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ORIGINAL

January 7, 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. 030851-TP -
SUPRA'S REBUTTAL TESTIMONIES OF MARK T. NEPTUNE AND DAVID A. NILSON

Dear Mrs. Bayo:

Enclosed are the original and fifteen (15) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Rebuttal Testimonies of Mark T. Neptune and David A. Nilson 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,

Jorge Cruz-Bustillo

Jorge Cruz-Bustillo
Assistant General Counsel

00236-04 Nilson
00237-04 Neptune

AUS ___
CAF ___
CMP
COM 5+1
CTR ___
ECR ___
GCL 1
OPC ___
MMS 1
SEC 1
OTH ___

CERTIFICATE OF SERVICE
Docket No. 030851-TP

I HEREBY CERTIFY that a true and correct copy of the following was served via e-mail, Hand Delivery, and/or U.S. Mail this 7th day of January 2004 to the following:

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Jorge Cruz-Bustillo/LWA

By: Jorge Cruz-Bustillo

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of requirements arising from Federal Communications Commission triennial UNE review: Local Circuit Switching for Mass Market Customers.	DOCKET NO. 030851-TP **Filed: January 7, 2004**

REBUTTAL TESTIMONY OF DAVID A. NILSON ON BEHALF OF SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.

SUBMITTED

JANUARY 7, 2004

I. INTRODUCTION AND SUMMARY OF TESTIMONY

PLEASE STATE YOUR NAME AND ADDRESS

A. My name is David A. Nilson. My address is 2620 SW 27th Avenue, Miami, Florida 33133.

Q **BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

A. I am the Chief Technology Officer of Supra Telecommunications and Information Systems, Inc. ("Supra").

Q **PLEASE DESCRIBE YOUR BACKGROUND AND WORK EXPERIENCE.**

A. I have been an electrical engineer for the past 27 years, with the last 23 years spent in management level positions in engineering, quality assurance, and regulatory departments. In 1976, I spent two years working in the microwave industry, producing next generation switching equipment for end customers such as AT&T Long Lines, ITT, and the U.S. Department of Defense. This job involved extensive work with various government agencies. I was part of a three-man design team that produced the world's first microwave integrated circuit which was placed in production for AT&T within 30 days of its creation. I held jobs at two different companies in quality control management, monitoring and trouble-shooting manufacturing process deviations, and serving as liaison and auditor to our regulatory dealings with the government. I spent 14 years in the aviation industry designing both airborne and land-based communications systems for various airlines and airframe manufacturers worldwide. This included ASIC and Integrated Circuit design, custom designed hardware originally designed for the Pan

American Airlines call centers, and various system controllers used on Air Force One and Two, other government aircraft and the Royal Family in England. I designed special purpose systems used by both the FAA and the FCC in monitoring and compliance testing. I was responsible for design validation testing and FAA system conformance testing. Since 1992 I have been performing network and system design consulting for various industry and government agencies, including research and design engineering positions at the Argonne National Laboratories. I joined Supra Telecom in the summer of 1997. A programmer for more than 35 years, I have extensive experience systems analysis, design, and quality assurance procedures required by various US government agencies. I have designed Internet Service Provider networks and organizations, including Supra's. I have done communications related software consulting to Fortune 500 corporations such as Sherwin Williams, Inc.

I have attended extensive management and engineering training programs with Motorola, Lucent, Nortel, Siemens, Alcatel, Ascend, Cisco, Call Technologies, Southwestern Bell Telephone, Verizon (formally known as Bell Atlantic), and others.

I am the architect of Supra's network, Internet Service Provider, designer of our central office deployments and network operations. This includes planning, capacity and traffic analysis to define equipment capacity from market projections for both voice services, Class 5 switch design and planning, transmission, data and Internet services, xDSL, voicemail and ILEC interconnection, ordering and billing.

I have negotiated interconnection agreements with Sprint, Verizon, Ameritech (SBC), SWBT and SWBT (SBC), and BellSouth.

I participate in bill analysis and dispute resolution and am intimately familiar with BellSouth retail and CLEC OSS systems, CRIS and CABS billing systems and standards. I have resolved tens of millions of dollars in over billed charges.

Q **HAVE YOU EVER TESTIFIED BEFORE?**

A. Yes, I testified before the Florida Public Service Commission (FPSC) in numerous generic dockets and in various disputes between Supra Telecom and BellSouth regarding central office space availability, rates, requirements, and specifications for Collocation, Unbundled Network Elements (UNEs), and UNE Combinations. I have participated in settlement procedures before the FPSC staff on matters relating to OSS and OSS performance against BellSouth. I have testified before the Texas Public Utilities Commission (TPUC) on matters of collocation regarding disputes with SWBT. I have made ex-parte presentations before the Federal Communications Commission (FCC) regarding the Bell Atlantic / GTE merger, the UNE Triennial review in 2002, and the Department of Agriculture (RUS) regarding Network Design and Expansion policies for CLECs. I have appeared before the FCC staff on several occasions in disputes against BellSouth regarding collocation. I have testified before regulatory arbitrators in Texas, and in Commercial arbitration against BellSouth. I have been deposed numerous times by BellSouth, and SWBT. I was qualified as an Expert Witness in Telecommunications by the Texas Public Utilities Commission in 2000. I have testified in Federal District Court and Federal Bankruptcy Court.

Q **WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

A. The purpose of my testimony is to rebut the testimony of **Dr. Pleatsikas , Mr. K. Milner, Ms. P. Tipton**, Dr. Randall S. Billingsly, Mr. J. Stegman, Dr. D. Aron,

Q: Which Commission issues do you address in your rebuttal testimony?

A. I discuss market definition (questions 1 and 2), actual switch deployment: local switching triggers, self-provisioning (question 4a), the potential for self-provisioning local switching (question 5), and the transitional use of unbundled local switching (question 6).

Q: Please provide a brief description and summary of your testimony.

A. My testimony responds to BellSouth's testimony and states Supra's positions on three key issues. First, geographic markets for mass market unbundled local switching should be defined as existing retail rate centers. BellSouth's proposal of UNE rate zones subdivided by CEAs is simply too large. Second, the mere presence of three self-provisioned CLEC switches in a geographic market is not enough to satisfy the triggers required by the FCC. BellSouth has ignored the FCC's criteria and thus, has failed to meet their burden of proof. Finally, BellSouth's BACE model alleging that CLEC entry is theoretically possible should be disregarded because it does not reflect how CLECs analyze markets for entry.

Supra does not meet the trigger as the 3rd CLEC in these wire centers or rate centers other than the North Dade Golden Glades wire center / North Dade Rate Center because we have one switch operating out of that Wire center. Supra does not qualify as the 3rd CLEC trigger in that office either because Supra is not able to serve all of its

UNE-P customers much less all of the customers in the geographic area per the FCC requirements.

Supra has one switch, one remote hanging off that switch and 16 offices of Digital loop Carrier facilities potentially serving 28,000 lines (0.4% of Bellsouth's 6.3 million) and actually serving 6000 lines (0.09% of BellSouth's 6.3 Million Florida lines. While Supra is committed to expanding this network, only an ILEC seeking to eliminate its competition could possibly consider such penetration a 3rd CLEC that would entitle the ILEC to eliminate UNE local switching. It is clearly not the presence envisioned by the FCC in the TRO as will be shown below.

II. EVIDENCE THAT CLECS ARE STILL IMPAIRED FROM SERVING MASS MARKETS WITHOUT ACCESS TO UNBUNDLED LOCAL SWITCHING.

Q. In addition to the analysis required by the FCC and the FPSC, what other evidence shows that local telecommunications mass market is not competitive and that CLECs should still be allowed to use unbundled local switching to serve mass market customers?

A. There are three additional key factors that strongly support a commission finding that CLECs serving mass market customers are impaired without access to unbundled local switching.

1) BellSouth's refusal to enter any market as a CLEC is proof that BellSouth believes CLECs are impaired.

2) The Big 3 ILEC's recent local rate increase clearly demonstrates that local competition from CLECs is not sufficient to restrain the ILECs' from exercising enormous monopoly pricing power and raising rates of captive local ratepayers.

Q. Please explain why BellSouth's refusal to enter markets as a CLEC is further proof that CLECs are impaired.

A. Aside from the FCC's national finding of impairment for the mass market, the most telling evidence that CLEC mass market competition is impaired is the conspicuous absence of any RBOC competing in another RBOC's territory as a CLEC for the past eight years even with the availability of unbundled local switching. If CLECs were not impaired in serving the mass market it would be reasonable to expect BellSouth, Southwestern Bell, Verizon, and Qwest competing as CLECs in each others market especially since SBC and Verizon promised to compete in other regions as a condition of gaining approval to merge with other RBOCs. SBC's entry into Florida was minimal[1], and is now over. The largest ILEC in the country never achieved sufficient mass market customers to support finishing its planned deployment of a Florida network. If BellSouth truly believed the results of its BACE model, it would be reasonable to expect that after eight years since the passage of the Federal Telecommunications Act of 1996, that BellSouth would have entered local markets outside of its monopoly territory as a CLEC. Rather, despite BellSouth's rhetoric that markets are open, BellSouth has yet to enter local markets as a CLEC.

[1] SBC did for a period of time attempt to compete into the Miami market. Despite a proven track record in advertising, customer care, the ability to deploy a network, and a sturdy financial base, SBC predominantly served customers via UNE-P left the Florida market shortly after its obligation to the Department of Justice and FCC was satisfied leaving no viable facilities base behind. Were it not for SBC's access to UNE-P, that ILEC's customer base would be eliminated.

