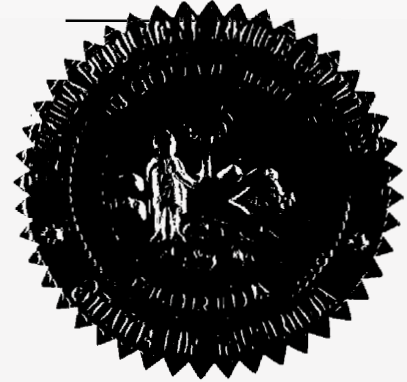


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 040301-TP

In the Matter of

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



ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE
A CONVENIENCE COPY ONLY AND ARE NOT
THE OFFICIAL TRANSCRIPT OF THE HEARING,
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 7

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

DATE: Tuesday, October 5, 2004

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

REPORTED BY: JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 11002 OCT 12 3

FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 NANCY WHITE, ESQUIRE, representing BellSouth
3 Telecommunications, Inc.

4 BRIAN CHAIKEN, ESQUIRE, representing Supra
5 Telecommunications & Information Systems, Inc. (Mia)

6 NORMAN H. HORTON, JR., representing FDN and
7 ITC^DeltaCom.

8 JEREMY SUSAC, ESQUIRE, representing the Florida
9 Public Service Commission Staff.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

CHAIRMAN BAEZ: Mr. Susac.

MR. SUSAC: Good morning, Chairman. Good morning,
Commissioners.

Item 7 is staff's recommendation in Docket 040301-TP to deny BellSouth's motion to dismiss Supra's first amended complaint because Supra has stated a cause of action upon which leave can be granted. In addition, it is staff's recommendation to deny Supra's motion for partial summary final order because there is an issue of fact as to whether the parties' interconnection agreement contains a rate for UNE-P to UNE-L conversion.

In addition, a representative for ITC^DeltaCom and FDN is here to address the possibility of whether this should be addressed in a generic docket. Staff is available for questions and parties are here.

CHAIRMAN BAEZ: We are not discussing a motion. There is no discussion on the motion at this point.

Commissioners, if you have any questions -- well, Mr. Horton, go ahead.

MR. HORTON: Yes, sir. Norman H. Horton, Jr. on behalf of ITC^DeltaCom and FDN. And the staff has recommended that this proceed as a two-party complaint and not as a generic proceeding. And if that's the case, we would ask that you make it clear that it is a two-party complaint. These issues are of

1 some interest to other parties, so that is strictly our
2 comment.

3 COMMISSIONER JABER: Mr. Chairman, I'm sorry, this is
4 my fault because I have gotten a little bit confused on what
5 this relates to. Would this be part of -- which issue would
6 this discussion be part of?

7 MR. HORTON: Issue 1.

8 CHAIRMAN BAEZ: It is Issue 1, or at least part of
9 Issue 1.

10 MR. HORTON: And part of the staff recommendation.

11 COMMISSIONER JABER: Oh, the second sentence, staff
12 in the staff recommendation?

13 MR. HORTON: Yes, ma'am.

14 CHAIRMAN BAEZ: Right.

15 MR. HORTON: And we are just urging if it is not
16 going to be a two-party -- excuse me, if it is not going to be
17 a generic, that it be made clear that this is between the two
18 parties.

19 CHAIRMAN BAEZ: Okay. And there is a representative
20 from FDN.

21 MR. HORTON: I'm --

22 CHAIRMAN BAEZ: Oh, you're with FDN and ITC, also,
23 you are wearing two hats today.

24 MR. HORTON: Two-for-one today.

25 CHAIRMAN BAEZ: Forgive me, it is very little sleep

1 over the last three days.

