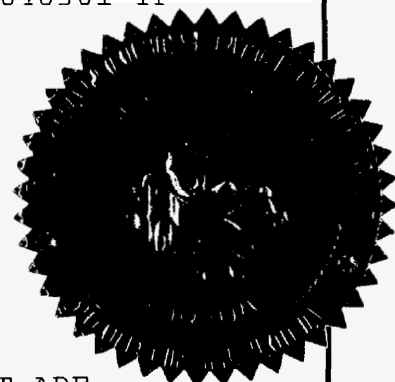


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 040301-TP

In the Matter of

PETITION BY SUPRA TELECOMMUNICATIONS
AND INFORMATION SYSTEMS, INC. FOR
ARBITRATION WITH BELLSOUTH
TELECOMMUNICATIONS, INC.



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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 3

BEFORE: CHAIRMAN BRAULIO L. BAEZ
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER RUDOLPH "RUDY" BRADLEY
 COMMISSIONER CHARLES M. DAVIDSON

DATE: Tuesday, September 21, 2004

PLACE: Betty Easley Conference Center
 Room 148
 4075 Esplanade Way
 Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR
 Official FPSC Reporter
 (850) 413-6734

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1 PARTICIPATING:

2 JAMES MEZA, ESQUIRE, representing BellSouth
3 Telecommunications, Inc.

4 STEVE CHAIKEN, ESQUIRE, representing Supra
5 Telecommunications & Information Systems, Inc.

6 RICK MELSON, GENERAL COUNSEL; JEREMY SUSAC, ESQUIRE,
7 and DAVID DOWDS, representing the Florida Public Service
8 Commission Staff.

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P R O C E E D I N G S

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2 CHAIRMAN BAEZ: Commissioners, we are on Item 3.
3 and, Ms. Keating, we have parties present.

4 MR. SUSAC: Good morning, Commissioners. Item 3 is
5 staff's recommendation in Docket 040301 to deny Supra's request
6 for an interim rate for a UNE-P to UNE-L conversion. In
7 addition, it's staff's recommendation to deny Supra's motion
8 for reconsideration of Order Number PSC-04-0752-PCO-TP. The
9 parties are here to address the item, and staff is available
10 for questions.

11 CHAIRMAN BAEZ: Thank you, Mr. Susac. And by my
12 count it is Supra's motion.

13 MR. CHAIKEN: Good morning, Commissioners. Steve
14 Chaiken on behalf of Supra.

15 CHAIRMAN BAEZ: I'm sorry. Can you restate your
16 name?

17 MR. CHAIKEN: I apologize. Steve Chaiken on behalf
18 of Supra.

19 CHAIRMAN BAEZ: Thank you.

20 MR. CHAIKEN: Supra has requested that during the
21 pendency of the time frame when the Commission sets a final
22 rate in this docket, that the Commission set an interim rate to
23 allow Supra to effectuate transitions from UNE-P to UNE-L.

24 In the absence of such a rate, Supra must either
25 choose to pay the unilaterally set cost-prohibitive rate of .

1 BellSouth and risk not be being able to recover the cost it
2 pays until the time frame in which the Commission sets a final
3 rate, or do what Supra has been doing for the past six months
4 and cease its efforts to transition its customer.

5 Staff correctly points out that Supra has in the past
6 converted and migrated over 18,000 customers' lines to UNE-L.
7 This was done based on a credit from BellSouth. Since that
8 credit was no longer available to Supra, Supra has converted
9 only but a handful of customers and is unable to do so. Supra
10 is faced with this dilemma unless an interim rate is set, which
11 would present no prejudice to BellSouth if the Commission would
12 allow a true-up pending -- a true-up once the final rate is
13 set. In the absence of that, Supra would be prejudiced.

14 CHAIRMAN BAEZ: Thank you, Mr. Chaiken. Mr. Meza.

15 MR. MEZA: Yes. Thank you. Jim Meza on behalf of
16 BellSouth. BellSouth supports staff's recommendation. As
17 staff aptly points out, there is no basis whatsoever asserted
18 by Supra for any type of interim rate in this proceeding. **The**
19 parties have a disagreement over what the contract says,
20 BellSouth is charging Supra the rate in the contract, and
21 Supra's remedy is to order the services it wants to provide.
22 If it's successful at the hearing, then BellSouth will provide
23 whatever credit this Commission determines it is owed to Supra.
24 There's just simply no justification for an interim rate.
25 There's no proof to support the \$15 rate that Supra is

1 suggesting. And the very fact that Supra has migrated over
2 18,000 lines from UNE-P to UNE-L mitigates against any finding
3 of interim rate because it proves that Supra can perform the
4 functions that it chooses to do, that for whatever reason,
5 business reason, litigation reason, it has chosen not to
6 continue to migrate those lines. And in the event, again, if
7 it's successful at the hearing which is scheduled for
8 December 1st, whatever credits are owed Supra can be then
9 applied. There's just, there's just simply no justification
10 and no proof to establish whether Supra is entitled to an
11 interim rate and what that rate should be.

