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November 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 No. 040301-TP - SUPRA'S PREHEARING STATEMENT**

Dear Mrs. Bayo:

Enclosed are the original and fifteen (15) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Prehearing Statement to be filed in the captioned docket.

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 Vice President, Legal Affairs

DOCUMENT NUMBER-DATE

12070 NOV-9 8

FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE**

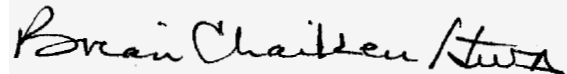
**Docket No. 040301-TP**

**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 9<sup>th</sup> day of November 2004 to the following:

***Jason Rojas/Jeremy Susac***  
*Office of the General Counsel*  
*Florida Public Service Commission*  
*2540 Shumard Oak Boulevard*  
*Tallahassee, FL 32399-0850*

***Nancy White***  
*c/o Ms. Nancy H. Sims*  
*BellSouth Telecommunications, Inc.*  
*150 South Monroe Street, Suite 400*  
*Tallahassee, FL 32301-1556*

SUPRA TELECOMMUNICATIONS  
AND INFORMATION SYSTEMS, INC.  
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By: Brian Chaiken

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition of Supra	)	
Telecommunications and Information	)	Docket No. 040301-TP
Systems, Inc.'s for arbitration	)	
with BellSouth Telecommunications, Inc.	)	Filed: November 9, 2004

**SUPRA TELECOMMUNICATIONS AND INFORMATION  
SYSTEMS, INC.'S PREHEARING STATEMENT**

Supra Telecommunications and Information Systems, Inc. ("Supra") hereby files this Pre-hearing Statement, pursuant to the Revised Order Establishing Procedure (Order No. PSC-04-0959-PCO-TP) issued October 1, 2004.

**A. Known Witnesses:** Supra has pre-filed the testimony of the following witness:

<u>Witness</u>	<u>Issues</u>
1. David Nilson (Direct and Rebuttal) * Supra employee	1-4

Supra reserves the right to call additional witnesses, including, but not limited to witnesses to respond to Commission inquiries not addressed in direct or rebuttal testimony and to address issues not presently designated that may be designated by the Pre-Hearing Officer at the Pre-Hearing Conference to be held on November 19, 2004 and witnesses necessary to rebut the testimony of BellSouth's witnesses. Supra reserves the right to supplement this witness list if necessary.

**B. Known Exhibits:**

**Depositions:**

The deposition transcripts of BellSouth employees Daonne Caldwell, Ken Ainsworth, and James Ennis, as well as any other BellSouth employee that may yet be deposed, as taken in this proceeding.

**Official Notice of PSC Orders:**

Order PSC-98-0604-FOF-TP (Florida Public Service Commission) Collocation arbitration Order in Florida Dockets 960757-TP, 960833-TP, 960846-TP dated April 29, 1998.

Order PSC-98-0810-FOF-TP (Florida Public Service Commission) First Final Arbitration Order in Florida Docket 971140-TP dated June 12, 1998.

Order PSC-99-0060-FOF-TP (Florida Public Service Commission) Final Order in Florida Docket 980800-TP dated January 6, 1999

Order PSC-01-2017-FOF-TP (Florida Public Service Commission) Final Order in Florida Docket 001797-TP dated October 9, 2001

Order PSC-01-1181-FOF-TP (Florida Public Service Commission) Final Order in Florida Generic UNE Docket 990649-TP dated May 25, 2001

Order PSC-01-2051-FOF-TP (Florida Public Service Commission) Order on Reconsideration in Florida Generic UNE Docket 990649-TP dated October 18, 2001.

Order PSC-02-1311-FOF-TP (Florida Public Service Commission) Order Florida Generic UNE Docket 990649-TP dated September 27, 2002

Order PSC-02-0413-FOF-TP (Florida Public Service Commission) Order on Arbitration of Interconnection Agreement UNE Docket 001305-TP dated 3/26/2002.

**Discovery Responses:**

All of BellSouth's discovery responses in this docket (to both Staff's and Supra's propounded discovery).

All of Supra's discovery responses in this docket (to both Staff's and BellSouth's propounded discovery).

**Agreements:**

Florida interconnection agreement between Supra and BellSouth. (Filed July 15, 2002 in Docket No. 001305-TP)

**Rebuttal Exhibits:**

Supra reserves the right to file exhibits with any additional testimony that may be filed under the circumstances identified above. Supra also reserves the right to introduce exhibits for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence and Rules of this Commission.

