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ORIGINAL

1311 Executive Center Drive, Suite 220  
Tallahassee, FL 32301-5027

January 13, 2005

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

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**RE: Docket No. 040301-TP -  
SUPRA'S REQUEST FOR ORAL ARGUMENT ON ITS RENEWED  
MOTION FOR INTERIM RATE FILED ON JANUARY 3, 2005**

Dear Mrs. Bayo:

Enclosed are the originals and fifteen (15) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Request For Oral Argument On Its Renewed Motion For Interim Rate Filed On January 3, 2005 to be filed in the above 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*  
Brian Chaiken  
Executive Vice President, Legal Affairs

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**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 13<sup>th</sup> day of January 2005 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*

**E. Earl Edenfield, Jr.**  
*BellSouth Telecommunications, Inc.*  
*BellSouth Center – Suite 4300*  
*675 West Peachtree Street, N.E.*  
*Atlanta, GA 30375*

SUPRA TELECOMMUNICATIONS  
AND INFORMATION SYSTEMS, INC.  
2620 S. W. 27<sup>th</sup> Avenue  
Miami, FL 33133  
Telephone: 305/ 476-4248  
Facsimile: 305/ 443-1078

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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: January 13, 2005

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**SUPRA'S REQUEST FOR ORAL ARGUMENT  
ON ITS RENEWED MOTION FOR INTERIM  
RATE FILED ON JANUARY 3, 2005**

Supra Telecommunications and Information Systems, Inc. ("Supra"), pursuant to Rule 25-24.058, Florida Administrative Code, hereby requests that the Florida Public Service Commission hear oral argument on its Renewed Motion for Interim Rate filed on January 3, 2005. In support of this request, Supra states as follows:

1. On August 10, 2004, Supra filed a Motion for Reconsideration of Order No. PSC-04-0752-PCO-TP, in which the Commission denied Supra's request for expedited relief. In the alternative, Supra requested that the Commission set an interim rate.
2. On August 26, 2004, the Commission staff issued a recommendation to deny Supra's Motion For Interim Rate and set it for the Agenda Conference of September 7, 2004. This recommendation was heard at the September 21, 2004, Agenda Conference.
3. Rule 25-22.058 requires that the Request for Oral Argument accompany the pleading for which argument is requested, and as such Supra hereby attaches copies of the January 3, 2005 Renewed Motion for Interim Rate.
4. At the Commission's September 21, 2004, Agenda Conference at which Supra's initial Motion For Interim Rate was denied, the vote to deny Supra the interim rate was partly based on a determination that the request for interim rate was "... not appropriate, at least at this time," (September 21, 2004, Agenda Transcript – Item No. 3; pg 14) and on staff's assurance that a "... recommendation [for a hot cut rate] would

follow probably a month pending – looking at late January.”<sup>1</sup> At this same Agenda Conference, staff further assured the bench that this docket would not be dragged-out in an effort to alleviate the Commission’s concern that this is a “transitory period” for transferring services off of UNE-P and on to UNE-L<sup>2</sup>.

5. Since the September 21, 2004, Agenda Conference, where the Commission denied Supra’s Request for Interim Rates, two things have changed to necessitate another look at the issue of interim rates. First, on November 23, 2004, a Joint Petition was filed for a generic proceeding regarding rates, terms and conditions for hot cuts with BellSouth in Docket No. 041338-TP. Further, on November 29, 2004, BellSouth filed an Emergency Motion for Continuance citing Docket 041388-TP as necessitating their filing. On November 30, 2004, this Commission granted BellSouth’s Emergency Motion for Continuance without any hearing whatsoever, and the [December 1<sup>st</sup> and 2<sup>nd</sup>] scheduled hearing in this proceeding was cancelled. See Order No. PSC-04-1180-PCO-TP granting BellSouth’s Emergency Motion for Continuance. This Order provided no schedule for moving this proceeding forward.

