



Telephone: (850) 402-0510  
Fax: (850) 402-0522  
www.supratelecom.com

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

---

March 17, 2005

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

**DOCKET NOS. 040301-TP AND 041338-TP –  
SUPRA'S RESPONSE TO STAFF'S PROPOSED ISSUE LIST AND  
SCHEDULING REQUEST**

Dear Mrs. Bayo:

Enclosed is the original and fifteen (15) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Response To Staff's Proposed Issue List And Scheduling Request to be filed in the above captured 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 V.P for Legal Affairs

DOCUMENT NUMBER DATE  
02636 MAR 17 05  
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Generic Proceeding to Set ) Docket No. 041338-TP  
Rates, Terms, and Conditions for Batch Hot )  
Cuts for UNE-P to UNE-L Conversions and for )  
ILEC to UNE-L Conversions in the BellSouth )  
Telecommunications, Inc. Service Area )  
\_\_\_\_\_ )

In Re: Petition of Supra ) Docket No. 040301-TP  
Telecommunications and Information )  
Systems, Inc.'s for arbitration )  
With BellSouth Telecommunications, Inc. )  
\_\_\_\_\_ )

**SUPRA'S RESPONSE TO STAFF'S PROPOSED ISSUE LIST AND SCHEDULING ISSUES**

**1. Changes/Comments to Staff's Proposed Issues List, dated March 8, 2005.**

- Issue 1 should have the following second question asked:

If not, what hot cut process modifications would be appropriate?

- Issue 2 should be changed to read as follows:

Should a CLEC be permitted to select the implementation method for BellSouth to use for that CLEC to perform a UNE-P or Retail to UNE-L conversion for lines served by IDLC?

- Issue 3 should be changed to read as follows:

Regardless of the implementation method for BellSouth's uses to perform a UNE-P to UNE-L or Retail to UNE-L conversion for a line served by IDLC, what impacts, if any, are there on the resulting UNE-L recurring rates?

- Issue 4 should be changed to read as follows:

Should BellSouth's rate structure for hot cuts differentiate between hot cuts (whether UNE-P or Retail) to UNE-L conversions where the line is provisioned with IDLC, as opposed to a copper loop or UDLC? If so, what, is the appropriate rate structure, and what, if any changes, are appropriate to the recurring rates?

- Supra agrees that Issues 5 and 6 are unnecessary and may be deleted.
- Revised Issue 8.

Should BellSouth's batch hot cut process allow for CLECs to connect loops directly to third party switches?

New sections:

Should BellSouth's CLEC to CLEC conversion process allow for any one CLEC entity to convert customers from a UNE-P OCN to a UNE-L OCN belonging to the same entity, regardless of whether or not the OCNs are the same or different?

Should BellSouth's CLEC to CLEC conversion process allow for any one CLEC to convert its existing UNE-P lines to UNE-L using the same OCN for single customer orders and/or as a bulk conversion order for multiple customers?

## **2. Scheduling issues.**

Supra's proposes that the Commission use the schedule originally proposed by the joint CLECs. Supra have over 240,000 UNE-P lines in the State of Florida that BellSouth is going to push to have off of UNE-P by March 11, 2006. That, or have BellSouth impose massive "commercial" price increases on all lines that don't make it off of UNE-P by that date. Time is of the essence, and every day that this matter gets pushed off is potentially harmful to Supra and all of the CLECs who have UNE-P customers. Supra is presently forced to use precious cash resources that it could be using for other parts of its business, fighting off BellSouth's tremendous winback promotions for instance, to pay an outrageous fee for a hot cut so as to insure that it meets the March 11, 2006 deadline. Now that BellSouth has received the ruling it sought from the FCC, it has no incentive to move forward in this docket with any great speed.

Supra believes that BellSouth's statement that it would take 5 to 6 months to complete an entirely new cost study or studies is disingenuous at best. Supra requests that the Staff review BellSouth's Motion to Dismiss or, in the alternative, Partial Motion to Dismiss Supra's First Amended Petition, filed on July 21, 2004 in Docket No. 040301 ("Motion to Dismiss"). Therein, BellSouth argued that Supra "impermissibly seeks an order reconsidering the Commission's decision in Docket No. 990649-TP in a two-party complaint proceeding." See Motion to Dismiss at pg. 1. BellSouth goes on to argue:

On May 25, 2001, the Commission entered Order no. PSC-01-1181-FOF-TP in its generic Cost Docket (the "Cost Order"). In the Cost Order, the Commission established the cost methodology by which UNE rates would be set in Florida. The Commission specifically spent a large part of the Cost Order establishing the methodology applicable to nonrecurring costs for UNEs, including loops. Cost Order, at 279-366. In its discussion of nonrecurring costs for loops the Commission explicitly recognized that BellSouth used probabilities to assign dispatch and non-dispatch provisioning for SL1 loops. *Id.* At page 335.

