive issues surrounding the fact that Supra left in its cost study
12 certain work activities included In the A.1.1 / A.1.2 cost study (as described above) due to
13 BellSouths refusal to provide information on said activities, which were later revealed to be
14 absent from Mr. Ainsworth's TRO hot cut flowchart⁸⁵, or the Affidavit of Mr. Keith Milner in
15 the Florida / Tennessee 271 proceeding.

16 As such, Supra's cost study has been compromised by the current lack of discovery from
17 BellSouth, and a full and open cost proceeding could, should, and will arrive at a lower rate still.

18

19

20 **Q. DOES THIS FULLY ADDRESS THE ISSUE 3 COST ANALYSIS?**

21 No. A bulk conversion process is mandated by the FCC and quite essential when one considers
22 that Supra has upwards of 20,000 UNE-P lines in some offices. BellSouth has proposed a bulk

⁸⁵ See Supra Exhibit # DAN-31

1 conversion process, and even created a cost study. Once Supra has had a chance to review
2 BellSouth's cost study and proposed worktimes and processes, it will be in a better position to
3 state exactly what the appropriate costs should be for such.

4

5 **Q. WHAT DOES THE BELLSOUTH BULK HOT CUT RATE INCLUDE AND**
6 **WHAT WORK ACTIVITIES DOES IT INCLUDE?**

7 A. We don't know. All we know is that Bellsouth is willing to offer a 10% reduction, but
8 that is offered without any visibility into Bellsouths actual costs. BellSouth allegedly did
9 prepare such a cost study to Mr. Ruscilli.^{86, 87} but, no such cost study was ever filed with the
10 Commission or provided to Supra, or any other CLEC in Florida for review.^{88, 89, 90}

11 However, as I stated above, what we do know about BellSouth's Bulk hot cut leads us to
12 seriously question how valid such a study is. It is not just that the reduction is less than we
13 wanted or expected, although both are true. It is that the very minute details we have already
14 heard from Mr. Ruscilli leave some very serious unanswered questions:

- 15 • A bulk hot cut cost study was prepared⁹¹
- 16 • The A.1.1 and A.1.2 NRC costs are assumed to be from the August 16, 2000⁹²
- 17 rejected by this Commission in 990640-TP, as BellSouth simply does not agree with
- 18 what the FPSC previously ordered.
- 19 • That without the FPSC factors the bulk rate was "less than the original filed costs"⁹³
- 20 (i.e. the August 16 2000 cost study at approx \$71), but "higher than the ordered loop

⁸⁶ Direct Testimony of John Ruscilli, Docket 030851-TP, pg 18.

⁸⁷ See Exhibit Supra Exhibit # DAN-24 030851-TP Direct surebuttal of John Ruscilli at page 17.

⁸⁸ See **Supra Exhibit # DAN-24**—Surebuttal Testimony of John A. Ruscilli, filed January 28, 2004, at p. 17.

⁸⁹ See Rebuttal Testimony Van De Water, Docket 030851-TP pages 27-28.

⁹⁰ See Rebuttal Testimony Gallagher, Docket 030851-TP, pg 14.

⁹¹ Whether it addresses any of the 8 methods of conversion, or just the BellSouth practice of tearing down the old loop and building a new copper or UDLC loop (whether necessary or not), cannot be determined until BellSouth actually produces its cost study, produces discovery, and allows its author(s) to be deposed.

⁹² i.e. the cost study BellSouth has provided in this Docket, and before the FCC, rather than the October 8, 2001 or subsequent studies reflecting the corrections and adjustments ordered by the FPSC.

⁹³ See **Supra Exhibit # DAN-24**—Surebuttal Testimony of John A. Ruscilli, filed January 28, 2004, at p. 17.

1 rates set by this Commission”⁹⁴ (\$49.57). Obviously there are errors in the bulk
2 study at this point.

- 3 • That **the FPSC factors alone result a \$24 reduction** from BellSouth’s claim. (i.e.
4 The August 16, 200 cost study minus October 2001 FPSC order.)
- 5 • That when BellSouth then applied what it “understood”⁹⁵ were the Commission
6 factors, the batch hot cut rate fell “approximately 10% below the ordered loop
7 rate”⁹⁶, (even though that makes no sense.)
- 8 • As a result, Mr. Ruscilli asserts the **higher priced** A.1.1 NRC was used, instead of
9 the **lower priced** bulk hotcut study which BellSouth has heretofore kept buried in its
10 archives.
11

12 **Q. WHAT DOES THAT LEAD YOU TO CONCLUDE ABOUT A BULK HOT CUT**
13 **RATE FOR LOOPS SERVED BY COPPER OR UDLC?**

14 A. That the rate should be less than \$4.50 once fully adjudicated.
15
16

17 **Q. SHOULD THE COMMISSION ESTABLISH A NEW RATE FOR THE UNE-P TO**
18 **UNE-L HOTCUT, FOR UNE-P LOOPS SERVED BY COPPER OR UDLC,**
19 **WHAT RATE WILL THAT BE?**

20 A. Less than \$5.27 for an individual hot cut, and less than \$4.50 for a bulk hot cut.
21

22 **Q. THE A.1.1 / A.1.2 COST STUDY DESCRIBES JUST ONE METHOD – THE**
23 **CREATION OF A NEW COPPER OR UDLC LOOP FROM SCRATCH ASSUMING**
24 **THAT LITTLE OR NOTHING FROM THE UNE-P SERVICE IS RE-USED.**

⁹⁴ *Id.*

⁹⁵ Despite Mr. Ruscilli’s testimony, the deposition of Ms. Caldwell in this Docket revealed that BellSouths premier cost expert is unable to positively reproduce the rates ordered by this Commission. As a result, Ms. Caldwell, in live testimony and discovery responses, testified that she is not certain exactly what the FPSC did in adjusting the final ordered rates, and that the October 8, 2001 Compliance filing does not duplicate the rate. With this uncertainty it is essential that this cost study be reviewed by the industry.

⁹⁶ See **Supra Exhibit # DAN-24**—Surebittal Testimony of John A. Ruscilli, filed January 28, 2004, at p. 17.

1 **DOESN'T THIS CONTRADICT BELLSOUTH'S TRO TESTIMONY? IS IT EVEN**
2 **INDICATIVE OF WHAT BELLSOUTH ACTUALLY DOES?**

3 A. **Although BellSouth had proposed eight (8) different alternatives, with varying degrees of**
4 costs and efficiencies, for handling UNE-P to UNE-L conversions in which the loops are being
5 served with IDLC, to date, BellSouth has not submitted any cost studies regarding such
6 alternatives to the Commission or to Supra.⁹⁷

7 Of the various options identified in BellSouths IDLC conversion document (Supra
8 Exhibit # DAN-32 and Supra Exhibit # DAN-35, but not the earlier versions Supra Exhibit #
9 DAN-33Supra Exhibit # DAN-34) BellSouth is actively performing options 1 & 3 (move it to
10 copper, move it to UDLC) but ignoring all other methods.

11 Some of those other technology based methods already in regular Bellsouth service
12 would serve to **lower**, not raise the cost of IDLC conversion.

13
14
15 **Q. DOES IT AUTOMATICALLY FOLLOW THAT A CONVERSION OF UNE-P TO**
16 **UNE-L WITH THE UNE-P LOOP SERVED BY IDLC (OR INA) WILL**
17 **NECESSARY HAVE TO EXCEED THE NRC FOR A LOOP SERVED BY**
18 **COPPER OR UDLC?**

19 A. **Not at all. In fact, that only comes to pass if the loop is completely reconstructed from**
20 scratch, something we have already proven is an unnecessary violation of a Supreme Court order
21 against unnecessary disconnection of already connected elements.

⁹⁷ See Caldwell Depo, at pp. 34 and 117.

1 Yet it remains BellSouth's predominant method of conversion today.

2
3 **Q. WHY IS THAT WRONG?**

4 A. Because Class 5 switch ports are expensive. Too expensive to hardwire an IDLC box to
5 directly. The reason for this is the universe of customers who could be connected to a single
6 IDLC box, (and hence to its captive switch port(s)) is limited by the location of the remote
7 terminal where the IDLC is located and the F2 loop distribution pairs that run into it.

8 In the extreme case of a new development provisioned with 1024 loops, but only one
9 home has been built, if the IDLC were hardwired to the switch, 1024 switch ports would be
10 stranded, dedicated to that one development and unavailable for use for other customers.

11 BellSouth and most all other telephone companies go to great lengths, and expend capital
12 and manpower to prevent such inefficiency from happening on its most expensive equipment.
13 The Digital Crossconnect ("DCS" or "DACs")⁹⁸ was designed to solve such capacity / traffic
14 issues for both the network transport side of the switch and customer HiCapacity⁹⁹ line-side
15 circuits¹⁰⁰. Essentially, several partially full facilities (circuits) are brought in from the field, and
16 **re-combined** into a single, 100% utilized facility before being presented to the switch.

17 **For years** BellSouths has been installing its IDLC systems in this manner to save its
18 internal costs.

⁹⁸ Before the general advent of modern DCS systems, BellSouth implemented its INA system using older technology to multiplex partially used facilities onto full facilities to provide this type of line side concentration for DLC and HiCap circuits. Thus several partially filled facilities are combined and then presented to the switch using maximum efficiency of expensive switch ports

⁹⁹ i.e. DS1 and above.

¹⁰⁰ The same thing happens when a business customer buys less than the full 24 channels in a T1 facility. Without a DCS, the unused channels would tie up switch ports. With the DCS, the 12 channels from one customer T1 can be combined with 6 from two other customers, and a full 24 channel T1 is presented to the switch, from three partially full Ta's saving 48 switch ports in this example.

1

2 **Q. HOW DOES THAT APPLY TO THE PROBLEM AT HAND?**

3 A. Once a facility is routed into a DCS system, software controls where that call comes out
4 of the DCS. It also controls whether everything coming in on one facility is routed out on the
5 same or different facilities. All this is done under software command and control.

6 For years, Bellsouth has been deploying its IDLC (and other line units) using DCS and/or
7 INA to present highly efficient workloads to the switch. Since BellSouth is **already** remapping
8 these incoming packets to its switches today, it is fully capable of routing specific packets to
9 alternate DS1 facilities.

10 Those facilities can be owned by BellSouth or leased by Supra.

11 Once Supra pays¹⁰¹ for a dedicated facility from a BellSouth office to its switch, it is
12 patently simple to re-direct that particular call channel not to the BellSouth DS1, but to the Supra
13 DS1.

14 At least as far back as June 12, 1998 when this Commission issued order PSC-98-0810-
15 FOF-TP (AT&T / MCI arbitration #1), there has been a well recognized tenet that provisioning
16 that happens exclusively via flow through OSS commands has a distinctly identifiable cost on
17 the order of what the Commission had determined was appropriate for a PIC change.^{102, 103, 104, 105}

¹⁰¹ Using already in-place UNE elements and pricing that Supra identical to what Supra is already purchasing to interconnect its switch to BellSouth, transport vendors, LD providers etc.

¹⁰² PSC-98-0810-FOF-TP AT&T / MCI arbitration #1

¹⁰³ See Supra Exhibit # DAN-1 PSC-01-1181-FOF-TP the May 2001 Generic UNE order.

¹⁰⁴ See **Error! Reference source not found.** PSC-01-2051-FOF-TP the October 2001 Generic UNE order.

¹⁰⁵ See Supra Exhibit # DAN-4 PSC-02-02413-FOF-TP the Supra-BellSouth arbitration order.

1 Therefore it is eminently possible and conceivable that an individual IDLC conversion
2 would have a cost as low as the \$0.102 (ten point two cents) proscribed by this Commission for
3 such electronic changes as retail to UNE-P conversions¹⁰⁶

4
5 **Q. SHOULD THE COMMISSION ESTABLISH A NEW RATE FOR THE UNE-P TO**
6 **UNE-L HOTCUT, FOR UNE-P LOOPS SERVED BY IDLC, WHAT RATE WILL**
7 **THAT BE?**

8 A. The electronic OSS change charge of \$0.102, unless Bellsouth provides sufficient
9 evidence regarding its network limitations which might serve to raise this cost / rate.

10 **VI. The “COVAD” crossconnect is for construction of infrastructure and is being**
11 **improperly applied by BellSouth in a manner which allows BellSouth double**
12 **recovery of its cost(s).**

13
14 **Q. BELLSOUTH WITNESS CALDWELL ASSERTS THAT THE \$8.22 RESULTING**
15 **FROM THE COVAD ARBITRATION (DOCKET 001797-TP) IS SOMEHOW**
16 **BINDING UPON SUPRA IN ITS CONVERSION OF UNE-P TO UNE-L. WHAT DID**
17 **THE COMMISSION ACTUALLY ORDER?**

18 The first issue in Supra’s arbitration of its interconnection agreement with BellSouth in
19 Docket 001305-TP, surrounded whose interconnection agreement template would form the basis
20 of the agreement between the parties. One of Supra’s concerns in this issue was the basis of the
21 “take it or leave it” rates recorded in the BellSouth template. BellSouth won the template issue,

¹⁰⁶ See PSC-01-2051-FOF-TP, Appendix A, NRC rate for the P.1.1 of \$0.102 - (In light of Ms. Caldwell’s assertion this is the loop part only, this is the FPSC labeling used in the May and October orders, which was later changed to P.1.BIZRES identification in PSC-02-1311-FOF-TP).

1 but in so doing, the FPSC was quite precise in the subsequent issue regarding the source of the
2 rates – BellSouth’s template rates were thrown out in their entirety and replaced with the rates set
3 by this Commission in two dockets. However, the Covad arbitration Docket 001797-TP was **not**
4 ordered by this Commission, which was quite clear in its order stating “... in this **issue we**
5 **believe that the rates we established in Docket Nos. 990649-TP and 000649-TP are the**
6 **appropriate rates for (B) Network Elements, (C) Interconnection, (E) LNP/INP, (F) Billing**
7 **Records¹⁰⁷, and (G) Other¹⁰⁸. “¹⁰⁹ (Emphasis Added)** The Commission addressed Supra’s
8 issue that certain rates were missing from the BellSouth template by suggesting that Supra either
9 a) adopt rates from other carriers Interconnection agreements, or b) using Tariff rates. Neither of
10 these solutions are applicable in this case, as the necessary conversion rate, according to
11 BellSouth, is not in **any** CLEC agreement, nor is it in a tariff.

12
13 There is no legal basis for BellSouth’s assertion that the ADSL crossconnect charge established
14 in the Covad arbitration is a) binding upon Supra, b) not excluded by the FPSC orders in Supra
15 contract arbitration Docket 00-1305, c) legitimately applied to a UNE-L crossconnect charge in
16 any event, or d) intended to be used for any purpose other than the crossconnecting of a carriers
17 facility to a CLEC owned facility, line splitter, or other device within the collocation space by
18 ordering a crossconnect be placed between two blocks at the MDF. Supra orders this cross

¹⁰⁷ 02-0413 original footnote - Although there is no discussion as to specific billing records, we presume the items intended to be addressed are Access Daily Usage File (ADUF), Optional Daily Usage File (ODUF), and Enhanced Optional Daily Usage File, for which we have established rates in Docket No. 990649-TP.

¹⁰⁸ 02-0413 original footnote - Although there is no discussion as to a specific “other” network element(s) by either party, we presume the item intended to be addressed is line-sharing, for which we established rates in Docket No. 000649-TP.

¹⁰⁹ **Supra Exhibit # DAN-4 -- PSC-02-0413-FOF-TP at pg 71-72, (Emphasis Added)**

1 connect to “jumper” terminal on one of its MDF mounted blocks to another of its MDF mounted
2 blocks for the purpose of effecting collocation infrastructure, but Supra disputes that it is
3 properly charged on a UNE-L loop which **already includes recovery all of the same work**
4 **activities recovered by the Covad crossconnect cost study.**

5
6 **Q. CAN YOU EXPLAIN THIS IN MORE DETAIL?**

7 A. Yes. A detailed analysis of the COVAD crossconnect will show (1) that it conflicts with
8 the UNE-L NRC cost study, and (2) it lacks applicability to UNE-P to UNE-L hot cuts.

9

10 **Q. EXPLAIN THE RELEVANCE OF DOCKET 001797 TO THE SUPRA –**
11 **BELLSOUTH INTERCONNECTION AGREEMENT.**

12 A. I cannot. Based on the summaries of the arbitration of the current agreement, I doubt that
13 BellSouth will be able to do more than state that the generic template contained, in the
14 collocation section not the UNE section, a rate for a two wire crossconnect that is the same as the
15 rate awarded In the COVAD arbitration.

16 It is clear from the COVAD case, this is not a standard UNE element – otherwise it
17 would be addressed in the Generic UNE Docket 990649-TP, which it was not – but a special
18 purpose crossconnect unbundled at the request of COVAD. Therefore, all other UNE-L loops,
19 purchased by all other CLEC before¹¹⁰ would have been provisioned without this COVAD
20 crossconnect. The simple conclusion from this is that no other CLEC, not Supra, MCI, AT&T,

¹¹⁰ And likely since, at least until the Follensbee – Nilson discourse In the Spring of 2003

1 FDN or **any other voice** CLEC felt the need for this particular element to be unbundled for the
2 purpose of voice service.

3 **Q. WHO IS COVAD AND WHAT IS THEIR BUSINESS?**

4 A. Outside the Incumbent LECs, indeed outside the major RBOCS, COVAD is the countries
5 leading provider of wholesale DSL services which are based upon a wholly owned DSL
6 network.¹¹¹ Based upon information and Belief, COVAD is the major supplier to Earthlink,
7 and possibly AOL.

8
9 **Q. WHY DOES COVAD NEED AN UNBUNDLED CROSSCONNECT WHEN**
10 **EVERYONE ELSE CAN DO WITHOUT IT?**

11 A. That's pretty simple. In order to provision DSL service to a customer, regardless of who
12 is **already providing voice service** to the customer, COVAD must issue an order to:

- 13 1. Break the voice circuit from the loop to the switch at the MDF.
- 14 2. Provision a **crossconnect** from the MDF block where the loop is terminated to the
15 input port of the COVAD supplied (or leased) POTS Splitter¹¹²
- 16 3. Provision a **second crossconnect** from the output of the Pots splitter LoPass filter
17 back to the Class 5 switch.
- 18 4. Provision a **third crossconnect** from the output of the POTs splitter HiPass filter
19 to the COVAD supplied DSL DSLAM¹¹³.
- 20

21 While various network design issues will affect the exact configuration of above, and based upon
22 information and belief it is quite likely that COVAD itself does this in different ways in different

¹¹¹ As opposed to purchasing the Federally Tarrified DSL transport from the RBOC, connecting to a third party network and reselling the result.

¹¹² The POTS splitter (logically) is a three terminal device. Terminal 1 is input from the loop, which is fed to the input to a Hi-pass/LoPass filter in the POTS splitter. Terminal 2 is the output of the LoPass filter which is then fed to the Class 5 switch and contains the low frequency voice with the high Frequency DSL signal filtered out. Terminal three is the output of the HiPass filter which is fed to the DSL DSLAM with the low frequency voice signal filtered out.

¹¹³ The third crossconnect is optional if the network design permanently cables the POTs splitter to the DSLAM, or incorporates it into the DSLAM. However when the POTS splitter is leased from BellSouth it is most likely that three crossconnects will be purchased, provisioned and billed.

1 offices, the generic explanation above is representative of **why** COVAD needed the crossconnect
2 broken out as a separate rate element.

3

4 **Q. GIVEN THE SCENARIO ABOVE, IS BELLSOUTH THE ONLY VENDOR WHO**
5 **COULD PROVIDE SUCH A CROSSCONNECT?**

6 A. Not at all. Supra's interconnection provide the ability, and BellSouths account team has
7 encouraged Supra to use its Bellsouth certified contractors to place crossconnects on their behalf.
8 All such infrastructure crossconnect, and co-carrier crossconnects such as would be covered by
9 the "COVAD" crossconnect are placed by Supra's vendor WPC, and not subject to recurring or
10 non-recurring billing by Bellsouth out of the collocation Attachment (3). There is no
11 corresponding UNE crossconnect in the UNE (UNE-P/UNE-L) rate section in Attachment 2.

12

13 **Q. WHY IS THAT?**

14 A. There is no reason for one. The FCC UNE Remand Order (00-238) did not lead this
15 Commission to create a separate crossconnect UNE element as part of the UNE docket 990649-
16 TP. This was **not** an oversight by the Commission as the rate was built into the loop UNE In
17 each case. BellSouth is not allowed to bill a crossconnect with UNE-P service, which effects a
18 crossconnect and recovers the cost of same through the very same UNE-L loop cost, so its
19 inconceivable how BellSouth believe s that they will prevail on this issue.

20 And it is not an oversight due to DSL either. This Commission provides a rate for the
21 very same POTs splitter listed above in the MCI, and then AT&T And Supra agreements listed
22 as a rate for "line splitting" which is the monthly lease of a preinstalled BellSouth POTS splitter.

23 So BellSouth's argument is that

- 1 a) None of the major voice CLECs sought a crossconnect, only the largest DSL
2 (“DLEC”) did.
- 3 B) That the Commission, in their wisdom, did not address or include a discrete
4 crossconnect In the Generic UNE Docket, but in a collocation docket.
- 5 C) That the Commission, however, **did** address the cost of the POTS splitter and
6 ordered line splitting be leased to CLECs in 00649-TP.
- 7 d) That BellSouth places the POTs splitter In the UNE section of the Interconnection
8 agreement.
- 9 e) That BellSouth does not place the discrete crossconnect in the UNE section of the
10 agreement, but in the collocation section, where this commission ordered the rates
11 of 00649-TP, not 001797 be placed.

12

13 This is simply logic that is too tortured to be credible. Supra cannot fathom what other defense
14 BellSouth will bring forward – all they have said to date is “the Commission ordered us to do it.”

15 **Q. HOW DID THE CHARGE FOR THE “COVAD” CROSSCONNECT FIRST**
16 **APPEAR ON SUPRA’S BILLS FROM BELLSOUTH.**

17 A. This may be the most frustrating issue in this entire Docket. BellSouth blames this
18 charge on me! I think it goes without saying that I never suggested to BellSouth that this charge
19 be added to our bill, and now turn around and fight against it, yet that is the story being
20 circulated. It is completely false.

21

22 **Q. WHAT IS BELLSOUTH’S “STORY” OR POSITION ON THIS ISSUE?**

1 A. BellSouth has repeatedly made the claim that I, David Nilson **reminded** Bellsouth that
2 **they** should be billing the crossconnect fee **in addition** to the A.1.1 NRC (\$49.57). Nothing
3 could be further from the truth.

4 Around the time of the March 5, 2003 Intercompany meeting (where BellSouth first
5 stated its intention of charging Supra \$49.57), Supra and BellSouth were participating in
6 regularly scheduled meetings relative to resolving the billing disputes that Supra had brought in
7 Federal court. Mr. Follensbee and I were representing our respective companies. At the end of
8 most meetings, time was generally devoted to discussion of other pending issues. At this
9 particular telephone conference, I asked Mr. Follensbee for the financial, cost and other data
10 relative to the \$9.57 charge that he had taken as an action item at the March 5 meeting.¹¹⁴

11 Responding to a push-back from Mr. Follensbee regarding this information (which to
12 date has yet to be provided). I challenged Mr. Follensbee as to BellSouths authority was to
13 charge the full NRC for construction of a A.1.1 and A.1.2 loop for a simple hot cut. I further
14 stated that **the absolute most** that BellSouth could reasonably claim was to charge us for a
15 crossconnect, although **even that was too** much based upon the rate established and the work
16 actually performed. The logic of this was that the loop itself was not being ordered or
17 provisioned, and that while the crossconnect charge was embedded in the loop, having the
18 separate crossconnect charge in the collocation section (for collocation infrastructure) would
19 allow a more reasonable resolution to the missing UNE-P to UNE-L conversion rate than simply
20 applying the full A.1.1 and A.1.2 NRC rate.

¹¹⁴ See Supra Exhibit # DAN-12 page 6, para 5, action Item 13A and 13B.

1 Mr. Follensbee responded “Thank YOU, I forgot that we will add that to the bill”, and
2 since then no amount of discussion has swayed BellSouth’s course.

3 Now other than seeking every opportunity to inflate Supra’s bills¹¹⁵, I can find no other
4 justification for BellSouths actions in this regard. Simply put, how could the company that had
5 **already** provisioned over “**300,000** hotcuts between November 2000 and September 2003”¹¹⁶
6 suddenly be dependent upon David Nilson’s suggestion as to what to bill for them?

7
8 **Q. IS THERE ANY RELEVANCE TO THE COVAD DOCKET?**

9 A. No. It is a bald attempt to justify a BellSouth billing error, the genesis of which I
10 describe above. This entire issue should be rejected by the Commission, and BellSouth should
11 be ordered to immediately stop billing this charge in connection with a UNE-L loop.

12
13 **VII. Economic issues relating to the Cost of Hot Cuts**

14 **Q. Does BellSouth’s \$59 Hot Cut Charge Create an Economic Barrier that Would**
15 **Prevent Supra from Competing Effectively in the Mass Market, absent UNE-P?**

16
17 A. Yes. Bellsouth’s \$59 hot cut charge is an economic barrier that would prevent Supra
18 **from** competing effectively in the mass market in BellSouth’s monopoly territory, absent UNE-
19 P. When coupled with both the substantial costs for capital expenditures and the internal costs
20 Supra incurs to establish service for a new mass market customer, BellSouth’s \$59 non-recurring
21 charge for a hot cut becomes the straw that breaks the camel’s back. Additionally, customer

¹¹⁵ And those of other CLECs.

¹¹⁶ See Supra Exhibit # DAN-23 Direct Testimony of Kenneth Ainsworth

1 churn exacerbates the financial burden of BellSouth's excessive hot cut charge that Supra must
2 bear. BellSouth's \$59 non-recurring charge for a hot cut is particularly repugnant because it is
3 priced far above its actual cost and serves no purpose other than to create an insurmountable
4 financial burden for CLECs trying to compete in the mass market in BellSouth's monopoly
5 territory. In the final analysis, it is simply not cost effective for Supra or any CLEC to pay
6 BellSouth's current unjustified non-recurring charge for an individual hot-cut. Perhaps this is
7 why CLECs in general have not successfully engaged in a business strategy in the state of
8 Florida to serve mass market customers via their own switching facilities. The \$59 charge acts
9 as an economic barrier to facilities-based competition for the mass market.

10
11 In the FCC's recent Triennial Review Order released August 21, 2003, the FCC concluded that
12 the high cost of non-recurring charges for hot cuts constituted a significant economic barrier for
13 CLECs serving mass market customers such that CLECs were impaired from serving the mass
14 market. In paragraph 459, the FCC stated that,

15
16 "....We find on a national basis, that competing carriers are impaired without
17 access to unbundled local circuit switching for mass market customers. This
18 finding is based on evidence in our record regarding the economic and operational
19 barriers caused by the cut over process. These barriers include the associated
20 non-recurring costs,..." (emphasis added.)

21 Because the non-recurring charges for hot cuts were so high, the FCC ordered State
22 Commissions to find ways to reduce the ILEC's non-recurring charges for hot cuts in an effort to
23 eliminate that particular barrier to entry. In paragraph 460, the FCC stated that,

1 “...we ask state commissions to take specific actions designed to alleviate
2 impairment in markets over which they exercise jurisdiction. Because we find
3 that operational and economic factors associated with the current hot cut process
4 used to transfer a loop from one carrier’s switch to another’s serve as barriers to
5 competitive entry in the absence of unbundled switching, state commissions must,
6 within nine months from the effective date of this Order, approve and implement
7 a batch cut process that will render the hot cut process more efficient and reduce
8 per-line hot cut costs.” (Emphasis added.)
9

10 The FCC stated that the non-recurring charges for hot cuts are so high that they prohibit
11 facilities-based competition for mass market customers. In paragraph 465, the FCC stated,

12
13 “The record contains evidence that hot cuts frequently lead to provisioning delays
14 and service outages, and are often priced at rates that prohibit facilities-based
15 competition for the mass market.” (Emphasis added.)
16

17 AT&T echoed the FCC’s finding when it stated in its Reply Comments (at 321) in the TRO
18 proceeding, “the current charges for hot cuts in many states forecloses the use of UNE-L.”¹¹⁷
19

20 In defining what constitutes a “high” non-recurring charge for a hot cut, the FCC provided some
21 guidance by noting that a non-recurring hot cut charge of \$51 was high and was a “significant
22 barrier to entry.” In paragraph 470, the FCC stated,

23
24 “Although hot cut costs vary among incumbent LECs, we find on a national level
25 that that these costs contribute to a significant barrier to entry. WorldCom
26 submitted hot cut non-recurring costs (NRCs) for several states, with an average
27 non-recurring charge of approximately \$51...”
28

¹¹⁷ See www.biznessonline.com Feb. 14, 2003 *Ex Parte* Letter at 5 n.12

1 Thus, if the FCC has already determined that a \$51 non-recurring charge for a hot cut is too high
2 and constitutes an economic barrier to entry, then BellSouth's \$59 non-recurring charge is
3 clearly too high.

4

5 **Q. What effect does Customer Churn Have on the Economics?**

6

7 A. Customer churn exacerbates the problem of excessive non-recurring charges for hot cuts
8 to the point where it becomes uneconomic to serve the mass market. Supra estimates that
9 approximately 3% - 4% of its mass market customers churn each month, due in no small part to
10 BellSouth winback activities, legal or otherwise. Z-Tel estimates that at least four percent of its
11 lines turn over each month¹¹⁸ and WorldCom states that it loses 25% of its new local customers
12 within the first three months of service and a has a monthly churn rate of 4 – 6% after the first
13 six months of service.¹¹⁹ This churn is due, no doubt, to BellSouth's tremendous winback
14 activities, including significant cash back and other promotions – see PreferredPack Plan Tariff
15 and Supra's challenge of such in Docket 040353-TP -- which exceed \$135 in value to an
16 individual residential customer.

17 Supra's only hope to recover the high non-recurring hot cut charges that BellSouth charges is for
18 a local customer to stay with Supra for a number of years. However, if that customer leaves
19 before payback has been reached, then Supra incurs a loss for having served that local customer.
20 The FCC found that CLECs' customer churn rates exacerbated the economic barriers that
21 CLECs faced when serving the mass market.

¹¹⁸ See TRO proceeding, Z-Tel Comments at 31.

¹¹⁹ See TRO Proceeding WorldCom Comments.

1 “The evidence in the record demonstrates that customer churn exacerbates the operational
2 and economic barriers to serving mass market customers. For example, competitive
3 LECs incur non-recurring costs upon establishing an end user’s service, but generally
4 recover those costs over time, spreading them out over monthly customer bills; high
5 churn rates thus often deprive competitive carriers the opportunity fully to recover those
6 outlays. The record demonstrates that the current level of churn for carriers providing
7 service to the mass market has significant negative revenue effects on the ability of
8 competitive carriers to recover the high costs associated with manual hot cuts. (para. 471)

9
10 **Q. What other economic issues must be taken into consideration?**

11
12 **A.** Supra also incurs its own internal costs to manage and execute a hot cut. Supra service
13 representatives and outside plant personnel must be involved to execute a hot cut from Supra’s
14 end of the process. If BellSouth does not successfully execute the hot cut, then Supra personnel
15 must spend additional time resolving the hot cut problem. When these internal costs of
16 completing a hot cut are coupled with BellSouth’s high non-recurring charge for a hot cut, the
17 cost makes serving mass market customers, via Supra’s own facilities, unprofitable. In the
18 FCC’s recent TRO, other CLECs noted this same problem. Paragraph 470 of the TRO Order
19 states,

20
21 “In addition to the high non-recurring charges imposed by the incumbent LECs,
22 the evidence in the record shows that hot cuts also require significant internal
23 resources and expenditures which must be borne by the competitive LEC. Thus,
24 the record evidence indicates that the non-recurring costs associated with cutting
25 over large volumes of loops would likely be prohibitively expensive for a
26 competitive carrier seeking to provide service without the use of unbundled local
27 circuit switching.

28
29 **Q. What did the FCC state regarding BellSouth’s Cost Studies Purporting to Show**
30 **that Its Non-Recurring Charge For Hot Cuts Was Not An Economic Barrier To Entry**

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A. The FCC has already rejected BellSouth’s cost studies purporting to show that its non-recurring charge for hot cuts was not an economic barrier. In the recent TRO investigation, BellSouth submitted cost studies to the FCC alleging that it was possible for a CLEC to pay BellSouth’s high non-recurring charges for hot cuts and still be financially viable in the market. The FCC rejected BellSouth’s cost study for a number of reasons. (see para. 482 - 483).

The studies presented by SBC and BellSouth examine whether economic entry is possible, taking into consideration the revenue opportunities available and the typical costs of utilizing a UNE-L strategy. (para. 482)

We find that these studies fail to provide sufficient evidence to form a basis for making a national finding of no impairment, or a finding of impairment on the basis of non-hot cut factors alone. These studies either failed to adopt the proper framework for determining impairment, were insufficiently granular, or failed to provide sufficient support for the parameters they employed. . . . The incumbent LEC studies also used incorrect revenues, failing to use the likely revenues to be obtained from the typical customer. (para. 483.)

The real test of the validity of BellSouth’s cost study is whether BellSouth believes in the results of its own cost study and enters another ILEC’s market as a CLEC. The fact that BellSouth has refused to operate as a CLEC and enter markets outside of its traditional monopoly franchise territory is strong evidence that BellSouth realizes that entry costs such as non-recurring charges for hot cuts, are too high for a CLEC to profitably enter other markets. If economic barriers to entry were truly low, one would expect that BellSouth would capitalize on its core competency as a telephone company and expand its operations into Verizon’s and Sprint’s territory to compete as a CLEC. Instead, BellSouth seeks only to protect its historic monopoly franchise territory by maintaining high economic barriers to entry while alleging that its high nonrecurring

1 charges are not barriers to entry. It is not surprising that the FCC rejected BellSouth's cost
2 studies as an unrealistic portrayal of the real world.

3

4 **VII. Problems with the way BS is handling/has handled the process to date – loss of**
5 **Internet speed, etc.**

6

7 **Q. WHAT IS BELLSOUTH'S PERFORMANCE IN PROVISIONING LOOPS FOR**
8 **SUPRA'S CUSTOMERS**

9 A. I adopt the testimonies of Mark Neptune and David A. Nilson in Docket 030851-TP
10 (TRO Switching Docket) in this regard.

11

12 **Q. WHAT IS THE ISSUE OF INTERNET MODEM SPEED HAVE TO DO WITH**
13 **UNE-P TO UNE-L CONVERSIONS?**

14 A. Supra asks the Commission to consider BellSouth's use of pair-gain technologies,
15 including Digital Loop Carrier ("DLC") in its analysis of the loop UNE. BellSouth uses DLC to
16 concentrate additional loops onto existing feeder circuits in areas where they have "run out of
17 loops. Over time, this has become the predominant method of outside plant buildouts since
18 1995¹²⁰.

19

20 DLC (and other) digital loop technology synthesize the normal operation of a loop by digitizing
21 each telephone call and passing the digitized information over a single circuit consisting of DLC,

¹²⁰ See Supra Exhibit Supra Exhibit # DAN-27 which shows that the predominant construction, region wide, of feeder circuits is no longer copper, but fiber optic cable. DLC must be used In the remote terminal to support this method of buildout.

1 fiber backhaul (i.e. F2 transport), and the F1 subloop. The digitized signals are extracted by
2 corresponding central office based electronics and placed on separate two wire copper circuits
3 and fed to the Class 5 switch.

4

5 Ever since modem speeds increased above 28.8 BPS, it has become essential that the loop
6 serving a customer have, at most, a single analog to digital conversion. The compression
7 algorithms inherent in 56K modems will tolerate no more, and indeed require non-standard
8 implementations of the GR-303 to achieve full rated speed. GR-303 is the standard
9 communication protocol between Digital Loop Carrier (DLC) equipment and the Class 5 switch
10 that serves it. With a standard GR-303 interface a 56K modem can easily be limited to 28.8K or
11 less. With DAML added in such a loop communications can fall as low as 4.8K!

12 Given the ubiquitous presence of the Internet, digital modem, DSL and future Advanced
13 Services depend upon the loop characteristics, and particularly equal access to control loop
14 quality characteristics. While the BellSouth has the unbridled ability to "tune" a loop to satisfy a
15 given customers complaint, BellSouth currently only "guarantees" its loops to be capable of 9600
16 baud operation!¹²¹ Clearly BellSouth has a substantial advantage over Supra in this situation,
17 and the opportunity for anti-competitive "win-back" of a customer whose line speed dramatically
18 drops at conversion to Supra is all too difficult to ignore.

19

20 Typically the scenario is that a BellSouth customer converts to Supra. At some point in time,
21 either at conversion or sometime after, with no prior warning to Supra, the customer line is

¹²¹ Supra's current Interconnection agreement has extended that figure, but only to 14.4 Kbps!

1 converted to DAML (or run through multiple DLC systems). Immediately the customer begins
2 complaining about the drop in modem speed.

3

4 This final issue is most insidious to Supra as it represents hidden, undocumented, and often
5 denied violations of the Telecommunications Act¹²², all FCC orders in this regard¹²³, including
6 orders that have been sustained by the Supreme Court of the United States¹²⁴. **Further the**
7 commission needs to set new and higher standards for the digital transmission capabilities of the
8 loop that only ILECs are currently capable of fully enjoying.

9

10 **VIII. VII. Economic issues relating to the Cost of Hot Cuts**

11 **IX. Q. DOES BELLSOUTH'S \$59 HOT CUT CHARGE CREATE AN ECONOMIC**
12 **BARRIER THAT WOULD PREVENT SUPRA FROM COMPETING**
13 **EFFECTIVELY IN THE MASS MARKET, ABSENT UNE-P?**

14

15 A. Yes. Bellsouth's \$59 hot cut charge is an economic barrier that would prevent Supra
16 from competing effectively in the mass market in BellSouth's monopoly territory, absent UNE-
17 P. When coupled with both the substantial costs for capital expenditures and the internal costs
18 Supra incurs to establish service for a new mass market customer, BellSouth's \$59 non-recurring
19 charge for a hot cut becomes the straw that breaks the camel's back. Additionally, customer
20 churn exacerbates the financial burden of BellSouth's excessive hot cut charge that Supra must
21 bear. BellSouth's \$59 non-recurring charge for a hot cut is particularly repugnant because it is

¹²² Telecommunications Act of 1996, 47 U.S.C.A. § 251(c)(3).

¹²³ 47 C.F.R. § 51.315(b).

¹²⁴ *AT&T v. Iowa Utilities Bd.* 525 U.S. 366, 119 S.Ct 721 (Iowa Utilities Board II) at pg. 368, and pg. 393-395

1 priced far above its actual cost and serves no purpose other than to create an insurmountable
2 financial burden for CLECs trying to compete in the mass market in BellSouth's monopoly
3 territory. In the final analysis, it is simply not cost effective for Supra or any CLEC to pay
4 BellSouth's current unjustified non-recurring charge for an individual hot-cut. Perhaps this is
5 why CLECs in general have not successfully engaged in a business strategy in the state of
6 Florida to serve mass market customers via their own switching facilities. The \$59 charge acts
7 as an economic barrier to facilities-based competition for the mass market.

8

9 In the FCC's recent Triennial Review Order released August 21, 2003, the FCC concluded that
10 the high cost of non-recurring charges for hot cuts constituted a significant economic barrier for
11 CLECs serving mass market customers such that CLECs were impaired from serving the mass
12 market. In paragraph 459, the FCC stated that,

13

14 "....We find on a national basis, that competing carriers are impaired without
15 access to unbundled local circuit switching for mass market customers. This
16 finding is based on evidence in our record regarding the economic and operational
17 barriers caused by the cut over process. These barriers include the associated
18 non-recurring costs,..." (emphasis added.)

19 Because the non-recurring charges for hot cuts were so high, the FCC ordered State
20 Commissions to find ways to reduce the ILEC's non-recurring charges for hot cuts in an effort to
21 eliminate that particular barrier to entry. In paragraph 460, the FCC stated that,

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23 "...we ask state commissions to take specific actions designed to alleviate
24 impairment in markets over which they exercise jurisdiction. Because we find
25 that operational and economic factors associated with the current hot cut process
26 used to transfer a loop from one carrier's switch to another's serve as barriers to
27 competitive entry in the absence of unbundled switching, state commissions must,

1 within nine months from the effective date of this Order, approve and implement
2 a batch cut process that will render the hot cut process more efficient and reduce
3 per-line hot cut costs.” (Emphasis added.)
4

5 The FCC stated that the non-recurring charges for hot cuts are so high that they prohibit
6 facilities-based competition for mass market customers. In paragraph 465, the FCC stated,
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8 “The record contains evidence that hot cuts frequently lead to provisioning delays
9 and service outages, and are often priced at rates that prohibit facilities-based
10 competition for the mass market.” (Emphasis added.)
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12 AT&T echoed the FCC’s finding when it stated in its Reply Comments (at 321) in the TRO
13 proceeding, “the current charges for hot cuts in many states forecloses the use of UNE-L.”
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15 In defining what constitutes a “high” non-recurring charge for a hot cut, the FCC provided some
16 guidance by noting that a non-recurring hot cut charge of \$51 was high and was a “significant
17 barrier to entry.” In paragraph 470, the FCC stated,
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19 “Although hot cut costs vary among incumbent LECs, we find on a national level
20 that that these costs contribute to a significant barrier to entry. WorldCom
21 submitted hot cut non-recurring costs (NRCs) for several states, with an average
22 non-recurring charge of approximately \$51...”
23

24 Thus, if the FCC has already determined that a \$51 non-recurring charge for a hot cut is too high
25 and constitutes an economic barrier to entry, then BellSouth’s \$59 non-recurring charge is
26 clearly too high.
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28 **Q. What effect does Customer Churn Have on the Economics?**

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A. Customer churn exacerbates the problem of excessive non-recurring charges for hot cuts to the point where it becomes uneconomic to serve the mass market. Supra estimates that approximately 3% - 4% of its mass market customers churn each month, due in no small part to BellSouth winback activities, legal or otherwise. Z-Tel estimates that at least four percent of its lines turn over each month and WorldCom states that it loses 25% of its new local customers within the first three months of service and a has a monthly churn rate of 4 -- 6% after the first six months of service. This churn is due, no doubt, to BellSouth's tremendous winback activities, including significant cash back and other promotions -- see PreferredPack Plan Tariff and Supra's challenge of such in Docket 040353-TP -- which exceed \$135 in value to an individual residential customer.

Supra's only hope to recover the high non-recurring hot cut charges that BellSouth charges is for a local customer to stay with Supra for a number of years. However, if that customer leaves before payback has been reached, then Supra incurs a loss for having served that local customer. The FCC found that CLECs' customer churn rates exacerbated the economic barriers that CLECs faced when serving the mass market.

"The evidence in the record demonstrates that customer churn exacerbates the operational and economic barriers to serving mass market customers. For example, competitive LECs incur non-recurring costs upon establishing an end user's service, but generally recover those costs over time, spreading them out over monthly customer bills; high churn rates thus often deprive competitive carriers the opportunity fully to recover those outlays. The record demonstrates that the current level of churn for carriers providing service to the mass market has significant negative revenue effects on the ability of competitive carriers to recover the high costs associated with manual hot cuts. (para. 471)

Q. What other economic issues must be taken into consideration?

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A. Supra also incurs its own internal costs to manage and execute a hot cut. Supra service representatives and outside plant personnel must be involved to execute a hot cut from Supra’s end of the process. If BellSouth does not successfully execute the hot cut, then Supra personnel must spend additional time resolving the hot cut problem. When these internal costs of completing a hot cut are coupled with BellSouth’s high non-recurring charge for a hot cut, the cost makes serving mass market customers, via Supra’s own facilities, unprofitable. In the FCC’s recent TRO, other CLECs noted this same problem. Paragraph 470 of the TRO Order states,

“In addition to the high non-recurring charges imposed by the incumbent LECs, the evidence in the record shows that hot cuts also require significant internal resources and expenditures which must be borne by the competitive LEC. Thus, the record evidence indicates that the non-recurring costs associated with cutting over large volumes of loops would likely be prohibitively expensive for a competitive carrier seeking to provide service without the use of unbundled local circuit switching.

Q. What did the FCC state regarding BellSouth’s Cost Studies Purporting to Show that Its Non-Recurring Charge For Hot Cuts Was Not An Economic Barrier To Entry

A. The FCC has already rejected BellSouth’s cost studies purporting to show that its non-recurring charge for hot cuts was not an economic barrier. In the recent TRO investigation, BellSouth submitted cost studies to the FCC alleging that it was possible for a CLEC to pay BellSouth’s high non-recurring charges for hot cuts and still be financially viable in the market. The FCC rejected BellSouth’s cost study for a number of reasons. (see para. 482 - 483).

1

2 The studies presented by SBC and BellSouth examine whether economic entry is
3 possible, taking into consideration the revenue opportunities available and the
4 typical costs of utilizing a UNE-L strategy. (para. 482)

5 We find that these studies fail to provide sufficient evidence to form a basis for
6 making a national finding of no impairment, or a finding of impairment on the
7 basis of non-hot cut factors alone. These studies either failed to adopt the proper
8 framework for determining impairment, were insufficiently granular, or failed to
9 provide sufficient support for the parameters they employed. ... The incumbent
10 LEC studies also used incorrect revenues, failing to use the likely revenues to be
11 obtained from the typical customer. (para. 483.)

12

13 The real test of the validity of BellSouth's cost study is whether BellSouth believes in the results
14 of its own cost study and enters another ILEC's market as a CLEC. The fact that BellSouth has
15 refused to operate as a CLEC and enter markets outside of its traditional monopoly franchise
16 territory is strong evidence that BellSouth realizes that entry costs such as non-recurring charges
17 for hot cuts, are too high for a CLEC to profitably enter other markets. If economic barriers to
18 entry were truly low, one would expect that BellSouth would capitalize on its core competency
19 as a telephone company and expand its operations into Verizon's and Sprint's territory to
20 compete as a CLEC. Instead, BellSouth seeks only to protect its historic monopoly franchise
21 territory by maintaining high economic barriers to entry while alleging that its high nonrecurring
22 charges are not barriers to entry. It is not surprising that the FCC rejected BellSouth's cost
23 studies as an unrealistic portrayal of the real world.

24

25 Problems with the way BS is handling/has handled the process to date – loss of Internet speed,
26 etc.

27 **Q. Does this conclude your direct testimony?**

1 A. Yes it does.

2 **X. Exhibits**

- 1 **Supra Exhibit # DAN-1** Order PSC-01-1181-FOF-TP (Florida Public Service Commission)
2 Final Order in Florida Generic UNE Docket 990649-TP dated May 25, 2001. (electronic
3 copy only)
- 4 **Supra Exhibit # DAN-2** Order PSC-01-2051-FOF-TP (Florida Public Service Commission)
5 Order on Reconsideration in Florida Generic UNE Docket 990649-TP dated October 18,
6 2001. (electronic copy only)
- 7 **Supra Exhibit # DAN-3** Order PSC-02-1311-FOF-TP (Florida Public Service Commission)
8 Order Florida Generic UNE Docket 990649-TP dated September 2002. (electronic copy
9 only)
- 10 **Supra Exhibit # DAN-4** Order PSC-02-0413-FOF-TP (Florida Public Service Commission)
11 Order on Arbitration of Interconnection Agreement UNE Docket 001305-TP dated
12 3/26/2002. (electronic copy only)
- ** 13 **Supra Exhibit # DAN-5** \Supra – BellSouth Interconnection agreement dated July 15, 2002
14 (electronic copy only)
- 15 **Supra Exhibit # DAN-6** Confidential (CD2) - BellSouth August 16, 2000 cost study filing
16 in Docket 990649-TP. (electronic copy only)
- 17 **Supra Exhibit # DAN-7** Confidential (CD-3) – BellSouth October 8, 2001, Revision 1
18 Supplemental 120 Compliance filing Cost Study. (electronic copy only)
- 19 **Supra Exhibit # DAN-8** Confidential (CD4) – BellSouth cost study from the Covad
20 Arbitration, Docket 001797-TP. (electronic copy only)
- 21 **Supra Exhibit # DAN-9** Confidential – Supra A.1.1 and A.1.2 NRC cost study for loops
22 served by Copper / UDLC.

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October 1999

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1 **Supra Exhibit # DAN-10** **Confidential** – BellSouth FL-2w.xls A.1.1 and A.1.2 NRC cost
2 study from the October 8, 2001 120 day compliance filing. (Electronic and paper copy).

3 **Supra Exhibit # DAN-11** **Composite exhibit – the testimonies, Direct, Rebuttal and**
4 **surebuttal of Mark Neptune and David A. Nilson in Docket 030851-TP (TRO Switching**
5 **Docket).**

6 **Supra Exhibit # DAN-12** Composite Exhibit of Intercompany meeting minutes UNE-P to
7 UNE-L conversion Project(s).

8 A. \$49.57 UNE-L NRC rate – March 5, 2003 Intercompany meeting
9 minutes D. Smith to Supra. BellSouth promised response on UNE-L
10 NRC rate demand.

11 B. \$ 49.57 UNE-L NRC rate – 3/5/ 2003 Intercompany meeting #2 re:
12 implementation of UNE-P to UNE-L conversion project.

13 **Supra Exhibit # DAN-13** \$51.09 UNE-L NRC rate – 5/21/2003 Letter G. Follensbee to D.
14 Nilson re: Adequate assurance adjustment.

15 **Supra Exhibit # DAN-14** 5/29/2003 response D. Nilson to G. Follensbee re: Adequate
16 assurance adjustment, challenging both the recurring and non-recurring rates BellSouth seeks
17 to charge, and requesting promised support for BellSouth's position (which was to date,
18 never provided).

19 **Supra Exhibit # DAN-15** \$51.09 UNE-L NRC rate – June 5, 2003 response, G. Follensbee
20 to D. Nilson explaining how BellSouth aggregated the UNE-L recurring charges above
21 FPSC ordered rates, and making for the first time, the claim that the FPSC order in 990649-
22 TP was indeed inclusive of a UNE-P to UNE- conversion.

1 **Supra Exhibit # DAN-16** 6/16/2003 Supra request to the FCC for consideration of Supra's
2 complaint for inclusion in the Accelerated Docket.

3 **Supra Exhibit # DAN-17** 6/18/2003 email A. Starr to C. Savage, esq. of the FCC
4 enforcement division regarding BellSouth's failure to respond to the contractual arguments
5 raised in Supra's AD letter of 6/16/2003.

6 **Supra Exhibit # DAN-18** 6/18/2003 Supra supplement to the 6/16/2003 request for
7 consideration in response to the FCC 6/17/2003 request for supplemental information.

8 **Supra Exhibit # DAN-19** \$59.31 UNE-L NRC rate – 6/23/2003 - Emergency Motion of
9 BellSouth Telecommunications, Inc. for Interim Relief Regarding Obligation to Perform
10 UNE-P to UNE-L Conversions. BellSouth's motion for interim relief now includes an \$8.22
11 crossconnect charge for the first time, along with an admission that the contract does not
12 specify a process.

13 **Supra Exhibit # DAN-20** 07/14/2004 Letter L. Foshee (BST) to A. Starr (FCC) in response
14 to Supra's request that its complaint against BellSouth (re: UNE-p to UNE-L conversion
15 costs) be included in the Accelerated Docket.

16 **Supra Exhibit # DAN-21** 7-15-2003 United State Bankruptcy Court order in Case 02-41250-
17 BKC-RAM, granting a temporary award to BellSouth of \$59.31¹²⁵ after finding that the
18 interconnection agreement did "... specifically set a rate for UNE-P to UNE-L
19 conversions..."not provide for this rate, deferring judgment upon such a rate to the FCC or
20 the FPSC.

¹²⁵ Based upon BellSouth's belief that it would ultimately be receive authorization to charge that rate.

1 **Supra Exhibit # DAN-22** 7/23/2003 Letter C. Savage, esq. to A. Starr (FCC) in response to
2 BellSouth's position(s) before the FCC.

3 **Supra Exhibit # DAN-23** Direct Testimony of Kenneth Ainsworth filed December 4, 2003 in
4 Docket 030851-TP.

5 **Supra Exhibit # DAN-24** Surebuttal Testimony of John A. Ruscilli, filed January 28, 2004.
6 2003 in Docket 030851-TP.

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1 **Supra Exhibit # DAN-25** BellSouth Spreadsheet file (filename BellSouth Network
2 Statistics.xls) available from
3 http://www.BellSouth.com/investor/xls/ir_businessprofile_statistics.xls showing 65.8% of all
4 loop feeder routes contain fiber in the entire nine state region, and 70% of homes qualify for
5 DSL. BST Technology and Deployment Statistics ir_businessprofile_statistics.xls

6 **Supra Exhibit # DAN-26** Excerpt from the Testimony of Kenneth Ainsworth filed December
7 4, 2003 in Docket 030851-TP at pg. 21.

8 **Supra Exhibit # DAN-27** 9-16-2003 BellSouth Document “Fiber Loops”, author Peter Hill.
9 Presentation to the FPSC in Docket 030381-TP.

10 **Supra Exhibit # DAN-28** 5-5-2003 BellSouth Letter to AT&T (L. MacKenzie to D. Berger)
11 documenting IDLC penetration levels by state.

12 **Supra Exhibit # DAN-29** 4/18/00 Coordinated Hot Cut Process Flow (as defined by the
13 parties Interconnection agreement). Exhibit NDT-3 to Testimony in FPSC Docket 001305-
14 TP.

15 **Supra Exhibit # DAN-30** 8-15-2003 Supra UNE-P to UNE-L Conversion Process document.

16 **Supra Exhibit # DAN-31** BellSouth Provisioning Process Flow (Coordinated cuts), Exhibit
17 KLA-1 to the testimony of Kenneth Ainsworth in FPSC Docket 030851-TP.

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Supra Exhibit # DAN-32 3-5-2003 high level BellSouth IDLC Document identifying the 8 methods by which BellSouth agrees to convert IDLC served UNE-P lines to UNE-L

Supra Exhibit # DAN-33 3-26-03 BellSouth UNE-Port/Loop Combination (UNE-P) to UNE-Loop (UNE-L) Bulk Migration – CLEC Information Package, Version 1. BellSouth’s process documentation to CLECs for this conversion.

Supra Exhibit # DAN-34 2-18-04 BellSouth UNE-Port/Loop Combination (UNE-P) to UNE-Loop (UNE-L) Bulk Migration – CLEC Information Package, Version 2. BellSouth’s process documentation to CLECs for this conversion.

Supra Exhibit # DAN-35 7-26-04 BellSouth UNE-Port/Loop Combination (UNE-P) to UNE-Loop (UNE-L) Bulk Migration – CLEC Information Package, Version 3. BellSouth’s process documentation to CLECs for this conversion.

XI.

Q. END OF TESTIMONY

1 I, DAVID A. NILSON, am the Chief Technology Officer of Supra Telecommunications and
2 Information Systems Inc., and am authorized to make this Affidavit on behalf of said
3 corporation. The statements made in the foregoing comments are true of my own knowledge,
4 except as to those matters which are therein stated on information and belief, and as to those
5 matters I believe them to be true.

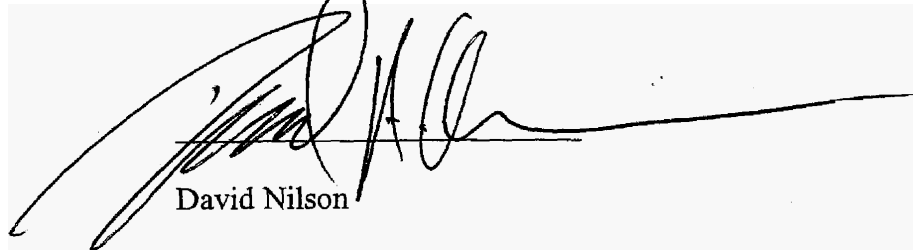
6

7 I declare under penalty of perjury that the foregoing is true and correct this 2nd day of
8 September, 2004.

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David Nilson

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STATE OF FLORIDA)

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) SS:

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COUNTY OF MIAMI-DADE)

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The execution of the foregoing instrument was acknowledged before me this 2nd day of

17

September, 2004, by David Nilson, who [X] is personally known to me or who [] produced

18

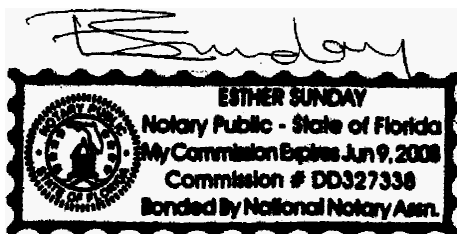
_____ as identification and who did take an oath.

19

20

My Commission Expires:

21



22

NOTARY PUBLIC

23

State of Florida at Large

24

Print Name: *Esther Sunday*

**Docket No. 040301-TP
David A. Nilson
EXHIBIT DAN – 6**

BellSouth August 16, 2000 Cost Study/Dkt. #. 990649-TP

CONFIDENTIAL

Docket No. 040301-TP
David A. Nilson
EXHIBIT DAN – 7

BellSouth October 8, 2001 Rev. 1; Supp. 120 Compliance
Filing Cost Study/Dkt. # 990649-TP

CONFIDENTIAL

Docket No. 040301-TP
David A. Nilson
EXHIBIT DAN – 8

BellSouth Cost Study from the Covad Arb. Dkt. # 001797-TP

CONFIDENTIAL

Docket No. 040301-TP
David A. Nilson
EXHIBIT DAN – 9

*Supra A.1.1 & A.1.2 NRC Cost Study for Copper/
UDLC loops*

CONFIDENTIAL

Docket No. 040301-TP
David A. Nilson
EXHIBIT DAN – 10

BellSouth FL-2w.xls A.1. & A.1.2 NRC Cost Study – Oct. 8,
2001 120 day Compliance Filing/
Dkt. # 990649-TP

CONFIDENTIAL

Date: March 12, 2003

Subject: Minutes of March 5, 2003 Meeting between BellSouth and Supra Telecom to discuss migration of Supra end users from UNE-P to UNE-L

By: Don Smith

On March 5, 2003, a meeting was held in Miami to allow BellSouth and Supra to discuss plans for Supra to migrate their end users from UNE-P to UNE-L arrangements. This project is to start upon turn up of two of Supra's switches located in Red Roads and Golden Glades offices. The attendance list is attached to these minutes.

The meeting was begun by Don Smith introducing the Agenda, which is also attached. Introductions were then done, and Shamron Wilder welcomed Supra. She then turned the meeting over to Carl Forbes who presented Supra's migration plans. Included in the presentation was an overall view of the network Supra plans to deploy, and the offices involved in each of three phases of the project.

