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May 5, 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 040301 –TP
SUPRA'S RESPONSE TO BELLSOUTH''S ANSWER AND RESPONSE OF APRIL 28, 2004 TO SUPRA'S PETITION

Dear Mrs. Bayo:

Enclosed are the originals and fifteen (15) copies of Supra Telecommunications and Information Systems, Inc.'s (Supra) Response To Bellsouth's Answer And Response Of April 28, 2004 To Supra's Petition to be filed in the above captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return it to me.

Sincerely,

Steve B. Chaiken

Steve B. Chaiken
Assistant General Counsel

CERTIFICATE OF SERVICE
Docket No. 040301-TP

I HEREBY CERTIFY that a true and correct copy of the following was served via Facsimile, E-Mail, Hand Delivery, and/or U.S. Mail this 5th day of May 2004 to the following:

Jason Rojas/Jeremy Susac
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
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Nancy White
c/o Ms. Nancy H. Sims
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Steve B. Chaiken

By: Steve B. Chaiken

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Supra	)	
Telecommunications and Information	)	Docket No. 040301-TP
Systems, Inc.'s for arbitration	)	
with BellSouth Telecommunications, Inc.	)	Filed: May 5, 2004

SUPRA'S RESPONSE TO BELLSOUTH'S ANSWER AND RESPONSE TO SUPRA'S PETITION

Supra Telecommunications and Information Systems, Inc. ("Supra") by and through its undersigned counsel hereby files its Response to BellSouth Telecommunications, Inc. ("BellSouth") Response to Supra's Petition in the instant docket. In support thereof Supra states as follows:

BACKGROUND

On April 5, 2004, Supra filed a Petition to arbitrate a "rate dispute" in accordance with Sections 364.161(1) and 364.162(2), Florida Statutes. Pursuant to Florida Public Service Commission ("Commission") procedure, BellSouth was required to file an Answer. BellSouth is also entitled to file any dispositive motion that it believes to be relevant. In this instance, BellSouth did file an Answer along with several requests for affirmative relief. The affirmative relief, however, was mislabeled as a Response. Commission precedent allows this Commission to consider BellSouth's mischaracterized Response as a Motion for Affirmative Relief, which then permits Supra to file a Response. In its Response, BellSouth asks this Commission to affirmatively (1) treat Supra's petition for arbitration as a complaint, (2) direct Supra to engage in a "BFR process" for a new service, or (3) in the alternative, dismiss Supra's Petition because this matter has already, allegedly, been considered in the UNE cost docket. The undersigned believes that BellSouth inadvertently mislabeled its request for affirmative relief, and will have no objection to Supra filing a Response to its numerous requests for Commission action.

I. Memorandum Of Law

Rule 28-106.204(1), Florida Administrative Code, states in pertinent part as follows:

> **"All requests for relief shall be by motion. All motions shall be in writing unless made on the record during a hearing, and shall fully state the action requested and the grounds relied upon. . . When time allows, the other parties may, within 7 days of service of a written motion, file a response in opposition."**

Thus, a motion is by definition a request for relief. Black's Law Dictionary (5th Ed.) defines the word "motion" as **"[a]n application to a court or judge for purpose of obtaining a rule or order directing some act to be done in favor of the applicant"**. Black's Law Dictionary (5th Ed.) also defines the term "responsive" as **"[a]nswering"** and as something **"which directly answers the allegation"**. Given the above, it is reasonable to define a motion as a request for relief which sets forth a basis for that request; while a response should only answer the matters raised in the motion. If a response goes beyond merely answering the motion (e.g. raising new issues or seeking affirmative relief), then the response is no longer just a response (and arguably is in violation of Rule 28-106.204(1), Fla. Adm. Code).

In this proceeding, BellSouth has requested specific affirmative relief from this Commission in its "response". BellSouth's response is actually a motion seeking affirmative relief and should be treated as such.