**C. Basic Position:**

Supra seeks the ability to cost-effectively make use of its own facilities-based network to provide service to its end-users in the State of Florida. In order to do so, Supra requires a reasonable means in which to transition or cutover its UNE-P customers to its own network. Supra does not seek anything other than what is already set forth in its contract. To the extent this Commission believes that BellSouth is entitled to charge Supra for the functions at issue, Supra seeks to pay only for the work elements that BellSouth actually performs.

This Commission is vested with the power to both resolve contractual disputes arising under interconnection agreements and to set applicable rates for the provision of services provided under FL Statute 364, the Telecommunications Act of 1996 and its progeny. In this case, Supra asks the Commission to first determine whether or not the parties' Florida interconnection agreement dated July 15, 2002 and as approved by this Commission (the "Current Agreement") provides via its plain and unambiguous language that BellSouth may recover the costs of converting its bundled UNE-P service to its stand-alone UNE-L service. Supra submits that, under the unambiguous terms of the Current Agreement, which was drafted by BellSouth, BellSouth may not recover such.

Should the Commission, however, find that BellSouth is entitled to recover such costs, Supra submits that neither the parties by agreement, nor the Commission in any docket or order, has ever addressed the appropriate rate which BellSouth may charge Supra for performing such conversions.

Even if the Commission finds that it had previously addressed the appropriate rate for a UNE-P to UNE-L conversion, Supra specifically asks the Commission to set a rate for conversions of lines served via copper or UDLC and a separate rate for those lines served via IDLC. Supra has requested UNE-P to UNE-L conversions in two variants, both of which BellSouth agrees are not addressed by the parties' interconnection agreement, and failing to obtain them from negotiation, petitioned the FPSC for arbitration as provided for by the agreement<sup>1</sup>. Furthermore, in this instance, the FCC anticipated that just such a situation would arise for all new entrants, and placed the burden on the ILEC, not the CLEC, to effectuate such requested elements, whether requested before, or **after** contract arbitration. See *First Report and Order On Local Competition*, FCC 96-325 at ¶297. As is the case with geographically de-averaged UNE loop rates, Supra seeks to serve those customers in which it has an ability to make a profit.

By the Commission's own order<sup>2</sup>, any non-recurring costs should be forward-looking reflecting efficient practices and systems. The theory behind developing nonrecurring cost is "fairly simple."<sup>3</sup>

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<sup>1</sup> Arbitration order PSC-02-0413-FOF-TP identified that both parties had argued that rates were missing from the final agreement. The two remedies for effecting change were recently invalidated by the FCC. In FCC 04-164 "Pick and Choose" order. The FCC prohibited the MFN adoption of sections of existing Interconnection agreement. In FCC xx-xxx the FCC prohibited the MFN of entire agreements containing pre-TRO UNE-P provisions. No post TRO agreements are available, as none have yet been negotiated, and made public. Therefore there is no MFN solution, as previously anticipated by this Commission, as viable solution to this problem.

<sup>2</sup> Order No. PSC-01-1181-FOF-TP in Docket 990649.

<sup>3</sup> Id, at pg. 292.



**Issue 1: Under the parties' existing interconnection agreement, what nonrecurring rate, if any, applies for a hot cut from UNE-P to UNE-L, where the lines being converted are served by copper or UDLC, for (a) SL1 loops and (b) SL2 loops?**

**Supra's Position.** There is no such applicable nonrecurring rate in the Current Agreement.

As Supra's position is quite simple and straightforward— there is no such rate in the contract – all that is required of BellSouth to contradict this position is a citation to the applicable rate in the contract. However, it is undisputed that BellSouth has failed to do so. Via the direct testimonies of BellSouth's Ms. Caldwell and Mr. Ainsworth, BellSouth fails to identify any contractual citation to a rate for UNE-P to UNE-L conversions, much less a rate for such a conversion on a copper or UDLC line. Furthermore, not one BellSouth witness cites to a Commission ordered rate for UNE-P to UNE-L conversions, much less a rate for such a conversion on a copper or UDLC line. Instead, BellSouth argues that the non-recurring rate for the installation of a new SL1 or SL2 loop (A.1.1 and A.1.2 elements) applies to this situation, but presents absolutely no supporting evidence to substantiate this naked claim.