Carl's presentation made the following points:

- Supra will initially use two switches deployed in Red Road and Golden Glades
- Supra will connect end users from 16 remotes located in 16 other offices.
- These lines will be connected to the two switches via FP&L FiberNet's fiber network
- Carl provided a detailed plan for each of three phases of the project. Phase 1A, involving 18 offices, is to begin immediately, as soon as the two switches are ready. Phase 1B is to involve six more offices, ending tentatively 4/30. Phase 2, is to involve 9 more offices, tentatively ending 6/30. Phase 3, is to involve 10 more offices, tentatively ending 7/30. These are construction dates not conversion dates. Conversion starts on these dates and it was stressed by Mark Neptune that they are aggressive and planning dates.
- Mark Neptune said that all ASR's for the South and Southeast offices are in now. Those for the North Florida offices will be issued by March 7.
- Rick Lagrange indicated that some ASR's for SO and SE are not yet clean enough to have orders issued, in particular, E911 trunks to two PSAP's are not yet issued. If lines from the areas served by these PSAP's are converted to the new switches, E911 calls will not compete to a PSAP.
- Rick Lagrange also reminded Supra that after receipt of a "clean" ASR, it takes 30 business days to get orders issued and trunks turned up, making the conversion of North Florida offices beginning on 4/1 highly doubtful.
- Greg Follensbee also noted that some of the offices do not yet have collocation space allocated to Supra. In the case of six offices, the collocation space offered to Supra was rejected by Supra. In a discussion between Mark Neptune and L Williams and Greg Follensbee, Supra suggested that that they had accepted the offices in August via letter to Mr. Follensbee. This was to be taken off line and

reviewed. In other cases, no application has yet been made. David Nilson asked if the original applications for collocation space in the six offices could be used rather than issuing new request. Greg stated that new applications would be required, noting that neither the equipment list nor the availability of the originally offered space could be guaranteed without that. **David Nilson said he would talk with Greg off line.**

- Supra will use BellSouth's network for SS7, DA and OS.
- Mark Neptune reported four recent events that have interrupted their service in the two switches being turned up. Those included SS7 link taken out of service in Golden Glades, Alhambra DS3 disconnected on Monday 3/3, and other cases of DS1's being disconnected. Rick Lagrange agreed to research these upon receipt of trouble ticket information. **Mark agreed to provide this information (3¹).**
- Levoyd Williams asked if certain circuits could be specially tagged to avoid accidental disruption to service. **Aldo agreed to discuss this off line (1).**

Levoyd Williams asked about situations where Supra orders multiple DS1's on a given order. On the due date, if one or more of them is not ready or Supra is not ready to test and accept them, Levoyd asked if those which are ready could be made available to Supra for use. Rick Lagrange said if Supra would like to cancel the unavailable circuits on the order, the remainder could be turned up and placed in service. Absent that, less that full acceptance would result in no billing on any of the circuits, which is why they are not made available for use. **Rick Lagrange agreed to look into this and provide feedback. (4).**

Shamron Wilder then began a presentation of the migration process available to Supra for moving their end users to UNE-L. During the presentation, the three main choices for Supra were presented: SL1 or SL2 loops, coordinated or non-coordinated orders, and bulk or non-bulk orders. Before the details of each choice were presented, BellSouth stated that it was their position that Supra should select coordinated, bulk conversions in all cases. The choices between SL1 and SL2 loops should be made on an individual, case by case basis, depending on the needs of each of their end users.

During the discussion and presentations, it was reiterated that the use of non-coordinated orders would result in completions being provided via a fax machine. If coordinated is chosen, the completion notices would come via a telephone call. This will enhance Supra's ability to provide completion information to NPAC quicker to allow for LNP completion notices to be released to all service providers. This is necessary to cause incoming calls for converted lines to be routed to the correct offices.

During a discussion over LNP activity, it was noted that NPAC has a maintenance period (probably monthly) and Supra will have to synchronize the activities with BST to not request due dates during this period. (Subsequent investigation suggests that this maintenance period is normally during early Sunday morning hours.)

¹ Bolded type indicates an action item taken from meeting. Number in parenthesis indicates the number on the action item list prepared and provided separately.

Bellsouth also stated normal business hours (which is 8-5) is the period when Supra might receive faxes for uncoordinated cutover. However, it was noted by BellSouth that cuts occurring in normal business hours could result in faxes being generated by systems after hours.

During the discussion of how completion notices would be distributed, Victor asked if they could get email notices as well as fax. Answer was no, it is fax for non-coordinated, phone call for coordinated. **(Later in the meeting, Brenda Smith agreed to take this as an issue and refer to internal teams as suggestion for future enhancement. (11))** Ken Ainsworth and Greg Follensbee pointed out that the phone call is one of the significant advantages of coordinated orders, along with the additional control office monitoring and coordination provided by CWINS.

Victor asked about difference between ordering loop with LNP and one without LNP. BellSouth explained that if the loop was associated with an existing working telephone number, which must be ported to a new switch, LNP would be necessary, and an associated order to NPAC would have to be issued by Supra. If, on the other hand, a loop is being ordered to establish a new telephone number on a Supra switch, no LNP is required as there is no existing telephone number to be ported. Victor further inquired if the UNE-L without number portability provided for in LENS documentation may be use instead of the bulk process since Supra handle its own LNP request and upload directly with the NPAC. Bellsouth answer was No. The reason is, if Supra is ordering UNE-L WITHOUT number portability, it would suggest either a new loop is being purchased to serve an end user who is going to use one of Supra's own tn's, or an order to change an existing Supra user's tn to a Supra "owned" tn. The bulk process is designed to convert existing UNE-P customers to UNE-L. As such, assuming that the end user wishes to keep his existing tn, number porting will have to take place through following the industry standard procedures. This standard requires that an LSR be sent to the current owner of the tn to request concurrence with the requested port. This is not part of UNE-L without number portability, so it is unsuited for this process.

Betty asked for explanation of notification to NPAC associated with FOC. BellSouth explained that a release notification would be sent to NPAC by BellSouth, but a final notification to NPAC by Supra is required after order completes so that a broadcast to all service providers to begin routing calls to the new switch can be made by NPAC. This notice must come from Supra, as the new service provider for the telephone number.

(A high level listing of the flow of LNP notices, prepared by BellSouth, is attached to these minutes for information.)

Supra asked for a copy of the fax notice they would receive. **Brenda Smith-Owens agreed to provide this (5).** (It was actually provided by the end of the meeting, but is tracked on the action item list for completeness.)

David Nilson asked about the service interruption time on a conversion. BellSouth explained that the actual loss of dialtone would be miniscule, since the line will have been pre-wired before the conversion is begun. Assuming Supra has provided dialtone on the CFA, the loss of dialtone will be only the time for the jumpers to the old switch to be removed and the jumpers to the new switch to be placed. After this is done, the end user will have dialtone and can begin making calls. However, receipt of inbound calls is

dependent on the notice to NPAC. This will be done by Supra after receiving notice of completion of the order. If, as is recommended by BellSouth, coordinated conversion is ordered by Supra, the notice will be a phone call, thus minimizing the time before such notice is sent. If non-coordinated is chosen by Supra, then the notice will come via a fax.

In case of a uncoordinated cutover process, Supra asked if they have technicians in the CO, could Bellsouth technicians advise them when orders were completed. Bellsouth said they might be able to, although the fax is system generated and is not available to them. It was noted that this should not be construed as an "official" notice of completion, as it is completely out of process. It should be noted that this manual notification will not be continued if it adds significant additional work activity to either party. Since the BellSouth activity will occur at BellSouth's frame, and Supra's technicians would be expected to be in their collocation space, this may be more difficult to orchestrate than it seems on the surface, but under the constraints listed, it could work out in some cases.

Betty Smith asked about the possibility of receipt of fax after hours when Supra might not be staffed to receive them. BellSouth stated that, unless otherwise arranged, all conversions should be worked in normal business hours. However, due to work load, this could extend somewhat past 5 pm. Then the fax would come even later. Without order coordination, there is no control over this activity. It is all automated. If a particular end user of Supra's requires a time specific conversion, this can be ordered, at an additional charge. Sandra Jones stressed that for certain critical accounts like hospitals and such, time specific order coordination would be preferred to insure that such accounts are provisioned accurately and timely.

There were a number of questions around the service order charge to be applied. Assuming bulk ordering is used, manual or mechanized, SOMECH would apply. If non-bulk is used via LENS, it will be necessary to fax the order in so that LNP can be processed. This will result in a SOMAN charge until LENS can process LNP on individual orders (capabilities exist for bulk orders as of 3/30). This capability will be available with release 13, currently planned for 6/22. At that time, individual bulk orders will be billed SOMECH if submitted mechanically. Prior to that time, other mechanized systems (TAG, EDI) are available for Supra's use.

David Nilson asked for clarification on "same product type" on page 19 of presentation, and Betty Smith asked for explanation of the USOC's shown as available for conversion.

Brenda Smith-Owens agreed to provide clarification on the same product type question. (6) The USOCS were explained as being only representative of class of service USOCS, and others, as well as line class USOCS, would be eligible for conversion. This is further explained on the CLEC package on the web.

Victor asked about an escalation list for the Project Manager should issue arise during the conversion process. **Sam Blackstock agreed to provide. (7)**

There was a significant amount of discussion around the process of ordering bulk migration. The time frames were somewhat confusing to Supra. Two time lines were discussed, manual (available through March 30) and mechanized (available after March 30). Under manual, two spreadsheets will be prepared by Supra. With mechanized, only one is required. In both cases, the Single Point of Contact will work to determine available due dates for orders, with a response due by a date certain, with interval

dependent on number of telephone number's on the request. (for a bulk order with 99 requests, the expected time for due date calculation is 7 business days). The minimum interval for the completion of orders, measured from the time the SPOC has determined the allowable due dates, is 14 business days for mechanized, 19 for manual. These intervals, and the related flows, were presented in a flow chart. **Sandra Jones agreed to prepare a time line which makes this clearer. (15). Dave Nilson expressed concern over the possibility of order completion from when Supra submit a bulk request taken as much as 26-30 days. (A recent Carrier Notification Letter has modified this. See SN91083640 posted March 26, 2003).**

If errors on the spreadsheet are detected in processing by BellSouth, the spreadsheet will be referred back to Supra. The fastest way to move forward would be for Supra to delete the items in error and send the remaining items back in immediately. The deleted items can be placed on a subsequent spreadsheet for later conversion. Victor further inquire if the resubmitted spread will be re-process or re-negotiated for a new due date. Bellsouth's position was that it will be submitted and re-negotiate for a new due date. (Subsequent to the meeting, the process has been modified to allow 3 days for return of the sheet without impacint due dates. See Carrier Notification Letter SN91083640 posted March 26, 2003). Victor also requested for any pre-ordering information and/or any clear instruction that may be use as a guide to ensure that cleans orders are submitted to Bellsouth. Ken Ainsworth from Bellsouth agreed to put some information together for Supra (this action item was left off the original action item spread sheet sent out earlier).

Brenda Smith-Owens then presented flow charts outlining the information flow in the various scenarios involved in the conversion process. A number of questions came up in this discussion, resulting in some additional action items on the list. Not all are captured in these minutes, as the presence of the question on the action item list is self explanatory.

Mark Neptune asked if they could include more than one NXX on a given bulk order. The answer is yes, provided they both work in the same switch.

David Nilson raised question about conversion of telephone number's which are not working in their native switch within BellSouth. He stated that Supra had observed a large number of such telephone number's among their existing end-users. Don Smith stated that this is normally referred to as Location Portability variety of LNP, and was neither ordered by FCC nor supported by BellSouth. However, through certain series of events, such a situation could arise. **David Nilson agreed to provide BellSouth with a list of such telephone number's (8B) and Brenda Smith-Owens agreed to research this (8A).**

There was a significant amount of discussion around the assignment of CFA's on Supra's bulk order as being a possible source of error or conflict. David Nilson asked if they could see a list of busy CFA's. BellSouth advised that there is a web based report now available. David Nilson asked if it is up and available now, and it is. **Shamron Wilder agreed to provide Supra with a web site for this information (9).** In the final analysis, it is Supra's responsibility to maintain the assignments for their CFA's.

Betty asked what could be done on non-coordinated conversions to minimize service interruption time between conversion and fax notification. The answer was that in general, the time should be small, but that without coordination, the fax will be Supra's

official notification of conversion. Some discussion was held about a suggestion by Mark Neptune for having the BellSouth technician in the office inform a Supra technician in the office of the completion of the orders so that the technician could begin testing the lines in smaller batches as the work progressed.

Levoyd Williams asked if there were, say, 100 telephone numbers on a bulk order, would we complete all 100 before reporting. In effect, the 100 telephone number's could be converted to a smaller number of orders, the exact number depending on how many of the telephone number's went with each earning number. And each of these would be completed as a separate order. The number of such orders and/or telephone number's to be completed before notice of completion is provided, is negotiable between BellSouth and Supra, under the heading of Successive Cuts. This says that a technician would convert an agreed upon number of lines before going over and entering the completion information. This method of gaining efficiency through the use of Successive Cuts is available for both coordinated and non-coordinated conversions, with the exception of orders requiring field dispatch. It is not available on such orders.

After all three presentations, Don Smith led a review of BellSouth's answers to questions and/or statements submitted by Supra. While there were numerous questions and clarifications, three that stand out are being noted.

Supra had asked if they could use OCN 206A or would they have to continue using 7011. Shamron responded that 206A was for Georgia, and since the conversions were in Florida, 7011 should be used. Supra responded that 206A was established for use in Florida. **Betty agreed to provide the necessary copies of the documentation to Shamron, and if such had been previously provided, to provide that information also. (14)** Victor noted that having OCN 206A for UNE-L provided service, and 7011 for UNE-P provided service, would make it much easier on Supra for record keeping and end user service handling.

A series of questions was raised around migration of UNE-L served customers after the conversion, both back to BellSouth and to other CLEC's. BellSouth (**Brenda Smith-Owens**) **agreed to insure that adequate procedures are documented on the web. (13A,B)**. In addition, David Nilson asked if, under the scenario of a migration back to BellSouth, would not only the procedures but the charges be a reversal of the procedures and charges for migration to Supra. **Greg Follensbee agreed to respond to the cost portion of this question (13A)**. It was noted, however, that since BellSouth technicians would be doing the central office work to disconnect and reconnect the loop from and to the proper switch, it would be highly unlikely that the charges would be reversed on a migration back to BellSouth.

Supra's statement, and clarification of, concerning expected volume of conversion daily was discussed. The original stated desired volume was 300 conversions per day per central office (max of 18 offices, although some have relatively small numbers of lines). This would result in 5400 conversions per day. Don Smith noted that this would result in fax notifications at the rate of over 11 per minute. Mark Neptune said that this would not be a problem for them however the fax notification process is a problem overall. While the use of a fax server would certainly allow for this kind of volume, Don noted the next

load issue would be the ability to complete NPAC orders at this rate. Mark also said that Supra had this under control. Mark suggested that this volume was their desire, and they recognized that it was a very aggressive load. **Supra agreed to prepare a spreadsheet of the actual volumes they might like to convert, from which offices, and send that to BellSouth in the week following the meeting (this item was left off the original action item list, but will be added as item 18, assigned to Betty. Spreadsheet is to go to Shamron Wilder and Sam Blackstock.)**

A very significant discussion was held near the end of the meeting, concerning conversion of lines assigned to Integrated Subscriber Loop Carriers. Supra had asked about this at the beginning of the meeting, and at this point, a specific office, Pembroke Pines, was used as an example. That office has a high level of lines served by IDLC, thus raising the question of how those loops will be provided if neither Universal, Stand Alone SLC nor copper loops are available to which the loops can be thrown from the IDLC. Mark Neptune proposed that BellSouth consider grooming Supra's end users to selected IDLC at the CEV or remote end and then those be thrown, at the DS1 level, to Supra to be integrated into their switch. **Ken Ainsworth noted that BellSouth had considered that as a possible solution, and agreed to investigate this. (2).** Don Smith raised the question of how we would handle loops in such an arrangement when a Supra end user migrated to another carrier. The short answer was that they would be migrated onto whatever facilities were appropriate. Follow on question about what would happen to facility on IDLC now terminated into Supra switch, answer was that Supra would soon fill it via churn. Final question of Supra's willingness to pay for vacant facility while working to fill it, first answer was no, but later comments by Mark indicated an acceptance of the need to work out something on this.

For lack of time, Supra's responses to a list of questions provided by BellSouth were not reviewed. Almost all of them were reviewed in the normal course of the meeting. However, one warrants mention and a request for further review, perhaps by Supra. BellSouth had asked if there were any issues around connectivity for their existing or new voiced mail platforms that would impact conversion. Supra responded that there was nothing that would impact conversions, but that they were changing the voice mail system to SS7 signaling as a separate project and had requested of Rick LaGrange for somebody to meet with Supra to plan the process. Mark Neptune also noted that there appears to be a lack of BST personnel familiar with the provisioning of VoiceMail in general and SMDI/SS#7 links. A concern that should be addressed by that project is that SS7 connectivity for voice mail platforms may not be in the tariff. This should be reviewed and any impacts on the conversion project should be noted.

See attached list of attendees and action items. Other material was provided during the meeting, and is available for reissue if needed.

Don Smith

Minutes
Let's Get Started Meeting
BellSouth and Supra Telecom
July 9, 2003
Miami, Fl

This meeting was held to facilitate Supra's migration of service from UNE-P to UNE-Loop in order to best utilize their switches. It was a follow up from a previous meeting held on March 5, 2003. (During the course of the meeting, other topics came up and were discussed. Those are reported on a separate page of these minutes, at the end.)

Participants were:

Supra Telecom: Mark Neptune, Carl Forbes, Levoyd Williams

BellSouth: Don Smith, Sandra Jones, Ken Ainsworth, Brenda Smith-Owens

Don Smith opened the meeting with a review of the Agenda (attached) The purpose of the meeting was stated to be the review of planning efforts by BellSouth and Supra that would culminate in the successful migration of many of Supra's end users to service from Supra's switches over UNE-Loops.

Ken Ainsworth stated that the planning that would be presented was based on material provided by Supra Telecom in the March 5 meeting, augmented with updated information on the number of UNE-P customers Supra had in service near the first of May, 2003. Supra had verbally provided information since the March 5 meeting that indicated they were exploring the addition of four switches in the near time frame, and that this might change their migration plans. Additionally, the quantities on the BellSouth presentation would of course need to be updated as these are ever changing quantities.

Ken handed out the planning documents that BellSouth had prepared. In those documents, there was a chart showing which offices would home on each of the two offices, Red Road and Golden Glades, as was understood from the material Supra had provided in March. For each office, BellSouth had a quantity of lines to be converted based on the number of lines from May's data. The quantities, if they were still accurate, would have resulted in a fill of approximately 27k lines in Red Road and 34k in Golden Glades.

Mark said that the material BellSouth provided was pretty close to their current plans, which had been modified significantly and were more realistic than the very aggressive plans presented in March. Mark and Carl also said that they wanted to include Perrine as an office subtending Red Road, which BellSouth had not included in the presentation.

Mark gave a high level objective of converting a total of approximately 29k customers over the next 90 days, mostly in the last 30 days. Mark said that Supra would not convert, at this time, more than 28,924 total lines, as this is currently a limit of their switches. Also, all of the lines to be ported must reside in lata 460. Initially they will convert approximately 20k in Red Road and Golden Glades (including Perrine as an office subtending Red Road).

Supra will also do one more round of test orders, testing all of the flow through in both their back office systems and also BellSouth bulk provisioning processes. These test orders will be done in the early part of the 90 day period, with the majority of the remaining lines being converted throughout the 90 day period.

Deleted: majority

Deleted: in the

Deleted: latter part of

Brenda reviewed the current migration activity:

- So far, 13 orders have been completed. Supra stated that they were over all pleased with the conversion results. Certain specific items were then discussed, and are noted below.
- Brenda discussed email notice of completion. Betty has not been getting emails. If she does not, the port completion will not be issued, and the end user, now working from the Supra switch, will not receive any inbound calls. Supra made some changes in their email system yesterday, changing IP addresses which may have caused the 7-8 e-mails to fail according to Mark Neptune. He will investigate adding a backup e-mail address.
- Supra indicated that the conversion orders were being done early in the day, starting at 7:30 in some cases. In at least one case, the work was completed very early but the completion was not entered into the system until the end of the work day. Brenda repeated that this was an excessive time period between work being completed and reported, and should not be the normal. However, as had been noted in the March meeting, on non-coordinated orders, there could always be some delay between the work being completed and the system generated notification. On coordinated conversions, this risk would be minimized.
- Brenda also noted that since Supra was placing non-coordinated orders, they would be worked in accordance with times available. Generally they would be worked first thing in the morning.
- During the completion of some of the orders, an issue of stenciling in Red Road came to light. This was related to Supra on Monday, July 7. During the meeting, Levoyd said that he had visited the office and the stenciling did include the cable designation and pair numbering, and he would like to meet with BellSouth Central Office supervisor to review it. [Subsequent to the meeting, this took place on July 10. The confusion had come from two things. One, the designations on the Supra CSA's which should agree with the assignment records Supra had asked BellSouth to build had been removed. Levoyd agreed to have this replaced. Additionally, since Supra will be using these terminations to test back into their switch, they have stenciled additional designations on these blocks. The access to blocks such as these, the stenciling, and the coordination of work by BellSouth and CLEC's will be reviewed and, if needed, additional or revised documentation will be provided to all field locations.]

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Brenda noted that in the process, if no dialtone is found on the Supra CSA, the order will be closed to a missed appointment. Notification of the status will be available to Supra in CSOTS.

Ken noted that since Supra was using SL1, non-coordinated orders, there could be a significant amount of time between the completion of the work and the notice of

completion through the systems. He also noted that there cannot be a lot of communications between our people in the field, as it will hamper the efficient conversion process.

Levoyd indicated that Supra planned to build the converting lines in their switch perhaps as long as two weeks before the orders were to cut, so there should be minimal physical activity taking place in the office at the time of the cut. Don asked if they would keep their switch up to date with any changes that worked through during the interim. Levoyd said that they would put a freeze in place on the lines, and would not accept any changes. Sandra asked if they were prepared to recognize any lines that disconnected. Levoyd said they would have to put procedures in place to handle these. If they are allowed to process on the bulk conversion orders, they would simply fall out in BellSouth, as the lines would have been disconnected, but they would remain provisioned in Supra's switches if this is not done.

Mark stated that they are investigating the purchase of a system by Toll Grade to do auto testing of orders in their switch, looking out to see the loop being tied down, which will be taken to indicate to them the completion of the order and their indication that the LNP port should be done. Ken noted that BellSouth is familiar with this system and does a good job if it is set up properly, recognizing that the loop can be provided in a variety of ways. However, if the Toll Grade system is not configured properly, erroneous tests could be received.

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Mark stated that Supra intends to send through 1000 test orders, using the bulk migration process, starting immediately. After this, they expect to complete 10k by August 30, and another 9k by September 30, for a total of 20k by that date.

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Carl indicated that currently their switch capacity is approximately 13k in Red Road and 28k in Golden Glades. There are other limiting factors, such as the 28,924 port/RTU limit and the amount of equipment currently in the various subtending offices. They have modified their plans to use SLC's in some of the subtending offices rather than SLC's and this might affect the number of lines that can be converted, and when.

Deleted: ASU's

Levoyd stated that Hialeah is now to home on Golden Glades rather than Red Road as had been presented in March. Carl agreed to send BellSouth (Don Smith) a revised planning document showing the offices which will home on each switch and the ramp up schedule which they would like to follow for the conversion.

Mark stated that Supra's plans, as had been presented in March, still would use coordinated conversions for business lines, but non-coordinated for non-business.

We discussed the best way to achieve the desired number of lines converted in each office. BellSouth recommended doing simultaneous conversions in a number of offices rather than doing all of the lines in one office and then moving to another. This would make best use of the space around the frames to convert the largest number of lines per day. As an example, if it was desired to convert 13k lines in Red Road and offices subtending that switch, it would be better to convert 2K or slightly more in each of six offices than to do 2k in two offices and 9k in one.

It was recognized that there are a number of factors that influence the detailed planning of lines per office:

- Supra's equipment in each office, i.e., how many can be converted and routed to the switches in Red Road or Golden Glades
- How many of the offices are in the 460 lata
- What is the capacity of the Red Road and Golden Glades switches
- How many lines can be converted in each of the subtending offices each day by BellSouth?

As the detailed planning continues, all of these will be considered. BellSouth repeated the suggestion that spreading the conversion over a larger number of subtending offices would allow more lines to be converted each day, and Supra acknowledged the reasoning behind this.

Supra noted that, for now, their growth orders, i.e. conversion of lines from other service providers and/or provisioning of new service, would be une-p, rather than une-loop, and they would later be converted if appropriate. At some point in the future, they will expect to be ordering une-loop for their growth.

Levoyd asked what plans BellSouth had to convert lines from Integrated Digital Loop Carrier, after the easily convertible lines are completely converted. Ken said that we have some other options, like doing Line and Station Transfers. When those are all exhausted, BellSouth would review their construction plans and needs. If planning indicates a need for alternate facility arrangements in the near future, such plans might be advanced to accommodate this. However, if no need is foreseen, Supra might have to make business decisions on whether or not to build such facilities.

Levoyd then asked what BellSouth does if Supra submits telephone numbers on the bulk ordering spreadsheet that are served by IDLC. Ken and Brenda stated that we would look at these in the beginning and see if we can do a field cut or something within the 24 days allotted for the interval. If it takes a cut or something that extends the 24 days, this would be noted on the information returned to Supra as part of the bulk process. If some require something like a cable cut, they would be noted as PF, and returned to Supra, again as part of the bulk process. Supra should then remove them from the bulk ordering spreadsheet and return it and we'd process the remaining orders.

From the material which BellSouth presented at the beginning of the meeting, it did not appear that IDLC would be a limiting factor in Supra's reaching their desired fill levels on their switches at this time.

Sandra did a recap of the back office work that Supra had indicated they need to verify.

- Make certain that Supra has a process in place to remove the PF'd tn's from the bulk process when returned to Supra. (this might also require any pre-conversion work in the switches to be backed out)
- Establish process to handle orders that are returned by BellSouth as MA, and not cut due to things like lack of dialtone on the CSA's going to Supra's switches.
- Set up procedures to handle changes and/or disconnection of lines after they have been built in their switch in anticipation of a forthcoming conversion. As an example, if a tn which has been included in a bulk order decides to move, Supra's

change order would clarify back. Supra will then have to cancel the pending conversion order, reissue the LSR asking for the change, and then resend the unep to unep-loop request, perhaps on a subsequent bulk order.

In concluding the meeting, it was thought that both companies are well equipped to move forward in a timely manner to achieve the desired loading of the two switches Supra has deployed.

**Agenda for “Let’s Get Started” Meeting
July 9, 2003**

- **BellSouth’s Recap of Information from March 5 Meeting**
 - Supra’s Architecture
 - Supra’s Phases
 - Migration Process
- **BellSouth’s Presentation of Suggested Migration Plan**
- **Review of Current Migration Activity**
 - Email
 - Dialtone
 - Stenciling
 - Test Assists
- **Discussion of Supra’s Possible Architectural Changes to Plans of March 5**
 - Possible additional switch deployments
 - Any changes to trunking, subtending offices
- **Where do we go from here?**
 - Possible timeline
 - Simultaneous or Sequential
- **Open Discussion of Any Additional Topics**

675 West Peachtree Street, NE
Room 38F56
Atlanta, Georgia 30375



Greg Follensbee
(404) 927-7198
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May 21, 2003

VIA E-MAIL AND FEDERAL EXPRESS

Mr. David Nilson
VP Technology
Supra Telecom
2620 SW 27th Avenue
Miami, FL 33133-3001

Docket No. 040301-TP
David A. Nilson
EXHIBIT DAN - 13
*5/21/2003 Letter, G. Follensbee to D. Nilson re:
Adequate assurance adjustment*

Re: Adjustment to Weekly Adequate Assurance Payment

Dear David:

Judge Mark's December 2, 2002 Order entitled Further Adequate Assurance Order (1) Providing Formula Adjustment Procedures; (2) Requiring Debtor to Provide Additional Financial Information; and (3) Preliminary Ruling on Procedures for Review of Post Petition Bills, provides for either party to request an adjustment of Supra's weekly adequate assurance formula. Specifically, either BellSouth or Supra may trigger the procedure for adjusting the adequate assurance formula by sending such a request to the other party, along with an explanation of the request and an example of the modified formula. The receiving party will then have 10 calendar days to respond. The parties are then to attempt to negotiate a resolution to the proposed formula modification.

Pursuant to Judge Mark's December 2, 2002 Order and the procedure described above, this letter constitutes BellSouth's request to modify the current formula to address the issue of Supra's ordering of UNE-Loops. The purpose of this amendment is to reflect Supra's ongoing efforts to turn up Supra's switches located in the Golden Glades and Red Roads central offices, and to convert Supra's customers from BellSouth switches to Supra switches. Such conversions will result in substantial up-front non-recurring charges associated with the conversions, as well as lower recurring charges (resulting from the change from UNE-P to UNE-Loop or UNE-L). BellSouth proposes to amend the formula to reflect both of these changes. The modification to the formula is as follows:

UNE-L Lines

- a. BellSouth proposes to add a new category labeled UNE-L lines. BST will provide as a part of its weekly line count report, the number of lines UNE-Loops provisioned through the week ending the previous Friday, separated between SL1 and SL2 loops.
- b. UNE-L lines will bear a recurring cost of \$16.18 for a SL1 loop and \$18.27 for a SL2 loop.
- c. The non-recurring charge for a SL1 Loop will be \$51.09. The non-recurring cost of a SL2 Loop will be \$137.27. This assumes Supra is not ordering non-coordinated service orders for the UNE-P or resale to UNE-L conversions. BellSouth reserves the right to increase these non-recurring rates by \$9.00 each, if Supra orders coordinated service orders for the conversions to UNE-L.
- d. The formula for the weekly adequate assurance payments will be changed to reflect the net number of UNE-L lines placed into service in the prior week, as we do for



resale and UNE-P. The count of UNE-L orders will be multiplied by the recurring costs identified in b above. This total will be added to the \$400,000 for resale and the UNE-P amount, divided by 30 and multiplied by 7, to get the weekly payment for recurring costs.

- e. To this number will be added the number of orders added for UNE-L in the weekly line count report, times the non-recurring costs identified in c above per line for the type of line ordered.
- f. The total of recurring and non-recurring weekly charges will be paid by Supra each Thursday, as it currently is required.

The following is an example of how the modified formula would work:

Line Count Numbers for Week Ending:	6/6/2003
Gains:	4000
Losses:	3000
Net gain:	1000
Total Of Lines:	275000
PAYMENT:	
10,400 DSL Lines	400,000.00
Remaining 255000 Lines @ \$25 each:	6,375,000.00
9000 SL1 Lines @ \$16.18 each	145,620.00
600 SL2 Lines @ \$18.27 each	10,962.00
Total Monthly	6,931,582.00
Daily (Monthly / 30)	231,052.73
Weekly (Daily * 7):	1,617,369.10
NRCs 9000 SL1 Lines @ \$51.09 each	459,810.00
600 SL2 Lines @ \$137.27 each	82,362.00
Total Payment for Week	2,159,954.11

BellSouth believes that the current formula understates the monthly charges for UNE-P and resale lines. We understand this issue will be addressed at the end of the true up hearing for October-January bills.



Attached to this letter is the calculation of the monthly recurring and the non-recurring rates used in the proposed modification to the formula. Please call at your earliest convenience so that we can arrange for our respective teams to begin talking about the various issues in the bill disputes.

Sincerely,

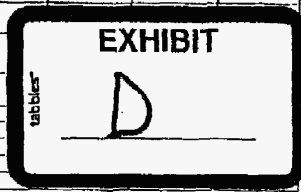
Greg Foilensbee
AVP-Regulatory and External Affairs

cc: E. Earl Edenfield, Jr., Esq.
Paul Steven Singerman, Esq.
Paul M. Rosenblatt, Esq.
Mary Jo Peed, Esq.

Attachment

UNBUNDLED NETWORK ELEMENTS - Florida

CATEGORY	RATE ELEMENTS	Interm	Zone	BCS	USOC	RATES (\$)				Attachment: 2				Exhibit: A		
						Rec	Nonrecurring		Nonrecurring Disconnect		Svc Order Submitted Elec per LSR	Svc Order Submitted Manually per LSR	Incremental Charge - Manual Svc Order vs. Electronic-1st Add'l	Incremental Charge - Manual Svc Order vs. Electronic-Disc 1st	Incremental Charge - Manual Svc Order vs. Electronic-Disc 1st	Incremental Charge - Manual Svc Order vs. Electronic-Disc Add'l
							First	Add'l	First	Add'l						
<p>The "Zone" shown in the sections for stand-alone loops or loops as part of a combination refers to Geographically Deaveraged UNE Zones. To view Geographically Deaveraged UNE Zone Designations by Central Office, refer to Internet Website: http://www.intrconnection.bellsouth.com/become_a_clec/html/intrconnection.htm</p>																
<p>OPERATIONAL SUPPORT SYSTEMS</p> <p>NOTE: (1) Electronic Service Order - CLEC should contact its preferred negotiator if it prefers the state specific electronic service ordering charges as ordered by the State Commissions. The electronic service ordering charge currently contained in this rate exhibit is the BellSouth regional electronic service ordering charge. CLEC may elect either the state specific Commission ordered rates for the electronic service ordering charges, or CLEC may elect the regional electronic service ordering charge.</p> <p>NOTE: (2) Any element that can be ordered electronically will be billed according to the SOMEC rate listed in this category. Please refer to BellSouth's Business Rules for Local Ordering (BBL-LO) to determine if a product can be ordered electronically. For those elements that cannot be ordered electronically at present per the BBL-LO, the listed SOMEC rate in this category reflects the charge that would be billed to a CLEC once electronic ordering capabilities come on-line for that element. Otherwise, the manual ordering charge, SOMAN, will be applied to a CLEC's bill when it submits an LSR to BellSouth.</p>																
	Manual Service Order Charge, per LSR, Disconnect Only (FL)												SOMAN	1.52	0.20	
	Electronic OSS Charge, per LSR, submitted via BST's OSS Interactive Interfaces (Regional)												SOMEC			
UNBUNDLED EXCHANGE ACCESS LOOP																
2-WIRE ANALOG VOICE GRADE LOOP																
	2-Wire Analog Voice Grade Loop - Service Level 1- Zone 1		1	UEANL	UEAL2	12.78	49.57	22.83	25.62	6.57					11.90	
	2-Wire Analog Voice Grade Loop - Service Level 1- Zone 2		2	UEANL	UEAL2	17.27	49.57	22.83	25.62	6.57					11.90	
	2-Wire Analog Voice Grade Loop - Service Level 1- Zone 3		3	UEANL	UEAL2	33.36	49.57	22.83	25.62	6.57					11.90	
	Loop Testing - Basic (st Half Hour)			UEANL	URET1		77.08								11.90	
	Loop Testing - Basic Additional Half Hour			UEANL	URET2		33.12								11.90	
	CLEC to CLEC Conversation Charge Without Outside Dispatch (U/L-SL1)			UEANL	UREWO		48.11	22.01							11.90	
	Engineering Information Document (Ei)			UEANL			12.28	12.28								
	Manual Order Coordination for U/L-SL1s (per loop)			UEANL	UEAMC		9.00	9.00								
	Order Coordination for Specified Conversation Time for U/L-SL1 (per LSR)			UEANL	OCOSL		23.02	23.02								
UNBUNDLED EXCHANGE ACCESS LOOP																
2-WIRE ANALOG VOICE GRADE LOOP																
	2 Wire Analog Voice Grade Loop-Service Level 1-Line Splitting-Zone 1		1	UEPSR UEPSB	UEALS	12.78	49.57	22.83	25.62	6.57					11.90	
	2 Wire Analog Voice Grade Loop-Service Level 1-Line Splitting-Zone 1		1	UEPSR UEPSB	UEABS	12.78	49.57	22.83	25.62	6.57					11.90	
	2 Wire Analog Voice Grade Loop- Service Level 1-Line Splitting-Zone 2		2	UEPSR UEPSB	UEALS	17.27	49.57	22.83	25.62	6.57					11.90	
	2 Wire Analog Voice Grade Loop- Service Level 1-Line Splitting-Zone 2		2	UEPSR UEPSB	UEABS	17.27	49.57	22.83	25.62	6.57					11.90	
	2 Wire Analog Voice Grade Loop-Service Level 1-Line Splitting-Zone 3		3	UEPSR UEPSB	UEALS	33.36	49.57	22.83	25.62	6.57					11.90	
	2 Wire Analog Voice Grade Loop-Service Level 1-Line Splitting-Zone 3		3	UEPSR UEPSB	UEABS	33.36	49.57	22.83	25.62	6.57					11.90	
UNBUNDLED EXCHANGE ACCESS LOOP																
2-WIRE ANALOG VOICE GRADE LOOP																
	2-Wire Analog Voice Grade Loop - Service Level 2 w/Loop or Ground Start Signaling - Zone 1		1	UEA	UEAL2	14.50	135.75	82.47	63.53	12.01					11.90	
	2-Wire Analog Voice Grade Loop - Service Level 2 w/Loop or Ground Start Signaling - Zone 2		2	UEA	UEAL2	19.57	135.75	82.47	63.53	12.01					11.90	
	2-Wire Analog Voice Grade Loop - Service Level 2 w/Loop or Ground Start Signaling - Zone 3		3	UEA	UEAL2	37.82	135.75	82.47	63.53	12.01					11.90	
	Order Coordination for Specified Conversation Time (per LSR)			UEA	GCOSL		23.02									
	2-Wire Analog Voice Grade Loop - Service Level 2 w/Reverse Battery Signaling - Zone 1		1	UEA	UEAR2	14.50	135.75	82.47	63.53	12.01					11.90	
	2-Wire Analog Voice Grade Loop - Service Level 2 w/Reverse Battery Signaling - Zone 2		2	UEA	UEAR2	19.57	135.75	82.47	63.53	12.01					11.90	
	2-Wire Analog Voice Grade Loop - Service Level 2 w/Reverse Battery Signaling - Zone 3		3	UEA	UEAR2	37.82	135.75	82.47	63.53	12.01					11.90	
	Order Coordination for Specified Conversation Time (per LSR)			UEA	OCOSL		23.02									
	CLEC to CLEC Conversation Charge without outside dispatch			UEA	UREWO		131.83	36.27							11.90	
4-WIRE ANALOG VOICE GRADE LOOP																
	4-Wire Analog Voice Grade Loop - Zone 1		1	UEA	UEAL4	23.02	167.86	115.15	67.08	15.56					11.90	
	4-Wire Analog Voice Grade Loop - Zone 2		2	UEA	UEAL4	31.07	167.86	115.15	67.08	15.56					11.90	



COLLOCATION - Florida										Attachment: 4		Exhibit: A									
CATEGORY	LATE ELEMENTS	Interim	Zone	BCS	USOC	RATES (\$)				Svc Order Submitted per LBR	Svc Order Submitted Manually per LBR	Incremental Charge - Manual Svc Order vs. Electronic-Add'l	Incremental Charge - Manual Svc Order vs. Electronic-Add'l	Incremental Charge - Manual Svc Order vs. Electronic-Disc 1st	Incremental Charge - Manual Svc Order vs. Electronic-Disc Add'l						
						Rec	Nonrecurring		Nonrecurring Disconnect							OSS RATES (\$)					
							First	Add'l	First							Add'l	SOMEC	SOMAN	SOMAN	SOMAN	SOMAN
PHYSICAL COLLOCATION																					
	Physical Collocation - Application Fee - Initial			CLO	PE1BA	2,597.00			1.01												
	Physical Collocation - Application Fee - Subsequent			CLO	PE1CA	2,236.00															
	Physical Collocation - Space Preparation - Firm Order Processing			CLO	PE1SJ	288.93															
	Physical Collocation - Space Preparation - C.O. Modification per square ft.			CLO	PE1SK	2.38															
	Physical Collocation - Space Preparation - Common Systems Modification per square ft. - Cageless			CLO	PE1SL	2.99															
	Physical Collocation - Space Preparation - Common Systems Modification per Cage			CLO	PE1SM	92.55															
	Physical Collocation - Cable Installation per Cable			CLO	PE1BD		1,750.00		45.16												
	Physical Collocation - Floor Space per Sq. Ft.			CLO	PE1PJ	7.86															
	Physical Collocation - Cable Support Structure			CLO	PE1PM	18.06															
	Physical Collocation - Power, per Fused Amp			CLO	PE1PL	7.80															
	Physical Collocation - Power Reduction Application Fee			CLO	PE1PR	399.43															
	Physical Collocation - 120V, Single Phase Standby Power Rate			CLO	PE1FB	5.56															
	Physical Collocation - 240V, Single Phase Standby Power Rate			CLO	PE1FD	11.14															
	Physical Collocation - 120V, Three Phase Standby Power Rate			CLO	PE1FE	10.70															
	Physical Collocation - 277V, Three Phase Standby Power Rate			CLO	PE1FG	38.57															
	Physical Collocation - 2-Wire Cross-Connects			UEANL,UEA,UON,UC	PE1F2	0.0276	6.22	7.22	5.74	4.58											
	Physical Collocation - 4-Wire Cross-Connects			CLO	PE1P4	0.0562	8.43	7.36	5.90	4.66											
	Physical Collocation - DS1 Cross-Connects			CLO,UEANL,UEQ,W	PE1P1	1.32	27.77	15.52	5.83	4.77											
	Physical Collocation - DS3 Cross-Connects			CLO	PE1P3	18.81	25.48	14.05	7.77	6.01											
	Physical Collocation - 2-Fiber Cross-Connect			CLO	PE1F2	3.34	41.94	30.52	13.91	11.18											
	Physical Collocation - 4-Fiber Cross-Connect			CLO	PE1F4	5.92	51.30	39.87	18.29	15.54											
	Physical Collocation - Welded Wire Cage - First 100 Sq. Ft.			CLO	PE1BW	189.45															
	Physical Collocation - Welded Wire Cage - Add'l 50 Sq. Ft.			CLO	PE1CW	18.68															
	Physical Collocation - Security System Per Central Office Per Assignable Sq. Ft.			CLO	PE1AY	0.0105															
	Physical Collocation - Security Access System - New Access Card Activation, per Card			CLO	PE1A1	0.0577	55.80														
	Physical Collocation - Security Access System - Administrative Change, adding Access Card, per Card			CLO	PE1AA		15.55														
	Physical Collocation - Security Access System - Replace Lost or Stolen Card, per Card			CLO	PE1AR		45.75														
	Physical Collocation - Security Access - Initial Key, per Key			CLO	PE1AK		26.30														
	Physical Collocation - Security Access - Key, Replace Lost or Stolen Key, per Key			CLO	PE1AL		26.30														
	Physical Collocation - Space Availability Report per premises			CLO	PE1SR		2,150.00														
	Collocation Cable Records - per request			CLO	PE1CR		1,525.00	890.22	267.08	267.08											
	Collocation Cable Records - VG/DS0 Cable, per cable record			CLO	PE1CD		656.50	656.50	379.78	267.08											
	Collocation Cable Records - VG/DS0 Cable, per each 100 pair			CLO	PE1CO		9.66	9.66	11.84	11.84											
	Collocation Cable Records - DS1, per T1RE			CLO	PE1C1		4.52	4.52	5.54	5.54											
	Collocation Cable Records - DS3, per T3RE			CLO	PE1C3		15.82	15.82	19.40	19.40											
	Collocation Cable Records - Fiber Cable, per 99 fiber records			CLO	PE1CB		169.67	169.67	154.89	154.89											
	Physical Collocation - Security Escort - Basic, Per Quarter Hour			CLO	PE1BQ		10.89														
	Physical Collocation - Security Escort - Overtime, Per Quarter Hour			CLO	PE1OQ		13.54														
	Physical Collocation - Security Escort - Premium, Per Quarter Hour			CLO	PE1PQ		18.40														

EXHIBIT
E



David A. Nilson
VP-Technology
2620 SW 27th Avenue
Miami, FL 33133-3001
Phone: (305) 476-4201
FAX: (305) 443-9516
Email dnilson@STIS.com

May 29, 2003

VIA E-MAIL, FACSIMILE 404-529-7839 AND FEDERAL EXPRESS

Mr. Greg Follensbee
BellSouth Interconnection Services
4300 BellSouth Center
675 West Peachtree Street, N.E.
Atlanta, GA 30375

Docket No. 040301-TP
David A. Nilson
EXHIBIT DAN - 14
*5/29/2003 Reply, D. Nilson to G. Follensbee re:
Adequate assurance adjustment*

Re: Adjustment to Adequate Assurance Payment.

Dear Greg:

This letter responds to your letter of May 21, 2003. Supra agrees that an adjustment to the current Adequate Assurance payment level and formula are needed. As discussed below, however, a properly modified formula will reflect the fact that the payment level needs to go down — substantially so — rather than up.

The March 5, 2003 Intercompany Meeting.

I am not certain what purpose the March 5, 2003 Intra-company meeting served, as like so many other ordering issues which have changed, based upon this recent letter you seem to have thrown out all the rates, and options presented on March 5 meeting in favor of higher rates across the board. We can find no justification for either the original rates, or the new ones.

At the meeting on March 5, 2003 between Bellsouth and Supra, Supra was told that for conversion of Supra UNE-P customers to UNE-L BellSouth expected to collect an unbelievably high non-recurring charge of \$49.57 for the first line on an order, and \$22.83 for additional lines on the order. BellSouth did not offer a formula that addressed the potential for some multiple line orders in its proposal, so Supra believes BellSouth know it has made it impossible for Supra to enjoy the multiline rate.

You and I had a discussion on BellSouth's entitlement to such a large rate. You represented that the FPSC had not ruled on an equivalent charge, BellSouth had never presented any cost studies to the Florida commission on this, and so you were adopting the Non-recurring rate for new construction of a 2 wire analog voice grade loop (UEANL) from the agreement (rate is \$49.57 in the un-amended agreement)¹. Coincidentally this is the highest non-recurring rate

¹ This rate was established in FPSC docket 990649-TP, order PSC-01-2051-FOF-TP (the "October" order) and (note continued)...

available for 2 wire voice grade loop. Yet BellSouth feels justified in selecting that rate from all others for what amounts to moving two wire jumpers from one terminal to another.

I responded that it was well established by Bellsouth testimony that the non recurring rate you reference is used whenever new service must be provisioned to a new home, etc. The simple fact is that since 1998 the FPSC has recognized that the non recurring cost for individual network elements is inappropriate to be simply added up². The FPSC has consistently ruled that non recurring rates which include duplicitous charges are inappropriate and has ordered BellSouth on numerous occasions to remove from duplicitous cost elements from the rates it charges in these cases.³

BellSouth has not done this in this case. Instead your letter raises the rate to \$51.09, a number we find documented nowhere in the interconnection agreement, or any relevant FPSC order.

I reminded you that your March 5 flow charts show LNP activities, but remember that by FCC rule, LNP costs are recovered equally from all telephone subscribers. I asked, for an SL1 loop what else, chargeable, remains other than crossconnect and LNP?

You promised to get back to me on this issue. I had not heard anything until your letter came **increasing** the NRE, with no further explanation.

The details of switching an existing Supra customer from UNE-P to UNE-L

You are correct in characterizing our ongoing effort as "convert[ing] Supra's customers from BellSouth switches to Supra's switches" We are currently buying a full suite of BellSouth UNEs, including BellSouth switching transport usage and associated back-office functions which we do not require for UNE-L. The purpose of our current effort is to stop buying that set of functions, and instead buy only UNE-L.

...(note continued)

apparently not amended by the 02-1311-FOF-TP order (the "September" order). For the A.1 loop type, but the A.6, A.7A.13, 2 wire copper loops were assigned recurring charges of \$8.30, \$7.22 and \$8.30 respectively, far less than what BellSouth seeks to charge by its letter.

² As you know, the FPSC has accepted the position advanced (under your direction) by AT&T in its 1998 arbitration that that the non-recurring cost for individual network elements is inappropriate to be simply added up a) for conversion of an in service line from one billing mode to another or b) the combination of two network elements. The FPSC banned the imposition of non-recurring rates which include such duplicative charges, and has ordered BellSouth on numerous occasions to remove such duplicative elements from the rates it charges in these cases. FPSC Order PSC-98-0810-FOF-TP and subsequent orders leading up to the October 1999 establishment (by the FPSC due to the parties inability to agree) of a rate of \$1.47 for retail to UNE-P conversion against the \$178 NRE (\$140 loop and \$38 port) that BellSouth was seeking to charge. These higher charges are the ones that apparently underlie the rates in your letter.

³ FPSC order PSC-98-0810-FOF-TP and subsequent orders leading up to the October 1999 establishment, (by the FPSC due to the parties inability to agree) of a rate of \$1.47 for retail to UNE-P conversion against the \$178 NRE (\$140 loop and \$38 port) that BellSouth was seeking to charge. These higher NRE charges are EXACTLY the same charges BellSouth seeks to collect in this case.

We both agree that the monthly recurring charges will be coming down; the question is, by how much? We currently pay "Adequate Assurance" based on a monthly rate of \$25.00 per UNE-P line and \$38.56 per resold line. Going forward we will pay the following rates (element numbers from Docket 990649-TP):

UNE LOOP TYPE	\$/MONTH	SOURCE ELEMENT PSC02-1311-FOF-TP
SL1 loop	\$10.69	(A.1.1)
SL2 2-wire Voice Grade	\$12.24	(A.1.2)
2-wire copper	\$8.30	(A.13.1wLMU)
2-wire ADSL compatible	\$8.30	(A.6.1wLMU)
2-wire HDSL	\$7.22	(A.7.1wLMU)

Table 1 -- UNE Loop rates from FPSCC Docket 990649-TP -- Sept 2002

These monthly recurring rates are between \$13 and \$18 per month lower than the current monthly recurring and usage rates for UNE-P services; the difference is even greater in the case of resold loops, \$26 -\$31. So, a substantial **downward** adjustment in Adequate Assurance payments is plainly in order.

A more realistic question is to ask what BellSouth is actually being called on to do, and what a fair price might be for that activity. Aside from internal BellSouth record keeping functions (for which it is not appropriate to charge Supra), what occurs in UNE-P to UNE-L conversion is that jumper wires are moved from the BellSouth switch terminals to Supra's switch terminals on the same frame (MDF). By no stretch of the imagination should this cost \$137 per loop, or \$51 per loop, as suggested in your letter.⁴ It probably shouldn't even cost \$1 per loop. Moreover, any LNP-related costs that might arise in connection with Supra's ceasing to buy BellSouth switching is properly covered by the LNP surcharges BellSouth assesses on **all** its retail and wholesale end users, per FCC rule. Including any such costs in charges to Supra would amount to double-recovery.²

Perhaps the source of BellSouth's confusion is identified in the second paragraph where you state that there will be "...substantial up-front non-recurring charges associated with the conversions...". Unfortunately, nowhere in your letter do you identify the provisions in our interconnection agreement that you believe entitles BellSouth to these "charges." In fact, as far as Supra can tell, there are no such provisions.

To the contrary, there **is** contract support for Supra's position. As you correctly note in your letter, Supra today buys enormous amounts of switching functionality from BellSouth, **but** is seeking to stop buying that functionality and, only buy UNE loops. Under our interconnection agreement, this transition is to occur without charge to Supra. Specifically, what is going on here is a termination by Supra of its purchase of UNE switching and related functionality **with no other change** to the currently operational telephone circuit. In the current agreement, Section 1.2 of the General Terms and Conditions states that such situations shall be handled in accordance with

⁴ Recall our discussion regarding BellSouth's entitlement to such a large rate at our March 5, 2003 meeting. You admitted that BellSouth had never presented any cost studies on this issue, so the FPSC could not rule on UNE-P to UNE-L conversion cost. You said that you were using the non-recurring rate for new construction of a 2 wire analog voice grade loop. As noted in the text, however, there is no basis in the contract for applying that rate to the circumstances of Supra's termination of the use of BellSouth's switching functionality.

Section 3. Section 3.1 says that upon such termination, BellSouth will “cooperate in an orderly and efficient transition to Supra Telecom ... such that the level and quality of the Services and Elements is not degraded and to exercise its best efforts to effect an orderly and efficient transition.” No charge for such an orderly termination is stated in the contract, nor would any such charge be appropriate. A customer is not normally charged for the privilege of ceasing to buy something he no longer needs. But any doubt on that score is settled by Section 22.1 of the General Terms and Conditions, which states that in the absence of a stated price, each party “shall comply at its own expense with all Applicable Law that relates to (i) its obligations under or activities in connection with this Agreement.” Here “applicable law” is the requirement that UNEs and resold services be offered on reasonable terms and conditions. It is not reasonable to expect Supra to pay to stop buying switching it no longer needs.

In any event, as noted above, the recurring monthly charges for the affected loops will be declining by between \$13 and \$18 per month. Under the contract, no charge is appropriate for the process of converting to the new arrangement, as also noted above. In fact, BellSouth already collected all of the loop NRE it was entitled to when the UNE-P service was established. Nothing further is being done to the loop to justify the rendering of a NRE charge. Even assuming that some charge for the activities needed to allow Supra to stop buying BellSouth’s switching were appropriate — again assuming that the contract permits BellSouth to charge for this type of activity at all — that charge would not be anything remotely like the amounts quoted in your letter. Frankly, I do not know where those quoted charges came from. Your letter lacks any reference to any provision in our interconnection agreement to support any of the particular rates and charges that you reference in your letter. That is unfortunate, because it makes it very difficult to intelligently discuss what fees, if any, BellSouth believes it is entitled to collect here. The reason is simple, there are no such contractual or FPSC ordered fees.

BellSouth’s proposed formula to adjust adequate assurance.

General

Supra has several serious concerns with your proposed formula for adjusting the adequate assurance payments. First, your proposal does not explicitly address the fact that as Supra discontinues using BellSouth’s switching, *i.e.*, as lines are converted to UNE-L, the ongoing payments from Supra to BellSouth will decline dramatically. Coupled with existing concerns over the accuracy of the weekly line counts (see below) this is a serious omission. We would expect that separate line counts by billing type and circuit type will be maintained and that each conversion be reflected by properly subtracting from one category and adding to the new. Your proposal seems to blithely assume that subtracting new UNE-L line counts from a “total” count will result in an accurate number.

By making such explicit additions and subtractions, as we weed out the existing (and large) group of erroneously billed numbers, and the double counting of lines caused by FID and other BellSouth errors, the bill and the adequate assurance may be properly and accurately self adjusting.

Specific Issues with the formula.

- a. Supra agrees that there should be a new category called UNE-L and that there could be SL1 and SL2 loops purchased from BellSouth, but there will be other types. Per the Interconnection agreement there can also be loops without either

an SL1 or SL2 designation, DSL loops, ISDN loops, etc. which are billed at other rates (see table above). This must be included in BellSouth's formula.

Because of this is essential that the various Basic Class of Service ("BCS") loops must be counted separately due to the variances in rates.

- b. UNE-L lines will bear a recurring costs of \$10.69 for SL1 loop (A.1.1); \$12.24 for a SL2 2 wire voice grade loop (A.1.2);, \$8.30 for a 2 wire copper loop(A.13.1wLMU) and for a 2 wire ADSL compatible loop (A.6.1wLMU); and \$7.22 for a 2 wire HDSL loop (A.7.1wLMU). These represent the most likely loops ordered⁵.

Supra cannot determine where the very high monthly recurring loop rates in your letter — \$16.18 and \$18.27 — came from. They are not in the Interconnection Agreement, and they are not FPSC approved rates. We can only imagine that BellSouth engaged in some computation to create them. If that is so, we do not accept it. To move the ball forward, if BellSouth is trying to compute some sort of geographically weighted average loop rate, please be advised that all of Supra's collocations are in zone 1, so only the lowest loop rates would apply.

- c. The non-recurring rate for permitting Supra to cease buying BellSouth's switching shall be zero. If you disagree with this conclusion, then please provide (i) a citation to the applicable portions of our Interconnection Agreement that, in your view, permit you to charge for it and (ii) provide a reasonable cost-based proposed charge, including a description of the cost basis for the charge, so that we can discuss it.

Should BellSouth seek to comply with C(i) or c(ii) above, please include the following in your consideration. Since it has been well established that the difference between SL1 and SL2 is order coordination, Supra cannot believe Bellsouth seeks to **re-charge** an order coordination charge on SL2 loops. That is built into SL2. This was all confirmed by Bellsouth personnel in response to a direct question on March 5, 2003. Only SL1 loops could possibly be subject to an additional charge for order coordination, although BellSouth never identified its entitlement to the \$9.00 rate for this service. That charge too must be reconsidered in light of c(ii).

- d. As stated above, the formulas will not be adjusted by net numbers. Specific counts by type will be maintained – traceable directly to the bill, for each billing type. Specific adds and deletes will be maintained for each BCS or USOC type. Additionally, corrections to erroneously billed numbers will be adjusted out of the formula so that the errors begin to be factored out of the adequate assurance formula, which finally begins to agree with the bill.

Further, the actual number of lines serving DSL customers will be used in the resale calculation, making this calculation self-adjusting finally. Supra has not had 10,994 DSL customers since August 2002, and this is clearly reflected by BellSouth's weekly line count reports.

⁵ Rates come from the most recent rate ordered in FPSC Docket 990649-TP, or in absence of that, the still unamended interconnections agreement.

- e. Supra agrees with the logic of step e, except the specific UNE-L types ordered will be multiplied by their respective rates and non-recurring charges (if any turn out to be applicable) as set forth in this letter.
- f. Section f appears to be unchanged from the current practice and will continue.

Of course you realize this all goes out the window depending upon the final outcome of the current proceedings regarding BellSouth's attempt to collect double adequate assurance.

Adjustments to the weekly line loss report.

Additionally, some issues have come to light which prove that the current adequate assurance payments are overstated due to billing errors which BellSouth has just recently confirmed.

Supra has maintained for almost a year that there were errors in BellSouth's records in regard to which T/N's belong to Supra, and which were being improperly billed. Several issues have been identified. I will for this exercise ignore Ringmaster® numbers included in the numbers, as you did a one-time adjustment to resolve that. However I never received any assurance it was positively fixed moving forward.

- 1. When a USOC representing the Basic Class of Service ("BCS") on the line has certain features, or a Local Number Portability ("LNP") modifier, the BellSouth rules have the telephone number repeated in the Field Identifier ("FID"). Don Smith has confirmed this field is sometimes incorrectly populated by BellSouth which leads to the telephone number being counted twice, once under each number.
- 2. We have issues where Supra requested a telephone number change 9 months ago and are still being charged for the old, inactive number. This too was confirmed by Don Smith.

Furthermore, both Supra and Bellsouth now have additional concerns over the population of existing accounts represented by BellSouth in the very first weekly line count report. Sufficient concern over this list merit at least a quarterly, if not monthly adjustment of this base, followed by the appropriate number of weeks operating off of add/drop data.

Supra believes that the current formula overstates the monthly charges for UNE-P and resale lines. We too, expect this will be addressed at the end of the October-January true-up proceedings.

Sincerely,

David A. Nilson
VP Technology

cc. Brian Chaiken
Victor Miriki
Mark Neptune

675 West Peachtree Street, NE
Room 38F56
Atlanta, Georgia 30375



Greg Follensbee
(404) 927-7198
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June 5, 2003

VIA E-MAIL AND FEDERAL EXPRESS

Mr. David Nilson
VP Technology
Supra Telecom
2620 SW 27th Avenue
Miami, FL 33133-3001

Docket No. 040301-TP
David A. Nilson
EXHIBIT DAN - 15
6/5/2003 Reply, G. Follensbee to D. Nilson re:c/ref.
990649-TP

Re: Adjustment to Weekly Adequate Assurance Payment

Dear David:

This letter is in response to your letter dated May 29, 2003, regarding BellSouth's May 21, 2003 proposal to amend the weekly adequate assurance formula. I will respond to each of the points raised in your question. I would also suggest that we arrange a conference call within the next week to discuss each Party's positions and to see if we can reach agreement on the appropriate modifications to the formula. As an initial matter, BellSouth does agree that, to the extent UNE-P lines are changed to UNE-L lines, the recurring portion of the weekly adequate assurance payment will decrease due to the cost difference in the two services. This decrease was reflected in the formula proposed by BellSouth in my May 21, 2003 letter. As to the remaining comments in your May 29, 2003 letter, please see the following responses for each of your enumerated paragraphs.

- a. It appears both Parties agree that a modification to the formula is needed when Supra begins to order stand alone UNE Loops. BellSouth does not agree with Supra's proposal that the formula take into account the various types of potential loops that Supra may order. Rather, BellSouth submits that its proposed formula, which only reflects the purchase of SL1 and SL2 loops is more appropriate at this time, especially since Supra has only ordered these types of loops to date. If Supra purchases other loops at a later date, the cost differential will be addressed in subsequent true-up hearings.
- b. Pursuant to the Florida Public Service Commission's ("FPSC") zone assignments set forth in its September 27, 2002 Order in Docket No. 990649A-TP, BellSouth has reviewed the actual loops that Supra is currently leasing and determined that only 14.62% of Supra's loops fall into zone 1. The remaining 85.38% fall in zone 2. In support, attached is the loop count for UNEPLX loops for the month of April 2003 for the central offices where Supra has collocation space. The attachment also reflects the proposed weighted average loop rates for the SL1 and SL2 loops.