In Order No. PSC-00-1777-PCO-TP (In re: Complaint of Supra Telecommunications and Information Systems, Inc. against BellSouth Telecommunications for violation of the Telecommunications Act of 1996; petition for resolution of disputes as to implementation and interpretation of interconnection, resale and collocation agreements; and petition for emergency relief; Docket No. 980119-TP), Supra sought to strike a motion for reconsideration which had been

filed by BellSouth several months after the filing deadline for such motions. In denying Supra's motion to strike, this Commission stated in pertinent part as follows:

> "Although styled as a Motion for Reconsideration, BellSouth's Motion does not seek reconsideration of any specific Commission Order. Instead, BellSouth asks that we determine that the issue of whether BellSouth has modified the ALEC ordering system . . . should be resolved in Dockets Nos. 960786-TL and 981834-TP. . . Florida courts have held that '[a] pleading will be considered what it is in substance, even though mislabeled.' Mendoza v. Board of County Commissioners/Dade County, 221 So.2d 797, 798 (3rd DCA 1969). See also Sodikoff v. Allen Parker Company, 202 So.2d 4 (Fla.App. 1967); Hough v. Menses, 95 So.2d 581, 582 (Fla. 1957). 'Courts should look to the substance of a motion and not the title alone.' Mendoza v. Board of County Commissioners/Dade County, 221 So.2d 797, 798 (3rd DCA 1969)."

See Order No. PSC-00-1777-PCO-TP at pages 6-7. Accordingly, it is incumbent upon this Commission to look into the substance of a motion or response, rather than merely its label. Where a response crosses the line and actually seeks relief, then the opposing party should be given an opportunity to respond as contemplated by Rule 28-106.204(1), Fla. Adm. Code.

Part I, Section A of BellSouth request asks this Commission to change the request for arbitration into a complaint. Part II, entitled legal analysis states: "Supra is legally barred from relitigating the cost docket . . . and thus its petition should be dismissed;" Part II, Section A., BellSouth argues that the petition should be construed in such a way that requires the petition's dismissal; Section B, requests that this Commission order Supra to follow the "BFR process" before brining this action to this Commission; and finally in Section C., BellSouth once again states: "Supra . . . failed to pursue this in the cost docket which is closed and cannot be relitigated." Given the fact that BellSouth's *entire* "response" is a request that this Commission act to either temporarily postpone this proceeding or to have the petition dismissed outright, Supra believes, given the authority referenced above, that it is legally entitled to file a Response

to all of BellSouth's arguments in support of its requests for affirmative relief in its – for all practical purposes - Motion for Affirmative Relief.

II. Procedural Status

A. The Petition Should Be Treated As An Arbitration, Not A Complaint.[1]

Supra's petition is not a complaint that arises out of the parties' present interconnection agreement dated July 15, 2002 (the "Present Agreement"). Rather, it is a request for arbitration of a rate element (NRC for UNE-P to UNE-L conversions) that is not addressed in either the Present Agreement or the Generic UNE Cost Docket (Docket No. 990649-TP).[2] BellSouth attempts to minimize this issue by characterizing it as merely a billing dispute that can be handled as a complaint resolution -- not as an arbitrated issue. However, as Supra pointed out in its petition, BellSouth is billing Supra for a service that 1) was never arbitrated or agreed to by the parties, and 2) when based upon a strict reading of the interconnection agreement, is a service that, by default, BellSouth has agreed to provide without charge.

However, despite the fact the Present Agreement does not set forth a NRC rate for a UNE-P to UNE-L conversion and BellSouth should, pursuant to said Agreement, cover the cost of providing those conversions, Supra is willing to amend the Present Agreement to allow BellSouth to recover its reasonable costs of providing the service. Yet, despite Supra's good-faith efforts to establish the reasonable cost-based NRC rate for UNE-P to UNE-L conversions, BellSouth has taken the unreasonable position of applying the NRC established for retail to

[1] Supra notes that Supra first approached BellSouth to negotiate this issue as early as March 5, 2003, and on June 16, 2003, Supra filed a Complaint with the Federal Communications Commission ("FCC") requesting that the FCC consider this very issue on its accelerated docket. The FCC has since declined to hear this issue.

[2] Docket No. 990649-TP, Order No. PSC-01-1181-FOF-TP; Before the Florida Public Service Commission in re: Investigation into Pricing of Unbundled Network Elements; Issued: May 25, 2001; (hereinafter referred to as the "UNE Cost Docket").

UNE-P conversions and has refused to move from that position. Whether it is correct to use the NRC rate that was established for retail to UNE-L conversions as the de facto NRC rate for UNE-P to UNE-L conversions is not a billing dispute. It is subject to an arbitration before this Commission which can investigate BellSouth's true costs of providing UNE-P to UNE-L conversions and establish the reasonable cost-based NRC rate.