While BellSouth argues that the A.1.1 and A.1.2 non-recurring cost study ("FL-2w.xls") is appropriate to be used as a type of surrogate non-recurring rate, BellSouth admits that the Current Agreement neither contains nor references a rate for UNE-P to UNE-L conversions.<sup>4</sup> In its pleading before the United States Bankruptcy Court, Southern District of Florida, BellSouth stated:

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. BellSouth **believes** that the process and rates

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<sup>4</sup> 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.

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 process if it has adequate assurance that the applicable rates will be paid. (Emphasis added.)

This statement by BellSouth is erroneous, in that the Current Agreement **does** explicitly reference a **process** for hot cuts;<sup>5</sup> however does not define the corresponding **rate** to be charged. Interestingly, it is in this pleading<sup>6</sup> that BellSouth first makes the claim for a \$59.31 non-recurring charge for A.1.1, increasing its previous demand for \$51.09.<sup>7</sup> This sudden reversal in BellSouth's stated position for its non-recurring charge is nothing more than a last-second effort by BellSouth to include the \$8.22 "Covad Crossconnect"; despite the fact that BellSouth's position is that "...the terms of the Agreement do not explicitly reference a conversion process from the Port/Loop combination Service (i.e. UNE-P)..."

On July 15, 2003, the United States Bankruptcy Court, Southern District of Florida, held<sup>8</sup>:

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 Rate proposed in its motion applies...**

(Supra Exhibit DAN-21, emphasis added).

Although BellSouth has tried to justify and apply existing rates for different conversions to this conversion, it has provided absolutely no evidence to support its conclusions. Despite

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<sup>5</sup> See Supra Exhibit DAN-4 PSC-02-0413-FOF-TP, Issue 'R', pages 108-114, TOC of order states page 111.

<sup>6</sup> 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.

<sup>7</sup> \$49.57 A.1.1 NRC plus \$1.52 LENS OSS ordering charge. See **Supra Exhibit # DAN 13.**

<sup>8</sup> 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.



BellSouth's arguments to the contrary, BellSouth's director in charge of all of BellSouth's cost studies, Ms. Caldwell, testified under oath that she neither prepared nor was ever requested to prepare a cost study for a retail to UNE-L conversion, much less a UNE-P to UNE-L conversion.<sup>9</sup> Ms. Caldwell further testified that the Commission has never even **referenced** a retail to UNE-L conversion or hot cut, much less ordered a working UNE-P to UNE-L conversion or hot cut rate, in any of its orders issued in the cost study docket, or any other docket.<sup>10</sup> *Supra* agrees with Ms. Caldwell in this instance.

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

**Supra's Position:** There is no nonrecurring rate that applies under the Current Agreement. *Supra*'s position relative to Issue 1, that, *inter alia*, the Current Agreement lacks an explicit rate, applies equally to Issue 2 as well.

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

**Supra's Position:** a. **The contract provides that the parties bear their own costs for fulfilling obligations under the agreement.** As the parties have contractually and expressly dealt with the situation in which a rate is not specifically set forth, no new rate need be created under the Current Agreement. Section 3.1 of the General Terms and Conditions ("GT&C") of

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<sup>9</sup> 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.

<sup>10</sup> *Id.*, at p. 22.

the Current Agreement establishes an obligation on BellSouth to cooperate in terminating services or elements and transitioning customers to Supra services. Furthermore, Section 22.1 of the GT&C requires 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.” In this case, the Current Agreement specifies an explicit process to be used for the hot cut from retail to UNE-P and UNE-L, but fails to specify a corresponding rate for such a hot-cut.

The “hot cut” process that BellSouth says applies here is described in Section 3.8 and 3.8.1 of Attachment 2 of the Current Agreement which clearly states 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.

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

Not only is this what the parties contractually agreed to, but it also makes sense because, 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. In this regard, BellSouth is incorrect when it claims that what Supra is seeking is the cessation of the use of one integrated “facility” (the UNE-P arrangement) and the “simultaneous replacement” of that “facility” “with a new facility.”<sup>11</sup> Supra simply wants the Bellsouth switch disconnected, and the Supra switch to be re-connected to the **existing** loop, without being compelled to buy a completely new loop<sup>12</sup>. Any given Supra UNE-P customer is served by a specific unbundled BellSouth loop that is connected to a BellSouth switch (the functionality of which is also being purchased as a UNE). Supra does not want to “replace” the UNE loops serving its customers with new “facilities.” To the contrary, Supra merely wants to disconnect the unbundled local switching element, while continuing to use exactly the same “facility” as it is currently using. After all, if the customer being served by UNE-P had no service or warm dialtone at the time Supra ordered UNE-P on their behalf, BellSouth **already** billed and collected the full A.1.1 (\$49.57) NRC<sup>13</sup> as part of a larger UNE-P NRC<sup>14</sup>, or another CLEC (or BellSouth) incurred that larger cost. In either case, Supra should not bear this cost, much less be asked to bear it **twice**, when the majority of UNE-P to UNE-L conversion scenarios avoid most of the work effort which makes up the \$49.57 NRC rate. BellSouth should not be allowed to a) recover cost it does not incur, or b) penalize CLECs for network design efficiencies which benefit only BellSouth.