12 CHAIRMAN BAEZ: Thank you, Mr. Meza.

13 Mr. Chaiken, you were poised to make some comment.
14 Otherwise, we can move on to questions. Commissioners.

15 COMMISSIONER DEASON: I have a question for Mr. Meza.

16 CHAIRMAN BAEZ: Go ahead, Commissioner Deason.

17 COMMISSIONER DEASON: You indicated that after
18 hearing and determination by the Commission, if credits are due
19 to Supra, they would be paid. What period of time would those
20 credits cover, if that scenario plays out?

21 MR. MEZA: The -- I believe Supra migrated the lines,
22 the 18,000 lines over the past year, maybe 18 months. And as
23 Mr. Chaiken pointed out, Supra has ceased performing those
24 conversions on a going-forward basis for the past six months.
25 So you'd have 18,000 lines, I guess, that would be subject to a

1 credit, and then whatever -- on a going-forward basis whatever
2 the charge would be.

3 COMMISSIONER DEASON: Okay. Thank you.

4 CHAIRMAN BAEZ: Commissioners, any other questions?

5 COMMISSIONER DAVIDSON: Chairman, one, one question
6 for both Supra and BellSouth.

7 For Supra, do you agree that under BellSouth's
8 position there would be a true-up at some point in time, it's
9 just not the time when Supra would desire? And, BellSouth,
10 same question, do you agree that there would be a true-up,
11 again, that's not at the time frame that Supra would request?
12 Supra?

13 MR. CHAIKEN: It would be our intent that that would
14 be the case. Until now my understanding was that PSC orders
15 were not retroactive in effect. It's my understanding from
16 what BellSouth is saying now that they would be agreeable to
17 some sort of true-up process. So you're correct.

18 MR. MEZA: The answer to your question is, yes. I
19 mean, this is a contract dispute over what rate should apply to
20 a specific service that BellSouth provides to Supra, just like
21 any other billing dispute that this Commission hears between
22 parties. And if this Commission determines that the rate that
23 BellSouth is charging Supra is inappropriate, then there's
24 going to be, you know, credits applied in conjunction with this
25 Commission's order.

1 COMMISSIONER DAVIDSON: For staff, what would be the
2 process for going forward so that if there is an adjustment,
3 either in BellSouth's favor or in Supra's favor, those
4 adjustments would be made? When, when would some true-up as,
5 as it's been discussed occur? And I guess related to that, is
6 there -- is this docket the docket that's addressing the
7 charges or is there another docket that applies?

8 MR. SUSAC: If I'm understanding the question
9 correctly, it would -- the true-up would occur after a final
10 order. And for your second part of your question, this is the
11 docket that would cover the true-up.

12 COMMISSIONER DAVIDSON: And what will be the process
13 by which this docket is managed and comes to closure? What,
14 what time frame and what are the next steps?

15 MR. SUSAC: The next step is there is a hearing
16 scheduled currently for December 1st. After the final
17 conclusion of the hearing, the recommendation would be taken to
18 the Commission. Approximately -- I would say briefs would be
19 filed 20 to 25 days after the hearing. A recommendation would
20 follow probably a month pending -- looking at late January.

21 COMMISSIONER DAVIDSON: So --

22 MR. SUSAC: However, I would like to note that there
23 is currently a motion to dismiss on the table and a motion for
24 partial summary final order, both of which could alter the
25 procedure of the, of the case going forward.

1 COMMISSIONER DAVIDSON: The, the true-up portion,
2 assuming the case proceeded then, we would have resolution of
3 that, is it correct; there would be in all likelihood a staff
4 recommendation late January for a subsequent agenda conference?

5 MR. SUSAC: Correct.

6 COMMISSIONER DAVIDSON: And what is the, what is the
7 schedule, if you know, for the motion to dismiss? Has that
8 been filed in this case?

9 MR. SUSAC: No, Commissioner. That motion to dismiss
10 as well as the motion for partial summary final order will be
11 filed this Thursday. It will be on the next agenda.