Section 364.161(1) clearly allows parties to petition the Commission to arbitrate disputed issues. Additionally, the Commission is obligated to render a decision within 120 days. Section 364.161(1), Florida Statutes, provides in part:

> The parties shall negotiate the terms, conditions, and prices of any feasible unbundling request. If the parties cannot reach a satisfactory resolution within 60 days, either party may petition the commission to arbitrate the dispute and the commission shall make a determination within 120 days...[t]he prices, rates, terms, and conditions for the unbundled services shall be established by the procedure set forth in Section 364.162.[3]

Chapter 364.162 anticipated cases such as this when it provided that "If a negotiated *price* is not established after 60 days, either party may petition the commission to establish nondiscriminatory rates, terms, and conditions of interconnection."[4] Further, the Present Agreement provides for dispute resolution. Indeed, the Present Agreement specifically requires for such disputes to "... be taken to the Commission for resolution." The Present Agreement provides that "the parties agree that any other disputes that arise as to the interpretation of any provision of this Agreement or as to *the proper implementation of this Agreement*, may be taken

[3] Emphasis added.
[4] Chapter 364.162(1) (Emphasis added).

to the Commission for resolution." Pursuant to these provisions, Supra has brought its "implementation" dispute before this Commission.

Although BellSouth argues that the applicable filing deadlines to this proceeding should be construed as those applicable to an arbitration proceeding, BellSouth calls on this Commission to treat and resolve this petition "... as a complaint arising out of an interconnection agreement." However, Supra disagrees with BellSouth that this Petition should be treated and resolved as a complaint arising out of an existing interconnection agreement because by so doing, will only enable BellSouth to further delay this issue which is already over a year old, instead of convening the schedule that is called for in an arbitration. Supra calls upon this Commission to establish a nondiscriminatory rate[5] for the UNE-P to UNE-L conversion charge which BellSouth, itself, agrees is not specifically set forth in the Present Agreement.[6] Further, Supra calls upon this Commission to proceed with the scheduling of an Issue Identification Conference in the instant proceeding.

Complaint is legally improper

Interestingly enough, a Complaint, pursuant to Rule 25-22.036, F.A.C, is only brought if one party believes that another party is in violation of a Commission rule, statute, or order. In this case, Supra is not alleging that BellSouth is in violation of any of these three. Instead, Supra is requesting that this Commission set a rate pursuant to chapter 364.162, Florida Statutes, which requires that the Commission conduct an arbitration. Therefore, a Complaint would not be the

[5] Chapter 364.162(1) empowers the Commission with the rate setting authority in cases such as this, whereby the parties are unable to negotiate an agreeable rate. This section states in relevant parts that "If a negotiated price is not established after 60 days, either party may petition the [Florida Public Service] commission to establish nondiscriminatory rates, terms, and conditions of interconnection and for the resale of services and facilities."

[6] See Answer and Response of BellSouth Telecommunications, Inc.; Docket No. 040301-TP, in Re: Petition of Supra Telecommunications and Information Systems, Inc, for Arbitration With BellSouth Telecommunications, Inc, April 28, 2004 (hereafter referred to as "Answer and Response of BellSouth"), p. 5.

proper legal vehicle to bring this action to this Commission. Rule 28-106.201, F.A.C., would also be an improper vehicle for bringing this action to this Commission. This latter rule is specifically used when parties wish to challenge some agency action. See 28-106.201(b),(c),(d) and (e), F.A.C. For this reason alone, this Commission should not treat this Petition as a Complaint even if it were so inclined.

B. The Dispute Is Appropriate For Expedited Procedures

BellSouth did not seek any affirmative relief when it argued that expedited relief should be denied. Thus, no argument is included in this section in response to BellSouth's assertion that Supra should be denied expedited relief.

II. Supra's Response to BellSouth's Legal Analysis Regarding Dismissal

BellSouth argues that Supra should agree to use the NRC for converting retail service to UNE-L as the appropriate NRC rate for converting UNE-P to UNE-L. Supra disagrees because it has sufficient evidence to show that a cost-based NRC for converting UNE-P to UNE-L is much less than the NRC for converting retail service to UNE-L. BellSouth tries to erect a wall of smoke and mirrors and advances invalid reasons as to why it believes Supra's position is without merit. All of BellSouth's "reasons" are in fact, misrepresentations of Supra's petition and are themselves without merit.