Q. If BellSouth's own analysis as presented in the BACE Model alleges CLEC entry to be profitable without access to unbundled local switching, wouldn't it be reasonable to see BellSouth enter markets as a CLEC?

A. Yes. If BellSouth really believed the results of its BACE model, one would expect BellSouth to enter markets as a CLEC. However, the fact that BellSouth refuses to enter markets as a CLEC shows that BellSouth's BACE Model is Completely Without Merit. BellSouth has reached into its alchemy kit and conjured a magic model alleging that CLEC's can compete in local mass markets and are not impaired without access to unbundled switching. If BellSouth's model were truly valid and workable, BellSouth would be competing as a CLEC today in other ILEC's territory. The fact that BellSouth has not been competing outside of its territory as a CLEC for the past eight years completely undermines BellSouth's model. It serves as a stark reminder of how detached the academic theories of BellSouth's witnesses are from reality. The model should be disregarded.

Q. Is it true that ILECs, such as Sprint, that are competing as CLECs are willing to have their ILECs continue providing unbundled local switching?

A. Yes. Sprint has stated that its ILEC will continue to offer unbundled local switching. Contrast Sprint's behavior and policy positions with BellSouth's. Sprint's ILEC division has a large local customer base (approximately 8 million customers). Sprint could have sought to protect its ILEC customer base by opposing pro-competitive policies such as unbundled local switching. Instead, because Sprint is seeking to go outside of its territory

to compete as a CLEC, Sprint has realized the necessity of unbundled local switching for its success as a CLEC and thus, is willing to allow UNE-P to continue indefinitely in its ILEC territory. This is because Sprint recognizes that it must have a consistent policy for its ILEC and CLEC divisions such as offering UNE-P. If BellSouth ever intended to be a CLEC, it would not be trying to quash competition and, like Sprint, would allow UNE-P to continue indefinitely.

Q. What are BellSouth's motives in opposing the continuation of Unbundled Local Switching?

A. Quite simply the elimination of UNE-P as a means to eliminate meaningful competition in its service area. To say otherwise is ludicrous because, after all, that is the intent of any business. But in our Congress has clearly stated its intention that competition be encouraged and fostered, and as such the **means** to compete are to be regulated. Congress went so far as to empower the state commissions with the authority to create state rules which exceed the FCC's **minimum** requirements to foster local competition. As this Commission has obviously looked to the actions of other state Commissions in formulating the issues to be decided in this docket, the history of competition in Florida over the past 6 years should be considered as much as the current status. Not all ILECs have resisted competition as vigorously as the Florida ILECs.

Q. How do you justify that answer?

A. Quite simply the elimination of UNE-P as a method of providing local service. BellSouth seeks not to eliminate a burden on itself, but to eliminate what it has fought

implementing since prior to the 1996 ACT. BellSouth knows well the economics of providing telephone service, and which of its revenues must be protected from competition. Despite entering into agreements to provide UNE-P in 1996, BellSouth refused to provide UNE-P, and refused to accept that the CLEC would be entitled to collect access charges and other end user line charges under UNE-P, if it was made available. This Commission ordered BellSouth to comply in order PSC-98-0810-FOF-TP on June 12, 1998. BellSouth refused to implement UNE-P. Bellsouth still refused to implement UNE-P after the Supreme Court ruled in *AT&T v. Iowa Utilities*[2] in January 1999. Despite continuous pressure from Supra and other CLECs, BellSouth did nothing to implement UNE-P in 1999, 2000, and 2001. Supra first got limited and faulty UNE-P ordering capability on June 15, 2001, and by BellSouth's own sworn testimony in Federal Court[3] BellSouth itself never determined its CLEC OSS systems for UNE-P were effective until approximately June 18, 2002. BellSouth had avoided making UNE-P available for over 5 years in an effort to avoid meaningful competition. Now a scant 18 months later, BellSouth is using the TRO in an attempt to reduce competition back to token levels. Simply put, BellSouth knows it can **eliminate** anything except token competition from its region by eliminating UNE-P because the step from resale to facilities based competition[4] is simply too large a step for a competitor to successfully make, even another ILEC competitor.

Q. What about the other Florida ILECs?

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[2] Iowa Utilities Board v. AT&T 525 U.S. 366, 119 S.Ct. 721 (Iowa Utilities Board II) Decided by the Supreme Court of the U.S. on Jan 25, 1999.

[3] See Supra Exhibit DAN-1.

[4] Or startup to facilities based.

A. Sprint did not make UNE-P available to Supra until December of 2002. GTE never provided UNE-P at all. While Supra applauds Sprints decision to continue to offer UNE-P, its OSS interfaces are not suited for any significant volume[5] and lack the ability to be effectively automated. The ability to seamlessly scale orders in response to mass market advertising, such as Television advertising requires ability to process in excess of 20,000 conversion orders per month. Not having that ability means not having meaningful mass market competition just as much as not having Unbundled Local Switching.

No ILEC in Florida can handle that volume under UNE-L, and probably only BellSouth can handle it under UNE-P.

Q. What does meaningful competition mean?

A. The ability to rise above token completion to a level where in mass market advertising (Newspaper, Radio, TV) a CLEC has the same opportunity to acquire, **provision, and service** any customer exposed to the mass market advertising as does the ILEC. The ability to ubiquitously provide service to any customer that requests it, without using resale as a method of provisioning service. Anything else is token completion.

Q. Why is it that resale does not represent meaningful competition?

A. Even if a CLEC charges the same rate for a resold line as the ILEC[6], because of access charges, EUCL and other associated fees that go the ILEC, the ILEC actually stand to make 3-5 times the revenue a CLEC can make with the associated 21% discount. It is

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[5] In June of 2002 Supra was able to process 20,000 conversion orders per week and a total of 65,000 change order LSRs per month.

[6] A situation that may not be attractive to large numbers of customers.

these very revenues which are appropriately used to build, maintain and expand a LEC's network are denied CLECs under resale. By eliminating UNE-P the very revenues needed to build a facilities based network flow to the ILEC, ensuring that CLEC network cannot in the foreseeable future become large enough, and ubiquitous enough to provide anything more than token competition to the ILEC.

Q. Why does the Big 3 ILEC's recent local rate increase clearly demonstrate that local competition from CLECs is not sufficient to restrain the ILECs' from exercising enormous monopoly pricing power and show that unbundled local switching should still be required?

A. A basic tenet of economics is that increased competition leads to lower prices. If the Big 3 ILECs felt competitive pressure from CLECs, they would have reduced their basic local rates. The simple fact that BellSouth, Verizon, and Sprint each significantly raised their basic local rates proves that none of the Big 3 ILECs truly believe that CLECs provide significant competition.

If CLECs are not allowed to continue to use unbundled local switching, then competition from CLECs will be decreased, and consumers will likely see continued price increases by the Big 3 ILECs. In the mis-named rate-rebalancing docket, this Commission acknowledged the inelasticity of the captive ILEC retail customers. Without UNE-P to place competitive pressure on BellSouth, the ILEC will feel secure in raising rates in the future. If customers have no alternatives, they will be forced to pay whatever BellSouth chooses to charge. The recent rate rebalancing shows the importance of access charges to

the ILEC. In response to reduced rates the FCC allowed the ILEC's to charge IXC's[7], the ILECs filed for end user rate increases to restore their "losses". Yet it is these very revenues that would be denied CLECs in their entirety if UNE-P were eliminated and resale had to be relied upon until a critical mass was developed that would justify the deployment of network facilities. Furthermore the loss of these revenues would further delay the economic point at which a CLEC **could economically deploy facilities,** thus extending, or in fact restoring the ILEC monopoly. The Commission should require the Big 3 ILECs to continue offering unbundled local switching for mass market customers so that competition will continue to grow to the point where the Big 3 actually start reducing local rates rather than increasing them.

III. REBUTTAL OF DR. CHRISTOPHER JON PLEATSIKAS – DEFINING GEOGRAPHIC AREAS FOR MASS MARKET UNE-P SWITCHING (ISSUE 1 AND 2).

Q. When defining geographic market areas for mass market unbundled local switching, which factors should be taken into consideration and what relative weights should they be assigned?

A. The FCC and FPSC Staff have identified three factors to consider. They are as follows:

(a) the locations of mass market customers actually being served by CLECs;

(b) the variation in factors affecting CLECs' ability to serve each group of customers; and

[7] As ordered in the Access Reform Docket 96-262, and particularly the CALLS order, 00-193.

(c) CLECs' ability to target and serve specific markets profitably and efficiently using current available technologies?[8]

Q. Does Dr. Pleatsikas sufficiently address the Commission's criteria for defining a geographic market?

A. No. Dr. Pleatsikas falls far short of the analysis that should have been presented to prove BellSouth's case. He only makes cursory mention of UNE loop rates as one factor that varies across geographic areas that affect CLECs' ability to serve a group of customers but ignores many other crucial factors. He also fails to present any discussion about whether currently available technologies are sufficient to allow CLECs to target and serve specific markets based on his definition of a geographic market. In short, Dr. Pleatsikas provides an arbitrary definition of geographic markets for mass markets with insufficient evidence to support his market definition.

Q. Regarding Issue 2(a), how does the location of mass market customers actually being served by CLECs affect defining the relevant geographic area for mass market switching?

A. The closer mass market customers are physically located to a CLEC's switch, the lower the cost to serve those customers all other things being equal. But the actual telephone service being provided to customers is a significant consideration here. For example, much will be discussed in the two open dockets regarding serving multiline customers

[8] See TRO para. 495.

over a DS1[9] loop. However Supra, providing over 290,000 lines of POTS service, nearly all of it in 1 or 2 line configurations is a second and substantially different scenario. If Supra is indeed the largest CLEC operating in Florida, it is imperative that the single line POTS model be addressed fully.