In addition, BellSouth proposes to add (1) \$.57 per loop for OS/DA service as Supra has indicated that it intends to purchase such services from BellSouth, and is currently purchasing this service for its UNE-P lines; and (2) \$.31 per loop for special directory listings that Supra has historically purchased. Supra has not indicated that it intends to place its UNE-L orders without such special directory listings. Furthermore, Supra is not currently disputing such in the October-January true-up process.

6/5/03 Letter to David Nilson
RE: Adjustments to Adequate Assurance Payments

- c. The non-recurring charges ("NRC") BellSouth proposes to charge Supra for the UNE-Loops are also set forth in the FPSC's orders in Docket No. 990649A-TP, and are expressly set forth in Exhibit A to Attachment 2 of the Supra interconnection agreement. Contrary to Supra's belief, the cost studies filed by BellSouth to support its NRCs associated with each type of loop are not just for new loops, but are also for conversion of retail, resale or UNE-P lines to UNE-L. BellSouth's recollection of the discussion on March 5, 2003, is that BellSouth would review the cost studies it filed to determine what type of costs the NRCs in question were intended to recover. BellSouth did not state that the cost studies and rates approved only pertained to new loops added for the first time. While Supra may not like the rates that resulted, they are the rates ordered by the FPSC, they are the rates set forth in the Supra interconnection agreement, and they accurately reflect the costs associated with the work necessary to move the loops currently connected to BellSouth's facilities to Supra's collocated space.

Concerning the Order Coordination charge (item N.1.5), BellSouth agrees that the following loops are the only ones that the additional charge of \$9.00 for Order Coordination would apply: SL1 and Unbundled Copper Loops. All designed loops come with Order Coordination as a part of the nonrecurring cost for each type designed loop. As to Supra's statement that BellSouth never identified its entitlement to the \$9.00 rate for this service, Supra's interconnection agreement contains the rate of \$9.00 for Order Coordination. This rate is also expressly contained in Exhibit A to Attachment 2 of the Supra interconnection agreement.

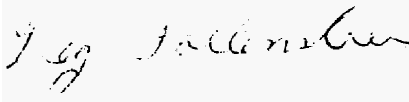
- d. The current formula for the weekly adequate assurance payments reflects the net number of lines placed into service in the prior week, and BellSouth is proposing no change to this treatment. If Supra means the actual count of lines by type of service at the end of each week, then we are saying the same thing. To calculate the number of lines in service, BellSouth agrees that the list maintained should reflect lines in service as of the Friday of the previous week. This line count should be used to calculate the weekly payment. BellSouth also agrees that the actual number of resale lines in service at the end of each week should be used in lieu of the 10,400 used to develop the current weekly payment. However, BellSouth does not believe any adjustment in the resale amount should be made until the conclusion of the first true up hearing. Finally, the count of UNE-L orders will be multiplied by the recurring costs identified in b above. This total will be added to the \$400,000 for resale and the UNE-P amount, divided by 30 and multiplied by 7, to get the weekly payment for recurring costs.
- e. It appears both Parties are in agreement on the weekly payment reflecting the lines in service priced at their different recurring and non-recurring costs.
- f. It appears both Parties agree that the weekly payment would continue as is currently done.

BellSouth believes that the current formula understates the monthly charges for UNE-P and resale lines. We understand this issue will be addressed at the end of the true up hearing for October-January bills. To the extent it is not, BellSouth also proposes that the adequate assurance formula be revised to take into account more accurate UNE-P and resale monthly charges.

6/5/03 Letter to David Nilson
RE: Adjustments to Adequate Assurance Payments

Please let me know Supra's schedule for the next seven days to discuss modifications to the current formula.

Sincerely,



Greg Follensbee
AVP-Regulatory and External Affairs

cc: E. Earl Edenfield, Jr., Esq.
Paul Steven Singerman, Esq.
Paul M. Rosenblatt, Esq.
Mary Jo Peed, Esq.

Attachment

COLE, RAYWID & BRAVERMAN, L.L.P

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June 16, 2003

Docket No. 040301-TP
David A. Nilson
EXHIBIT DAN - 16
6/16/2003 Supra Request to the FCC, re: Accelerated
Docket

BY COURIER AND EMAIL

Mr. Alex Starr
Chief, Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Request for Consideration of Supra Telecommunications and Information Systems, Inc.'s Complaint Against BellSouth Telecommunications, Inc. for Inclusion on the Accelerated Docket

Dear Mr. Starr:

Supra Telecommunications and Information Systems, Inc. (Supra) respectfully requests that the Commission consider Supra's complaint against BellSouth Telecommunications, Inc. (BellSouth), described below, for inclusion on the FCC's Accelerated Docket (AD) pursuant to 47 CFR § 1.730.

Supra urgently needs a declaration that BellSouth may not charge Supra for the privilege of ceasing to use certain BellSouth unbundled network elements (UNEs) or, in the alternative, that any charges be limited to cost-based charges for the minor rearrangement of BellSouth facilities needed to effectuate Supra's ceasing to purchase those UNES.

In contrast to this sensible result, BellSouth is erroneously asserting a right, purportedly (but erroneously) under the parties' interconnection agreement, to charge more than \$50 per affected end user loop for these activities, whereas a realistic cost-based one-time charge — if any charge should apply at all — would not exceed approximately \$1.00.

BellSouth is trying to impose unjust and unreasonable terms and conditions on Supra's access to UNES, in terms of both cost and delay and administrative inefficiency. BellSouth, therefore, is violating 47 U.S.C. § 251(c)(3), 47 C.F.R. §§ 51.313 and 51.321, 47 U.S.C. § 201(b), as well as the parties' interconnection agreement — which not only does not support the imposition of such charges, but instead compels the conclusion that none may be assessed (*see*

infra). BellSouth's position is also discriminatory, in violation of 47 U.S.C. § 251(c)(3), 47 C.F.R. § 51.311, and 47 U.S.C. § 202(a). This Commission, therefore, has jurisdiction to resolve this dispute under 47 U.S.C. § 208. *See also CoreComm Communications v. Verizon-Maryland*, 18 FCC Rcd 796 (2003).

Moreover, if BellSouth's position is allowed to stand, it will constitute a serious — indeed, an effectively insurmountable — barrier to competitive local exchange carriers (CLECs) seeking to reduce reliance on the network facilities of incumbent LECs (ILECs) and increase reliance on their own network facilities. This is therefore a matter of grave significance to the ongoing evolution of meaningful, facilities-based competition in local exchange markets. It is therefore particularly appropriate for inclusion on the AD.

1. Introduction

Supra has been competing with BellSouth in Florida and elsewhere for several years. The Enforcement Bureau is well aware that the process of getting BellSouth to offer collocation to Supra on reasonable terms has been problematic at best; Supra has requested intervention by the Bureau in its collocation disputes with BellSouth on several prior occasions.¹ In an important sense, the dispute identified in this letter is simply the latest chapter in that ongoing series of disputes. It bears noting that in each past case, with the assistance of Bureau staff, the parties were able to reach enough of an accord that no formal complaint has been necessary.

Supra has not waited for its collocation disputes with BellSouth to be fully resolved before entering the competitive fray. To the contrary, Supra has aggressively sought to compete with BellSouth using the most effective means available to it under the circumstances — purchasing the collection of UNEs from BellSouth known as “UNE-P” and providing service to end users by means of that collection of UNEs.² Supra has proven an effective competitor using this market entry strategy, winning more than 300,000 customers in Florida alone.

Even so, Supra recognizes the benefits of facilities-based competition. Indeed, its ongoing battles to collocate its equipment in BellSouth central offices, at reasonable cost and on reasonable terms, have been premised on the notion that facilities-based competition is

¹ See, e.g., Letter to Glenn T. Reynolds & Frank G. Lamancusa (FCC) from Mark E. Bueshele (Supra) re: *Supra Telecom avd. BellSouth; Request for Accelerated Docket and Pre-filing Mediation* (September 20, 1999); Letter to Glenn T. Reynolds & Frank G. Lamancusa (FCC) from Mark E. Bueshele (Supra) re: *Supra Telecom avd. BellSouth; Request for Accelerated Docket and Pre-filing Mediation* (November 13, 1999) (detailing problems with BellSouth's unreasonable collocation practices and charges); Letter to Alex P. Starr & Frank G. Lamancusa (FCC) from Paul D. Turner (Supra) re: *Supra Telecom avd. BellSouth; Request for Accelerated Docket and Pre-filing Mediation* (March 15, 2001) (detailing ongoing difficulties with BellSouth collocation practices including BellSouth's refusal to cost justify unreasonably high collocation charges).

² The collection of UNEs embraced by UNE-P includes the NID, the loop, the switch port, switching (and associated network control signaling), interoffice transport and billing.

preferable to relying on the facilities and services of one's principal rival. To this end, Supra has invested significantly in its own equipment — now collocated, powered up and ready to serve customers at eighteen BellSouth end offices — and is seeking to begin serving its customers using that equipment to connect customers directly to Supra's switches.

By relying on its own switches, Supra will be able to stop purchasing many BellSouth UNEs for which it is now paying — the switch port, switching, associated network signaling, interoffice transport, and billing (along with various back office functions). As a competitive matter, ceasing to purchase these BellSouth UNEs will give Supra more direct control over the provision of services to its customers. For example, Supra will be able to rapidly test and deploy services and pricing options based on the capabilities of its own switches, without having to deal with BellSouth's legacy ordering and billing arrangements and without telegraphing in any way its marketing strategy to BellSouth. As a financial and economic matter, the savings available from not buying all those BellSouth UNEs is what justifies the substantial investment in switches and collocation arrangements in the first place.

BellSouth, however, has taken the position that it will take weeks of work, and cost well above \$50 per line, to allow Supra to stop buying the UNEs it no longer wants nor needs.

This is, in a word, ridiculous. All BellSouth needs to do to stop providing the UNEs Supra no longer wants is to (a) run a jumper cable from the Main Distribution Frame (MDF) to which the customer's UNE loop is attached to Supra's collocated equipment; and (b) notify the relevant Number Portability Administration Center (NPAC) that calls to those customers' numbers should be routed to Supra's network. This activity should not take weeks, and — since what is fundamentally occurring is that Supra is *ceasing to buy UNEs it no longer needs* — Supra should not be charged for it at all. But if some charge is appropriate, it should be cost-based. Supra estimates that the entire process should take about 3 minutes per loop. BellSouth's number portability-related costs are already being recovered through the number portability charges BellSouth is permitted to assess on its end users. As a result, an appropriate one-time per-loop cost for this activity should not exceed about \$1.00 (*see infra*).

BellSouth's position is both irrational and anticompetitive. If BellSouth is allowed to throw grit into the gears of competition in this way, the Commission's desire to migrate CLECs towards facilities-based competition will be frustrated. The policies of the Commission, as well as common sense, dictate that this process be easy, streamlined and inexpensive, not laborious, complex, and costly. Unfortunately, however, it appears that it will require Commission intervention — at least in the form of pre-complaint mediation, and possibly in the form of full adjudication of the dispute — to make that happen.

2. *The Physical Process At Issue*

Supra has already successfully competed in the marketplace for the business of hundreds of thousands of former BellSouth customers. These customers are purchasing service from Supra, while Supra purchases the underlying facilities needed from BellSouth — including

BellSouth's switching and transport functions.

The mechanics of transferring a customer from one switch (today, BellSouth's) to another (tomorrow, Supra's) are reasonably straightforward. Customer loops terminate on the line (vertical) side of the MDF in each central office. Switches connect to the opposite (horizontal) side of the MDF. Loops are connected to switches by jumper wires. When a customer's service needs to be transferred from one switch to another, an ILEC frame technician simply connects a new set of jumpers from the MDF to the new switch and disconnects the old set from the old switch. The process can be completed in a matter of minutes.

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. This is known in the industry as a "hot cut."³ Another is when an ILEC is changing out one switch for another, or adding a switch (perhaps to accommodate line growth) in an end office formerly served by only one ILEC switch. In that case the old and new switch are both owned by the ILEC. Another occurs when an ILEC needs to rearrange the line cards (attached to a single switch) to which loops connect, in order to balance the load on particular line cards to assure that customers do not experience undue probabilities of blockage. In this case the jumper wire is moved from the back of the MDF from one line card to another, within the same switch.⁴ Still another situation in which this same basic physical process occurs is the situation at issue here, where a customer already served by a CLEC using UNE-P (or perhaps pure resale) begins to be served by the same CLEC using UNE loops.

In those situations where the physical rearrangement involves a change in carriers, the customer's number will normally need to be ported to the new carrier at the same time. For that to occur, the technician making the physical change has to enter the completion of his activity into his workstation, connected to BellSouth back office systems which in turn notify the NPAC

³ See, e.g., Re Application By Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (D/B/A Verizon Long Distance), NYNEX Long Distance Company (D/B/A Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., For Authorization To Provide In-Region, InterLATA Services In New Jersey, WC Docket No. 02-67, *Memorandum Opinion and Order*, 17 FCC Rcd. 12275 at ¶ 61 (June 24, 2002) ("A hot cut is 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. The 'cut' is said to be 'hot' because telephone service on the specific customer's loop is interrupted for a brief period of time, usually fewer than five minutes, during the conversion process.").

⁴ This type of rearrangement was common in the mid-1990s when ILECs found themselves providing services to Internet Service Providers (ISPs). ISP lines are "off hook" much more consistently than other business customer lines. When ISP lines were grouped together on a single concentrating line card, they would tend to be busy so often that other customers served by the same line card would sometimes have difficulty getting dial tone. Reassigning customers so that the ISP lines were distributed among multiple line cards involves essentially the same activity as described above.

that the telephone number associated with the loop is available for Local Number Portability (LNP). As part of the implementation of number portability, BellSouth's PMAP and LENS systems must also be updated. When the telephone number appears in PMAP or LENS, Supra will pick that fact up in its next scheduled interrogation of those databases. At that time, Supra can send its own message to NPAC to show the number has been moved.

As noted above, Supra needs these processes to occur in order to stop buying UNE switching, billing, and associated functions from BellSouth, *i.e.*, in order to obtain "access to network elements" — the NID and the loop — "on an unbundled basis." 47 U.S.C. § 251(c)(3). Under that statute (and others), the Commission's rules, and the parties' interconnection agreement, Supra is entitled to obtain such access on "rates, terms and conditions that are just, reasonable and nondiscriminatory."

Unfortunately, BellSouth is insisting on performing these functions in an inefficient, error-prone, and time-consuming manner. For example, in one meeting in March 2003, BellSouth provided a flow-chart purporting to outline the steps it would take — a flow-chart that ran to more than a dozen pages.

Supra does not doubt that BellSouth will have to implement a variety of internal procedures in order to (a) arrange for its employees to physically configure things so that Supra can stop buying local switching, billing, and related UNES; and (b) update its various databases to reflect the fact that Supra isn't buying those UNES anymore. These activities are inherent in any non-trivial change or rearrangement of the services a customer purchases from BellSouth.

On the whole, however, these activities are not, and should not be, a matter of concern to Supra. Supra is well aware that BellSouth has complex and inefficient legacy back office systems that sometimes make it a challenge for BellSouth to accomplish simple tasks. Supra is not required to subsidize that inefficiency.

As noted above, however, there is one important area in which Supra and BellSouth have to interface when Supra stops buying BellSouth's UNE switching, etc. — number portability. BellSouth needs to let NPAC know that BellSouth is no longer providing the switching associated with a particular telephone number; and after that occurs, Supra has to let NPAC know that Supra will be doing so. Here, BellSouth is insisting on using what are probably the most inefficient and error-prone methods imaginable.

The sensible and efficient way to provide notification to Supra that the required rearrangements have been completed is by email. Email is essentially instantaneous. Email is inexpensive. Email provides an automatic record of who sent the relevant message, when it was sent, and to whom it was sent. Email text is searchable by electronic means, making it simple to find particular data contained in a large number of reports or records. Email text messages do not use much disk storage space. Email is a proven technology that is in many respects and in many situations preferable to either traditional "hard copy" or faxes, as the Enforcement Bureau itself knows. BellSouth's affiliate, BellSouth.net, is a large and sophisticated supplier of

Internet-related services, including email.

BellSouth refuses to provide notification to Supra by email.

Instead, apparently based on its erroneous assertion that the process at issue here — rearranging the services Supra is now purchasing to reflect Supra's decision not to purchase certain UNEs — is really the same as converting an existing *BellSouth* end user's service over to Supra by means of a newly-established UNE loop arrangement — BellSouth claims that the only options available are fax notifications to Supra, or a telephone call indicating that the new arrangement is established.

One can imagine that those methods might work when the number of rearrangements at issue was one, or three, or a few dozen. Supra, however, is trying to stop buying BellSouth UNE switching for *hundreds of thousands of existing Supra customers*. Any phone-call-based system would obviously be grossly inefficient and, frankly, would promptly be overwhelmed by the volume of activity. Envisioning banks of BellSouth employees reading thousands of numbers over the phone, perhaps putting checkmarks next to items on a list, while Supra employees on the other end listen and make their own checkmarks is a quality assurance nightmare. Yet this is the process for which BellSouth wants to charge *extra*. The "basic" process entails using a fax to notify Supra that the arrangements needed for Supra to stop buying BellSouth local switching have been completed, enabling notification to NPAC to port the customer's number to Supra.⁵

Supra is at a loss to understand why BellSouth would support fax transmission but not email. Unless the fax notification is to be accomplished by some BellSouth employee spending hours next to a fax machine, duly inserting page after page after page, listening to dial tone, then ringing, then fax tones, the faxes will *have* to be generated automatically. For its part, Supra would not dream of trying to accept hundreds and thousands of literal paper faxes; instead, Supra would install a fax server that captures the faxed image in electronic form and stores it to disk for later viewing. In other words, the process will be electronic.

What, then, is the difference between fax and email? Essentially, most of the advantages discussed above for email are absent from fax. Supra grants that faxing is an established technology and that BellSouth is capable of doing it. But a fax does not provide an automatically searchable record of who sent the message or who received it. The content of a fax image is not

⁵ Note that the number portability notification process that BellSouth is using would not be as efficient as possible even if email notification were provided. For example, Verizon offers a different and more sensible process. See http://www.state.va.us/scc/division/puc/ossfolder/c2cappend/app_d.pdf. Indeed, at least one day prior to the due date, Verizon will install a 10 digit unconditional trigger on the affected loop, to direct all calls to the number being ported to be queried at the LNP data base before any call termination is attempted. Once the CLEC is notified that the loop has been connected to the CLEC switch, the CLEC can then immediately update the NPAC.

reliably searchable in the way that an email message is, making it impossible to quickly and easily find information about individual loop situations that may require attention. A fax image takes up much more storage space on disk than does email.

To top it off, BellSouth wants to charge Supra outlandish rates for having to put up with this inconvenient and unreliable process.

As described below, BellSouth's stance is unjust, unreasonable, and discriminatory, in violation of the Communications Act and Commission rules.

3. *The Setting of the Current Dispute.*

The current dispute has evolved over the last several months, but come to a head over the last two weeks.

As noted above, Supra has obtained roughly 300,000 customers in Florida, mainly from BellSouth, in head-to-head marketplace competition. Unfortunately, as the Bureau is no doubt aware, part of BellSouth's response to Supra's success in the marketplace was to try to destroy Supra's business by submitting grossly erroneous and inflated bills to Supra, refusing to pay Supra for functions Supra itself performed, and then cutting off Supra's access to essential BellSouth network elements (back-office ordering systems) when Supra refused to pay the purported "balance" due to BellSouth. In order to protect itself from total business ruin at BellSouth's hands, Supra had no choice but to seek protection from federal bankruptcy court during the third quarter of 2002.

When a firm such as Supra operates under bankruptcy protection, suppliers such as BellSouth are entitled to court-supervised payments, often (and in this case) weekly, to provide "adequate assurance" that the supplier will not be forced to provide services without payment. The amount of these adequate assurance payments is adjusted periodically to reflect changes in the volume and nature of the services the supplier is supplying.⁶

For some time, Supra has been planning to establish its own switching and collocation arrangements and to transition its UNE-P and resale customers away from reliance on the use of BellSouth's facilities and services, and instead to serve those customers, to the maximum extent possible, using equipment owned and operated by Supra. This effort by Supra is what has generated the repeated collocation disputes with BellSouth noted above.

⁶ BellSouth originally sought "adequate assurance" payments on the order of \$16 million per month. The bankruptcy court roundly rejected this wildly inflated figure and established an initial payment level of approximately \$7.5 million per month. The court also promptly ordered BellSouth to restore Supra's access to BellSouth's relevant OSS, so that Supra could continue to operate. (BellSouth had violated federal law by refusing to restore this access.)

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During the first quarter of 2003, Supra began pressing BellSouth to establish reasonable procedures by which Supra could cease buying BellSouth switching and associated functions. BellSouth presented an elaborate and inefficient proposed process for these activities, along with grossly unreasonable charges, whether assessed in light of the actual activities involved, or the terms of the parties' interconnection agreement. Notwithstanding this, and without waiving its right to object to these BellSouth positions, Supra began submitting orders to cease using BellSouth's UNE switching in May 2003.

Supra expected the issue of the proper rate to be applied (if any) to be sorted out over time, as BellSouth began sending bills to Supra. However, BellSouth — ever eager to prevent Supra from making progress in its efforts to compete — raised the issue in the context of proposed adjustments to the formula for setting the weekly “adequate assurance” payment.

Specifically, on May 22, 2003, BellSouth sent a letter to Supra asserting that the “adequate assurance” payment amount should go *up* significantly, even though Supra would be buying *fewer* services from BellSouth. The supposed justification for the increase was the outlandish “nonrecurring” charges that BellSouth claims to be entitled to impose when Supra stops buying UNE switching but continues to buy UNE loops. Supra responded with a letter dated May 30, 2003, pointing out (among other things) that the parties' interconnection agreement did not require or, indeed, permit the imposition of charges in these circumstances.⁷

The parties then had a conference call to discuss the necessary adjustments to the “adequate assurance” payment, including the issues discussed here, on June 12, 2003. During that call, BellSouth (through Mr. Greg Follensbee) stated plainly and unequivocally that BellSouth was completely inflexible on both the contractual question of whether these functions were properly viewed as chargeable (BellSouth said that they were, with no substantial justification in the actual terms of the contract) and the applicable rate (BellSouth said that the \$50+ rate it seeks to impose, concocted from rates applicable in other situations, was the only rate that could apply).

In these circumstances, Supra believes that it has exhausted all meaningful possibility of negotiating a settlement of this issue without outside help. For the reasons explained in this letter, Supra believes that neither its interconnection agreement with BellSouth, nor applicable federal statutes and regulations, nor sound pro-competitive policy, support BellSouth's position. To the contrary, all of those considerations support the conclusion that the relevant activities are not chargeable at all, or, if chargeable, only subject to a small, cost-based fee.

In these circumstances, it is critically important that this issue be raised and resolved as soon as reasonably possible. For this reason, Supra is asking the Enforcement Bureau to consider this dispute on the AD, including pre-filing mediation — which has in the past proven

⁷ Copies of this correspondence are being supplied to the Enforcement Bureau (in electronic form) along with this letter.

reasonably effective in collocation-related disputes between Supra and BellSouth.

4. *Analysis*

- a. *BellSouth Must Provide Access to UNEs on Terms and Conditions That Are Just, Reasonable, Nondiscriminatory, and in Accordance with the Parties' Agreement, Section 251. and Section 252.*

The essence of this dispute is BellSouth's effort to impose unjust, unreasonable, and discriminatory terms and conditions on Supra's access to UNEs. As described above, Supra already purchases hundreds of thousands of UNE-P arrangements to provide service to hundreds of thousands of former BellSouth customers. Supra now wants to stop buying BellSouth's UNE switching (and associated back office functions). In what might be called a "UNE-of-the-month-club" approach, however, BellSouth claims that to allow Supra to provide its own switching — that is, to allow Supra to *stop* buying it from BellSouth — will involve complex and cumbersome procedures and prohibitively high per-customer charges.

Under Section 251(c)(3), an ILEC must provide "nondiscriminatory access to network elements on an unbundled basis ... on rates, terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms of the agreement and the requirements of this section and section 252." Note that the obligations on the ILEC are cumulative: the ILEC must comply with "the terms of the agreement *and* the requirements of [Section 251] *and* Section 252." One could therefore imagine situations in which there might be a conflict between these obligations: the agreement says one thing, for instance, while statutory obligation to be just, reasonable, and nondiscriminatory requires something else. In such cases, in Supra's view, the statute should control. But here the issue does not arise, because by its terms the parties' agreement requires (at a minimum) compliance with the statutory and regulatory requirements.⁸

As the Commission observed in *CoreComm, supra*, Section 251(c)(3)'s combination of direct statutory obligations (to provide access to UNEs on just, reasonable, and non-

⁸ See, e.g., Agreement between [BellSouth] and [Supra] (effective July 15, 2002), General Terms & Conditions, Section 4.1 ("In the performance of their obligations under this Agreement, the Parties shall act in good faith and consistently with the intent of the Act"); Section 7.1 ("Supra Telecom and BellSouth each shall comply ... with all Applicable Law that relates to (i) its obligations under or activities in connection with this Agreement"); Section 24.6.1 ("To the extent any provisions of this Agreement are subject to the jurisdiction of the FCC, applicable federal rules and regulations shall govern those provisions"); Attachment 2, Network Elements and Combinations, Section 1.1 ("This Attachment sets forth the Network Elements and Combinations that BellSouth agrees to offer to Supra Telecom in accordance with its obligations under Section 251(c)(3) of the Act"); *id.* Section 2.2 ("BellSouth shall provide to Supra Telecom ... non-discriminatory access to Network Elements at any technically feasible point on terms and conditions that are just, reasonable, and non-discriminatory in accordance with the terms and conditions of the Agreement"). A copy of this agreement is being provided via email with the electronic version of this letter.

discriminatory terms) with obligations to abide by the terms of the parties' agreement creates a situation in which independent violations of Section 251(c)(3) and associated Commission rules may exist, but in which violations of the agreement are, necessarily, also violations of Section 251(c)(3). In addition, here the agreement clearly incorporates the requirements of the law (and associated Commission regulations) as a minimum standard of conduct, so that violations of the law are necessarily violations of the agreement as well.⁹

Supra also believes that the unjust, unreasonable, and discriminatory behavior described herein violates 47 U.S.C. §§ 201(b) and 202(a). However, as in *CoreComm*, a determination that BellSouth has violated Section 251(c)(3) and/or associated Commission rules will provide Supra the relief to which it is entitled. For purposes of this AD request, therefore, and without prejudice to the contents of any formal complaint that might later need to be filed (whether on the AD or otherwise), Supra will focus its discussion on Section 251(c)(3) and associated rules.

b. BellSouth's Approach To Supra's Ceasing To Buy BellSouth's Unbundled Switching Is Unjust, Unreasonable, Discriminatory, Violates The Parties' Agreement, And Is Not Accordance With Section 251 or Section 252.

BellSouth's approach does not comport with the applicable legal standard.

What constitutes "just" or "reasonable" behavior by a carrier is always a somewhat fact-intensive question. It is therefore important to place the facts in an appropriate business, economic, and competitive context.

The situation here deals with customers Supra has already vied for, and won, in open marketplace competition with BellSouth. Until recently Supra has not been in a position to serve these customers using its own switching gear, transmission systems, billing systems, etc. It has therefore, necessarily, relied upon BellSouth's network facilities to actually serve the customers by means of UNE-P arrangements.

After extensive difficulties, including repeated trips to the Enforcement Bureau, Supra has succeeded in establishing collocation arrangements — including, in some cases, collocated end office switches — in 18 BellSouth central offices.

This does not place Supra in a position to completely dispense with its reliance on BellSouth's network facilities. Supra serves a largely residential customer base, and it is difficult to imagine a situation in which Supra could duplicate BellSouth's embedded base of loop plant. But Supra's extensive investment in collocation and switches *does* allow Supra to stop relying on BellSouth for switching, signaling, inter-office transport, and associated back office functions. Once Supra starts providing its own switching, it will also provide its own interoffice signaling,

⁹ With respect to Commission regulations, Supra notes that 47 C.F.R. §§ 51.307, 51.311, and 51.313, and 51.321 all restate and/or elaborate upon the basic obligations contained in the statute.

its own billing and its own ordering/order processing and similar back office functions.¹⁰

For this to happen, BellSouth has to cooperate with Supra in allowing Supra to seamlessly and efficiently stop buying BellSouth's switching and associated UNEs, while continuing to purchase UNE loops (and associated NIDs). As described above, however, BellSouth is insisting that the process of terminating Supra's use of the switching and associated UNEs be made needlessly complex and expensive.

There are essentially two areas of particular concern to Supra. First is the inefficiency of the process BellSouth asserts that it intends to use to allow Supra to stop buying UNE switching. Second is the charge, if any, that might be imposed in connection with such service termination.

1. Inefficiencies In The Process.

As described above, Supra believes that BellSouth's proposed process for terminating Supra's use of UNE switching is extraordinarily complex and inefficient. Supra has any number of suggestions regarding how to make those processes better. Here, however, Supra is concerned with one particular problem in which it has an undeniable, direct interest: the manner in which BellSouth provides notification to Supra that a particular customer will no longer be receiving switching functionality via BellSouth's switch but, instead, via Supra's switch. As noted above, that will be accomplished in any particular case by transferring the jumper wires running (originally) from the MDF to BellSouth's switch to run, instead, to Supra's collocated gear.

Supra submits that in light of today's technology it is simply unjust and unreasonable for BellSouth to refuse to provide that notification via email. Email has numerous advantages over either telephone or fax notification, as described above, and it is inconceivable that BellSouth's employees do not have access to email.

Supra believes that BellSouth is insisting on using either fax or voice notification not because it really believes those to be efficient or appropriate, but rather as a consequence of its opportunistic mischaracterization of what is going on here. This is not a situation in which Supra has just acquired a customer from BellSouth and needs to arrange to "cut over" the customer's service to Supra. This is a situation in which Supra has long since acquired hundreds of thousands of customers from BellSouth, but has heretofore been unable to serve those customers without reliance on BellSouth's UNE switching. Yet BellSouth is looking to the "cut over of new customer" provisions in the agreement, doubtless in part because of the high rates associated with that activity (*see* below). Because those provisions in the agreement call for either fax or phone notification, that is what BellSouth is insisting on here.

¹⁰ It will still rely on BellSouth to transport some traffic between BellSouth end offices, but that will occur under the rubric of "transport and termination" of traffic under Section 251(b)(5), not the "interoffice transport" UNE under the rubric of Section 251(c)(3).

However, those provisions do not apply. What is going on here is the termination by Supra of the use of BellSouth's UNE switching. In that situation, the agreement has different provisions. Section 1.2 of the "General Terms and Conditions" states 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. ***Terminations of any Services or Elements shall be handled pursuant to Section 3 of the General Terms and Conditions of this Agreement.***

(Emphasis added). The referenced Section 3.1 then states that, when Supra terminates "any ... Elements provided under this Agreement" then "[u]pon termination,

BellSouth agrees to ***cooperate in an orderly and efficient transition to Supra Telecom*** or another vendor such that the level and quality of the Services and Elements is not degraded and to exercise its best efforts to effect an orderly and efficient transition.

Here, Supra is trying to terminate its use of UNE switching and related "Elements" and to "transition [the affected customers' switching and related functionality] to Supra." It does not contemplate "cooperat[ing] in an orderly and efficient transition" for BellSouth to insist on inefficient and error-prone fax or voice confirmation that the physical rearrangement has occurred — thus triggering the number porting process needed to fully complete the "orderly and efficient transition" to Supra.¹¹ Indeed, BellSouth's insistence on applying the provisions of the agreement that relate to the acquisition of new customers is, itself, not "cooperative" at all.

At bottom, what BellSouth fails to realize here is that ***BellSouth has already lost these customers.*** Having lost them to Supra, and having established arrangements (mainly UNE-P) by which ***Supra*** can serve them, the relevant provisions of the agreement are those that relate to termination of now-unneeded UNE switching, not those that relate to converting a customer to Supra in the first instance.

The relevant agreement provisions require BellSouth to "cooperate" in providing an "orderly and efficient" transition. The relevant statutory and regulatory provisions require this (and all other) aspects of Supra's access to UNEs to be "just" and "reasonable." Those legal

¹¹ BellSouth's proposed notification methods would be neither "orderly" nor "efficient" for Supra. To the contrary, they would require Supra to develop additional software and hardware interfaces, and to hire additional personnel to relay messages within Supra during the critical few minutes when a cutover line is incapable of receiving inbound calls. In this regard, the first phase of Supra's termination of use of BellSouth's UNE switching will involve 300 loops per central office per day, in 18 central offices. This is approximately 5,400 loops per day. (Even at that rate, it will take nearly six months to terminate Supra's reliance on BellSouth's UNE switching for all of its customers.) Clearly, either a fax-based or telephone-based notification system would be grossly inefficient for handling this volume of activity.

standards do not permit BellSouth to insist on telephonic or fax notification when email is both available and in most relevant respects superior. It follows that BellSouth is attempting to impose unjust and unreasonable conditions on Supra's access to UNEs.¹²

ii. Unreasonable And Discriminatory Rates.

Rates, as well as other terms and conditions, of access to UNEs, must be just, reasonable, and nondiscriminatory. 47 U.S.C. § 251(c)(3). As a general proposition, it is unjust and unreasonable to impose charges on a customer for the "privilege" of terminating service. Without a specific contractual commitment and reasonable justification (*e.g.*, a term commitment entered into in order to receive low rates up front) termination charges amount to one last bit of monopoly exploitation before competition allows the customer to use an alternative source of supply. It is therefore facially inappropriate — in statutory terms, unjust and unreasonable — for Supra to be charged anything at all to make the necessary arrangements to stop using BellSouth's UNE switching (and associated UNEs) while continuing to purchase UNE loops, and the Commission should expressly so rule.

As with the reasonableness of BellSouth's practices (*viz.*, its refusal to use email notification in making an "orderly and efficient transition" to Supra), the parties' interconnection agreement informs the appropriate understanding of what rates (if any) should apply. Section 7.1 of the "General Terms and Conditions" states that Supra and BellSouth "each shall comply *at its own expense* with all Applicable Law that relates to (i) its obligations under or activities in connection with this Agreement." As a result, to the extent that Section 251(c)(3) and associated Commission regulations do not normally permit charges for *terminating* service — and they do not — then this requirement obliges BellSouth to make the rearrangements needed to permit Supra to stop buying BellSouth's UNE switching at no charge to Supra.¹³

This conclusion is bolstered by Section 22.1, which states that "Except as otherwise specifically stated in this Agreement, or any FCC or Commission order or rules, *each Party shall be responsible for its costs and expenses in complying with its obligations under this Agreement.*" Supra submits that nothing in the agreement expressly deals with payment by Supra for taking the steps needed for Supra to stop buying BellSouth's UNE switching and related elements. On the other hand, as noted above, the agreement expressly requires BellSouth to "cooperate in an orderly and efficient transition" to service provision by Supra when Supra chooses to terminate use of any particular BellSouth UNE. Undertaking such an "orderly and efficient transition," therefore, is simply one of many obligations under the agreement as to

¹² Supra cannot see any legitimate, rational justification for BellSouth's position. That said, a different kind of explanation is readily available: the more costs and delays BellSouth can impose on Supra, the more likely it is that Supra will go out of business and cease being a competitive thorn in BellSouth's side, in Florida and elsewhere.

¹³ Of course, where the law contemplates that a CLEC should pay for something — *e.g.*, the use of a UNE loop — then compliance with that requirement — payment — shall be at the CLEC's expense.

which “each Party shall be responsible for its costs and expenses.”

Charging for the rearrangements needed to change the equipment from which the customer draws dial tone is also discriminatory. As noted above, in a variety of situations an ILEC will perform the same physical function at issue here — changing the gear to which jumper wire from an MDF associated with a particular loop terminates — at no charge to anyone. These include situations where the ILEC is adding or changing out its own switch, or where it rearranges the assignment of loops to line cards to maintain reliable service. There is no reasonable basis to permit BellSouth to charge Supra for this same function when it does not assess such a charge when the function occurs in connection with BellSouth’s own customers.¹⁴

Assuming, however, that *some* rate may properly be assessed on Supra for rearranging things so that Supra’s customers will receive switching functionality from Supra’s own underlying equipment, that rate should be based on the reasonable incremental cost that BellSouth incurs in making the rearrangement, not some generic rate in the contract applicable to different situations.

The rearrangement at issue here takes about 3 minutes per loop to perform. It is an absolutely commonplace, standard function for telephone company technicians to run jumper wire from the back of an MDF to an appropriate connection point within the central office. This modest effort is the most that Supra should be called upon to pay for if, indeed, it is permissible under the contract for it to be required to make any payment at all.

It follows that a proper rate for this function should not exceed about \$1.00 per loop. This is based on the following simple calculation. First, the most expensive salary rate for BellSouth central office technicians is about \$850 per week. A reasonable average figure, therefore, is approximately \$800 per week. This translates to \$20 per hour in a 40-hour work week. At 3 minutes per loop, 20 loops per hour can be transferred to connect to Supra’s switch. That translates to \$1.00 per loop.

Supra recognizes that BellSouth will have to make certain entries in its own records to reflect the fact that Supra is no longer buying UNE switching from BellSouth. Clearly, however, it makes no sense to charge Supra for the administrative costs involved in BellSouth noting that it has *lost* Supra’s business.¹⁵ Supra also recognizes that BellSouth will have to undertake

¹⁴ In addition to discriminatory *rates*, in fact the entire *process* to which BellSouth wants to subject Supra is discriminatory, in violation of 47 C.F.R. § 51.313(b). BellSouth’s proposed process imposes a delay of roughly three weeks to allow Supra to stop buying UNE switching from BellSouth. However, when BellSouth needs to perform analogous functions for its own operations (e.g., when a customer shifts from one location within a wire center to another) Supra submits that it does not take BellSouth three weeks to coordinate the required activities.

¹⁵ Cf. *Verizon Communications v. FCC*, 535 U.S. 467, 514-17 (2002) (Supreme Court denies ILEC claims of entitlement to rates based on “Efficient Component Pricing Rule,” which would (inefficiently) compensate them for the “costs” they incur by virtue of losing their monopoly position).

certain administrative activities to properly notify the number portability authorities that the affected customer will no longer receive underlying switching functionality from BellSouth. But, BellSouth has a separate charge to all its end users designed to recover the costs of implementing number portability. It would subvert the purpose of the Commission's rules assigning number portability costs to the entire industry on the basis of number of lines in service to allow BellSouth to export its number-portability administrative costs to Supra. This is particularly true since Supra will incur its *own* number-portability-related costs with respect to each customer whose underlying switching functionality will now be provided by Supra.

For these reasons, the appropriate charge to Supra in connection with Supra's ceasing to purchase BellSouth's UNE switching is zero; but if any non-zero charge is appropriate, that charge would not properly exceed a one-time charge of approximately \$1.00 per loop.

5. *Need for Accelerated Docket Treatment*

Section 1.730(e) of the Commission's rules, 47 C.F.R. § 1.730(e), sets out a "non-exclusive list" of factors that Enforcement Bureau staff "may consider" in assessing whether a particular matter should be accepted for the AD. These are each addressed below in the context of this dispute.

a. *Supra and BellSouth have exhausted all reasonable opportunities for settlement.* Supra has repeatedly, since 1998, engaged BellSouth in discussions directed toward resolving disputed co-location requirements and charges. Twice in 1999, and throughout 2000 and 2001 Supra engaged in staff-supervised settlement discussions with BellSouth over issues stemming from and related to BellSouth's practices and rates, which Supra Telecom posits are discriminatory, unjust and unreasonable. The present matter grows directly out of these disputes. Supra has had a long stream of emails, letters, phone conversations and meetings with BellSouth to try to get some movement on these problems. Most recently, on June 12, 2003, BellSouth's representatives made clear that BellSouth would not change its views on these matters. No further independent movement towards settlement seems possible; indeed, BellSouth is using this issue to try to extract more money from Supra in the form of weekly "adequate assurance" payments, as described above.

b. *Without question, expedited resolution of this dispute is likely to advance competition in telecommunications markets nationwide.* By emphasizing the importance of facilities-based competition and signaling the possible phase-out of UNE-P, the Commission itself has elevated — to the highest level — the competitive significance of the procedures and costs involved in a CLEC choosing to discontinue its purchase of some of the UNEs that make up UNE-P. So far, however, BellSouth has prevented Supra from earning a return on the substantial investments of capital (as well as technical and managerial effort) sunk into its collocated switches — switches that presently serve essentially no loops. The procedures that BellSouth seeks to impose are complex, and its purported charges unjust and discriminatory. Without expedited resolution of this dispute, the incumbent obstructionist could once again bleed precious time, money and effort from Supra. On the other hand, a decisive determination here

condemning ILEC intransigence in moving customers to competitor's switches would go far towards assuring investors that CLECs can indeed viably compete using their own facilities, as opposed to resale and/or UNE-P. In this regard, the Commission's recent decisions in *CoreComm Communications v. Verizon*, *supra*, and *CoreComm Communications & Z-Tel Communications v. SBC*, FCC 03-83, EB-01-MD-017 (released April 17, 2003), both indicate the importance of avoiding duplicative, state-by-state litigation of issues that should be determined, under the Act, on a nationwide basis.

c. *The issues in this proceeding are simple, lend themselves to examination under the procedures allowed in the accelerated docket, do not involve complex discovery, and will not require separate proceedings on the question of damages.* *Supra* requests that the Commission order BellSouth to relinquish loops serving *Supra*'s customers to *Supra*'s switching facilities in an efficient and cost-effective manner. *Supra* expects BellSouth to try to make this process much more complicated than it is, and the Commission will need to be prepared to cut through that obfuscation to get at the facts. The discussion above, however, shows that the underlying issues are, indeed, simple.

d. *Supra's complaint states a claim for violation of the Act and Commission rules within the Commission's jurisdiction.* *Supra* asserts that BellSouth refuses to provide access to UNEs on rates, terms and conditions that are just, reasonable and nondiscriminatory, in violation of 47 U.S.C. § 251(c)(3) and associated Commission rules; in violation of 47 U.S.C. §§ 201(b) and 202(a); and in violation of the parties' interconnection agreement (violations of which are incorporated into 47 U.S.C. § 251(c)(3), and which itself incorporates the relevant legal standard). On their face these allegations state a claim for violation of the Act and Commission rules within the Commission's jurisdiction — a conclusion which the two *CoreComm* cases cited above confirm.

e. *Inclusion of Supra's complaint on the Accelerated Docket would not be unfair to either Supra or BellSouth.* Inclusion of this matter on the AD would not be unfair either to *Supra* or to BellSouth. While in absolute terms, BellSouth plainly has an extraordinarily disproportionate amount of money and resources, *Supra* is fully capable of conducting rapid and extensive litigation on the AD if need be. Indeed, from one perspective it is the very fact that BellSouth enjoys such an overwhelming disparity in resources — not just financial, but also in terms of control over local loops — that this complaint is appropriate for the AD.

6. Conclusion and Prayer for Relief

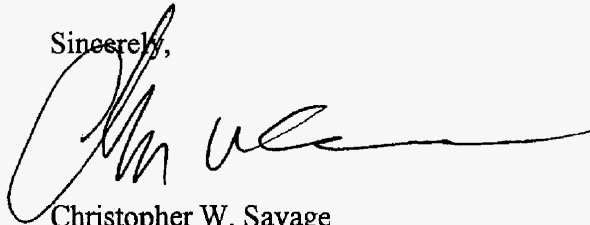
BellSouth has needlessly tried to place practical and economic barriers in the path of *Supra*'s effort to stop buying certain UNEs from BellSouth. Instead of reasonably accommodating this process, as the parties' contract and the statutory "just and reasonable" standard both require, BellSouth claims the right to vastly complicate the process and to impose charges far in excess of any rational cost-based rate for the activities involved. In fact, the process should be simple and no charge — or a very low one — should apply

Mr. Alex Starr
June 16, 2003
Page 17

For these reasons and those discussed above, Supra respectfully requests that the Commission issue a declaratory ruling (a) that under applicable law BellSouth must provide the rearrangements described here in an efficient manner that expressly includes email notification of completed jumper wiring; and (b) that this process should be provided at no charge or, at most, a nominal (but cost-based) charge of approximately \$1.00 per affected loop. This matter is plainly within the Commission's jurisdiction and is appropriate for consideration on the AD.

Supra stands ready to transition customers to its own switching, transport and other facilities. It has won these customers in an uphill battle for market share against BellSouth. Supra simply requests that the Enforcement Bureau help it secure the right to transition its customers to its own facilities without the burden of unnecessary charges and discriminatory imposition of procedures designed to frustrate Supra's transition to a fully facilities-based carrier.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Savage', written over the word 'Sincerely,'.

Christopher W. Savage
Erik J. Cecil

COLE, RAYWID & BRAVERMAN, L.L.P.

cc: Mr. Glenn Reynolds (BellSouth) (via email)
Ms. Radhika Karmarkar (FCC) (via email)

Docket No. 040301-TP

David A. Nilson

EXHIBIT DAN - 17

*6/18/2003 E-mail, A. Starr to C. Savage, esq. of the
FCC. re: c/ref. Supra's AD letter of 6/16/2003.*

From: Alexander Starr [ASTARR@fcc.gov]
Sent: Wednesday, June 18, 2003 9:49 AM
To: Chris Savage; Glenn.Reynolds@BellSouth.com
Cc: Radhika Karmarkar
Subject: RE: Supra Telecom v. BST: AD Request

Chris: Please file a supplement containing the substantive material in your most recent e-mail, and attach to that supplement all of the provisions of the interconnection agreement that you believe are relevant, including Exhibit A to Attachment 2. Thank you.

>>> Chris Savage 06/17/03 01:07PM >>>

-----Original Message-----

From: Alexander Starr [mailto:ASTARR@fcc.gov]
Sent: Tuesday, June 17, 2003 10:52 AM
To: Chris Savage; Glenn.Reynolds@BellSouth.com
Cc: Radhika Karmarkar
Subject: RE: Supra Telecom v. BST: AD Request

>>Gentlemen: We have completed a quick review of Supra's request and have one preliminary observation/question: In Bell South's June 5, 2003 letter to Supra, Bell South seems to assert the position that certain FPSC orders and Exhibit A to Attachment 2 of the parties' interconnection agreement justify the NRC of \$51.09 for conversion from UNE-P to UNE-L. Supra's AD request does not appear to address that contention directly. If we are mistaken about that, Supra should specify in an e-mail the pages of the AD request in which Supra does address Bell South's contention.<<

You are mistaken.

I recognize that later in your note you state that you do not want "substantive argument." What I do below simply re-states material that was included in the AD request to demonstrate where we stand, i.e., it is not new. If for some reason you would like me to present this material in a separate letter as well, please let me know.

1. BellSouth is correct that the contract contains provisions that establish that in some situations involving loops, an NRC of >\$50 might apply. Those provisions apply to a situation not present here, viz., where Supra wins a customer away from BellSouth and seeks at that time to purchase a UNE loop for that customer. Similarly, the FPSC orders establish the level of the NRCs; they do not hold that those NRCs apply to the situation here. With due respect, the contention that the FPSC has dealt with this issue is just arm-waving.

2. In fact, as discussed in the AD request, the actual situation here is governed by parts of the contract that expressly preclude the application of the rate BellSouth wants to charge (or, indeed, any rate).

a. On page 12 of the AD request, we quote from the provisions of the contract that deal with Supra's ceasing to buy UNEs or services from BellSouth. In Section 3.1 of the General Terms/Conditions, BellSouth obliges itself to "cooperate in an orderly and efficient transition [of the affected customers] to Surpa Telecom['s]' services and facilities. No charge for this activity is identified or implied in this language. Note also that BellSouth's refusal to accommodate an efficient email notification system is a direct violation of this contractual provision, as explained at pages 11-13 of the AD request.

b. On page 13 of the AD request, we quote from Section 22.1 of the contract, which states that in the absence of a specific contractual right to be paid for something, "each Party shall be responsible for its costs and expenses in complying with its obligations under this Agreement." In other words, the parties specifically agreed that the "default case" was that each party would do what the contract required, at no charge to the other party. With no charge specified for the "orderly and efficient transition" required by Section 3.1, no charge may be assessed on Supra here. This is discussed at pages 13-15 of the AD request.

c. Note that Supra quoted these precise contractual provisions in its May 29, 2003 letter to Mr. Follensbee (attached to the AD request). We had hoped that in response to that letter BellSouth would (ideally) acknowledge its error or, at a minimum, provide some reasoned argument as to why, in its view, those contractual provisions were not controlling. Instead, all that happened was that Mr. Follensbee pointed to the general introductory language of Attachment 2 (which says Attachment 2 applies to UNEs); to the parts of that Attachment that identify UNE loops; and to the fact that the NRCs BellSouth wants to charge exist in the pricing appendix (as opposed, we assume, to being made up out of whole cloth). That is as sophisticated a contractual analysis as Supra has received from BellSouth. Yet Mr. Follensbee made quite clear on that call that BellSouth would not even consider or further discuss Supra's contractual analysis. This all evident from the attachments to the AD request and is discussed on page 8.

>>If we are correct, Supra should supplement its AD request to address Bell South's argument, at the same time that it provides relevant excerpts of the interconnection agreement.<<

You are not correct. See above. As you can see, the actual situation is that Supra provided a specific contractual analysis showing why BellSouth was not entitled to charge Supra for the activities in question, to which BellSouth has never responded. What should happen here, it seems to us, is that BellSouth should be called upon to respond to Supra's contractual analysis. The fact that Mr. Follensbee flatly refused to do so and declared the matter closed to further discussion is a key reason Supra filed its AD request yesterday. We need outside help to get BellSouth to focus on what its contract with Supra actually says.

Note also: If BellSouth thinks that some specific language in the quite lengthy FPSC orders it generally cites actually deals with the situation at hand, it would be very helpful if it could point to that language. Supra does not believe such language exists.

All that said, I do not want to quibble. If you believe that the discussion above is fairly viewed as a "supplement" to our AD request, just let me know and I will file a letter called a "supplement." But I really think that both the AD letter (as cited above) and the attached correspondence show that it is BellSouth that has totally failed to respond meaningfully to Supra's arguments, not vice versa.

>>Either way, Supra should let us know in an e-mail how it plans to proceed, without including in the e-mail any substantive argument.<<

See above.

Chris Savage

COLE, RAYWID & BRAVERMAN, L.L.P.

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June 18, 2003

BY COURIER AND EMAIL

Mr. Alex Starr
Chief, Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Request for Consideration of *Supra* Telecommunications and Information Systems, Inc.'s Complaint Against BellSouth Telecommunications, Inc. for Inclusion on the Accelerated Docket — Supplemental Matters

Dear Mr. Starr:

I am sending this letter in response to your request in email correspondence yesterday and today.¹ In yesterday's email you suggested that *Supra* had in some manner failed to respond to BellSouth's claim, laid out in a June 5 letter from Mr. Greg Follensbee (BellSouth) to Mr. David Nilson (*Supra*), that the dispute between the parties was governed by certain (unspecified) provisions of the parties' interconnection agreement and/or certain (unspecified) provisions of some orders of the Florida PSC.

As noted in my email yesterday, the suggestion that *Supra* has failed to respond to a *BellSouth* argument has matters exactly backwards.

It is helpful to distinguish between two questions. The first is whether BellSouth is entitled, under the parties' interconnection agreement, to charge *Supra* *at all* for doing what needs to be done to allow *Supra* to stop buying BellSouth's UNE switching and related UNEs as *Supra* begins serving its customers using its own switches. The second question is, if some rate may properly be applied under the agreement, what that rate should be.

¹ I am attaching a print-out of your request for this supplemental letter. That print-out includes my email to you of yesterday. Please consider my email to you to be incorporated by reference here.

BellSouth is trying to completely avoid the first question. It is doing so by pointing at the contract rates that it *wishes* were applicable here — even though they are not — and then saying, (in effect) “Gosh, not only are these rates in our contract, they were even established by the Florida PSC!” The rates BellSouth points to are in the contract and were established by the Florida PSC. The problem for BellSouth is that the actual language of the contract makes perfectly clear that BellSouth may not charge those rates in the situation at hand.

Supra explained this in its letter to BellSouth dated May 29, 2003, attached to the original AD request. In that letter Supra identified and quoted from several specific provisions of the parties’ interconnection agreement. Those provisions establish that: (1) BellSouth is obliged to cooperate in order to efficiently and smoothly transition customers away from using BellSouth’s UNE switching; (2) there is no charge in the contract for that activity; and (3) the parties specifically agreed that anything they are required to do under the agreement will be done *at their own expense* unless a charge is specifically provided for. Straightforward application of these contractual terms compels the conclusion that when Supra needs BellSouth to cooperate to efficiently transition a customer away from using BellSouth’s UNE switching, BellSouth must provide that activity at no charge.

BellSouth *never responded to this argument.*

What BellSouth said in Mr. Follensbee’s June 5 letter — and what you apparently picked up on in your preliminary review — was something quite different. Mr. Follensbee said that the non-recurring charges that “BellSouth proposes to charge” are “set forth in the FPSC’s orders in Docket No. 990649A-TP, and are expressly set forth in Exhibit A to Attachment 2 of the Supra interconnection agreement.”

Mr. Follensbee’s statement is true, but is utterly beside the point. To put the matter as starkly as possible:

- (1) The contract does not say that BellSouth may charge for the activities BellSouth is obliged to undertake here, and indeed expressly states that, in that case, no charges may be assessed. *See* General Terms & Conditions, Sections 1.2, 3.1, and 22.1.
- (2) BellSouth wants to charge something anyway.
- (3) BellSouth, therefore, looked for a rate that it may charge in *other* circumstances, involving activities it considers “close enough.” *See* Attachment 2 (Network Elements and Combinations) Section 3.8 & associated provisions in Exhibit A (pricing).
- (4) BellSouth then said that it will charge that rate here.

Supra does not dispute that the rate BellSouth seeks to charge “exists” in the contract. Supra does not dispute that the rate BellSouth seeks to charge was established by the Florida PSC in the docket indicated by BellSouth. But Supra absolutely disputes BellSouth’s assertion that the

Mr. Alex Starr
June 18, 2003
Page 3

contract permits BellSouth to charge the rate it wants to charge, in the circumstances of this dispute.²

During the conference call between the parties on June 12, 2003, I specifically asked Mr. Follensbee (or anyone else on the call, which included at least one BellSouth attorney) to point to the provisions in the contract which, in BellSouth's view, supported the claim that BellSouth could apply the rates it wanted to apply. The call was not transcribed, but my best recollection is that Mr. Follensbee pointed to: the last sentence of Attachment 2, Section 1.1, which states that "[t]he prices for the Network Elements and Combinations are set forth in Exhibit A of this Attachment 2"; generally to Section 3, which identifies different kinds of loops available on an unbundled basis; and generally to the entire pricing exhibit to Attachment 2, with a statement that nothing in that exhibit said it would transition to Supra-supplied switching for free.

Neither Mr. Follensbee nor anyone else from BellSouth on the call had anything at all to say about the fact that the General Terms & Conditions in the contract (cited above and in Supra's Mary 29 letter to BellSouth) expressly preclude BellSouth charging Supra. Mr. Follensbee's main argument seemed to be that other CLECs had not previously raised the argument Supra was raising, so it must be wrong.

So — contrary to the implication of Mr. Follensbee's letter — this is *not* a situation in which Supra is trying to avoid the application of some charge that the relevant PSC says applies to the situation at hand. This is a situation in which the parties' contract plainly states that BellSouth cannot impose any charges on Supra at all, but — despite that — BellSouth wants to charge something anyway.

BellSouth has never even *tried* to deal with the fact that the plain language of the contract precludes any charge here. To the contrary, BellSouth's representatives made clear that they were unwilling to discuss the issue in any way.

This is why I said in my email yesterday, and earlier in this letter, that what needs to happen here is for BellSouth to explain (a) what particular contract language *BellSouth* relies on to justify imposing the charges it wants to impose and (b) why the contract language *Supra* relies upon does not compel the conclusion that no charges are permitted in this situation.

I have attached to this letter a set of excerpts from the (lengthy) interconnection agreement that include the contract provisions that Supra believes govern; the contract provisions that, to Supra's best understanding, BellSouth is relying on; and the pricing attachment associated with the provisions BellSouth asserts to be relevant. Obviously, BellSouth may want

² As noted in my email, the fact that BellSouth is expressly obliged to "cooperate in an orderly and efficient transition" away from reliance on its UNE switching also compels the conclusion that BellSouth must use email notification of completion of those transitions, as opposed to inefficient and error-prone fax or phone notification.

Mr. Alex Starr
June 18, 2003
Page 4

to identify additional contract provisions, and, depending on how the discussion of these issues proceeds, Supra may wish to point to other provisions as well. The pricing attachment itself is fairly lengthy. I am attaching it all, however, since Mr. Follensbee seemed to be saying on the parties' conference call that the *absence* from that attachment of some specific statement that the activities in question here are non-chargeable means that they are, in fact, chargeable. I would invite BellSouth, however, to identify the specific items in the pricing attachment that it thinks apply here.

Please let me know if I can be of further assistance at this time. Otherwise, I look forward to seeing some reasoned response from BellSouth to Supra's specific showing that, under the parties' contract, no charge may be assessed in the circumstances at issue here.

Sincerely,



Christopher W. Savage
Erik J. Cecil
COLE, RAYWID & BRAVERMAN, L.L.P.

cc: Mr. Glenn Reynolds BellSouth
Ms. Radhika Karmarkar (FCC)

6/23/2003

Docket No. 040301-TP
David A. Nilson
EXHIBIT DAN - 19
6/23/2003 BellSouth's Motion for Interim Relief

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

In re:

SUPRA TELECOMMUNICATIONS &
INFORMATION SYSTEMS, INC.,

Chapter 11
Case No. 02-41250-BKC-RAM

Debtor.

**EMERGENCY MOTION OF BELL SOUTH TELECOMMUNICATIONS,
INC. FOR INTERIM RELIEF REGARDING OBLIGATION
TO PERFORM UNE-P TO UNE-L CONVERSIONS**

**Compliance with Local Rule 9075-1
Basis for Exigency**

At the June 18, 2003 hearing, the Court invited the filing of the instant Motion on an emergency basis to address BellSouth's obligations to incur substantial up-front non-recurring charges that were not dealt with in the Court's previous adequate assurance orders. In light of Supra's proffer at the June 18, 2003 hearing that it intends to place approximately 28,000 UNE-L orders in the near future, and the monetary scope of this issue (approximately \$1.66 million), BellSouth may suffer direct, immediate and substantial harm in the absence of the immediate resolution of this issue.

BellSouth Telecommunications, Inc. ("BellSouth"), by and through undersigned counsel, submits this *Emergency Motion of BellSouth Telecommunications, Inc. for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions* (the "Motion"). In support of this Motion, BellSouth states:

1. On October 23, 2002 (the "Petition Date"), Supra Telecommunications & Information Systems, Inc. ("Supra"), filed its voluntary petition under Chapter 11, title 11 of the United States Code (the "Bankruptcy Code").¹

¹ For the sake of brevity, BellSouth will recite only those facts relevant to the instant Motion. A detailed recitation of the facts and procedural history of the parties' relationship and the litigation that preceded the filing of Supra's chapter 11 case is set forth in the Motion of BellSouth Telecommunications, Inc. for Abstention or, in the Alternative, to Dismiss Case (C.P. #19).