First, BellSouth misrepresents the Commission's order and alleges that the Commission-ordered rate for a retail to UNE-L hot cut determined in Docket 990649-TP should also apply to UNE-P to UNE-L hot cuts,.[7] BellSouth does not provide any cite to the order indicating that the

[7] Id. p. 4.

Commission intended that to be the case. Not surprisingly, as the Commission intended no such thing.

Second, BellSouth misrepresents Supra's dispute and alleges that Supra does not base the price on differences between a retail to UNE-L hot cut versus a UNE-P to UNE-L hot cut. Instead, BellSouth alleges that Supra claims the only difference is whether or not a technician dispatch is required and then claims that it is "a difference for which the Commission already has accounted."[8] BellSouth completely ignores the substantial and substantive evidence provided in Exhibit A to Supra's petition which discusses in great detail, several different cost accounts and work functions that are different for a UNE-P to UNE-L conversion than for a retail to UNE-L conversion and that result in a lower cost.

Finally, BellSouth again misrepresents Supra's position and claims that Supra seeks to relitigate the UNE Cost Docket.[9] Such is not the case. Supra seeks to arbitrate the price for a service that was never reviewed in the Commission's cost docket or in the arbitration with BellSouth resulting in the Present Agreement.[10] Each of BellSouth's arguments shall be discussed in further detail.

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[8] Id. p. 4.
[9] Id. p. 4.
[10] See Docket No. 001305-TP; Order No. PSC-02-0413-FOF-TP; Before The Florida Public Service Commission In re: Petition by BellSouth Telecommunications, Inc. for Arbitration of Certain Issues in Interconnection Agreement With Supra Telecommunications and Information Systems, Inc.; Issued: March 26, 2002.

A. Response to Argument #1: The UNE Cost Docket Did Not Determine an NRC for a CLEC UNE-P to UNE-L Hot Cut.

The Commission's Order in the UNE Cost Docket did not establish an NRC for a UNE-P to UNE-L conversion nor did it contemplate substituting the NRC for a retail to UNE-L conversion as a surrogate. In the UNE Cost Docket, the Commission investigated and discussed NRCs for only two types of hot cuts (conversions). They were the NRC for:

1) converting a BellSouth retail line to a CLEC's UNE-P facilities[11]; and
2) converting a BellSouth retail line to a CLEC's UNE-L facilities.[12]

The third category, an NRC for converting a customer from a CLEC's UNE-P facilities to a CLEC's UNE-L facilities was never discussed nor contemplated in the UNE Cost Docket. It is not surprising that an NRC for converting a CLEC's UNE-P facilities to a CLEC's UNE-L facilities was never discussed because the NRC for converting a BellSouth retail line to a CLEC's UNE-P facilities was discussed very little in the docket or the order. Regarding the lack of testimony on the issue of UNE-P NRCs, the Commission noted that, "the parties presented very little testimony on this issue."[13]

Additionally, nowhere in the order does the Commission ever state that it considers UNE-P to be the same as BellSouth's retail and that the rate established for the conversion of BellSouth's retail to UNE-L should be the same as for converting UNE-P to UNE-L. BellSouth's allegations that the Commission "assumed" that BellSouth's retail and CLEC UNE-P were the same thing for purposes of determining the appropriate NRC are nothing more than BellSouth's

[11] NRCs for UNE-P are discussed in Section 14.A, pp. 534-540.
[12] This is when a CLEC builds its own switching and transport, but leases the unbundled copper loop ("UCL") from BellSouth. NRCs for UCLs are discussed in Section 10, pp. 327-433, with rates being provided in section 11.A.
[13] See UNE Cost Docket, Order 01-1181-FOF-TP, p. 534.

wishful thinking. The simple truth is that none of the parties (including BellSouth) nor the Commission addressed the issue of setting an appropriate cost-based NRC for converting a CLEC's UNE-P facilities to UNE-L. That is why Supra has brought this issue before the Commission. The Commission needs to determine the reasonable and appropriate NRC for converting a CLEC's facilities from UNE-P to UNE-L.