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<sup>1</sup> See Transcript of Item No. 3, of the September 21, 2004 Agenda Conference  
“... , After the final conclusion of the hearing, the recommendation would be taken to the Commission. Approximately -- I would say briefs would be filed 20 to 25 days after the hearing. A recommendation would follow probably a month pending -- looking at late January.” (Pg 7, lines 16 – 20)

<sup>2</sup> See Transcript of Item No. 3, of the September 21, 2004 Agenda Conference  
“I mean, this is not going to get postponed for a year.  
MR. SUSAC: No, Commissioner, . . . .  
COMMISSIONER DAVIDSON: And just the reason I ask that is we've all emphasized sort of the importance of facilities-based competition, and this is an issue that's arisen for a competitor that has actually been sort of deploying their own switches and they're trying to migrate. So there may be issues here or there may not be. What I want in terms of process is not a process here where we don't get to an issue. I don't know how we'll resolve it, but at some point we need to get to it sooner rather than later in this transitory period.” (Emphasis added) (Pg 18, lines 8 – 23)

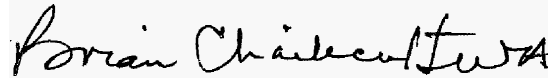
Second and perhaps more importantly, on December 15, 2004, the FCC published a News Release in which the FCC outlined a frame work for the release of its Final Unbundling Rules – which could be issued any time now.

6. It cannot be disputed that since this Commission's decision of September 21, 2004, there has been a change in circumstances which provide greater need for an interim hot cut rate. Indeed, since the November 23, 2004, Joint Petition filing, and following the Staff Recommendation that was filed on January 6, 2005, in Docket Nos. 040301-TP and 041338-TP, for the January 18, 2005 Agenda Conference, Supra observes Docket No. 040301-TP's entire scheduled has been rendered of no effect. Supra makes this assertion following staff's recommendation in Issue No. 4 (Staff Recommendation that was filed on January 6, 2005, in Docket Nos. 040301-TP and 041338-TP); where staff recommends setting this proceeding for hearing. As it stands today, there is no schedule going forward.

7. The absence of any schedule for the setting of rates for UNE-P to UNE-L conversions, combined with the certainty that the FCC will release the Final Unbundling Rules which will force Supra to cease using UNE-P as a means of providing service absent an appeal or separate ruling from this Commission, provides the necessity and urgency for an interim hot cut rate. Supra believes that oral arguments with respect to these changed circumstances will benefit the Commission in this instance.

WHEREFORE, on the basis of the information contained herein, Supra respectfully request that the Florida Public Service commission grant oral argument on its Renewed Motion for Interim Rate.

Respectfully submitted,



BRIAN CHAIKEN, ESQ.  
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January 3, 2005

Mrs. Blanca Bayo, Director  
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Florida Public Service Commission  
2540 Shumard Oak Boulevard  
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**RE: Docket No. 040301-TP -  
SUPRA'S RENEWED MOTION FOR INTERIM RATE FOR UNE-P  
TO UNE-L CONVERSIONS BASED ON CHANGE OF  
CIRCUMSTANCES**

Dear Mrs. Bayo:

Enclosed are the originals and fifteen (15) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Renewed Motion For Interim Rate For UNE-P To UNE-L Conversions Based On Change Of Circumstances to be filed in the above 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

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**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 3<sup>rd</sup> day of January 2005 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*  
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Facsimile: 305/ 443-1078

*Brian Chaiken*

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: January 3, 2005

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**SUPRA'S RENEWED MOTION FOR INTERIM RATE FOR UNE-P  
TO UNE-L CONVERSIONS BASED ON CHANGE OF CIRCUMSTANCES**

Supra Telecommunications and Information Systems, Inc. ("Supra") hereby files its renewed request that the Commission establish an interim rate for UNE-P to UNE-L conversions. This renewed request is based on a change of circumstances – namely, the December 15, 2004 adoption by the Federal Communications Commission ("FCC") of new permanent UNE rules on remand from the U.S. Court of Appeals for the District of Columbia Circuit, which vacated the FCC's previous Triennial Review Order. ("TRO Remand Rules").<sup>1</sup> As the result of the issuance of the TRO Remand Rules, a definite end date, slightly over a year from now, will soon be established for federally mandated UNE-P.<sup>2</sup> During this abbreviated 12 month period, Supra will need to convert to UNE-L more than 200,000 Florida UNE-P lines and other CLECs will be similarly converting hundreds of thousand of UNE-P lines to UNE-L. Since, as reflected in this proceeding, BellSouth is demanding a very high conversion rate that is not based on the particular functions involved in this conversion, if a rate based on the cost of this particular conversion process is not promptly established, Supra and other CLECs will be induced to postpone conversion until such a rate is established. The result will be a chaotic, last-minute rush of conversions that will result in massive service disruptions, to the severe

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<sup>1</sup> See copy of FCC press release attached hereto as **Exhibit A**, summarizing the TRO Remand Rules. The precise text of the TRO Remand Rules is expected to be released some time in January, 2005.