2. Supra continues to operate its business and manage its affairs as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

3. On November 13, 2002, this Court entered an *Order Determining Adequate Assurance for BellSouth under Section 366 of the Bankruptcy Code and Setting Further Hearing* (the "366 Order") (C.P. # 84), requiring Supra to make weekly adequate assurance payments to BellSouth for the continuation of post-petition utility service by BellSouth to Supra. The 366 Order set forth the formula (the "Formula") by which the adequate assurance number is calculated on a weekly basis. The Formula is as follows:

- 10,400 resale lines at \$400,000 per month
- (x) UNE lines at \$25/line = (y)
- (y) + 400,000 = (z)
- (z) / 30 x 7 = weekly adequate assurance payment

4. On November 26, 2003, this Court entered its *Preliminary Injunction* (C.P. # 26), which provided, among other things, that BellSouth will be entitled to seek an appropriate adjustment to the Formula to the extent collocation access results in additional charges.

5. On December 2, 2002, this Court entered its *Further Adequate Assurance Order (i) Providing Formula Adjustment Procedures; (2) Requiring Debtor to Provide Additional Financial Information; and (3) Preliminary Ruling* (the "Adequate Assurance Order") (C.P. # 138).

6. The Adequate Assurance Order approved and adopted the adequate assurance adjustment procedure described in paragraphs 9, 10, and 11 of BellSouth's adequate assurance proposals (the "Adjustment Procedures").² The Adjustment Procedures set forth in these paragraphs permits either party to send in writing a request to modify the Formula, along with an explanation of the request and an example of the modified formula. The other party shall have

² A true and correct copy of BellSouth's *Supplemental Adequate Assurance Proposals* is attached hereto as Exhibit "A."

10 calendar days to respond to the party making the request, and include in its response an explanation of its response. The parties shall then have 10 days to attempt to negotiate a resolution of the proposed modification. If after the 10 day negotiation period resolution cannot be reached, the requesting party may seek a determination from the Court by motion on at least 10 day notice.

7. On May 21, 2003, BellSouth issued written notice to Supra requesting an adjustment to the Formula to address the issue of Supra's ordering of UNE-Loops ("UNE-L").³ By ordering UNE-L, Supra is attempting to convert Supra customers from BellSouth switches to Supra switches. Such conversions will result in substantial up-front non-recurring charges that were not contemplated by the Court when it entered the 366 Order and the Adequate Assurance Order. Based on the significant costs involved and Supra's declining cash reserves, BellSouth submits that it is necessary for Supra to pay the non-recurring portion of any and all UNE-P to UNE-L conversions within one week following such conversions, as well as to adjust the Formula to reflect the recurring UNE-L costs. The need for adequate assurance is particularly acute in light of Supra's proffer at the June 18, 2003 hearing that it intends to place approximately 28,000 UNE-L orders in the near future.

8. BellSouth and Supra have reached an agreement as to the appropriate adjustment to the Formula regarding the recurring UNE-L costs, pursuant to which the recurring payments would depend on the particular SL1s provisioned.⁴ Added to the specific SL1 loop rate is \$.31 for special directory listings and \$.57 for Operator Services and Directory Assistance Services,

³ A true and correct copy of the May 21 Letter is attached hereto as Exhibit "B."

⁴ The prices charged by BellSouth for a loop varies according to whether it is located in zone 1 (generally high population density), zone 2 (medium population density) and zone 3 (low population density).

all of which are services that Supra currently purchases from BellSouth and that Supra has agreed it will continue to purchase with UNE-L.⁵ The formula is illustrated in the table below:

Line Count Numbers for Week Ending:		6/27/2003
Gains:	4000	
Losses:	3000	
Net gain:	1000	
Total Of Lines:	275000	
PAYMENT:		
10,400 DSL Lines		400,000.00
Remaining 255000	UNE P Lines @ \$25 each:	6,375,000.00
2500 SL1 (zone 1)	Lines @ \$11.60 each	28,994.00
6000 SL1 (zone 2)	Lines @ \$16.11 each	96,645.60
500 SL1 (zone 3)	Lines @ \$27.88 each	13,938.80
Total Monthly		6,914,578.40
Daily (Monthly / 30)		230,485.95
Weekly (Daily * 7):		1,613,401.63
Total Payment for Week		1,613,401.63

However, the parties are unable to reach an agreement regarding the non-recurring cost associated with effectuating such conversions.

9. In its May 29 Letter, Supra objects to the amount of BellSouth's non-recurring charge for converting an SL1 Loop (\$51.09).⁶ The May 29 letter states that there is no support for the \$51.09 rate in the parties' interconnection agreement dated July 15, 2002 (the "Present Agreement") or any relevant FPSC order, and that such conversion should in fact cost less than \$1 per loop.

⁵ Supra has requested that BellSouth provide voice mail service to Supra when a line is converted from UNE-P to UNE-L. BellSouth is still researching this request. If BellSouth elects to offer such service, the monthly recurring cost for each loop will need to be adjusted accordingly.

⁶ BellSouth's May 21 Letter inadvertently failed to include the \$8.22 cross-connect charge.

10. CLECs have been ordering UNE-L from BellSouth for several years. BellSouth developed a process to convert lines from its switches to CLEC switches through extensive negotiations with AT&T and other CLECs. This "hot cut" process has been used and continues to be used to provision CLEC orders for stand-alone loops.

11. The public service commissions in BellSouth's region, including the FPSC, have considered this process in extensive administrative litigation concerning UNE costs, BellSouth's applications to provide in-region long distance services and other dockets. In fact, the Florida PSC in its UNE cost docket adopted the rates for the components of BellSouth's hot cut process initially in its May 25, 2001 order in Docket No. 990649-TP, and later revised the rates in its October 18, 2001 order on motions for reconsideration of its May 2001 order. It later reaffirmed these rates in its September 27, 2002 order in Docket No. 990649A-TP, where it established new recurring rates for loops. These rates are incorporated in the Present Agreement and are the rates that BellSouth seeks to collect from Supra for the conversions in question. Moreover, the cost studies filed by BellSouth and approved by the FPSC reflect the rates to convert UNE-P loops to UNE-L. There can be no doubt that Supra must pay for the cost of converting Supra's customers to its switching facilities. BellSouth believes that its conversion process, which has been accepted by all CLECs (until now) and all PSCs, is the proper method of implementing Supra's conversions. Against this background, BellSouth has asserted that Supra is required to pay the approximately \$58 in charges for each hot cut.

12. BellSouth agrees that the terms of the Agreement do not explicitly reference a conversion process from the Port/Loop Combination Service (i.e., UNE-P) Supra currently uses to the separate 2-Wire Analog Voice Grade Loop Service (i.e., UNE-L) Supra now seeks to use.⁷

⁷ The fact that the Present Agreement is silent on this specific conversion is not unusual, as all the other interconnection agreements between BellSouth and other CLECs similarly do not address this issue. Evidently, all other CLECs understand that the FPSC rates would apply and thus have not disputed the charges.

BellSouth believes that the process and rates detailed in the Present Agreement for conversion of BellSouth's retail service to UNE-L should be applied to UNE-P to UNE-L conversions because UNE-P is, for the several functions involved in conversion to UNE-L, the functional equivalent of BellSouth's retail service. BellSouth has been, and continues to be, ready to convert service consistent with the contractual processes if it has adequate assurance that the applicable rates will be paid.

13. Based on the entire record of Supra letters to BellSouth and its argument to the Court, it is unclear to BellSouth whether Supra seeks to use the conversion process and rates of the Present Agreement, or whether Supra prefers a new conversion process separate from the Present Agreement. If Supra seeks a new process, BellSouth stands ready to negotiate its rates, terms, and conditions consistent with its incumbent local exchange company obligations.⁸

14. If Supra, however, desires to proceed under the Present Agreement, it should, as a debtor and debtor-in-possession, provide adequate assurance of payment, particularly in light of its declining cash flow. As a certificated CLEC, it should pay the same price for the establishment of UNE-L service that scores of other BellSouth Region CLECs pay. In Florida, those rates are: (i) Service Order: pursuant to Attachment 2, Exhibit A to the Present Agreement, the charge for submitting an electronic service order is \$1.52 per order;⁹ (ii) Service Provisioning: pursuant to Attachment 2, Exhibit A to the Present Agreement, the charge for

⁸ The Interconnection Agreement between BellSouth and Supra provides a process for the addition of services and elements or processes not included in the Agreement at the time of execution. Attachment 10 of the Agreement sets for the Bona Fide Request/New Business Request Process. The process contemplates Supra submitting to BellSouth its request, BellSouth processing that request pursuant to certain timeframes and then culminating in an amendment to the Agreement.

⁹ The \$1.52 service order charge is inadvertently identified in the box above its proper location; however, BellSouth believes that this amount is not disputed. A true and correct copy of Attachment 2, Exhibit A, Page 142 is attached hereto as Exhibit "C."

provisioning a SL1 loop is \$49.57;¹⁰ and (iii) Cross-Connect: pursuant to Attachment 2, Exhibit A to the Present Agreement, the charge for to cross-connect a 2-wire loop is \$8.22.¹¹ Accordingly, the total charge for converting to UNE-L is \$59.31.

15. Supra has elected to take its dispute regarding the applicable rate to the FCC. BellSouth believes the Florida Public Service Commission is the correct forum for the issues Supra is now raising. Regardless, it is apparent that one or the other regulatory agency will resolve the underlying substantive dispute. Neither agency, however, can currently provide BellSouth with the appropriate adequate assurances of payment – only this Court can. The existing formula simply does not contemplate the Supra's incurring an additional \$1.66M (28,000 lines x \$59.31) in conversion charges. Accordingly, the Court should adopt the adequate assurance proposal that is set forth in detail below.

16. By this Motion, BellSouth requests that this Court adopt the following procedure with respect to all UNE-P to UNE-L conversions. In its weekly line count report to Supra, which is delivered to Supra every Tuesday under the present adequate assurance procedures, BellSouth will report the number of UNE-L conversions completed during the prior week, and shall calculate the total weekly payment due to BellSouth, including the amounts due for completed conversions, based on the rates set forth in paragraphs 8 and 14. Supra shall have until Thursday (of the same week) to remit payment to BellSouth, as it does under the current adequate assurance mechanism. If the FCC, or any other regulatory agency, ultimately determines that the appropriate rate for effectuating a UNE-P to UNE-L conversion is less than \$59.31, BellSouth will issue Supra a credit to be applied against future conversions. Likewise, if

¹⁰ A true and correct copy of Attachment 2, Exhibit A, Page 142 is attached hereto as Exhibit "D."

¹¹ A true and correct copy of Attachment 4, Exhibit A, Page 350 is attached hereto as Exhibit "E."

the FCC, or any other regulatory agency, ultimately determines that the conversion rate is higher than \$59.31, Supra shall immediately remit payment to BellSouth for all completed conversions.

17. BellSouth has made a bona fide effort to resolve this matter without the necessity of a hearing.

WHEREFORE, BellSouth respectfully requests this Court enter an Order:

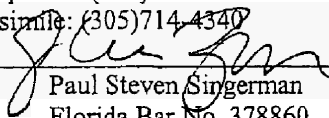
- A. Granting the Motion;
- B. Modifying the Formula in the manner specified above; and
- C. Granting such other and further relief as may be just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the *foregoing* was served via hand delivery on Michael Budwick, Esq. 200 S. Biscayne Blvd., 30th Floor, Miami, FL 33131; the Office of the U.S. Trustee, 51 Southwest First Avenue, Room 1204, Miami, FL 33130; Robert Charbonneau, Esq., Kluger Peretz Kaplan & Berlin, P.A., Miami Center, 17th Floor, 201 South Biscayne Blvd., Miami, FL 33131; Kevin S. Neiman, Esq., 550 Brickell Avenue, PH2, Miami, FL 33131; and by first class mail, postage prepaid, without exhibits, to all other parties on the attached Master Service List this 23 day of June, 2003.

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and that I am in compliance with all additional qualifications to practice before this Court as set forth in Local Rule 2090-1(A).
Respectfully submitted,

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Atlanta, GA 30384-2709

Shell
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Des Moines, IA 50363

Ameritech - Private Line
Bill Payment Center
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Dept. of Justice
P.O. 14198
Washington, DC 20044

IRS
Special Procedures - Insolvency
Stop 5760/POB 17167
Fort Lauderdale, FL 33318

Miami-Dade Tax Collector
Bankruptcy Unit
140 W Flagler Street #1403
Miami, FL 33130

Florida Department of Revenue
POB 6668
Bankruptcy Division
Tallahassee, FL 32314

Internal Revenue Service
Special Procedures Function
P.O. Box 17167 Stop 5730
Fort Lauderdale, FL 33318

Internal Revenue Service
P.O. Box 35045, Stop 501
Jacksonville, FL 92202
Washington, DC 20530

BELLSOUTH SUPPLEMENTAL ADEQUATE ASSURANCE PROPOSALS

The following procedures are proposed by BellSouth to address the Court’s Order Determining Adequate Assurance for BellSouth Under § 366 of the Bankruptcy Code and Setting Forth Hearing (the “366 Order”). BellSouth reserves all rights, and nothing contained herein shall be deemed a waiver of, any of BellSouth’s rights with respect to BellSouth’s motion seeking dismissal or abstention.

A. EXPIDITED DISPUTE RESOLUTION

1. The 2002 Agreement provides the following for billing dispute resolution:

Dispute Process	Contract Terms	Note
First Level of Dispute Resolution (Att.6, § 15.1, p. 487 of 593)	Attempt Resolution Within 60 Calendar Days of Dispute Notification at First Level of Management	1
Second Level of Dispute Resolution (Att.6, § 15.2-3, p. 487 of 593)	Attempt Resolution Within 45 Calendar Days of Parties Designation of Higher Level Management Dispute Team	
Final Dispute Resolution (Att.6, § 15.3, p. 487 of 593; GT&C, § 16.1, p. 25 of 593)	Bring Action Before Florida PSC, Subject to Judicial Review.	2

Note 1 – Payment is due within 30 days of the Bill Date (Att.6, § 14.1, p. 486 of 593), unless “The disputing party [provides] the billing party sufficient documentation to investigate the dispute and [the disputing party] may withhold any disputed amounts supported by such documentation.” (Att.6, §§ 15.1 and 15.5, p. 487-8 of 593). Thus, disputes must first be properly submitted within 30 days of the Bill Date to avoid having to make payment on that disputed amount. Otherwise, the party must pay and dispute the amount later by seeking a credit.

Note 2 – After execution of the 2002 Agreement, Supra adopted the dispute resolution provisions of the current AT&T Agreement, the only difference being that under the 2002



Agreement, all disputes were brought to the Florida PSC for resolution, whereas under the AT&T Agreement provision, the parties can mutually agree to an alternative dispute resolution mechanism for any dispute other than billing disputes, which must still be brought to the Florida PSC for resolution.

2. BellSouth's Proposal for Expedited Review of Post-Petition Bills:

Proposed Dispute Process	Terms
Supra Submits Dispute to BellSouth	30 Calendar Days from Bill Date
BellSouth Responds to Disputes	50 Calendar Days from Bill Date
Negotiation Period	70 Calendar Days from Bill Date
Court for Unresolved Disputes	Quarterly Basis

3. BellSouth's proposed dispute resolution procedures are based upon the assumption that Supra will be making regular weekly adequate assurance payments to BellSouth. In general, assuming that Supra will continue to make the Court ordered weekly payments, BellSouth will issue bills in the ordinary course of business, the parties will exchange information regarding disputed items, a negotiation period (the "Negotiation Period") will follow, ending in a true-up of the bills either by consent or pursuant to Court order on a quarterly basis. In addition, either party may seek an adjustment of the adequate assurance payment formula (the "Formula") set forth in the 366 Order by motion to the Court after a negotiation period as set forth below.

4. BellSouth will issue its monthly bills in the ordinary course of business. Supra shall submit to BellSouth within 30 days of the Bill Date any disputes by following the dispute documentation procedures set forth in the 2002 Agreement. See 2002 Agreement at Attachment 6, copy attached. In sum, the dispute documentation procedures set forth in the 2002 Agreement require Supra to pay all undisputed amounts and to submit disputes with specificity accompanied by sufficient documentation and on the proper form. Alleged disputes not set forth as described above shall not be considered by the court at any subsequent True-Up Hearing (as defined

herein). Moreover, as determined by the Florida PSC in Docket No. 001305-TP, Order No. 02-1413-FOF-TP (dated March 26, 2002) (copy attached), claims asserted by Supra against BellSouth shall not be considered a dispute and shall not be offset against any amounts billed by BellSouth to Supra. Within 50 days from the Bill Date, BellSouth shall respond to Supra's properly raised disputes. During the period that is 51-70 days after the Bill Date, the parties shall attempt to negotiate a resolution of the properly raised disputes. If resolution is reached, the parties shall follow the "Consensual True-Up Procedures" set forth below. If resolution is not reached, the parties will present their positions at a "True-Up Hearing" before the Court on a quarterly basis as set forth below.

5. Consensual True-Up Procedures. After the Negotiation Period, if the parties are able to reach consensus on the properly raised disputes, the parties shall agree upon an amount due for the agreed upon bills (the "Agreed Amount"). If the Agreed Amount is greater than the weekly adequate assurance payments made by Supra to BellSouth for the period of the bills related to the Agreed Amount, Supra shall within 3 calendar days remit the difference to BellSouth by wire or electronic transfer. If the Agreed Amount is less than the weekly adequate assurance payments made by Supra to BellSouth for the period of the bills related to the Agreed Amount, then BellSouth shall credit the difference to the next weekly adequate assurance payments to be made by Supra until such credit is exhausted.

6. True-Up Hearing. After the Negotiation Period, if the parties are not able to reach consensus on the properly raised disputes, the parties shall document their respective positions on the remaining properly raised disputes (the "Disputed Amounts") and submit those Disputed Amounts to the Court for a determination. The first True-Up Hearing shall take place on or after the expiration of the Negotiation Period for the November Bills, so that only the November Bills

(which will also contain any post-petition charges from the October Bills) will be heard at the first True-Up Hearing. As the November Bills are issued around November 20-23, the Negotiation Period for the November Bills will expire around February 20, 2003. Either Supra or BellSouth may file a motion seeking a True-Up Hearing for the Disputed Amounts from the November Bills. The second True-Up hearing would occur in June, 2002, at which hearing the Disputed Amounts from the December, January and February Bills would be addressed, and so on. The initial True-Up Hearing dates for 2003 shall be held on March ____, June ____, and September ____, 2003, and such party filing a motion seeking a True-Up Hearing shall file their motion at least 10 days prior to the scheduled True-Up Hearing.

7. The party seeking a True-Up Hearing shall set forth its position on the Disputed Amounts in its motion seeking a True-Up Hearing, and the respondent shall file a written response no less than 2 business days prior to the scheduled hearing. The parties shall exchange witness and exhibit lists for any True-Up Hearing at noon four business days prior to the scheduled True-Up Hearing. The parties shall endeavor to resolve any disputed exhibits by noon two business days prior to the scheduled True-Up Hearing. Each party shall submit their exhibit and witness lists, and copies of exhibits to the Court by 4:30 p.m. two business days prior to the scheduled True-Up Hearing.

8. The Court will resolve the Dispute Amounts in conjunction with the True-Up Hearing, direct application of the weekly adequate assurance payments to the monthly bills in question as appropriate, make any adjustments to the Formula for the weekly adequate assurance payments deemed necessary, and grant such other relief as is appropriate.

B. ADJUSTING THE FORMULA

9. For numerous reasons, the parties may wish to seek an adjustment to the underlying formula (the "Formula") used to calculate the weekly payments described in paragraph 4 of the 366 Order. For example, BellSouth or Supra may seek an adjustment in the \$25.00 average UNE rate based upon a change in Florida PSC approved rate. If LENS, collocation and related services are ever restored, the Formula as set forth in the 366 Order would likely need to be modified at that time based upon future services to be ordered by Supra.

10. BellSouth proposes the following procedures for the parties to follow to seek adjustment of the Formula. Either party shall send in writing to the other party the requested modification to the Formula, along with an explanation of the request and an example of the modified formula. The other party shall have 10 calendar days to respond to the party making the request, and include in its response an explanation of its response. The parties shall then have 10 days to attempt to negotiate a resolution to the proposed modification. If after the 10 day negotiation period resolution cannot be reached, the requesting party may seek a determination from the Court by motion on at least 10 days notice.

11. By way of example only, if BellSouth believes that the UNE rate should be \$26 per UNE line, BellSouth may send to Supra such a request. Supra would have 10 calendar days to respond to BellSouth's request, with an explanation of its position. If in the ensuing 10 days the parties agreed on the modification, the parties would implement the modification and future weekly payments would be made based upon the modification. If agreement could not be reached in the 10 day negotiation period, the party requesting the modification may by motion to the Court on 10 days notice, seek a modification in the Formula. The party seeking the modification shall set forth its position in the motion and the other party shall file a written response no less than 2 business days prior to the scheduled hearing. The parties shall exchange

witness and exhibit lists at noon four business days prior to the scheduled hearing. The parties shall endeavor to resolve any disputed exhibits by noon two business days prior to the scheduled hearing. Each party shall submit their exhibit and witness lists, and copies of exhibits to the Court by 4:30 p.m. two business days prior to the scheduled hearing.

C. Additional Financial Information

12. BellSouth requests the following financial information to be submitted to BellSouth pursuant to paragraph 9 of the 366 Order.

13. Supra's 13-week rolling projection in a form no less detailed as the form used by Supra at the 366 hearings, updated weekly, with budget to actual for prior periods.

14. In addition, the financial information set forth in the chart below labeled "BellSouth Proposed Weekly Flash Report For Supra." For the Court's information, also set forth below is the financial information provided to BellSouth as an ILEC in the Adelphia bankruptcy case.

15. BellSouth does not believe that the requested information would be burdensome for Supra to prepare as such information was either included in the cash flow projections utilized by Supra at the 366 Hearings and such information is typically maintained by a debtor-in-possession and would likely be provided to a creditors' committee on a regular basis. BellSouth is entitled to the requested information based upon the level of services provided to Supra.

16. The information requested by BellSouth is financial information as itemized in the chart below, as well as a list of the following information for the corresponding weekly period: the (a) payee, (b) date of check, and (c) amount of any and all checks, withdrawals, wire or electronic transfers (collectively a "Payment") for the following:

- (i) Payments \$2,500 and over during the weekly period;

(ii) All payees (including to "Cash") that were issued two or more Payments during the weekly period; and

(iii) All Payments to insiders or relatives of insiders (as such terms are defined in 11 U.S.C. § 101).

WEEKLY FLASH REPORT PROVIDED TO ILECs IN ADELPHIA

Adelphia Business Solutions
Cash Flash Report ILECs

Cash Flash	18-Nov-02	19-Nov-02	20-Nov-02	21-Nov-02	22-Nov-02
Cash - Beginning of Day before Receipts	\$	\$ -	\$ -	\$ -	\$ -
Daily Receipts	<hr/>				
Available Cash before Items Clearing	<hr/>				
Clearing Items:	<hr/>				
- Checks (estimated)	<hr/>				
- Wires	<hr/>				
- Payroll and benefits	<hr/>				
Totals Clearing Items	<hr/>				
Cash - End of Day	\$ -	\$ -	\$ -	\$ -	\$ -
Post Petition Administrative Claims outstanding - estimated	\$ -	\$ -	\$ -	\$ -	\$ -
DIP Summary					
- Outstanding	\$ -	\$ -	\$ -	\$ -	\$ -

BELLSOUTH PROPOSED WEEKLY FLASH REPORT FOR SUPRA

Supra

Cash Flash Report ILECs

Cash Flash	Week Ending Each Friday
Cash - Beginning of Day before Receipts	\$
Weekly Receipts – Carriers	
Weekly Receipts – End Users	
Weekly Receipts - Other	
Available Cash before Items Clearing	<hr/>
Clearing Items:	
- Checks (estimated)	-
- Wires/Electronic	-
- Payroll and beuefits	-
- Other Withdrawals	
Totals Clearing Items	<hr/>
Cash - End of Day	<u>\$</u>
 Post-Petition Payables Outstanding - Estimated	 \$ -

List of the following for the weekly period: the (a) payee, (b) date of check, and (c) amount of any and all checks, withdrawals, wire or electronic transfers (collectively a "Payment") for the following:

- (i) Payments \$2,500 and over during the weekly period;
- (ii) All payees (including to "Cash") that were issued two or more Payments during the weekly period; and
- (iv) All Payments to insiders or relatives of insiders (as such terms are defined in 11 U.S.C. § 101).

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July 14, 2003

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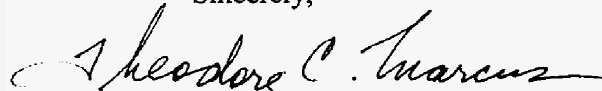
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**Re: Request for Consideration of Supra Telecommunications and
Information Systems, Inc.'s Complaint Against BellSouth
Telecommunications, Inc. for Inclusion on the Accelerated Docket**

Dear Messrs. Starr, DeLaurentis and Savage, and Ms. Karmarkar:

Attached please find BellSouth Telecommunications, Inc.'s Response to the
above-referenced Request.

Sincerely,



Theodore C. Marcus

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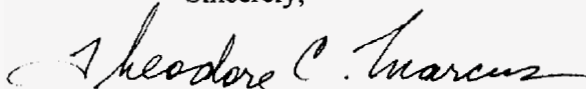
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Sincerely,



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Re: Request for Consideration of Supra Telecommunications and Information Systems, Inc.'s Complaint Against BellSouth Telecommunications, Inc. for Inclusion on the Accelerated Docket

Dear Mr. Starr:

BellSouth Telecommunications, Inc. ("BellSouth") hereby responds to Supra Telecommunications and Information Systems, Inc.'s ("Supra's") request for Commission consideration of its complaint against BellSouth on the Commission's Accelerated Docket pursuant to 47 C.F.R. § 1.730.

INTRODUCTION

Supra, a debtor-in-possession under the U.S. bankruptcy code, is seeking in this Complaint to obtain valuable services from BellSouth, worth approximately \$1.6 million, for nothing. Supra's position, cobbled together from a strained reading of the parties' interconnection agreement, is that it is entitled to convert tens of thousands of its customers from UNE-P to UNE-L facilities without charge.¹ As BellSouth will demonstrate, Supra's position is both factually inconsistent and legally flawed and thus should be rejected.

First and foremost, the parties' current interconnection agreement (the "Agreement") requires that this dispute be resolved before the Florida Public Service Commission ("FPSC"),

¹ Supra's position is that it is entitled to the hot cut conversions without charge, but if there is a charge, it should be at most \$1.00. For purposes of this response, BellSouth will assume Supra's position to be that it is entitled to the hot cuts without charge given that a charge of \$1.00 for a hot cut is substantially the same as free of charge. Further, through BellSouth's discussions with Supra it understands that Supra is not seeking to coordinate the cut from the BellSouth switch to the Supra switch in an effort to reduce the downtime experienced by the Supra end users. Rather, Supra has chosen a noncoordinated cut where BellSouth performs its work independent of the Supra employees performing their work.

Alexander Starr, Chief
July 14, 2003
Page 2

not this Commission. Supra's failure to adhere to the Agreement's forum selection clause forecloses any remedy that Supra might seek here. For this reason, the Commission should dismiss the Complaint without further consideration.

Should the Commission choose to ignore the forum selection clause in the Agreement and consider the merits of the dispute, the inconsistencies in Supra's argument will be patently obvious. As the Commission will see, Supra is trying to argue simultaneously that the conversions from the so-called Unbundled Network Element Platform to Unbundled Loops ("UNE-P to UNE-L conversions") it wants are not in the Agreement and thus no rate applies to them, while at the same time arguing that it is entitled to UNE-P to UNE-L conversions despite the fact that the process is not in the Agreement. Supra can't have it both ways – either the parties have an agreement for the UNE-P to UNE-L conversions (memorialized in the Agreement) and the rates in the Agreement apply, or the parties have no such agreement and Supra is not entitled to the conversions until such time as the parties reach an agreement for the conversions.

In an attempt to avoid this inconsistency, Supra tries to point to the Agreement as evidencing an affirmative agreement that BellSouth would perform these conversions free of charge. Supra's interpretation is strained at best, irresponsible at worst. Supra points to provisions in the Agreement having nothing to do with the provision of network elements and services, but rather provisions that deal with compliance with government regulations, and the allocation of business cost and expenses. Supra also tries to characterize the conversions at issue as "terminations" of service to avail itself of termination language in the Agreement. This argument might be true if Supra were submitting Local Service Requests ("LSRs") canceling its UNE-P service and then submitting new LSRs for UNE loops to that same end-user, but that makes no sense in a situation in which BellSouth is making a conversion of active customer service from the UNE-P to UNE-L.

As this Commission is well aware, the issue of timely, effective conversions in which customer service disruption is reduced, has been discussed at length. Those discussions have, in many cases, resulted in improvements to the agreed-to processes used by incumbents and CLECs for these conversions. In light of those discussions, it is puzzling that Supra might now intentionally seek a method of moving customers from BellSouth's switches to Supra's own switches that increased rather than decreased the risks of service disruption.

Moreover, Supra's position is nonsensical in light of the extensive review conducted by this Commission and nine state commissions of BellSouth's conversion process and the cost-based rates associated with that process. The process that Supra claims is "inefficient, error-prone and time-consuming" is the *same process* that this Commission found "provides hot cuts in each of the states within reasonable time intervals, at an acceptable level of quality, with minimal service disruption, and with a minimum number of troubles following installation." It also is the same process this Commission and nine state commissions found met the requirements of Checklist Item 4; the same process for which the FPSC established TELRIC-compliant rates; and the same process for which this Commission approved the FPSC-ordered

cost-based rates. Importantly, the process BellSouth and the CLECs in its region use for hot cuts is one that has evolved and improved over time through significant CLEC input and cooperation.

BRIEF SUMMARY OF FACTS

On October 23, 2002, Supra filed for Chapter 11 bankruptcy protection in the Southern District of Florida. Supra has continued to operate its business and manage its affairs as a debtor-in-possession pursuant to the bankruptcy code. On November 13, 2002, the bankruptcy court ordered Supra to make weekly adequate assurance payments to BellSouth for the continuation of post-petition services provided by BellSouth to Supra. A formula was established for the calculation of the payments, which was premised in large part on the status quo business relationship between BellSouth and Supra.

The adequate assurance payments order, however, contains an adjustment procedure that allows the parties to have the existing formula modified for an appropriate reason. Pursuant to that procedure, on May 21, 2003, BellSouth issued written notice to Supra seeking a formula adjustment. The notice and request were designed to address the issue of Supra's ordering of UNE-Loops, a process through which Supra intends to convert tens of thousands of its end users from Supra's current UNE-P arrangements to UNE-L facilities using Supra's, not BellSouth's, switches. Supra argues that the conversions it seeks will result in lower recurring costs going forward.

CLEC UNE-P to CLEC UNE-L conversions are virtually identical to the process involved in conversions, for example, of BellSouth retail service to UNE-L. Under the Agreement, this is a valuable service with applicable rates. The rates include a non-recurring (i.e., one-time) charge of \$51.09 (plus certain cross-connection charges amounting to \$8.22), per loop for the particular loops at issue, known as Service Level-1 ("SL-1") loops. When BellSouth informed Supra of this charge in the notice for adjustment of the adequate assurance payments, Supra, by letter dated May 29, 2003, objected to the charges and took the position that, because conversions of the specific facilities at issue were not separately itemized on the rate schedule, BellSouth should be entitled to either no compensation under the Agreement, or no more than \$1 per loop.

After additional correspondence, the parties met by conference call to discuss their differences on June 12, 2003. The parties failed to reach accord in that meeting regarding Supra's UNE orders. Shortly thereafter, on June 16, 2003, Supra filed the present matter before the Commission. Subsequently, the bankruptcy court has approved BellSouth's adequate assurance payments request. The court, however, has not decided the actual merits of the dispute, but has essentially accepted BellSouth's position subject to further ruling by an appropriate authority.

ARGUMENT

I. The Complaint Should Be Dismissed Because The Commission Lacks Jurisdiction Over It.

A. The Agreement contains a forum selection provision that vests jurisdiction over this Complaint in the Florida Public Service Commission.

Supra's central allegation is that BellSouth is violating the Agreement, and thus the reasonableness standard of Section 251(c)(3) of the Act, by seeking approximately \$50 per order for what Supra calls the "termination" of its UNE switching arrangements. *See* Letter Brief, at 10 ("Supra will focus its discussion on Section 251(c)(3) and associated rules"). Supra further contends that BellSouth's contractual position is discriminatory, in violation of Sections 202(a) and 251(c)(3) of the Act's requirement that ILECs provide competing carriers with non-discriminatory access to unbundled network elements. These violations, Supra argues, provide the premises for the Commission's jurisdiction pursuant to Section 208 of the Act. *See* Letter Brief of C. Savage to A. Starr, June 16, 2003, at 1-2, 4-5.

It is abundantly clear that the current dispute arises from the parties' commitments and obligations under the Agreement. Supra's complaint fails to mention, however, that the parties chose their desired forum for the resolution of such disputes, and that the forum is not this Commission. On August 20, 2002, the parties adopted an amendment to the Agreement incorporating the Dispute Resolution Process from the AT&T agreement. Under section 16 and 16.1 of the amendment, the parties agreed that:

Except as otherwise stated in this 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. The Parties may, by mutual agreement, agree to an alternative dispute resolution mechanism for any dispute, except billing disputes, which shall be resolved as described in Attachment 6, Section 15. Each Party reserves the rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

Agreement, ¶¶ 16, 16.1. The term "Commission" in the Agreement is the Florida Public Service Commission. *See e.g.* Att. 11 ("FCC" means Federal Communications Commission"); Att. 9 (reference to FPSC's performance measures docket). The language of section 16, therefore, provides that the FPSC should resolve this dispute, which arises out of the Agreement. The only situation in which the FPSC would not be the appropriate forum to resolve this dispute is, according to the Agreement, in the event the parties *mutually agree* to an alternative forum. In

this case, the parties did not agree to an alternate forum, and specifically did not agree to this forum. Consequently, the matter should be decided by the FPSC.

Moreover, Section 3.8.4.1 of Attachment 2 of the Agreement provides that the parties will establish a process improvement mechanism "to be used throughout the term of this Agreement for amending and supplementing the initial [hot cut] procedures established in this Section." Section 3.8.4.2 provides that

in the event that the Parties are unable to enter into the improvement method contemplated in Section 3.8.4.1 above within ninety (90) days of the Execution Date, the Parties agree to resolve any disputes in *accordance with the dispute resolution process provided in Section 16 of the General Terms and Conditions of this Agreement.*

Section 16, as described above, provides that the Florida Commission should resolve this dispute. Consequently, given that this dispute focuses on alleged improvements to the hot cut process that Supra contends should be made, Section 3.8.4.1 governs the issue and, because there is no improvement method, Section 16 directs the parties to the FPSC.

This Commission should respect the parties' agreed upon forum. The Commission has affirmed the "significance of interconnection agreements in the [Act's] statutory scheme," and "the crucial status of interconnection agreements in implementing the statutory requirements..." *Core Communications, Inc. v. Verizon Maryland, Inc.*, ___ Commission Rcd ___, File No. EB-01-MD-007, Commission No. 03-96 (rel. April 18, 2003); see also *BellSouth Telecommunications, Inc. v. MCI Metro Access Transmission Services, Inc.*, 317 F.3d 1270, 1278 (11th Cir. 2003) ("Interconnection agreements are tools through which the [Act is] enforced").

Further, as the Commission recently stated, "the obligations created by section 251 and [Commission] rules are effectuated through the process established in section 252 – that is, by reaching agreement through negotiation, arbitration, or opt-in." *CoreComm Communications Inc. and Z-Tel Communications Inc. v. SBC Communications Inc., et al.*, ___ Commission Rcd ___, File No. EB-01-MD-017, Commission No. 03-83 (rel. Apr. 17, 2003); see Separate Statement of Commissioner K. Abernathy, *CoreComm Communications Inc., supra* ("A party's failure to adhere to the requirements of an interconnection agreement – its change-of-law provisions, for example – would likely foreclose any remedy under section 208"); see also *Trinko v. Bell Atlantic Corp.*, 305 F.2d 89, 102 (2nd Cir. 2002) ("After the state commission approves . . . an [interconnection] agreement, the . . . Act intends that the ILEC be governed directly by the specific agreement rather than the general duties described in subsections (b) and (c) of section 251").

In this vein, the Commission and the courts have made clear that parties' forum selection in an interconnection agreement for resolution of disputes should be respected. See *Core Communications, supra*, n.81 ("Contrary to Verizon's suggestion otherwise . . . nothing in this order indicates that the Commission would ignore a valid forum-selection clause in an

interconnection agreement) (emphasis added); see also *BellSouth Telecommunications, Inc. v. MCIMetro Access Transmission Services, Inc.*, 278 F.3d 1223 n. 13 at 1232 (11th Cir. 2002), vacated on other grounds, 297 F.3d 1276, on rehearing en banc 317 F.3d 1270 (11th Circuit “acknowledge[s] that parties are free to predetermine a forum for dispute resolution . . .”).

The Commission should, as it forecast in *Core Communications, supra*, enforce the parties' forum choice in this matter and dismiss this complaint. In so doing, the Commission would avoid the anomalous result of assisting in a breach of the Agreement it is being called upon to enforce. Accordingly, the Commission should decline to exercise jurisdiction over this matter.

B. The FPSC, not the Commission, has sole jurisdiction to set rates.

Supra claims that the CLEC UNE-P to CLEC UNE-L conversion process is not set forth in the Agreement and that, therefore, no rate applies to it. If, as Supra alleges, there is no rate established in the Agreement for the service, then it is incumbent on the FCC, Supra claims, to determine the applicable rate. Under the Act, however, the FCC has no such jurisdiction.

Under the Act, interconnection and network element charges, as well as wholesale prices for telecommunications services are to be determined by state commissions, not the FCC. 47 U.S.C. §§ 252(d)(1) and 252(d)(3). See *Verizon Communications Inc. v. FCC*, 535 U.S. 467 (2002). Although, as the Supreme Court has held, the FCC has the authority to set the pricing methodology for the states to use in establishing such rates, see *Verizon Communications, supra*, 535 U.S. at 20-21, the FCC does not have jurisdiction to set rates for interconnection and network element charges, or wholesale prices for services: that power is exclusively vested in the states. In the case of wholesale services, the rates are to be set by the FPSC on the basis of retail rates, exclusive of certain enumerated costs. 47 U.S.C. §§ 252(d)(1) and 252(d)(3). *Verizon Communications, supra*, 535 U.S. at 21.

Thus, if no rate has been established in the Agreement for the services at issue, and it is clear that the parties disagree as to what that rate should be, then the Act requires the FPSC to set both the network element charges and the wholesale service prices in an appropriate proceeding (e.g., arbitration). It goes without saying that the rate to be established by the FPSC must be non-confiscatory, i.e., the opposite of the zero charge Supra is claiming in this matter. See *Verizon Communications, Inc., supra*, 535 U.S. at 17 (“the Act thus appears to be an explicit disavowal of the familiar public-utility of rate regulation . . . in favor of novel ratesetting designed to give aspiring competitors every possible incentive to enter local retail telephone markets, short of confiscating the incumbents' property”) (emphasis added).

In sum, although it is clear, in BellSouth's view, that the Agreement contemplates the conversion service and process at issue and that the rates should be the same as the identical retail to UNE-L conversion service also described therein, if there is any doubt that the Agreement does not so provide, then it is incumbent on the FPSC, not the Commission, to set the

appropriate charges for the services being sought. Accordingly, this matter should be referred immediately to the FPSC for further proceedings.

C. Supra's Complaint fails to state a claim under Sections 202 or 208 of the Act.

A related, but distinct, consequence of Supra's failure to observe the dispute resolution mechanism of the Agreement is that Supra is foreclosed from seeking any remedy before the Commission under Sections 208 or 202 of the Act. Although the Commission has held that its jurisdiction to adjudicate interconnection disputes is concurrent with that of the states under the Act, it has not held – nor should it, that that jurisdiction overrides the parties' statutorily permissible selection of a state PSC as the forum for the resolution of disputes. But that is precisely the result Supra is seeking in this case.

Contrary to Supra's view, however, is Commissioner Abernathy's concurrence in *Core Communications, supra*. There, Commissioner Abernathy stated:

This Order holds that the Commission has concurrent jurisdiction with the state commissions to adjudicate interconnection disputes. I agree that the plain language of the Act compels this conclusion. But I also believe there are significant limitations on the circumstances in which complainants actually will be able to state a claim under section 208 for violations of section 251(c) A party's failure to adhere to the requirements of an interconnection agreement – its change of law provisions, for example – likely would foreclose any remedy under section 208. Thus, in this case, the failure of Core Communications and Z-Tel to follow the change-of-law provision in their interconnection agreement in California denied them a cause of action against SBC for failing to provide shared transport for intraLATA toll traffic in California.

Separate Statement of Commissioner K. Abernathy, *Core Communications Inc., supra*. Supra's failure to adhere to the "Dispute Resolution Process" to which it expressly agreed should, as Commissioner Abernathy's concurrence states, "foreclose any remedy under section 208" and, of course, section 202 of the Act.

II. This Commission And Nine State Commissions Have Determined That BellSouth's Hot Cut Process Is Efficient And Effective.

Supra attacks BellSouth's "hot cut" process as "inefficient, error-prone, and time-consuming." See Letter Brief from C. Savage to A. Starr at 4-5. Further, Supra argues that to the extent BellSouth's process involves steps that Supra deems "inefficient," it would amount to "subsidiz[ing] that inefficiency" for Supra to have to pay more than "approximately \$1.00 [per order]" for the service. *Id.* at 1, 3, 4-5. Finally, Supra claims that BellSouth's hot cut process is "an effectively insurmountable – barrier to [CLECs]". *Id.* at 2. After extensive review in section 271 proceedings and cost dockets, this Commission, the FPSC, and eight other state commissions have directly contradicted Supra's allegations and concluded that BellSouth's hot

cut process meets its obligations under Sections 251 and 271.² Supra's unsubstantiated allegations should, therefore, be rejected.

A. BellSouth's Hot Cut Process.

1. The Hot Cut Process.

A "hot cut" is "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." *Bell Atlantic New York Order*, 15 FCC Rcd 3953, 4104, para. 291 n. 925 (emphasis added). In Supra's case, the hot cut process at issue³ involves the non-coordinated conversion of Supra's customers from UNE-P facilities, which employ BellSouth's switching facilities, to UNE-Loops using Supra's switches. The process involved, however, is virtually identical to the conversion of BellSouth's retail service to UNE-L (with the exception that this process is for coordinated conversions, the process most CLECs adopt). The coordinated cut-over process is generally described as follows:

- The BellSouth central office technician receives a call from the Customer Wholesale Interconnection Network Services ("CWINS") Center to begin cutover and the technician asks for the cable pair identification of the loop to be cutover.
- The technician types the cable pair identification into a database to find the loop cutover work order number.
- The technician retrieves a copy of the work order for the unbundled loop.
- The technician in the BellSouth central office responds to the BellSouth CWINS Center's request to initiate coordination of the overall cutover of service from BellSouth to the CLEC.
- The technician then verifies that the correct loop has been identified for cutover. This is done using a capability referred to as Automatic Number Announcement Circuit ("ANAC"). The technician plugs a test set onto the loop and dials a special code. The telephone number associated with that loop is played audibly.
- Next, the technician locates the existing jumper on the BellSouth Main Distributing Frame ("MDF") running between the loop and the BellSouth switch port.

² While Supra makes numerous references to its involvement of the Commission in its collocation disputes with BellSouth, it fails to mention that at no time did the Commission ever grant Supra the relief that it sought.

³ A variety of "hot cut" conversion scenarios exist, depending on the facilities involved (e.g., Service Level 1 (SL-1) or Service Level 2 (SL-2) voice grade loops, or any of the other loop types BellSouth makes available to CLECs), and the conversion requested (e.g., conversion of retail or resale lines to UNE-L, CLEC UNE-L to CLEC-UNE-L, UNE-P to UNE-L, etc.). The core components of BellSouth's hot cut process (described *infra*), however, is essentially the same in each of these scenarios.

- The technician locates and removes the end of the jumper connected to the BellSouth switching equipment.
- The technician then connects the one end of a new jumper between the loop and a connector block on a cable rack with tie cables to the CLEC's collocation arrangement.
- The technician connects the second end of the new jumper to the connector block and thus the tie cable to the CLEC's collocation equipment.
- The technician next verifies that the loop is connected to the expected switch port and telephone number in the CLEC's switch, again using ANAC capabilities.
- Upon successful completion of the loop cutover, the technician verifies with the CLEC that the order was correctly worked, closes the work order, and notifies the CWINS Center.
- Once the cutover is complete, the CLEC sends appropriate messages to effectuate number porting.⁴

See *Florida/Tennessee Order*, Affidavit of W. Keith Milner, ¶ 127.

Supra's simplistic, shorthand description of BellSouth's hot cut process is both self-serving and erroneous. BellSouth's hot cut process is designed to ensure that hot cuts are done as quickly as possible with the least chance of error or unnecessary disruption to the end user's service. The process was created in conjunction with AT&T and numerous other CLECs that have successfully had their hot cut conversion orders processed without complaint..

2. The hot cut process is virtually the same for retail to UNE-L conversions as for UNE-P to UNE-L conversions.

While Supra tries to draw a competitive distinction between retail to UNE-L conversions and UNE-P to UNE-L conversions, there is virtually no technical distinction between the two processes. In each case, there is a service order charge, a non-recurring loop charge, and a charge for the cross-connect to move the loop from BellSouth's switch to Supra's switch. The similarity in the processes is obvious from the fact that UNE-P is virtually equivalent to BellSouth's retail service. It stands to reason, therefore, that the conversion processes would also be substantially equivalent. Consequently, the distinction Supra tries to draw between the process detailed in the Agreement (retail to UNE-L) and the hot cut conversions that it wants (UNE-P to UNE-L) is a distinction without a difference.

⁴ These steps were detailed in an exhibit submitted in the Florida/Tennessee Section 271 proceedings. *Florida/Tennessee Order*, Affidavit of W. Keith Milner, Exh. WKM-7.

3. A UNE-P to UNE-L change is a *conversion*, not a “termination” as characterized by Supra.

Supra claims that the services it has sought from BellSouth are “fundamentally” the cessation of UNEs Supra “no longer needs.” Letter Brief at 3. If, in fact, that was all there was to it, Supra’s position might be sustainable. However, Supra’s request does not stop at the termination of BellSouth’s switching facilities under the UNE-P. Rather, Supra’s request involves the cessation of that facility (that is, the UNE-P arrangement) and its simultaneous replacement with a new facility (that is, the UNE-L).

In the process applicable to Supra’s requests, customers are transferred from, inter alia, BellSouth’s switches to Supra’s collocated equipment including Supra’s switching equipment. Thus, Supra is not seeking merely to stop buying “UNEs it no longer needs,” rather, it is simultaneously disconnecting UNE-Ps and establishing the UNE-Ls it does need. This is not the termination of service, but rather the conversion from one service to another. Such a conversion, i.e., a hot cut, can be accomplished via the process described in the Agreement. A “termination” of service would be a situation in which Supra issued disconnect orders for its UNE-P arrangements, BellSouth processed those disconnect orders, and Supra then issued LSRs to provide UNE loops to each of those same locations. The problem with this service termination scenario, of course, is that it will result in a longer period of time during which the end user would be without service. The value of the *conversion* process BellSouth and CLECs have exercised successfully thousands of times is that it keeps the customer’s service intact for all but a very short period of time (minutes in most cases).

Supra attempts to distinguish the conversion of its facilities from the conversion described in the Agreement on the basis that Supra is not “converting an existing BellSouth end user’s service over to Supra.” Letter Brief, at 6. As discussed above, this is a meaningless distinction - the services involved, particularly the hot cut process involved, are virtually the same regardless of whether the conversions involve BellSouth retail to UNE-L or CLEC UNE-P to CLEC UNE-L, and they are valuable services in both scenarios.⁵

⁵ In addition, it is interesting to note that the challenge AT&T made to BellSouth’s hot cut charges before both the FPSC and the Commission were driven by AT&T’s “business plan of converting UNE-Platform customers to UNE-loop customers served on AT&T’s switches.” *Florida/Tennessee Order, supra*, at ¶ 39. This business plan is identical to that outlined by Supra in its complaint, the only difference being that AT&T’s plan involved a different loop type referred to as the SL-2s, rather than SL-1s. This difference between SL-1 loops and SL-2 loops justifies a higher charge for the SL-2 loops, but gives no support to the zero charge for SL-1 loops that Supra seeks. In any event, the process in the quoted language is properly characterized as the conversion of UNE-P to UNE-L, with service on the CLEC’s switch, not mere “termination” of UNE-P.

B. This Commission and nine state commissions have approved BellSouth's hot cut conversion process.

In an attempt to substantiate its claim that it is entitled to UNE-P to UNE-L conversions without charge, Supra argues that BellSouth's hot cut process is "inefficient, error-prone and time-consuming." See Letter Brief, at 10. What Supra fails to mention, however, is that the coordinated hot cut process BellSouth has presented to Supra is the precise process presented to, and approved by, all nine states and this Commission in BellSouth's 271 proceedings. See *Florida/Tennessee Order*, ¶ 135; *Five State Order* ¶ 234. The Commission held that "like the state commissions, we find that BellSouth is providing voice grade loops through hot cuts in each state in accordance with the requirements of checklist item 4." *Five State Order*, para. 234. The Commission went on to hold that BellSouth, using the process detailed above and the process offered to Supra, "provides hot cuts in each of the states within reasonable time intervals, at an acceptable level of quality, with minimal service disruption, and with a minimum number of troubles following installation." *Id.*; see also *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Authorization to Provide In-Region, InterLATA Services in Florida and Tennessee*, WC Docket No. 02-307, Memorandum Opinion and Order, paras. 32-42, 132-135 (2002) ("*Florida/Tennessee Order*"); *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Authorization to Provide In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Memorandum Opinion and Order, paras. 218-222 (2002) ("*Georgia/Louisiana Order*"); *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Authorization to Provide In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina and South Carolina*, WC Docket No. 02-150, Memorandum Opinion and Order, paras. 232-34, 289 (2002) ("*Five State Order*").

In addition, independent of the section 271 proceedings, the FPSC recognized the merit of BellSouth's coordinated cut-over process in its Order approving the parties' interconnection agreement. On March 26, 2000, the FPSC, over objections from Supra, held that "BellSouth's coordinated cut-over process should be implemented when service is transferred from a BellSouth switch to a Supra switch." See Order No. PSC-02-0413-FOF-TP, Docket No. 001305-TP, March 26, 2002, at 118. Thus, while Supra is not interested in protecting its end-users by using the coordinated cut-over process, the FPSC recognized the merits of BellSouth's cut-over process. Moreover, the FPSC appeared to recognize that the issue is not whether the cut-over is from retail to UNE-L or UNE-P to UNE-L, but rather that the cut is from the *BellSouth switch* to the *Supra switch*. It is exactly such a move that Supra wants to make here.

Based on this extensive regulatory review, there can be no doubt that BellSouth's hot cut process meets the requirements of the Act, and that Supra's claims of inefficiency and error are spurious.

- C. BellSouth's performance data demonstrate conclusively that BellSouth's process is effective and efficient.

The most compelling evidence of the viability of BellSouth's hot cut process is its operational success. While Supra makes unsubstantiated and exaggerated allegations regarding the process, BellSouth has actual data that tell a far different story. For example, for the period December 2002 – April 2003 in Florida, BellSouth met the state commission-ordered benchmarks for 107 out of 109 hot cut performance measures covering provisioning, timeliness and quality of installation. In the face of this exemplary data, Supra provides nothing but rhetoric.

- D. BellSouth already has agreed to modify the process to address the only specific allegation of inefficiency that Supra makes.

While its entire complaint is based on the alleged "inefficiencies" of BellSouth's hot cut process, Supra only cites to one specific example of an alleged inefficiency, namely the use of telephone or fax communications rather than email. Again, however, Supra only has told the Commission half the story, as the truth is that BellSouth had offered to provide Supra email notification *prior* to the filing of this Complaint.

BellSouth's usual course of dealing with CLECs is to provide notifications of hot cut completions via telephone or fax. It is not the case, however, that inefficiency or inability to employ "a proven technology . . . that is preferable to . . . 'hard copy' or faxes," *id.*, explains that practice. Rather, BellSouth's methods of communicating order completion have developed as a course of dealing with the CLECs themselves, most of whom seek "coordinated" conversions as opposed to un-coordinated conversions, the type ordered by Supra for its SL-1 loops. As the term suggests, "coordinated" conversions (of which there are two service options, time-specific and non-time-specific) involve mutual establishment of a time for conversion on the established "due date," through which the CLEC acquires the ability to minimize ill-timed service interruptions, or certainly to manage their impact on its customers. Because in these conversions CLECs are in comparatively close contact with BellSouth on the due dates already, the fax and hard copy notices have served more to memorialize what they already know than to notify them of something they do not.

Second, BellSouth has never "insisted" that Supra accept fax or hard copy notification of conversion completions, nor has BellSouth "refused" to provide email notification. In fact, after Supra first requested that BellSouth email conversion completion notifications (at a meeting between the parties on March 5, 2003), BellSouth: (1) immediately generated an internal action item for the request on March 7, 2003; (2) made the necessary changes to its systems to implement Supra's request; (3) advised Supra by voice mail on June 3, 2003 that it would now send notifications by email and requested the proper email address; and (4) received that email address from Supra the next day, June 4, 2003. Thus, Supra is now, in fact, able to receive email notification from BellSouth for completion of conversion requests.

III. The FPSC Has Reviewed BellSouth's Hot Cut Process And Established Cost-Based Rates For The Process Based On The Work Activities Involved.

A. The FPSC has approved cost-based rates for SL-1 and SL-2 hot cut conversions.

While Supra expends substantial energy arguing about what the hot cut process entails and what it should cost, those arguments are moot in light of the extensive, fact-intensive inquiry into the process and the costs associated with that process conducted by the FPSC in its recent cost docket. Notably, while Supra tries to relitigate the costs associated with the hot cut process in this proceeding, Supra did not challenge that process during the FPSC's cost docket or otherwise participate in that docket.⁶ As a result of failing to challenge BellSouth's hot cut process in the FPSC cost docket, Supra, as a matter of law, waived the right to participate in that docket or to otherwise challenge that process. See Order PSC-02-0117-PCO-TP at 6 (stating "if a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.")

The FPSC engaged in a thorough, detailed analysis of the evidence (from BellSouth and CLECs) regarding the hot cut rates proposed by BellSouth in its UNE rate proceedings. See Florida Public Service Commission, In re: Investigation into Pricing of Unbundled Network Elements, *Final Order on Rates for Unbundled Network Elements Provided by BellSouth*, Docket No. 990649-TP (May 25, 2001) (*Florida Commission UNE Rate Order*); and Order No. PSC-01-2051-FOF-TP in Docket No. 990649-TP (October 18, 2001). See also, *Florida/Tennessee Order, supra*, at ¶¶ 33, 41. The evidence in the UNE Rate proceedings included BellSouth's cost studies, which were filed in support of "each type of loop . . . not just . . . new loops, but . . . also . . . conversion[s] of retail, resale or UNE-P lines to UNE-L. See Letter from G. Follensbee to D. Nilson, June 5, 2003 at 2.

At the conclusion of the proceedings, the FPSC ordered nonrecurring rates for SL-1 loops, SL-2 loops and other hot cut elements. For SL-1s, the specific rate established for non-recurring charges for SL-1 was \$49.57, the loop rate BellSouth seeks from Supra. These rates, it should be noted, reflect the FPSC's modification of certain inputs, as well as reductions to certain work times, proposed by BellSouth. As a result, the FPSC's established rates were substantially lower, by an average of 41%, than what BellSouth proposed. See *Florida Commission UNE Rate Order*, Order No. PSC-01-2051-FOF-TP, Appx. A at p. 28 (October 18, 2001). See also *Florida/Tennessee Order, supra*, at ¶ 38 (The FPSC's "adjustments reduced BellSouth's SL-1, SL-2 and other hot cut elements by an average of 41%").⁷

⁶ Supra submitted no filings in the FPSC cost proceeding relating specifically to BellSouth. In fact, the last time Supra submitted a filing in the FPSC cost docket was in September 2000 and that pleading related to discovery.

⁷ The FPSC's adjustments, it should be noted, took into account similar "efficiency," forward-looking network and related arguments now espoused by Supra. The FPSC's rates, therefore, reflected the hot cut process it also tailored, and ultimately approved.

B. This Commission reviewed the FPSC's hot cut conversion rates and found them to be TELRIC-compliant.

In BellSouth's Florida/Tennessee section 271 application, the Commission concluded that the hot cut charges for SL-2 loops ordered by the FPSC were TELRIC-compliant. See *Florida/Tennessee Order, supra*, at ¶ 33. The Commission held that "[a]fter reviewing AT&T's evidence and the Florida Commission's consideration of this issue, we find BellSouth's hot cut charge for an SL-2 loop complies with checklist item 2." *Id.* The Commission reached this conclusion after reviewing the inputs to BellSouth's cost studies and the work elements associated with the cost determination. While *Supra* alleges that BellSouth's hot cut process is "inefficient," this Commission concluded otherwise in approving the Florida rates as cost-based.

Notably, although AT&T challenged the SL-2 rate, it did *not* challenge the SL-1 rate despite the fact that the majority of hot cuts are to SL-1 loops. Moreover, BellSouth used the same process at the FPSC to determine its costs for SL-1 loops and SL-2 loops. Finally, although no CLEC specifically challenged the SL-1 hot cut rate, it was incumbent on the Commission to review all of the FPSC rates, and thus, the Commission's approval of the SL-1 hot cut rate as TELRIC-compliant can be presumed.⁸

IV. BellSouth Is Entitled To Recovery Of The Cost-Based Rates Established By The FPSC For Its Efficient Hot Cut Process.

A. The Agreement should be construed to provide for the recovery of the \$59.31 non-recurring charge.

1. The Agreement contains an analogous retail to UNE-L conversion process.

While BellSouth agrees that the terms of the Agreement do not explicitly reference a conversion process from the UNE-P *Supra* currently uses to the separate UNE-L *Supra* now seeks to use, BellSouth strenuously disagrees with *Supra*'s position that the lack of specificity entitles *Supra* to hot cut conversions without charge. On the contrary, the terms and the conditions of the Agreement can, and should, be construed to obligate *Supra* to pay the \$59.31 non-recurring charge for hot cut conversions.

Section 3.8 of Attachment 2 of the Agreement sets forth the hot cut process for the situation "when *Supra* Telecom orders and BellSouth provisions the conversion of active BellSouth retail end users to a service configuration by which *Supra* Telecom will serve such end users by unbundled loops and number portability (hereinafter referred to as "Hot Cuts"). Section

⁸ In any event, *Supra* has provided no credible basis to support a conclusion that the Commission should let stand NRCs of \$134 for SL-2s, but countenance a zero charge for SL-1s. This is the result that necessarily flows from *Supra*'s argument.

3.8 extends over 10 pages of the Agreement and sets forth the various aspects of the hot cut process including ordering, LFACS, CFA, and activities after the hot cut.

The process detailed in the Agreement for conversion of BellSouth's retail service to UNE-L should be construed to provide for conversions from UNE-P to UNE-L conversions because UNE-P is, for the several functions involved in conversions to UNE-L, the functional equivalent of BellSouth's retail service. Thus, as a practical matter, the conversion process is set forth in the Agreement, even if not explicitly. Moreover, as described above, the process set forth in the Agreement is the same process that this Commission has found compliant with BellSouth's obligations under section 271, and the same process reviewed by the FPSC in its extensive cost docket. If Supra wants to avail itself of that process, Supra may do so as long as Supra is willing to pay the associated rates.

The fact that this conversion is not explicitly addressed is not unusual, as all other interconnection agreements between BellSouth and other CLECs similarly do not address this issue. Evidently, other CLECs for whom BellSouth has performed this conversion understood that the FPSC rates would apply and thus have not disputed the charges.