B. Response to Argument #2: Supra bases the price difference on multiple work task differences between a retail to UNE-L hot cut versus a UNE-P to UNE-L hot cut.

BellSouth misrepresents Supra's dispute and alleges that Supra bases the difference between a retail to UNE-L conversion NRC and a UNE-P to UNE-L conversion NRC as solely being the fact that a technician dispatch is not required for the UNE-P to UNE-L conversion. BellSouth goes on to claim that it is "a difference for which the Commission already has accounted."[14]

Exhibit A to Supra's petition provides substantial and substantive evidence and discusses in great detail the many differences that exist between the two different UNE-L conversions in question. There are several different cost accounts and work functions that are different for a UNE-P to UNE-L conversion than for a retail to UNE-L conversion and that result in a lower cost for a UNE-P to UNE-L conversion.

As part of the attempt to negotiate a reasonable NRC rate for a UNE-P to UNE-L conversion, BellSouth provided Supra with the Florida cost study identifying the various work tasks and costs associated with the retail to UNE-L conversion and that were used to calculate

[14] See Answer and Response of BellSouth, p. 4.

the NRC. The BellSouth cost study did not include the Commission-ordered adjustments from the Generic UNE Cost Docket and did not include any changes to reflect the fact that this was for a UNE-P to UNE-L conversion rather than a retail to UNE-L conversion. The cost study represented BellSouth's original cost position for NRC conversion charges.

Exhibit A of Supra's petition noted several work tasks that would not be performed when BellSouth completed a UNE-P to UNE-L conversion (as opposed to a retail to UNE-L conversion) and would therefore result in a lower cost for a UNE-P to UNE-L conversion. These differences include, but are not necessarily limited to, the following:

- BellSouth's cost study erroneously treats nonrecurring UDLC costs as the same as IDLC costs even though no method for doing IDLC properly has been arrived at.
- BellSouth failed to treat UDLC costs the same as home run copper NRC costs.
- BellSouth cost study erroneously assumes that a truck roll is required on 100% of the conversions.
- BellSouth's cost study erroneously assumes that a conversion takes 48.91 minutes to complete rather than the 2.3 minutes to complete that it testified to in the Commission's recent TRO proceedings.
- BellSouth's cost study erroneously assumes that it takes 12.75 minutes to complete the (431X) labor grade activity associated with a conversion rather than 2.3 minutes.
- BellSouth's cost study erroneously assumes that Outside Plant personnel are involved and need travel time.
- BellSouth's cost study erroneously includes costs for manual order coordination and other manual labor costs that Supra understood BellSouth agreed to exclude per, an agreement reached at a meeting with BellSouth on March 5, 2003.
- BellSouth's cost study erroneously includes significant engineering charges that are allocated for the cutover or a working line.

As Supra has shown (now and in its petition), there are several work tasks and costs that are different for a UNE-P to UNE-L conversion than there are for a retail to UNE-L conversion and will result in a lower NRC for a UNE-P to UNE-L conversion. It is imperative that the Commission arbitrate Supra's dispute with BellSouth and establish a cost-based NRC rate for UNE-P to UNE-L conversions.

C. Response to Argument #3: Supra is not seeking to relitigate the cost docket.

Supra is not seeking to relitigate the UNE Cost docket. As discussed above in great detail to BellSouth's Argument #1, the Commission did not establish a rate for a UNE-P to UNE-L conversion. Supra simply seeks to arbitrate the price for a service that was never reviewed in the Commission's UNE Cost docket or set forth in the Present Agreement.

III. The Agreement Should Not Be Construed To Provide For The Recovery of The Commission-Ordered $59.31 Nonrecurring Charge.

BellSouth does not dispute that the Present Agreement does not specifically contain an NRC for a UNE-P to UNE-L conversion. Accordingly, in shotgun-style, Bellsouth has fabricated a number of fanciful arguments in hopes that one of their arguments sticks. The basic premise behind all of BellSouth's arguments is that "other" NRCs should be used as a surrogate for the UNE-P to UNE-L conversion NRC under the theory that they are "the same thing." In essence, BellSouth argues that, "if it looks like a duck, walks like a duck, and quacks like a duck, it must be a duck." However, BellSouth's examples are nothing more than BellSouth trying to pass off an elephant as a duck.