<sup>2</sup> The precise date will be 12 months from the date that the TRO Remand Rules are published in the Federal Register, or approximately March 2006.

detriment of hundreds of thousands of Florida consumers. Despite admissions<sup>3</sup> that BellSouth's hotcut process is infinitely scalable, BellSouth has already made policy statements which limit the number of UNE-P lines that can be converted to UNE-P to 125<sup>4</sup> per day. This is far short of what will be required to convert Supra's customer base, much less all competitive lines in the 12 month phase out period.

Supra is the CLEC with the most access lines in the State of Florida – over 240,000, the vast majority of which are served via UNE-P. As a result of the TRO, if adopted by the Florida Commission, means that federally mandated UNE-P has a limited and finite one year sunset, at which point the price at which BellSouth can charge Supra will increase<sup>5</sup>, forcing Supra to pass on such costs to its customer base, and in turn making Supra less competitive in the marketplace. Perhaps even more significant is the fact that Supra will not be able to add any new UNE-P customers as of approximately March 1, 2005. The result is that BellSouth will be able to continue to winback customers from UNE-P based CLECs such as Supra, and Supra will be unable to competitively add new customers unless they go directly to UNE-L, the competitiveness of which will, of course, be dependent upon the non-recurring costs of converting a customer to such.

Supra therefore urges the Commission to establish an interim rate in this proceeding, so that conversions can go forward in an orderly fashion, rather than waiting for a last-minute rush that will inevitably result in service problems for hundreds of

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<sup>3</sup> Testimony of K. Ainsworth in Docket 03-0851-TP

<sup>4</sup> See BellSouth's Unbundled Network Element Platform/DSO Wholesale Local Platform Service to UNE Loop Bulk Migration CLEC Information Package, Version 4, dated October 15, 2004, Section 8.2, attached hereto as **Exhibit B**.

<sup>5</sup> **The amount of such increase has yet to be determined. BellSouth still has an obligation to provide the elements that comprise UNE-P at "just and reasonable" rates, pursuant to 47 U.S.C. §§ 271 and 201.**

thousands of Florida consumers. Alternatively, should the Commission choose not to set an interim rate, Supra requests that this Commission immediately set this matter for a one-day hearing. The parties were ready for a December 1-2, 2004 hearing, but two days before it was scheduled to begin, they agreed that the hearing could be accomplished in one day. Shortly thereafter, the Commission postponed the hearing. At that time, the parties were ready for hearing, so they should not need additional time to prepare for a rescheduled hearing

### **BACKGROUND**

Supra is the CLEC with the most access lines in the State of Florida—more than 240,000, the vast majority of which are served via UNE-P. As a result of the adoption of TRO Remand Rules, if adopted by the Florida Commission, means that UNE-P has a limited and finite one year sunset, at which point, BellSouth will no longer be required to provide UNE-P under 47 U.S.C. §§ 251 and 252 at TELRIC prices. The price that BellSouth can charge Supra for UNE-P service will therefore increase,<sup>6</sup> forcing Supra to pass on such costs to its customer base, and in turn making Supra less competitive in the marketplace. To continue to compete for the business of its existing customer base, Supra will need to convert most or all of its UNE-P customers to UNE-L within the next year, to immediately begin adding new customers as UNE-L, and it should go without saying that it is not feasible for Supra and BellSouth to wait until the last few months to convert more than 200,000 UNE-P lines to UNE-L. Supra has been seeking a just and reasonable non-recurring rate for UNE-P to UNE-L conversions since February of 2003. BellSouth has done everything in its power to delay such, including unilaterally

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<sup>6</sup> The amount of such increase has yet to be determined., BellSouth still has an obligation to provide the elements that comprise UNE-P at “just and reasonable” rates, pursuant to 47 U.S.C. §§ 271 and 201.

terminating negotiations with Supra based on false allegations.<sup>7</sup> Supra initially filed its Petition in this Docket on April 5, 2004, seeking resolution of a contractual dispute, or, in the alternative, requesting that the Commission set a rate for UNE-P to UNE-L conversions. Although this matter was set for hearing on December 1<sup>st</sup> and 2<sup>nd</sup>, 2004, this Commission granted BellSouth's Emergency Motion for Continuance (filed two days before the hearing was to commence), indefinitely postponing adjudication of this matter.