For POTS service it is substantially less expensive for a CLEC to serve customers in the same wire center where its switch is collocated with the ILEC's switch than it is to serve those same customers from a different wire center several miles away. Large multiline customers which can be cost effectively served by DS1 loops[10] can be efficiently cross connected to either a switch in the serving wire center, or to transport which will carry the call back to a switch located remotely. On the other hand, 2 wire POTs service requires electronics equipment be collocated[11] in every central office or remote terminal where the two wire copper is terminated, in order to transport the call back to a switch. Dr. Pleatsikas acknowledges this only to a very limited extent when he acknowledges that even though Jacksonville and Miami are within the same UNE rate zone, they are too far apart and transport costs would likely be too high. However, he does not discuss the additional higher transport, collocation, and equipment[12] costs CLECs would face if the market were defined as the entire Miami-Fort Lauderdale metropolitan area and the CLEC must transport traffic across that market.

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9 Or higher.

10 6-8 lines or more at a given location.

11 Or leased. However despite the FPSC orders in 990649-TP relative to leased loop concentration equipment, the ability for a CLEC to actually lease such loop concentration from a remote terminal under UNE-L is non-existent. BellSouth refuses to provide such to Supra.

12 Absent a viable implementation of loop concentration of 2 wire EELs, both of which are effectively unavailable in Florida.

A wire center located in an urban area with a higher population density will have lower per unit costs than a wire center located in a rural area with a lower population density. Geographic areas should be defined based, in part, on population density since the consumer response to mass market advertising is directly proportional to the number of customers who can see the advertising, and as such is directly proportional to the number of customers served in a given wire center, or rate center. However, rate zones for UNE Loops are too large and do not account for other factors which affect a CLEC's cost of providing service to mass market customers. Given the economic theory of supply and demand, the ability of a CLEC to supply service to end user customers must be proportional to the **local** demand, or competition will wither once again.

For example, Supra serves some 20,000 customer in the Pembroke Pines[13] wire center, yet serves less than one sixth that number of customers in the adjoining Weston wire center which is a highly affluent area. This demonstrates the price inelasticity mentioned above, and calls into question the wide area averaging proposed by BellSouth. While these adjacent wire centers are both in the same rate center and same UNE rate zone, a single number threshold for to apply to both offices is inartful, and punitive to one party or the other. Competition occurs on an office by office basis. Collocation decisions, cost justifications and expenditures must happen on an office by office basis, particularly for POTS customers. Even rate centers show large variances from office to office, although a rate center is far more palatable than the BellSouth proposal provided there a demonstrable ability to provide a given CLEC in excess of 20,000 conversions per month to 2 wire POTS EELS. Such ability does **not** exist today. Unless it is the express

[13] Largely single family middle income and elderly customers.

intention to reduce competition from its current state, it is inappropriate to set threshold based upon an arbitrarily large boundary such as CEA or UNE rate zone.

Q. What factors affect a CLECs' ability to serve customers in a particular geographic area?

A. The cost of serving a customer as well as the revenue that can be collected from each customer are two key factors that affect a CLECs' ability to serve each group of customers and can vary significantly by geographic area. Cost factors include UNE Loop rates, the size and location of a wire center, the availability of EELs[14] and the availability of collocation space. UNE Loop rates vary by ILEC and by zone density. The less dense the zone, the higher the rate; plus, some ILECs have higher rates than others for zones with similar densities.

The size and location of a wire center impact costs as well. A large wire center, or a wire center serving 40,000 lines, will have lower per unit costs than a small wire center that serves only 2,000 lines. Likewise, a wire center located in a densely populated area will also have lower per unit costs because the CLEC will be able to reach more customers from that site. Additionally, expected revenues per customer vary by ILEC and by population density. Rates in urban areas are generally lower than rates in rural areas and have to be weighed against costs of serving customers Furthermore, ILECs charge different rates for the same services. A CLEC must consider all of these factors before choosing to enter a particular geographic area.

[14] I.e. the ability to order EELS in the same volume, time and manner that UNE-P conversions can be ordered today is an essential key to using geographic areas larger than a single serving wire center, such a rate center.

Q. If a CLEC has a switch collocated in the ILECs CO, why is the CLEC still unable to serve all of the customers in that CO without access to unbundled local switching?

A. Simply put, POTS service is no longer exclusively provisioned via long 2 wire copper loops stretching from the switch to the customer premises. The introduction of technology such as Integrated Digital Loop Carrier ("IDLC") (a.k.a loop Concentration) and fiber to the home (a.k.a "IFITL") has brought about economies of scale to the ILEC.

They have also complicated and prevented conversion of CLEC customers from UNE-P to UNE-L.

In carrier serving areas, which probably exceed 70% of Florida customers and may exceed that in LATA 460, high capacity transport circuits run from the switch to DLC equipment in remote terminals ("RTs"). Since not all telephone customers use their phone at the same time, statistical multiplexing is used to put up to 4 customers for every one transport channel. Signalling is used between the switch and the RT to determine which customer gets to talk at a given time. However one and only one switch can connect to this transport. The IDLC equipment cannot talk to more than one switch.

In order for a CLEC to serve customers from the Remote terminals a CLEC must either be given full control of an entire IDLC box[15], to have the loop transferred to an older Universal DLC ("UDLC") technology, if it exists and has capacity in the RT, or to one of a limited number of remaining copper loops in the RT. Both of these approaches are problematic, simply because the facilities doe not exist in any large number and those that doe are already partilly or fully used by BellSouth itself. The use of multiple UDLC

[15] While the FPSC has established rates for this, BellSouth steadfastly refuses to allow Supra to purchase loop concentration facilities to Supra's switch, and lacks OSS support to provide such service.

boxes can also have a detrimental effect on high speed modem use by a customer, causing a customer who enjoyed %Kbps modem speeds as a Bellsouth customer to suffer 14.4 or slower service as a CLEC customer due to the multiple A/D and D/A conversions negatively affecting the modems ability to compress data at the 56K rate. Service provided to customers formerly served by IDLC technology cannot be provided in the same time or manner as it is to a BellSouth Retail, Resale, or UNE-P customer.

Furthermore there is again the question of scale. What BellSouth can do to convert this type of service for 10 or 20 customers, it cannot do for 2000. Yet mass market advertising has provided Supra with approx 20,000 customers of this type in the Pembroke Pines wire center alone. BellSouth cannot convert these customers to UNE-L at all. BellSouth testimony is full of unfufillable promises regarding EELs. Were EELS as ubiquitous as BellSouth would have you believe, they could use that technology to solve the UNE-P to UNE-L conversion issues in Pembroke Pines. The simple fact is that today, 2 wire POTS EELs do not exist as a viable high volume alternative to UNE-P.

Q. What factors, other than cost, affect a CLECs' ability to serve customers in a particular geographic area?

A. A key requirement is that an ILEC have collocation space available. If the ILEC does not have any collocation space available, then it becomes prohibitively more expensive for a CLEC to build their own suitable collocation space. EELs were supposed to eliminate this and provide a seamless[16] solution so that a CLEC did not have to collocate in all 200+ wire centers in the BellSouth region. This all looks good on paper. But 2 wire

[16] Albeit a prohibitively expensive.

POTS EELs provide the same problems[17] to the ILEC as they do to the CLEC. BellSouth simply cannot provide 290,000 POTS EELs to replace the UNE-P service being provided to Supra customers today. Supra on the other hand has been able to effect collocation in 18 Bellsouth offices, and is unable to directly provide service, without collocation or POTS EELs in over 95% of the BellSouth central offices.

Furthermore, BellSouth has refused Supra's orders for 2 wire POTS EELs in offices where Supra does not have collocation facilities. So due to an extremely poor policy decision on Bellsouth's part, ubiquitous use of EELS **still** requires collocation in all 200+ central offices. As such, until BellSouth can demonstrably prove that a given type of EELs is ubiquitously available, the corresponding unbundled switching element should not be eliminated at all, and such EEL availability should be tested on a wire center by wire center basis. Only when volume availability off EELs is **proven** within all wire centers in a rate center, should BellSouth be allowed granularity at the rate center level.

This concept is supported by prior FCC rules which allowed the ILEC to discontinue unbundled local switching in zone one of the top 50 MSAs. BellSouth, in interconnection agreements filed before this Commission with AT&T, MCI, Supra and others chose to continue offering unbundled switching at "market rates". Bellsouth's assessment of an appropriate "market rate" for unbundled switching at $14.00 per port per month is *prima facie* evidence that a third party market for unbundled switching does not exist. To inflate the TELRIC rate of $1.17 to $14.00 **can not, and would not** be viable if there was a single third party provider. This change alone, if implemented

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17 Or impairments

would raise the **cost** to a CLEC from approx $25.45 per month to $39.28 for a $33 retail service. No CLEC can afford to pay its customers $6.28 per month, every month to be its customer and Bellsouth well knows that.

But BellSouth has never billed that rate, knowing full well that it has not, and cannot make a showing that EELS can ubiquitously be used to provide alternative service in zone one in Miami, Orlando and Jacksonville. BellSouth cannot make a showing that it can provide each and every type of EEL in commercial volume to enable it to charge the exorbitant $14.00 per port, and its failure to bill customers this rate is *prima facie* evidence that EELS are not able to be provided to enable Bellsouth to discontinue TELRIC based ULS for customers with 4 lines of more at a given address.