As Supra has already discussed, a UNE-P to UNE-L conversion is different than a retail to UNE-L conversion NRC. Accordingly, the cost of the UNE-P to UNE-L conversion NRC "duck" is lower than the cost of the retail to UNE-L conversion NRC "elephant." Since

BellSouth has no material support for its argument that the NRC for retail to UNE-L conversions should be used as the surrogate for the NRC for UNE-P to UNE-L conversions, BellSouth has fabricated a number of bogus arguments. While not all of BellSouth's arguments deserve addressing, some of the more fanciful arguments should be responded to.

A. The Present Agreement Should Not Be Read To Say Anything Other Than What It Says.

BellSouth argues that "The terms of the Agreement ... *should be read* to require the $59.31 nonrecurring charge for a hot cut from a UNE-P arrangement to an unbundled loop."[15]. BellSouth does not point to any Commission Order that provides support for its argument because the Commission has never stated anything to that effect. BellSouth concedes that the Present Agreement does not set a specific NRC rate for UNE-P to UNE-L conversion when it states, "..., BellSouth agrees that the Agreement does not specifically set a "UNE-P to UNE-L" conversion charge,..."[16] BellSouth should not then be permitted to argue that other NRC rates should stand in as surrogates for the UNE-P to UNE-L conversion NRC rate and refuse to negotiate a reasonable cost-based rate.

B. BellSouth's Retail Service and a CLEC's UNE-P Service Are NOT the Same Thing. Therefore, the NRC rate for Retail to UNE-L Cannot Be Used for the NRC for UNE-P to UNE-L

BellSouth alleges that its retail service and a CLEC's UNE-P service are "the same thing" and concludes then that the Commission should simply use the NRC for converting BellSouth retail to CLEC UNE-L as the NRC for converting a CLEC's UNE-P facilities to UNE-L.

[15] Id. p. 5. Emphasis added.
[16] Id. p. 5.

However, in the Supra/BellSouth arbitration, BellSouth's own witness testified that BellSouth's retail service and CLEC's UNE-P service were *different services* because the CLEC's UNE-P service was more than just a billing change.[17] Clearly, since BellSouth's retail service and a CLEC's UNE-P service are two completely different services, it would be inappropriate to use the retail to UNE-L conversion NRC as the surrogate for the UNE-P to UNE-L conversion NRC.

In the section of the Arbitration Order discussing the Coordinated Cut-Over Process (Section R), BellSouth's Witness, Mr. Kephart testified that it costs more to cut over BellSouth's retail service to CLEC UNE-P than it does to cut it over to CLEC resale because UNE-P was "not exactly a billing change."[18] In discussing the conversion of BellSouth retail to CLEC UNE-P, Kephart testified that:

> "We are effectively turning over a portion of our plant on the UNE basis to another company, and there are billing issues that have to go with that, because that's a different price for doing that than it is for, say, resale, but - so we have to address that within our systems and make sure it's recorded correctly so that we can handle everything, but **it is a case where now the CLEC has ownership of the physical plant through leasing it from us versus a resale situation, so there is a difference from a systems standpoint, in particular.**" (emphasis added.)

BellSouth has testified that CLEC UNE-P service is not the same as a BellSouth's own retail service, let alone a CLEC reselling BellSouth's retail service. If, as BellSouth has testified, BellSouth's retail service is not the same as a CLEC's UNE-P service, then the NRC for converting BellSouth's retail service to CLEC UNE-L cannot be used as a surrogate for the NRC to convert a CLEC's UNE-P facilities to UNE-L.

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[17] See Supra/BellSouth Arbitration Order p. 111-112.
[18] Id. pp. 111-112.

C. The Fact That Supra Paid Bellsouth's NRC for Retail To UNE-L Conversions and NRC for UNE-P To UNE-L Conversions does not mean that Supra agrees.

On page 7 of their alleged Response, BellSouth alleges that Supra agrees to the $59.31 NRC rate for UNE-P to UNE-L conversions because Supra has already paid that rate to convert 18,000 customers from UNE-P to UNE-L. In actuality, Supra utilized credits and absolutely no actual money exchanged hands. The fact that Supra utilized credits at the high NRC to convert 18,000 loops from UNE-P to UNE-L does not mean that Supra agrees with the rate charged by BellSouth for the hot cut. The only way Supra could move ahead with its business plans to move customers to its own switches was to pay these onerous rates that BellSouth forced upon it. If every CLEC had put its business plans on hold until BellSouth offered UNEs and NRCs at cost-based rates, hot cuts with minimal errors, and order entry systems that provided on-line edit checking, there would be no CLEC competition in Florida today.