On December 15, 2004, the FCC issued its press release (Exhibit A hereto), summarizing the major rulings stemming from its TRO Remand Rules. Specifically, the FCC stated:

Mass Market Local Circuit Switching. Incumbent LECs have no obligation to provide competitive LECs with unbundled access to mass market local circuit switching. We adopt a 12-month plan for competing carriers to transition away from use of unbundled mass market local circuit switching.

This transition plan applies only to the embedded customer base, and does not permit competitive LECs to add new switching UNEs. During the transition period, competitive carriers will retain access to the UNE platform (i.e., the combination of an unbundled loop, unbundled local circuit switching, and shared transport) at a rate equal to the higher of (1) the rate at which the requesting carrier leased that combination of elements on June 15, 2004, plus one dollar, or (2) the rate the state public utility commission establishes, if any, between June 16, 2004, and the effective date of this Order, for this combination of elements, plus one dollar.

Neither party is prejudiced whatsoever in the event the Commission sets an interim rate, subject to true up upon a final rate being set. However, in the event the

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<sup>7</sup> BellSouth claimed that Supra "breached" its confidentiality obligations relating to settlement negotiations mediated by the FCC, and therefore BellSouth would not negotiate this issue further with Supra. However, when asked by Supra for any factual or legal support for such an accusation, BellSouth admitted that it was unaware of any third party to whom Supra provided any confidential information, or any legal support which would provide that a party has breached its confidentiality obligations absent a wrongful communication of confidential information.

Commission does not set an interim rate, Supra is severely prejudiced while BellSouth stands to receive a gigantic windfall.

If no interim rate is established, Supra must either a) pay the excessively high conversion prices that BellSouth has unilaterally set; b) pay BellSouth excessive "market" rates for the equivalent UNE-P services, knowing that BellSouth's current marketing activities make that option infeasible as BellSouth is already undercutting Supra's services offerings at prices below what Supra pays for UNE-P at TELRIC rates, much less "market" rates; or c) continue to place its business plans on hold by postponing the transition of its current UNE-P customers to UNE-L and experiencing a dramatic loss in customers as of the effective date of the TRO Remand Rules, which prevent Supra from adding any new UNE-P customers. The former option allows BellSouth to charge Supra over-inflated rates for conversions until the PSC sets a reasonable rate, with no means for Supra to recover the excessive costs it pays, thereby providing BellSouth a windfall. The latter option will result in Supra deferring conversions, in the hope that the Commission will establish a cost-based permanent rate enough in advance of the end of UNE-P that Supra can convert its more than 200,000 Florida customers, at the same time that other Florida UNE-P carriers do likewise, without major mishaps and disruption of service. Until this rate is established, BellSouth will continue to charge inflated rates for commercial UNE-P at rates 5 to 12 times the TELRIC rate this Commission set for unbundled switching. Given the FCC's exhaustive documentation of problems with service disruptions when large numbers of hot-cuts are attempted in a short time frame,<sup>8</sup> this is a recipe for disaster. The inevitable result of delay is that BellSouth will be

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<sup>8</sup> See *In the Matter of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-328 (FCC August 21, 2003) at ¶ 466.