\* \* \*

In the Cost Docket, MCI described nonrecurring costs as follows:

The non-recurring cost of a particular action, then, is simply the sum of the costs of each of the necessary work activities, calculated as the product of (1) the required time, (2) the labor rate, and (3) the probability of occurrence of each work activity. *Cost Order*, at p. 291.

The process of moving an SL1 or SL2 loop from a BellSouth switch to a CLEC switch is comprised of the work activities necessary to provision these UNE loops. The costs associated with those work activities are captured in the nonrecurring cost for the loop. Thus, the hot cut service that BellSouth provides to CLECs is comprised of the nonrecurring cost of the loop, a cross-connect charge and a service order processing charge. The provisioning costs for an SL1 and SL2 loop are recovered in the nonrecurring rate for the loop.

See *Motion to Dismiss*, at pgs.1 and 3.

Amazingly, BellSouth now argues (1) that its cost studies need to be adjusted while, at the same time, that those same cost studies are valid and therefore every CLEC should pay the resulting rates derived there from until a new rate is established; and (2) that the CLECs are using this docket as an opportunity to extend the FCC ordered transition period for UNE-P customers. Supra is confounded by these arguments, particularly in light of BellSouth's Motion to Dismiss. Clearly, BellSouth is the party continually seeking to delay. Supra has been attempting to get a true hot cut rate since as early as December 2002. If BellSouth had been sincere, BellSouth would have begun the process of creating a cost study months or even years ago. However, BellSouth has repeatedly maintained, since as early as March 2003, that its existing cost studies were reflective of true and accurate work elements, work times and labor costs for such hot cuts.

Significantly, in May 2003, BellSouth raised the issue before the Federal Bankruptcy Court, Southern District of Florida, Case No. 02-41250-BKC-RAM, in the context of attempting to get an Order increasing Supra's adequate assurance payments to BellSouth by \$59.31 for performing each individual UNE-P to UNE-L conversion. On June 25, 2003, the following discourse took place:

THE COURT: All I'm saying is that if BellSouth, in its heart of hearts, if it has a heart, believes that the Public Service Commission is going to rate this at \$25 or \$20, and you're charging -- and I find that the only way we can go now is to have them pay \$60, then, yes, I think it's appropriate, when the Commission rules, to sock BellSouth, if they truly know that they're overcharging.

\* \* \*

I just want you to have a heart to heart talk with your client, if they know that this rate is too high. That's it. It's a simple process.

MR. SINGERMAN (BellSouth attorney): And, Judge, I will do that. We have done that.

\* \* \*

If there is the -- I can put witnesses on, I'll put the senior most person in this room on from BellSouth to talk about the discussions internally and BellSouth's good faith belief, ...

\* \* \*

THE COURT: Then I reread your Paragraph 11, and I saw that, what may be a key word is that you say the Florida Public Service Commission, in its UNE cost docket, adopted the rates for the components of BellSouth's "hot cut process".

**So, let me ask it this way: Is it BellSouth's position that you've got approved rates for the components, so presumably you didn't just make up numbers that add up to an odd number like \$59.81, and that each of those components applies to this service?**

MR. SINGERMAN: Yes.

\* \* \*

THE COURT: All right. Well, what we're probably going to do -- what we're definitely going to do is get away from this issue for the moment, and what I probably will do, both for time constraints and because it appears appropriate to me, is let BellSouth put on its case, and if they present a *prima facie* case, if there are contract prices that apply to the service, that rate will apply pending any regulatory ruling to the contrary, and what I want to reiterate, without making it threatening, is that while you may have a contract basis for charging this, **I want you to also be considering whether you believe, when it comes to a regulatory ruling on this precise function, that there is a good faith belief that that is what rate will be set.**

**In other words, there is a distinction between saying you have a good faith belief that you're entitled to charge this under the contract, and a good faith belief that this is what the Public Service Commission is going to set the rate at, and I realize you can't predict with certainty what they're going to set the rate at, but -- and maybe it's the same. If it's the same, you're fine. I mean, if you believe that the same *prima facie* case, talking about the contract rate, is going to carry the day, that's fine, but if you're just taking a position that you've got the**

**contractual right to charge this amount, knowing that when it's fully considered by the Public Service Commission, there will be a significantly lower rate, then I do have a problem with that.**

**MR. SINGERMAN: And I understand that and you've made that clear.**

See June 25, 2003 hearing transcript, In Re Supra Telecommunications, Case No. 02-41250-BKC-RAM (Emphasis added). As a result of BellSouth's arguments, the Court ordered that Supra pay BellSouth the requested \$59.31 per line for each UNE-P to UNE-L conversion, until such time as a regulatory body issued an order setting a rate for such.

