

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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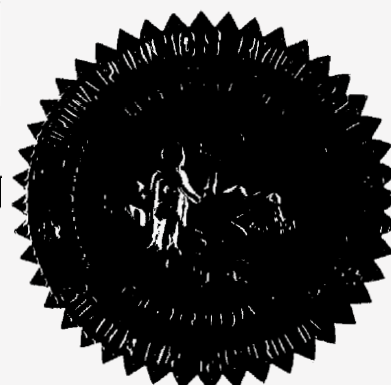
In the Matter of:

COMPLAINT BY SUPRA TELECOMMUNICATIONS  
AND INFORMATION SYSTEMS, INC. AGAINST  
BELLSOUTH TELECOMMUNICATIONS, INC.

DOCKET NO. 040301-TP

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JOINT PETITION BY ITC^DELTACOM  
COMMUNICATIONS, INC. D/B/A ITC^DELTACOM  
D/B/A GRAPEVINE; BIRCH TELECOM OF THE  
SOUTH, INC. D/B/A BIRCH TELECOM AND d/b/a  
BIRCH; DIECA COMMUNICATIONS, INC. d/b/a  
COVAD COMMUNICATIONS COMPANY; FLORIDA  
DIGITAL NETWORK, INC.; LECSTAR TELECOM,  
INC.; MCI COMMUNICATIONS, INC.; AND  
NETWORK TELEPHONE CORPORATION ("JOINT  
CLECS") FOR GENERIC PROCEEDING TO SET  
RATES, TERMS, AND CONDITIONS FOR HOT  
CUTS AND BATCH HOT CUTS FOR UNE-P TO  
UNE-L CONVERSIONS AND FOR RETAIL TO  
UNE-L CONVERSIONS IN BELLSOUTH  
TELECOMMUNICATIONS, INC. SERVICE AREA.

DOCKET NO. 041338-TP



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PROCEEDINGS:           AGENDA CONFERENCE  
                          ITEM NO. 4

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

DATE:                   Tuesday, February 1, 2005

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

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REPORTED BY:

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

1 PARTICIPATING:

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

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

6 JEREMY SUSAC, ESQUIRE, and FELICIA BANKS, ESQUIRE,  
7 representing the Florida Public Service Commission Staff.

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## P R O C E E D I N G S

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CHAIRMAN BAEZ: We are back on Item 4.

MR. SUSAC: Commissioners, Jeremy Susac on behalf of staff. Item 4 is staff's recommendation to consolidate Docket Numbers 040301-TP and 041338-TP. It should be noted that Issues 2 and 3 were approved at the January 18th, 2005, Agenda Conference, and only Issues 1 and 4 remain.

It should also be noted that on January 24th, 2005, Supra filed a letter in Docket Number 040301-TP informing staff that it had accepted BellSouth's offer to pay \$59.31 for a UNE-P to UNE-L conversion, subject to a true-up.

Staff would like to note participation is at the discretion of the Commission, and staff is available for questions.

CHAIRMAN BAEZ: And is it my understanding that whatever these terms, and maybe I'll just direct my question to the parties. Mr. Chaiken, your letter memorializes whatever the deal is, whatever you all's agreement is in terms of true-up and how far back you are going to count?

MS. WHITE: I'm sorry, I didn't hear the first part of your question.

CHAIRMAN BAEZ: I'm sorry. Forgive me, I'm going through a little bit here. Mr. Chaiken's letter, the letter that Mr. Susac refers to, that memorializes or takes care of whatever discussions we were having the last time we met up?

1 MS. WHITE: That's correct.

2 CHAIRMAN BAEZ: Just for my information, does the  
3 letter, or the terms of the letter agreement get incorporated?  
4 Does it need to be incorporated into our, a motion on Issue 1?

5 MR. SUSAC: Commissioner, I don't believe it needs to  
6 be incorporated into the rec. However, we can, if you would  
7 like to. It has been filed in the docket, and it's --

8 CHAIRMAN BAEZ: I'm really just asking housekeeping  
9 questions.

10 MS. WHITE: I don't think it has to. It was filed  
11 with Ms. Baez (sic), so it is part of the record.

12 CHAIRMAN BAEZ: Very well. Commissioners, I'm sorry  
13 do you have any questions? Do the parties need to address us?

14 COMMISSIONER DEASON: I guess I'm at a loss. What is  
15 the controversy with staff's recommendation now? Does anybody  
16 have an issue with what staff is recommending?