2. The applicable rates for the pieces of the conversion process are in the Agreement.

The Agreement contains rates for the conversion of a BellSouth retail line to UNE-L service. The rate is comprised of the Service Order charge and the non-recurring charge for the UNE-L that recovers the cost of service provisioning of the UNE-L and the 2-wire cross-connect used for the purpose of connecting the UNE-L to the Supra switch or other transmission equipment in the collocation space. Given that the procedures necessary to convert a UNE-P to a UNE-L are substantially the same as retail to UNE-L, the same charges apply even if the process is not explicitly spelled out.

It is only logical that the terms and conditions of the interconnection agreement would not set forth every process by which network elements can be provisioned for a CLEC. The rate sheet for Attachment 2, however, constitutes a binding agreement to pay the rates set forth therein regardless of whether the service or process is explicitly discussed in the text of the Agreement. Therefore, because Supra has agreed to pay the rates for the components of the hot cut process, it follows that Supra has agreed to pay the composite hot cut rate.

- B. If the Agreement does not provide for UNE-P to UNE-L conversions, the parties must reach a separate agreement on a conversion process and rate.

The inconsistency of Supra's position is that either (1) the UNE-P to UNE-L conversion process is contemplated by the parties' Agreement, and the rate, therefore, is specified in the Agreement; or (2) the UNE-P to UNE-L conversion process is not contemplated by the parties' Agreement, and Supra has no right to convert from UNE-P to UNE-L and must instead terminate its UNE-P lines and order new UNE-L lines for the same end-users (and thereby put its end users

out of service for some period of time). If the latter situation is really the one Supra believes itself to be in, the result is not that Supra gets UNE-P to UNE-L conversions for free, but that Supra does not get them at all until the parties negotiate an agreement pursuant to which BellSouth can perform the hot cut process. There are at least three avenues by which a new agreement or an amendment to the current agreement could be obtained.

1. Section 3.8 of Attachment 2 of the Agreement provides for a Process Improvement process.

If Supra really believes that there is a more efficient way to provision a hot cut (and is not just trying to get something for nothing) the Agreement provides a mechanism to negotiate improvements or changes to the hot cut process. Section 3.8.4.1 of Attachment 2 provides in relevant part as follows:

...the Parties agree to negotiate and adopt a process improvement method to be used throughout the term of this Agreement for amending and supplementing the initial [hot cut] procedures established in this Section...Both Parties will work cooperatively to identify areas for improvement and, if applicable, develop and implement process changes resulting from such mutual cooperation. Such method will provide the procedures to be employed on an on-going basis by the Parties when one Party wishes to improve any of the initial provisions set out in this Section. Each improvement negotiated by the Parties must be documented in an Attachment to the initial procedures as mutually agreed by the Parties.

This provision of the Agreement specifically contemplates that the hot cut process would be an evolving process that may need to be modified or expanded as the parties gained experience and knowledge. This flexibility should also be read to document the parties' understanding that the hot cut process may not be limited solely to retail to UNE-L conversions, but could address other conversion situations as they arose. Supra, however, did not avail itself of this process but instead has simply taken the position that the process is "inefficient" and thus it is entitled to conversions without charge. Its refusal to pay for services rendered is hardly compelling, especially in light of a contractual provision that afforded it the opportunity to modify the hot cut process as needed.

2. Attachment 10 of the Agreement sets forth the Bona Fide Request process for products and services not in the Agreement.

Although its exact position remains unclear, if what Supra wants is a new hot cut conversion process different from the one set forth in the Agreement or if the retail to UNE-L process is not applicable, the Agreement provides that Supra may pursue such a process via the Bona Fide Request process set forth in Attachment 10 to the Agreement. Section 2.12 of Attachment 2 provides that

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 of Attachment 10 provides in relevant part as follows:

When applicable, Bona Fide Request/New Business Requests ("BFR/NBR") are to be used when Supra Telecom requests any 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...

Consequently, if Supra's position is that the UNE-P to UNE-L conversion process is not captured by the current Agreement, the appropriate process for reaching agreement on that process is the BFR/NBR process.

3. The parties could negotiate a stand-alone agreement for UNE-P to UNE-L conversions.

Finally, if Supra wishes to ignore the Agreement altogether, Supra could request the negotiation of a stand-alone agreement to set forth the process, rates, terms and conditions pursuant to which BellSouth would perform the UNE-P to UNE-L conversion process. While this separate agreement is unnecessary in BellSouth's view given that the current Agreement should be construed to encompass this conversion, BellSouth stands ready to negotiate rates, terms and conditions with Supra pursuant to its obligations under the Act.

C. Equity demands that BellSouth receive compensation for the hot cut process.

The parties do not appear to dispute that the Agreement provides for a BellSouth retail to UNE-P conversion process. Moreover, the parties do not appear to dispute that the Agreement contains a charge for converting from retail to UNE-P. The parties also do not appear to dispute that the process set forth in the Agreement and the UNE-P to UNE-L conversions sought by Supra are virtually identical. See Letter Brief, at 4 ("[s]till another situation in which this *same basic physical process occurs* is the situation at issue here, where a customer already served by a CLEC using UNE-P (or perhaps pure resale) begins to be served by the same CLEC using UNE loops.") Based on these undisputed facts, the equities demand (even aside from the legal arguments) that BellSouth be compensated for performing a process virtually identical to the process to which the parties agreed for retail to UNE-P conversions and for which the parties

agreed a rate applied and for which the FPSC and this Commission determined an applicable cost-based rate.

D. Supra's argument that it is entitled to hot cut conversions at no charge is nonsensical.

Supra's attempt to support its alleged entitlement to hot cut conversions without charge under the Agreement's terms and conditions is without merit. For example, Section 7.1 of the Agreement, which Supra claims requires BellSouth to provide Supra's "termination" services "at its own expense," has nothing to do with the valuable services, elements, etc., that form the actual commercial basis of the Agreement. Rather, that section, as its title – "Governmental Compliance" – implies, has to do with the parties bearing their respective costs for compliance with requirements imposed by federal or state laws. As Supra surely must know, Section 7.1 does not govern applicable rates and charges for the services and network elements provided, or later to be sought, under the Agreement, but deals exclusively with the various costs of doing business that might be occasioned by governmental action, lawsuits, etc. See Agreement, § 7.1.

Next, Supra's reliance on Section 22.1 to bolster its Section 7.1-based conclusion that the services should be provided at next-to-no cost is misplaced. That section,⁹ which appears under the Section 22 heading, "Costs and Rates," applies to "costs and expenses," while its accompanying section, Section 22.2, applies to "rates" that may be charged under the Agreement for network elements and services.¹⁰ **Supra takes the extraordinary position that valuable services – for which BellSouth charges approved rates (see *supra*) to all of its CLEC customers in all of the states in its region, are "costs or expenses," a position that flies in the face of the Agreement, accounting standards and common sense.**

The services at issue are ones for which rates have been established by the FPSC. These rates have been found by the Commission to be TELRIC-compliant. See, e.g., *Florida/Tennessee Order, supra*, at ¶ 33. This means that the rates meet the standards of 47 U.S.C. § 252(d)(1); that is, that in the Commission's view, the rates **are cost-based, non-discriminatory and inclusive of, at most, a "reasonable profit."** 47 U.S.C. § 252(d)(1). By that standard, it is not possible to argue that the charges at issue here are merely "costs and expenses" for purposes of Section 22.1 of the Agreement or, for that matter, are anything other than Total Element Long Run Incremental ("TELRIC") "rates" governed under Section 22.2. What Supra is demanding, then, is for BellSouth to waive the rates for the hot cut conversions, not absorb its "costs and expenses." If Supra's argument were correct, every rate in the Agreement is a "cost or expense," and therefore, the responsibility of BellSouth, not Supra. This position is not only

⁹ Section 22.1 states that, "[e]xcept as otherwise specifically stated in this Agreement, or any Commission or Commission order or rules, each Party shall be responsible for its costs and expenses in complying with its obligations under this Agreement." Agreement, § 22.1.

¹⁰ Section 22.2 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 Commission, the Parties shall negotiate a rate for such network elements or services." Agreement, § 22.2.

illogical, but because it necessarily equates TELRIC "rates" with ordinary business costs and expenses, it stands TELRIC on its head.

Thus, the only question on this point is whether the "network elements and services" at issue are "described in this Agreement" for Section 22.2 purposes. The network elements (UNE-Ls) sought by Supra are clearly described in the Agreement, which neither party contests. This leaves only the "services" by which Supra is to migrate from its UNE-Ps to those UNE-Ls: hot cut conversions. As demonstrated above, the Agreement, properly construed, describes the services at issue in this matter as well as the elements. The FPSC-established rates sought by BellSouth, therefore, are applicable under Section 22.2.

Finally, Supra's reliance on Sections 1.2 and 3.1 of the Agreement's "General Terms and Conditions" is misplaced. Section 1.2, as Supra correctly states, provides that "terminations of any Services or Elements shall be handled pursuant to Section 3 of the General Terms and Conditions." Agreement § 1.2. Section 3.1, in turn, provides that, upon termination of Services or Elements, or the Agreement, "BellSouth agrees to cooperate in an orderly and efficient transition to Supra Telecom or another vendor" Id. § 3.1. In its haste to highlight the "termination" language, however, Supra seems to have missed entirely the import of the remaining quoted language from section 1.2, which provides that "Supra . . . may . . . add, relocate or modify any Services and Elements purchased hereunder [and such] requests for additions or other changes shall be handled pursuant to the process provided in Attachment 10. Id. § 2.1.

Attachment 10, as described above governs bona fide requests ("BFRs") and new business requests ("NBRs"). Attachment 10 provides a mechanism for Supra to obtain Services and Elements not already provided in the Agreement and, "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 product or service. Agreement, Attachment 10, § 1. BellSouth submits, as described herein, that Supra is not seeking to "terminate" services or elements; rather, it is seeking to "add, relocate or modify" those services and elements. As such, Attachment 10, not Section 3 of the General Terms and Conditions, provides the applicable contractual requirements.

In sum, the non-recurring charges BellSouth seeks in this matter are exactly what the Agreement calls for and exactly what the FPSC has approved and the Commission affirmed. To the extent that it is argued that the Agreement does not specifically describe the services at issue, the Agreement's mechanisms for arriving at an appropriate charge leads to the very result BellSouth has articulated repeatedly to Supra. It does not lead to Supra obtaining \$1.6 million worth of services for nothing.

V. This Action Is Not Appropriate for Disposition under the Accelerated Docket Procedures.

The Commission should consider several enumerated factors, and others it may deem appropriate in a given case, to determine whether a complaint is appropriate for the Accelerated Docket. See 47 C.F.R. § 1.730(e). *Supra* has presented no compelling basis for inclusion of this matter on the Accelerated Docket. Its request in this regard, therefore, should be denied.

Under § 1.730(e)(2), the Commission considers whether “expedited resolution of . . . [the] dispute . . . appears likely to advance competition in the telecommunications market.” First, under *Core Communications*, *Supra* fails to make the case for Commission jurisdiction over its complaint by having failed to follow the Agreement’s dispute resolution mechanism. Second, *Supra* similarly fails to state a claim for which the relief sought under the Act is available, again because it failed to follow the dispute resolution mechanism in the Agreement. Third, *Supra* cannot argue that its dispute with BellSouth is germane to other carriers’ disputes with other ILECs, or that it impacts the development of local competition. The matter is purely *Supra*’s private complaint.

Under § 1.730(e)(3), the Commission should consider whether the issues raised in the complaint appear suited for the rigors of the accelerated docket. 47 U.S.C. § 1.730(e)(3). This factor, in turn, involves consideration of certain sub-issues, including the complexity of the issues and the difficulties of presumed discovery. Here, *Supra*’s complaint centers on highly fact-intensive (testimony and documentary) matters, ranging from the facts surrounding the parties’ Agreement, the facts presented in the FPSC and Commission proceedings as cited, and the technical facts associated with the hot cut processes at issue. This would involve, potentially, thousands of pages of documentary evidence, and the testimony of numerous individuals. It is not a stretch to say that the process, including discovery, would take months to complete. Such a proceeding would not be consistent with the goals of the Accelerated Docket.

Finally, under § 1.730(e)(4), the Commission should consider whether complainant states a claim for violation of the Act or Commission rule or order “that falls within the Commission’s jurisdiction.” 47 U.S.C. § 1.730(e)(4). As shown, *Supra*’s complaint does not provide a basis for Commission jurisdiction. The matter, by Agreement, and by operation of the Act thereby, belongs before the FPSC. Moreover, *Supra*’s failure to follow that process forecloses any remedy it might seek before the Commission; thus, *Supra* fails to state a proper claim for any relief here. Finally, *Supra*’s position, which runs counter to any reasonable interpretation of the

Alexander Starr, Chief
July 14, 2003
Page 21

parties' Agreement, the Commission's orders and the FPSC's orders, makes clear that Supra fails to state a claim for relief as a substantive legal matter.

Respectfully submitted,

A handwritten signature in cursive script that reads "Theodore C. Marcus". The signature is written in black ink and is positioned above the typed names.

Lisa Spooner Foshee
Theodore C. Marcus

7/15/2003

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

In re:)
SUPRA TELECOMMUNICATIONS,)
d/b/a SUPRA TELECOMMUNICATIONS))
& INFORMATION SYSTEMS,)
Debtor.)
_____)

CASE NO. 02-41250-BKC-RAM
CHAPTER 11

Docket No. 040301-TP
David A. Nilson
EXHIBIT DAN - 21
*7/15/2003 U.S. Bankruptcy Court Order in Case
02-41250-BKC-RAM*

**ORDER GRANTING EMERGENCY MOTION OF
BELLSOUTH TELECOMMUNICATIONS, INC., FOR INTERIM RELIEF
REGARDING OBLIGATION TO PERFORM UNE-P TO UNE-L CONVERSIONS**

The Court conducted a hearing, on June 25, 2003, on the Emergency Motion of BellSouth Telecommunications, Inc., for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions ("Motion") (CP# 617) and the Response of Supra Telecommunications and Information Systems, Inc. To BellSouth Telecommunications, Inc.'s Emergency Motion for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions ("Opposition") (CP# 626). The Court heard argument of counsel, reviewed the Motion and Opposition, and is otherwise fully advised in the premises. The Court also reviewed BellSouth's July 3, 2003 supplement to its original Motion and reviewed the parties' proposed Orders, portions of which are incorporated in this Order.

The Motion relates to certain non-recurring charges for the conversion of UNE-P lines to UNE-L lines (the "UNE-L Conversions"), a process that is part of Supra's efforts to convert its customers from BellSouth switches to Supra switches.

The parties do not agree on the correct charge for effectuating the conversions. BellSouth filed the Motion because (1) these charges may be substantial if Supra begins to order thousands of UNE-L Conversions as it stated it intends to do; and (2) the cost of these UNE-L Conversions was not considered when the Court established the amount of Supra's weekly adequate assurance payments to BellSouth in its November 13, 2002 Order Determining Adequate Assurance (the "366 Order").

The Court finds that Supra should pay the UNE-L Conversion changes on a weekly basis at the rate proposed by BellSouth in its Motion (the "BellSouth Rate") unless BellSouth voluntarily agrees to a lower rate. This rate will be subject to later adjustment if an appropriate regulatory body fixes a lower rate (the "Regulated Rate"). Although the BellSouth/Supra contract does not specifically set a rate for UNE-P to UNE-L conversions, BellSouth believes the \$59.31 BellSouth Rate proposed in its Motion applies since (1) that is the contract rate for the conversion of a BellSouth retail line to UNE-L service; and (2) BellSouth asserts that the procedures necessary to do a retail to UNE-L conversion are substantially the same as the procedures for converting a UNE-P line to UNE-L.

The rate that should apply to UNE-P to UNE-L conversions should be determined by the FCC or Florida PSC, not by this Court. In the interim, to ensure that BellSouth is not charging Supra the BellSouth Rates without reasonable justification, the

right to require BellSouth to refund twice
 Court is reserving the
 n the BellSouth Rate and the ultimately
 the difference between
 Rate.
 determined Regulatory
 finding nor implying that BellSouth is
 The Court is not
 rging Supra, nor is it indicating that
 intentionally overcha
 osed simply because the regulators fix a
 sanctions will be imp
 use of announcing a "twice the difference"
 lower rate. The purpo
 simply to induce BellSouth to charge a
 refund possibility is
 as substantial reason to believe that the
 lower rate now if it
 be materially lower than the \$59.31
 Regulatory Rate will
 BellSouth Rate it presently proposes to charge. This "twice the
 difference" refund may be imposed even if BellSouth has a
 colorable argument for charging the BellSouth Rate under the
 contract. This may occur, for example, if the FCC or Florida PSC
 find that BellSouth's costs for converting UNE-P to UNE-L are
 significantly less than its costs for converting retail lines to
 UNE-L, or, if the regulators otherwise make findings in the rate
 proceedings that cast substantial doubt on BellSouth's
 justification for using the retail to UNE-L rates for the UNE-L
 Conversions requested by Supra.

For the foregoing reasons, it is -

ORDERED as follows:

1. The Motion is granted.
2. Commencing with the date of the entry of this Order, in
 the weekly line count report that BellSouth issues to the Debtor,




and which is delivered to the Debtor every Tuesday under the present adequate assurance procedures, BellSouth shall also report the total number of UNE-L conversions completed during the prior week, and shall calculate the total weekly payment due to BellSouth, including the amounts due for completed conversions, based on the BellSouth Rates set forth in paragraphs 8 and 14 of the Motion. The Debtor shall have until Thursday (of the same week) to remit payment to BellSouth for UNE-L conversions completed during the prior week based on the prices provided for in the BellSouth Rates, in the same manner as it does under the current adequate assurance mechanism.¹

3. The Debtor has disputed the BellSouth Rates and has filed an action with the Federal Communications Commission ("FCC") seeking a determination of the appropriate amounts that BellSouth may charge the Debtor (as defined earlier, the "Regulated Rates"). If an appropriate regulatory body determines that (1) the Regulated Rates are materially lower than the BellSouth Rates and (2) BellSouth had substantial reason to believe that the Regulated Rates would be materially lower, then, as more fully discussed earlier in this Order, the Court may consider sanctions against BellSouth. At the Court's discretion, these sanctions may consist of a refund in an amount equal to twice the difference between the BellSouth Rates and the

¹BellSouth's rights under the 366 Order and related Orders shall also be applicable under this Order.

Regulated Rates for each converted line.

ORDERED in the Southern District of Florida, this 15th day
of July, 2003.



ROBERT A. MARK
Chief U.S. Bankruptcy Judge

COPIES FURNISHED TO:
Paul Singerman, Esq.
Michael Budwick, Esq.

(Attorney Budwick is directed to serve a copy of this Order on
all other interested parties herein)

COLE, RAYWID & BRAVERMAN, L.L.P.

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July 23, 2003

BY COURIER AND EMAIL

Mr. Alex Starr
Chief, Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Supra's Request for Consideration of Its Complaint Against BellSouth for
Inclusion on the Accelerated Docket — Supplemental Matters**

Dear Mr. Starr:

Supra Telecommunications and Information Systems, Inc. (Supra) looks forward to meeting with you and your staff this Friday for our initial mediation session with BellSouth Telecommunications, Inc. (BellSouth) regarding allowing existing Supra UNE-P and resale customers to cease using presently unnecessary BellSouth services so that they can become Supra UNE-L customers. Based on BellSouth's response to Supra's initial letters,¹ we believe that it would be helpful to set out a few points now, to help focus discussion on Friday.

First, one of Supra's complaints was that BellSouth was refusing to use email to confirm that the unbundled loops Supra purchases to serve its customers had been properly disconnected from BellSouth's switch and connected to Supra's switch. It appears that BellSouth is working with Supra to make email notification work. See BellSouth Letter at 12. We can discuss the details on Friday, but it seems likely that this issue will be fully resolved by negotiations.

Unfortunately, the same cannot be said with regard to BellSouth's irrational and anticompetitive approach to the parties' interconnection agreement.

Something is clearly odd when BellSouth leads with the claim that a contractual provision that says that the parties "may" bring their disputes to the Florida PSC means that the

¹ Letter from T. Marcus & L. Foushee (BellSouth) to A. Starr (FCC) dated July 14, 2003 ("BellSouth Letter").

Mr. Alex Starr
July 23, 2003
Page 2

parties must do so. *See* BellSouth Letter at 1-2, 4-6. The contract is governed by Georgia law. *See* General T & C, §24.6.1. Under Georgia law, “[s]hall’ ordinarily denotes command and not permission, whereas ‘may’ ordinarily denotes permission and not command.” *See, e.g., Ring v. Williams*, 192 Ga. App. 329, 330, 384 S.E.2d 914, 916 (Ct. App. Ga. 1989) (citations omitted). Moreover, the contract states that its remedies do not limit those otherwise available. *See* General T & C § 24.3.1. So, while Supra *could have* brought this dispute to the Florida PSC, nothing in the contract *requires* it to do so.

BellSouth’s basic position on the merits is that, because Florida has set a rate for converting BellSouth retail end users to Supra UNE-L customers, and because what Supra now needs is similar, that rate must apply. But this ignores the language of the contract:

- General T&C § 3.1 establishes an obligation on BellSouth to cooperate in terminating services or elements and transitioning customers to Supra services.
- General T&C § 22.1 says that if a party has an obligation to do something, it is responsible for its own costs in doing it, “except as otherwise specifically stated.”
- BellSouth has admitted in federal court that “the terms of the Agreement do not explicitly reference a conversion process from” UNE-P to UNE-L.²
- The “hot cut” process is described in the Network Elements Attachment in § 3.8. Under § 3.8.1 it only applies “when Supra Telecom orders and BellSouth provisions the conversion of *active BellSouth retail end users* to a service configuration by which Supra Telecom will serve such end users by unbundled Loops and number portability (hereinafter referred to as ‘Hot Cuts’).” Given that the contract requires a “specific statement” before a charge applies, and given that § 3.8 only applies to converting “active BellSouth retail end users” to UNE-L, rates for that process cannot and do not apply here.

So, under General T&C § 3.1, BellSouth has an obligation; under General T&C § 22.1 that obligation is to be performed at BellSouth’s expense unless “specifically stated” in the contract; nothing in either General T&C § 3.1 or the UNE attachment “specifically states” a price for the cooperation and coordination required by General T&C § 3.1; and, indeed, BellSouth has affirmatively stated in federal court that the contract does not specifically address it. It follows that the obligation in General T&C Section 3.1 is to be fulfilled at BellSouth’s expense.

In this regard, BellSouth is completely wrong when it claims that Supra is seeking the cessation of the use of one integrated “facility” (the UNE-P arrangement) and the “simultaneous replacement” of that “facility” “with a new facility.” *See* BellSouth Letter at 10. Any given Supra UNE-P customer is served by a particular unbundled BellSouth loop — a particular “facility” — that is connected to a BellSouth switch, the functionality of which is also being

² *See* BellSouth Emergency Motion to the Bankruptcy Court of June 23, 2003, at ¶ 12 (attached hereto). A copy of the Bankruptcy Court’s ruling on that motion is also attached.

Mr. Alex Starr
July 23, 2003
Page 3

purchased as a UNE. Supra does not want to “replace” the UNE loops serving its customers with new “facilities.” To the contrary, it wants to keep on using exactly the same “facility” as it is using today, only without also using BellSouth’s UNE switching.

BellSouth also fundamentally misreads Supra’s contract claim. That claim is supported by General T & C § 7.1 (requiring each party to do what is necessary to comply with governing law) but does not depend on it. *See* BellSouth Letter at 18. And BellSouth is whistling past the graveyard in its strained interpretation of General T & C § 22.1. According to BellSouth, the “costs and expenses” it will incur in meeting its obligations under General T & C § 3.1 to assist Supra in terminating the use of UNE switching are not really “costs and expenses” at all; they are really “rates,” supposedly governed by § 22.2. But Supra is not objecting to the rates for UNE loops or UNE switching. Supra is not even objecting (here) to the rate established for a “hot cut” as defined in the contract. It is simply noting that BellSouth agreed to do something under the contract for which no rate is “specifically” provided.³

Finally, even assuming *arguendo* that the “Hot Cut” process (limited by the contract to converting BellSouth retail customers) is essentially identical to what BellSouth needs to do here, and that the rates for it are reasonable, *see* BellSouth Letter, *passim*, that is irrelevant to whether, under the contract, BellSouth has agreed to perform those functions for free in some instances. It would be as if BellSouth wanted to avoid a “bill and keep” provision in a contract on the grounds that the Florida PSC had established a rate for intercarrier compensation. Even if such a rate exists, parties can agree to exchange traffic for free. Here, in the circumstances governed by General T & C § 3.1, BellSouth has agreed to perform certain activities for free.

Supra hopes and expects that the discussion here will facilitate matters on Friday.

Sincerely,

/s/ Christopher W. Savage

Christopher W. Savage
Erik J. Cecil
COLE, RAYWID & BRAVERMAN, L.L.P.

cc: Ms. L. Foushee & Mr. T. Marcus, BellSouth

³ Of course, BellSouth’s claim that granting Supra’s interpretation would mean that no rates under the contract would ever apply, *see* BellSouth Letter at 18, is nonsense. Precisely as § 22.1 says, the rates in the contract apply whenever it is “specifically stated” that they do. For precisely this reason, the “hot cut” rate *does* apply to conversions of “active BellSouth retail end users” to UNE-L, but equally does *not* apply to paring down an “active *Supra* retail end user’s” UNE-P arrangement to UNE-L.

BELLSOUTH TELECOMMUNICATIONS, INC.

DIRECT TESTIMONY OF KENNETH L. AINSWORTH

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030851-TP

DECEMBER 4, 2003

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Q. PLEASE STATE YOUR NAME, YOUR BUSINESS ADDRESS, AND YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH").

A. My name is Ken L. Ainsworth. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375. My title is Director – Interconnection Operations for BellSouth.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE WITH BELLSOUTH.

A. I have over thirty-five years experience in the telecommunications industry. My experience covers a wide range of network centers as well as outside plant construction. Specifically, I have managed and/or supported the following network centers: Switching Control Center, Special Service Center, Central Office Operations, Access Customer Advocate Center, Facility Management Administrative Center, Circuit Order Control Center, Network Operations Center, Major Account Center, 911 Center and the Customer Wholesale Interconnection Network Services Center. In addition, I deployed the Work Force Administration

1 ("WFA") system, which is used by these centers to track the status of certain
2 activities performed by BellSouth's Network personnel. I am currently a Director
3 for Interconnection Services directly supporting the Local Carrier Service Center
4 ("LCSC") and Customer Wholesale Interconnection Services ("CWINS") Centers
5 regarding pre-ordering, ordering, provisioning and maintenance activities for the
6 wholesale market. I have participated in and provided technical assistance to
7 numerous Competitive Local Exchange Carrier ("CLEC") workshops on issues
8 dealing with pre-ordering, ordering, provisioning and maintenance of resold
9 services and unbundled network elements.

10

11 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

12

13 A. My testimony will demonstrate two main points: (1) BellSouth has in place a
14 proven, seamless, high quality individual hot cut process to handle unbundled
15 loop ("UNE-L") volumes likely to result if BellSouth obtains full relief from
16 unbundled circuit switching; and (2) BellSouth has in place a batch hot cut
17 process that provides additional ordering efficiencies and the same proven,
18 seamless, quality migrations as individual hot cuts to convert the embedded base
19 of Unbundled Network Element Platform ("UNE-P") arrangements to UNE-L
20 arrangements if BellSouth obtains full relief from unbundled circuit switching.

21

22 Q. WHAT ISSUES ON THE FLORIDA ISSUES LIST DOES YOUR TESTIMONY
23 ADDRESS?

24

25 A. Issue 3 in its entirety.

1 Q. BASED ON THE VOLUME OF TESTIMONY FILED ON THE HOT CUT ISSUE,
2 SHOULD THE COMMISSION INFER THAT A "HOT CUT" IS A DIFFICULT OR
3 CUMBERSOME PROCESS?
4

5 A. Absolutely not. A hot cut, simply defined, is moving a jumper from one location
6 to another. The hot cut itself involves basic network functions and skills that are
7 used repeatedly in BellSouth's network every day. The extensive number of
8 customers being served in Florida by a combination of a BellSouth loop and a
9 CLEC switch demonstrates that BellSouth has a hot cut process that works.
10

11 Q. HAS THE COMMISSION REVIEWED BELLSOUTH'S HOT CUT PROCESS
12 BEFORE?
13

14 A. Yes. This portion of the case should be familiar to the Commission. The
15 Commission expended a great deal of time and energy reviewing the ordering
16 and provisioning of hot cuts in BellSouth's 271 case. In that case, the
17 Commission found that BellSouth provides CLECs nondiscriminatory access to
18 UNE loops, provided via a hot cut process.
19

20 **I. BELLSOUTH'S HOT CUT PROCESSES**
21

22 **A. General Overview of BellSouth's Different Hot Cut Processes**
23

24 Q. GENERALLY, WHAT TYPES OF HOT CUT PROCESSES AND WHAT TYPES
25 OF COORDINATION LEVELS DOES BELLSOUTH OFFER CLECS?

1 A. BellSouth provides three (3) different hot cut processes and three (3) different
2 levels of coordination. Despite this variety of service offerings, however, the
3 actual hot cut remains a simple, straightforward task – and a task BellSouth can
4 perform at high volumes with a high degree of accuracy and speed.

5
6 Q. WHAT ARE THE THREE (3) DIFFERENT TYPES OF HOT CUT PROCESSES
7 BELLSOUTH OFFERS?

8
9 A. BellSouth offers CLECs the following types of hot cuts: (1) individual hot cuts; (2)
10 project hot cuts; and (3) batch hot cuts.

11
12 Q. PLEASE BRIEFLY DESCRIBE THE INDIVIDUAL, PROJECT, AND BATCH HOT
13 CUT PROCESSES.

14
15 A. An individual hot cut service request is for a particular end-user account and is
16 available for both residence and business service lines. Service requests for
17 individual accounts may include single or multiple lines. Simply put, the
18 individual account service request will process a single order for a single end-
19 user.

20
21 The project hot cut is for cuts involving 15 or more lines to a single end-user. To
22 ensure an efficient cut, BellSouth involves a project manager to coordinate the
23 different work functions. The criteria for project hot cuts can be found at
24 http://www.interconnection.bellsouth.com/guides/html/other_guides.html

25

1 The batch hot cut service request (which is interchangeably referred to as the
2 "bulk" migration process) provides efficient processing for large volume
3 migrations of UNE-P service to UNE-L service and is particularly suited to the
4 migration of an embedded base of UNE-P circuits to UNE-L circuits. The batch
5 hot cut process applies to migrations of multiple accounts for the same service
6 type within a specific wire center. The batch process combines ordering
7 efficiencies and project management support with a proven hot cut provisioning
8 process. BellSouth's batch hot cut process can be found at
9 <http://www.interconnection.bellsouth.com/guides/unedocs/BulkManpka.pdf>

10
11 Q. PLEASE DESCRIBE THE DIFFERENT LEVELS OF COORDINATION
12 BELLSOUTH OFFERS AND THE PROCESSES TO WHICH THEY APPLY.

13
14 A. BellSouth offers CLECs three (3) hot cut coordination levels: (1) coordinated /
15 time specific, (2) coordinated, and (3) non-coordinated.

16
17 COORDINATED / TIME SPECIFIC hot cuts require BellSouth to convert the
18 CLEC account on a specific date and at a specific time designated by the CLEC.

19
20 When the CLEC elects this option, BellSouth contacts the requesting CLEC 24 to
21 48 hours prior to the due date to verify that BellSouth's service order information
22 agrees with the CLEC's request. At that time, BellSouth also confirms no
23 jeopardy situation exists (for either the CLEC or for BellSouth), validates the
24 specific conversion time requested, and provides to the CLEC the status of any
25 dial tone test (that is, BellSouth's test of dial tone provided by the CLEC's

switch).

On the due date, the CWINS Center contacts the CLEC prior to the established conversion time for a final validation that the migration is still a "go". The BellSouth CWINS technician communicates with the BellSouth's Network groups at the specified conversion time and makes the execution request to perform the hot cut. The CWINS technician stays on the call, awaiting Network completion notification. When the technician in BellSouth's Network group completes the hot cut, that technician notifies the CWINS technician who documents the hot cut completion. At this point, the hot cut is complete in BellSouth's network.

Once the hot cut is complete, the CWINS technician attempts to notify the CLEC for acceptance of the order. "Acceptance" means that the CLEC agrees that the order has been fulfilled successfully and that it is appropriate for BellSouth to close the order as complete. Once BellSouth confirms CLEC acceptance, or default acceptance occurs (e.g., BellSouth never hears back from the CLEC), the pending service orders are completed in BellSouth's systems by the CWINS technician.

Coordinated/Time Specific is available for individual and project hot cuts.

COORDINATED hot cuts require BellSouth to convert the CLEC's customer account on a date specified by the CLEC and a best effort time frame negotiated by the parties. For coordinated hot cuts, BellSouth contacts the requesting CLEC 24 to 48 hours prior to the due date to verify that BellSouth's service order

1 information agrees with the CLEC's request. At that time, BellSouth also
2 confirms no jeopardy situation exists (either for the CLEC or for BellSouth) and
3 provides to the CLEC the status of any dial tone test performed (that is,
4 BellSouth's test of dial tone from the CLEC's switch). Finally, during this call
5 during the 24 to 48 hours prior to the due date, the parties verify the targeted
6 time frame on the due date that the hot cut will be performed.

7
8 On the due date, CWINS will contact the CLEC prior to the conversion time for a
9 final validation that the migration is still a "go". The BellSouth CWINS technician
10 communicates with BellSouth's Network group prior to the conversion being
11 started. Once all BellSouth personnel are in communication, the CWINS
12 technician will make the execution request to perform the hot cut and stay on the
13 call, awaiting Network completion notification. When the Network technician
14 completes the hot cut, that technician notifies the CWINS technician who
15 documents the completion. At this point, the hot cut is complete within
16 BellSouth's network. The CWINS technician then attempts to notify the CLEC for
17 acceptance. As discussed earlier, acceptance in this sense means that the
18 CLEC agrees that the order has been fulfilled successfully and that is appropriate
19 that BellSouth close the order as complete. Once CLEC acceptance is
20 confirmed or default acceptance occurs, the pending service orders are
21 completed by the CWINS technician.

22
23 Coordinated service is available on individual, project, and batch hot cuts.

24
25 NON-COORDINATED hot cut requests are converted by BellSouth's Network

1 personnel during normal business hours (8 a.m. – 5 p.m.) at various times on the
2 due date based on the Network technicians' work load activity and schedule.

3
4 Once BellSouth network personnel complete the non-coordinated hot cut, the
5 technician completes the work order that, in turn, generates a notification (either
6 by facsimile or by e-mail) to the CLEC that the conversion is complete.

7
8 Non-coordinated service is available on individual, project, and batch hot cuts.

9
10 Q. PLEASE EXPLAIN THE BENEFITS OF EACH COORDINATION LEVEL.

11
12 A. COORDINATED/TIME SPECIFIC hot cuts allow CLECS to schedule conversions
13 at a CLEC-requested time on the due date. This gives the CLEC an opportunity
14 to schedule a specific conversion time with certain end-user customers based on
15 the business needs of the CLEC or the end-user. The coordinated / time specific
16 hot cut is the most detailed of the three (3) types of conversions and, as the FCC
17 held, is not something BellSouth is required to "provide at no charge."
18 *Georgia/Louisiana Order, ¶ 222.*

19
20 COORDINATED hot cuts assure the highest level of monitoring and interaction
21 by BellSouth with the CLEC during the provisioning process culminating in direct
22 completion notification at the completion of the conversion activity. The
23 coordinated hot cut allows CLECs the added value of the coordination functions
24 and direct notification and acceptance activities at the conclusion of the
25 conversion. When CLECs desire coordination assurances, direct notification and

1 acceptance opportunities, the coordinated conversion would be a good choice.

2
3 NON-COORDINATED hot cuts, as suggested by the name, provide basic hot cut
4 conversion processing without coordination functionality. This is not meant to
5 suggest that BellSouth's provisioning activities are not internally coordinated for
6 this type hot cut, because they are. However, BellSouth does not coordinate its
7 conversion activities with the CLEC at the time of the hot cut. This type of hot cut
8 allows a CLEC to convert its end-user from BellSouth's switch to the CLEC's
9 switch over an unbundled loop (that is, the UNE-L) at the lowest possible cost to
10 the CLEC. Network non-coordinated provisioning functions are still performed by
11 BellSouth's Network personnel to assure a quality conversion. Completion
12 notification is triggered by service order activity completion by Network
13 personnel, which propagates either a facsimile or e-mail conversion completion
14 notification (as specified by the CLEC) to the CLEC.

15
16 **B. BellSouth's Individual Hot Cut Process**

17
18 **Q. HAS THE COMMISSION REVIEWED BELLSOUTH'S INDIVIDUAL HOT CUT**
19 **PROCESS BEFORE?**

20
21 **A. Absolutely. As I mentioned briefly at the outset, this Commission, as well as the**
22 **FCC, reviewed BellSouth's hot cut process during BellSouth's 271 applications**
23 **and determined that BellSouth's hot cut process provided CLECs with**
24 **nondiscriminatory access to unbundled loops. The provisioning process I**
25 **discuss here is the same process reviewed during the 271 case.**

1 Q. PLEASE EXPLAIN BELLSOUTH'S INDIVIDUAL HOT CUT PROCESS.

2

3 A. BellSouth has a seamless individual hot cut process that ensures minimal end-
4 user service outage. A flow-chart of the individual hot cut process is attached to
5 my testimony as Exhibit KLA-1. BellSouth's process provides for the following:

6

- 7 1. Pre-wiring and pre-testing of all wiring prior to the due date
- 8 2. Verification of dial tone from the CLEC's switch
- 9 3. Verification of correct telephone number from the BellSouth and CLEC
10 switch using a capability referred to as Automatic Number Announcement
11 ("ANAC")
- 12 4. Monitoring of the line prior to actual wire transfer to ensure end-user
13 service is not interrupted
- 14 5. Notification to the CLEC that the transfer has completed

15

16 In addition to the activities listed above, coordinated hot cuts (including
17 coordinated/time specific hot cuts) also include:

18

- 19 1. Notification to the CLEC of CLEC wiring errors, dial tone, or ANI problems
- 20 2. Verification of end-user information with the CLEC prior to the conversion
- 21 3. Verification with the CLEC of cut date and or time 24 – 48 hours prior to
22 the conversion date
- 23 4. Joint acceptance testing, if requested by the CLEC.

24

25 Q. DOES BELLSOUTH CHECK FOR DIAL TONE PRIOR TO A HOT CUT?

1 A. Yes. BellSouth's processes require that a dial tone check be performed prior to a
2 hot cut. Hot cuts involving designed loops are tested for CLEC dial tone 24-48
3 hours before due date. If no dial tone is found, the CWINS Center technician
4 notifies the CLEC of the problem in order for the CLEC to have time to correct
5 the problem prior to the due date and not jeopardize the hot cut. Coordinated hot
6 cuts involving non-designed loops are tested for CLEC dial tone by the central
7 office ("CO") technician when they perform the pre-wiring for the hot cut. If no
8 dial tone is found, the CO technician places the order in jeopardy and the CWINS
9 technician notifies the CLEC of the problem in order for the CLEC to have time to
10 correct the problem prior to the due date and not jeopardize the hot cut.

11
12 For non-coordinated hot cuts, BellSouth checks for dial tone before the due date
13 but does not require CLEC notification of a no dial tone problem. BellSouth's CO
14 personnel check for CLEC dial tone when they perform pre-due date wiring
15 functions. The CO technician places the order in jeopardy if no CLEC dial tone is
16 present. The BellSouth CO technician checks again for CLEC dial tone on due
17 date and if dial tone is present, the CO technician performs the hot cut. If on the
18 due date, there is no CLEC dial tone, the hot cut does not go forward and the
19 BellSouth technician codes the order as a Missed Appointment ("MA") due to
20 CLEC problems. The CLEC is then notified, (either electronically, if the CLEC
21 placed its Local Service Request ("LSR") electronically, or by fax if the CLEC
22 placed its LSR manually), that the order is in MA status and that the CLEC must
23 either supplement its order for a new due date or cancel its order. Even in non-
24 coordinated cuts, the customer is not taken out of service if there is no dial tone
25 on the receiving end of the cut.

1 Regardless of which type of hot cut is ordered by the CLEC, BellSouth also
2 performs a check for CLEC dial tone immediately prior to the hot cut to ensure
3 that dial tone is present.
4

5 **Q. DOES THE HOT CUT PROCESS CAUSE SERVICE DISRUPTIONS? IF SO,**
6 **DOES THAT MEAN THAT BELLSOUTH'S PROCESS IS NOT SEAMLESS?**
7

8 **A. The very nature of a hot cut is that there is a physical transfer of the loop facility**
9 **serving the end-user from the existing central office switch (that is, BellSouth's**
10 **switch) to the CLEC's switch. This physical transfer interrupts dial tone and the**
11 **end-users ability to place or receive calls during this process only during the time**
12 **the loop is disconnected from BellSouth's switch but is not yet connected to the**
13 **CLEC's switch. Due to the pre-conversion work that BellSouth performs before**
14 **the actual transfer from switch to switch, the average conversion time to make**
15 **this physical transfer since January 2003 has only averaged 2:39 minutes in**
16 **Florida according to BellSouth Service Quality Measurements ("SQM") reports.**
17 **This indicates the end-user would only be without calling capability for only 2:39**
18 **minutes. The CLEC performs required number porting activities once the**
19 **transfer from BellSouth's switch to the CLEC's switch is effectuated. BellSouth**
20 **witness Mr. Varner will discuss the specifics of performance data.**
21

22 **Q. PLEASE ADDRESS HOW THE PROCESS CHANGES WHEN COSMIC**
23 **FRAMES OR MULTIPLE FRAMES ARE INVOLVED IN THE CUT.**
24
25

1 A. First, let me explain that the so-called "COSMIC" frame is a newer style modular
2 Main Distributing Frame ("MDF") whose assignment records are housed in a
3 system called SWITCH/FOMS ("Frame Order Management System"). Using a
4 "punch down tool" on this style frame, temporary connections referred to as
5 "jumpers" are made by punching the jumper wire onto special terminals that strip
6 the insulation and cut off any excess jumper wire in one stroke. This takes less
7 time than for older style frames that required soldered connections or so-called
8 "wire wrapped" connections. Wire wrapped connections required a special tool
9 that wound the jumper wire around a metal terminal once the technician had
10 removed the plastic insulation from the jumper wire. SWITCH/FOMS also
11 contains assignment algorithms meant to minimize the length of jumpers
12 connecting loops and switch ports thereby reducing work times required to place
13 jumpers. Thus, work times to complete required activities for an unbundled loop
14 order and the number of wiring connections that have to be made in the CO vary
15 depending on the frame type and/or the location of the demarcation point in a
16 particular CO between BellSouth's network and the CLEC's collocation
17 arrangement. The location of the demarcation influences work times because
18 the placement of the demarcation affects the total quantity of jumpers that
19 BellSouth's technicians must place to effectuate the transfer of an unbundled
20 loop. Non-designed loops can require from 1 to 3 jumpers to make the
21 connection from the CLEC demarcation point to the loops appearance on the
22 MDF while designed loops can require from 2 to 6 jumpers to make this
23 connection. Regardless of the arrangement, all of the jumpers are installed prior
24 to the actual hot cut occurring.

25

1 Q. HOW IS A CLEC NOTIFIED THAT BELLSOUTH HAS COMPLETED ITS
2 PORTION OF THE HOT CUT AND THAT THE CLEC SHOULD COMMENCE
3 ACTIVITIES TO PORT THE TELEPHONE NUMBER FROM BELLSOUTH'S
4 NETWORK TO THE CLEC'S NETWORK?
5

6 A. For coordinated hot cut conversions, the CLEC is directly notified by a telephone
7 call from CWINS Center personnel. This notification occurs after the conversion
8 is complete and takes place. From October 2002 to September 2003, BellSouth
9 averaged 1:35 minutes to notify the CLEC to port the number after the
10 conversions were completed. Exhibit KLA-2 sets forth the notification times for
11 the past year.
12

For non-coordinated conversions, BellSouth notifies the CLEC via facsimile or e-
14 mail (whichever the CLEC requests) at the completion of BellSouth's Network
15 technician's work activity. Remember, however, that non-coordinated hot cuts
16 only are an option for the CLEC for whom economics are of the utmost
17 importance. For CLECs who want virtually real-time notification, BellSouth
18 provides that option as well.
19

20 Q. WHEN DOES CLEC ACCEPTANCE OCCUR IN THE HOT CUT PROCESS?
21

22 A. Once BellSouth confirms CLEC acceptance, the BellSouth CWINS technician
23 completes the pending service orders in BellSouth's systems. The service order
24 also is completed in BellSouth's system if a default acceptance condition occurs.
25 Specifically, if the CLEC is notified before 3:00 p.m. that the hot cut is complete,

1 the CLEC has until 6:00 P.M. to accept. If the CLEC is notified of completion
2 after 3:00 P.M., the CLEC has until 12:00 P.M. of the next business day to accept
3 the hot-cut. If the hot-cut is not accepted within these timeframes, the orders are
4 closed by default acceptance.
5

6 **Q. DOES THE HOT CUT PROCESS HAVE ANY NEGATIVE IMPACT ON E911,
7 NUMBER PORTABILITY ADMINISTRATION CENTER ("NPAC"),
8 PROVISIONING, REPAIR, BILLING, OR OTHER DATABASES?**
9

10 **A. No. Updates to the E911 database are triggered by disconnect orders closed in
11 Service Order Communication System ("SOCS"). These same disconnect
12 completions, along with the completion of all related orders, update all customer
13 service records in the downstream systems including the provisioning, repair and
14 billing information databases. BellSouth's process has no negative impact on the
15 NPAC database. Once the conversion orders are issued, BellSouth places a
16 concur message in the Local Number Portability ("LNP") gateway awaiting the
17 CLECs' subscription to create the port. Once the gateway receives the create
18 message from the CLEC, BellSouth will return the concur message that is
19 already pending in the gateway. This process allows the CLEC to activate the
20 port on the agreed upon date.
21**

22 **Q. IS BELLSOUTH'S INDIVIDUAL HOT CUT PROCESS EFFECTIVE?**
23

24 **A. Yes. This Commission and the FCC confirmed the effectiveness of BellSouth's
25 hot cut process during BellSouth's Section 271 Application approval process.**

1 This Commission, eight other state commissions, and the FCC all found
2 BellSouth's hot cut process nondiscriminatory, timely, accurate, and effective.
3 Further, BellSouth's hot cut process was reviewed as part of the third party
4 testing performed by KPMG. That testing confirmed that BellSouth adhered to its
5 process.

6
7 Q. WAS THE HOT CUT PROVISIONING PROCESS REVIEWED DURING THE
8 FLORIDA OPERATIONAL SUPPORT SYSTEM ("OSS") THIRD PARTY TEST?

9
10 A. Yes. BearingPoint, formerly KPMG Consulting, did review the hot cut
11 provisioning process during the Florida Test. They assessed it from a process
12 standpoint in the PPR-9 Test Report Section which can be found beginning on
13 page 423 of the Florida Test Final Report. Additionally, they observed live hot
14 cuts both from a BellSouth and a CLEC perspective in the TVV-4 Test Report
15 which can be found beginning on page 448 of the Florida Test Final Report. The
16 evaluation criteria or test points for the hot cut observations can be found
17 beginning on page 458 of the report.

18
19 Q. WHAT WERE THE FINDINGS OF THE FLORIDA TEST FINAL REPORT?

20
21 A. BearingPoint determined that BellSouth had an adequate and effective loop
22 conversion or hot cut process. They found and reported on page 448 that:

23
24 "Loop Conversions (also referred to as Loop Migrations or Hot Cuts) – Existing
25 BellSouth lines are migrated to the ALEC collocation facility inside a BellSouth

1 central office. BellSouth frame technicians migrate the lines at the main
2 distribution frame (MDF) on the due date. The conversion is expected to occur on
3 the Frame Due Date for non-coordinated conversions. During coordinated
4 conversions, the cut occurs on the Frame Due Date and starts at the Frame Due
5 Time (FDT) as indicated on the LSR. Cases involving Integrated Loop Carrier
6 (IDLC) migrations require outside technicians to perform field work on the due
7 date and time."

8
9 To establish that this process was adequate to migrate CLEC customers,
10 BearingPoint observed live hot cuts. For many of hot cut observations, CLECs
11 conducting business in Florida allowed BearingPoint to observe commercial
12 installations of their orders. Data was also gathered during field inspections of
13 hot cut activities in BellSouth central offices and from the CWINS Center. This
14 data was logged and analyzed to determine if BellSouth's hot cut process along
15 with its methods and procedures were adequate for the migration of customers
16 from a BellSouth switch to a CLEC switch.

17
18 Beginning on page 458 of the Florida Test Final Report, BearingPoint listed their
19 specific test points or evaluation criteria. First, they assessed whether the
20 BellSouth technicians provisioned hot cuts in accordance with documented
21 methods and procedures. BearingPoint observed live hot cuts and determined
22 that the BellSouth technicians satisfactorily provisioned the hot cuts in
23 accordance with BellSouth documented methods and procedures. Second,
24 BearingPoint assessed BellSouth's performance from an SQM perspective. To
25 achieve this, BearingPoint evaluated Bellsouth's ability to meet the coordinated

1 customer conversion interval performance benchmark which is the P-7 SQM.
2 Additionally, BearingPoint assessed the P-7A SQM metric for Coordinated
3 Customer Conversions, the P-3 SQM metric for Percent Missed Installation
4 Appointments, the P-9 SQM metric for Percentage Troubles received within 30
5 Days of Service Order Completion, and the P-7C SQM metric for Percent
6 Provisioning Troubles Received Within Seven Days of a Completed Service
7 Order. For each measure, BearingPoint found that BellSouth indeed exceeded
8 the benchmark or parity standard for the observations that they assessed during
9 the test period. At the end of the testing, BearingPoint was able to confirm the
10 adequacy and effectiveness of BellSouth's hot cut process by rating each of the
11 test points or evaluation criteria as satisfied. This satisfactory rating provides an
12 endorsement for BellSouth's hot cut process.

14 Q. IS THERE COMMERCIAL USAGE OF BELLSOUTH'S INDIVIDUAL HOT CUT
15 PROCESS?

16
17 A. Certainly. As the FCC has repeatedly held, the most probative evidence of the
18 availability of a functionality is actual commercial usage. *Bell Atlantic New York*
19 *Order*, at ¶ 89. BellSouth has performed over 300,000 hot cuts between
20 November 2000 and September 2003. Recently, in Florida, BellSouth converted
21 over 200 lines for a single CLEC in one (1) central office on a single day. On the
22 same day, BellSouth converted a total of over 400 lines in six (6) central offices
23 in the same general area for the same CLEC. This level of commercial usage
24 alone demonstrates BellSouth's ability to perform hot cuts at existing and
25 foreseeable volumes.

1 Q. HOW IS BELLSOUTH'S PERFORMANCE ON COORDINATED HOT CUTS?

2

3 A. Superior. BellSouth witness Alphonso Vamer discusses BellSouth's
4 performance in detail, but I can tell you that BellSouth has performed at a very
5 high level of consistency and quality in regards to hot cuts. For the period
6 September 2002 through August 2003, BellSouth performed approximately
7 23,014 coordinated hot cuts in Florida. Of these, 99.92% of the hot cuts were
8 completed within 15 minutes, which exceeds the Commission-approved
9 benchmark of 95%.

10

11 Q. THE FCC INDICATED THAT NEITHER THE STATE'S NOR FCC'S 271
12 APPROVAL IS APPLICABLE TO A SITUATION IN WHICH CLECS WILL NOT
13 HAVE UNBUNDLED CIRCUIT SWITCHING OR UNE-P. DO YOU AGREE?

14

15 A. No. This Commission reviewed BellSouth's hot cut process and determined that
16 it provided CLECs non-discriminatory access to UNE loops. The fact that
17 volumes of UNE loops may increase does not change the fact that BellSouth's
18 process is nondiscriminatory and complies with all of BellSouth's obligations
19 under the Act as this Commission and the FCC confirmed. The Commission
20 does not need to revisit the process -- rather, if the Commission confirms that, as
21 BellSouth witness Mr. Heartley and I demonstrate, BellSouth's process is fully
22 scalable to meet forecasted demands, then the process is compliant.

23

24 C. BellSouth's Project Hot Cut Process

25

1 Q. PLEASE DESCRIBE BELLSOUTH'S PROJECT HOT CUT PROCESS.

2
3 A. Project conversions are available when the CLEC seeks to convert 15 or more
4 lines to the same end-user. When the CLEC requests a project conversion for
5 fifteen or more loops to be provisioned on a single individual order, a CWINS
6 Center technician and a Project Manager are assigned to the order and the order
7 is identified in the WFA system for Due Date tracking. The CWINS Center
8 technician or Project Manager reviews the order for accuracy and queries
9 associated systems for order status. The CWINS Center technician or Project
10 Manager contacts the CLEC prior to the due date to confirm or negotiate the
11 actual due date conversion time. The CWINS Center technician or Project
12 Manager then contacts any associated work group to schedule the conversion.

14 On the Due Date, the CWINS technician verifies that the required personnel are
15 scheduled for the conversion time. The CWINS Center technician sets up
16 communications with required conversion personnel to begin service cutover to
17 the CLEC. Upon completion of the cutover activity, the CLEC is notified. With
18 CLEC concurrence, the service order is completed.

19
20 The CWINS Center technician completes the order in BellSouth's systems after
21 concurrence of the CLEC. Any trouble conditions, made known by the CLEC,
22 related to the conversion are resolved with the CLEC before the order is closed.

23
24 Q. IS THE PROVISIONING PROCESS FOR PROJECT HOT CUTS THE SAME AS
25 FOR INDIVIDUAL HOT CUTS?

1 A. Yes. The "*Project Manager Implementation Guidelines*" posted on the Guides
2 website http://www.interconnection.bellsouth.com/guides/html/other_guides.html,
3 provides product-specific information.

4

5 **D. BellSouth's Batch Hot Cut Process**

6

7 Q. PLEASE DESCRIBE BELLSOUTH'S BATCH HOT CUT PROCESS.

8

9 A. BellSouth's "UNE-P to UNE-L Bulk Migration" is a batch hot cut process that
10 CLECs may use when migrating existing multiple non-complex UNE-P services
11 to a UNE-L offering. The batch hot cut process offers electronic ordering
12 capability and adds project-management services to the basic proven hot cut
provisioning process.

14

15 With respect to electronic ordering, CLECS can submit the Bulk Migration
16 Request electronically, which allows the migration of multiple UNE-Ps to a UNE-L
17 offering without submitting individual LSRs. BellSouth witness Mr. Pate
18 describes this ordering mechanism in his direct testimony. I will address the
19 project management services that are included in BellSouth's batch hot cut
20 process in greater detail below.

21

22 Q. HOW DOES THE BATCH MIGRATION PROCESS WORK?

23

24 A. During the pre-ordering process, the CLEC submits a Notification Form to
25 BellSouth's CCPM for UNE-P accounts to be converted to UNE-L within a single

1 wire center. The Customer Care Project Manager ("CCPM") reviews the
2 Notification Form for errors and assigns a Bulk Order Project Identifier ("BOPI")
3 and forwards the Notification Form to the Network Single Point of Contact
4 ("SPOC") who assigns due dates to accounts and returns the Notification Form to
5 the CCPM, who then returns the Notification Form to the CLEC.
6

7 **Q. DURING THE PRE-ORDERING PROCESS, ARE THERE SPECIFIC**
8 **INTERVALS FOR THE RETURN OF THE NOTIFICATION FORM TO THE**
9 **CLEC?**

10
11 **A. Yes. Those intervals are as follows:**

- 12 • Up to 99 Telephone Numbers, 7 business days
- 13 • 100 – 199 Telephone Numbers, 10 business days
- 14 • 200 or more Telephone Numbers, the CCPM will negotiate with SPOC
- 15 • Multiple Batch Requests from multiple CLECs may be submitted
- 16 simultaneously
- 17 • Maximum Telephone Numbers per Batch Request is 99X25=2475

18
19 **Q. WHEN IS THE FIRST DUE DATE ASSIGNED?**

20
21 **A. The first due date to be assigned by the SPOC will be a minimum of 17 business**
22 **days after the Notification Form is returned to the CLEC. In other words, there**
23 **are 3 days for the CLEC to submit a clean bulk LSR into their electronic system**
24 **and then there is a minimum of 14 days after the LSR is submitted to the first**
25 **service order due date.**

1 The ordering activity is such that the LCSC will use its normal process to handle
2 orders that fall out for manual or partial handling.

3
4 **Q. PLEASE DESCRIBE THE ROLE THE PROJECT MANAGER PLAYS IN THE**
5 **BATCH MIGRATION PROCESS AND THE EFFICIENCIES GAINED FROM**
6 **PROJECT-MANAGEMENT.**

7
8 **A. The role of the project manager in the batch migration process is to be the SPOC**
9 **as the liaison between the CLEC and network operations. They coordinate due**
10 **dates, advise of potential delays or problems, and advise of completion of the**
11 **project. In the batch hot cut provisioning process, the BellSouth CCPM provides**
12 **CWINS and the network operations group with notification of planned bulk**
13 **activity, monitors status of the order(s), interfaces with the CLEC and Bellsouth**
14 **groups during the process, and tracks orders and the project until it is complete.**
15 **The project manager is the party responsible in the first instance for ensuring**
16 **successful completion of the process.**

17
18 **Q. PLEASE DESCRIBE THE PROVISIONING PROCESS IN THE BATCH**
19 **MIGRATION PROCESS.**

20
21 **A. The batch hot cut process provisioning process is the same as the individual hot**
22 **cut provisioning process. The benefits of this are obvious – the CLEC is afforded**
23 **access to the same nondiscriminatory, 271-compliant process that this**
24 **Commission approved only last fall.**

1 Q. WILL BELLSOUTH PROVIDE THE CLEC A WINDOW OF TIME WITHIN
2 WHICH BATCH HOT CUTS WILL BE COMPLETED?

3
4 A. Yes. Because the batch hot cut process provides the assistance of the CCPM, a
5 CLEC may request, through the project manager, that some of their coordinated
6 conversions, such as business accounts, be converted within a specified window
7 of time. The project manager will work with the centers and network groups to
8 make best efforts to accommodate the request.

9
10 A CLEC also may request work outside normal business hours, to be handled on
11 a special project basis and negotiated through a CCPM. As with all special
12 projects, this work would be subject to overtime billing as specified in the parties'
interconnection agreement.

14
15 Q. IS THE BATCH HOT CUT PROCESS MORE EFFICIENT FOR THE
16 CONVERSION OF AN EMBEDDED BASE OF UNE-P ORDERS TO UNE-L
17 ORDERS?

18
19 A. Yes, because it was designed specifically to handle large conversions of UNE-P
20 to UNE-L such as will be accomplished in the conversion of the embedded base.

21
22 Q. IS THERE COMMERCIAL USAGE OF BELLSOUTH'S BATCH HOT CUT
23 PROCESS?

24

25

1 A. Yes. Since bulk migration has been made available, there has been limited
2 activity requested by the CLECs. However, at the time of this filing, BellSouth
3 currently has a total of five (5) bulk migration requests pending. Four (4) bulk
4 migration requests have been successfully ordered and completed.

5
6 Q. IN ADDITION TO OPERATIONAL EFFICIENCIES, ARE THERE RATE
7 ADVANTAGES TO THE BATCH PROCESS?

8
9 A. Yes. The rate for the batch hot cut is discussed in the testimony of BellSouth
10 witness John Ruscilli.

11
12 Q. DOES BELLSOUTH'S BATCH HOT CUT PROCESS INCLUDE LOOPS
SERVED BY INTEGRATED DIGITAL LOOP CARRIER ("IDLC")?