To assess wire centers where collocation exists in sufficient numbers, the largest noncost factor for the commission to consider is the ILEC's ability to "handle large numbers of hot cuts."[18] An ILEC's ability to handle commercial volumes of hot cuts is absolutely crucial to the survival and success of a CLEC to compete in any given geographic area. If the ILEC is unable to handle commercial volumes of hot cuts, then all of the preceding cost and revenue factors become largely irrelevant. This presupposes that the CLEC has large numbers of customers to begin with. The 1996 Act is designed to create choice for customers. A small company serving a small segment of one market offering similar services as the ILEC at lower prices is exactly what the Act was intended to do. The CLEC may not have large number of customers in any one specific area. In those cases it easier for the ILEC to meet its requirements, although the result is nothing more than token competition. Unless the Commission addresses the ILECs ability to

[18] See TRO para. 496.

provide commercially high volume conversions in proportion to the ILEC customer base, the elimination of UNE-P will guarantee that consumers in a given particular area will no longer have choices. This is contrary to the Act and Chapter 364, Florida Statutes.

Q. Regarding Issue 2(b), how does the variation in any of the above mentioned factors affect CLECs' ability to serve customers in each geographic area?

A. As discussed above, feasibility, availability, volume, cost effectiveness and revenues are key factors. If costs are high and expected revenues are low, then it will be unprofitable to serve customers in that geographic area. If an alternative service (i.e. IDLC replacement or EELs) are either not available or result in an underlying cost factor that exceeds the ILECs cost of provisioning the same service to the same customer, it will be unprofitable to serve customers in that geographic area, and competition will withdraw. Only the ILEC benefits from that, and that is the motive behind the push to eliminate UNE-P. BellSouth has never wanted to provide UNE-P and now a scant 18 months after they claimed the OSS was finally fixed, they want to dismantle it because UNE-P based competition has cost them customers, albeit with the benefit of getting 271 approvals. Now that the long distance business is in their hands, Bellsouth's seeks to eliminate all competition and thus get back, without competition, all customers it gave up to acquire 271. This Commission should look closely at these motives before rejecting them out of hand.

Some CLECs have tended to focus on serving customers in metropolitan areas where, generally, the cost per customer is lower than in rural areas due to lower UNE

Loop rates, higher customer density and higher overall population per wire center as well as wire centers being in closer proximity to a greater number of customers.

Additionally, as discussed above with the noncost factors, if collocation is not available in a certain wire center, then a CLEC cannot enter that geographic market on a cost-effective basis regardless of other favorable cost factors. This is due to the unavailability of EELs and wholesale loop concentration. Both of these solutions themselves require a certain volume of customers in a central office before they are cost effective. A solution that does not enable cost effective competition with the ILEC will cause CLECS to either fail, or withdraw from the market. Bellsouth as **zero** incentive to prevent this prom happening, and would like nothing more than to have its largest competitors go broke or withdraw from the market restoring its long missed monopoly power.

Even if collocation is available and cost factors are favorable, a CLEC cannot successfully serve mass market customers because Additionally, CLECs cannot successfully serve mass market customers if the ILEC cannot handle commercial volumes of hot cuts, or the alternative means of providing service. Today there is nothing, except resale than can be provided in the same volume, time and manner as UNE-P. The legal and regulatory forces that refined the UNE-P process to what it is today, no longer exist since 271 approvals. If a CLEC is damaged by BellSouth's actions this Commission could technically fine Bellsouth, an action it has not taken for past infractions, but it lacks the ability to make the CLEC whole again. There are no statutory provisions fro the Commission to award damages and as such abuses that damage the CLEC will continue to occur because it is good business for the ILEC to do

so. Florida has not seen extemporary performance from its ILECs and Florida ILECs should be held accountable for past refusals to compete in determining this issue.

Q. Regarding Issue 2(c), how does the CLECs' ability to target and serve specific markets profitably and efficiently using current available technologies affect defining the relevant geographic area for mass market switching?

A. In the POTS market, the CLECs' ability to target and serve specific markets does not confer significant cost advantages on the CLEC. In mass market advertising, a single television spot will reach customers from Jupiter to Key West. When Supra advertised solely in the Miami Herald, we began to see rises in Jacksonville, Orlando and even the Pensacola markets. The only way to target is via mail or direct telemarketing. Any form of advertising has the effect of generating ubiquitous demand. In order for meaningful competitions to exists, the CLEC must be able to cost effectively serve the same customers as the ILEC. BellSouth's proposals prevent that.

When serving the POTS market, CLECs often face higher costs than the ILEC even if one assumes UNE prices are truly TELRIC-based and reflect the ILEC's true cost. Since the CLECs are using the same loops as the ILEC and collocating in the same central offices (assuming collocation is truly cost based) to reach the customers, CLECs face the same cost structure as the ILEC. On top of these costs, the CLEC must pay enormous nonrecurring charges[19] to the ILEC to convert a customer's service from

[19] The FPSC has ordered that the conversion form BellSouth retail to UNE-P of a working telephone number be performed at a rate of $0.102 (10.2 cents). Yet BellSouth is billing $59.31 to convert the **same** working UNE-P line to a UNE-L loop. Since the FPSC has never looked at this rate, Bellsouth believes it can charge whatever it chooses in effecting what is essentially the discontinuation of unbundled local switching, without regard to duplicative or avoided costs. Almost $60 will be charged to each CLEC to disconnect the unbundled local switching if this Commission eliminates ULS!

UNE-P to UNE-L customer's service. Additionally, many CLECs are using the same switching technology as the ILECs meaning they will face similar switching costs. Thus, in terms of technology and operational costs, the CLEC faces costs that at best are similar to the ILEC's costs, but often, higher than the ILECs due to NRCs. The rate Bellsouth is charging for NRC means the CLEC will not even begin to break even until after the seventh month of service **even if the customer is already a UNE-P customer of the same CLEC!**

Q. Why is it vital for the geographic area to be defined at the "right size" and not too large?

A. If the geographic area is defined too large, it would make it impossible for CLECs to have a meaningful ability to compete with the ILEC and would drive all of the CLECs out of that market leaving local telephone users with the incumbent monopolist as their only choice for local telephone service. Such a result would be disastrous and send us back to the days of local monopoly phone service. Local competition and Florida local telephone consumers will benefit from erring towards defining the geographic area a bit too small rather than too large.

Q. What did the FCC say about defining geographic areas?

A. The FCC made it clear that "state commissions cannot define a market as encompassing an entire state and that they should not define the market so narrowly that a competitor serving that market alone would not be able to take advantage of available scale and

scope economies from serving a wider market."[20] States should consider CLECs' ability to self-provision switches or use switches provided by a third-party wholesaler[21] to serve various group of customers varies by geographic market. The FCC went on to say that if a CLEC was serving only a certain geographic area with its own switch, then the state commission should consider establishing those areas as separate markets.[22] Additionally, the state may consider using other geographic market definitions that were used for determining retail rates, UNE loop rate zones, and intrastate universal service funding.

States must determine the appropriate cut-off for multi-line DS0 customers as part of its more granular review..

Recommendation for Defining Geographic Markets

Q. What is your recommendation for defining a geographic market for purposes of evaluating mass market impairment?

A. I recommend that the Commission use existing wire centers as the appropriate geographic market for evaluating impairment for mass market switching. To use an area larger than an existing wire center would place CLECs at a severe competitive disadvantage. For example, if a geographic area were defined to include all of the wire centers in a

[20] See TRO para. 495.

[21] The record of this proceeding will show that there is not one single wholesale provider of unbundled local switching (or equivalent) operating in the state of Florida. If there were BellSouth would be able to argue this to their benefit. However since none exist, and Supra has searched long and hard to find such alternatives, this to will be born out by the record.

[22] See TRO footnote 1537.

metropolitan area it may be possible for the ILEC to game the system such that only one of the wire centers had collocation space available forcing new CLECs to collocate in that remaining wire center to enter that geographic area. That coupled with the unavailability of EELS would render that CLEC ineffective at serving the mass market defined by the surrounding rate center. The ILEC would choose the wire center that was furthest away from the desired customer base. This would force the CLEC to not be able to serve customers in other wire centers **at all** and would render mass market advertising costly, problematic and ineffective for the CLEC, all of which benefit **only** the ILEC and its bottom line. It is highly likely that CLECs could reduce their costs of serving their targeted customer base by choosing to collocate in wire centers that were located closest to their targeted customer base or had lower costs due to higher population density by the wire center or access to more loops at that wire center. However every CLEC capital expenditure would be a gamble. No longer would it be possible to build a sufficient number of customers to justify collocation of network facilities. In effect, the industry would revert back to a "build it and hope they will come" footing. That was an interesting premise for the movie "Field of Dreams", but turned out to be a disastrous way to build a network and stay in business as all the dearly departed CLECS of the 90's have taught us. Furthermore the money that built the speculative networks of the 90's is no longer available and is unexpected to ever return. Todays networks are being deployed not by Wall Street investments, but by customer profits which are turned back into investments in physical plant. Supra's entire network deployment has been funded by operations that BellSouth now seeks to eliminate.

The only way to ensure that CLECs would be unhindered by artificial regulatory

limitations or ILEC gamesmanship would be to define each wire center as the relevant market, and to establish a minimum level of lines, under which a CLEC would be entitled to UNE-P < and above which the CLEC would be given a certain amount of time to collocate, or UNE-P would no longer be available, to that CLEC, in that office. Thus, for an ILEC to meet the triggers to no longer provide UNE switching, the ILEC would be forced to ensure that collocation was available at each central office and that it performed hot cuts and batch cuts for CLECs at parity with that it would provide for itself. This would help to place the CLEC on a more equal footing with ILEC in designing their network by allowing the CLECs full access to all ILEC central offices with hot cuts and batch cuts at parity.