attempting to convert hundreds of thousands of Florida end-users from UNE-P to UNE-L at the last minute (at the same time that it is performing similar conversions in its other eight states), and numerous consumers will suffer service disruptions. The FCC is providing a 12-month period to allow the transition to proceed smoothly, but the absence of a cost-based nonrecurring rate for work required to perform the transition is undermining the FCC's efforts to space out the conversions. Plainly, the public interest favors avoiding this result by establishing a reasonable rate early in the process that will encourage Supra (and other CLECs, several of which manifested their interest in this process by recently filing a petition asserting that they need "rates, terms and conditions" for the UNE-P to UNE-L conversion process "as soon as possible, in advance of any discontinuance of UNE-P services") to begin the conversion process now, and avoid the disruptions that will result from allowing BellSouth to discourage early conversions with its insistence on an outrageous rate that is not subject to true-up. Furthermore, as a result of the FCC's ruling, Supra's customer base will be eroding a way week by week as a result of BellSouth's aggressive winback promotions, promotions which allow end-users to enjoy rates lower than those set for the individual UNEs which comprise UNE-P at TELRIC rates.<sup>9</sup>

## ARGUMENT

### **1. Supra is and continues to be prejudiced by the delay in the establishment of either an interim or permanent hot-cut rate.**

As a result of the TRO Remand Rules, Supra is now forced to choose between three options. The first option is to agree to pay BellSouth's so-called market rates for UNE-P, while leaving its customers on BellSouth's network. As the Commission is well

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<sup>9</sup> See BellSouth's latest promotions regarding Complete Choice (being sold at \$25.00 per line) and Preferred Pack (being sold at \$21.95 per line).

aware, this will result in an enormous increase in costs and make it economically infeasible for Supra to serve a significant number of customers through its current methods. The second option is to do nothing and wait for this Commission to set a reasonable cost-based rate for UNE-P to UNE-L conversions. The third option is to immediately begin converting the UNE-P customer to UNE-L.<sup>10</sup> This third option is the focus of this case.

Conversion of customers from ILEC facilities to CLEC facilities is what all parties (BellSouth, the FCC and the FPSC) have been urging and what Supra has been attempting to do for the last two years. BellSouth, having successfully urged regulators and the courts to channel competition away from UNE-P and into the CLECs use of their own facilities, now seeks to stifle that facilities-based competition from Supra by imposing a \$59.31 conversion charge that was not established by the Commission for this purpose. Rather, it was established as the price that a CLEC that won a *new* customer—who might or might not have any existing service--and desired to serve that customer via UNE-L would pay for the installation of a loop. Absent the establishment of an interim or a permanent UNE-P to UNE-L conversion rate by this Commission, BellSouth will be able to force this inappropriate rate on any CLEC conversions, simply by refusing to perform any conversions absent a CLEC agreement to pay BellSouth's rate.

The existing record in this case shows that the \$59.31 rate advocated by BellSouth is inappropriate because it includes the cost of work activities that are not necessary in a UNE-P to UNE-L conversion. Perhaps most indicative of BellSouth's inclusion of work

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<sup>10</sup> A third option, signing a "commercial agreement" with BellSouth, would entail a big cost increase and would lock Supra into an approach that precluded it from transitioning its customer base to its own facilities for a significant period of time.

activities that never need to be performed when performing a UNE-P to UNE-L conversion, as opposed to installing a new UNE loop, is the fact that for each and every time a dispatch is required to perform such, BellSouth includes the cost of sending a service technician to **both** the crossbox and the end-users' premises. There is simply no need to ever send the technician to the end-users' premises when the line is already in service, as in a UNE-P to UNE-L conversion. BellSouth's subject matter expert, James McCracken, testified at deposition regarding this point:

**Q** I really don't understand why it is you're changing the F2 when we already have a working UNE-P line, even if it's served by IDLC. **Can you explain to me why that needs to take place?**

**A** **That's just the way the assignments have been -- or the assignments did come out at that time. All of the pairs were being shown as new instead of reuse.**

**Q** **And why is that?**

**A** **I don't have that answer.**

**Q** Is that how it's done today?

**A** I don't know how it's done today.

**Q** If you were to design this process today, do you think that would be necessary?

**A** I'd have to go back and see what all the processes really are to really say that I could change the process from yesterday to today.

**Q** Okay. Well, based on your understanding of a UNE-P to UNE-L conversion which IDLC is involved, do you believe it's necessary to change the F2?

**A** I'm not sure how the records and the way that they can assign a working pair now, if they can reuse that or whatever, so I'm not familiar with how they actually assign them. I'm just familiar with what we need to do at the end when I get the service order and the work that I'm going to perform on that dispatch.