According to BellSouth, the “costs and expenses” it will (supposedly) incur in meeting its obligations under GT & 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” that are governed by § 22.2. But Supra

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<sup>11</sup> See Supra Exhibit DAN-20 7/14/2003 BellSouth Letter to FCC at pg. 10.

<sup>12</sup> The net effect of BellSouth’s position.

<sup>13</sup> Supra Exhibit DAN -1 PSC-01-1181-FOF-TP Appendix A.

<sup>14</sup> See Interconnection agreement pg 161 of 593.

is not objecting to the rates for UNE loops or UNE switching. *Supra* is simply noting that BellSouth agreed to do something under the contract for which no rate is “specifically” provided.<sup>15</sup> BellSouth has already admitted to such. The fact that BellSouth may incur some expense in performing its contractually obligations does not and can not change the plain and unambiguous language the parties’ agreed to as contained in the Current Agreement.

In this case, the Current Agreement controls the parties’ relationship, and this Commission must follow the plain, unambiguous language of such. As the language at issue is neither unclear nor ambiguous, this Commission need not look to the intent of the parties in determining what the language means. Even if the Commission was so inclined, as BellSouth was the drafter of such language, any ambiguities should be read in favor of *Supra*.

**b. Alternatively, if the Commission believes a new rate should be set, the rate should not exceed \$3.84<sup>16</sup>, for the first SL1 hot cut, and \$17.48 for the first SL2 hot cut, and a disconnect rate of \$0.00.**

First, it bears noting what the Commission has previously found regarding the non-recurring cost studies which BellSouth claims applies to the present proceeding:

According to BellSouth witness Caldwell, BellSouth used personnel familiar with the provisioning process or subject matter experts (SMEs) to “provide the process flow, the work centers involved, any probabilities that may be required, and the time required by work center.” BellSouth’s SMEs for the LCSC, UNEC, S SI&M, CO I&M, and Outside Plant Engineering work groups were deposed for this proceeding and provided information on how the work activities and times were developed.

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<sup>15</sup> 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 an “active *Supra* retail end user’s” UNE-P arrangement to a UNE-L arrangement.

<sup>16</sup> In the Rebuttal testimony of D. Nilson, *supra* filed higher numbers of \$7.53 (not blended, Copper/UDLC SL1 first, \$8.69 SL2 first), but has subsequently learned through deposition of BellSouth witness Ennis, that this cost study still contains avoided work activities which were improperly included as a result of the deposition of Mr. Ainsworth.

In only one of these areas was a time and motion study apparently used, and that was a study from 1993. We note that local competition was signed into law in 1995 in Florida and in 1996 on a federal basis, so this study was not performed for the provision of unbundled network elements.

As described previously, in some instances the SMEs had actually performed the work themselves, in others the SMEs had not. Time estimates were typically provided by the SMEs to the cost group verbally but sometimes were provided via e-mail. Apparently SMEs had the option of reviewing their inputs after the inputs had been placed into the cost study. We are troubled by the lack of a paper trail with regards to SME inputs. It makes it extremely difficult for us and the ALECs to analyze BellSouth's cost studies.

Were the SMEs given instruction on how to proceed? It is difficult to tell, because different SMEs reported different approaches in determining the work activities and work times. In the LCSC the time reported is an average, but in the other areas, the time is simply reported.

Based on the depositions, we believe that BellSouth's SMEs did what they were told to do; that is, they developed or reviewed work activities and times based on their knowledge, experience, and observations. However, we believe that there is a higher standard that these cost studies must presumably meet. According to her testimony, BellSouth witness Caldwell apparently agrees, because she asserts that the same network designed for recurring costs should also be used for nonrecurring costs: "forward-looking, reflect BellSouth's guidelines and practices, should consider potential process improvements, and should be attainable."