17 CHAIRMAN BAEZ: I'm not sensing that there is any.

18 MR. CHAIKEN: Well, if I could, Commissioners.

19 CHAIRMAN BAEZ: Go ahead, Mr. Chaiken.

20 MR. CHAIKEN: I believe Issue 3 was withdrawn. Issue  
21 4 is whether or not to consolidate Supra's matter into a  
22 generic docket. And the only reason -- well, Supra has two  
23 reasons for objecting to that treatment. And my concern is  
24 that I will lose my ability to argue the applicability of our  
25 specific contract as it relates to hot cuts.

1           BellSouth in its emergency motion for a continuance  
2 correctly pointed out that Supra agreed to withdraw Issues 1  
3 and 2 from its petition. However, there is a condition  
4 precedent to us withdrawing those first two issues. And I have  
5 to give you a little bit of background, **I apologize for that.**  
6 But Supra is poised to exit Chapter 11 as a result of an  
7 auction process. That auction process resulted in a winning  
8 bidder. That winning bidder entered into an agreement with  
9 both Supra, and had some terms which needed to -- had it  
10 satisfied some terms that BellSouth had as well. And in  
11 reaching that agreement, that new -- the winner of the auction  
12 agreed to withdraw Issues 1 and 2 from that docket.

13           While the condition precedent to that withdrawal  
14 taking place is that agreement closing, that agreement is set  
15 to close in March of 2005. However, if that agreement does not  
16 close, then I believe those issues are still viable, and Supra  
17 would still be pursuing those issues. So to have our issues  
18 rolled up into a generic docket at this point in time I think  
19 is a little premature, because we still have those contractual  
20 issues open. And I believe, also, that Issues 3 and 4, which  
21 are part of our docket, also have some contractual issues that  
22 need to be addressed. So to the extent that we have issues  
23 which are specific to our contract, we think it is improper to  
24 roll our issues into a generic proceeding.

25           COMMISSIONER DEASON: Mr. Chairman, may I ask a

1 question?

2 CHAIRMAN BAEZ: Please.

3 COMMISSIONER DEASON: The issues that were withdrawn,  
4 were they withdrawn contingent upon Supra coming out of  
5 bankruptcy proceedings?

6 MR. CHAIKEN: Actually, they have not been withdrawn  
7 as of today's date. There is an agreement for us to withdraw  
8 them, but they have not been formally withdrawn. Now --

9 COMMISSIONER DEASON: What is the status of these  
10 issues, staff?

11 MR. SUSAC: Counsel is correct, he has not filed a  
12 formal letter withdrawing the issues, although he has informed  
13 staff that he will be withdrawing Issues 1 and 2 pursuant to an  
14 agreement in Bankruptcy Court with BellSouth.

15 COMMISSIONER DEASON: And BellSouth, it's your  
16 understanding that the withdrawal of these issues is contingent  
17 upon Supra actually coming out of bankruptcy proceedings.

18 MS. WHITE: Quite frankly, I'm not sure about that.  
19 I know that they have agreed to withdraw the issues. I do not  
20 know what condition, if any, is put on that. I guess -- I'm  
21 sorry, go ahead.

22 CHAIRMAN BAEZ: Does it follow -- is there some logic  
23 to the statement that that withdrawal obviously is part of the  
24 agreement being executed, or is contingent on the agreement  
25 being carried out?

1 MS. WHITE: Well, whatever is in the agreement has  
2 been signed between the two parties, yes, I would think so.

3 CHAIRMAN BAEZ: Is there any -- is there anyway to  
4 safeguard some due process rights in the event that it doesn't  
5 close, that you can think of?

6 MS. WHITE: Well, I mean, BellSouth is in favor of  
7 the consolidation. And I think Issues 3 and 4 of Supra's  
8 petition definitely belong in the generic hot cut docket. As  
9 far as Issues 1 and 2 which are specific to the interconnection  
10 agreement, I mean, it's possible we could -- I mean, if you are  
11 consolidating the dockets, it's possible we could include those  
12 issues, but not really -- I'm just trying to think off the cuff  
13 here -- include them, but not really -- I guess I'm saying, you  
14 know, include them as a pro forma, but not really file  
15 testimony on them necessarily, or argue them out. Or else we  
16 could put as an asterisk, or as a footnote to the issue list  
17 when we get there on the generic docket that these two issues  
18 are still out there pending the performance of the agreement in  
19 Bankruptcy Court.