2 Ms. White and Mr. --

3 MR. CHAIKEN: Good morning, Commissioners. Brian
4 Chaiken on behalf of Supra Telecom.

5 CHAIRMAN BAEZ: Mr. Chaiken, you have grown up
6 somehow, I don't know, there's something different of you.

7 MR. CHAIKEN: My brother also appears before you.

8 CHAIRMAN BAEZ: That's right. We are off to a flying
9 start, fellows. I'm sorry.

10 And I had originally said that there was no oral
11 argument on the motion because, frankly, I didn't recognize Mr.
12 Chaiken. And, Ms. White, obviously you had stepped out of the
13 room, but it is your motion. And we'll go back on Issue 1,
14 Commissioners, my apologies.

15 MS. WHITE: Do you want the motions to be argued --
16 do you want me to argue both, or do you just want me to argue
17 BellSouth's motion and then come back to the Issue 2?

18 CHAIRMAN BAEZ: Let's separate them. Because I think
19 Mr. Chaiken may have a problem with you arguing for some of his
20 motions.

21 MS. WHITE: That's fine.

22 CHAIRMAN BAEZ: Go ahead. We'll stick to Issue 1.

23 MS. WHITE: The first issue on Issue 1 is BellSouth's
24 motion to dismiss. We oppose the staff's recommendation on
25 that. We believe that our motion to dismiss should be granted.

1 The primary basis for our motion is that Supra's complaint is
2 essentially an attack on the nonrecurring rates that were set
3 by this Commission in the UNE docket.

4 The SL-1 and SL-2 nonrecurring loop rates approved by
5 the Commission incorporated the costs of moving the loop from
6 the BellSouth switch to the CLEC switch. In fact, one of the
7 largest cost elements in these rates was the cost BellSouth
8 incurs in having to dispatch a service technician to completed
9 the migration of the loop from the BellSouth switch to the CLEC
10 switch.

11 Generally, BellSouth does not have to dispatch a
12 technician when the loop is served either via UDLC or copper,
13 but it has to dispatch almost 100 percent of the time when the
14 loop is served by IDLC, and that is because the IDLC loop is
15 hard-wired into the BellSouth switch.

16 In approving the SL-1 and SL-2 nonrecurring loop
17 rates, the Commission adopted a single rate regardless of the
18 type of the underlying facility, and assumed an overall
19 dispatch rate of 38 percent. So they essentially melded it.
20 What Supra is asking for in this docket is to slice the subject
21 more narrowly. And they want a nonrecurring loop rate for
22 dispatch, and a nonrecurring loop for nondispatch.

23 We believe that this is an issue that was essentially
24 already dealt with by the Commission in the UNE docket. We
25 believe that if this was important to Supra, they participated

1 n the generic UNE docket, when these rates were set they
2 withdrew before the hearing, and we don't believe they should
3 be allowed to come in and challenge that now.

4 We believe that if the nondispatch -- if the
5 Commission sets a rate for nondispatch and for dispatch, then
6 the dispatch rate for SL-1 loops will increase dramatically,
7 and this means that the dispatch or the nonrecurring price for
8 SL-1 loops will be so high that CLECs won't be able to afford
9 to compete for customers that BellSouth currently serves via
10 IDLC.

11 We believe that Supra should have litigated this in
12 the cost docket, and they shouldn't be allowed to do so now.
13 So we have believe that our motion to dismiss should be granted
14 for failure to state a cause of action. Thank you.

15 CHAIRMAN BAEZ: Questions, Commissioners.

16 COMMISSIONER DEASON: I have a question of Ms. White.

17 CHAIRMAN BAEZ: Commissioner Deason.

18 COMMISSIONER DEASON: What does the agreement
19 provide? I mean you referred back to the '99 docket, the cost
20 docket, and how it was determined, and it was a melded rate,
21 and that was the decision at that time. Of course it was some
22 five years ago. What does the agreement between the parties
23 provide?

24 MS. WHITE: The agreement between the parties
25 provides that there is a nonrecurring SL-1 and SL-2 loop rate.

1 COMMISSIONER DEASON: And it is your position that
2 the agreement is clear on that, and that there should be no
3 issue involved?

4 MS. WHITE: We believe -- well, our position is,
5 first of all, that the nonrecurring loop rate for SL-1 and SL-2
6 includes the costs of mitigating the loop from a BellSouth to a
7 CLEC. And, therefore, what Supra is asking for is already
8 contained in the agreement. So, in essence, yes, we believe
9 that that is there already.