Were the SMEs told that this was to be a forward-looking cost study? If they were, it is not readily apparent from the depositions; the SMEs typically referred to the work as it is done today. We acknowledge that the definition of "forward-looking" is not easily discernable. Is manual work required? Why? How much? Under what circumstances? Will some type of manual work always be necessary? Are certain activities always required and will they always be required? Admittedly, there are no simple answers to these questions, and we believe that any answers that currently exist may well change in the future.

Should BellSouth have performed time and motion studies for nonrecurring activities? We believe the answer is "perhaps," because time and motion studies imply that the activities to be studied are already known and agreed upon and that the parties are comfortable with BellSouth performing the time and motion studies.

Was BellSouth's methodology for determining required work activities and times forward-looking? BellSouth apparently used the work activities and

times currently in place based on the information available to the current SME. **Neither BellSouth witnesses nor BellSouth SMEs testified to any directive given to the SMEs of how a forward-looking study should be done.**

An example of problems in BellSouth's nonrecurring cost study methodology is how a change in SME can alter a cost study. On August 16, 2000, approximately one month prior to the September 19, 2000 hearing, BellSouth filed its revised cost study. **One of the changes to the SL1 loop nonrecurring cost study was an increase in the field dispatch rate from 20 percent to 38 percent - an almost 100 percent increase. BellSouth did not file any supporting documentation for this increase; however, BellSouth did provide documentation as a late-filed deposition exhibit just prior to the hearing. The 20 percent rate was asserted to have been an estimate, but the 38 percent dispatch rate was based on a regional BellSouth report on service orders and dispatches. The reason this report came to light was that a new SME knew of the report and used it. Leaving aside whether the report is sufficient documentation for the dispatch rate, we are concerned about the adequacy of other work activities, times, and probabilities. If a simple change in SME can produce such a dramatic change, then additional questions arise as to the overall validity of the study.**

These difficulties in determining the appropriate way to decide nonrecurring activities and times are not confined to Florida alone. In considering nonrecurring studies and ILEC employee estimates of times involved, the Massachusetts Department of Telecommunications and Energy (MDTE) stated its concerns about how Bell Atlantic (n/k/a Verizon) had determined nonrecurring charges in an arbitration with AT&T, WorldCom, Sprint, and other ALECs, citing as a "flaw" the fact that:

. . . employees were not always informed of and instructed to assume forward-looking technologies in making their assessments. These flaws introduce an element of bias into the estimation process and impair its reliability. . . . There is also a strong likelihood of bias when employees are instructed to provide estimates that they are told will be used to derive charges for their employer's competitors.

In this particular case the MDTE was unhappy with both Bell Atlantic's and the competitors' nonrecurring cost models. However, Bell Atlantic provided "minimum," "maximum," and "most likely" time frames. The MDTE concluded:

We could choose to send Bell Atlantic back to the drawing board to conduct new studies, but we are reluctant to do so because we are not convinced that such studies would be a productive use of company time or the regulatory process or that they could be completed in a period frame appropriate for these proceedings. Accordingly, we are left with no choice but to modify the numbers presented by Bell Atlantic to offset, to the



extent possible, the biases in its approach. We choose to do so by adopting a set of numbers produced by Bell Atlantic that is least likely to be biased, the 'minimum' figures produced by its employees.

We share the MDTE's concerns that the reliability of cost studies can be impaired if employees are not instructed to assume a forward-looking perspective. We also believe that it is completely natural for some bias to be introduced into a study where employees provide work times for activities that they know will be performed for a competitor. **Similarly, we believe that BellSouth's nonrecurring cost study methodology may have flaws, and that any such flaws are likely to create an upward bias in an resulting numbers.**

Summarizing the above analysis, we believe that BellSouth's nonrecurring cost studies have not provided complete documentation that permits this Commission and the ALECs to perform an exhaustive analysis. We also believe that BellSouth's nonrecurring cost study methodology may have flaws, and that any such flaws are likely to create an upward bias in an resulting numbers. **Additionally, the ALEC parties dispute which activities are even required.**

See PSC Order No. PSC-01-1181-FOF-TP, May 25, 2001, pgs. 333-336 (Emphasis added.)