12 COMMISSIONER DAVIDSON: The recommendation for those
13 motions.

14 MR. SUSAC: Yes, the recommendation.

15 COMMISSIONER DAVIDSON: All right. Thank you.

16 MR. MEZA: May I add something just to make sure it's
17 clear?

18 COMMISSIONER DAVIDSON: Sure. And, Supra, you can
19 respond if something he adds you disagree with.

20 MR. MEZA: This, this is a unique case because if
21 Supra is successful, there could be an application of
22 retroactive ratemaking. And so I would like to modify my
23 response about the application of the true-up because there
24 could be a situation where if this Commission determines and
25 establishes a new rate in this proceeding for the particular

1 type of migration that Supra says is not covered by the
2 contract but BellSouth says it is, that there could be an
3 application of that doctrine. So I just want to make sure that
4 the Commission is clear on that point.

5 COMMISSIONER DAVIDSON: Would you also agree though
6 that if Supra is correct, that the rate they are seeking is
7 actually the rate that's covered by the contract, and I have no
8 idea as I sit here, that that would just be a matter of
9 enforcing the contract as opposed to retroactive ratemaking;
10 the two notions are, are different?

11 MR. MEZA: That's right. Yes.

12 CHAIRMAN BAEZ: Mr. Meza, can you clear up for me,
13 there seemed to be, based on Commissioner Davidson's question,
14 some agreement that there is going to be some, some true-up.
15 How does the change in your response affect that?

16 MR. MEZA: Well, I -- sure. In actuality, I was
17 thinking through it, it appears that if BellSouth is correct in
18 its interpretation of the contract, then there wouldn't be a
19 need for a true-up because we would have applied the correct
20 rate.

21 If Supra is correct in its argument that the contract
22 is silent on this particular service and that the Commission
23 needs to establish a specific rate, then BellSouth, I believe,
24 would argue that it cannot be applied retroactively because you
25 would be establishing a new rate. So I apologize for the

1 confusion. Upon thinking further, the true-up aspect would
2 only apply if BellSouth -- if it is a true contract
3 interpretation. If the Commission decides to entertain Supra's
4 request to make new rates, then that's a different animal.

5 CHAIRMAN BAEZ: Mr. Chaiken.

6 MR. CHAIKEN: Yeah. I think this highlights the
7 reason why we are requesting an interim rate. We filed
8 this petition, we've been seeking a rate for this for over two
9 years now. And if we don't get an interim rate now and Supra
10 is correct in its petition that this rate is not established,
11 BellSouth will not provide a credit for the amounts that we've
12 overpaid if we were to continue on and effectuate conversions
13 at this point.

14 CHAIRMAN BAEZ: Well, and I -- based on that, I have
15 a question for staff: Is, is, is the question of whether, of
16 whether some adjustments, depending on the, depending on the
17 result, is that, is that an issue that's going to be
18 considered, to be considered at hearing?

19 MR. SUSAC: Currently, no, Chairman, that is not an
20 issue. The four issues are whether the rates apply under the
21 existing agreement. If they do not, then what should the
22 applicable rate be, the appropriate rate be, those consisting
23 of the four issues?

24 Supra's motion predicated in their first amendment
25 petition put forth a, somewhat of a number, intermediate number

1 that they thought was appropriate. However, they never
2 established any methodology or calculation for staff to work
3 with, nor did they show any damage or any harm that would need
4 an immediate -- intermediate rate, and so that was not an issue
5 put forth at the issue identification.

6 CHAIRMAN BAEZ: Do you, do you see, do you see based
7 on -- this is a loaded question, mind you, but do you see based
8 on the, the positions that the parties are taking now, based on
9 our conversations, that there may be, that there may be reason
10 to, to address whether, whether and how, based on a certain
11 result rather than another, there may be an issue as to what,
12 what kind of application a rate might have retroactively, or,
13 or is that issue decided in your mind?

14 MR. SUSAC: Could you give me one second, Chairman?

15 CHAIRMAN BAEZ: Sure. Go ahead.

16 (Pause.)

17 MR. DOWDS: Bear with me -- make sure I understand
18 your question.

19 CHAIRMAN BAEZ: And maybe I -- you know, shaking the
20 cobwebs off this morning. But I guess what I'm asking is
21 we've, we've had, based on the discussion offered by the
22 parties, at least in my mind, identified some disagreement as
23 to whether the pendency of this docket for whatever time has
24 created the possibility that there may be some adjustments
25 necessary if the current rate is still applicable through,

1 through decision time. And, and have you thought about that,
2 assuming another rate would have been appropriate, what the
3 effect of that is going backwards, and is that proper for us to
4 consider?

5 MR.. DOWDS: I think the answer is yes, but let me
6 clarify a few things. There's two sets of issues and they
7 differ according to technology, but I don't need to get into
8 the details of that.