Q. Regarding Issue 1, in BellSouth's service area, what are the relevant markets for purposes of evaluating mass market impairment and how are they defined?

A. The relevant markets would be each wire center as defined by BellSouth's retail rate tariff. In the alternative no consideration of an area larger than a rate center should ever be made, and then only when EELs could be cost effectively deployed throughout a rate center, and the CLEC had a switch **physically** located within the rate center boundaries itself. No consideration for eliminating UNE-P should be given when a switch serving the rate center is physically located outside the rate center. The added cost of doing so is a bridge to quicker network deployment, but the added cost penalty is sufficient that the ILEC should not be allowed to count that in eliminating unbundled switching in an effort to destroy competition.

IV. REBUTTAL OF TIPTON – THE PRESENCE OF THREE CLECS SELF-PROVISIONING SWITCHING

Q. Do you agree with Ms. Tipton, that the FCC's criteria for the first trigger of three CLECs self-provisioning switching have been met in 10 of BellSouth's markets?

A. No. Ms. Tipton's analysis falls far short of the standard set by the FCC in the TRO. BellSouth's witness, Pamela Tipton, states that there are 13 markets (markets as defined by BellSouth) in BellSouth's territory where there are three or more CLECs self-provisioning switching and then alleges that the FCC's criteria is satisfied. However, Ms. Tipton completely ignores the FCC's specific criteria that discuss which types of CLECs and CLEC switches qualify to be counted toward meeting the criteria of three CLECs self-provisioning switching serving the mass market. Ms. Tipton completely ignores discussing whether the CLECs qualify under the FCC's strict standards. Rather, her analysis is nothing more than saying that the mere presence of three CLECs with switches satisfies the FCC's strict criteria.

Q. Why is the mere presence of three self-provisioned CLEC switches in a market NOT enough to satisfy the trigger?

A. The FCC has set a very high standard for considering which CLEC switches could be considered to meet the self-provisioning trigger because they want states to ensure that mass market customers are actually being served by those switches and receiving some benefit. Local competition for mass market customers will be seriously damaged if the

Commission does not first ensure that the CLEC switches are being used to serve mass market customers and that they are actually in service.

Based on the FCC's criteria, the checklist for analyzing each of the three CLECs that are self-provisioning switching is as follows:

1) The CLEC must be actively providing voice services to mass market customers in that market.[23]

2) The CLEC must also be **operationally able** and willing to provide service to all customers in that market.

3) The CLEC must also be economically able and willing to provide service to all customers in that market.

4) The CLEC's services must be desirable to all segments of mass market customers in that market.

To meet this trigger, the state commission can only consider CLEC switches that are actively providing voice services to mass market customers in that market. Thus, if a CLEC switch is idle or is not currently being used to provide voice services to mass market customers, it cannot be counted towards meeting the threshold. The CLEC must also be operationally and economically able and willing to provide service to all customers in that market. Even if the CLEC is providing voice services to some mass market customers in that market, if the CLEC is unable to provide service to all mass

[23] See TRO footnote 1561, which reads, in part, "We require the states to apply triggers that look only at actual deployment as the principal mechanism form evaluating impairment in particular market."

market customers in that geographically defined market[24] economically or for operational reasons, that CLEC switch cannot be counted toward meeting the threshold. Finally, even though a CLEC may have a switch located in a given geographic market that theoretically could be used to serve mass market customers, if the CLEC is not serving mass market customers[25] and the CLEC's services are not targeted toward serving mass market customers or are desirable to mass market customers, the State cannot count that CLEC's switch as one of the three necessary to meet the self-provisioning non-impairment trigger. States cannot rely on CLECs that provide service that are desirable to only one segment of the market. Rather, there must be at least three CLECs self-provisioning switching that are serving all segments of the market.[26]

Q. What are some examples of how a CLEC would not meet the first criteria of providing voice services to mass market customers in a geographic market?

A. CLECs that are targeting enterprise business customers would fall into this category. The vast majority of CLECs have focused their business on serving only enterprise customers. While their switches may (or more often may not) be technically capable of providing voice services to mass market customers, those CLECs have chosen to not serve the mass market. Hence, based on the FCC's rules,[27] the switches of these CLECs should not be counted as one of three CLECs self-provisioning switching for the first trigger. Additionally, there may be CLEC-owned switches that are idle for a number of reasons. The CLEC-owner may not be operationally or financially ready to turn up the switch.

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[24] And this obviously first include the CLECs ability to provide voice service to all of it **its own existing UNE-P customers in that wire center / geographic market.**

[25] I.e. an idle switch, or one serving the IXC market.

[26] See TRO para. 499.

[27] Id. (TRO para. 499).

The CLEC-owner may have chosen to exit that market or may have gone out of business altogether. Thus, the mere presence of a CLEC-owned switch is not sufficient to meet that part of the self-provisioning criteria. The switch must be actively used to provide voice services to mass market customers.[28] As the FCC stated,

> "We give substantial weight to **actual commercial deployment** of particular network elements by competing carriers." (bold added for emphasis.)

Q. What are some examples of how a CLEC could not be operationally able or willing to provide service to <u>all</u> customers in a geographic market?

A. The CLEC could be actively providing voice service to some mass market customers in a given geographic market, but may not be operationally able or willing to provide service to <u>all</u> customers in a geographic market. For example,

1) Collocation space is not available to the CLEC so the CLEC cannot offer service in parts of the market.

2) The CLEC's switch capacity is not yet sufficient to serve all of its **own** UNE-P customers.

3) The ILEC cannot cut over all of the CLEC's existing UNE-P customers to the CLEC's switch.

[28] TRO para. 498, We give

4) The ILEC cannot keep pace with the CLEC's addition of new customers and cannot hot cut the CLEC's new customers to the CLEC's switch in a timely manner.

5) The ILEC's hot cut process is so fraught with errors and service disruptions that the CLEC does not want to risk alienating its customers until the ILEC can resolve its hot cut problems.

6) The ILEC cannot, has not, or will not provide the same type of EELs necessary to support the specific services being purchased by the CLEC under UNE-P.

Q. What are some examples of how a CLEC could not be economically able or willing to provide service to <u>all</u> customers in a geographic market?

A. The CLEC could be actively providing voice service to some mass market customers in a given geographic market, but may not be economically able or willing to provide service to <u>all</u> customers in a geographic market. For example,

1) Collocation space is available but is prohibitively expensive.

2) The ILEC's non-recurring charge (NRC) for hot cuts is prohibitively expensive.

3) The wire exchange is too small to justify collocating equipment to serve the customers and

4) EELs are prohibitively expensive or unavailable so they are not a reasonable substitute[29].

Q. What are some examples of how a CLEC's services might not be desirable to all segments of mass market customers in a geographic market?

A. The CLEC could be actively providing voice service to some mass market customers in a given geographic market, but its services might not be desirable to all segments of mass market customers in a geographic market. The mass market can be broken down into several customer segments, each with its own unique characteristics and desired product service set. A CLEC may choose to target only one of those customer segments leaving the other customer segments without a competitive alternative. For example,

Customer Segment	Product Targeted to Segment
a) Consumer[30]	POTS
b) Low-income	Lifeline
c) Bad Credit	Prepaid local phone service

[29] EELs come in many sizes and configurations. It is necessary to specifically address the **exact** EEL necessary to serve a mass market customer (i.e. a 2 wire POTS to DS1 EEL, etc) in making such assessment. BellSouth may offer one EEL in low demand and not suited as a mass market EEL in an effort to win on this point. Such deception should be prevented by strict and explicit findings, and a proof by the ILEC that they actually exist and can be provisioned in commercial volumes. Such volumes should not be less than 20,000 lines per CLEC per month.

[30] Consumer Market follows FCC guidelines, Residential and Small business service with 5 lines or less. This is generally 100% POTs service.

Q. Even if there are three CLECs self-provisioning switching in a market, that meet all of the FCC's criteria, what extenuating circumstances would prevent the State commission from finding non-impairment?

A. The FCC said that a state commission would find impairment exists if a significant barrier to entry existed such that even a CLEC that self-provisioned its own switching would not be able to enter the market to serve all mass market customers. As I stated above, even if Supra has a switch collocated in BellSouth's central Office Supra is unable to serve all of the mass market customers with its switch because some customers are served with IDLC facilities which BellSouth will not unbundle or due to the unavailability of EELS and wholesale loop concentration facilities. The only way that Supra can reach these customers is by using unbundled local switching. Additionally, if the FPSC finds that there is no collocation space available in a geographic market to CLECs that self-provision switches, the Commission would find that CLECs are impaired without access to unbundled switching because further competitive entry would be impossible regardless of other economic or operational circumstances. (See para. 503).

Q. What if there are three CLECs self-provisioning switching in the enterprise market, should the State commission count them for a finding non-impairment?

A. No. The FCC has said that switches serving the enterprise market cannot be counted toward meeting the threshold for the mass market triggers. (See TRO para. 508). Even though there is a possibility that switches being used to serve the enterprise market could be deployed to serve the mass market after the state commission implements a batch cut

process, the state commission should not currently consider them for purposes of meeting the triggers. After the state commission implemented a batch cut process that was proven to work, the state commission could investigate those switches to see if they met all of the necessary criteria.