Q Is the only factor that you're aware of that would change your -- or affect your response to my last question be the way that the lines are assigned?

A It's what -- it's what the assignments are on that dispatch.

Q So the answer would be yes?

A The answer would be yes.

See James McCracken, Deposition Transcript taken on November 16, 2004, pg. 26 line 18 – pg. 28 line 3.

As testified to by Mr. McCracken, in the cost study upon which BellSouth relies for its \$59.31 rate, all of BellSouth's assignments, when a dispatch was required, were shown as new installs, as opposed to reusing the facilities that are already in place in a UNE-P to UNE-L conversion scenario. BellSouth recovers \$5.76, improperly, on every conversion.

Furthermore, BellSouth seeks to recover the UNEC (CWINS) work in the amount of \$7.1468 per A.1.1 SL1 loop for work which is never performed for an SL1 conversion. See Depo. Tr. of BellSouth's James Ennis Pg. 46-47.

This amounts to costs of as much as \$12.91 that are **never** performed in a UNE-P to UNE-L conversion for SL1 loop conversions **by BellSouth's own testimony!** As such, it cannot be disputed that BellSouth's purported cost study contains processes which are over and above what is necessary to effectuate conversions of working UNE-P lines.

As BellSouth witnesses have admitted at depositions and in testimony in this proceeding, the 2000 cost study upon which BellSouth relies considers non-working

loops that should not be considered in a UNE-P to UNE-L conversion, and considers and involves work steps that are not needed for all UNE-P to UNE-L conversions. Furthermore, this 2000 cost study assumed one-at-a-time processing, not the kind of batch processing that is inherent in the mass conversions that Supra proposes, and therefore, significantly overstates BellSouth's actual costs for the tasks involved in converting UNE-P lines to UNE-L.

BellSouth has been charging this rate for over two years and now seeks to impose this charge on a going forward basis on the grounds that it allegedly comes closer to modeling the costs of a UNE-P to UNE-L conversion than any other nonrecurring charge previously established by the Commission. BellSouth also seeks to impose this charge on a non-refundable (no true-up) basis until and unless the Commission establishes a permanent rate for the UNE-P to UNE-L conversion. Given high churn rates caused by BellSouth's aggressive winback programs triggered by the very LSR used to order the UNE-L loop, if Supra and other CLECs cannot recover the inflated non-recurring costs for switching a customer to their network that BellSouth seeks to impose within a reasonable period of time, facilities based competition will never succeed in Florida.

Further delay in establishing a cost-based rate for UNE-P to UNE-L conversions thus benefits BellSouth, at the expense of Supra, Supra's customers (who may well lose the competitive benefits that Supra provides), and competition for the provision of telephone service in the portions of Florida served by BellSouth.

In fact, the Commission previously acknowledged the need for the setting of a new rate and for such to be done on an expedited basis. At the September 21, 2004

Agenda hearing on Supra's Motion to Establish an Interim Rate, the following colloquy took place:

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

MR. DOWDS: It's our belief it would be done in his proceeding.

See September 21, 2004 Agenda hearing transcript at pg. 14, lines 12 – 21.

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

MR. SUSAC: No, Commissioner, you are correct.

*Id.* at pg. 18, lines 8 -12.

Unfortunately, as this Commission granted BellSouth's Emergency Motion for Continuance, via Order No. PSC-04-1180-PCO-TP on November 30, 2004, an adjudication of this matter has been indefinitely delayed, further preventing Supra's ability to make use of its own network facilities and thereby effectively reducing its costs. Supra has over 240,000 access lines which it would like to convert to UNE-L. Given BellSouth's current limitation on the number of lines it will convert per day (i.e. 125)<sup>11</sup>, even if Supra started doing the maximum number of conversions allowed by BellSouth beginning January 1, 2005, Supra would be unable to convert all of its embedded lines

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<sup>11</sup> See BellSouth's Unbundled Network Element Platform/DSO Wholesale Local Platform Service to UNE Loop Bulk Migration CLEC Information Package, Version 4, dated October 15, 2004, Section 8.2, attached hereto as **Exhibit B**.

before BellSouth's obligation to provide UNE-P has ended. Such a result will necessarily result in substantial prejudice and harm to Supra, and if Supra is induced by the absence of a cost-based conversion rate to postpone the conversion process, this problem will be seriously exacerbated.