In light of these conclusions by the FPSC, BellSouth's purported cost studies cannot be relied upon, even if they addressed the services at issue in this case (which Supra submits they do not). Furthermore, BellSouth has submitted absolutely no evidence supporting a finding that work times and probabilities listed in its October 2001 cost study took into consideration the processes involved for a hot cut involving lines served by copper or UDLC. Neither Ms. Caldwell nor Mr. Ainsworth has any personal knowledge of the work times or probability factors assigned. Mr. Ainsworth testified that of the 10 department / paygrades comprising some 34 "steps" identified by the cost study, for which costs are being recovered in the FL-2w.XLS cost study, **only 3 department paygrades, comprising 5 "steps" are actually performed by BellSouth in a UNE-P to UNE-L hotcut.** Additionally, BellSouth's subject matter expert for at least one BellSouth work group listed in the cost study, Mr. James Ennis (CWINS), testified that **none of the work elements**, attributing 104.4 minutes worth of work time per individual

conversion, listed in the CWINS section is **not even performed** when a non-coordinated<sup>17</sup> hot cut is ordered. Yet, unbelievably, BellSouth continues to maintain that Supra be required to pay for such when it orders a non-coordinated hot cut!

Simply put, there is no evidence to substantiate that (a) BellSouth's cost study addresses a UNE-P to UNE-L conversion for lines served via copper or UDLC, (b) the Commission considered BellSouth's cost study as a cost study for a UNE-P to UNE-L conversion for lines served via copper or UDLC, or (c) that BellSouth's cost study accurately portrays the appropriate work elements, times and probabilities for a UNE-P to UNE-L conversion for lines served via copper or UDLC. In fact, BellSouth's Mr. Ainsworth even admitted that the majority of the costs contained in BellSouth's cost study did not apply to UNE-P to UNE-L conversions for lines served via copper or UDLC. As such, Supra provides the following methodology be used in this case:

As such, Supra believes the evidence in this case will show that for copper/UDLC UNE-P to UNE-L hot cuts, the rate should not exceed \$3.84 for the first SL1 hot cut, and \$17.48 for the first SL2 hot cut, and a disconnect rate of \$0.00. Based on the testimonies, transcripts and other discovery taken in this case, at most, using only facts and figures obtained from BellSouth, the rates should not exceed \$8.36 for the first SL1 hot cut, and \$48.69 for the first SL2 hot cut, and a disconnect rate of \$0.00. These figures are subject to change, based on the fact that Supra is still waiting to take the depositions of BellSouth's subject matter experts who provided the SSIM and CO Forces work element cost inputs.

These rates are the result of (1) only including the appropriate work elements associated with actually performing the necessary functions to perform such hot cuts; (2) assigning a

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<sup>17</sup> SL1 loops may be ordered with, or without coordination. SL2, for some reason, is only available with coordination.

reasonable and appropriate time to complete such work elements; and (3) assigning a reasonable and appropriate probability factor to such work elements.

Finally, at the deposition of BellSouth's witness with most knowledge regarding BellSouth's processes for effectuating hot cuts taken on November 3, 2004, Supra learned, for the first time, that the parties have a genuine issue of material fact as it relates to the application of the "Covad Cross-connect" charge, regarding an incorrect BellSouth assumption as to which, of several, collocation arrangements Supra elected to construct. Specifically, the issue centers around whether Supra has purchased and maintained cabling from its switch(s) or other voice equipment to blocks on BellSouth's MDF located within BellSouth central offices in the state of Florida. Supra will show that it has purchased and maintained such, in no less than 18 BellSouth central offices.<sup>18</sup> As a result, Supra will show that the additional \$8.22 which BellSouth seeks to charge Supra for performing a "Covad Cross-connect" is inapplicable, based on the specific implementation of Supra's collocation arrangements, as BellSouth does not perform any additional work on top of what is performed to justify the non-recurring costs for performing a UNE-P to UNE-L hot cut.

**Issue 4: Should a new nonrecurring rate be created that applies for a hot-cut from UNE-P to UNE-L, where the lines being converted are not served by copper or UDLC, for (a) SL1 loops and (b) SL2 loops? If so, what should such nonrecurring rates be?**

**Supra's Position:**

**a. The contract provides that the parties bear their own costs for fulfilling obligations under the agreement. Supra's position relative to Issue 3, that, *inter alia*, the**

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<sup>18</sup> On November 8, 2004, Supra sought to serve additional requests for admission upon BellSouth which go to the heart of this issue.

Current Agreement lacks an explicit rate and therefore BellSouth is obligated to bear its own costs for disconnecting all other UNEs except the loop, applies equally to Issue 4 as well.