Q. Did BellSouth's Witness, Ms. Tipton, address <u>any</u> of the FCC's criteria in her analysis?

A. No, not a single one.

Q. Has BellSouth met the burden of proof in attempting to show that the first trigger is met?

A. No. BellSouth has fallen far short of the proof required to overturn the FCC's national finding of impairment for unbundled local switching in the mass market. Since BellSouth has failed to meet this burden, their claims that the FCC's first trigger has been met should be rejected. The FPSC should find that there is insufficient evidence to prove that CLECs are not impaired without access to unbundled local switching in the mass market.

<u>CMRS and Cable TV Intermodal Switching Is Not An Alternative For Analyzing the Presence of CLEC Switching Within A Market.</u>

Q. Ms. Tipton suggests that CMRS switches and/or Cable TV switches (intermodal switching alternatives) should also be considered when analyzing self-provisioning

switching or wholesale provisioning of switching in a geographic market. Do you agree?

A. No, I do not. The FCC said that state commissions may not consider CMRS switches or switches used in Cable TV networks as adequate substitutes for LEC-provided unbundled local switching be used in the analysis for either the first or second trigger.

The FCC said that CMRS providers do not provide service that is a suitable substitute for local circuit switching. As many know from their own personal experience with cellular phone service, voice clarity seldom compares to the clarity of a wireline call, calls are often dropped mid-sentence, service is simply unavailable in many areas, and surfing speeds on the internet via a cell phone are akin to watching paint dry. Specifically, the FCC stated that,

> "We also find that, despite evidence demonstrating that narrowband local services are widely available through CMRS providers, wireless is not yet a suitable substitute for local circuit switching.....the record demonstrates that wireless CMRS connections in general do not yet equal traditional landline facilities in their quality and their ability to handle data traffic." (TRO para. 445.)
>
> "...we note that CMRS does not yet equal traditional incumbent LEC services in its quality, its ability to handle data traffic, its ubiquity, and its ability to provide broadband services to the mass market....(TRO para. 230 and footnote 1549)

The FCC stated that that was no evidence that either CMRS or Cable TV switching provided CLECs access to the ILEC's DS0 loops. Thus, they could not be considered as intermodal alternatives for wholesale switching for purposes of this docket.

> "We are unaware of any evidence that either technology (cable or CMRS) can be used as a means of accessing the incumbents' wireline voice-grade local loops. Accordingly, neither technology (cable or CMRS) provides probative evidence of an entrant's ability to access the incumbent LEC's

wireline voice-grade local loop and thereby self-deploy local circuit switches.[31]

Q. Did the FCC specifically state that CMRS switches should not be considered?

A. Yes. The FCC explicitly stated that it does not expect state commissions to consider CMRS providers as viable intermodal switch providers when analyzing CLEC self-provisioning switching or wholesale provisioning of switching in a geographic market.

> "at this time, we do not expect state commissions to consider CMRS providers in their application of the triggers." (TRO footnote 1549)

Q. Did the FCC specifically state that Cable TV switches should not be considered as an intermodal alternative?

A. Yes. The FCC stated that their intermodal switching analysis is based, in part, on evidence from the intermodal loop analysis.[32] Regarding the intermodal loop analysis which included analyzing the use of Cable TV networks to provide voice services, the FCC stated:

> "Upon review of the extensive record on intermodal competition compiled in this proceeding, we determine that, although the existence of intermodal loops does not warrant a finding of no impairment, such competition is a factor to consider in establishing our unbundling requirements.. . Neither wireless nor cable has blossomed into a full substitute for wireline telephony."[33]

Q. When considering intermodal switching, did FCC consider if CLECs were impaired?

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[31] See TRO para. 446.

[32] See TRO footnote 1355 which reads, "We note that our analysis of intermodal switching alternatives is informed by the evidence of intermodal alternatives relating to local loops. Because commenters devoted a significant amount of discussion to cable and wireless facilities as substitutes for local loops, evidence of intermodal alternatives is also discussed under our analysis of local loop unbundling."

[33] See TRO para. 245.

A. Yes. The FCC clearly stated that intermodal switching provided by CMRS and Cable TV networks were insufficient for them to make a finding of no impairment.

> "In particular, we determine that the limited use of intermodal circuit switching alternatives (CMRS and Cable TV) for the mass market is insufficient for us to make a finding of no impairment in this market, especially since these intermodal alternatives are not generally available to new competitors."[34]

Q. If CMRS switches or Cable TV switches should not be considered, what type of intermodal switching alternatives could be considered when analyzing self-provisioning switching or wholesale provisioning of switching in a geographic market?

A. The FCC stated that packet switches could be considered to the extent that they are used to provide local voice service to the mass market.[35]

Reversing a finding of Non-impairment.

Q. If the Commission finds that one of the three CLECs that were counted for meeting the criteria of three CLECs self-provisioning switching in a geographic market ceases to provide service, what should the Commission do?

A. If the Commission finds that one of the three CLECs that was originally counted for meeting the criteria of three CLECs self-provisioning switching in a geographic market ceases to provide service, the Commission should immediately find that the criteria is no longer met and that CLECs are impaired without access to unbundled local switching.

[34] See TRO para. 443.
[35] See TRO footnote 1549.

There are a couple of very possible scenarios that would cause a CLEC that is self-provisioning switching in a geographic market to no longer be counted as meeting the benchmark of three CLECs. First, the CLEC may merge with the ILEC. For example, if BellSouth and AT&T were to merge, then AT&T's switches should no longer be counted as one of the three CLECs to meet the FCC's criteria of three CLECs self-provisioning switching. Second, over the past three years, numerous CLECs have filed bankruptcy and have ceased providing service. If a CLEC ceases to provide service in that market, leaving only two CLECs self-provisioning switching in that geographic market, then that CLEC should no longer be counted as one of the three meeting the criteria. Third, CLECs may withdraw from a given geographic market for economic reasons other than bankruptcy, as the ILEC SBC withdrew from the Florida market. CLECs may scale back operations to survive financially or a CLEC may no longer find it economically profitable to serve that specific geographic market. If this occurs, then the commission should immediately find that the criteria of three CLECs is no longer met and should require the ILEC to offer unbundled local switching. This "automatic impairment trigger" – for a lack of a better term – should be included in the order of the Commission, if the Commission were to find that presently non-impairment exists in these markets. It would be detrimental to the fundamental legislative mandate of Chapter 364, Florida Statutes, that this Commission promotes competition in the State of Florida.

IV. REBUTTAL OF BELLSOUTH'S BACE (BELLSOUTH ANALYSIS OF COMPETITIVE ENTRY) - OPERATIONAL AND ECONOMIC BARRIERS TO CLEC ENTRY

Q. Q. Didn't the FCC find on a national level that CLECs serving the mass market were impaired without access to unbundled local switching due to operational and economic barriers?

A. Yes. As discussed above, the FCC concluded that on a national level, CLECs serving the mass market were impaired without access to unbundled local switching based on evidence regarding the operational and economic barriers caused by the cut over process. The FCC stated:

> "We find on a national basis, that competing carriers are impaired without access to unbundled local circuit switching for mass market customers. **This finding is based on evidence in our record regarding the economic and operational barriers caused by the cut over process. These barriers include the associated non-recurring costs, the potential for disruption of service to the customer, and our conclusion, as demonstrated by our record, that incumbent LECs appear unable to handle the necessary volume of migrations to support competitive switching in the absence of unbundled switching. These hot cut barriers not only make it uneconomic for competitive LECs to self-deploy switches specifically to serve the mass market, but also hinder competitive carriers' ability to serve mass market customers using switches self-deployed to serve enterprise customers. (bold added for emphasis)"**[36]

The FCC also noted that that the high non-recurring per-line charges for connecting a carrier's own switch to an unbundled loop in combination with customer churn may

[36] See TRO para. 459.

make entry uneconomic.[37],[38] The FCC found that as a result of these barriers, there has only been minimal deployment of CLEC-owned switches to serve mass market customers. The FCC found that the characteristics of the mass market raise significant barriers to CLECs self-provisioning switching to serve mass market customers and required state commissions to develop and implement a batch cut process to overcome those barriers.

Q. Are hot cuts the largest operational and economic barrier to CLEC entry in the mass market?

A. In regard to the conversion of UNE-P to UNE-L customers, Yes. As discussed above, the ILEC's inability to perform hot cuts in a timely manner without undue service disruption to the customer was the key reason the FCC found that CLECs serving the mass market are impaired without access to unbundled local switching.[39] The FCC's finding was based on evidence regarding the economic and operational barriers caused by the cut over (i.e., hot cut) process.[40] The FCC stated,

> "...we conclude that the operational and economical barriers arising form the to cut process create an insurmountable disadvantage to carriers seeking to serve the mass market, demonstrating that competitive carriers are impaired without local circuit switching as a UNE."[41]

[37] See TRO footnote 1405
[38] See also footnote 19, regarding the 10.2 cent NRC to UNE-P and the $60 NRC to convert UNE-P to UNE-P, which essentially involves disconnecting unbundled local switching only!
[39] See TRO para. 419, 422.
[40] See TRO para. 459.
[41] See TRO para. 475.

Supra witness, Mark Neptune, provides ample testimony describing the many difficulties BellSouth still has in trying to provide hot cuts.

Q. What other operational barriers prevent CLEC Entry?

A. As discussed in the FCC's Order (TRO para. 456), state commissions must examine whether operational factors are impairing competitors, according to our impairment standard discussed in Part V. B. 1. In particular, state commissions must consider whether incumbent LEC performance in provisioning loops, difficulties in obtaining collocation space due to lack of space or delays in provisioning by the incumbent LEC, or difficulties in obtaining cross-connects in an incumbent's wire center, are making entry uneconomic for competitive LECs.[42]

Q. What economic barriers prevent CLEC Entry?

A. The FCC also required state commissions to investigate CLECs' potential revenues from serving enterprise customers in a particular geographic market against the cost of entry into that market. In evaluating competitive LECs' potential revenues, the states should consider all likely revenues to be gained from entering the enterprise market (not necessarily any carrier's individual business plan), including revenues derived from local exchange and data services.