10 CHAIRMAN BAEZ: Commissioners, other questions of Ms.
11 White?

12 Mr. Chaiken.

13 MR. CHAIKEN: Thank you. Obviously, Supra agrees
14 with staff's recommendation as to Issue 1. This morning for
15 the first time we are heard the theory of BellSouth's legal
16 argument behind its motion to dismiss. Their argument is a
17 failure to state a cause of action upon which relief can be
18 granted. That is not listed in their motion. They never set
19 forth that in their motion to dismiss. But if you look at what
20 the legal standard is for a motion to dismiss, it tests the
21 legal sufficiency of the complaint.

22 You must look to the four corners of the complaint in
23 testing the legal sufficiency of the complaint. BellSouth
24 hasn't even attempted to do that. BellSouth hasn't even
25 attempted to state that they met the standard for a motion to

1 dismiss, notwithstanding the legal argument. Factually,
2 BellSouth has presented absolutely no facts which would allow
3 them to get you to that relief. BellSouth cannot point to
4 anything in the cost docket or anything in the parties
5 interconnection agreement which states a rate for a UNE-P to
6 UNE-L conversion. If they could have, they would have.
7 BellSouth cannot present any factual evidence whatsoever which
8 shows that this Commission even considered that issue.

9 BellSouth cannot present any evidence which shows
10 that their own cost study experts even considered that issue
11 when they put together their SL-1 and SL-2 cost study. There
12 are simply no facts. There is simply no law upon which you can
13 grant the relief requested by BellSouth.

14 CHAIRMAN BAEZ: Questions of Mr. Chaiken?

15 COMMISSIONER DEASON: I'm going to ask the same
16 question --

17 CHAIRMAN BAEZ: Commissioner Deason.

18 COMMISSIONER DEASON: -- to Mr. Chaiken. What is
19 your understanding is contained in the agreement as it pertains
20 to the relief you are seeking?

21 MR. CHAIKEN: Our position, Commissioner, is that the
22 agreement is silent as to the issue as to whether or not there
23 is a rate for UNE-P-to-UNE-L conversions. There is nothing in
24 the agreement which speaks to it.

25 COMMISSIONER DEASON: Not in those precise terms,

1 correct?

2 MR. CHAIKEN: Those precise terms were nowhere in the
3 agreement, nowhere in the UNE cost docket which is referred to
4 in the agreement.

5 COMMISSIONER DEASON: What is happening now? I know
6 that Supra is no longer incurring these type of conversions, is
7 that correct?

8 MR. CHAIKEN: Supra seeks to continue to do so, but
9 Supra does not want to have to continue to pay the charge that
10 BellSouth believes it is entitled to in order to do so.

11 COMMISSIONER DEASON: What charge do you think
12 BellSouth is entitled to under the agreement, or is there no
13 charge that can be assessed because the agreement is silent?

14 MR. CHAIKEN: We believe the agreement is silent.
15 And the agreement says that in the case where BellSouth --
16 well, in the case where either party has to perform any of its
17 obligations under the agreement, there is a provision which
18 states that they bear their own costs. That was written into
19 the agreement and we believe that that provision applies.

20 In this case BellSouth didn't put -- and this is
21 BellSouth's template agreement we are talking about. BellSouth
22 drafted this agreement. They could have said specifically the
23 rate for UNE-P-to-UNE-L conversion is blank. They failed to do
24 so. As the agreement is silent but for that provision, we
25 believe that BellSouth, under this agreement, is not entitled

1 to charge us anything to perform these conversions.

2 Supra is seeking to use the same loop it is using
3 when it orders UNE-P. We don't want a different loop. We want
4 the same one we have already ordered. We just want to stop
5 ordering all the other services so as to become a
6 facilities-based provider.