**2. This Commission has ordered interim rates in the past.**

The FPSC set an interim rate in the generic UNE docket for the recurring portion of the loop rate when they discovered that they were unable to meet the FCC's May 1, 2000 deadline for establishing the de-averaged UNE rates. (See Order No. PSC-00-0380-S-TP, Docket No. 990649-TP, issued on February 22, 2000.) Although in that case the parties to the docket mutually agreed to the interim rate, the fact that the Commission entered the order approving an interim rate establishes that the Commission (and the parties, including BellSouth) believes it has, and actually does have, the authority to enter interim rates.

Furthermore, Florida Statutes Section 364.01(4)(b), (f) and (i) give the Commission latitude whereby it could order interim rates to foster and encourage competition, eliminate rules that impair the smooth delivery of the benefits of competition, and in keeping with its historical role as the surrogate [i.e., when in doubt, rule in favor of competition] for competition.

**3. The Commission should immediately grant Supra an interim rate for such conversions at no greater than 50% of what BellSouth seeks to currently charge, subject to true up after the establishment of a permanent rate.**

An interim rate would preferably be based on the record of this proceeding, and Supra suggests that such rate should be no greater than \$15.00 per conversion.<sup>12, 13</sup> Alternatively, the Commission could look to the permanent non-recurring rates set by other states, such as Georgia, for UNE-P to UNE-L conversions. What the Commission should not do, however, is establish the rate proposed by BellSouth as an interim rate. For the reasons set forth above, that rate clearly overstates BellSouth's costs for this function. The establishment of an interim rate, subject to true-up, will accomplish two things: (1) ease the immediate cash flow burden on Supra and allow it to immediately begin converting customers to its own facilities, and (2) provide that neither party is harmed as a result of the true-up provision. This latter point is important in that investors are poised to remove Supra from bankruptcy, but only if they have confidence that the costs of UNE-P to UNE-L conversions will be reasonable, as such a large part of Supra's going-forward business model is reliant upon such. Knowledge at this point in time that the rate will be trued up will provide at least some modest degree of assurance that the conversion charges they pay will ultimately be returned, if not shown to be cost-justified.

As another alternative, Supra suggests that the interim blended rate be established at \$23.09 for SL1 hot cuts and \$53.58 for SL2 hot cuts. Supra arrives at these numbers by using BellSouth's bulk migration process (batch hot cuts), and using the rates BellSouth claims apply to the processes being performed in this proceeding<sup>14</sup>, Supra submits that it would pay BellSouth \$49.57 for the first hot cut, and \$22.83 for the

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<sup>12</sup> See Direct and Rebuttal Testimonies of David Nilson submitted in this docket on September 8, 2004 and October 8, 2004, respectively.

<sup>13</sup> See BellSouth Florida SGAT, and the BellSouth MCI Florida interconnection agreement (amended March 4, 2003) re CLEC to CLEC conversion rates, arguably identical to a CLEC UNE-P to UNE-L process, which set a rate of approximately \$15.00.

<sup>14</sup> Per rebuttal testimony of Caldwell, weighted as suggested by both Caldwell and Nilson relative to the percentages of lines deployed by technology.

subsequent 98 hot cuts. As Supra only intends to issue bulk migration orders, and would agree to do so in writing, and as all such orders must incorporate telephone numbers to be converted out of the same office, Supra believes that, at worst, BellSouth will be recovering what it is presently seeking for the nonrecurring cost of an SL1 UNE loop. The same formula was used for the SL2 rate. As Supra believes these numbers will be drastically reduced once a hearing takes place and evidence is presented, Supra requests that these numbers be subject to true-up.

Supra further suggests that no charge be allowed for collocation cross connects, which currently are priced at approximately \$7.22 for the first one and \$5.35 for each additional. If BellSouth is successful in a later hearing establishing that such rates apply in addition to the non-recurring costs of an SL1/SL2 hot cut, then BellSouth would be entitled to a true-up.

Supra agrees that the mechanized OSS ordering charge applies and will pay that in its entirety as ordered and accurately billed.