20 COMMISSIONER DAVIDSON: Chairman?

21 CHAIRMAN BAEZ: Go ahead.

22 COMMISSIONER DAVIDSON: A couple of questions. Just  
23 one procedural question, Supra and BellSouth, have you all  
24 talked about a way to hopefully resolve this issue prior to  
25 coming up here today? Prior to sitting here, I mean, did you



1 all talk about, sort of, this issue and try to work out a  
2 solution and were unable to reach one, or have you not talked  
3 about this yet.

4 MS. WHITE: We really haven't talked about it. Quite  
5 frankly, I thought with the agreement we've reached, since we  
6 were going to retroactively true-up, if need be, then that made  
7 this issue of consolidation moot. I was obviously mistaken.  
8 So I wasn't aware --

9 COMMISSIONER DAVIDSON: Why I asked that question,  
10 just because this seems like something easy enough to resolve,  
11 and perhaps something that could have been resolved before you  
12 came here. On this question, this is a question for staff, and  
13 for feedback from the Commission. In generic -- in these  
14 telecom generic dockets, is there any room for, sort of,  
15 case-specific interconnection type issues to be addressed?  
16 Meaning can you have a generic docket, but perhaps particular  
17 circumstances of Verizon's relationship with FDN, or  
18 BellSouth's relation with Supra, or someone else's relationship  
19 with another to be addressed.

20 MR. SUSAC: Commissioner, I'm not aware of any.  
21 However, as Ms. White stated, it could be a sense that a  
22 contractual issue between BellSouth and Supra could almost, for  
23 lack of a better word, be carved out, and those issues only be  
24 unique to BellSouth and Supra as a part of the consolidation.

25 COMMISSIONER DAVIDSON: With a consolidated generic

1 docket, assuming Issues 3 and 4 would be moved into that, once  
2 we are through with that docket, would there then be, sort of,  
3 fallout of that docket in particular interconnection cases,  
4 meaning would we expect to be additional dockets that would  
5 apply the outcome of the generic docket?

6 (Pause.)

7 COMMISSIONER DAVIDSON: Well, let me state the  
8 question again. Is the generic docket itself, would that be  
9 applied going forward in particular cases? Meaning if the  
10 issues aren't resolved in bankruptcy, Supra would have Issue 1  
11 and 2 remaining open. Let's assume other companies might have  
12 similar issues. Will all issues between all the parties get  
13 resolved in the generic docket, or will we have the generic  
14 docket, and then there may be particular follow-up dockets to  
15 which the outcome of the generic docket will apply?

16 MS. BANKS: Well, Commissioner, as the docket's title  
17 states, this is generic as relates to BellSouth. However,  
18 questions of law generally would be on a going-forward basis.  
19 But if there are factual differences that differ that may  
20 distinguish a case, I think it is permissible to say that they  
21 may have a different issue. But as filed currently, this is  
22 generic as it pertains to BellSouth.

23 COMMISSIONER DAVIDSON: All right. BellSouth and all  
24 of the CLECs with which BellSouth has agreements, correct?

25 MS. BANKS: That is correct.

1 COMMISSIONER DAVIDSON: I see Ms. Keating. Hello.

2 MS. KEATING: I agree with Ms. Banks. I just wanted  
3 to add a little bit to. I think there is probably -- this is  
4 contemplated to address the issues as they pertain to  
5 BellSouth, but it's possible that as a result of parties'  
6 interconnection agreements, that the implementation of what is  
7 done in this docket could arise at a later date. But it is  
8 hoped that generally as in, say, the UNE-P dockets, it was  
9 contemplated that those would resolve specific rates, but there  
10 are always potentials for those issues to arise as a result of  
11 implementation into specific interconnection agreements.

12 COMMISSIONER DAVIDSON: Not wanting to move too far  
13 afield, and I wasn't, and I'll thank someone for this, a  
14 participant in all of those UNE-P dockets, but if we move  
15 forward on this generic docket and we -- I assume we are going  
16 to have legal questions and factual questions, once we address  
17 those legal questions in this generic docket, can those legal  
18 questions can revisited in additional, say, generic dockets.  
19 Meaning if there was a generic Verizon docket, would we revisit  
20 those legal questions or would we, in practice, probably adhere  
21 to what we've determined?

22 And I ask that because it would be nice if we could  
23 get to a point where we had, sort of, one generic correct that  
24 could resolve, sort of, the legal and policy issues that we  
25 would be dealing with, and then somehow a mechanism to deal

1 with all the different facts. Because the law is the law, it  
2 seems, and it ought to apply whether we are talking about a  
3 BellSouth competitor issue or Verizon competitor issue.