7 COMMISSIONER DEASON: Thank you.

8 CHAIRMAN BAEZ: Let me go this way. Commissioner
9 Bradley, go ahead.

10 COMMISSIONER BRADLEY: I have a question for Supra.
11 Is it your position that there is no rate for UNE-P/UNE-L in
12 the contract?

13 MR. CHAIKEN: There is no rate to perform a
14 UNE-P-to-UNE-L conversion in the contract, that is correct.
15 That is our position.

16 COMMISSIONER BRADLEY: Okay. Well, BellSouth seems
17 to take the position that there is a nonrecurring loop rate
18 that includes the cost of migration. And you disagree with
19 that, then?

20 MR. CHAIKEN: That is correct, we disagree with that.
21 We believe there is a rate for installing new SL-1 or SL-2
22 service where that service does not exist, but that, we do not
23 believe, covers a UNE-P-to-UNE-L conversion.

24 COMMISSIONER BRADLEY: A question of BellSouth. How
25 are you defining migration, the cost of migration?

1 MS. WHITE: Well, for a loop it would be moving a
2 loop from a BellSouth switch to either a CLEC who uses a loop,
3 or moving it to their switch. So it is essentially moving the
4 loop.

5 CHAIRMAN BAEZ: Commissioner Jaber, you had a
6 question?

7 COMMISSIONER JABER: Mr. Chairman, two questions.
8 The same two questions to each party. Ms. White, what is the
9 date of your interconnection agreement with Supra, is the first
10 question; and the second is at the time of execution, was Supra
11 converting UNE-P to UNE-L?

12 MS. WHITE: Unfortunately, I do not have the date of
13 the interconnection agreement with me. I believe that either
14 they started right before the agreement was signed to convert
15 or it was immediately after. I apologize I can't be any more
16 specific.

17 COMMISSIONER JABER: Mr. Chaiken.

18 MR. CHAIKEN: Commissioner, the date of the contract
19 is July 15th, 2002. And, no, Supra was not performing
20 UNE-P-to-UNE-L conversions prior to that date.

21 COMMISSIONER JABER: Do you remember when you
22 started?

23 MR. CHAIKEN: I believe it was sometime in 2003. I
24 believe it was the September or August time frame.

25 COMMISSIONER JABER: Ms. White, based on what you all

1 just responded, would you agree that that is a fact that
2 remains in dispute? You just said you believe they had started
3 right before or immediately after the execution of the
4 contract.

5 MS. WHITE: I would have to say yes, because I do not
6 have that.

7 CHAIRMAN BAEZ: Commissioner Davidson.

8 COMMISSIONER DAVIDSON: Thank you, Chairman. A
9 couple of questions for Mr. Chaiken and then, Ms. White, you
10 will have an opportunity to respond.

11 Mr. Chaiken, it is correct in the contract that there
12 is a rate for the provisioning of UNE-P, correct?

13 MR. CHAIKEN: There are several rates.

14 COMMISSIONER DAVIDSON: Several rates. And also for
15 the provisioning of UNE-L as a new service?

16 MR. CHAIKEN: Assuming that UNE-L service is not
17 already in existence, yes, I would agree with that.

18 COMMISSIONER DAVIDSON: What I'm trying to do is just
19 narrow -- make sure, in my mind, that I am clear as to the
20 scope of the issue.

21 COMMISSIONER BRADLEY: Excuse me, I would like for
22 him to repeat his answer. Assuming that UNE-L is what?

23 MR. CHAIKEN: Is not already -- there is not already
24 existing service. There is no dial tone to the end user.

25 COMMISSIONER BRADLEY: Okay.

1 COMMISSIONER DAVIDSON: So from Supra's vantage the
2 debate in this docket is simply the conversion from UNE-P,
3 existing UNE-P to UNE-L.

4 MR. CHAIKEN: That is correct.

5 COMMISSIONER DAVIDSON: If you can, using sort of
6 simplified numbers that do not reflect the actual numbers in
7 the contract, can you sort of walk through a basic numeric
8 example of what Supra believes should be the case and what
9 Supra contends is actually the case. And then I would like Ms.
10 White to respond. And briefly what I mean is assume there
11 is -- X is the rate for UNE-P, and just pick something, \$10,
12 20, 30, whatever, something simple. And why is the rate for
13 UNE-L -- what is it that you contend in terms of some
14 incremental cost should occur when you migrate from UNE-P to
15 UNE-L, and then what is it you believe BellSouth is proposing.