BellSouth testimony of Dr. Randall S. Billingsley focuses on the cost of capitol without ever addressing whether such capitol is available **at any cost.** Billingsley addresses the fact that CLECs are in financial distress, but is silent whether capitol for

[42] See TRO para. 456.

expansion is available any longer. It is no longer 1998 and 1999. Equipment vendors such as Lucent and Nortel went to the edge of extinction based on their lending to CLECS who, lacking UNE-P, were unable to build critical mass to stay afloat, much less repay the loans. Those loans are non-existent today as any CLEC engineer knows. VC money similarly, and for the same reasons no longer exists. The ILECS refusal to honor interconnection agreement, provide collocation and UNE-P, excessive billing errors, has led to the failure of most CLES. Today the successful CLEC are deploying networks purchased from profits. No one else is deploying networks because the ILEC has clearly demonstrated its ability to avoid its obligations and wait out competitors. In all but a few instances he ILEC is winning, and that has eliminated investments in CLEC networks. The state must consider the opportunity for a market entrant to self-fund its network based upon profits from UNE-P.

The states should also consider the prices entrants are likely to be able to charge, after considering the prevailing retail rates the incumbents charge to the different classes of customers in the different parts of the state. In determining the cost of entry into a particular geographic market, the states should consider the costs imposed by both operational and economic barriers to entry. Paragraph 458 states:

> "The states must consider all relevant factors in determining whether entry is uneconomic in the absence of unbundled access to local circuit switching. For example, even in a market where retail rates would give competitive carriers the opportunity to earn considerable revenues, entry may nonetheless be uneconomic. For example, the potential revenues could be outweighed by a combination of even higher economic and operational costs, such as untimely and unreliable provisioning of loops, transport, or collocation by the incumbent LEC at high non-recurring charges, and significant costs to purchase equipment and backhaul the local traffic to the competitor's switch. However, where competitive LECs have the opportunity to earn revenues that outweigh the costs associated

with entry, carriers are not impaired without unbundled access to local circuit switching for DS1 enterprise customers."

Q. Does the BACE model account for CLEC's real world experience with BellSouth?

A. No. The BACE model looks at a theoretical world where BellSouth is able to complete hot cuts on a timely basis, where CLEC customers aren't left without service for days because BellSouth cannot resolve a hot cut issue with IDLC, and where CLEC customers don't blame the CLEC for problems with BellSouth's ineptitude and leave the CLEC.

Actual Switch Deployment: Local Switching Triggers

Q. Regarding issue 4(a), in which markets in BellSouth's service area are there three or more CLECs not affiliated with each other or BellSouth, including intermodal providers of service comparable in quality to that of BellSouth, serving mass market customers with their own switches?

A.

Based on my analysis of the several criteria the FCC requires state commissions to use to analyze CLEC provisioning of switching in a market and based on the market definition the FPSC should adopt, I find that there are no areas in BellSouth's territory where there are three or more CLECs not affiliated with each other or BellSouth serving mass market customers with their own switches.[43]

[43] This analysis is based on the criteria set forth by the FCC as I have described earlier in my testimony that each of the three CLECs must be actively providing voice services to mass market customers in that market and the CLEC must also be operationally and economically able and willing to provide service to all customers in that market. Additionally, there must not be any extenuating circumstances that create a significant barrier to entry such that even CLECs that self-provision their own switching would not be able to enter the market to serve mass market

Q. Regarding issue 4(b), In which markets in BellSouth's service area are there two or more CLECs not affiliated with each other or BellSouth, including intermodal providers of service comparable in quality to that of BellSouth, who have their own switches and are offering wholesale local switching to customers serving DS0 capacity loops in that market?

A. Based on my analysis of the several criteria the FCC requires state commissions to use to analyze CLEC provisioning of switching in a market and based on the market definition the FPSC should adopt, I find that there are no areas in BellSouth's territory where there are two or more CLECs not affiliated with each other or BellSouth providing wholesale unbundled switching to other CLECs that are serving mass market customers.[44]

Potential for Self-Provisioning of Local Switching

Q, Regarding Issue 5(a), in which markets in BellSouth's service area are there either two wholesale providers or three self-provisioners of local switching not affiliated with each other or BellSouth, serving end users using DS1 or higher capacity loops?

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customers. Further, as I discussed elsewhere in my testimony, the FCC has found that CMRS switching and Cable TV switching is not a viable substitute for the availability of ILEC-provided unbundled local switching.

[44] This analysis is based on the criteria set forth by the FCC as I have described earlier in my testimony that two CLECs must be actively providing wholesale switching services to CLECs that are providing voice services to mass market customers in that market and that such wholesale offering must allow retail CLECs to operationally and economically be able and willing to provide retail service to all customers in that market. Additionally, there must not be any extenuating circumstances that create a significant barrier to entry such that CLECs that are purchasing CLEC-provisioned wholesale switching would not be able to enter the market to serve mass market customers. Further, as I discussed elsewhere in my testimony, the FCC has found that CMRS switching and Cable TV switching is not a viable substitute for the availability of ILEC-provided unbundled local switching.

Where there are, can these switches be used to serve DS0 capacity loops in an economic fashion?

A. As discussed earlier in my testimony, there is not one identifiable wholesale provider of local switching in the state of Florida, regardless of area, much less two or more. The FCC has said that switches serving the enterprise (DS1) market cannot be counted toward meeting the threshold for the mass market triggers. (See TRO para. 508). Even though there is a possibility that switches being used to serve the enterprise market could be deployed to serve the mass market after the state commission implements a batch cut process, the state commission should not currently consider them for purposes of meeting the triggers. After the state commission implemented a batch cut process that was proven to work, the state commission could investigate those switches to see if they met all of the necessary criteria.

Q. Regarding Issue 5(b), in which markets in BellSouth's service area is there a carrier with a self-provisioned switch, including an intermodal provider of service comparable in quality to that of BellSouth, serving end users using DS0 capacity loops? Where there is, can this switch be used to serve DS0 capacity loops in an economic fashion?

A. Supra Telecom self-provisions switching in the following wire centers within the BellSouth territory: North Dade Golden Glades (NDADFLGG), and a remote off of that switch located in Miami Red Road (MIAMFLRR). Supra currently has 16 other collocation sites serving DLC service which is routed back to its switch. 10 of those DLCs serve customers in 8 different rate centers in LATA 460, the remaining 6 each

serve approx 512 per office lines throughout the state from Orlando to Pensacola in 6 different rate centers. All told Supra has the capacity to deploy 28,000 lines of DS0 service. This represents 0.4% of BellSouth's approximately 6.3 million lines in Florida. Due to various issues between the parties ranging from collocation, interconnection, billing and hot cuts, Supra is currently serving about 6,000 customers (0.09% of BellSouth's base). These percentages do not support Bellsouth's assertion that Supra represents the third CLEC trigger, or that Supra can serve all of its current UNE-P customers off of the existing switch, as required by the FCC. Supra is firmly committed to converting to a facilities based platform, and expanding its network by organically funding it from profits. Yet it took nearly 5 years of litigation, from application to space turn over to acquire the collocation spaces first applied for in 1998. As you can see, any delay benefits no one but the ILEC, and the means with which the ILEC can delay a CLEC choosing to deploy a network has been enough to force lesser carriers to fail completely. The states must foster competition by forcing the ILEC to continue to provide UNE-P. It has been available for such a short period of time in Florida as compared to the rest of the country.

Although there may be other CLECs self-provisioning switching in BellSouth's territory, I am not aware of their specific locations. As discussed elsewhere in my testimony, the FCC has stated that intermodal providers of service (i.e., CMRS and Cable TV) do not provide service comparable in quality to that of BellSouth. Hence, I currently know of only one CLEC self-provisioning switching and serving end users using DS0 capacity loops in the above markets.

Q. Regarding Issue 5(c), in which markets in BellSouth's service area do any of the following potential operational barriers render CLEC entry uneconomic absent access to unbundled local circuit switching:

A. Supra has collocated its own switch (and an associated remote) in two BellSouth central offices throughout Florida and is supporting 16 DLC sites off that switch. Supra is committed to the process of converting its 300,000 plus UNE-P customers to UNE-L, and will grow its network deployment beyond the 28,000 line current capacity if given the chance to do so. However, based on the problems Supra has experienced with collocation, UNE-P, billing and hot cuts there are operational and economic barriers in every market in BellSouth's territory.

Q. Regarding Issue 5(c)(i), BellSouth's performance in provisioning loops;

A. Refer tot the testimony of Mark Neptune in this docket.

Q. Regarding Issue (c)(i), 5.c.ii. difficulties in obtaining collocation space due to lack of space or delays in provisioning by BellSouth; or

A. Supra's collocation battles have been fought before this commission on several occasions and in other venues. Supra applied for collocation in 18 central offices in April 1998, and finally took possession of these spaces in March 2002, although problems existed until August 2002 when BellSouth finally resolved its problems and started billing rent, over 5 years later.

Q. Regarding Issue 5(c)(i), 5.c.iii. difficulties in obtaining cross-connects in BellSouth's

wire centers?

A. BellSouth, when provided with otherwise identical orders, cannot readily provision UNE crossconnects for network interconnection and trunking out of our interconnection agreement. Commonly, crossconnects are provisioned from the Special access tariff at a higher rate than the interconnection agreement. Virtually all DS1 and above crossconnects are provisioned randomly from office to office requiring large amounts of time and effort to resolve. This problem exists both on the line (customer) side and the network interconnection side.