4 MS. KEATING: I see what you are saying. But I don't  
5 think, and I hope that staff will correct me, that we have any  
6 of those types of, sort of, general legal questions that are  
7 currently posed in this proceeding. If they were, I think you  
8 would certainly want no consider expanding the scope to the  
9 other ILECs. But in this instance, and I do hope they will  
10 correct me if I'm wrong, but I don't think we have any of those  
11 types of broad, sort of, interpretation type questions.

12 COMMISSIONER DAVIDSON: How would we proceed with  
13 consolidation? Everyone seems to agree that 3 and 4 fit within  
14 the generic docket, and there also seems to be agreement that 1  
15 and 2 perhaps do not, because they are fact specific and relate  
16 to the interconnection agreement. What would procedurally be  
17 the best mechanism to, sort of, leave consideration of those  
18 issues out there open, but without hindering consolidation and  
19 moving forward with one docket on all the applicable issues?

20 MS. KEATING: I think there is probably a couple of  
21 ways to do it. And, quite honestly, I'm not sure which would  
22 end up being the most administratively efficient. But one way  
23 would be to go ahead and take those issues out, but perhaps  
24 allow Supra to make those contractual type arguments in the  
25 context of the remaining issues. I understand one of the

1 issues essentially asks the question should a hot cut rate be  
2 set? And I understand that Supra would be making an argument  
3 that they already have a rate in their current interconnection  
4 agreement, so that one would not need to be set. I mean that  
5 is perhaps one option.

6 Another option, I was just conferencing with Ms.  
7 Helton, and as I understand it, in some of the generic electric  
8 dockets there are sometimes company-specific issues that are  
9 included and addressed specifically for individual companies.  
10 And I don't see why that couldn't be done in this case as well.

11 COMMISSIONER DAVIDSON: Just a comment, that makes  
12 the most sense to me, if that is procedurally okay.

13 CHAIRMAN BAEZ: And, Commissioner, for your  
14 reference, my experience with it has been sort of the same, and  
15 especially in light of this case where really what we are  
16 trying to seek is some administratively efficiency to not  
17 have -- to at least get the general questions done and let it  
18 benefit from a generic docket. But, you know, the electric  
19 have always had company-specific issues, in my memory, and it  
20 hasn't really hindered -- you're not changing the target that  
21 the companies that are participating are shooting at. And I  
22 think you have got to preserve -- I think in all fairness  
23 you've got to preserve those two issues which may go away, my  
24 understanding is, from just the natural operation of things.  
25 And I would be loathed, for our sake of efficiency, to start

1 crampling on due process rights along the way. I can support  
2 either way, either carrying over the issues, because at the end  
3 of the day they may go away anyhow, or, you know, draw them --  
4 at least find the best place for them.

5 COMMISSIONER DAVIDSON: I'm prepared to make a  
6 motion, unless there are any questions.

7 CHAIRMAN BAEZ: Commissioners, are there any other  
8 questions before we -- no.

9 COMMISSIONER DAVIDSON: I would, on Item 4, move  
10 staff's recommendation, but with the modification as suggested  
11 by Ms. Keating, that we preserve Issues 1 and 2, add them as  
12 company-specific issues in the generic hot cuts docket.

13 CHAIRMAN BAEZ: Is everybody clear on how we are  
14 proceeding? Is there a second?

15 COMMISSIONER DEASON: Second.

16 CHAIRMAN BAEZ: A motion and a second. All those in  
17 favor say aye.

18 (Unanimous affirmative vote.)

19 CHAIRMAN BAEZ: That was Issue 1, correct? And we  
20 have Issue 4 remaining.

21 COMMISSIONER DAVIDSON: And I assume we would still  
22 move staff on docket closing. Move staff.

23 MR. SUSAC: That's correct, Commissioner.

24 COMMISSIONER DEASON: Second.

25 CHAIRMAN BAEZ: The staff recommendation to close

1 moved and seconded. All those in favor say aye.

2 (Unanimous affirmative vote.)

3 CHAIRMAN BAEZ: Show Issue 4 approved unanimously.

4 Thank you, Commissioners. And thank you, staff, and the  
5 parties.

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STATE OF FLORIDA )

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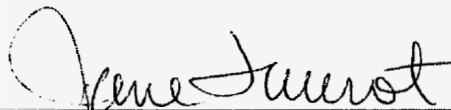
COUNTY OF LEON )

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 4th day of February, 2005.



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