16 MR. CHAIKEN: Sure. UNE-P is made up of a number of
17 different elements, and let's say they all total up to be
18 approximately \$26 per month per line. UNE-L, as you know, the
19 Commission has deaveraged geographically the rates for an
20 individual loop. So on a monthly basis, depending upon what
21 horizon you are in, you pay -- you know, if you are in Zone 1,
22 9 bucks; on 2, 13 bucks; zone 3, 26 bucks per line. And those
23 are their monthly recurring charges.

24 Now, in order to establish UNE-P service -- there are
25 actually two different rates for establishing UNE-P service.

1 One presumes that the line is already receiving dial tone, one
2 presumes that the line is not receiving dial tone. If the line
3 is not receiving dial tone, you get hit for a \$49.57 charge,
4 and that incorporates, you know, BellSouth actually placing a
5 new UNE loop into service. That is the same charge BellSouth
6 is seeking to charge us in performing a UNE-P-to-UNE-L
7 conversion.

8 Let me step back again. Presuming that the UNE loop
9 is already in service when Supra orders the UNE-P, there is
10 only, approximately, a 10-cent charge, 10.2 cents is what it
11 costs in nonrecurring charges for a UNE-P conversion. That is
12 going from a BellSouth customer to a Supra customer, service
13 over UNE-P.

14 Now, what we are seeking to do is convert -- in this
15 case, we are seeking to convert an already existing Supra
16 customer that is using UNE-P as its service method to UNE-L
17 using Supra's own switch. Now, what does that entail? Well,
18 we have specifically broken it down into two different methods,
19 because we believe there are two different things that need to
20 be done, depending upon how the loop is serviced. And
21 BellSouth actually has agreed to these issues, along with
22 staff, when this docket was set up.

23 The first issue is if the line is served via copper
24 or UDLC. Now, in that case BellSouth has admitted that no
25 truck roll is required under any circumstances in order to

1 perform a conversion of that type. So that means when Supra's
2 switch, which is sitting in BellSouth's central office down the
3 wall from BellSouth's switch, BellSouth has to run a
4 cross-connect to perform that UNE-P-to-UNE-L conversion. We
5 believe the cost for doing that should not exceed \$5 and some
6 amount of cents. All the work that needs to be done is right
7 there in the central office. No one should ever leave the
8 building. That is the first issue.

9 The second one is --

10 COMMISSIONER DAVIDSON: Pardon me on that, if you can
11 repeat the nature of the conversion.

12 MR. CHAIKEN: That is copper or UDLC. The second
13 type we have is IDLC. Now, BellSouth -- we have had some
14 discovery in this case already, and in some cases BellSouth
15 says that you don't even need a truck roll to do an IDLC
16 conversion. In some cases you do. But BellSouth in the TRO
17 docket before this Commission said there is eight different
18 methods that they deploy to do a UNE-P-to-UNE-L conversion in
19 which IDLC is involved. We have never seen a cost study for
20 it, we have no idea how they came about, how they costed the
21 different processes. We have never even seen a flow chart for
22 the processes of these eight different methods.

23 That being said, we are still putting together our
24 own cost study to determine exactly how much an IDLC type
25 conversion should cost based on those eight different methods.

1 Because if you don't need a truck roll, the costs obviously are
2 significantly lower.

3 COMMISSIONER DAVIDSON: That was very helpful. And,
4 Ms. White, you will certainly have an opportunity to respond.
5 I want to follow up with a couple of questions. So is it
6 Supra's position that if Supra was converting, say, a UNE-P at
7 the \$26 rate to UNE-L at, say, the \$9 nonrecurring, that to do
8 that in month one at UNE-P it would be paying \$26, month two it
9 may be paying \$9, but it would also have to have paid \$49 for
10 the conversion. And Supra is contending it should actually be
11 paying something substantially less based on whatever model is
12 in Supra's mind accurate?