D. Vague Descriptions Of Services In The Present Agreement Cannot Be Construed To Apply To An NRC For UNE-P To UNE-L Conversions.

BellSouth cites section 22.2 of the General Terms and Conditions in the Supra/BellSouth interconnection agreement states where the Commission has establish rates for network elements describe in the interconnection agreement that those rates shall apply.[19] BellSouth then argues that the service of converting UNE-P to UNE-L is similar to converting BellSouth's retail service to UNE-L so the NRC for converting BellSouth's retail service to UNE-L should apply to the service of converting UNE-P to UNE-L. As discussed previously, there are significant cost differences between the two services that each service must be priced out based on its own costs.

[19] See Answer and Response of BellSouth, p. 7.

Applying this logic, BellSouth should accept an argument that the description of the termination of local traffic describes the termination of intrastate toll traffic and that Supra's intrastate long distance traffic should only be charged reciprocal compensation rates rather than intrastate switched access rates. Clearly BellSouth would not agree to charge Supra the lower reciprocal compensation rates. Yet this is the same fallacy BellSouth is putting forward and asking this Commission to accept when it argues for the surrogacy of using the NRC of the retail to UNE-L conversion for the UNE-P to UNE-L conversion.

Interestingly, BellSouth did not cite GT&C §22.1 which states that if a party has an obligation to do something, it [BellSouth] is responsible for its own costs in doing it, "except as otherwise specifically stated."

E. Supra's Request for a UNE-P to UNE-L Conversion NRC Does Not Fall Under the Bona Fide Request/New Business Request Process.

BellSouth argues that Supra must follow the Bona Fide Request/New Business Request process if the Present Agreement does not contain a process for converting UNE-P to UNE-L.

The process BellSouth is referring to is used when there is actually no process in effect at the time of the request. The BFR process requires BellSouth to develop such a process and the CLEc then reviews it and negotiations over the "process" continue for months. In this case, the "process" is well established. This issue in this case is the rate and not the process; and thus the BFR mechanism is not appropriate under any circumstances. BellSouth is asking this Commission to dismiss this petition and order Supra to undergo a BFR process for a process that BellSouth already has in place. Evidence of the present existence of this process can be found in

BellSouth's efforts to show case its "process" during the TRO proceeding. The only issue is the rate. There is no appropriate rate established for this present process.

Supra's request for a cost-based NRC is not a request for a new business service because BellSouth has already been providing UNE-P to UNE-L conversions to Supra. In fact, in the past five months alone, BellSouth has provided over 18,000 UNE-P to UNE-L conversions to Supra. The dispute is not over whether BellSouth should provide a new service, but rather what the price of the existing service should be. Supra's petition is a request for the Commission to arbitrate an issue over which Supra and BellSouth have attempted to negotiate a reasonable resolution and have come to an impasse.

BellSouth and Supra have been attempting to negotiate and reach a resolution on setting an appropriate rate since at least March 5, 2003. Additionally, on June 16, 2003, Supra filed a Complaint at the Federal Communications Commission ("FCC") and requested that the FCC consider this very rate issue on its accelerated docket. The request to place the issue on the accelerated docket was denied. Supra submits that BellSouth has actual knowledge of Supra's dispute: that the non-recurring charge BellSouth is currently charging Supra for an individual hot-cut from UNE-P-to-UNE-L is unjustified. BellSouth has explicitly refused to negotiate this matter any further with Supra. Hence, Supra has filed its petition and is asking the Commission to arbitrate this issue.