13
14
15 A. Yes. IDLC is a special version of DLC that does not require a host terminal in the
16 central office, sometimes referred to as the COT, but instead terminates the
17 digital transmission facilities directly into the central office switch. In its Texas
18 271 Decision, the FCC found that "the BOC must provide competitors with
19 access to unbundled loops regardless of whether the BOC uses integrated digital
20 loop carrier (IDLC) technology or similar remote concentration devices for the
21 particular loops sought by the competitor." *Memorandum Opinion and Order,*
22 *Application by SBC Communications Inc., et al., Pursuant to Section 271 of*
23 *Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in*
24 *Texas*, 15 FCC Rcd 18354, ¶ 248 (2000) ("*Texas Order*"). BellSouth provides
25 access to such IDLC loops via the following methods:

- 1 ● **Alternative 1: If sufficient physical copper pairs are available, BellSouth**
2 **will reassign the loop from the IDLC system to a physical copper pair.**
- 3 ● **Alternative 2: Where the loops are served by Next Generation Digital Loop**
4 **Carrier (“NGDLC”) systems, BellSouth will “groom” the integrated loops to**
5 **form a virtual Remote Terminal (“RT”) arranged for universal service (that**
6 **is, a terminal which can accommodate both switched and private line**
7 **circuits). “Grooming” is the process of arranging certain loops (in the input**
8 **stage of the NGDLC) in such a way that discrete groups of multiplexed**
9 **loops may be assigned to transmission facilities (in the output stage of the**
10 **NGDLC). Both of the NGDLC systems currently approved for use in**
11 **BellSouth’s network have “grooming” capabilities.**
- 12 ● **Alternative 3: BellSouth will remove the loop distribution pair from the**
13 **IDLC and re-terminate the pair to either a spare metallic loop feeder pair**
14 **(copper pair) or to spare universal digital loop carrier equipment in the**
15 **loop feeder route or Carrier Serving Area (“CSA”). For two-wire Integrated**
16 **Services Digital Network (“ISDN”) loops, the Universal Digital Loop Carrier**
17 **(“UDLC”) facilities will be made available through the use of Conklin**
18 **BRITEmux or Fitel-PMX 8uMux equipment.**
- 19 ● **Alternative 4: BellSouth will remove the loop distribution pair from the**
20 **IDLC and re-terminate the pair to utilize spare capacity of existing**
21 **Integrated Network Access (“INA”) systems or other existing IDLC that**
22 **terminates on Digital Cross-connect System (“DCS”) equipment.**
23 **BellSouth will thereby route the requested unbundled loop channel to a**
24 **channel bank where it can be de-multiplexed for delivery to the requesting**
25 **CLEC or for termination in a DLC channel bank in the central office for**

1 concentration and subsequent delivery to the requesting CLEC.

2 • **Alternative 5: When IDLC terminates at a switch peripheral that is capable**
3 **of serving "side-door/hairpin" capabilities, BellSouth will utilize this switch**
4 **functionality. The loop will remain terminated directly into the switch while**
5 **the "side-door/hairpin" capabilities allow the loop to be provided**
6 **individually to the requesting CLEC.**

7 • **Alternative 6: If a given IDLC system is not served by a switch peripheral**
8 **that is capable of side-door/hairpin functionality, BellSouth will move the**
9 **IDLC system to switch peripheral equipment that is side-door capable.**

10 • **Alternative 7: BellSouth will install and activate new UDLC facilities or**
11 **NGDLC facilities and then move the requested loop from the IDLC to**
12 **these new facilities. In the case of UDLC, if growth will trigger activation of**
13 **additional capacity within two years, BellSouth will activate new UDLC**
14 **capacity to the distribution area. In the case of NGDLC, if channel banks**
15 **are available for growth in the CSA, BellSouth will activate NGDLC unless**
16 **the DLC enclosure is a cabinet already wired for older vintage DLC**
17 **systems.**

18 • **Alternative 8: When it is expected that growth will not create the need for**
19 **additional capacity within the next two years, BellSouth will convert some**
20 **existing IDLC capacity to UDLC.**

21
22 **The eight (8) alternatives for giving a CLEC access to loops served by IDLC**
23 **listed above are listed in order of complexity, time, and cost to implement. The**
24 **simplest is listed first and the most complex, lengthy, and costly to implement**
25 **listed last. Also, Alternative 1 and the copper loop solution of Alternative 3 do not**

1 add additional Analog to Digital conversions. When a CLEC orders a loop,
2 BellSouth delivers that loop to the specifications ordered by the CLEC. Thus,
3 ordinarily BellSouth chooses the method for delivering the loop meeting the
4 ordered specification without involving the CLEC.

5

6 Q. WHAT HAPPENS IF ONLY ALTERNATIVES 7 OR 8 ARE AVAILABLE?

7

8 A. In that scenario, which BellSouth anticipates occurring very infrequently,
9 BellSouth will provide the CLEC two choices – the CLEC may pay special
10 construction charges to build the necessary facilities, or BellSouth will provide the
11 CLEC a UNE-P at the TELRIC rate. BellSouth only will make the second of
12 these options available in those areas in which it receives relief from unbundled
switching.

14

15 Q. HAS THIS COMMISSION REVIEWED THESE EIGHT (8) ALTERNATIVES
16 PREVIOUSLY?

17

18 A. Yes. All nine of BellSouth's states and the FCC considered and approved these
19 eight (8) alternatives for providing unbundled loops served via IDLC during
20 BellSouth's Section 271 applications.

21

22 a. **SCALABILITY OF BELL SOUTH'S HOT CUT PROCESSES**

23

1 Q. IS BELLSOUTH'S INDIVIDUAL AND/OR BATCH HOT CUT PROCESS
2 SCALABLE TO MEET LOAD DEMAND THAT MIGHT RESULT IF BELLSOUTH
3 RECEIVES UNBUNDLED SWITCHING RELIEF?
4

5 A. Absolutely. BellSouth's systems and processes are scalable and the capacity of
6 those systems and processes may be readily increased as demand warrants. I
7 will address the scalability of the centers involved in the hot cut process, while
8 BellSouth witnesses Pate and Heartley address the scalability of the OSS and
9 network forces, respectively.
10

11 BellSouth's performance measurements demonstrate that BellSouth's LCSC and
12 CWINS organizations are staffed sufficiently to handle the current volumes of
unbundled loop orders. They also establish that BellSouth has scaled its
14 resources as necessary to handle changes in volumes of such orders over the
15 years. More fundamentally, the outstanding performance of the LCSC and
16 CWINS in handling both steady growth and spikes in demand makes clear that
17 BellSouth will continue to staff its LCSC and CWINS organizations sufficiently to
18 handle any reasonably foreseeable demand for hot cut conversions.
19

20 Finally, BellSouth has a strong incentive to ensure that the LCSC and CWINS
21 are adequately staffed to meet demand for all order types, including hot cut loops
22 in that BellSouth remains subject to penalties and voluntary payments under its
23 Self Effectuating Enforcement Measurements ("SEEMs") plan for performance
24 failures.
25

1 Q. FOR WHAT VOLUME LEVELS ARE THE CENTERS CURRENTLY STAFFED?

2

3 A. Current staffing of the LCSC and CWINS were predicated on expectation of
4 higher UNE loop conversion volumes than currently exist. There are three (3)
5 dedicated LCSCs (located in Atlanta, Georgia, Birmingham, Alabama and
6 Fleming Island, Florida) serving the CLEC community for preordering and
7 ordering. Further, there are two (2) dedicated CWINS operational centers
8 (located in Birmingham and Fleming Island) to perform hot cut coordination,
9 when required. These operational groups have currently redirected resources
10 due to lower than expected UNE conversion volumes. That means these
11 operational groups have the available capacity to reallocate these personnel at
12 such time that the UNE conversion volumes increase.

14 Q. CAN CENTERS PERSONNEL BE REALLOCATED AS PRODUCT DEMAND
15 CHANGES WITHOUT ADDITIONAL STAFFING?

16

17 A. Yes. The LCSC and CWINS personnel provide support across the entire range
18 of wholesale products and services BellSouth makes available. Any increase in
19 hot cut volumes resulting from the absence of UNE switching presumably would
20 be accompanied by a decrease in order types that rely on UNE switching (i.e.,
21 UNE-P), such that the resources currently dedicated to one could then be
22 devoted to the other. Initially, LCSC service reps are hired and trained in a single
23 product type, for example, residential resale or simple business resale or UNE-P.
24 As service representatives become more proficient with their initial discipline,
25 additional training to handle other types of order requests is provided. With this

1 cross training, many LCSC service representatives are able to handle multiple
2 types of service order requests thus enabling the LCSC organization to move
3 service representatives from one function to another. CWINS employees
4 complete various levels of technical classroom training, in addition to receiving
5 CWINS-specific training on the CLEC products or functions they are assigned to
6 support. CWINS employees therefore are capable of handling provisioning,
7 maintenance, and repair functions for a variety of wholesale products with
8 minimal additional on-the-job training. The CWINS reallocates its employees
9 among products as necessary to handle shift in demand.

10

11 Q. IF UNBUNDLED CIRCUIT SWITCHING IS ELIMINATED IN CERAIN AREAS,
12 HOW WILL BELLSOUTH MEET THE DEMAND?

13

14 A. The LCSC and CWINS organizations use sophisticated force models to ensure
15 that their operations are adequately staffed to meet anticipated CLEC demand.
16 BellSouth's sustained level of performance for both UNE loops and hot cuts
17 validates that the current force models have been successful in meeting CLEC
18 service order demand with quality and reliability.

19

20 Q. DID BELLSOUTH DO A FORCE MODEL TO ANTICIPATE STAFFING NEEDS
21 ASSUMING THE ELIMINATION OF UNBUNDLED CIRCUIT SWITCHING?

22

23 A. Yes. Using an estimated volume of UNE-L orders that I will discuss later,
24 BellSouth ran the centers force model to determine anticipated staffing needs
25 assuming a worst case scenario.

1 Q. DOES BELLSOUTH OBTAIN CLEC FORECASTS TO ASSIST IN SCALING ITS
2 WORK FORCE?

3
4 A. BellSouth attempts to obtain such forecasts. Accurate and timely CLEC
5 forecasts help BellSouth plan for future hot cut volumes, but are not required for
6 the operation of its force models. CLECs are requested to provide a forecasted
7 number of unbundled loops a minimum of 30 days prior to submitting their first
8 unbundled loop order. After CLECs order their first unbundled loop, BellSouth
9 requests six-month interval forecasts by unbundled loop type and wire center.
10 Accurate and timely forecast information is helpful in assisting BellSouth meet
11 projected hot cut volumes; however, BellSouth force models are not dependent
12 upon receipt of such forecasts because CLECs generally do not provide such
forecasts.

14
15 Rather, as noted above, the force models automatically factor demand
16 projections based on historical trends into LCSC/CWINS staffing requirements.
17 BellSouth makes adjustments, as necessary, to handle sudden increases in
18 volume – and undertakes hiring initiatives as soon as it becomes apparent that
19 additional resources will be necessary to handle anticipated future demand.
20 Nonetheless, CLECs could help BellSouth anticipate and fulfill future staffing
21 needs by providing timely and accurate forecasts, especially for substantial
22 increases in volumes.

23
24 Q. WHAT DO YOU MEAN BY “WORST CASE” SCENARIO?

25

1 A. I am not using the term "worst case" in a negative or judgmental manner.
2 Rather, I am using it simply to refer to the maximum amount of hot cuts that the
3 LCSCs and CWINS Centers would reasonably be expected to handle if the
4 following were to occur:

- 5 1. This Commission finds that CLECs are not impaired without unbundled
6 switching (and thus, UNE-Ps) in any market in BellSouth's nine-state region.
- 7 2. CLECs decide to convert the totality of their UNE-P base to unbundled loops
8 attached to the CLECs' switches rather than BellSouth's switches.
- 9 3. UNE-P growth and UNE-L growth is maintained throughout the relevant
10 period for the absolute highest volumes of each that has occurred at any time
11 in the last 33 months that BellSouth has maintained records.

12
13 Q. WHAT MONTHLY VOLUME OF UNE-P TO UNE-L CONVERSIONS RESULTS
14 FROM YOUR ASSUMPTIONS?

15
16 A. The "worst case" monthly volume of hot cuts (except for adjustments to that
17 volume that I will discuss later in this testimony) is 317,998 across the entirety of
18 BellSouth's nine-state region. The following explains how I arrived at that value:

19
20 The highest single-month volume of UNE-Ps added (116,295) occurred in June
21 2002. The highest single-month volume of UNE-L inward movement added
22 (19,029) occurred in January 2001. These "highest ever" volumes were
23 assumed as monthly growth going forward. The pictorial in Exhibit KLA-3, which
24 is attached to this testimony, depicts how those volumes grow over time.

25

1 Following is a brief explanation:

2 In October 2003, there were about 2.21 million UNE-Ps in service region-wide.
3 Projecting forward for nine (9) months to July 2004 (the earliest expected
4 decision by a Public Service Commission in BellSouth's region), there would be
5 3.26 million UNE-Ps in service ($2.21M + (9 \cdot 116,295)$). However, because the
6 conversion of a BellSouth retail account to a UNE-P arrangement does not
7 require a hot cut, the monthly volume expected in July 2004 is equal to the
8 quantity of "stand-alone" unbundled loops requested (19,029).

9
10 Assuming that in July 2004, all nine Commissions in BellSouth's region decided
11 that CLECs are not impaired without unbundled switching and that CLECs may
12 continue to request UNE-Ps for an additional five (5) months, the expected
13 quantity of UNE-Ps in service in December 2004 would be 3.84 million. This
14 level of UNE-Ps becomes the "embedded base" which later will be converted to
15 stand-alone unbundled loops via the hot cut process. For the next eight (8)
16 months, the monthly volume of hot cuts would rise to 135,324. This is the sum of
17 the "worst case" unbundled loop volume (19,029) plus the "worst case" monthly
18 growth for UNE-Ps (116,295).

19
20 Beginning in August 2005, BellSouth would begin the transition of the embedded
21 base of UNE-Ps (3.84 million) plus handle the "worst case" monthly unbundled
22 loop volume (19,029) and the "worst case" monthly UNE-P growth volume
23 (116,295). During each of the subsequent seven-month intervals, BellSouth
24 would migrate one third of the embedded base. Thus, the "worst case" monthly
25 hot cut volume at the region level would be 317,998 (that is, $19,029 + 116,295 +$

1 ((3.84M * 0.333)/7)

2
3 Because on average there are 22.3 business days per month, the daily volume
4 becomes 14,260 (that is, 317,998 / 22.3) at the regional level.

5
6 Q. WHAT OTHER ADJUSTMENTS TO ANTICIPATED VOLUMES HAVE YOU
7 ASSUMED?

8
9 A. During CLEC workshops, CLECs have suggested that two adjustments should
10 be made to increase the anticipated volume of hot cuts by including: (1) some
11 level of "churn" from one local carrier to another; and (2) increased trouble
12 reports for unbundled loops compared to UNE-P arrangements. While I do not
necessarily agree with the CLECs' suggestions, I have included those
14 adjustments to prove my point that BellSouth can expand its LCSC and CWINS
15 groups to handle hot cut volumes even when these additional factors are taken
16 into account. . Accordingly, I made an upward adjustment of 4% churn per
17 month (48%) per year and an upward adjustment of 5% increased trouble report
18 rate. I treated these adjustments as if they resulted in additional hot cuts (again,
19 a "worst case" assumption) and the resultant monthly volume for hot cuts rose to
20 347,254 per month (15,572 per business day).

21
22 Q. WHAT ARE THE CENTERS' INPUTS TO THE FORCE MODEL?

23
24 A. In order to ensure adequate staffing of the centers supporting CLECs, BellSouth
25 utilizes a work force model to anticipate staffing needs based on historical trends,

1 time and motion studies, internal forecasts and targeted benchmarks. The work
2 force model provides a means to assure adequate staffing of BellSouth's LCSC
3 and CWINS operations. The models utilize a forward-looking view of activity by
4 product type, which allows BellSouth sufficient time to hire and train personnel in
5 anticipation of any increase in activity. The force model has proved reliable. It
6 allowed BellSouth staff to meet tighter benchmarks for Firm Order Confirmations
7 ("FOCs") and rejects for partially mechanized orders. BellSouth has clearly
8 demonstrated, through its performance data, that the infrastructure to handle
9 increasing levels of orders is in place and functioning at a very high level.

10

11 Q. WHAT ARE THE CENTERS' STAFFING REQUIREMENTS FROM THE
12 MODEL?

14 A. Using daily volumes for Florida (29% of all the UNE-Ps in BellSouth's region)
15 means that BellSouth would have to hire and train 425 technicians in the CWINS
16 Centers and 105 service representatives in the LCSCs. Again we have assumed
17 a worst-case scenario for the CWINS Centers that 50% of the migrations would
18 be coordinated and thus would require CWINS involvement. BellSouth expects
19 the number of coordinated migrations to be much less than this.

20

21 Q. HOW CAN THE CENTERS MEET THESE PROJECTED STAFFING LEVELS?

22

23 A. Force and load management is something BellSouth has been doing for
24 decades. BellSouth would hire the additional force by engaging its Human
25 Resources Department. Human Resources would advertise the jobs in local

1 media and conduct job fairs and testing events to screen applicants. Human
2 Resources would require 90 days from notification to employees being added to
3 the payroll.

4
5 Q. HAS BELLSOUTH EVER HIRED CENTER PERSONNEL IN SUCH VOLUMES
6 BEFORE?

7
8 A. Yes. During the time period 1998-2001, BellSouth hired and trained
9 approximately 2,000 service representatives and technicians for its Wholesale
10 operations.

11
12 Q. DOES BELLSOUTH HAVE TO HIRE ALL OF THESE PEOPLE AT ONCE?

14 A. No. The transition period for the embedded base of UNE-Ps in the Order is
15 almost two years away (August 2005) as shown in Exhibit KLA-3, so BellSouth
16 has an extended period of over which to add force if needed.

17
18 Q. ARE THESE FORECASTED VOLUMES REALISTIC?

19
20 A. No. First, as other BellSouth witnesses describe, BellSouth only is seeking
21 elimination of unbundled circuit switching in certain areas of the state. Thus,
22 BellSouth's assumption of UNE-L orders is high in that unbundled UNE-P will
23 continue to be available in some areas of the state. Second, whenever it had a
24 choice, BellSouth used the highest volume value available – highest UNE-Ps in a
25 month etc. The point, however, is that if BellSouth can scale its forces to meet

1 the most unrealistic demand, it certainly can scale its forces to meet a more
2 realistic demand.

3
4 **b. REGIONALITY OF BELLSOUTH'S PROCESSES**

5
6 **Q. ARE BELLSOUTH'S HOT CUT PROCESSES REGIONAL?**

7
8 **A. Yes. In the 271 cases, state commissions and the FCC held that BellSouth's**
9 **OSS (pre-ordering, ordering, provisioning, maintenance and repair, and billing)**
10 **are regional. For example, in the FCC's Five-state Order, (WC Docket No. 02-**
11 **260, ¶1130) the FCC held "We find that BellSouth, through the Pricewaterhouse**
12 **Coopers (PwC) report, provides evidence that its OSS in Georgia are**
substantially the same as the OSS in each of the five states."

13
14
15 Further, in CC Docket No. 02-35 (GA/LA Order) at ¶111, the FCC held that "[t]he
16 record indicates ... BellSouth has provided detailed information regarding the
17 "sameness" of BellSouth's systems in Georgia and Louisiana, including their
18 manual systems and the way in which BellSouth personnel do their jobs.
19 Accordingly, we find that BellSouth, through the PwC audit and its attestation
20 examination, provides evidence that its OSS in Georgia are substantially the
21 same as the OSS in Louisiana. We shall consider BellSouth's commercial OSS
22 performance in Georgia and the Georgia third-party test to support the Louisiana
23 application and rely on Louisiana performance to support the Georgia
24 application."

1 Q. DOES BELLSOUTH PERFORM ITS HOT CUT PROCESSES THE SAME WAY
2 IN ALL NINE OF ITS STATES?

3

4 A. Yes it does.

5

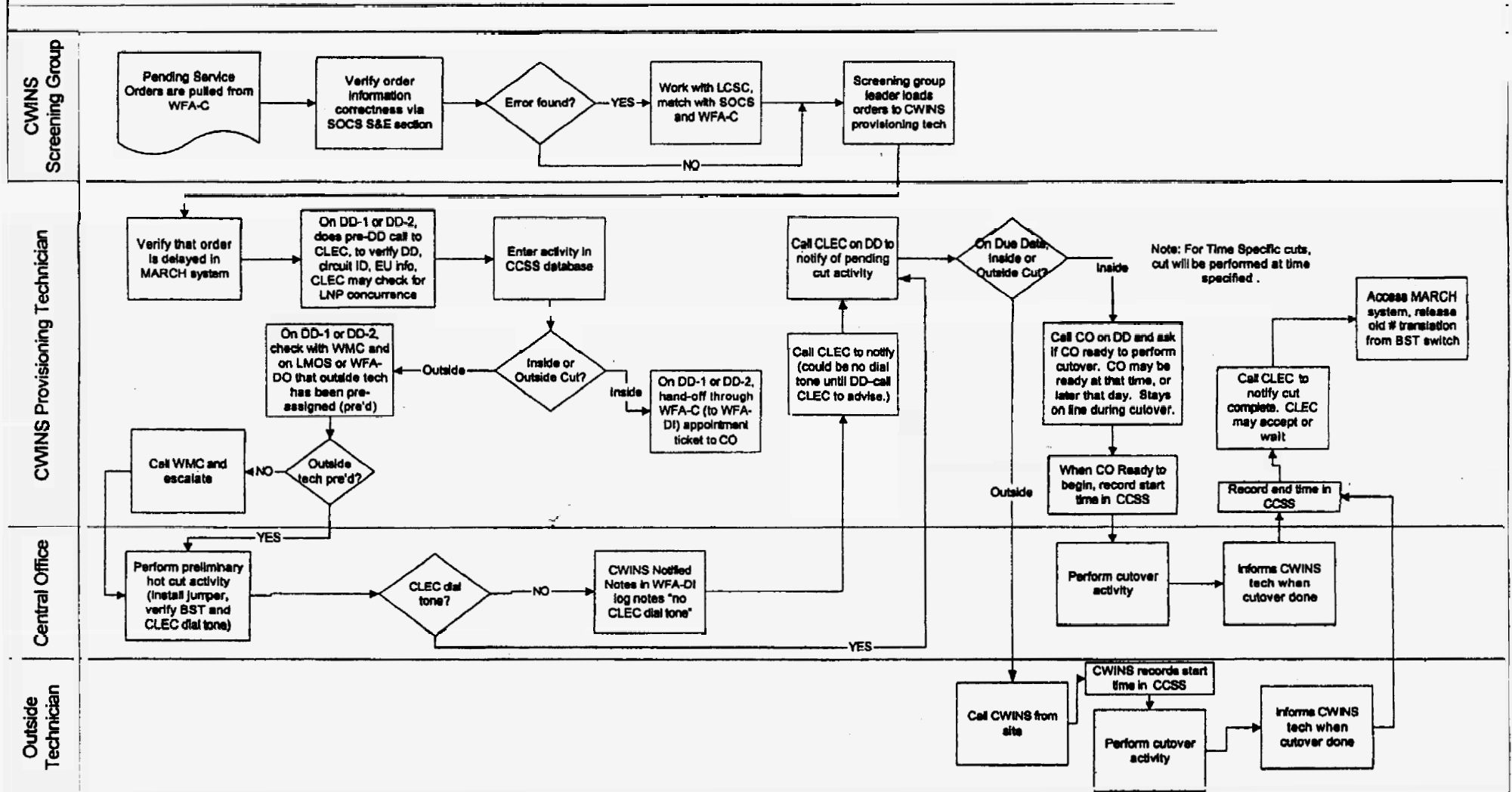
6 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

7

8 A. Yes.

9

Provisioning Process Flow (Coordinated cuts)



Hot Cut Report Notification Summary

Average time from Cut Completion to CLEC Notification (HRS:MIN:SEC)

State	Oct-02	Nov-02	Dec-02	Jan-03	Feb-03	Mar-03	Apr-03	May-03	Jun-03	Jul-03	Aug-03	Sep-03	12 Mo Avg
AL		0:01:00	0:02:00	0:00:30	0:01:00		0:00:20	0:00:00	0:00:00	0:01:00			0:00:35
FL	0:01:57	0:01:29	0:01:18	0:01:13	0:01:10	0:01:06*	0:01:11	0:01:15	0:02:59	0:01:02	0:03:25	0:00:59	0:01:35
GA	0:01:47	0:02:06	0:01:23	0:13:56	0:11:41	0:01:11	0:01:22	0:01:08	0:01:56	0:01:47	0:01:03	0:00:59	0:02:16
KY				0:02:00				0:02:00				0:01:00	0:01:40
LA	0:01:08	0:01:32	0:02:20	0:01:31	0:01:30	0:01:34	0:01:37	0:01:19	0:01:41	0:02:03	0:02:05	0:02:05	0:01:41
MS	0:17:00	0:01:20	0:01:06	0:01:27	0:01:20	0:01:47	0:00:38	0:01:40	0:02:33	0:01:24	0:01:26	0:01:25	0:03:09
NC/SC	0:01:22	0:01:31	0:01:04	0:01:42	0:02:00	0:01:15	0:02:05	0:01:26	0:01:33	0:01:30	0:02:04	0:01:03	0:01:35
TN	0:01:37	0:01:55	0:02:33	0:01:35	0:01:35	0:01:47	0:02:02	0:01:32	0:01:14	0:01:45	0:01:43	0:01:14	0:01:44
Total	0:01:57	0:01:33	0:01:25	0:02:25	0:02:33	0:01:14	0:01:28	0:01:18	0:02:22	0:01:25	0:02:19	0:01:03	0:01:43

Percent Notifications in 5 minutes or less

State	Oct-02	Nov-02	Dec-02	Jan-03	Feb-03	Mar-03	Apr-03	May-03	Jun-03	Jul-03	Aug-03	Sep-03	12 Mo Avg
AL		100.0%	100.0%	100.0%	100.0%		100.0%	100.0%	100.0%	100.0%			100.0%
FL	92.3%	97.4%	99.0%	98.8%	99.2%	99.1%	99.5%	99.0%	99.4%	99.5%	99.2%	98.8%	98.2%
GA	96.7%	97.9%	98.9%	97.8%	99.2%	99.2%	97.7%	99.5%	99.2%	98.0%	99.2%	99.6%	98.7%
KY				100.0%				100.0%				100.0%	100.0%
LA	100.0%	97.0%	96.8%	100.0%	97.6%	97.0%	97.4%	99.2%	94.7%	94.9%	94.0%	90.8%	96.6%
MS	85.7%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	77.8%	100.0%	100.0%	100.0%	96.9%
NC/SC	97.9%	97.5%	100.0%	94.4%	92.3%	98.9%	97.1%	98.9%	98.5%	97.6%	94.8%	99.4%	97.2%
TN	98.9%	93.9%	91.8%	98.7%	98.0%	97.5%	93.5%	95.3%	100.0%	98.2%	97.7%	100.0%	96.6%
Grand Total	94.0%	97.3%	98.5%	98.1%	98.0%	98.8%	98.1%	98.8%	98.7%	98.5%	98.2%	98.8%	98.0%

* One order was removed from the Florida data for March 2003. There was a systems anomaly on this order that caused the results to be skewed.

Hot cut work load calculation

UNE-P growth per month = 116,295

UNE-L growth per month = 19,029

October 2003

UNE-Ps in service = 2.21M.

Continue UNE-P growth

For 9 months

Hot cuts per month = 19,029

(Note 1)

July 2004

UNE-Ps in service = 3.26M

PSC Decision

Continue UNE-P growth

For 5 months

Hot cuts per month = 19,029

(Note 1)

December 2004

UNE-Ps in service = 3.84M

No new UNE-Ps. All growth

Becomes UNE-L

For 8 months

Hot cuts per month = 135,324

(Note 2)

August 2005

UNE-Ps in service = 4.77M

Convert 1/3 of UNE-Ps to UNEL.

Handle UNE-L growth

For 7 months

Hot cuts per month =

317,998

(Note 3)

March 2006

UNE-Ps in service = 2.22M

Convert 1/3 of UNE-Ps to UNE-L.

Handle UNE-L growth

For 7 months

Hot cuts per month =

317,998

(Note 3)

October 2006

UNE-Ps in service = 1.11M

Convert 1/3 of UNE-Ps to UNE-L.

Handle UNE-L growth

For 7 months

Hot cuts per month =

317,998

(Note 3)

May 2007

UNE-Ps in service = 0

Handle UNE-L growth

Going forward

Hot cuts per month = 135,234

(Note 4)

Note 1: Only stand-alone UNE-L requests require a hot cut. (19,029)

Note 2: Sum of stand-alone UNE-L requests plus UNE-P growth requires a hot cut. (19,029 + 116,295 = 135,324)

Note 3: Sum of stand-alone UNE-L requests plus UNE-P growth plus attrition of UNE-P embedded base requires a hot cut. (19,029 + 116,295 + ((3.84M * 0.333)/7) = 317,998.

Note 4: Sum of UNE-L growth and UNE-P growth requires a hot cut. (19,029 + 116,295 = 135,324)

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BELLSOUTH TELECOMMUNICATIONS, INC.
SURREBUTTAL TESTIMONY OF JOHN A. RUSCILLI
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 030851-TP
JANUARY 28, 2004

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. (“BELLSOUTH”) AND YOUR BUSINESS ADDRESS.

A. My name is John A. Ruscilli. I am employed by BellSouth as Senior Director – Policy Implementation and Regulatory Compliance for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes, I filed direct testimony and three exhibits on December 4, 2003 and rebuttal testimony and one exhibit on January 7, 2004.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY AND HOW HAVE YOU ORGANIZED IT?

A. My surrebuttal testimony addresses numerous comments contained in the rebuttal testimony filed by other witnesses in this proceeding on January 7, 2004.

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In the first section of my testimony, I make some general observations regarding the rebuttal testimony filed in this proceeding. I then walk through each step of the investigation that the Federal Communications Commission (“FCC”) asked the state commissions to undertake to determine whether CLECs are impaired without unbundled local switching – namely, in this proceeding established by the Florida Public Service Commission (“Commission”), to determine the definition of the geographical market and the mass market/enterprise crossover (Issues 1 and 2), the application of the triggers and potential deployment tests (Issues 4 and 5), and the approval of a batch cut process (Issue 3) – and discuss the remarks of other witnesses who have filed rebuttal testimony relevant to each issue. I highlight areas of agreement and summarize rationales for BellSouth’s positions where disagreement exists. More detailed arguments can be found in the testimonies of other BellSouth witnesses, who I will refer to as appropriate. As no one has presented meaningful rebuttal of my original discussion of Issue 6, the transitional use of unbundled switching, I do not discuss this topic further here.

GENERAL OBSERVATIONS

Q. ARE YOU FAMILIAR WITH THE REMARKS OF OTHER WITNESSES WHO HAVE FILED REBUTTAL TO BELLSOUTH’S DIRECT TESTIMONY?

A. Yes. I have studied the testimonies of the numerous witnesses who have filed rebuttal testimony in this proceeding, including that on behalf of AT&T, the FCCA, FDN, MCI, Sprint, Supra, and the Citizens of the State of Florida.

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Q. WHAT IS YOUR GENERAL IMPRESSION OF THE REBUTTAL TESTIMONY?

A. I would make three general observations. First, there seems to be a general tendency toward selective obfuscation. That is, although the FCC has left some issues to the interpretation of this Commission, there are other issues – such as the application of the triggers tests or the type of CLEC to be modeled in the potential deployment test – on which the *TRO* is crystal clear. Although one would expect there to be legitimate differences of opinion where interpretation is required, I find an unfortunate tendency to cloud issues where clarity has been provided by the FCC. As I will discuss below, Drs. Staihr, Johnson and Bryant and Messrs. Gillan and Bradbury are all particularly prone to this, creating unnecessary complication where none is required, presumably because they do not like the clear direction given by the *TRO*.

Second, there seems to be substantial disagreement amongst the parties attacking BellSouth's positions: some find BellSouth's suggested market definition too small, others find it too large; some find the BACE model too sensitive to inputs, others too insensitive; some claim that BellSouth has counted the wrong trigger candidates, but then admit in other forums (notably the current appeal from the FCC's *TRO* order pending in the courts) that these companies (the cable companies) can be counted. To me, this lack of consensus supports my conviction that in areas where judgments need to be made, and where legitimate differences

1 of opinion are therefore to be expected, BellSouth has proposed reasonable
2 middle-ground positions that this Commission can feel comfortable adopting.
3
4 Finally, there are several witnesses (e.g., Messrs. Wood and Gillan) who seek to
5 downplay the responsibility that this Commission has to determine where
6 impairment exists and where it does not. They imply that the *TRO*'s presumption
7 of impairment for mass-market switching based on aggregate, nationwide data
8 shuts the door to a finding of non-impairment based on data reflecting local
9 market conditions. In fact, nothing could be farther from the truth. The whole
10 point of devolving responsibility to the states is so that commissions such as this
11 one can use their knowledge to conduct the granular decision making that an
12 important issue such as this deserves. Indeed, as the FCC itself explained in their
13 brief to the DC Circuit Court of Appeals: "In making certain national findings of
14 impairment, the Commission also recognized that the record before it was not
15 sufficiently detailed to support the nuanced decisionmaking that *USTA* required.
16 To address those situations – involving, for example, local circuit switching, high
17 capacity local loops, and dedicated transport – the Commission enlisted state
18 commissions to gather and evaluate information relevant to impairment in their
19 states. These very specific delegations were reasonably designed to ensure
20 accurate and nuanced analyses of impairment on a market-specific basis." (Brief
21 for Respondent at 21, *USTA v. FCC*, Case No. 00-1012 (DC Cir.)) (Emphasis
22 added). Therefore, if one believes what the FCC has said, to suggest all this
23 Commission has to do is apply nationwide CLEC market share to local markets
24 (Gillan, pp.21-22) or that the potential deployment test is essentially irrelevant
25 (Wood, pp. 6-7) is clearly incorrect.

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ISSUES 1 AND 2: MARKET DEFINITION

Q. WHAT IS BELLSOUTH'S POSITION WITH REGARD TO THE DEFINITION OF THE GEOGRAPHICAL MARKET THAT SHOULD BE USED TO EVALUATE IMPAIRMENT?

A. BellSouth has proposed the use of UNE rate zones that this Commission has defined previously, subdivided into component economic areas ("CEAs") as defined by the Bureau of Economic Analysis, U.S. Department of Commerce. As described in the direct, rebuttal, and surrebuttal testimonies of Dr. Christopher Pleatsikas, this definition satisfies the multiple criteria laid out in the *TRO* and results in economically meaningful "markets" in which to consider impairment.

Q. WHAT HAVE OTHER WITNESSES SUGGESTED IN THEIR REBUTTAL TESTIMONY FOR THE GEOGRAPHICAL MARKET DEFINITION?

A. Mr. Gillan on behalf of the FCCA recommends that the entire service footprint, or else the LATA, should be considered a market. Notwithstanding his client's membership in the FCCA, on whose behalf Mr. Gillan testifies, Dr. Bryant, on behalf of MCI, suggests that each individual customer represents the appropriate economic market, although he concedes that a wire-center definition would be administratively simpler. Dr. Staihr suggests MSAs combined with RSAs, Mr. Nilson mentions retail rate centers, although he finally recommends wire centers, and Dr. Johnson, on behalf of the Citizens of the State of Florida, recommends *ad*

1 *hoc* aggregations of wire centers that have “reasonably homogeneous [demand]
2 characteristics”. Although Mr. Bradbury is keen to defend wire centers as the
3 geographical unit of competition (pp. 22-23), another witness for AT&T has
4 suggested LATAs as the appropriate market definition in discovery. (AT&T
5 Response to Interrogatory No. 156.)

6

7 Q. HOW WOULD YOU CHARACTERIZE THESE ALTERNATIVE POSITIONS?

8

9 A. Geographical market definition is one of those issues that supports my general
10 observation above: while Mr. Gillan and AT&T find BellSouth’s market
11 definition is too small, Messrs. Bryant, Staihr, and Nilson find it is too large, and
12 as Dr. Pleatsikas describes, Dr Johnson’s suggestion is logically impossible to
13 implement, which to me suggests BellSouth’s proposal may actually be just right.

14

15 Furthermore, it is interesting that the parties not only contradict each other, but
16 also appear to be contradicting themselves: MCI is arguing for a larger market
17 definition through the FCCA’s witness Mr. Gillan and a smaller definition
18 through its own witness, Dr. Bryant; AT&T is suggesting a LATA in discovery
19 (AT&T Response to Interrogatory No. 156), while its witness, Mr. Bradbury,
20 emphasizes that this Commission “must assure itself that UNE-L competition will
21 exist in every wirecenter.” Both MCI and AT&T have previously argued against
22 too small a geographical market definition because their switches can provide
23 service to a comparable area as BellSouth’s tandem switches (see Ruscilli
24 Rebuttal, p. 15), even though both are now defending individual wire centers as
25 the unit of meaningful competition (Bradbury, pp. 22-23, Bryant p. 43-51).

1

2 Q. WHAT SHOULD THE COMMISSION DECIDE IN THE FACE OF THESE
3 COMPETING ALTERNATIVES?

4

5 A. It is hardly surprising that many alternative definitions of the geographical market
6 have been propounded – this is an issue that has been left up to this Commission’s
7 judgment, and where, although I believe that UNE Zones cut by CEAs is the most
8 logical definition, there is likely no “right answer.” As Dr. Pleatsikas explains,
9 however, there are two definite “wrong answers,” both of which should obviously
10 be avoided. The first would be to define the whole State of Florida as a market;
11 the second would be to define every wire center within Florida as a market. Either
12 of these approaches would run afoul of *TRO* ¶ 495 (the former is too big, the latter
13 is too small). As long as the Commission steers between these two “icebergs,”
14 however, I believe its analysis will be reasonable.

15

16 Q. TURNING FROM THE GEOGRAPHICAL MARKET TO THE DEFINITION
17 OF “MASS MARKET,” WHAT IS THIS COMMISSION’S TASK?

18

19 A. The *TRO* (¶ 497) is quite clear on this point: “Some mass market customers (i.e.,
20 very small businesses) purchase multiple DS0s at a single location...Therefore as
21 part of the economic and operational analysis discussed below, a state must
22 determine the appropriate cut-off for multiline DS0 customers as part of its more
23 granular review.” The Commission’s task is no more and no less than to set a
24 number of DS0s below which a customer is classified as “mass market” and

1 above which it is classified as “enterprise” (and therefore no longer eligible for
2 unbundled switching, per *TRO* ¶ 419).

3
4 Q. WHAT IS BELL SOUTH’S POSITION REGARDING THE APPROPRIATE
5 CUTOFF?

6
7 A. As described in my direct Testimony (p.8), BellSouth has accepted the FCC
8 default delineation that customers with three or fewer CLEC DS0 lines serving
9 them should be deemed “mass market.” This position has also been tentatively
10 adopted by the Ohio PUC. (See *In the Matter of the Implementation of the*
11 *Federal Communications Commission’s Triennial Review Regarding Local*
12 *Circuit Switching in the Mass Market*, Case No. 03-2040-TP-COI, *Entry*, dated
13 October 2, 2003, p.5.)

14
15 Q. WHAT HAVE OTHER WITNESSES SUGGESTED IN THEIR REBUTTAL
16 TESTIMONY FOR THE CUTOFF?

17
18 A. On this issue, there is a lot of smoke, but not much in the way of concrete
19 suggestions. Mr. Gillan proposes a 12-line cutoff for BellSouth’s territory, and an
20 *ad hoc* definition for Verizon’s territory (although why the crossover should vary
21 by ILEC is not explained). Mr. Nilson variously suggests 6-8 lines (footnote 10,
22 p. 14), 5-6 lines (p. 52) and 10-12 lines (p. 53). Mr. Johnson agrees that “the FCC
23 adopted a cut-over of four lines” (p. 36) (contrary to Mr. Gillan, who claims that
24 they didn’t (p.17)) and correctly points out that the higher the cut-over is set, the
25 more customers are included in the “mass market” category, and so the more

1 likely it is that no mass-market impairment will be found. However, he then goes
2 on a somewhat bizarre tangent (pp. 38-47) in which – directly contradicting the
3 *TRO* as quoted above – he suggests that the “mass market” should be further
4 subdivided into “residential” and “small business” segments to which the triggers
5 tests should be applied independently (p. 46), or as an alternative, the cutoff
6 should be performed “on the basis of revenue per customer, or on the basis of
7 gross profit margin per customer (revenues minus direct costs), rather than purely
8 on the basis of the number of DS0 lines.”

9

10 Q. WHAT SHOULD THE COMMISSION DECIDE IN THE FACE OF THESE
11 COMPETING ALTERNATIVES?

12

13 A. Again, there is likely no “right” answer. Obviously, BellSouth believes its
14 position is a reasonable one and comes closest to assuaging Mr. Johnson’s
15 concern that “no other party in this proceeding has recognized the importance of
16 studying residential and small business customers separately,” (p.38) by staying
17 within the *TRO*’s mandate to include multiline DS0 customers while establishing
18 an explicit cutoff. On the other hand, raising the cutoff, as Mr. Gillan suggests,
19 only improves the chances of finding mass-market non-impairment, and so is not
20 unappealing to BellSouth. The only thing that I would propose this Commission
21 avoid is not following the clear guidance of the *TRO* and the FCC rule by failing
22 to come up with a single, clear cutoff point between “mass market” and
23 “enterprise” customer segments.

24

1 **ISSUES 4 AND 5: THE TRIGGERS AND POTENTIAL**

2 **DEPLOYMENT TESTS**

3
4 Q. WHAT DO YOU MEAN BY THE “TRIGGERS AND POTENTIAL
5 DEPLOYMENT TESTS”?

6
7 A. Having defined the geographical markets and the “mass market” cutoff, the *TRO*
8 lays out a clear process by which this Commission should determine whether
9 impairment exists for local switching. All witnesses in this proceeding agree that
10 the Commission should examine each geographical market in turn, first applying
11 the “triggers tests,” which examine whether there is actual deployment of CLEC
12 switching on either a retail or wholesale basis, and then – if neither of those tests
13 are passed – the “potential deployment test,” which weighs evidence of actual
14 deployment, operational barriers, and economic barriers to determine whether
15 self-provisioning of facilities is potentially economic, even if it has not yet
16 occurred to the extent required to meet either of the triggers.

17
18 Q. LET US BEGIN WITH THE TRIGGERS TESTS. WHAT IS BELL SOUTH’S
19 INTERPRETATION OF THESE TESTS?

20
21 A. Actually, very little interpretation is required. The *TRO* is crystal clear about the
22 nature of these tests. Furthermore, BellSouth is not claiming that the wholesale
23 facilities trigger is met in any market at this time, which simplifies matters
24 because it means that this Commission only has to consider the self-provisioning
25 trigger. As it is easy to get lost in the lengthy, seemingly plausible, but in fact

1 mostly fictitious, “interpretations” of the trigger test presented by Drs. Stair,
2 Johnson and Bryant and Messrs. Gillan, Nilson and Bradbury in their rebuttal
3 testimonies, let me quote *in its entirety* the FCC’s rule describing this test: “Local
4 switching self-provisioning trigger. To satisfy this trigger, a state commission
5 must find that three or more competing providers not affiliated with each other or
6 the incumbent LEC, including intermodal providers of service comparable in
7 quality to that of the incumbent LEC, each are serving mass market customers in
8 the particular market with the use of their own local switches.” (47 C.F.R. §
9 51.319 (d)(2)(iii)(A).)

10

11 Although BellSouth would prefer the trigger to be met with the presence of one or
12 two competing providers, the text is quite clear that three is the threshold.

13 Similarly, although many witnesses would prefer the trigger to be met only if
14 additional criteria – such as a *de minimis* threshold, or a requirement that every
15 customer in the market be served, or that trigger candidates have to use ILEC
16 loops and “mass market switches” (whatever those may be) are satisfied – the text
17 is quite clear that none of these additional standards have been imposed.

18

19 Ms. Pam Tipton further elaborates on these fictional criteria in her testimony, and
20 describes how, in contrast, BellSouth has simply applied the FCC’s
21 straightforward test to the markets that have been proposed. That is, in each
22 market BellSouth has counted how many competing providers – through their
23 own admission in discovery and BellSouth’s internal data – are serving mass-
24 market customers. In the markets where there are three or more competing
25 providers, the trigger has been met, and this Commission should immediately find

1 non-impairment. In the markets where there are fewer than three competing
2 providers, the trigger has not been met, and therefore, the Commission should
3 continue their examination to see if the markets pass the potential deployment
4 test.

5
6 Q. HOW HAS BELL SOUTH DEFINED "COMPETING PROVIDERS"?

7
8 A. BellSouth has been rather conservative in defining "competing providers." For
9 example, despite the evidence in the TRO itself that "local services are widely
10 available through CMRS providers" (§ 230), that CMRS providers are sufficiently
11 competitive with the incumbent LEC that they should qualify for UNEs (§ 140),
12 and that CMRS is "growing as a...replacement for *primary* fixed voice wireline
13 service" (§ 230), BellSouth chose not to challenge the FCC's statement that "at
14 this time we do not expect state commissions to consider CMRS providers in their
15 application of the triggers" (fn. 1549). Similarly, BellSouth did not include
16 internet-based telephone providers, such as Vonage, as trigger candidates,
17 although internet-based telephone providers and CMRS providers are clearly a
18 growing presence and a direct and ubiquitous substitute for the incumbent LEC's
19 voice service in Florida. (See Exhibit JAR-5.)

20
21 **Eliminating these two categories of trigger candidates leaves only wireline**
22 CLECs as included as "competing providers." I should mention in passing that
23 BellSouth has of course included cable companies as trigger candidates – this is
24 contrary to the assertions of Mr. Nilson (pp. 36-38) and Mr. Bryant (pp.10-12),
25 but more importantly is consistent with the TRO and with the CLECs own

1 position in their DC Circuit brief where they state that “the FCC acknowledged
2 that its triggers may ‘count’ carriers like cable companies”. (Brief of CLEC
3 Petitioners and Intervenors, *USTA v. FCC*, Case No. 00-1012 (DC Cir), p. 37.)
4

5 Q. ON PAGE 39 OF HIS TESTIMONY, MR. NILSON SUGGESTS THAT
6 FUTURE MERGER ACTIVITY THAT RESULTS IN A REDUCTION IN THE
7 NUMBER OF LOCAL EXCHANGE CARRIERS IN A GIVEN MARKET
8 WOULD REQUIRE THE COMMISSION TO REVISIT WHETHER THE
9 TRIGGER HAD BEEN MET FOR THAT MARKET. DO YOU AGREE?
10

11 A. No. First, this point is well beyond the scope of this proceeding and outside of the
12 issues presented. This point anticipates what will happen in the future, after the
13 Commission has made a finding of “no impairment” in a market. However, even
14 with this said, Mr. Nilson’s point is simply wrong. The FCC has established the
15 triggers as the proof that CLECs can serve mass market customers without
16 unbundled switching. Once that proposition has been established by applying the
17 triggers, it is established regardless of whether three CLECs continue indefinitely
18 to provide service in that particular market. Subsequent merger activity has
19 absolutely no impact on this finding once it has been made.
20

21 Q. WITH RESPECT TO THE “POTENTIAL DEPLOYMENT” TEST, HOW
22 SHOULD THIS TEST BE APPLIED?
23

24 A. Although it is not quite as straightforward as the “bright-line” self-provisioning
25 trigger test, the potential deployment test is also well described in the *TRO*. In

1 markets where neither of the triggers tests has been met, this Commission needs
2 to examine three criteria: evidence of actual switching deployment, operational
3 barriers (such as the availability of collocation space and cross-connects), and
4 economic barriers. (47 C.F.R. § 51.319 (d)(2)(iii)(B)(1)-(3).) If, having weighed
5 these criteria, the Commission decides that self-provisioning of local switching
6 could be economic, then it should make a finding of non-impairment.

7

8 Q. HOW HAS BELLSOUTH APPLIED THIS TEST?

9

10 A. BellSouth has presented details regarding each of these three criteria: evidence of
11 actual switching deployment is described in the direct testimony of Ms. Tipton;
12 the lack of operational barriers is described in my direct testimony, pp.19-23, and
13 the assessment of economic barriers is discussed in the direct testimony of Dr.
14 Aron.

15

16 Q. WHAT HAVE OTHER WITNESSES SUGGESTED IN THEIR REBUTTAL
17 TESTIMONY REGARDING THE POTENTIAL DEPLOYMENT TEST?

18

19 A. The focus of other witness's rebuttal testimony has been on BellSouth's
20 assessment of the economic barriers. This assessment was based on the BACE
21 model, a detailed business case for a UNE-L CLEC entering the Florida market.
22 In sponsoring the BACE model, BellSouth has made an effort unparalleled by any
23 other carrier in the country to provide the Commission with a tool to assess
24 economic impairment in a way that meets the criteria laid out in the *TRO* (see for
25 example *TRO* ¶ 485 and the direct testimony of Mr. James Stegeman, pp. 6-18).

1 Indeed, no other party has even attempted to claim that the models they originally
2 presented in direct testimony are better suited to the task at hand. Unfortunately,
3 instead of engaging in a constructive debate about the BACE model, the rebuttal
4 testimonies of Drs. Staihr and Bryant and Messrs. Dickerson, Nilson, Webber,
5 Bradbury and Wood by and large satisfy themselves with making unfounded
6 attacks on the input parameters or superficial complaints about the structure of the
7 model. The former group of complaints is comprehensively dealt with in the
8 surrebuttal testimonies of Drs. Aron and Billingsley, who show that most of the
9 issues are the results of definitional misunderstandings or attempts to substitute
10 the months of documented research that the BellSouth witnesses have performed
11 regarding variables such as churn, cost of capital, and selling, general and
12 administrative (“SG&A”) costs, with offhand assumptions. The latter group of
13 complaints is handled in the surrebuttal testimonies of Messrs. Stegeman, Milner
14 and Gray, who demonstrate that none of the witnesses appear to have made a
15 good faith attempt to understand the model, with the result that many of their
16 alleged critiques are inaccurate and mutually contradictory.

17
18 I would urge this Commission to make use of the powerful tool that is the BACE
19 model. Contrary to the assertion of Mr. Wood that the potential deployment test
20 is essentially irrelevant because the absence of self-deployment “should eliminate
21 any question regarding the ability of CLECs to enter a market and successfully
22 compete for mass market customers is impaired without access to UNE local
23 circuit switching [sic]” (pp.6-7), the *TRO* lays out a detailed and thoughtful test
24 for state commissions to apply where the triggers are not met. So long as UNE-P
25 promotes artificial competition by distorting market prices and subsidizing

1 arbitrage players with no interest in making real investments in the state of
2 Florida, this test may be consumers' only hope of benefiting from real, facilities-
3 based competition and therefore deserves to be taken seriously.

4

5

ISSUE 3: BATCH CUTS

6

7 Q. ON PAGES 5-6 OF HIS TESTIMONY, MR. VAN DE WATER CLAIMS THAT
8 THIS COMMISSION CAN NOT RELY ON ITS 271 FINDINGS WITH
9 RESPECT TO THE HOT CUT PROCESS. HOW DO YOU RESPOND?

10

11 A. The FCC's decision not to rely on the objective hot cut performance data on
12 which it relied in at least forty-nine 271 cases to find that ILECs provide
13 nondiscriminatory access to loops is erroneous. This Commission should not
14 make the same error. It would make no sense for this Commission to ignore its
15 finding from a year ago that BellSouth has a 251/271-compliant hot cut process,
16 and then today, find that the process is unacceptable.

17

18 Moreover, even if this Commission does not rely solely on its 271 holding,
19 BellSouth's objective performance data should inform this Commission's
20 decision far more than the CLEC's uncorroborated and anecdotal evidence that
21 BellSouth's process "might not work." BellSouth's witnesses have presented a
22 seamless and efficient batch hot cut process, and have presented performance data
23 and a third party test that demonstrates its effectiveness. When weighed against
24 the CLECs' speculative musings, BellSouth's case is far more compelling. There
25 is no doubt that the Commission's findings in the 271 case should inform its

1 decision, but the Commission can, and should, adopt BellSouth's batch hot cut
2 process based on the evidentiary record in this case.

3

4 Q. MR. VAN DE WATER (PAGES 27-28) AND MR. GALLAGHER (PAGE 14)
5 CRITICIZE BELLSOUTH FOR NOT FILING THE COST STUDY YOU
6 MENTION IN YOUR TESTIMONY (RUSCILLI DIRECT, P. 18). IS A COST
7 STUDY RELEVANT TO THIS PROCEEDING?

8

9 A. No. The cost study BellSouth conducted of the batch hot cut process was done
10 using BellSouth's cost model with the inputs BellSouth contends are correct. The
11 estimated costs for the batch hot cut process were less than the original filed costs
12 for the standalone loop; however, they were still higher than the ordered loop
13 rates set by this Commission because of the adjustments made by the Commission
14 to the inputs. To account for the Commission's Order, BellSouth applied the
15 same adjustments and discounts that the Commission applied to BellSouth's filed
16 costs for the loop that established the individual hot cut rate to the estimated batch
17 hot cut rates. This resulted in the proposed batch hot cut rate being approximately
18 10% below the ordered loop rate. The rate is driven, therefore, not by BellSouth's
19 cost study so much as by the Commission's UNE Cost Order.

20

21 Q. MR. VAN DE WATER AND MR. NEPTUNE ARGUE THAT THE RATE
22 BELLSOUTH IS PROPOSING IS TOO HIGH. PLEASE COMMENT.

23

24 A. As I discussed in my rebuttal testimony, the rate BellSouth is proposing for the
25 batch hot cut process is a discount off the Commission-approved TELRIC-based

1 rates set forth by this Commission in the UNE Cost Proceeding, Docket No.
2 990649-TP, Order No. PSC-01-2051-FOF-TP. During the UNE Cost Proceeding,
3 this Commission engaged in a thorough, detailed analysis of the evidence (from
4 BellSouth and CLECs) regarding the proposed hot cut rates. At the conclusion of
5 the proceeding, this Commission ordered the nonrecurring rates for hot cuts with
6 modifications of certain inputs, as well as reductions to certain work times. As a
7 result, the Commission's established rate was substantially lower than what
8 BellSouth had proposed. Taking into consideration the already reduced hot cut
9 rates, BellSouth's additional 10% discount for the batch hot cut process is a true
10 cost-savings for CLECs.

11

12 Q. DID AT&T OR SUPRA PARTICIPATE IN THE UNE COST PROCEEDING?

13

14 A. AT&T did, Supra did not. However, AT&T never raised a concern about the
15 proposed hot cut costs. Even after the UNE Cost Order had been issued, AT&T
16 did not request the Commission to reconsider the rates established for hot cuts.
17 Now, some 2 ½ years after the fact, AT&T is attempting to request a modification
18 of the UNE Cost Order.

19

20 Q. MR. VAN DE WATER AND MR. NEPTUNE CONTINUE TO TRY AND
21 COMPARE A RETAIL TO UNE-P MIGRATION TO A RETAIL TO UNE-L
22 MIGRATION. IS SUCH A COMPARISON APPROPRIATE?

23

24 A. Absolutely not. As I explained in detail in my rebuttal testimony, the work
25 required to migrate a CLEC's service from UNE-P to UNE-L is much more

1 involved than converting retail service to UNE-P. The Commission has
2 recognized this fact in at least two ways. First, it established higher rates for hot
3 cuts than for conversions to UNE-P, recognizing the different work effort in each.
4 Second, it established different benchmarks and retail analogues for UNE-L
5 performance measures than for UNE-P performance measures. The fact that
6 UNE-L and UNE-P are different is no surprise to this Commission. Congress also
7 recognized the difference between UNE-L and UNE-P – it is simply the
8 difference between true facilities-based competition with the UNE-L and
9 synthetic competition with the UNE-P. The question for the Commission is not
10 whether UNE-P is the same as UNE-L, but rather whether an efficient CLEC can
11 economically enter the market without access to unbundled switching. Because
12 the answer to the second question, the correct question, is unequivocally “yes”,
13 the CLECs are trying to change the question.

14

15 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

16

17 A. Yes.

18

19 [#522525]

20

21

A Debate on Web Phone Service

By MATT RICHTEL
2,236 words
5 January 2004
The New York Times
Late Edition - Final

1

English

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Charles Davidson, a self-proclaimed gadget freak in Tallahassee, Fla., began using Internet-based telephone service last week. He can call anyone -- not just the other 100,000 pioneers around the nation using such service, but any of the millions of people who use conventional telephones, like his parents in Elizabethton, Tenn.

But Mr. Davidson is more than an adventuresome consumer. As a member of the Florida Public Service Commission, he is a regulator who is eager to see Internet telephone service spread because he predicts it can make the nation's phone services less expensive and richer in features.

That is why Mr. Davidson wants the federal and state governments to let Internet-based phone service blossom, free from regulation, taxes and surcharges. Like a growing number of officials who advocate minimal oversight of the service -- including Michael K. Powell, the chairman of the Federal Communications Commission -- Mr. Davidson says Internet telephone service should be treated just like other unregulated Internet services, including e-mail messaging and Web surfing.

But unlike some proponents of deregulation, Mr. Davidson also has a nagging concern. Because Internet-based phone service rides over traditional telephone or cable lines, it will not work unless the conventional phone network is intact. The government has long regarded that network as a national asset akin to roads and highways, and it is a communications system whose reliability and virtual ubiquity make it the envy of most of the rest of the world. In fact, if users of Internet phones were not able to communicate with all the millions of people still plugged into the conventional telephone network, Internet telephone service would be little more than a hobbyist's experiment.

So Internet telephone service raises a public policy question: If the government does not continue to play a role in ensuring that the telephone network is reliable and universally available, does the nation risk losing a vital asset?

"It's a great question," Mr. Davidson said. "Do we, as a society, want to maintain a policy of 'always on'?"

Mr. Davidson, a former antitrust lawyer appointed to the Florida commission by the governor, Jeb Bush, a Republican, is still weighing his answer. But he says he tends to think that markets are more efficient than regulators -- in other words, that laissez-faire can walk hand in hand with "always on."

Some of Mr. Davidson's counterparts in other states sound just as certain that only government referees can preserve the decades-old tradition of universal, reliable telephone service.

"If somebody doesn't regulate this, it's buyer beware," said Loretta Lynch, a member of the California Public Utilities Commission, who was appointed by the former governor, Gray Davis, a Democrat. Ms. Lynch, a lawyer, said the role of the telephone was too important to leave in the hands of market forces. "Telecommunications is essential to our democracy," she said. "It's essential, in fact, to keeping an informed populace."

If the issue were limited to the 100,000 or so customers currently using Internet-based telephones, the debate might remain largely theoretical. But the service seems on the verge of a takeoff.

The field's current leader is the Vonage Holdings Corporation, an Edison, N.J., company with about 80 percent of the market so far. Mr. Davidson is among its customers. Vonage estimates that it will have 250,000 customers by the end of 2004 and one million by 2006. Time Warner Cable, a unit of Time Warner Inc., and the AT&T Corporation have both announced major initiatives to roll out Internet-based phone service. The regional Bell company Qwest Communications International Inc. plans to offer Internet telephone service in its 14-state Rocky Mountain region as an alternative to conventional phone service. And every other major

telecommunications provider has plans to introduce Internet-based service to take advantage of the technology's lower costs and the lack of regulation.

The F.C.C. has embarked on a series of public hearings around the country on whether and how to regulate Internet telephony. The agency's chairman, Mr. Powell, has said that his instinct is to subject telephone calls made using Internet technology to only minimal regulation in order to avoid costs and bureaucracy that he says would slow innovation and competition.