13 MR. CHAIKEN: That's correct.

14 COMMISSIONER DAVIDSON: All right. BellSouth, you
15 can respond as you see fit.

16 MS. WHITE: I will try to be brief. I mean,
17 essentially what we are talking about here are nonrecurring
18 rates. Not recurring rates, but nonrecurring rates. And when
19 the Commission in the UNE docket set the nonrecurring rate for
20 an SL-1 and an SL-2 loop, they essentially accepted BellSouth's
21 cost methodology that melded the dispatch and the nondispatch
22 occasions. And they even set a percentage in that, and I don't
23 even pretend to get into how this went through the model, but
24 essentially they said, okay, we are going to say that 38
25 percent of the time a dispatch is required, and the remainder

1 of the time a dispatch is not required. So they averaged out,
2 they melded out those rates and came up with a nonrecurring
3 SL-1 rate. In order to do this conversion you have that
4 nonrecurring SL-1 or SL-2 rate, then you have an electronic OSS
5 charge, and you have a cross-connect. And those are the three
6 elements that make up the conversion rate.

7 We believe this is something the Commission already
8 looked at and already did, and we don't see the need to look at
9 it again, or look at it more narrowly. Thank you.

10 CHAIRMAN BAEZ: Commissioners, any other questions?
11 Or we can --

12 COMMISSIONER JABER: Mr. Chairman, I understand and
13 recall what Ms. White is saying. I think, though, that there
14 is a sincere difference in opinion as to whether we made an
15 affirmative finding that all of those things together
16 constituted the conversion, hence a final rate. That is not to
17 say at the end of the day it is not a similar answer, but I
18 think that it was a different proceeding and there is a genuine
19 dispute as to the facts, and because of that I can move staff
20 on Issue 1.

21 COMMISSIONER DAVIDSON: Second.

22 CHAIRMAN BAEZ: There is a motion and a second,
23 Commissioners. All those in favor say aye.

24 (Unanimous affirmative vote.)

25 CHAIRMAN BAEZ: Issue 2.

1 Mr. Chaiken.

2 MR. CHAIKEN: Thank you.

3 Issue 2 pertains to Supra's motion for partial
4 summary final order on the first two issues in this case. Let
5 me read those two issues for you. Issue 1, under the parties
6 existing interconnection agreement, what nonrecurring rate, if
7 any, applies for a hot cut from UNE-P to UNE-L where the lines
8 being converted are served by copper or UDLC for, (a), SL-1
9 loops, and, (b), SL-2 loops.

10 Issue 2, under the parties existing interconnection
11 agreement, what nonrecurring rate, if any, applies for a hot
12 cut from UNE-P to UNE-L where the lines being converted are not
13 served by copper or UDLC for, (a), SL-1 loops, and, (b), SL-2
14 loops.

15 These two issues were agreed to, as I stated earlier,
16 by the parties, by BellSouth, by Staff. Nowhere in the parties
17 interconnection agreement are you going to see the term
18 UNE-P-to-UNE-L conversion. Nowhere are you going to see --
19 even assuming that BellSouth's argument is correct, are you
20 going to find a rate that breaks it down under those two
21 scenarios, either copper UDLC or noncopper UDLC.

22 Nowhere in any UNE cost docket in any testimony
23 submitted, in any document filed, or in any FPSC order are you
24 going to see a rate broken down in that fashion. BellSouth has
25 filed documents before the United States Bankruptcy Court,

1 Southern District, where they have admitted that there is no
2 rate. We have attached that pleading to our motion. That
3 bankruptcy court also found in its order that there was no rate
4 in the parties contract for what Supra is asking in this
5 docket.