Alternatively, Supra suggests that the Commission can do what the Georgia Public Service Commission ("GPSC") did in Docket No. 14631-U, Order issued March 18, 2003 as it relates to BellSouth's non-recurring costs. There, the GPSC entered an order slashing all of BellSouth's non-recurring costs in half<sup>15</sup>. In that Order, the GPSC stated:

AT&T/WorldCom claim that hot cuts are necessary for CLECs to use, but that BellSouth's proposed charge for hot cuts effectively precludes their use. *Id.* at 127. AT&T/WorldCom set forth the following four problems stemming from BellSouth's reliance on work sampling in developing its rate for hot cuts: (1) "many of the functions BellSouth identified in the 'order Coordination for Specified Conversion Time' non-

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<sup>15</sup> See the Georgia Public Service Commission Order issued on March 18, 2003 in Docket No. 14631-U, attached hereto as Exhibit C.

recurring charge are functions that are already recovered in the non-recurring charge for the unbundled loop,” (2) “BellSouth relied on the inaccurate work sampling approach for the CWINS functions,” (3) BellSouth included unnecessary levels of managers, and (4) BellSouth included two levels of technicians for work that a single technician could perform.

Allegiance makes arguments similar to those made by AT&T/WorldCom regarding BellSouth’s proposed non-recurring charges. Allegiance contends that BellSouth’s non-recurring cost studies are fundamentally flawed because they rely upon a flawed work sampling study. (Allegiance Post-Hearing Brief pp. 32-33) Allegiance specifically addresses BellSouth’s proposed hot cut rates and concludes that they are excessive, not reflective of forward-looking costs and will have a negative impact on facilities based competition. *Id.* at 36.

Although BellSouth contends that the Georgia Work Time Study was based upon the Commission order in Docket No. 11900-U, BellSouth also admits that the study was used to support task times for UNEs other than those covered by the Commission Order. Rates in this docket cannot be based upon a time and motion/work sampling study that does not take into account forward-looking labor and task times to provision UNEs. The Commission’s analysis consists of examining both whether the model is structured to capture forward-looking costs and whether the estimates of these costs are reasonable. The problem with the time and motion studies as pointed out by other parties to the docket and admitted to by BellSouth is that these studies include embedded inputs (Tr. 474). While BellSouth claims that it made adjustments to these embedded inputs to arrive at forward-looking costs, other parties to the docket have made strong cases that these adjustments were either not made or inadequate.

As to the specific modifications, the Commission finds that several of the arguments by AT&T/WorldCom, Allegiance, AccuTel and Covad’s regarding eliminating certain tasks and reducing the task times for various BellSouth centers have merit. For example, **the Commission agrees with Covad that BellSouth included higher task times for DSL-Capable Loops in comparison to analog loops for the same tasks.** Also, even BellSouth agrees with AT&T/WorldCom’s position that the LSCS time associated with handling UNE-P orders that fall-out should be dramatically reduced from the forty minutes included in BellSouth’s cost studies. (Tr. 448). **In addition, the Commission finds persuasive AT&T/WorldCom’s argument that BellSouth’s dispatch probability should be reduced based on data taken from CWINS sampling work papers.**

Therefore, not only is BellSouth's use of its Georgia Work Time Study problematic because the study is not forward-looking, but it is also inaccurate. The record reflects that CLEC witnesses had ample expertise to support their recommendations. For instance, AT&T/WorldCom witness Mr. Turner has had experience provisioning, engineering and testing circuits. (Tr. 1753). **Taking into consideration both the adjustments to the study that the evidence reflects would result from a forward-looking study and the adjustments related to the inflated work times and unnecessary tasks, the Staff recommended that all of the non-recurring rates BellSouth filed on January 18, 2002 be reduced by fifty (50) percent. The Commission agrees with this methodology and believes that reduction will result in reasonable non-recurring rates.** GPSC Order pp 59-62. (Emphasis added.)

Similarly, in this case, the Commission could reduce BellSouth's proposed non-recurring rates for UNE-P to UNE-L conversions by fifty (50%) percent as an interim rate subject to true up.

### CONCLUSION

For the reasons stated hereinabove, the Commission should immediately establish interim rates, to be subject to true up upon the establishment of permanent rates. Alternatively, the Commission should immediately set a hearing date for evidence to be presented in this matter.