The public policy questions go to the heart of a social compact born in the 1930's. Then, the government granted regulated monopolies in individual markets to AT&T and other, smaller companies. In exchange, policy makers exacted a price: the telephone monopolies had to meet service quality standards and collect taxes and surcharges to support affordable, universal access even in rural or remote areas where free-market economics would not have made it cost effective to string telephone wires.

Although AT&T's Bell System was split up in 1984, the existing four major telephone companies descending from it -- Verizon Communications, the BellSouth Corporation, Qwest and SBC Communications Inc. -- still face substantial regulation from the federal and state governments. Now, though, with the advent of Internet-based telephone service, as well as competition from wireless providers, there is growing momentum to rewrite 70 years of rules.

"The economic regulation was quid pro quo for giving it a monopoly," said Mr. Davidson of the rules governing the Bell companies. Now, he said, "there is no monopoly."

Mr. Davidson said he thought that competition from cable and wireless companies provided consumers an array of new choices. But among the various state and federal regulators who will weigh in on the Internet-phone issue, there are many nuanced notions about how to proceed. Some want to see state regulation eliminated; others want to see regulation streamlined but kept intact. Many want to retain guarantees of 911 service and universal service for low-income and rural residents, but they differ considerably on how to achieve those goals. Even within the National Association of Utility Regulators, an influential lobbying group of state regulators, some top officials have greatly divergent views about how to regulate telecommunications in the 21st century.

Not all industry executives agree, either, although most companies favor a significant rollback of regulations. One of the most unabashed supporters of Internet-based telephone service is Richard C. Notebaert, the chief executive of Qwest. Mr. Notebaert said Qwest, besides introducing Internet-based calling across its region, might even offer it nationwide.

Mr. Notebaert said that with Internet telephone service, he could save his customers 25 percent to 30 percent on their bills because they would not be required to pay the taxes and surcharges assessed to conventional phone service to support such things as phone service for low-income and rural residents. He said Internet-based service would enable his company to save "hundreds of millions" of dollars a year in costs associated with following regulatory requirements like tracking and reporting Qwest's customer service performance by various measures.

Mr. Notebaert acknowledged that moving to Internet telephone service would mean tradeoffs.

"You're going to have to give things up to get 25 to 30 percent savings," Mr. Notebaert said. As to regulation, including universal service, he said, "I do not think it should be retained at all."

Some of the lower costs of Internet telephone service are a result of the underlying architecture. In the conventional telephone network, voice calls travel over a line that stretches from the home to a piece of phone company equipment called a circuit switch. The switch, and many others like it along the way, routes the call to its destination over local or long-distance networks. The switches can be expensive, as much as \$10 million each, said John Hodulik, a telecommunications analyst with UBS Securities.

And adding to the costs is the fact that with conventional telephone service the line that carries the voice signal to and from homes is dedicated exclusively to one call at a time. With Internet-based calls, the information is broken down into small packets, so that the lines that carry the voice conversations can simultaneously transport many other packets of Internet traffic, like e-mail messages and World Wide Web pages. And Internet calls do not require lots of expensive circuit switches, because each packet of data carries an address that helps it find its own way across the network.

Were telephone companies to build a network from scratch today, they likely would do so using the less expensive Internet architecture that has enabled start-up companies like Vonage to enter the market.

Vonage has invested a mere \$12 million in technology, the company's chief executive, Jeffrey A. Citron, said. That, he said, is a far cry from the \$75 million to \$100 million that some companies must spend to begin offering conventional telephone service. And Vonage spends only about

\$200 to set up each new customer, while a service provider selling conventional phone service might need to spend as much as \$600 a customer, Mr. Citron said.

But some critics say a big reason Vonage and other Internet-based phone providers can cut costs is because they do not have to adhere to the same rules and regulations as the conventional telephone companies on whose local and national networks the Internet providers depend. Even an Internet telephony fan like Jeff Pulver, who was formerly on the Vonage board, acknowledged that a substantial amount of cost savings comes from avoiding the taxes, surcharges and access fees used to support the traditional phone network.

"Vonage benefits by not having to comply with those rules," he said. Mr. Pulver acknowledges that the Internet upstarts are practicing regulatory "arbitrage." But in his view the public policy response should be to deregulate all phone companies.

The fact that Vonage is not regulated and did not pay to build the national network may obscure the real cost of providing Internet-based phone service. Likewise, the cost to customers is not as low as it may seem. While consumers may pay less each month for Internet telephone service than for regular phone service, they cannot obtain the service unless they first have high-speed Internet access -- on which they are likely to spend \$40 to \$70 a month. So the ability to use Internet phone service may actually require a total monthly outlay of \$100 or more.

Those are table stakes far higher than the bare-bones "lifeline" conventional telephone service subsidized by the regulated industry's universal service fund, which can make basic dial tone and 911 service available to the poor or elderly for less than \$10 a month in some states.

That is why policy makers like Ms. Lynch of the California resist the idea that Internet telephone service will lead to a telecommunications market so competitive that government regulation becomes unnecessary. She said that if conventional telephone companies like Qwest were allowed to avoid regulation by moving their business to Internet-based service, it would drain money from the universal service funds that have enabled low-income residents, as well as schools and libraries, to afford basic phone service.

"The pot of money used to make sure people can communicate will shrink," Ms. Lynch said. "It's a death spiral."

She also questions the premise that a competitive marketplace will satisfy consumer demands for reliable, affordable telecommunications. There are six major mobile phone companies, Ms. Lynch said, and despite vibrant competition, wireless service is still highly unreliable.

"Economic theory is not today's reality," Ms. Lynch said. "My job is not to hypothesize about Nirvana. My job is to deal with the realities today."

Mr. Davidson, in Florida, says he agrees that universal service is an important goal. But, he says he thinks the Internet phone technology should be allowed to mature before it is subjected to taxes and surcharges.

He also says he thinks that Internet-based telephone service providers should eventually be required to provide 911 service. But there, too, he would rather not force the issue just yet -- in part because 911 service is difficult for Internet-based telephone services to accomplish.

Compared with traditional telephone calls, it is complicated to determine the precise location from which an Internet-based call has been placed, meaning that 911 operators would need to ask the caller to provide that information -- even as the house is burning or the child is choking. Mr. Davidson said companies should have to disclose that shortcoming.

"The industry has a very clear obligation," Mr. Davidson said, "to let folks know that this isn't your father's 911."

But when asked when the industry would be mature enough to make 911 service mandatory, he showed his laissez-faire side. "I don't know," he said. "We should allow companies some time to get there."

	AL	FL	GA	KY	LA	MS	NC	SC	TN	Total
% Households with Telephones	0.93	0.931	0.931	0.932	0.915	0.898	0.932	0.92	0.945	
Regional HH Tel Penetration	7.73%	25.03%	16.01%	4.73%	8.94%	4.79%	9.39%	5.57%	10.68%	92.87%

PUBLIC DISCLOSURE DOCUMENT

1 explaining that this issue could not be a BellSouth problem, as the same
2 database is used to route calls for BellSouth's own landline customers as well as
3 calls from any carrier, wireless or otherwise, that reaches BellSouth's network
4 unqueried. That, combined with the fact that the problem was remedied by the
5 wireless carrier, is evidence that the issue was not with BellSouth. Either the
6 wireless carrier had not updated their LNP routing database, or, more likely, they
7 had no routing built for the NPA/NXX of Supra's Local Routing Number ("LRN")
8 for their switch. This could be a wireless carrier problem or a problem with the
9 information Supra placed in the Local Exchange Routing Guide ("LERG"). Since
10 some wireless carriers were able to route, it is more than likely that it is a
11 problem with the wireless carrier's LNP database. It is surely not a problem with
12 Bellsouth.

13
14 Q. MR. STAHLY ASSERTS, ON PAGE 21 OF HIS TESTIMONY, THAT 5% OF
15 THE CUTOVERS HAD NO DIAL TONE REQUIRING DISPATCHES OF
16 BELLSOUTH'S AND THIRD PARTY'S TECHNICIANS TO CORRECT THE
17 PROBLEM. DO YOU KNOW HOW MR. STAHLY ARRIVED AT THE LEVEL OF
18 "5%" AND DO YOU AGREE WITH MR. STAHLY'S ASSESSMENT OF THE
19 BLAME?

20
21 A. No. I do not know how Mr. Stahly arrived at 5%, but let's look at the facts. I
22 would assume that Mr. Stahly is referring to those conversions that required a
23 BellSouth dispatch to change from integrated subscriber loop carrier facilities to a
24 suitable universal or copper facility. In such cases, BellSouth's technician verifies
25 both the old facility is working on the BellSouth switch and, after conversion,

PUBLIC DISCLOSURE DOCUMENT

1 again verifies the new facility is working on the CLEC switch. If there is a
2 problem with dial tone, the technician will not complete that order until the no dial
3 tone problem is resolved (changing pairs, etc). It is true that these new 'cut to'
4 pairs could go into a maintenance problem after the conversion has been
5 completed. However, this is not an issue that is unique to Supra, as this also
6 applies to BellSouth's own retail customers on new services, transfer of services,
7 changes, etc. This fact is supported by looking at the published PMAP data for
8 dispatched trouble reports within 30 days of an order completion for BellSouth's
9 retail residence and business combined for < 10 circuits. During the months of
10 April through October 2003, the retail PT30 results ranged from 9.72% to
11 10.86%. Noting that Mr. Stahly complains that 5% of Supra's conversions later
12 experienced some no dial tone problems, that volume is clearly under the volume
13 experienced by BellSouth's own customers.

14
15 Q. NEXT, ON PAGE 23 OF HIS TESTIMONY, MR. STAHLY ASSERTS THAT 47%
16 OF THE CUTOVERS HAD NUMBER PORTING PROBLEMS CAUSED BY
17 BELL SOUTH. IS HE CORRECT?

18
19 A. Absolutely not. Here again, let's look at the facts. BellSouth provides Supra
20 timely completion notices. Supra, however, does not timely port the number.
21 See Exhibit KLA-5 containing comparisons of BellSouth Go-Ahead completion
22 notices and Supra porting activity. This exhibit shows Supra's porting activity
23 significantly lags behind BellSouth's Go-Ahead message delivery. For example,
24 on November 24, 2003, BellSouth provided ***** Go-Ahead notices while Supra
25 ported only ***** telephone numbers. The remaining port backlog caused

copy
MANNY
CALL
LEVY
G. L.

Fiber Loops

Peter Hill

September 16, 2003


 **Outline****BellSouth Fiber Background****Architectural Background**

All Copper Loops

Fiber Fed Digital Loop Carrier (DLC)

Fiber to the Curb

Fiber to the Home

Fiber to the Multiple Dwelling Unit (MDU)

Service Capabilities**Challenges with the FCC Order****Proposed Definition**

BellSouth Fiber Background

Deployed first Fiber to the Home (FTTH) Network in 1986

Hunters Creek Florida

Began Deploying Fiber Distribution in 1995

By End of Year, 1 Million Homes will be Served By Fiber
Voice, Data, and Video Capable Architecture

Fiber Used for all New Feeder Placements beginning in 1996

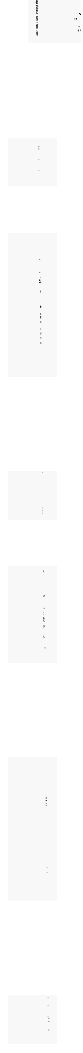
High Level of Fiber in Feeder and Distribution

50% of our Loops could support 5 Mbps

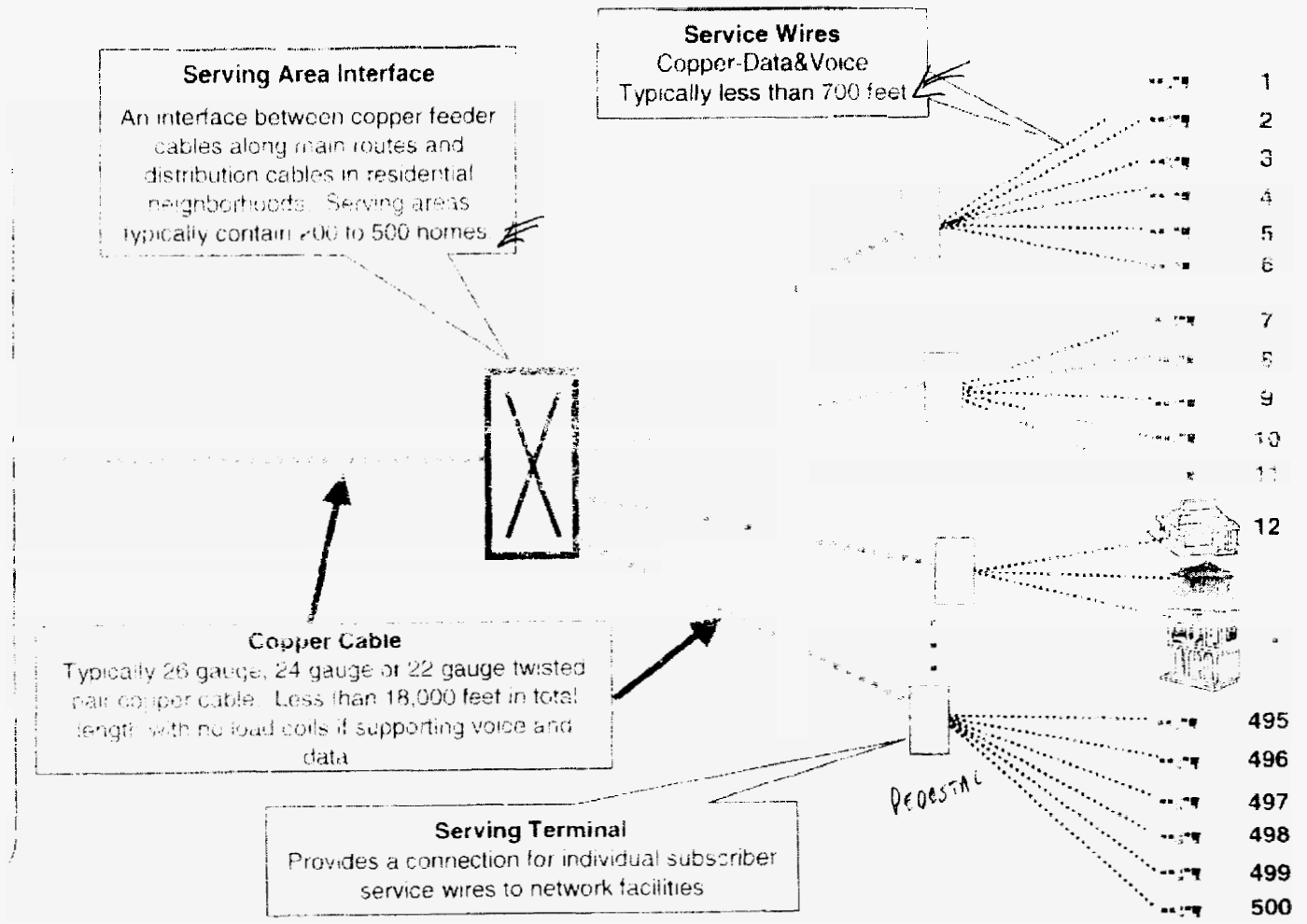
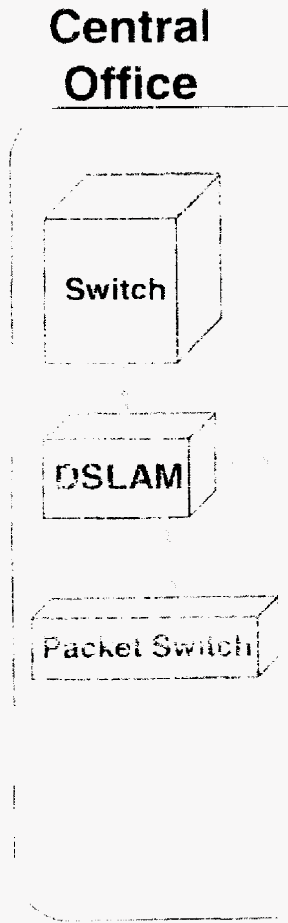
80% could support 3 Mbps

Deployed the first US Passive Optical Network (PON) FTTH System

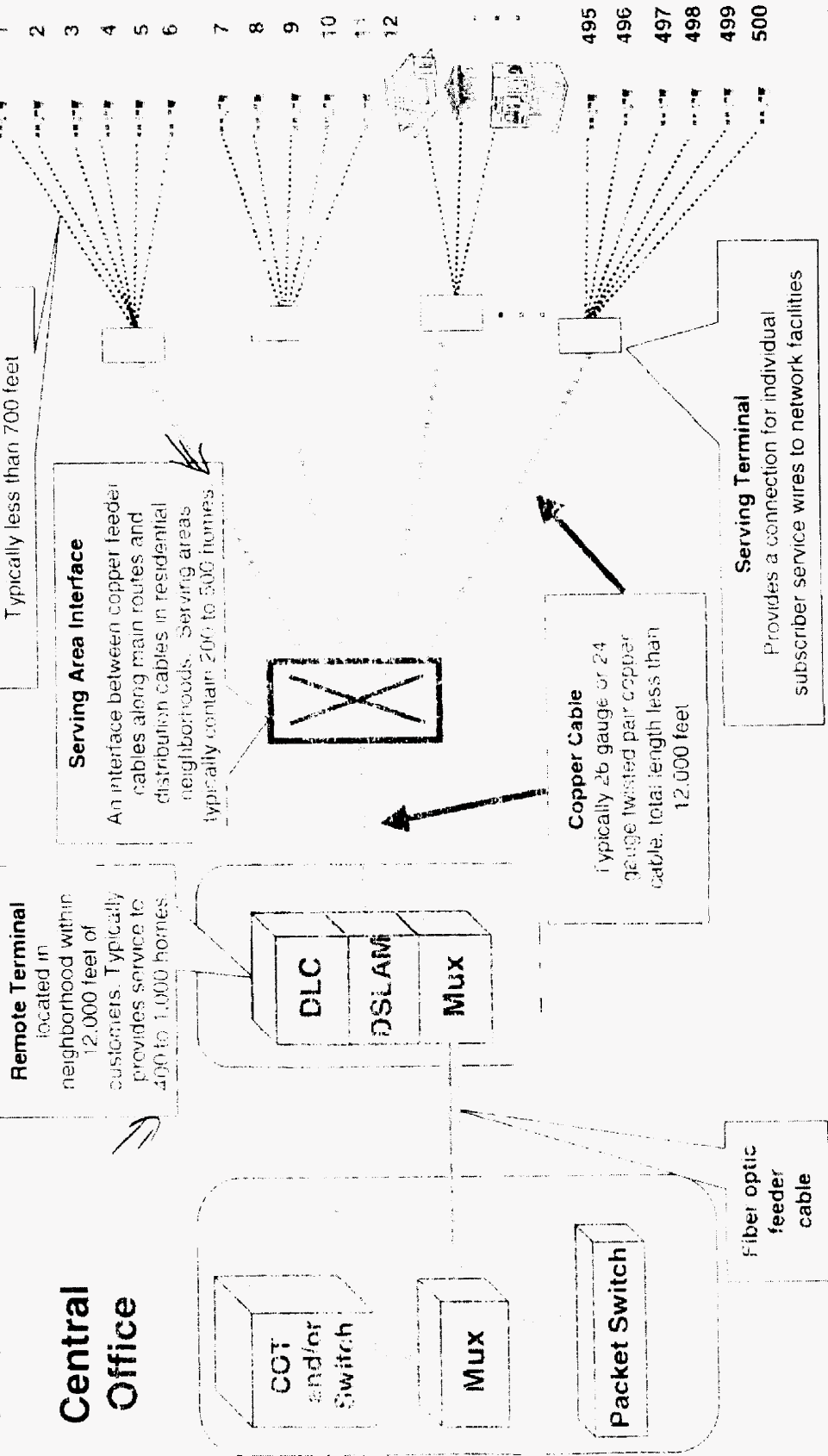
Atlanta 1999



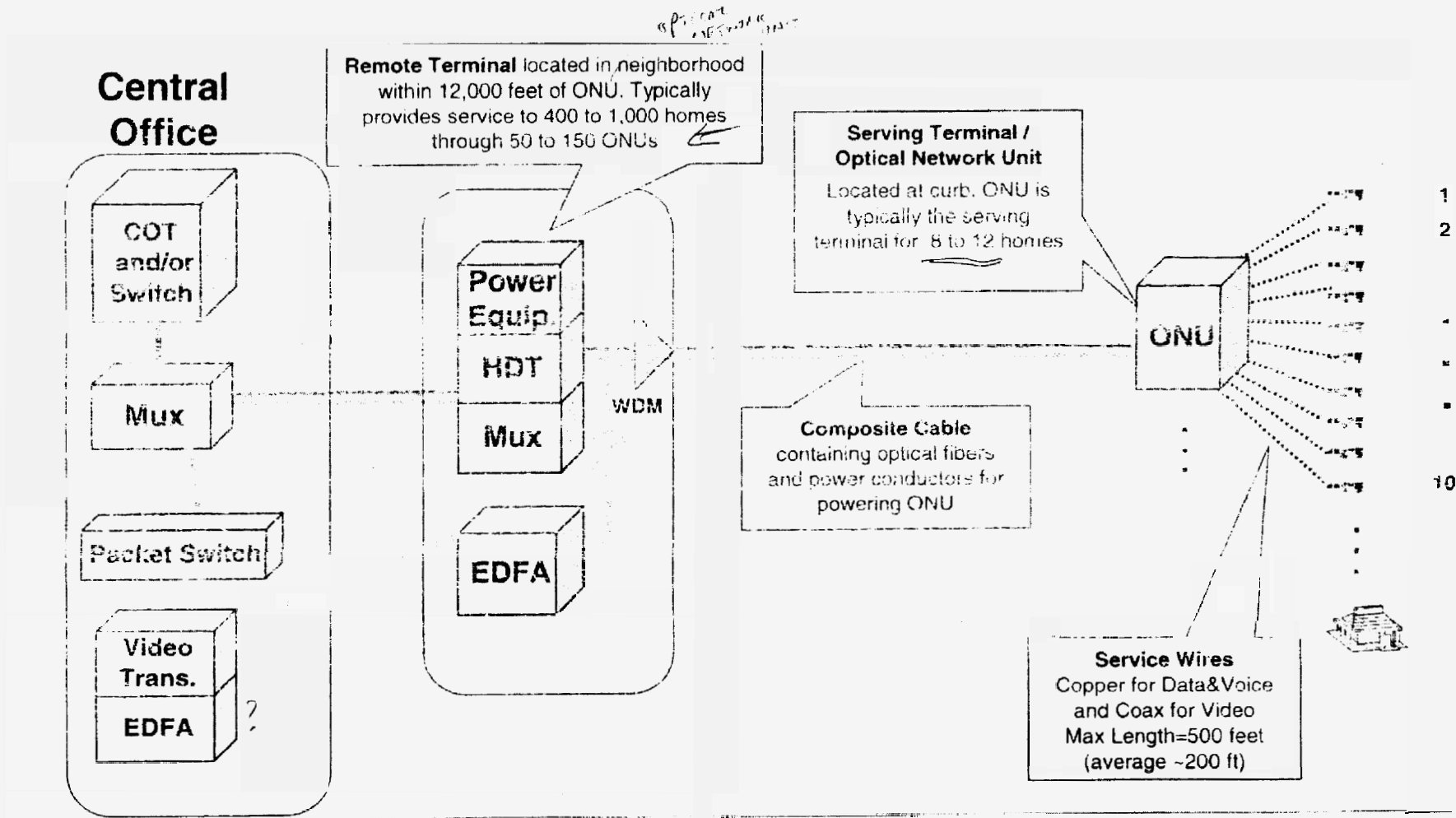
All-Copper Loop Reference Architecture



Fiber Fed Digital Loop Carrier "Hybrid Loop" Reference Architecture

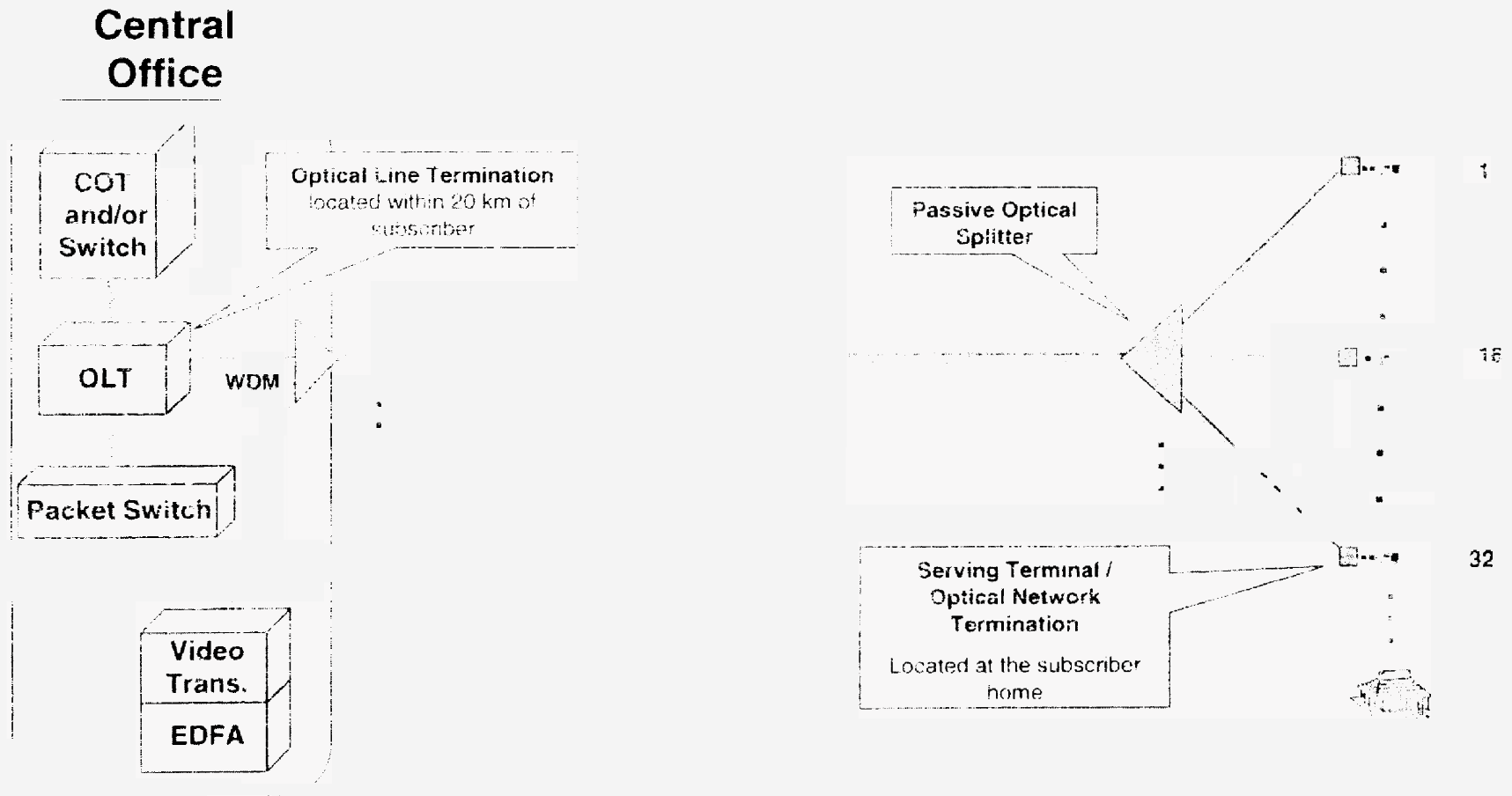


Fiber to the Curb (FTTC) Reference Architecture

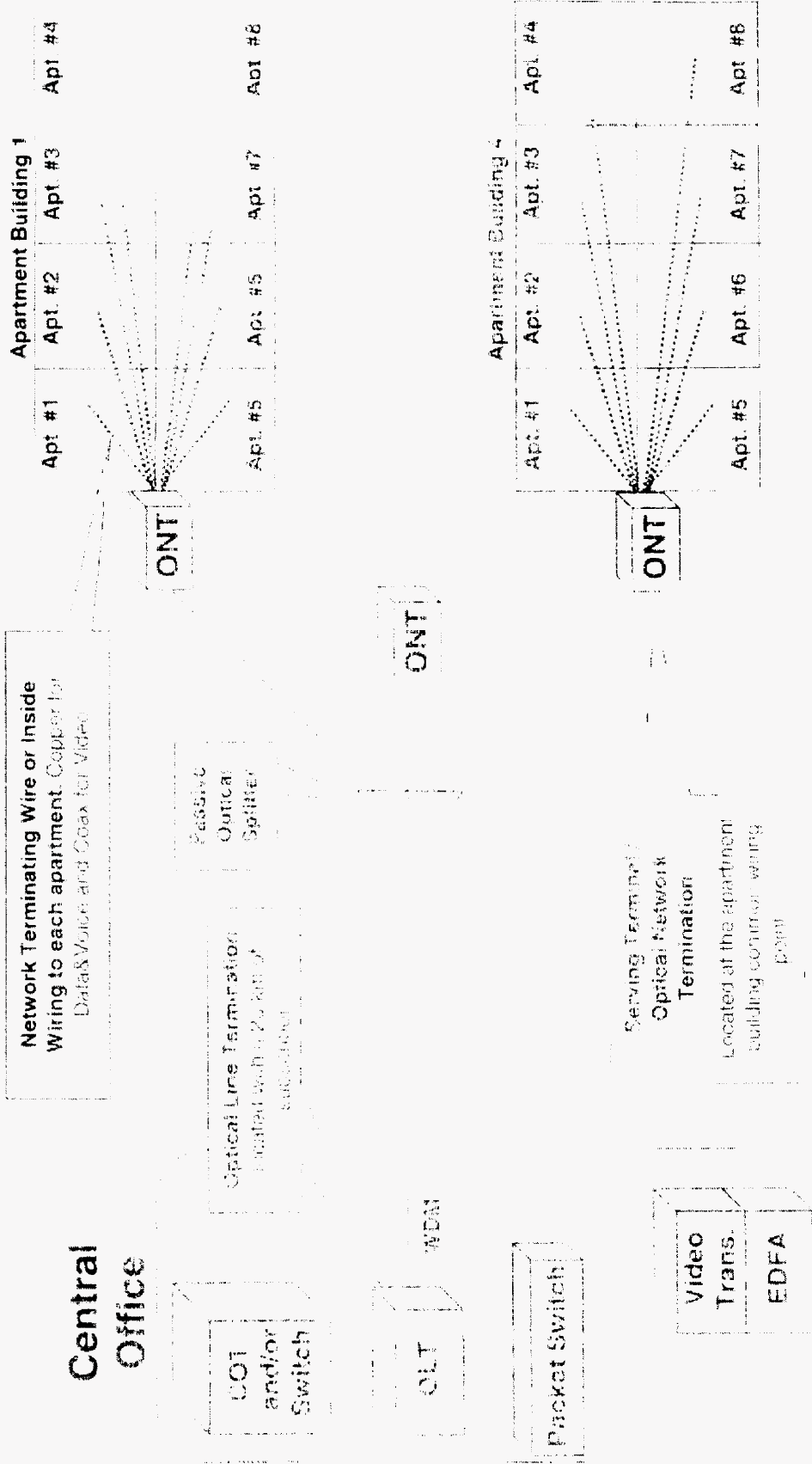


my House

Fiber to the Home (FTTH) Reference Architecture



Fiber to the Multiple Dwelling Unit (MDU)



Service Capabilities

	Voice	Data	Video
Fiber to the Curb	Yes	> 100Mbps	Yes
Fiber to the Home	Yes	> 100Mbps	Yes
Fiber to the Multiple Dwelling Unit (MDU)	Yes	> 100Mbps	Yes



Fiber Fed Digital Loop Carrier "Hybrid Loop"	Yes	~5Mbps for 12kft	No
All-Copper Loops	Yes	~256Kbps for 18kft	No

Challenges with Fiber Loops Portion of FCC Order

Service Equivalent Architectures (FTTH and FTTC) not Treated Equally

Architecture Picking by FCC inconsistent with paragraph 50 of Triennial NPRM where FCC recognized FTTH/FTTC equivalence

FTTC is MASSIVELY more Broadband Capable than Fiber Fed DLC

Architecture needs to be selected based upon the most economical serving arrangement which may not always extend fiber all the way to the customer's "home"

Equal Treatment for "Homes" other than Single Family Suburbia

Apartments, Condominiums, Town homes, Etc.

Lacks Incentive to Quickly Increase Deep Fiber Greenfield investment

FTTC Available today

~315K New Homes will be built in BellSouth Territory this Year

We will serve ~135K of them with FTTC

New Neighborhoods wired with Copper tomorrow will be Doomed to Low Speed Broadband and no Video for ~25-30 Years (even as Japan moves from 10M to 100M Broadband)

Opportunity missed to get significantly more Broadband Out There

Proposed Definition to Improve Fiber Loops Portion of Order

Fiber Loop: A broadband transmission facility with capacity to deliver voice, video, and data services that consists of a fiber optic cable connection or transmission path, whether lit or dark, between a distribution frame (or its equivalent) in the central office and the loop demarcation point or serving terminal¹ at or near the premises.

¹ *Serving Terminal:* The network equipment that provides a point to connect service wires for individual customers to the shared network facilities providing their service.

BellSouth Interconnection Services

675 West Peachtree Street
Room 34H71
Atlanta, Georgia 30375

Laurel MacKenzie
(404) 927-7575
Fax: (404) 927-4985

May 5, 2003

Ms. Denise Berger
AT&T Local Services
Operations Assistant Vice President
Room 12256
1200 Peachtree St. NE
Atlanta, GA 30309

Docket No. 040301-TP
David A. Nilson
EXHIBIT DAN – 28
*5/5/2003 BellSouth's Letter to AT&T (L. MacKenzie
to D. Berger), re: documenting IDLC penetration
levels by state*

Dear Ms. Berger:

This is in response to your e-mail dated March 6, 2003, posing additional questions concerning the conversion of customers from Unbundled Network Element – Platform (UNE-P) to UNE-Loop (UNE-L). The following are BellSouth's responses to your questions:

AT&T Question #1: Will BellSouth support the transition of IDLC UNE-P customers to UNE Loop as a part of this proposed migration? If not, what is a viable alternative.

BellSouth Response: As part of this proposed migration, BellSouth will support transition of Integrated Digital Loop Carrier (IDLC) UNE-P customers to UNE-L when alternative arrangements exist. Attachment 2, Section 3.11.1 of AT&T's Interconnection Agreement specifies the viable alternatives.

AT&T Question #2: Will BellSouth identify the IDLC customers as part of its project planning process? If so, will BellSouth also identify the alternative facilities onto which it will move customers prior to the migration?

BellSouth Response: During the project planning process, BellSouth will identify the IDLC UNE-P customers and will assign alternate facilities, when such facilities exist, during the service order process.

AT&T Question #3: Does BellSouth plan to move the customer to copper prior to the migration? If so, how will BellSouth schedule that interim transition? If not, how will BellSouth care for the change in facilities?

BellSouth Response: Currently, BellSouth has no plans to convert IDLC UNE-P customers to copper on an interim basis prior to the negotiated due date of the actual conversion. BellSouth will perform the conversion on the due date as per existing processes being utilized today. This process, as well as the CLEC notification, is based on requested service type (SL1/SL2) and requested conversion type (coordinated or non-coordinated).

AT&T Question #4: AT&T assumes that dispatch technicians will be required to migrate IDLC customers. How does BellSouth plan to schedule these customers in order to minimize dispatch technician overtime?

BellSouth Response: It is expected that IDLC UNE-P customers being converted to UNE-L will require a field dispatch. Upon initial receipt of the project planning notification from the CLEC, the project manager will negotiate due dates with the network organizations based on volumes and required dispatches. These dates will be set to maximize field resources with minimal or no use of overtime.

AT&T Question #5: What percentage of end-user customers by state in BellSouth's territory are on IDLC?

BellSouth Response: The following is the percentage by state within BellSouth territory of end-user customers of all carriers on IDLC:

AL 22.7%,	MS 22.7%
FL 31.8%,	NC 26.0%
GA 27.0%,	SC 36.3%
KY 13.4%,	TN 21.8%
LA 12.5%	

The questions that you submitted to Professional Services did not specifically pertain to the New Business Request (NBR) AT&T submitted earlier and, therefore, have required a longer response period. In the future, in an effort to facilitate quicker responses, please direct questions about general BellSouth practices to AT&T's Local Contract Manager within Jim Schenks' CLEC Care organization. CLEC Care has the resources assigned to AT&T to respond to your questions and interface with any department required to provide information in formulating an answer.

Sincerely,

Laurel MacKenzie

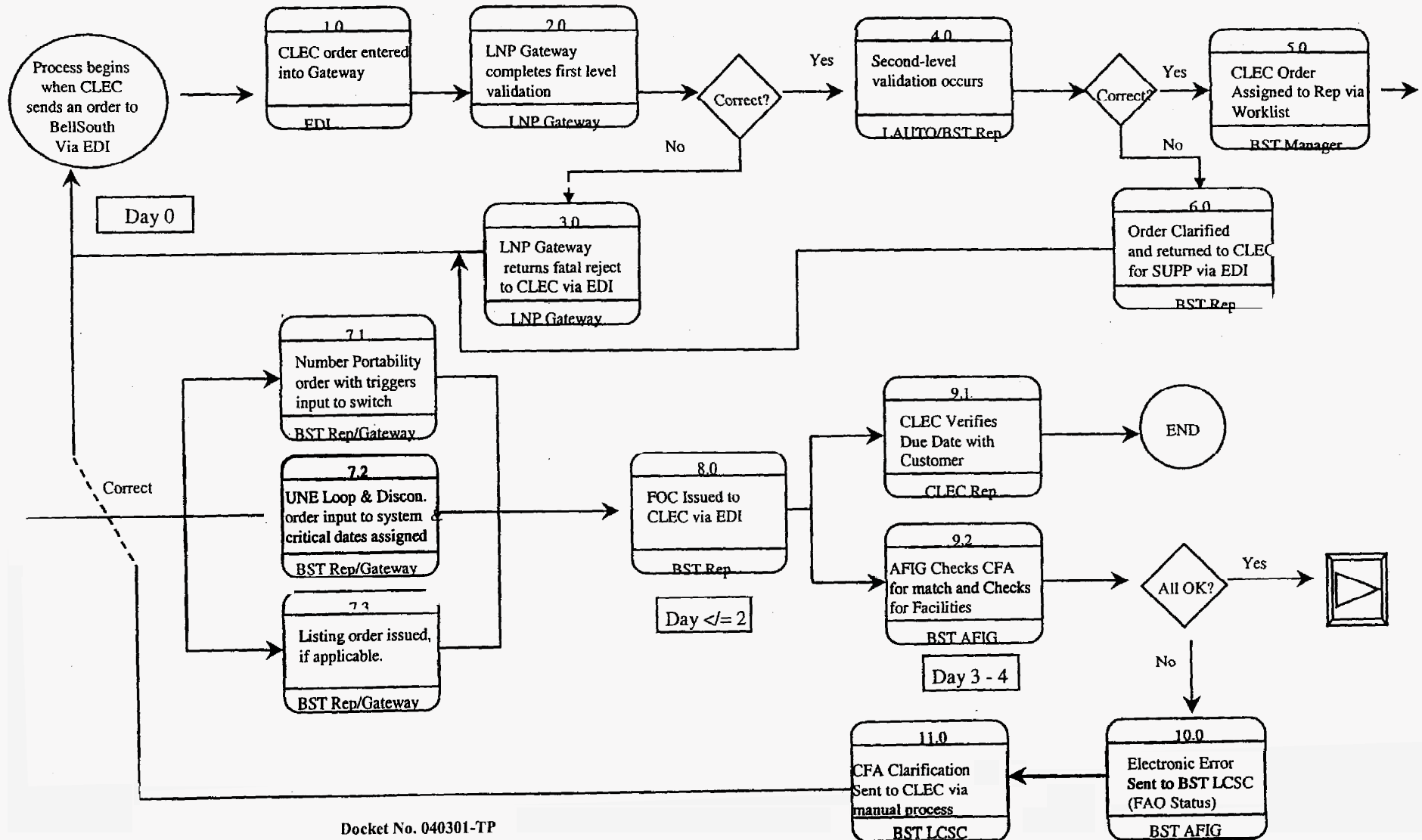
Laurel Mackenzie
Senior Manager – Professional Services
Interconnection Services Marketing

CC: Jim Schenks
Scott Kunze

Issue 2,
 4/18/00

Coordinated Hot Cut Process

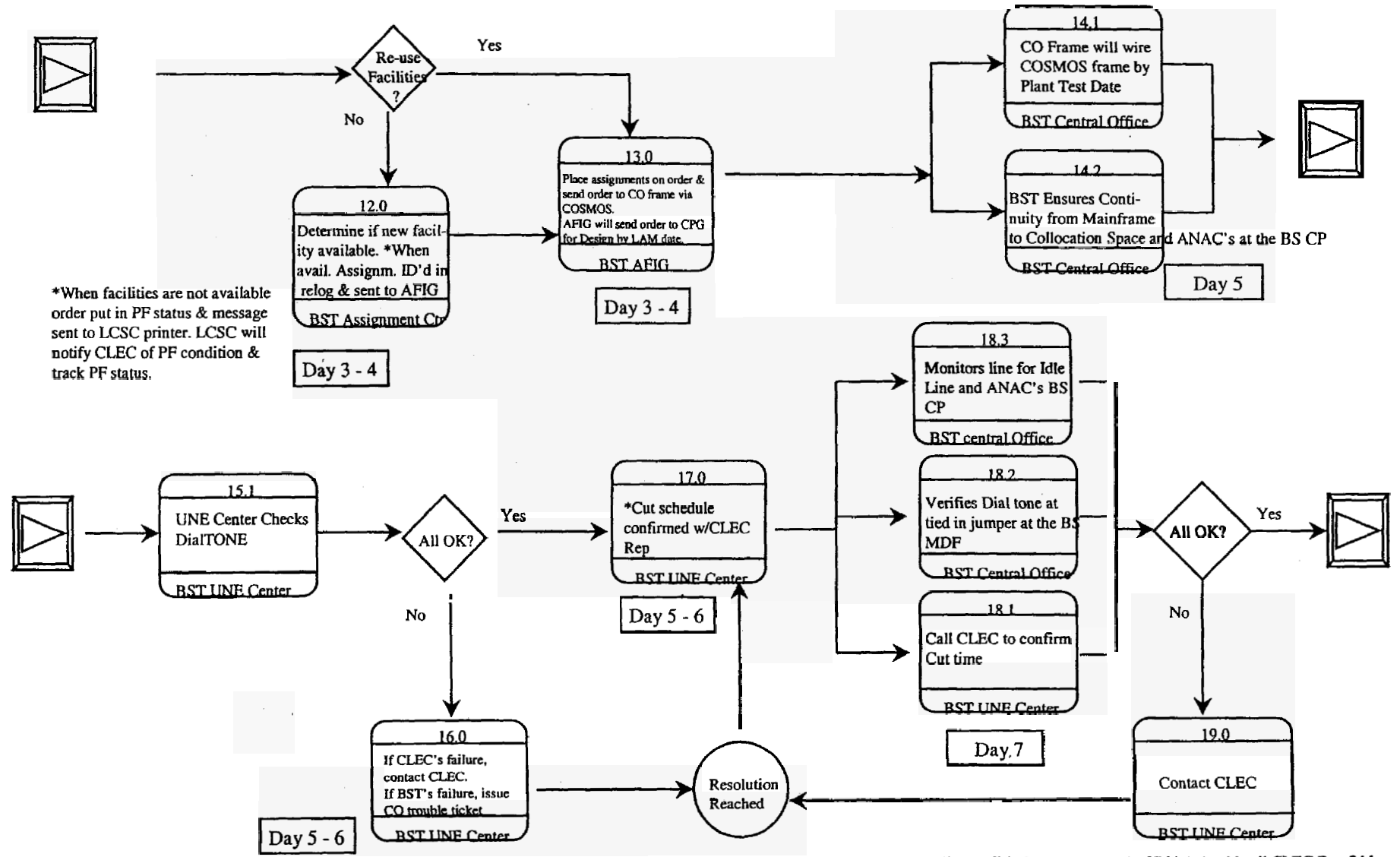
Assumption: Non-Complex, Designed Unbundled Voice Loop, CO Conversion, with LNP



Docket No. 040301-TP

Coordinated Hot Cut Process

Assumption: Non-Complex, Designed Unbundled Voice Loop, CO Conversion, with LNP

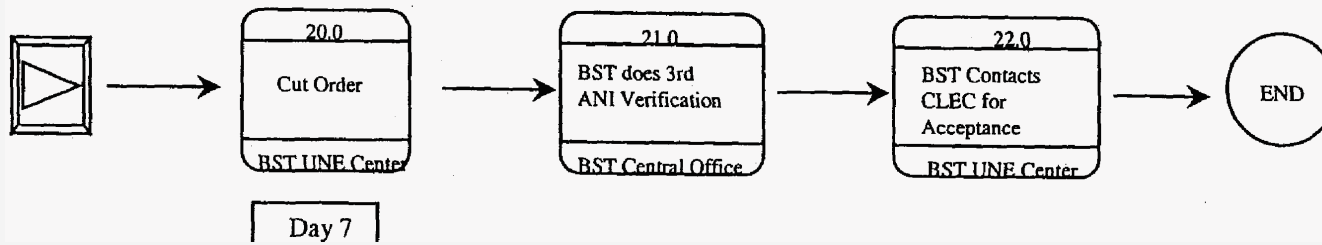


*When facilities are not available order put in PF status & message sent to LCSC printer. LCSC will notify CLEC of PF condition & track PF status.

*Note: Within some contracts, UNEC should call CLEC Rep 24 hours before Cut. If call is not made, CLEC will call UNEC.

Coordinated Hot Cut Process

Assumption: Non-Complex, Designed Unbundled Voice Loop, CO Conversion, with LNP



Critical Dates used internally by BellSouth

Service Issue Date

Line Assign Made

Design Verify Assign

Wire Office Toll

Frame Completion Date

Plant Test Date

Due Date

Note: When an order is issued (SID), pseudo order drops to WFA-C to alert UNE Center. Order is screened until designed, then loaded to a UNE technician. The UNE technician will begin testing and verification activity within 24-48 hours prior to the scheduled Due Date.



Brian Chaiken
Executive VP of Legal Affairs
2620 SW 27th Avenue
Miami, FL 33133-3001
Phone: 305.476.4248
Fax: 305.443.9516

August 15, 2003

Docket No. 040301-TP
David A. Nilson
EXHIBIT DAN - 30
*8/15/2003 Supra's UNE-P to UNE-L Conversion
Process Document*

Via Facsimile and Regular U.S. Mail

Jim Meza, Esq.
150 West Flagler Street
Suite 1910
Miami, FL 33130

Re: Proposed UNE-P to UNE-L Conversion Process

Dear Jim:

Attached please find Supra's proposed methodology and prices for the conversion of Supra's UNE-P lines to UNE-L lines. We look forward to discussing with your team.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brian Chaiken", with a long horizontal flourish extending to the right.

Brian Chaiken

cc: Chris Savage, Esq.

Assumptions:

1. Salary/week	851
2. % Overhead	1.45
3. Work Hours per day	6
4. Job Hours per day	8
5. Time for one connection in Minutes (Verizon Study)	3
6. Dialtone test added per BST procedure Verizon has automated tester	3
7. Other misc. elements listed below in process.	
8. Order Processing Cost is billed in other rate elements.	
9. Margin Requirement	0.125

Process Assumptions. Those that have been specified by BST
have been identified by (BST). Pricing from the IA
 Has been identified as (IA)

1. First we are assuming that all Order Processing Charges be they mechanized SOMEK @ \$1.52 or Manual SOMAN @ \$11.90 are charged separate from the physical work required to move the Loop. (BST March 5 2003)
2. We are also assuming that the disconnect charge for the switch port, if any, is being charged separately as USOC code UEPSR @ \$1.88 (IA)
3. As we understand the process from our joint meeting of July 9, 2003 the process from sending the order to the central office to completion is as follows: (BST)
 The times in minutes are estimates based on Verizon test data and experience with BST cut overs of test customers in Dade County.

	Minutes
1. The frame technician picks up the orders every morning from his/her workstation and reviews them.(assign total to our orders)	5
2. The technician runs the new jumper from the existing outside cable pair on the vertical side of the MDF to the Supra assigned cable and pair on the equipment side (horizontal) side of the main frame.	1.5 1/2 of Verizon Time
3. Technician Checks for dial tone from Supra switch with test set.	3
4. Assuming dial tone is there, technician puts down new jumper.	1.5 1/2 of Verizon Time
5. Technician removes old jumper.	1
6. At some point in time, the technician enters the order as complete	2
7. The BSS' show the order as a disconnect in the BST switch and show the LNP porting as complete on their side. This cost is covered by the order processing charge.	

Salary/week	\$851.00
Salary/hour	\$21.28
Loaded Salary/hour	\$30.85
Salary per Worked Hour	\$41.13
Salary per Worked Minute	\$0.6855
Minutes Worked/Connection	14
Cost/Connection	\$9.60
 Rate with Margin	 \$10.80



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Miami, Florida 33133
305/476-4200

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To Jim Meza, Esq. **Fax** 305-577-4491

From Brian Chaiken, Esq. **Date** 8/15/03

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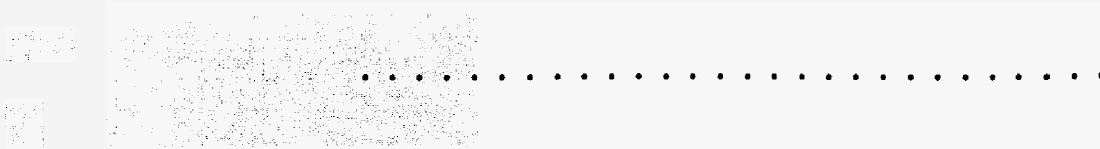
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From Brian Chaiken, Esq. **Date** 8/15/03

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DATE : AUG-15 12:03
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TO : 3055774491
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START TIME AUG-15 12:07
END TIME AUG-15 12:08
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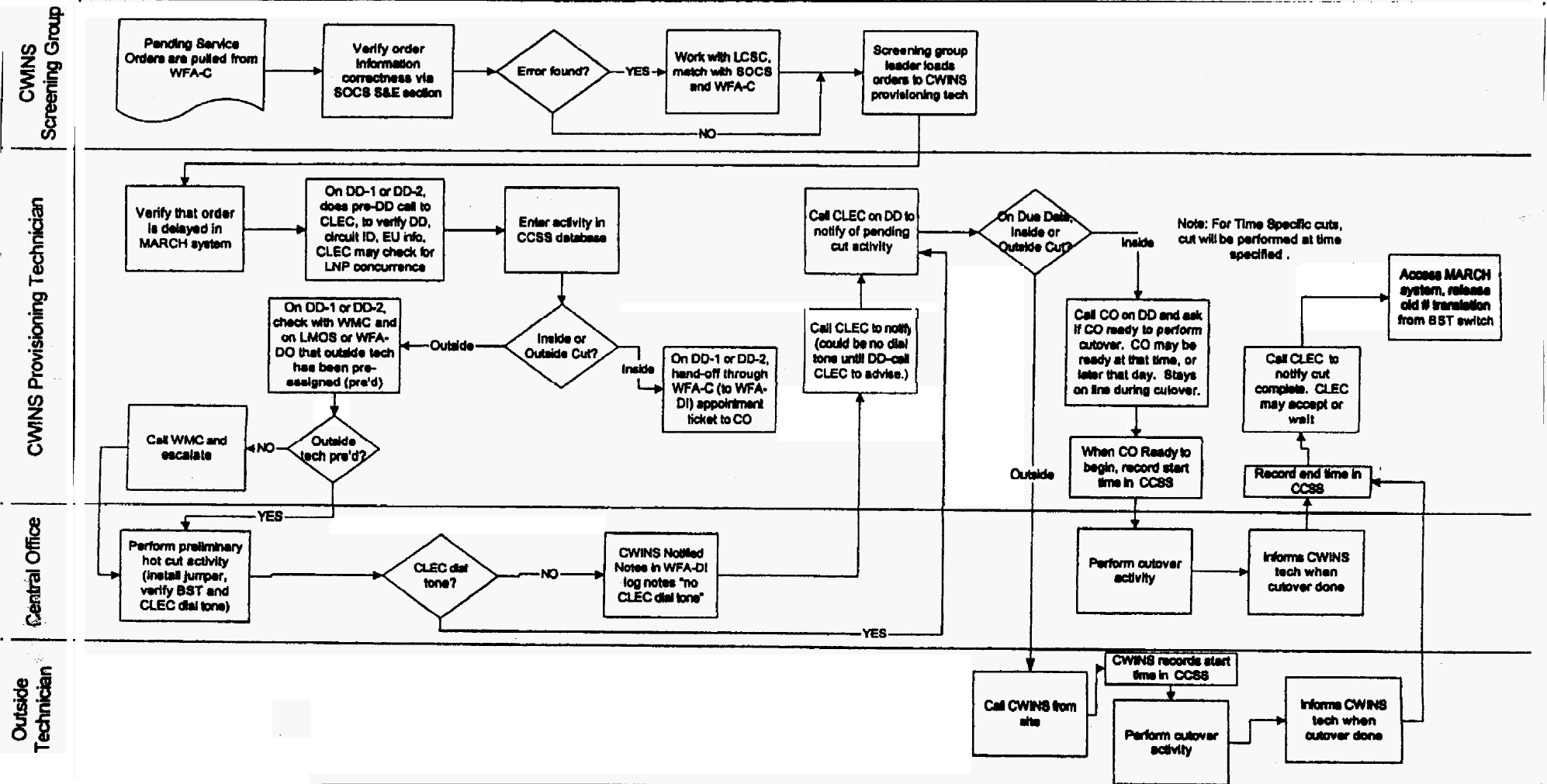
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Provisioning Process Flow (Coordinated cuts)



Integrated Digital Loop Carrier ("IDLC") is a special version of DLC that does not require the host terminal in the central office, sometimes referred to as the Central Office Terminal ("COT"), but instead terminates the digital transmission facilities directly into the central office switch. In its Texas Decision, the Commission found that "the BOC must provide competitors with access to unbundled loops regardless of whether the BOC uses integrated digital loop carrier (IDLC) technology or similar remote concentration devices for the particular loops sought by the competitor." Memorandum Opinion and Order, *Application by SBC Communications Inc., et al, Pursuant to Section 271 of Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, 15 FCC Red 18354, @ 248 (2000) ("*Texas Order*"). BellSouth provides access to such IDLC loops via the following methods:

- Alternative 1: If sufficient physical copper pairs are available, BellSouth will reassign the loop from the IDLC system to a physical copper pair.
- Alternative 2: Where the loops are served by Next Generation Digital Loop Carrier ("NGDLC") systems, BellSouth will "groom" the integrated loops to form a virtual Remote Terminal ("RT") arranged for universal service (that is, a terminal which can accommodate both switched and private line circuits). "Grooming" is the process of arranging certain loops (in the input stage of the NGDLC) in such a way that discrete groups of multiplexed loops may be assigned to transmission facilities (in the output stage of the NGDLC). Both of the NGDLC systems currently approved for use in BellSouth's network have "grooming" capabilities.
- Alternative 3. BellSouth will remove the loop distribution pair from the IDLC and re-terminate the pair to either a spare metallic loop feeder pair (copper pair) or to spare universal digital loop carrier equipment in the loop feeder route or Carrier Serving Area ("CSA"). For two-wire ISDN loops, the universal digital loop carrier facilities will be made available through the use of Conklin BRITEmux or Fitel-PMX 8mux equipment.
- Alternative 4: BellSouth will remove the loop distribution pair from the IDLC and re-terminate the pair to utilize spare capacity of existing Integrated Network Access ("INA") systems or other existing IDLC that terminates on DCS equipment. BellSouth will thereby route the requested unbundled loop channel to a channel bank where it can be de-multiplexed for delivery to the

requesting CLEC or for termination in a DLC channel bank in the central office for concentration and subsequent delivery to the requesting CLEC.

- Alternative 5: When IDLC terminates at a peripheral capable of serving "side-door/hairpin" capabilities, BellSouth will utilize this switch functionality. The loop will remain terminated directly into the switch while the "side-door/hairpin" capabilities allow the loop to be provided individually to the requesting CLEC.
- Alternative 6: If a given IDLC system is not served by a switch peripheral that is capable of side-door/hairpin functionality, BellSouth will move the IDLC system to switch peripheral equipment that is side-door capable.
- Alternative 7: BellSouth will install and activate new Universal DLC ("UDLC") facilities or NGDLC facilities and then move the requested loop from the IDLC to these new facilities. In the case of UDLC, if growth will trigger activation of additional capacity within two years, BellSouth will activate new UDLC capacity to the distribution area. In the case of NGDLC, if channel banks are available for growth in the CSA, BellSouth will activate NGDLC unless the DLC enclosure is a cabinet already wired for older vintage DLC systems.
- Alternative 8: When it is expected that growth will not create the need for additional capacity within the next two years, BellSouth will convert some existing IDLC capacity to UDLC.

The eight (8) alternatives for giving a CLEC access to loops served by IDLC listed above are listed in order of complexity, time, and cost to implement. The simplest is listed first and the most complex, lengthy, and costly to implement listed last. When a CLEC orders a loop, BellSouth delivers that loop to the specifications ordered by the CLEC. Thus, ordinarily BellSouth chooses the method for delivering the loop meeting the ordered specification without involving the CLEC. BellSouth does not

ordinarily consult the CLEC as to which alternative will be used in a given instance. If, however, BellSouth concludes that only Alternatives 7 or 8 can give the CLEC a loop meeting the specifications it ordered and because the application of these Alternatives may require the requesting CLEC to pay special construction charges, BellSouth would proceed with implementation only if the CLEC agrees.

UNE-P to UNE-L Bulk Migration

Docket No. 040301-TP
David A. Nilson
EXHIBIT DAN – 33
3/26/2003 BellSouth UNE-P/loop Combination
(UNE-P) to UNE-loop (UNE-L) Bulk Migration,
CLEC Package, v.1

***UNE-Port/Loop Combination (UNE-P) to UNE-Loop
(UNE-L) Bulk Migration******CLEC
Information Package***

Version 1

UNE-P to UNE-L Bulk Migration

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UNE-P to UNE-L Bulk Migration

1. Introduction & Scope

This Product Information Package is intended to provide CLECs general ordering information specific to the **UNE-P** to **UNE-L** Bulk Migration process described herein.

The information contained in this document is subject to change. BellSouth will provide notification of changes to the document through the CLEC Notification Process.

Please contact your BellSouth Local Support Manager if you have any questions about the information contained herein.

UNE-P to UNE-L Bulk Migration

2. Service Description

The Unbundled Network Element – Port/Loop Combination (UNE-P) to Unbundled Network Element – Loop (UNE-L) Bulk Migration process may be used by a CLEC when migrating existing multiple non-complex UNE-P Services to a UNE-L offering.

All Bulk Migration orders will be project managed by a BellSouth Project Manager. Initially, the CLEC will submit required information to a BellSouth Project Manager who after reviewing the bulk migration work effort with the field organizations will provide due dates back to the CLEC. Once the CLEC receives the due date information from the BellSouth Project Manager, the CLEC will electronically submit a Bulk Request for service order processing and provisioning. This allows migration of multiple UNE-P end-users to a UNE-L offering without submitting individual Local Service Requests.

UNE-P and UNE-L are defined below:

2.1 UNE-P

UNE-P is a UNE Port/Loop Switched Combination that combines a UNE local switch port and UNE loop to create an end-user-to-end-user transmission path and provides local exchange service. The CLEC may also choose to use the vertical services that are available through the features and functions of the local switch.

2.2 UNE-L

UNE-L is defined as the local loop network element that is a transmission facility between the main distribution frame (MDF) in BellSouth's central office and the point of demarcation at an end-user's premises. This facility will allow for the transmission of the CLEC's telecommunications services when connected to the CLEC's switch equipment. The local loop will require cross-connects for connection to the CLEC's collocation equipment. BellSouth does not provide telecommunications services with the UNE-L.