6 Significantly, in this docket, in the direct
7 testimony of BellSouth's Daonne Caldwell, and I will read from
8 her testimony at Page 7. One cannot simply dissect the cost
9 study in order to reverse engineer the provisioning process as
10 Supra has attempted to do. Thus, it is impossible to merely
11 partition the existing study into dispatch and nondispatch
12 activities and eliminate work times since many of the steps are
13 required, regardless of the loops facilities, and certain
14 activities are interdependent.

15 In this case in Issue 2 staff has recommended that
16 you deny Supra's motion for partial summary judgment, and staff
17 argues as follows: That although the agreement does not
18 explicitly list a rate for a UNE-P-to-UNE-L hot cut, the
19 agreement may contain rates associated with the necessary steps
20 to effectuate such a hot cut. Well, staff's recommendation and
21 Ms. Caldwell's testimony directly contradict each other. Ms.
22 Caldwell says it is impossible to do what staff proposes, which
23 is to take pieces of their cost study and put them together and
24 create a new rate.

25 But even presuming that you could do that, as a

1 matter of law the contract as it sits today does not reference
2 such a rate. You can't find it anywhere. There simply is no
3 material issue of fact as it relates to these two issues.
4 Sure, the parties can argue contractual interpretation, but
5 that is not an issue of material fact. What you have before
6 you is a contract, and that contract is silent as to those two
7 issues, as to whether or not there is a rate for a
8 UNE-P-to-UNE-L conversion when that line is served via copper
9 or UDLC or via IDLC. And as such Supra is entitled to summary
10 judgment as a matter of law. Thank you.

11 CHAIRMAN BAEZ: Questions?

12 Commissioner Bradley.

13 COMMISSIONER BRADLEY: Well, I think Supra just
14 answered my question, but I want to ask the question of
15 BellSouth. Does the contract provide a cost or not?

16 MS. WHITE: Well, it provides -- we argue that it
17 does provide a rate. The rate may not be specifically called
18 what Supra wants it to be called, but the cost associated with
19 the steps that have to be taken are included in the rates that
20 are included in the contract.

21 That is our position. That is the position we have
22 taken in testimony, we have taken it in depositions, we have
23 taken it in discovery. Therefore, there is an issue of
24 material fact. I mean, essentially for all the reasons that
25 you denied BellSouth's motion to dismiss, you have to deny this

1 motion for summary judgment.

2 The staff went through the standard for summary
3 judgment very well in the recommendation. It is a very high
4 standard. And the bottom line is that we have made our
5 position clear, it is diametrically opposed to Supra's,
6 therefore there are issues of material fact that have to be
7 dealt with. And therein is my argument.

8 COMMISSIONER BRADLEY: Staff.

9 MR. SUSAC: Yes, Commissioners. At this point in
10 time I think it is very important to point out the issues as
11 counsel for Supra, Mr. Chaiken, read. The only thing I would
12 like to point out, it is not whether this agreement contains a
13 rate, it is what nonrecurring rate applies for a hot cut.
14 BellSouth's argument is there are three things that may apply
15 to a hot cut, not is the rate for UNE-P-to-UNE-L conversion
16 \$59. That is not the issue before you. The issue before you
17 is what rates under the existing contract apply to a hot cut.
18 That is a material issue of fact.

19 CHAIRMAN BAEZ: Commissioners, other questions?

20 I'm sorry, Commissioner Bradley, were you through?

21 Okay.

22 Commissioner Davidson.

23 COMMISSIONER DAVIDSON: Move staff on Issue 2.

24 COMMISSIONER JABER: Second.

25 COMMISSIONER BRADLEY: Second.

1 CHAIRMAN BAEZ: A motion and a second. All those in
2 favor say aye.

3 (Unanimous affirmative vote.)

4 CHAIRMAN BAEZ: And we need Issue 3.

5 COMMISSIONER DEASON: Move staff.

6 COMMISSIONER JABER: Second.

7 CHAIRMAN BAEZ: A motion and a second. All of those
8 in favor say aye.

9 (Unanimous affirmative vote.)

10 CHAIRMAN BAEZ: Thank you all.

11 * * * * *

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, 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' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 11th day of October, 2004.



JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732