9 The first issue is is there a rate under their
10 existing agreement that applies for a UNE-P to UNE-L migration?
11 The parties differ as to the answer to that. Okay. If there
12 is a rate, if the answer is yes to that issue, there's twins,
13 then there presumably is no refund or credits at all.

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23 second, that second decision, that second answer that you
24 described would have -- that there may be a discrepancy as to
25 what the monies charged should have been?

1 MR. DOWDS: Based upon the representation of Supra's
2 counsel, I gather they have not been ordering any lines to be
3 cut over, so the 18,000 odd UNE-P to UNE-L conversions that
4 were done a number of months back is basically about it.

5 CHAIRMAN BAEZ: Don't fall into that category.

6 MR. DOWDS: Based on what we know at the present
7 time.

8 CHAIRMAN BAEZ: All right. So then you're
9 comfortable -- and the final question, I guess you're
10 comfortable with the issues the way that they've been
11 established now, that nothing new based on discussions this
12 morning has -- you know, you have no reason to believe that,
13 that you're not going to cover or that there isn't room for,
14 for whatever discussions might, might be had along those lines.

15 MR. DOWDS: We're comfortable with it. I think the
16 part, more importantly, the, the, the issues as drafted reflect
17 the, succinctly the disagreement between the parties, we
18 believe.

19 CHAIRMAN BAEZ: Very well. Commissioner Deason.

20 COMMISSIONER DEASON: This is a question for staff.
21 If we determine that the current agreement does not address the
22 particular type of migration, which is the, is part of -- which
23 is the subject of Supra's interim request, how do we go about
24 addressing that in the sense that, are we -- is that going to
25 be part of the hearing which is going to commence on December

1 the 1st? And, and if it is, how do we address that in the
2 context of what has been determined to be a complaint under an
3 existing agreement?

4 MR. SUSAC: Commissioner Deason, I'd just like to
5 point out that Supra's motion for partial summary final order
6 goes to those first two issues, whether there is a, whether
7 there is a rate under the existing agreement for a UNE-P to
8 UNE-L conversion for an IDLC and is there one for copper and
9 UDLC. So that issue should be determined prior to the, to the
10 hearing to narrow the scope of your question. If you could
11 repeat the second half of your question, I'd be glad to --

12 COMMISSIONER DEASON: Well, there's been a request
13 for an interim rate. It's been determined that it's not
14 appropriate, at least at this time, to address that. After the
15 conclusion of the hearing that commences on December the 1st,
16 if we make a determination that there needs to be some type of
17 a rate established on a going-forward basis, when and how do we
18 do that? And is it in the context of a complaint or is it a
19 new docket, or how do we address that procedurally?

20 MR. DOWDS: It's our belief it would be done in this
21 proceeding. There -- and I'm weak on -- procedure is not my
22 long suit, but there is attention as to whether this is
23 strictly a complaint or what potentially this docket actually
24 might be, but we will defer to counsel on that.

25 Conceptually there's a couple of things going on.

1 me is a contract dispute as to whether the contract provides
2 for a rate, surcharges, however you want to phrase it, for
3 UNE-P to UNE-L conversions. Depending on the answer to that,
4 you may or may not need to consider whether prospectively a
5 rate should be set for the specific kind of configuration that
6 supra raises.

7 COMMISSIONER DEASON: If the contract -- if the
8 agreement already addresses it, it addresses it and it says
9 what it says and that's what would apply going forward. Is
10 that --

11 MR. DOWDS: Well, not necessarily, sir. Let's assume
12 for the sake of argument that there is a rate that currently
13 applies to the particular kind of conversion that Supra is
14 seeing up in this proceeding. Under one theory it could be
that they want a more disaggregated rate structure than, than
that currently exists. If that were the case and the
Commission were, thought that was the way to go, an alternative
rate structure, since the ratio is 3 and 4, could be
implemented depending upon what the record provided for and the
Commissioners' desires.

COMMISSIONER DEASON: But if, if we follow that
course, it would be prospective; is that right?

MR. DOWDS: Yes, sir, I would, I would think so.

COMMISSIONER DEASON: From the broader perspective,
have we ever addressed an interim rate in terms of, for example

1 in this case, migrating or really interim rates in the context
2 of any type of an arbitrated agreement that would, would apply?

3 MR. DOWDS: I'm not the best person to answer, but
4 I'm not aware of any.

5 COMMISSIONER DEASON: I'm not aware of it either.

6 MR. DOWDS: I would have to defer to --

7 COMMISSIONER DEASON: And I guess my question is
8 would, would we be setting some type of precedent that
9 perhaps -- first of all, is it allowed under, under the, under
10 the Act? Is the interim rate allowed under the Act, or we
11 wouldn't be going beyond the, what our authority is?