As stated above, BellSouth believed, at least in June of 2003, that it has valid rates and that it did not "just make up numbers." **Furthermore, BellSouth believed it had a good faith basis that the FPSC would set a rate at or around the \$59.31 that BellSouth is still charging Supra today, based on its old cost studies.** Now, after making arguments and filing sworn testimony, stating that it already had a true and accurate cost study, we learn that BellSouth seeks to revisit such, and it will take six months to do it! If BellSouth truly believed its cost studies were in any way inaccurate, why did it not state such in the course of its pre-filed direct and rebuttal testimonies in Docket No 040301-TP? Supra and FPSC staff spent months taking the depositions of BellSouth's witnesses regarding cost studies that BellSouth now, for the first time, admits to be out of date. Of course, the fact that BellSouth's witnesses admitted that many of the elements and times set forth in those studies were erroneous may have something to do with the fact that BellSouth now seeks to amend such. Think of the time and expense that could have been saved had BellSouth admitted to this in the course of Docket No. 040301, instead of steadfastly maintaining its company line that "the PSC already adjudicated the issue in favor of BellSouth." At a minimum, BellSouth could have begun the task of creating new cost studies in December of 2004 (4 months ago) when it sought to continue its hearing with Supra in Docket 040301 and asked that Supra's docket be consolidated into this generic one. It is BellSouth, not the CLECs and certainly not Supra, who is seeking to delay this matter.

Respectfully submitted,

BY: \_\_\_\_\_  
Brian Chaiken, Esq.  
Supra Telecommunications & Information Systems Inc.  
2901 SW 149<sup>th</sup> Avenue  
Miramar, FL 33027  
(786) 455-94248

**CERTIFICATE OF SERVICE**  
**Docket Nos. 040301-TP & 041338-TP**

I HEREBY CERTIFY that a true and correct copy of Supra's Petition and Request was served by US. Mail and/or Facsimile this 17<sup>th</sup> day of March 2005 to the following:

**BellSouth Telecommunications, Inc.**

*N.White/D.Lackey/E.Edenfield/L.Foshee*  
*c/o Ms. Nancy H. Sims*  
*150 South Monroe Street, Suite 400*  
*Tallahassee, FL 32301-1556*  
*Email:*  
*nancy.sims@bellsouth.com/nancy.white@bellsouth.com*

**Birch**

*Ms. Rose M. Mulvany*  
*2020 Baltimore Avenue*  
*Kansas City, MO 64108-1914*  
*Email: rmulvany@birch.com*

**Covad Communications Company**

*Charles (Gene) Watkins*  
*1230 Peachtree Street NE, Suite 1900*  
*Atlanta, GA 30309*  
*Email: gwatkins@covad.com*

**FDN Communications**

*Mr. Matthew Feil*  
*2301 Lucien Way, Suite 200*  
*Maitland, FL 32751-7025*  
*Email: mfeil@mail.fdn.com*

**Florida Cable Telecommunications Association, Inc.**

*Michael A. Gross*  
*246 E. 6th Avenue*  
*Suite 100*  
*Tallahassee, FL 32303*  
*Email: mgross@fcta.com*

**IDS Telcom LLC**

*Mr. Angel Leiro*  
*1525 N.W. 167th Street, Suite 200*  
*Miami, FL 33169-5131*  
*Email: aleiro@idstelcom.com*

**ITC^DeltaCom**

*Ms. Nanette Edwards*  
*4092 S. Memorial Parkway*  
*Huntsville, AL 35802*  
*Email: Nedwards@itcdeltacom.com*

**LecStar Telecom, Inc.**

*Mr. Michael E. Britt*  
*2 Ravinia Drive, Suite 1300*  
*Atlanta, GA 30346-2123*  
*Email: Michael.britt@lecstar.com*

**MCI WorldCom/MCImetro Access Transmission**

*Ms. Donna C. McNulty*  
*1203 Governors Square Blvd., Suite 201*  
*Tallahassee, FL 32301-2960*  
*Email: donna.mculty@mci.com*

**MCI WorldCom/MCImetro Access Transmission (GA)**

*Dulaney O'Roark, Esq.*  
*Six Concourse Parkway, Suite 600*  
*Atlanta, GA 30328*  
*Email: de.oroark@mci.com*

**Messer Law Firm**

*Floyd Self*  
*215 S. Monroe Street, Suite 701*  
*Tallahassee, FL 32302*  
*Email: fsself@lawfla.com*

**Moyle Law Firm**

*Vicki Gordon Kaufman*  
*118 North Gadsden Street*  
*Tallahassee, FL 32301*  
*Email: vkaufman@moylelaw.com*

**Network Telephone Corporation**

*3300 North Pace Blvd.*  
*Pensacola, FL 32505-5148*  
*Email: danyelle.kennedy@networktelephone.net*

  
BRIAN CHAIKEN