**b. Alternatively, if the Commission believes a new rate should be set, the rate should not exceed \$59.63 for the first SL1 hot cut, and \$62.81 for the first SL2 hot cut, and a disconnect rate of \$0.00.**

Supra believes the evidence in this case will show that for IDLC UNE-P to UNE-L hot cuts, the rate should not exceed \$59.63 for the first SL1 hot cut, and \$62.81 for the first SL2 hot cut, and a disconnect rate of \$0.00. These figures are subject to change, based on the fact that Supra is still waiting to take the depositions of BellSouth's subject matter experts who provided the SSIM and CO Forces work element cost inputs.

These rates are the result of (1) only including the appropriate work elements associated with actually performing the necessary functions to perform such hot cuts; (2) assigning a reasonable and appropriate time to complete such work elements; and (3) assigning a reasonable and appropriate probability factor to such work elements.

Other than the inflated work times and probability factors in BellSouth's proposed cost study, there are three major issues with BellSouth's proposed eight alternatives for performing IDLC conversions. At the heart of all of these issues is the fact that BellSouth's implementation of IDLC is not forward-looking, as it is designed to solely lower BellSouth's costs at the expense of wholesale costs. Under TELRIC rules, BellSouth is not entitled to recover the costs of such inefficiencies.

First, BellSouth requires, for what otherwise would be the most efficient and least problematic two methods (alternatives 2 and 4), that it must run the signal through a channel bank, as opposed to providing a digital handoff directly to the CLEC in exactly the same manner

it provides it to the channel bank. This increases costs, at several departments' worth of labor, decreases reliability and degrades high speed modem speeds, as compared to what BellSouth provides to itself. BellSouth has stated no reason for deviating from the Telcordia recommendation as to how this technically feasible unbundling method could be implemented. Should BellSouth comply with Supra's recommendation and Telcordia's specification, the costs for implementing alternatives 2 and 4 would eliminate all connect and test, as well as travel and dispatch related activities.

Second, BellSouth claims that it will only provide alternatives 4, 5 and 6 at SL2 rates, while what it is providing may actually be an SL1 loop without order coordination. BellSouth makes this business decision based simply on the fact that such alternatives must be reviewed by the same department (that must review SL2 orders.) Supra receives no benefits of order coordination or test points, yet pays a substantially higher price for no apparent reason.

Third, BellSouth refuses to implement FPSC ordered loop concentration orders for digital loop carrier equipment unless that equipment is located in a BellSouth central office. Stated another way, BellSouth will not allow Supra to lease an entire digital loop carrier system merely because of where it is located (i.e. if it is located remotely, BellSouth will not allow Supra to lease it). Supra is unaware of any record evidence in Docket 990649-TP which indicates this to be the intention of this Commission and believes this to be solely a business decision of BellSouth designed to increase the costs to competitors.<sup>19</sup> Should Supra be able to lease an entire digital loop carrier system, this would provide a ninth alternative for conversion of IDLC loops that would be more cost efficient and further prevent degrading of loop quality to Supra en-users.

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<sup>19</sup> See FPSC rate element A.3.x for the elements in this category.

c. Alternatively, if the Commission believes a blended rate should be set for all UNE-P to UNE-L conversions, the rate should not exceed \$5.27<sup>20, 21</sup> for the first SL1 hot cut, and a disconnect rate of \$0.00.

Notwithstanding the fact that Supra believes it is entitled to separate rates for UNE-P to UNE-L conversions when different work elements are involved in effectuating such, should the Commission choose to order a blended rate, as BellSouth argues for, the blended rate should be set at a rate no greater than \$5.27. How do we get to this rate? Simply, using the “geographic” weighting derived from the BellSouth discovery responses relative to the actual network equipment deployed<sup>22</sup>, the resulting Supra cost is multiplied by the percentage of that equipment deployed statewide to achieve a weighted average rate show in Table 1.

	% deploy	% INA	Group	Rate	Statewide weighted
Copper	53.46%		1	\$3.87	\$2.07
IDLC - Not NGDLC Capable	19.70%	75%			
IDLC - Not NGDLC Capable - INA capable		14.8%	3	\$0.10	\$0.02
IDLC - Not NGDLC Capable, Not INA capable		4.9%	2	\$59.63	\$2.94
IDLC - NGDLC Capable	18.23%		4	\$0.10	\$0.02
UDLC - Not NGDLC	5.85%		1	\$3.87	\$0.23
UDLC - NGDLC Capable	2.75%		4	\$0.10	\$0.00
IDLC Switch Side-door	0.00%		5	\$0.10	\$0.00
	100.00%				\$5.27

Table 1 – Supra calculation of the statewide blended rate for SL1 first install.