12 MR. MELSON: I don't recall any specific provision in
13 the Act or in the Florida Statutes that contemplates an interim
14 rate in an arbitration type proceeding.

15 You know, the issue you've got on reconsideration in
16 Issue 2 is whether this is properly characterized as a
17 complaint or an arbitration. But in either event I can't think
18 of any statutory provision in either situation that really
19 contemplates an interim rate.

20 COMMISSIONER DEASON: Well, what -- in your opinion,
21 what should Supra, if they have a legitimate concern, they want
22 this Commission to address it, under what authority would we
23 address it and what should they have filed to the Commission to
24 get it appropriately teed up in front of us?

25 MR. MELSON: I have not reviewed the filing they made

1 in this case. But from reading what I've read in the staff
2 recommendation, it appears they are properly teeing the issue
3 up. I'm just not sure they can tee it up in a way that would
4 ultimately give it any retroactive effect, unless you said it's
5 covered by the existing agreement, covered by some different
6 provision or different combination of elements than BellSouth
7 is charging for today.

8 COMMISSIONER DEASON: Thank you.

9 CHAIRMAN BAEZ: And I wanted -- and just to close
10 this out, I want to have a very brief discussion as to the, the
11 procedural posture of this, whether, you know, because there
12 seems to be some tension as to whether this is a complaint or,
13 or an arbitration. I'm comfortable that it's a complaint in,
14 in this instance. But I see issues and I guess decisions
15 falling out of this docket that, that probably don't, aren't
16 consistent with, with a complaint posture. And is that a
17 distinction without a difference? Is that something that we
18 should be concerned of or something that we need to perhaps
19 think more about? I don't --

20 MR. MELSON: Commissioner, it may ultimately be a
21 distinction without a difference. So long as the issues are
22 teed up and they're litigated and you've got record support for
23 whatever decision you make at the end of day, I'm not sure that
24 the label that was put on it has any tremendous effect.

25 CHAIRMAN BAEZ: Very well. Thank you.

1 Commissioners, any other questions or a motion?

2 COMMISSIONER DAVIDSON: Just a quick follow-up, and I
3 think the answers to Chairman Baez and Commissioner Deason sort
4 of answered it for me. But just to be clear again, if there is
5 a rate in the contract that applies for migration from UNE-P to
6 UNE-L, we will address that in this docket; correct?

7 MR. SUSAC: That is correct.

8 COMMISSIONER DAVIDSON: If there is no rate and we
9 have to set a rate, the setting of that rate will also occur in
10 this docket; whether to set a rate will, will occur. I mean,
11 this is not going to get postponed for a year.

12 MR. SUSAC: No, Commissioner, you are correct.
13 Issues 3 and 4 address the ratemaking.

14 COMMISSIONER DAVIDSON: And just the reason I ask
15 that is we've all emphasized sort of the importance of
16 facilities-based competition, and this is an issue that's
17 arisen for a competitor that has actually been sort of
18 deploying their own switches and they're trying to migrate. So
19 there may be issues here or there may not be.

20 What I want in terms of process is not a process here
21 where we don't get to an issue. I don't know how we'll resolve
22 it, but at some point we need to get to it sooner rather than
23 later in this transitional period.

24 CHAIRMAN BAEZ: Yeah. And I think that was the
25 nature of my questions is that we're not going at these

1 decisions piecemeal, that whatever decisions have to be made
2 can be made through this vehicle and they'll stand and, and be
3 of some use to, to the parties going forward. And I'm
4 comfortable with, I'm comfortable with that. We can entertain
5 a motion, if you all are amenable.

6 COMMISSIONER DAVIDSON: I will -- I've got, I'm
7 sorry, Chairman. I've got one more question. Strike that,
8 Chairman. No more questions.

9 I'll move staff.

10 CHAIRMAN BAEZ: There's a motion. Is there a second?

11 COMMISSIONER DEASON: Second.

12 CHAIRMAN BAEZ: Motion and a second. All those in
13 favor, say aye.

14 (Unanimous affirmative vote.)

15 (Agenda Item 3 concluded.)

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1 STATE OF FLORIDA)
 : CERTIFICATE OF REPORTER
 2 COUNTY OF LEON)

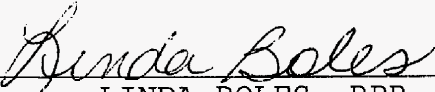
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I, LINDA BOLES, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 28th DAY OF SEPTEMBER, 2004.



 LINDA BOLES, RPR
 FPSC Official Commission Reporter
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