UNE-P to UNE-L Bulk Migration

3. Requirements

Major requirements for UNE-P to UNE-L Bulk Migration process are listed below. For complete requirements, refer to the **UNE to UNE Bulk Migration** section of the **Local Ordering Handbook** (formerly named "BellSouth Business Rules for Local Ordering")

- Bulk Migration is available for migrating existing **non-complex** Port/Loop Combination services to Unbundled Loops with Local Number Portability (LNP).
- A UNE Loop will be provided for each ported telephone number formerly associated with the UNE-P Service.
- Complex UNE-P accounts are prohibited on Bulk Requests. Examples of Complex UNE-P are 2 Wire ISDN/BRI Digital Loop & Port UNE Combination, 4 Wire ISDN/PRI Digital Loop & Port UNE Combination, UNE-P Centrex, Digital Direct Integration Termination Service (DDITS), etc.
- The UNE-Ps that can be migrated are listed in the **UNE-P USOC** section.
- UNE-Ps can be migrated to the UNE-Ls listed in the **UNE-L USOC** section. These UNE-L types must be in the CLEC's Interconnection Agreement.
- Bulk Requests that require a change in existing loop facilities to a type of facility that is not available, resulting in a Pending Facility (PF) status, must be cancelled by the CLEC and removed from the Bulk Request.
- All Existing Account Telephone Numbers (EATNs) on the Bulk Request must use the existing Regional Street Address Guide (RSAG) valid end-user address.
- All EATNs must be served from the same BellSouth Serving Wire Center (SWC).
- All UNE-Ps on a Bulk Request must be migrated to a single UNE-L type.
- No end-user moves or changes of address will be allowed on the Bulk Request.
- Non-Recurring rates for the specific loop type being requested will be charged.
- Service order charges for mechanized orders (SOMECS) will be charged based on the current rules for individual Local Service Requests (LSRs) created per EATN of a Bulk Request.
- A BellSouth Project Manager (PM) will project manage the Bulk Request.
- CLEC must submit a **BellSouth UNE-P to UNE-L Bulk Migration Project Notification**, herein known as **Project Notification**, to the BellSouth PM prior to the CLEC's placing the mechanized Bulk Request.
- CLEC may specify Desired Due Dates (DDD) for each EATN. However, the BellSouth PM will negotiate firm Due Dates for the Bulk Request.
- A minimum of two (2) EATNs and up to a maximum of ninety-nine (99) EATNs can be placed on a single Bulk Request.
- A maximum of twenty-five (25) end-user telephone numbers per EATN can be placed on a Bulk Request.
- No additional EATNs or end-user telephone numbers may be added to the **BellSouth UNE-P to UNE-L Bulk Migration Project Notification** form once it has been submitted to the BellSouth PM.

UNE-P to UNE-L Bulk Migration

Requirements (continued)

- Order Coordination-Time Specific option is not applicable for a Bulk Request.
- UNE-Ls that require a Service Inquiry and/or Unbundled Loop Modification are excluded from the Bulk Request process.
- A Reservation Identification (RESID) (also referred to as a Facility Reservation Number (FRN)) is required on the Bulk Request for Unbundled ADSL Compatible Loops, HDSL Compatible Loops and Unbundled Copper Loop - Designed (UCL-D). Refer to the **Unbundled ADSL and Unbundled HDSL Compatible Loop, UCL-Designed CLEC Information Packages and Loop Make-Up CLEC Information Package** for RESID/FRN requirements.
- When a Mechanized Loop Make Up with Facility Reservation Number (FRN) is requested, the CLEC must submit the Bulk Request with the FRN to BellSouth within 24 hours of receiving FRN.
- Firm Order Confirmation (FOC) will be sent on individual LSRs generated from the Bulk Request.
- Upon receipt of a Reject, CLEC must re-submit a corrected Bulk Request or submit a cancellation of the Bulk Request.

4. Options

- Order Coordination (OC) /Coordinated Hot Cut (CHC) is included on the UVL-SL2, 2 Wire ADSL and 2/4 Wire HDSL Loops. OC is available when the loop is provisioned over an existing circuit that is currently providing service to the end-user.
- OC is available as a chargeable option for conversions to UVL-SL1, UCL-ND and UCL-Designed Loops. OC must be requested at the EATN level on the Project Notification form. An OC charge will be applied to each loop on the EATN for which OC has been requested. OC will be indicated on Project Notification and will not be required on the Bulk Request LSR at this time.
- The CLEC may qualify the existing UNE-P facilities for the UNE-L types requested. For example, through Loop Make-Up (LMU), the CLEC can verify that a UNE-P facility being migrated is not on an Integrated Digital Loop Carrier (IDLC). When the existing UNE-P facility is on IDLC, the CLEC can reserve alternate compatible facilities if available.

UNE-P to UNE-L Bulk Migration

5. Bulk Migration Submission/Flow Process

The Bulk Request Submission Process will consist of two main work activities. The CLEC will first submit a Project Notification. Once the Project Notification has been processed and returned to the CLEC, the CLEC will then prepare and input the mechanized Bulk Request. The Bulk Request must be submitted according to the guidelines contained in the **Local Ordering Handbook**. Below are the steps in the process :

Step #	Action
1	PM receives Project Notification form from CLEC and negotiates/assigns Bulk Order Package Identifier (BOPi) and validates information (i.e., USOCs, Same Wire Center, etc.).
2	If pertinent information is missing on the Project Notification package, the form is returned to CLEC along with a reason(s) for return. PM receives corrected Project Notification from the CLEC and continues the negotiation process.
3	PM contacts BellSouth's Network organization and negotiates Due Date (DD) for all related Purchase Order Numbers (PONs) in the Bulk package and returns Bulk Notification Form including negotiated DD to the CLEC.
4	Upon receipt of the Bulk Notification Form that includes negotiated DD from PM, CLEC submits Bulk Request package with negotiated dates for each EATN/PON via electronic ordering interface.
5	If the CLEC wants to supplement (SUP) (01,02,03) an individual PON, the request <u>must</u> be sent through the same electronic ordering system as the original Bulk Request.
6	At this point, the Bulk Request package will be processed for 1 st level validation and any rejects will be mechanically generated to the CLEC.
7	The electronic ordering systems will accept the Bulk Request package, break the individual PONs into separate LSRs and populate the remaining required LSR fields from Operation Support System (OSS) systems prior to sending the individual LSRs downstream to the Local Number Portability (LNP) Gateway.
8	The LNP Gateway will perform 2 nd level validations and provide any fallouts, per "business as usual" processes. The Local Carrier Service Center (LCSC) will handle all fallouts as normal. Any of the individual PONs that must be clarified will be sent back to the CLEC, business as usual.
9	After LNP Gateway issues the service orders, the LCSC will handle all manual service order fallouts as normal. The BellSouth Service Representative will send any PF and Missed Appointments (MA) to the CLEC via a jeopardy notice.
10	LNP Gateway will send an FOC on each individual PON associated with the Bulk Request package, to the CLEC.
11	The Project Manager will monitor PON, Service Order and Porting Statuses associated with the Bulk Request package. BellSouth's Service Representative and Project Manager will monitor the LNP gateway for the "Number Ported" messages and the Service Representative will handle manual port out order processing if required.

UNE-P to UNE-L Bulk Migration

6. BellSouth UNE-P to UNE-L Bulk Migration Project Notification Process

Following is the Project Notification process:

- Complete the **BellSouth UNE-P to UNE-L Bulk Migration Project Notification** form according to the instructions.
- Electronically submit the **Project Notification** to the email address of the CLEC's assigned BellSouth Project Manager (PM). For help with identifying a Project Manager, contact your BellSouth Customer Support Manager.
- The BellSouth PM will review the information submitted by the CLEC and will assign a Bulk Order Package Identifier (BOPI) that the CLEC will later use on the electronic Bulk Request.
- The BellSouth PM will coordinate with BellSouth's field forces to schedule the migration Due Dates.
- Once the review with the field forces is complete, the BellSouth PM will include the Due Dates on the **Project Notification** and return it to the CLEC.
- No additional EATNs or end-user telephone numbers may be added to the **Project Notification** form once it has been submitted to the BellSouth PM.

UNE-P to UNE-L Bulk Migration

7. UNE-P USOCs

The UNE-P Services that can be migrated to UNE-L are represented by the Port USOCs listed in the table below:

Port USOC	Unbundled Port/Loop Combination Element	Description of Combinations using an Unbundled Exchange Port (UEP):
UEPBX	UEPLX	UEP, Business, 2 Wire Analog Business Line Port, UNE=P Basic Class of Service
UEPRX		Class of Service
UEPCO	UEPLX	UEP, Coin Basic Class of Service UNE-P
UEPBV	UEPLX	UEP, Remote Call Forwarding, Business Basic Class of Service
UEPVR	UEPLX	UEP, Remote Call Forwarding, Residence Basic Class of Service

8. UNE-L USOCs

Below are the UNE-L types and associated USOCs to which the UNE-Ps can be migrated:

Loop USOC	Description
UEAL2	2 Wire Unbundled Voice Loop – SL1
UEAL2. UEAR2	2 Wire Unbundled Voice Loop – SL2
UCLPW	2 Wire Unbundled Copper Loop/Short– Designed without manual Service Inquiry
UCL2W	2 Wire Unbundled Copper Loop/Long - Designed without manual Service Inquiry
UCL4W	4 Wire Unbundled Copper Loop/Short – Designed without manual Service Inquiry
UCL4O	4 wire Unbundled Copper Loop/Long – Designed without manual Service Inquiry
UEQ2X	2 Wire Unbundled Copper Loop – Non-Designed
UAL2W	2 Wire Unbundled ADSL Loop without manual Service Inquiry
UHL2W	2 Wire Unbundled HDSL Loop without manual Service Inquiry
UHL4W	4 Wire Unbundled HDSL Loop without manual Service Inquiry

UNE-P to UNE-L Bulk Migration

9. Intervals

9.1 BellSouth UNE-P to UNE-L Bulk Migration Project Notification Interval

- The “*PM Targeted Response Interval*” column in the table below represents the targeted number of business days in which the PM will respond back to the CLEC.
- CLEC must submit the **Project Notification** in advance of the earliest CLEC’s requested Desired Due Date (DDD) according to the “*Minimum # of days in advance to submit Project Notification*” column in the table below. This column represents the number of days that the Project Notification must be submitted in advance of the earliest DDD.
- “*Minimum # of days*” includes the interval for the Project Manager to negotiate the Due Dates. It also allows three (3) days for the CLEC to correct, process and submit mechanized Bulk Request and it includes 14 days in order to meet the 14-business day submission requirement for the Bulk Request.
- The PM will attempt, where possible, to assign the work such that migrations occur on the requested DDD.

# of end-user Tel. Numbers	PM Targeted Response Interval	CLEC days after receipt from Proj Mgr	Bulk Request Submission Requirement	Minimum # of days in advance to submit Project Notification
Maximum of 99	7 business days	3 business days	14 business days	24 business days
100-200	10 business days	3 business days	14 business days	27 business days
201 +	To be determined	3 business days	14 business days	Contact PM

9.2 Bulk Request Service Order Intervals

- The BellSouth Project Manager will negotiate the Bulk Request due dates with BellSouth’s provisioning personnel and will communicate the due date to the CLEC.
- The CLEC must submit the Bulk Request and it must be accepted by the mechanized system at least 14 business days in advance of the earliest Due Date for any end-user telephone number to be migrated.

9.3 Example of Intervals

An example of Intervals follows:

CLEC submits Project Notification with 87 end-user telephone numbers on May 1, 2003:

- May 12, 2003 (7 business days) – CLEC receives Project Notification with firm Due Dates
- May 12 – May 15 (3 business days) – CLEC will prepare and submit mechanized Bulk request via the **electronic interface**.
- June 5, 2003 (14 business days) – the earliest PM assigned Due Date on the Project Notification returned to the CLEC.

UNE-P to UNE-L Bulk Migration

10. Acronyms

ADSL	Asymmetrical Digital Subscriber Line
BOPI	Bulk Order Package Identifier
CHC	Coordinated Hot Cut
CLEC	Competitive Local Exchange Carrier
DDD	Desired Due Date
EATN	Existing Account Telephone Number
FOC	Firm Order Confirmation
FRN	Facility Reservation Number
HDSL	High-Bit-Rate Digital Subscriber Line
LCSC	Local Carrier Service Center
LNP	Local Number Portability
LSR	Local Service Request
MDF	Main Distribution Frame
OC	Order Coordination
OSS	Operation Support System
PM	Project Manager
PON	Purchase Order Number
RESID	Reservation Identification
RSAG	Regional Street Address Guide
SWC	Serving Wire Center
UCL-D	Unbundled Copper Loop – Designed
UCL-ND	Unbundled Copper Loop – Non-Designed
UNE-P	Unbundled Network Element-Port/Loop Combination
UNE-L	UNE Loop

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Job : 4
Date: 8/30/2004
Time: 11:18:11 AM

UNE-P to UNE-L Bulk Migration

Docket No. 040301-TP
David A. Nilson
EXHIBIT DAN – 34
2/18/04 BellSouth UNE-P/loop Combination
(UNE-P) to UNE-loop (UNE-L) Bulk Migration,
CLEC Package, v.2

UNE-Port/Loop Combination (UNE-P) to UNE-Loop (UNE-L) Bulk Migration

**CLEC
Information Package**

**Version 2
February 18, 2004**

UNE-P to UNE-L Bulk Migration

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UNE-P to UNE-L Bulk Migration

1. Introduction & Scope

This Product Information Package is intended to provide CLECs general ordering information specific to the **UNE-P** to **UNE-L** Bulk Migration process described herein.

The information contained in this document is subject to change. BellSouth will provide notification of changes to the document through the CLEC Notification Process.

Please contact your BellSouth Local Support Manager if you have any questions about the information contained herein.

UNE-P to UNE-L Bulk Migration

2. Revisions

1) Following are the revisions in section 5 "Bulk Migration Options" that are enhancements to the Bulk Migration process as referenced in Carrier Notification Letter SN91083967.

- After Hours/Weekend Migrations
- **Two-Hour Go Ahead Notifications** for SL1 non-coordinated migrations
- **Time Windows for coordinated conversions**
- **Pre and Post order completion restoral process (Throwback)**
- Same-Day end-user account migration
- CLEC to CLEC migration (UNE-P to UNE-L)

2) Additional revisions include interval reductions in the table in section 10.1 "**Bulk Migration Project Notification Interval**".

- For a "Maximum of 99" telephone numbers the CCPM interval has been reduced from 7 business days to 4 business days.
- For "100-200" telephone numbers, the CCPM interval has been reduced from 10 business days to 6 business days.

UNE-P to UNE-L Bulk Migration

3. Service Description

The Unbundled Network Element – Port/Loop Combination (UNE-P) to Unbundled Network Element – Loop (UNE-L) Bulk Migration process may be used by a CLEC when migrating existing multiple non-complex UNE-P Services to a UNE-L offering.

All Bulk Migration orders will be project managed by a BellSouth Project Manager. Initially, the CLEC will submit required information to a BellSouth Customer Care Project Manager (CCPM) who after reviewing the bulk migration work effort with the field organizations will provide due dates back to the CLEC. Once the CLEC receives the due date information from the BellSouth Project Manager, the CLEC will electronically submit a Bulk Request for service order processing and provisioning. This allows migration of multiple UNE-P end-users to a UNE-L offering without submitting individual Local Service Requests.

UNE-P and UNE-L are defined below:

3.1 UNE-P

UNE-P is a UNE Port/Loop Switched Combination that combines a UNE local switch port and UNE loop to create an end-user-to-end-user transmission path and provides local exchange service. The CLEC may also choose to use the vertical services that are available through the features and functions of the local switch.

3.2 UNE-L

UNE-L is defined as the local loop network element that is a transmission facility between the main distribution frame (MDF) in BellSouth's central office and the point of demarcation at an end-user's premises. This facility will allow for the transmission of the CLEC's telecommunications services when connected to the CLEC's switch equipment. The local loop will require cross-connects for connection to the CLEC's collocation equipment. BellSouth does not provide telecommunications services with the UNE-L.

UNE-P to UNE-L Bulk Migration

4. Bulk Migration Requirements

Major requirements for UNE-P to UNE-L Bulk Migration process are listed below. For complete requirements, refer to the **UNE to UNE Bulk Migration** section of the **Local Ordering Handbook** (formerly named "BellSouth Business Rules for Local Ordering")

- Bulk Migration is available for migrating existing **non-complex Port/Loop Combination services** to Unbundled Loops with Local Number Portability (LNP).
- A UNE Loop will be provided for each ported telephone number formerly associated with the UNE-P Service.
- Complex UNE-P accounts are prohibited on Bulk Requests. Examples of Complex UNE-P are 2 Wire ISDN/BRI Digital Loop & Port UNE Combination, 4 Wire ISDN/PRI Digital Loop & Port UNE Combination, UNE-P Centrex, Digital Direct Integration Termination Service (DDITS), etc.
- The UNE-Ps that can be migrated are listed in the **UNE-P USOC** section.
- UNE-Ps can be migrated to the UNE-Ls listed in the **UNE-L USOC** section. These UNE-L types must be in the CLEC's Interconnection Agreement.
- Bulk Requests that require a change in existing loop facilities to a type of facility that is not available, resulting in a Pending Facility (PF) status on Due Date -7 days, must be cancelled by the CLEC and removed from the Bulk Request.
- All Existing Account Telephone Numbers (EATNs) on the Bulk Request must use the existing Regional Street Address Guide (RSAG) valid end-user address.
- All EATNs must be served from the same BellSouth Serving Wire Center (SWC).
- All UNE-Ps on a Bulk Request must be migrated to a single UNE-L type.
- No end-user moves or changes of address will be allowed on the Bulk Request.
- Non-Recurring rates for the specific loop type being requested will be charged.
- Service order charges for mechanized orders (SOMEK) will be charged based on the current rules for individual Local Service Requests (LSRs) created per EATN of a Bulk Request.
- A BellSouth Customer Care Project Manager (CCPM) will project manage the Bulk Request.
- CLEC must submit a **BellSouth UNE-P to UNE-L Bulk Migration Project Notification**, herein known as **Project Notification**, to the BellSouth CCPM prior to the CLEC's placing the mechanized Bulk Request.
- CLEC may specify Desired Due Dates (DDD) for each EATN. The BellSouth CCPM will negotiate due dates with Network Operations. Every effort will be made to accommodate the CLEC DDDs where force and load permits and minimum intervals are met.
- A minimum of two (2) EATNs and up to a maximum of ninety-nine (99) EATNs can be placed on a single Bulk Request.
- A maximum of twenty-five (25) end-user telephone numbers per EATN can be placed on a Bulk Request.
- No additional EATNs or end-user telephone numbers may be added to the **BellSouth UNE-P to UNE-L Bulk Migration Project Notification** form once it has been submitted to the BellSouth CCPM.

UNE-P to UNE-L Bulk Migration

Requirements (continued)

- Order Coordination-Time Specific option is not applicable for a Bulk Request.
- UNE-Ls that require a Service Inquiry and/or Unbundled Loop Modification are excluded from the Bulk Request process.
- A Reservation Identification (RESID) (also referred to as a Facility Reservation Number (FRN)) is required on the Bulk Request for Unbundled ADSL Compatible Loops, HDSL Compatible Loops and Unbundled Copper Loop - Designed (UCL-D). Refer to the **Unbundled ADSL and Unbundled HDSL Compatible Loop, UCL-Designed CLEC Information Packages and Loop Make-Up CLEC Information Package** for RESID/FRN requirements.
- When a Mechanized Loop Make Up with Facility Reservation Number (FRN) is requested, the CLEC must submit the Bulk Request with the FRN to BellSouth within 24 hours of receiving FRN.
- Firm Order Confirmation (FOC) will be sent on individual LSRs generated from the Bulk Request.
- Upon receipt of a Reject, CLEC must re-submit a corrected Bulk Request or submit a cancellation of the Bulk Request.

5. Bulk Migration Options

5.1 Order Coordination (Coordinated Hot Cut)

- Order Coordination (OC) is available in situations where there is a reuse of existing facilities for the UNE-L.
- OC is included with the UVL-SL2, 2 Wire ADSL and 2/4 Wire HDSL Loops at no additional charge.
- OC is available as a chargeable option for conversions to UVL-SL1, UCL-Non Designed and UCL-Designed Loops. OC must be requested at the EATN level on the Project Notification form. An OC charge will be applied to each loop on the EATN for which OC has been requested.

UNE-P to UNE-L Bulk Migration

Bulk Migration Options (continued)

5.2 After Hours/Weekend Migrations

- Migrations will typically be completed during normal working hours of 8 a.m. – 5 p.m. However, for CLECs that have customers who need cutovers completed outside of normal business hours, after hours/weekend migrations are available at the CLECs request.
- The Project Notification Form includes a column titled “Special Handling”. The CLEC provides its desired “Day” and “After Hours/Weekend” time window for the selected accounts at the EATN level in the Special Handling column according to the table below:

Days	After-hours Time-Windows	Minimum Lines	Maximum Lines	Special Considerations	Add'l charges
Mon – Fri ¹	7 a.m. – 8 a.m.	10	25	NA	Per CLEC's IA ³
Mon – Fri ¹	5 p.m. – 7 p.m.	10	50	NA	Per CLEC's IA ³
Saturday ¹	8 a.m. – 5 p.m.	50	100	UVL-SL1 Non-Coordinated only	Per CLEC's IA ³
Mon-Fri ²	7 p.m. – 12 midnight 6 a.m. – 7 a.m.	Individual Case Basis	Individual Case Basis	CO work only – no outside dispatches	Yes Overtime

¹ Extended Basic Hours

² Extended Overtime Hours

³ Interconnection Agreement

5.3 Two (2) hour Go Ahead Notification (for Non-Coordinated Bulk Migrations)

- For **non-coordinated** non-designed migrations, the CLEC will be notified within a maximum of two (2) hours of the cutover.
- A Go Ahead Notification will be sent to the CLEC by facsimile* or email for UVL-SL1 and UCL-ND non-coordinated migrations.
- Once the CLEC is notified of the cutover completion, the CLEC can then complete the necessary number porting activities.

***Note:** To change from fax to email notification, the CLEC should contact its BellSouth Local Contract Manager (LCM) and provide its Alternate Exchange Carrier Number (AECN) and email address.

UNE-P to UNE-L Bulk Migration

Bulk Migration Options (continued)

5.4 Time Windows for Coordinated Conversions

Time Windows for Coordinated Conversions are available for bulk migration orders at the CLEC's request as follows:

- There are two (2) time window options:
 - 8 a.m. – 12 p.m.
 - 1 p.m. – 5 p.m.
- CLEC will submit the Project Notification form and indicate the time window desired, at the EATN level, in the Special Handling column.
- Prior to the due date, the BellSouth CCPM will coordinate with Customer Wholesale Interconnection Network Services (CWINS) to ensure that CWINS and Network forces are scheduled and loaded to perform the migration in the designated 4-hour time window.
- On the due date, the coordinated cutover will take place using current provisioning processes.

5.5 Pre and Post Order Completion Restoral Process (or Throwback Process)

- The restoral process (also referred to as a throwback process) is available at the CLEC's request due to out-of-service issues and when the CLEC requires a restoral/throwback back to the UNE-P service.
- ***The restoral/throwback process can only occur within a twenty-four (24) hour window of the UNE-L order Due Date.***
- The CLEC will use follow the requirements in 5.5.1 or 5.5.2 or 5.5.3 below depending on whether the order is (1)coordinated/non-coordinated *completed* UNE-L order; (2)coordinated *not* completed UNE-L order; (3)non-coordinated *not* completed order:

UNE-P to UNE-L Bulk Migration

Bulk Migration Options (continued)

5.5.1 Coordinated or Non-Coordinated '*Completed*' UNE-L order

- CLEC submits Expedited LSR to the Local Carrier Service Center (LCSC) using one of the following fax numbers:
 - Birmingham Fax Server – 888-792-6271
 - Atlanta Fax Server – 888-581-6038
- The LSR Package requesting a throwback to UNE-P must contain the following information:

LSR Fields	Field information
LSR Remarks	Restoral UNE-L to UNE-P
REQTYP	M
Local Service Request Page	ACT = V MI = C, D
Port Service Page	LNA = V, G FA=N UNE-P Telephone Number
Port Service Page - ECCKT Field	UNE-L associated Loop Circuit ID
Directory Listing	Fill out as any other ACT=V migration request
EXP	Y

- The CLEC must advise the BellSouth CCPM of the restoral/throwback request.
- UNE-P Non-Recurring, Recurring and Expedite rates will be charged if applicable.

5.5.2 Coordinated '*Not Completed*' UNE-L Order

- CLEC calls the CWINS Provisioning Group to request restoral/throwback to the UNE-P and if the number porting has been completed, the CLEC requests port-back activity.
- Refer to the **CWINS Location and Hours** web site for CWINs telephone numbers.
- Orders will be placed in Missed Appointment (MA) status.
- CLEC submits supplemental (sup) order to cancel or reschedule conversion request.
- After receipt of the sup order FOC, the CLEC will create a new Subscription Version (SV).
- The CLEC must advise the BellSouth CCPM of the restoral/throwback request.

UNE-P to UNE-L Bulk Migration

Bulk Migration Options (continued)

5.5.3 Non-Coordinated 'Not Completed' UNE-L order

- CLEC emails CWINS Enhanced Delivery (EnDI) Group to request restoral/throwback.
- CWINS EnDI email address is cwins.Inp@bellsouth.com
- Orders will be placed in MA status.
- If the number porting has been completed, the CLEC will call the Fleming Island LCSC Call Center at 800-872-3116 to request port-back activity before the CLECs submits a sup order.
- LCSC will advise the CLEC of port-back process.
- CLEC submits sup order to cancel or reschedule conversion request.
- After receipt of the sup order FOC, the CLEC will create a new Subscription Version (SV).
- The CLEC must advise the BellSouth CCPM of the restoral/throwback request.

5.6 Same-day End-user Account Migrations

Same day End-user Account Migrations are available upon CLEC request. Same day end-user account migration means that all lines associated with an end-user from the same Serving Wire Center will be assigned the same due date.

- CLEC will group the same end-user accounts together on the Project Notification form.
- CLEC will submit the Project Notification form and indicate the same Due Date desired, at the EATN level, in the Special Handling column.
- The BellSouth CCPM will coordinate with the appropriate internal groups to ensure that all end-user account migration activity is performed on the same due date.

5.7 CLEC to CLEC Migration of UNE-P to UNE-L

This process is available with the Bulk Migration process as follows:

- CLEC (CLEC A) to CLEC (CLEC B) Migration of UNE-P to UNE-L is defined as a facility based CLEC (CLEC B) that is migrating the UNE-Ps, previously held by another CLEC (CLEC A), to UNE-Ls.
- CLEC B will prepare the Project Notification form using the same Bulk Migration requirements as specified within this document.
- The Project Notification form must contain all the necessary UNE-P and UNE-L information according to the requirements of the form.
- CLEC B must have an end-user letter of authorization (LOA) on file (it must be available if requested).

UNE-P to UNE-L Bulk Migration

6. Bulk Migration Submission/Flow Process

The Bulk Request Submission Process will consist of two main work activities. The CLEC will first submit a Project Notification. Once the Project Notification has been processed and returned to the CLEC, the CLEC will then prepare and input the mechanized Bulk Request. The Bulk Request must be submitted according to the guidelines contained in the **Local Ordering Handbook**. Below are the steps in the process :

Step #	Action
1	BellSouth CCPM receives Project Notification form from CLEC and negotiates/assigns Bulk Order Package Identifier (BOPI) and validates information (i.e., USOCs, Same Wire Center, etc.).
2	If pertinent information is missing on the Project Notification package, the form is returned to CLEC along with a reason(s) for return. BellSouth CCPM receives corrected Project Notification from the CLEC and continues the negotiation process.
3	BellSouth CCPM contacts BellSouth's Network organization and negotiates Due Date (DD) for all related Purchase Order Numbers (PONs) in the Bulk package and returns Bulk Notification Form including negotiated DD to the CLEC.
4	Upon receipt of the Bulk Notification Form that includes negotiated DD from BellSouth CCPM, CLEC submits Bulk Request package with negotiated dates for each EATN/PON via electronic ordering interface.
5	If the CLEC wants to supplement (SUP) (01,02,03) an individual PON, the request <u>must</u> be sent through the same electronic ordering system as the original Bulk Request.
6	At this point, the Bulk Request package will be processed for 1 st level validation and any rejects will be mechanically generated to the CLEC.
7	The electronic ordering systems will accept the Bulk Request package, break the individual PONs into separate LSRs and populate the remaining required LSR fields from Operation Support System (OSS) systems prior to sending the individual LSRs downstream to the Local Number Portability (LNP) Gateway.
8	The LNP Gateway will perform 2 nd level validations and provide any fallouts, per "business as usual" processes. The Local Carrier Service Center (LCSC) will handle all fallouts as normal. Any of the individual PONs that must be clarified will be sent back to the CLEC, business as usual.
9	After LNP Gateway issues the service orders, the LCSC will handle all manual service order fallouts as normal. The BellSouth Service Representative will send any PF and Missed Appointments (MA) to the CLEC via a jeopardy notice.
10	LNP Gateway will send an FOC on each individual PON associated with the Bulk Request package, to the CLEC.
11	The Project Manager will monitor PON, Service Order and Porting Statuses associated with the Bulk Request package. BellSouth's Service Representative and Project Manager will monitor the LNP gateway for the "Number Ported" messages and the Service Representative will handle manual port out order processing if required.

UNE-P to UNE-L Bulk Migration

7. BellSouth UNE-P to UNE-L Bulk Migration Project Notification Process

Following is the Project Notification process:

- Complete the **BellSouth UNE-P to UNE-L Bulk Migration Project Notification** form according to the instructions.
- Electronically submit the **Project Notification** to the email address of the CLEC's assigned BellSouth Customer Care Project Manager (CCPM). For help with identifying a BellSouth CCPM, the CLEC should contact its BellSouth Customer Support Manager.
- The BellSouth CCPM will review the information submitted by the CLEC and will assign a Bulk Order Package Identifier (BOPID) that the CLEC will later use on the electronic Bulk Request.
- The BellSouth CCPM will coordinate with BellSouth's field forces to schedule the migration Due Dates.
- Once the review with the field forces is complete, the BellSouth CCPM will include the Due Dates on the **Project Notification** and return it to the CLEC.
- No additional EATNs or end-user telephone numbers may be added to the **Project Notification** form once it has been submitted to the BellSouth CCPM.

UNE-P to UNE-L Bulk Migration

8. UNE-P USOCs

The UNE-P Services that can be migrated to UNE-L are represented by the Port USOCs listed in the table below:

Port USOC	Unbundled Port/Loop Combination Element	Description of Combinations using an Unbundled Exchange Port (UEP):
UEPBX	UEPLX	UEP, Business, 2 Wire Analog Business Line Port, UNE=P Basic Class of Service
UEPRX	UEPLX	UEP, Residence, 2 Wire Analog Residence Line Port, UNE-P Basic Class of Service
UEPCO	UEPLX	UEP, Coin Basic Class of Service UNE-P
UEPBV	UEPLX	UEP, Remote Call Forwarding, Business Basic Class of Service
UEPVR	UEPLX	UEP, Remote Call Forwarding, Residence Basic Class of Service

9. UNE-L USOCs

Below are the UNE-L types and associated USOCs to which the UNE-Ps can be migrated:

Loop USOC	Description
UEAL2, UEAR2	2 Wire Unbundled Voice Loop – SL2
UCLPW	2 Wire Unbundled Copper Loop/Short– Designed without manual Service Inquiry
UCL2W	2 Wire Unbundled Copper Loop/Long - Designed without manual Service Inquiry
UCL4W	4 Wire Unbundled Copper Loop/Short – Designed without manual Service Inquiry
UCL4O	4 wire Unbundled Copper Loop/Long – Designed without manual Service Inquiry
UEQ2X	2 Wire Unbundled Copper Loop – Non-Designed
UAL2W	2 Wire Unbundled ADSL Loop without manual Service Inquiry
UHL2W	2 Wire Unbundled HDSL Loop without manual Service Inquiry
UHL4W	4 Wire Unbundled HDSL Loop without manual Service Inquiry

UNE-P to UNE-L Bulk Migration

10 Intervals

10.1 Bulk Migration Project Notification Interval

- The “CCPM Targeted Response Interval” column in the table below represents the targeted number of business days in which the BellSouth CCPM will respond back to the CLEC.
- CLEC must submit the **Project Notification** in advance of the earliest CLEC’s requested Desired Due Date (DDD) according to the “Minimum # of days in advance to submit Project Notification” column in the table below. This column represents the number of days that the Project Notification must be submitted in advance of the earliest DDD.
- “Minimum # of days” includes the interval for the BellSouth Customer Care Project Manager to negotiate the Due Dates. It also allows three (3) days for the CLEC to correct, process and submit mechanized Bulk Request and it includes 14 days in order to meet the 14-business day submission requirement for the Bulk Request.
- The BellSouth CCPM will attempt, where possible, to assign the work such that migrations occur on the requested DDD.

# of end-user Tel. Numbers	CCPM Targeted Response Interval	CLEC days after receipt from Proj Mgr	Bulk Request Submission Requirement	Minimum # of days in advance to submit Project Notification
Maximum of 99	4 business days	3 business days	14 business days	21 business days
100-200	6 business days	3 business days	14 business days	23 business days
201 +	To be determined	3 business days	14 business days	Contact CCPM

10.2 Bulk Request Service Order Intervals

- The BellSouth CCPM will negotiate the Bulk Request due dates with BellSouth’s provisioning personnel and will communicate the due date to the CLEC.
- The CLEC must submit the Bulk Request and it must be accepted by the mechanized system at least 14 business days in advance of the earliest Due Date for any end-user telephone number to be migrated.

10.3 Example of Intervals

An example of intervals follows:

- March 1, 2004 - CLEC submits Project Notification with 87 end-user telephone numbers to the BellSouth CCPM
- March 5, 2004 (4 business days) – the BellSouth CCPM sends the Project Notification with firm Due Dates to the CLEC
- March 8 – March 10 (3 business days) – CLEC will prepare and submit mechanized Bulk Request via the electronic interface.

March 30, 2004 (14 business days) – the earliest assigned Due Date on the Project Notification returned to the CLEC.

UNE-P to UNE-L Bulk Migration

11. Acronyms

AECN	Alternate Exchange Carrier Number
ADSL	Asymmetrical Digital Subscriber Line
BOPI	Bulk Order Package Identifier
CCPM	Customer Care Project Manager
CHC	Coordinated Hot Cut
CLEC	Competitive Local Exchange Carrier
CWINS	Customer Wholesale Interconnection Network Services
DDD	Desired Due Date
EATN	Existing Account Telephone Number
EnDI	Enhanced Delivery
FOC	Firm Order Confirmation
FRN	Facility Reservation Number
HDSL	High-Bit-Rate Digital Subscriber Line
LCSC	Local Carrier Service Center
LNP	Local Number Portability
LSR	Local Service Request
MDF	Main Distribution Frame
OC	Order Coordination
OSS	Operation Support System
PON	Purchase Order Number
RESID	Reservation Identification
RSAG	Regional Street Address Guide
SUP	Supplemental
SWC	Serving Wire Center
UCL-D	Unbundled Copper Loop – Designed
UCL-ND	Unbundled Copper Loop – Non-Designed
UNE-P	Unbundled Network Element-Port/Loop Combination
UNE-L	UNE Loop

UNE-P to UNE-L Bulk Migration

Docket No. 040301-TP
David A. Nilson
EXHIBIT DAN - 35
*7/26/04 BellSouth UNE-P/Loop Combination
(UNE-P) to UNE-loop (UNE-L) Bulk Migration,
CLEC Package, v.3*

***Unbundled Network Element Platform (UNE-P) and
DSO Wholesale Local Platform Service to UNE-Loop (UNE-L)
Bulk Migration***

***CLEC
Information Package***

**Version 3
July 26, 2004**

UNE-P to UNE-L Bulk Migration

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UNE-P to UNE-L Bulk Migration

1. Introduction & Scope

This Product Information Package is intended to provide CLECs general ordering information specific to the *UNE-PIDSO Wholesale Local Platform Service to UNE-L Bulk Migration* process described herein. Any UNE-P references, USOC definitions and procedures describe in this document and in other guides on the BellSouth Interconnection Web Site will also apply to the equivalent DSO Wholesale Local Platform Services. The DSO Wholesale Local Platform Service was formerly known as DSO Wholesale Local **Voice** Platform Service. This Information Package applies to both services.

The information contained in this document is subject to change. BellSouth will provide notification of changes to the document through the CLEC Notification Process.

Please contact your BellSouth Local Support Manager if you have any questions about the information contained herein.

2. Contract Requirements

The CLEC must have an Interconnection Agreement (IA) that includes terms and conditions for Bulk Migration. The IA must also include the terms, conditions and rates for each loop type to which the UNE-P services is migrated. The IA must be in effect for all states where the CLEC plans to order these unbundled loops.

The information contained herein applies to Bulk Migration and is part of the standard IA. The general offering is in accordance with BellSouth policies, procedures and regulatory obligations as well as the IA. The general offering does not address specific contract issues within a CLEC's IA that may be different from the general offering. Where specific contract language differs from the information provided here, the contract provisions will prevail for the term of the specific CLEC IA. Otherwise, the general offering provisions will apply.

UNE-P to UNE-L Bulk Migration

3. Revisions

3.1 Version 3

- 1) Modified **section 1 Introduction and Scope** to include the DSO Wholesale Local Platform Service reference.
- 2) Added **section 2 Contract Requirements** section.
- 3) Updated **sub-section 6.3 Two hour Go Ahead Notification** to include the Notification Tool reference.
- 4) Added new **sub-section 6.3.2 Web Based Notification Tool**.
- 5) Updated **section 11 Intervals** to reflect the reduction in the provisioning interval from 14 business days to 8 business days.

3.2 Version 2

- 1) Following are the revisions in section 5 “Bulk Migration Options” that are enhancements to the Bulk Migration process as referenced in Carrier Notification Letter SN91083967.
 - After Hours/Weekend Migrations
 - **Two-Hour Go Ahead Notifications for SL1 non-coordinated migrations**
 - **Time Windows for coordinated conversions**
 - **Pre and Post order completion restoral process (Throwback)**
 - Same-Day end-user account migration
 - CLEC to CLEC migration (UNE-P to UNE-L)
- 2) Additional revisions include interval reductions in the table in section 10.1 “**Bulk Migration Project Notification Interval**”.
 - For a “Maximum of 99” telephone numbers the CCPM interval has been reduced from 7 business days to 4 business days.
 - For “100-200” telephone numbers, the CCPM interval has been reduced from 10 business days to 6 business days.

UNE-P to UNE-L Bulk Migration

4. Service Description

The Unbundled Network Element – Port/Loop Combination (UNE-P) to Unbundled Network Element – Loop (UNE-L) Bulk Migration process may be used by a CLEC when migrating existing multiple non-complex UNE-P Services to a UNE-L offering.

All Bulk Migration orders will be project managed by a BellSouth Project Manager. Initially, the CLEC will submit required information to a BellSouth Customer Care Project Manager (CCPM) who after reviewing the bulk migration work effort with the field organizations will provide due dates back to the CLEC. Once the CLEC receives the due date information from the BellSouth Project Manager, the CLEC will electronically submit a Bulk Request for service order processing and provisioning. This allows migration of multiple UNE-P end-users to a UNE-L offering without submitting individual Local Service Requests.

UNE-P and UNE-L are defined below:

4.1 UNE-P

UNE-P is a UNE Port/Loop Switched Combination that combines a UNE local switch port and UNE loop to create an end-user-to-end-user transmission path and provides local exchange service. The CLEC may also choose to use the vertical services that are available through the features and functions of the local switch.

4.2 UNE-L

UNE-L is defined as the local loop network element that is a transmission facility between the main distribution frame (MDF) in BellSouth's central office and the point of demarcation at an end-user's premises. This facility will allow for the transmission of the CLEC's telecommunications services when connected to the CLEC's switch equipment. The local loop will require cross-connects for connection to the CLEC's collocation equipment. BellSouth does not provide telecommunications services with the UNE-L.

5. Bulk Migration Requirements

Major requirements for UNE-P to UNE-L Bulk Migration process are listed below. For complete requirements, refer to the **UNE to UNE Bulk Migration** section of the **Local Ordering Handbook (LOH)**.

- Bulk Migration is available for migrating existing **non-complex** Port/Loop Combination services to Unbundled Loops with Local Number Portability (LNP).
- A UNE Loop will be provided for each ported telephone number formerly associated with the UNE-P Service.
- Complex UNE-P accounts are prohibited on Bulk Requests. Examples of Complex UNE-P are 2 Wire ISDN/BRI Digital Loop & Port UNE Combination, 4 Wire ISDN/PRI Digital Loop & Port UNE Combination, UNE-P Centrex, Digital Direct Integration Termination Service (DDITS), etc.
- The UNE-Ps that can be migrated are listed in the **UNE-P USOC** section.
- UNE-Ps can be migrated to the UNE-Ls listed in the **UNE-L USOC** section. These UNE-L types must be in the CLEC's Interconnection Agreement.

UNE-P to UNE-L Bulk Migration

Requirements (continued)

- Bulk Requests that require a change in existing loop facilities to a type of facility that is not available, resulting in a Pending Facility (PF) status on Due Date –7 days, must be cancelled by the CLEC and removed from the Bulk Request.
- All Existing Account Telephone Numbers (EATNs) on the Bulk Request must use the existing Regional Street Address Guide (RSAG) valid end-user address.
- All EATNs must be served from the same BellSouth Serving Wire Center (SWC).
- All UNE-Ps on a Bulk Request must be migrated to a single UNE-L type.
- No end-user moves or changes of address will be allowed on the Bulk Request.
- Non-Recurring rates for the specific loop type being requested will be charged.
- Service order charges for mechanized orders (SOMEK) will be charged based on the current rules for individual Local Service Requests (LSRs) created per EATN of a Bulk Request.
- A BellSouth Customer Care Project Manager (CCPM) will project manage the Bulk Request.
- CLEC must submit a **BellSouth UNE-P to UNE-L Bulk Migration Project Notification**, herein known as **Project Notification**, to the BellSouth CCPM prior to the CLEC's placing the mechanized Bulk Request.
- CLEC may specify Desired Due Dates (DDD) for each EATN. The BellSouth CCPM will negotiate due dates with Network Operations. Every effort will be made to accommodate the CLEC DDDs where force and load permits and minimum intervals are met.
- A minimum of two (2) EATNs and up to a maximum of ninety-nine (99) EATNs can be placed on a single Bulk Request.
- A maximum of twenty-five (25) end-user telephone numbers per EATN can be placed on a Bulk Request.
- No additional EATNs or end-user telephone numbers may be added to the *BellSouth UNE-P to UNE-L Bulk Migration Project Notification* form once it has been submitted to the BellSouth CCPM.
- Order Coordination-Time Specific option is not applicable for a Bulk Request.
- UNE-Ls that require a Service Inquiry and/or Unbundled Loop Modification are excluded from the Bulk Request process.
- A Reservation Identification (RESID) (also referred to as a Facility Reservation Number (FRN)) is required on the Bulk Request for Unbundled ADSL Compatible Loops, HDSL Compatible Loops and Unbundled Copper Loop - Designed (UCL-D). Refer to the **Unbundled ADSL and Unbundled HDSL Compatible Loop, UCL-Designed CLEC Information Packages and Loop Make-Up CLEC Information Package** for RESID/FRN requirements.
- When a Mechanized Loop Make Up with Facility Reservation Number (FRN) is requested, the CLEC must submit the Bulk Request with the FRN to BellSouth within 24 hours of receiving FRN.
- Firm Order Confirmation (FOC) will be sent on individual LSRs generated from the Bulk Request.
- Upon receipt of a Reject, CLEC must re-submit a corrected Bulk Request or submit a cancellation of the Bulk Request.

UNE-P to UNE-L Bulk Migration

6. Bulk Options

6.1 Order Coordination (Coordinated Hot Cut)

- Order Coordination (OC) is available in situations where there is a reuse of existing facilities for the UNE-L.
- OC is included with the UVL-SL2, 2 Wire ADSL and 2/4 Wire HDSL Loops at no additional charge.
- OC is available as a chargeable option for conversions to UVL-SL1, UCL-Non Designed and UCL-Designed Loops. OC must be requested at the EATN level on the Project Notification form. An OC charge will be applied to each loop on the EATN for which OC has been requested.

6.2 After Hours/Weekend Migrations

- Migrations will typically be completed during normal working hours of 8 a.m. – 5 p.m. However, for CLECs that have customers who need cutovers completed outside of normal business hours, after hours/weekend migrations are available at the CLECs request.
- The Project Notification Form includes a column titled “Special Handling”. The CLEC provides its desired “Day” and “After Hours/Weekend” time window for the selected accounts at the EATN level in the Special Handling column according to the table below:

Days	After-hours Time-Windows	Minimum Lines	Maximum Lines	Special Considerations	Add'l charges
Mon – Fri ¹	7 a.m. – 8 a.m.	10	25	NA	Per CLEC's IA ³
Mon – Fri ¹	5 p.m. – 7 p.m.	10	50	NA	Per CLEC's IA ³
Saturday ¹	8 a.m. – 5 p.m.	50	100	UVL-SL1 Non-Coordinated only	Per CLEC's IA ³
Mon-Fri ²	7 p.m. – 12 midnight 6 a.m. – 7 a.m.	Individual Case Basis	Individual Case Basis	CO work only – no outside dispatches	Yes Overtime

²

³

6.3 Two (2) Hour Go Ahead Notification (For Non-Coordinated Bulk Migrations)

The Go Ahead Notification can be provided using one of two methods. The first method is through facsimile or email. The second method is through a web based Notification Tool. Both methods are described below:

UNE-P to UNE-L Bulk Migration

Bulk Migration Options (continued)

6.3.1 Facsimile or Email

- For **non-coordinated** non-designed migrations, the CLEC will be notified within a maximum of two (2) hours of the cutover.
- A Go Ahead Notification will be sent to the CLEC by facsimile* or email for UVL-SL1 and UCL-ND non-coordinated migrations.
- Once the CLEC is notified of the cutover completion, the CLEC can then complete the necessary number porting activities.

***Note:** To change from fax to email notification, the CLEC should contact its BellSouth Local Contract Manager (LCM) and provide its Alternate Exchange Carrier Number (AECN) and email address.

6.3.2 Web Based Notification Tool

The Notification Tool provides service order provisioning status associated with a non-coordinated migration for Non-Designed UNE-Ls. Additional information and access to the Notification Tool is via the Operations Report menu within the Performance Measurement and Analysis Platform (PMAP web site located at:

<http://pmap.bellsouth.com>

6.4 Time Windows for Coordinated Conversions

Time Windows for Coordinated Conversions are available for bulk migration orders at the CLEC's request as follows:

- There are two (2) time window options:
 - 8 a.m. – 12 p.m.
 - 1 p.m. – 5 p.m.
- CLEC will submit the Project Notification form and indicate the time window desired, at the EATN level, in the Special Handling column.
- Prior to the due date, the BellSouth CCPM will coordinate with Customer Wholesale Interconnection Network Services (CWINS) to ensure that CWINS and Network forces are scheduled and loaded to perform the migration in the designated 4-hour time window.
- On the due date, the coordinated cutover will take place using current provisioning processes.

6.5 Pre and Post Order Completion Restoral Process (or Throwback Process)

- The restoral process (also referred to as a throwback process) is available at the CLEC's request due to out-of-service issues and when the CLEC requires a restoral/throwback back to the UNE-P service.
- **The restoral/throwback process can only occur within a twenty-four (24) hour window of the UNE-L order Due Date.**
- The CLEC will use follow the requirements in 6.5.1 or 6.5.2 or 6.5.3 below depending on whether the order is (1)coordinated/non-coordinated *completed* UNE-L order; (2)coordinated *not* completed UNE-L order; (3)non-coordinated *not* completed order:

UNE-P to UNE-L Bulk Migration

Bulk Migration Options (continued)

6.5.1 Coordinated or Non-Coordinated 'Completed' UNE-L order

- CLEC submits Expedited LSR to the Local Carrier Service Center (LCSC) using one of the following fax numbers:
 - Birmingham Fax Server – 888-792-6271
 - Atlanta Fax Server – 888-581-6038
- The LSR Package requesting a throwback to UNE-P must contain the following information:

LSR Fields	Field information
LSR Remarks	Restoral UNE-L to UNE-P
REQTYP	M
Local Service Request Page	ACT = V MI = C, D
Port Service Page	LNA = V, G FA=N UNE-P Telephone Number
Port Service Page - ECCKT Field	UNE-L associated Loop Circuit ID
Directory Listing	Fill out as any other ACT=V migration request
EXP	Y

- The CLEC must advise the BellSouth CCPM of the restoral/throwback request.
- UNE-P Non-Recurring, Recurring and Expedite rates will be charged if applicable.

6.5.2 Coordinated 'Not Completed' UNE-L Order

- CLEC calls the CWINS Provisioning Group to request restoral/throwback to the UNE-P and if the number porting has been completed, the CLEC requests port-back activity.
- Refer to the **CWINS Location and Hours** web site for CWINs telephone numbers.
- Orders will be placed in Missed Appointment (MA) status.
- CLEC submits supplemental (sup) order to cancel or reschedule conversion request.
- After receipt of the sup order FOC, the CLEC will create a new Subscription Version (SV).
- The CLEC must advise the BellSouth CCPM of the restoral/throwback request.

UNE-P to UNE-L Bulk Migration

Bulk Migration Options (continued)

6.5.3 Non-Coordinated 'Not Completed' UNE-L order

- CLEC emails CWINS Enhanced Delivery (EnDI) Group to request restoral/throwback.
- CWINS EnDI email address is cwins.lnp@bellsouth.com
- Orders will be placed in MA status.
- If the number porting has been completed, the CLEC will call the Fleming Island LCSC Call Center at 800-872-3116 to request port-back activity before the CLECs submits a sup order.
- LCSC will advise the CLEC of port-back process.
- CLEC submits sup order to cancel or reschedule conversion request.
- After receipt of the sup order FOC, the CLEC will create a new Subscription Version (SV).
- The CLEC must advise the BellSouth CCPM of the restoral/throwback request.

6.6 Same-Day End-User Account Migrations

Same day End-user Account Migrations are available upon CLEC request. Same day end-user account migration means that all lines associated with an end-user from the same Serving Wire Center will be assigned the same due date.

- CLEC will group the same end-user accounts together on the Project Notification form.
- CLEC will submit the Project Notification form and indicate the same Due Date desired, at the EATN level, in the Special Handling column.
- The BellSouth CCPM will coordinate with the appropriate internal groups to ensure that all end-user account migration activity is performed on the same due date.

6.7 CLEC to CLEC Migration of UNE-P to UNE-L

This process is available with the Bulk Migration process as follows:

- CLEC (CLEC A) to CLEC (CLEC B) Migration of UNE-P to UNE-L is defined as a facility based CLEC (CLEC B) that is migrating the UNE-Ps, previously held by another CLEC (CLEC A), to UNE-Ls.
- CLEC B will prepare the Project Notification form using the same Bulk Migration requirements as specified within this document.
- The Project Notification form must contain all the necessary UNE-P and UNE-L information according to the requirements of the form.

CLEC B must have an end-user letter of authorization (LOA) on file (it must be available if requested).

UNE-P to UNE-L Bulk Migration

7. Bulk Migration Submission/Flow Process

The Bulk Request Submission Process will consist of two main work activities. The CLEC will first submit a Project Notification. Once the Project Notification has been processed and returned to the CLEC, the CLEC will then prepare and input the mechanized Bulk Request. The Bulk Request must be submitted according to the guidelines contained in the LOH. Below are the steps in the process :

Step #	Action
1	BellSouth CCPM receives Project Notification form from CLEC and negotiates/assigns Bulk Order Package Identifier (BOPI) and validates information (i.e., USOCs, Same Wire Center, etc.).
	If pertinent information is missing on the Project Notification package, the form is returned to CLEC along with a reason(s) for return. BellSouth CCPM receives corrected Project Notification from the CLEC and continues the negotiation process.
3	BellSouth CCPM contacts BellSouth's Network organization and negotiates Due Date (DD) for all related Purchase Order Numbers (PONs) in the Bulk package and returns Bulk Notification Form including negotiated DD to the CLEC.
4	Upon receipt of the Bulk Notification Form that includes negotiated DD from BellSouth CCPM, CLEC submits Bulk Request package with negotiated dates for each EATN/PON via electronic ordering interface.
5	If the CLEC wants to supplement (SUP) (01,02,03) an individual PON, the request <u>must</u> be sent through the same electronic ordering system as the original Bulk Request.
6	At this point, the Bulk Request package will be processed for 1 st level validation and any rejects will be mechanically generated to the CLEC.
7	The electronic ordering systems will accept the Bulk Request package, break the individual PONs into separate LSRs and populate the remaining required LSR fields from Operation Support System (OSS) systems prior to sending the individual LSRs downstream to the Local Number Portability (LNP) Gateway.
8	The LNP Gateway will perform 2 nd level validations and provide any fallouts, per "business as usual" processes. The Local Carrier Service Center (LCSC) will handle all fallouts as normal. Any of the individual PONs that must be clarified will be sent back to the CLEC, business as usual.
9	After LNP Gateway issues the service orders, the LCSC will handle all manual service order fallouts as normal. The BellSouth Service Representative will send any PF and Missed Appointments (MA) to the CLEC via a jeopardy notice.
10	LNP Gateway will send an FOC on each individual PON associated with the Bulk Request package, to the CLEC.
11	The Project Manager will monitor PON, Service Order and Porting Statuses associated with the Bulk Request package. BellSouth's Service Representative and Project Manager will monitor the LNP gateway for the "Number Ported" messages and the Service Representative will handle manual port out order processing if required.

UNE-P to UNE-L Bulk Migration

8. BellSouth UNE-P to UNE-L Bulk Migration Project Notification Process

Following is the Project Notification process:

- Complete the **BellSouth UNE-P to UNE-L Bulk Migration Project Notification** form according to the instructions.
- Electronically submit the **Project Notification** to the email address of the CLEC's assigned BellSouth Customer Care Project Manager (CCPM). For help with identifying a BellSouth CCPM, the CLEC should contact its BellSouth Customer Support Manager.
- The BellSouth CCPM will review the information submitted by the CLEC and will assign a Bulk Order Package Identifier (BOPI) that the CLEC will later use on the electronic Bulk Request.
- The BellSouth CCPM will coordinate with BellSouth's field forces to schedule the migration Due Dates.
- Once the review with the field forces is complete, the BellSouth CCPM will include the Due Dates on the **Project Notification** and return it to the CLEC.
- No additional EATNs or end-user telephone numbers may be added to the **Project Notification** form once it has been submitted to the BellSouth CCPM.

UNE-P to UNE-L Bulk Migration

9. UNE-P USOCs

The UNE-P Services that can be migrated to UNE-L are represented by the Port USOCs listed in the table below:

Port USOC	Unbundled Port/Loop Combination Element	Description of Combinations using an Unbundled Exchange Port (UEP):
UEPBX	UEPLX	UEP, Business, 2 Wire Analog Business Line Port, UNE=P Basic Class of Service
UEPRX	UEPLX	UEP, Residence, 2 Wire Analog Residence Line Port, UNE-P Basic Class of Service
UEPCO	UEPLX	UEP, Coin Basic Class of Service UNE-P
UEPBV	UEPLX	UEP, Remote Call Forwarding, Business Basic Class of Service
UEPVR	UEPLX	UEP, Remote Call Forwarding, Residence Basic Class of Service

10. UNE-L USOCs

Below are the UNE-L types and associated USOCs to which the UNE-Ps can be migrated:

Loop USOC	Description
UEAL2	2 Wire Unbundled Voice Loop – SL1
UEAL2, UEAR2	2 Wire Unbundled Voice Loop – SL2
UCLPW	2 Wire Unbundled Copper Loop/Short– Designed without manual Service Inquiry
UCL4W	4 Wire Unbundled Copper Loop/Short – Designed without manual Service Inquiry
UEQ2X	2 Wire Unbundled Copper Loop – Non-Designed
UAL2W	2 Wire Unbundled ADSL Loop without manual Service Inquiry
UHL2W	2 Wire Unbundled HDSL Loop without manual Service Inquiry
UHL4W	4 Wire Unbundled HDSL Loop without manual Service Inquiry

UNE-P to UNE-L Bulk Migration

11. Intervals

11.1 Bulk Migration Project Notification Interval

- The “*CCPM Targeted Response Interval*” column in the table below represents the targeted number of business days in which the BellSouth CCPM will respond back to the CLEC.
- The CLEC must submit the **Project Notification** in advance of the earliest CLEC’s requested Desired Due Date (DDD) according to the “*Minimum # of days in advance to submit Project Notification*” column in the table below. This column represents the number of days that the Project Notification must be submitted in advance of the earliest DDD.
- “*Minimum # of days*” column includes the interval for the BellSouth CCPM to negotiate the Due Dates. It allows three (3) days for the CLEC to correct, process and submit the mechanized Bulk Request. It also includes eight (8) days in order to meet the 8-business day submission requirement for the Bulk Request.
- The BellSouth CCPM will attempt, where possible, to assign the work such that migrations occur on the requested DDD.

# of end-user Tel. Numbers	CCPM Targeted Response Interval	CLEC days after receipt from Proj Mgr	Bulk Request Submission Requirement	Minimum # of days in advance to submit Project Notification
Maximum of 99	4 business days	3 business days	8 business days	15 business days
100-200	6 business days	3 business days	8 business days	17 business days
201 +	To be determined	3 business days	8 business days	Contact CCPM

11.2 Bulk Request Service Order Intervals

- The BellSouth CCPM will negotiate the Bulk Request due dates with BellSouth’s provisioning personnel and will communicate the due date to the CLEC.
- The CLEC must submit the Bulk Request and it must be accepted by the mechanized system at least eight (8) business days in advance of the earliest Due Date for any end-user telephone number to be migrated.

11.3 Example of Intervals

An example of Intervals follows:

- **March 1, 2004** - CLEC submits Project Notification with 87 end-user telephone numbers to the BellSouth CCPM
- **March 5, 2004** (4 business days) – the BellSouth CCPM sends the Project Notification with firm Due Dates to the CLEC
- **March 8 – March 10** (3 business days) – CLEC will prepare and submit mechanized Bulk Request via the electronic interface.
- **March 22, 2004** (8 business days) – the earliest assigned Due Date on the Project Notification returned to the CLEC.

UNE-P to UNE-L Bulk Migration

12. Acronyms

AECN	Alternate Exchange Carrier Number
ADSL	Asymmetrical Digital Subscriber Line
BOPI	Bulk Order Package Identifier
CCPM	Customer Care Project Manager
CHC	Coordinated Hot Cut
CLEC	Competitive Local Exchange Carrier
CWINS	Customer Wholesale Interconnection Network Services
DDD	Desired Due Date
EATN	Existing Account Telephone Number
EnDI	Enhanced Delivery
FOC	Firm Order Confirmation
FRN	Facility Reservation Number
HDSL	High-Bit-Rate Digital Subscriber Line
LCSC	Local Carrier Service Center
LNP	Local Number Portability
LSR	Local Service Request
MDF	Main Distribution Frame
OC	Order Coordination
OSS	Operation Support System
PON	Purchase Order Number
RESID	Reservation Identification
RSAG	Regional Street Address Guide
SUP	Supplemental
SWC	Serving Wire Center
UCL-D	Unbundled Copper Loop – Designed
UCL-ND	Unbundled Copper Loop – Non-Designed
UNE-P	Unbundled Network Element-Port/Loop Combination
UNE-L	UNE Loop