For POTS loops served via UDLC, IDLC or IFITL, Supra is experiencing large amounts or order failures because the facilities necessary to convert the volume of loops Supra needs to convert just are not available. See the testimony of Mark Neptune for more detail on this subject.

Even for bare copper loops, Supra is experiencing an unacceptable situation which we believe is related to the infamously poor quality of Bellsouth's line records. Initially as the conversion process started, which should just require moving a crossconnect inside the central office, we were being presented with a significant number of Missed Appointments ("MA"s). A missed appointment occurs when a technician, in the field, cannot get access to the customers Network Interface Device ("NID").

The disturbing point to all of this is that a simple cutover merely requires moving two wires in the Central Office. However BellSouth dispatched a technician to the customer premises, without ever notifying Supra of the need for an appointment. The only rational explanation for this behavior is that BellSouth was performing a rearrangement of the wiring, for whatever reason, and couldn't find the appropriate pair

due to faulty cable records. In this case the only way to resolve this situation is to put a tone at the customer premises and find the wire at the crossbox, etc. If a technician could not get access (it had never requested), the conversion to UNE-L stopped and Supra was billed $90!

When Supra objected to this behavior and insisted they stop this practice, they did, and the number of lines which reported no dial tone ("NDT") after conversion quickly rose. This Commission should be well aware of a rash of such complaints from Supra customers over the past 30 – 90 days. In many cases it has taken multiple repair calls and customers have been without service for periods of 5-6 days with such regularity, Supra had to implement a program of loaning cellular phones to customers affected by loss of dialtone during a conversion from UNE-P to UNE-L until BellSouth could finally make the loop functional once again.

Q. Regarding Issue 5(d)(i), the costs of migrating BellSouth loops to CLECs' switches; or

A. BellSouth charges an exorbitant nonrecurring charge to Supra Telecom for converting UNE-P to UNE-L or migrating a Supra customer loop from BellSouth's switch to Supra's switch. I estimate that the charge is a multiple of 25 times the actual cost to BellSouth. It is not surprising that BellSouth would try to enforce an outrageous rate. BellSouth proposed a rate of $178 for resale to UNE-P conversions, but the FPSC later determined that the cost-based rate was only $1.47[45], less than 1% of the rate that

[45] FPSC order PSC-98-0810-FOF-TP, June 12, 1998.

BellSouth proposed. Subsequent FPSC TELRIC proceedings reduced that rate to $0.102 (10.2 cents)[46]

Supra's current interconnection agreement with BellSouth does not specifically address the NRC for UNE-P to UNE-L conversions. Bellsouth in sworn testimony in Federal court has stated that they have never produced a cost study for this and the FPSC has never heard testimony regarding this cost. Supra met with BellSouth on March 5, 2003 to discuss the conversion of Supra customers from UNE-P to UNE-L and to discuss the appropriate rate. In that meeting, BellSouth said the rate was $49.57 for the first line on an order, and $22.83 for additional lines on the order. In a letter from BellSouth dated May 21, 2003, BellSouth raised the rate further to $51.09. Subsequently they began billing Supra $59.31 to disconnect local switching by crossconnecting the loop to Supra's switch. However, as I stated above, there is no rate for this in the current Supra/BellSouth IA. The rate that BellSouth quoted to Supra was the NRC rate for new construction of a 2-wire analog voice grade loop (UEANL).

A hot cut, or UNE-P to UNE-L conversion, is a simple cross-connect as has been shown by several parties at the Commissions Oct. 28, 2003 meeting on hot cuts. All that a BellSouth central office technician has to do to transfer a customer's loop from BellSouth's switch to Supra's switch is (1) run a jumper cable from the Main Distribution Frame (MDF) to which the customer's UNE loop is attached to Supra's collocated equipment, and (2) notify the relevant Number Portability Administration Center (NPAC) that calls to those customers' numbers should be routed to Supra's network. Supra

[46] FPSC Order PSC-01-2051-FOF-TP, October 2001.

estimates that the entire process should take about 3 minutes per loop and that the cost should be less than $2.00.

Q. Regarding Issue 5(e), taking into consideration the above factors, in what markets in BellSouth's service area is it economic for CLECs to self-provision local switching and CLECs are thus not impaired without access to unbundled local circuit switching?

A. As discussed above, CLECs that self-provision local switching face significant economic barriers as due to the various interconnections CLECs must complete with BellSouth. E.g., BellSouth charges an exorbitant rate for collocation space and an exorbitant rate for hot cuts.

Q. Regarding Issue 5(f), for each market in BellSouth's service area, taking into account the point at which the increased revenue opportunity at a single location is sufficient to overcome impairment and the point at which multiline end users could be served economically by higher capacity loops and a CLEC's own switching (and thus be considered part of the DS1 enterprise market), what is the maximum number of DS0 loops that a CLEC can serve using unbundled local switching, when serving multiline end users at a single location?

A. 5 or 6. Above that it becomes economically feasible to provide that service via a DS1 loop if the customer has equipment to terminate a DS1 circuit. If a channel bank is

required to re-convert the DS1 service back to two wire service, the number of loops rises to 10-12 depending upon the cost of the CPE used.

Transitional use of unbundled local switching (§51.319(d)(2)(iii)(C))

Q. Regarding Issue 6, if the triggers in §51.319(d)(2)(iii)(A) have not been satisfied for a given BellSouth market and the economic and operational analysis described in §51.319(d)(2)(iii)(B) resulted in a finding that CLECs are impaired in that market absent access to unbundled local switching, would the CLECs' impairment be cured if unbundled local switching were only made available for a transitional period of 90 days or more? If so, what should be the duration of the transitional period?

A. No. The economic and operational problems that have been described above will not be cured by a 90 day transitional period or "rolling access" to the ILEC's unbundled local switching. At a minimum, CLECs would need twelve month's rolling access to the ILEC's unbundled local switching to address some of the problems, especially those related to customer churn. (See TRO para. 521-524).

Conclusion

Q. What are your findings and recommendations?

A. I find that CLECs are still impaired from providing local service to mass market customers without access to unbundled local switching from the ILEC. Accordingly, the FPSC should order the ILECs to continue offering mass market unbundled local switching.

Q. Does this conclude your Testimony

A. Yes

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
Judge Robert A. Mark

In the Matter of: CASE NO.: 02-41250-BKC-RAM

SUPRA TELECOMMUNICATIONS,

Debtor.
_____/

SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.,

Plaintiff,
vs.

BELLSOUTH TELECOMMUNICATIONS, INC.,

Defendant.
_____/

ADV. NO.: 02-1530-BKC-RAM-A

SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.,

Plaintiff,
vs.

BELLSOUTH TELECOMMUNICATIONS, INC.,

Defendant.
_____/

ADV. NO.: 02-1122-BKC-RAM-A

CONTINUED FIRST TRUE-UP HEARING
AND ALL MOTIONS ON THE CALENDAR

June 18, 2003

The above-entitled cause came on for hearing before the HONORABLE ROBERT A. MARK, Chief Judge of the UNITED STATES BANKRUPTCY COURT, in and for the SOUTHERN DISTRICT OF FLORIDA, at 51 Southwest 1st Avenue, Miami, Dade County Florida, on Wednesday, June 18, 2003, commencing at or about 10:30 a.m., and the following proceedings were had:

23

24 REPORTED BY: Margaret Franzen
Karen Patlak
25 Robin Gonzalez, RPR

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19 Q. Now, has BellSouth made improvements to
20 LENS in its OSS since that date?
21 A. Yes.
22 Q. Can you briefly describe those changes and
23 when they occurred?

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17 MR. MEZA: From June 2001, forward, there
18 were multiple -- Mr. Follensbee testified there were
19 multiple changes and improvements to LENS

630

14 BY MR. MEZA:
15 Q. Mr. Follensbee, do you know when BellSouth
16 made those changes and what those changes were?
17 A. Several changes were made. Let me explain
18 a little why changes are made. There is a process
19 called the change control process that is part of
20 what we put in place that allows CLECs to, as a

group, bring forward changes they want made to our interfaces to enhance their capabilities, to improve what's occurring with the use of the interfaces, and so we will schedule releases with the CLEC industry and they will prioritize what particular changes they

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would like to see and then we will work through them when those changes will occur.

There are probably -- there have been three or four major releases since June of 2001, each release enhancing further from the previous release the capabilities that the interfaces provide.

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Q. Okay. Has the Florida Public Service Commission found that BellSouth provides nondiscriminatory access through LENS to its OSS?

A. It has.

Q. And when did it make that decision and in what proceeding?

A. The written decision was rendered in September of 2002, and it was based on a record that started in March of 1999.

A F F I D A V I T

I, DAVID A. NILSON, am the Chief Technology Officer of Supra Telecommunications and Information Systems, Inc., and I am authorized to make this Affidavit on behalf of said corporation. The statements made in the foregoing comments are true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct this 7th day of January, 2004.

David A. Nilson

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

Sonia K. Kuster
MY COMMISSION # DD219368 EXPIRES
June 3, 2007
BONDED THRU TROY FAIN INSURANCE, INC.

The execution of the foregoing instrument was acknowledged before me this 7th day of January, 2004, by David A. Nilson, who [X] is personally known to me or who [ ] produced _____ as identification and who did take an oath.

My Commission Expires: 6-3-07

Sonia K. Kuster
NOTARY PUBLIC
State of Florida at Large

Print Name: SONIA K. KUSTER