<sup>20</sup> In the Rebuttal testimony of D. Nilson, supra filed higher numbers of \$7.45 (blended), but has subsequently learned through deposition of BellSouth witness Ennis, that this cost study still contains avoided work activities which were improperly included based upon the deposition of Mr. Ainsworth.

<sup>21</sup> This is based upon the following revised table:

<sup>22</sup> i.e. Supra Exhibit DAN-44 with the recently updated cost information.



Based on the information provided by BellSouth in discovery in this case and based on Ms. Caldwell's revised cost study set forth in her rebuttal testimony, the blended rate should not exceed \$13.53. The following chart shows how this was calculated:

	% deploy	% INA	Group	Rate	Statewide weighted
Copper	53.46%		1	\$4.46	\$2.39
IDLC - Not NGDLC Capable	19.70%	75%			
IDLC - Not NGDLC Capable - INA capable		14.8%	3	\$50.49	\$7.46
IDLC - Not NGDLC Capable, Not INA capable		4.9%	2	\$50.49	\$2.49
IDLC - NGDLC Capable	18.23%		4	\$4.46	\$0.81
UDLC - Not NGDLC	5.85%		1	\$4.46	\$0.26
UDLC - NGDLC Capable	2.75%		4	\$4.46	\$0.12
IDLC Switch Side-door	0.00%		5	\$50.49	\$0.00
	100.00%				\$13.53

Table 2 -- Supra calculation of most costly statewide blended rate based upon Rebuttal of Caldwell

While Supra does not agree with the BellSouth process limitations regarding the use of a channel bank to raise the cost IDLC/NGDLC conversions, or the specifics of Ms. Caldwell's cost studies, the weighting of BellSouths rebuttal figures represents a ceiling figure which is substantially more realistic than the current rate charged Supra of \$59.31!

**D. Questions of Fact.**

1. Does the parties' current agreement contain a rate for UNE-P to UNE-L hot cuts where the lines being converted are served by copper or UDLC, for (a) SL1 loops and (b) SL2 loops?

**Supra's position:** No.

2. Does the parties' current agreement contain a rate for UNE-P to UNE-L hot cuts where the lines being converted are not served by copper or UDLC, for (a) SL1 loops and (b) SL2 loops?

**Supra's position:** No.

3. Did the FPSC address the rate for a UNE-P to UNE-L hot cut for lines served via copper, UDCL or IDLC in its generic UNE cost docket (No. 990649-TP)?

**Supra's position:** No.

4. Are different work elements required for different UNE-P to UNE-L conversions?

**Supra's position:** Yes.

5. Has Supra purchased and maintained cabling from its switch(s) or other voice equipment to blocks on BellSouth's MDF located within BellSouth central offices in the state of Florida?

**Supra's position:** Yes.

**E. Questions of Law.**

1. Is the language of the parties' current agreement clear and unambiguous?

**Supra's position:** Yes.

2. Does the clear and unambiguous language of the parties' current agreement provide that the parties are to bear their own costs in fulfilling obligations under the agreement unless specifically stated?

**Supra's position:** Yes.

**F. Policy Questions.**

Should the Commission find that, under the parties' current agreement, BellSouth is entitled to be compensated for the work performed in effectuating a UNE-P to UNE-L hot conversion, on copper, UDLC and IDLC lines, what are the proper rates that should be applied?

**Supra's Position:** The Commission should set forth a reasonable, cost based rate for a conversion for UNE-P lines served via copper and UDLC, and a separate reasonable rate for those served via IDLC. Furthermore, for those lines served via IDLC, BellSouth should be mandated to use the most efficient and cost-effective methods available to it, including the use of next generation digital loop carrier ("NGDLC") and any other technically feasible method proposed by Supra.

**G. Statement of issues that have been stipulated.**

None.

**H. Statement of all pending motions.**

Supra's Motion in Limine, dated November 5, 2004.

**I. Statement identifying the party's pending requests for confidentiality.**

None.

**J. Statement of requirement that cannot be complied with.**

None.

**K. Statement identifying any decision or pending decision that has or may preempt or otherwise impact the Commission's ability to resolve any of the issues or the relief requested.**

See DAN Exhibit 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, which states: "Although the BellSouth/Supra contract does not specifically set a rate for UNE-P to UNE-L conversions, BellSouth believes the \$59.31 Rate proposed in its motion applies..."

**L. Objections to a witness' qualification as an expert.**

See Supra's Motion in Limine, dated November 5, 2004.

Respectfully submitted this 9<sup>th</sup> day of November 2004.

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