Supra requests this Commission to determine the appropriate non-recurring rate, if any, which BellSouth is entitled to charge Supra under the Present Agreement for a hot-cut from UNE-P to UNE-L. The rate, if applicable, must be just, reasonable and non-discriminatory and

must also be "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection [service]."[20]

BellSouth's misrepresents that the $59.31 NRC rate it charges CLECs to convert UNE-P lines to UNE loops was approved by the Commission.[21] Specifically, BellSouth states that it "offers to convert UNE-P Lines to UNE loops for all CLECS at the "commission –ordered" rate of $59.31 (emphasis added). In reality, the Commission has never established an NRC for UNE-P to UNE-L conversion; not in the Generic UNE Cost Docket, not in AT&T's or Supra's interconnection agreement with BellSouth, nor in any other interconnection agreement that Supra is aware of. Furthermore, BellSouth has not (and cannot) provide a single cite to any Commission order or interconnection agreement where the Commission has stated that $59.31 is the rate it approved for a UNE-P to UNE-L conversion NRC. As such, the rate is invalid and neither Supra nor any other CLEC should be required to pay that inflated NRC rate for a UNE-P to UNE-L conversion.

IV. The NRC Rate For a Retail to UNE-L Conversion is NOT the Same as the NRC for a UNE-P to UNE-L Conversion.

Some of the same points made in Part II, B., of Supra's Response are included here also. This section does contain additional points not included earlier herein. To be consistent, however, Supra is responding in the order in which BellSouth presented its requests for affirmative relief.

BellSouth alleges that BellSouth's retail service and a CLEC's UNE-P service are "the same thing" so the Commission should simply use the NRC for converting BellSouth retail to

[20] See §252(d)(1)(A) of the 1996 Federal Telecommunications Act.
[21] See Answer and Response of BellSouth, p. 9.

CLEC UNE-L as the NRC for converting a CLEC's UNE-P facilities to UNE-L. However, in the Supra/BellSouth arbitration, BellSouth's own witness testified that BellSouth retail service and CLEC's UNE-P service were different services. Since these are two completely different services, it would be inappropriate to use the retail to UNE-L conversion NRC as the surrogate for the UNE-P to UNE-L conversion NRC.

In the Arbitration Order BellSouth's Witness, Mr. Kephart, testified that the difference meant it cost more to cut over BellSouth's retail service to CLEC UNE-P than it did to cut it over to CLEC resale because UNE-P was "not exactly a billing change."[22] In discussing the conversion of BellSouth retail to CLEC UNE-P, Witness Kephart testified that:

> "We are effectively turning over a portion of our plant on the UNE basis to another company, ... it is a case where now the CLEC has ownership of the physical plant through leasing it from us versus a resale situation, so **there is a difference from a systems standpoint, in particular**." (emphasis added.)[23]

As BellSouth has testified, CLEC UNE-P service is not the same as a BellSouth's own retail service. Thus, the NRC for converting BellSouth's retail service to CLEC UNE-L cannot be used as a surrogate for the NRC to convert a CLEC's UNE-P facilities to UNE-L.

BellSouth also alleges that "the work steps involved in a conversion from retail to UNE-L are the same as those involved in a conversion (of) UNE-P to UNE-L and thus the non-recurring cost is the same."[24] There are upwards of one hundred work steps required to convert retail service to UNE-L. While Supra agrees that many of the work steps are similar for converting UNE-P to UNE-L, there are many work steps that are not necessary or are significantly different

[22] See Arbitration Order pp. 111-112.
[23] Id. pp 111-112.
[24] See Answer and Response of BellSouth, p. 10.

when converting from UNE-P to UNE-L. As Supra described above, there several differences between the work processes used in the two conversion processes including, but not limited to:

a. Treatment of nonrecurring UDLC costs

b. Treatment of UDLC costs.

c. Treatment of a truck roll (truck rolls are not required for UNE-P to UNE-L conversions).

d. Only 2.3 minutes to complete the conversion rather than 48.91 minutes or 12.75 for the (431X) labor grade activity associated with a conversion.

e. Outside Plant personnel are not involved.

f. No travel time required.

A CLEC's UNE-P service is not the same as a BellSouth's own retail service. Thus, the NRC for converting BellSouth's retail service to CLEC UNE-L cannot be used as a surrogate for the NRC to convert a CLEC's UNE-P facilities to UNE-L.

V. Summary

Supra calls upon this Commission to see through BellSouth's tactics that seek to confuse a genuine issue of setting an appropriate NRC for UNE-P to UNE-L conversions – something which was not anticipated, intended, nor specifically decided by this Commission in either the Generic UNE Cost Docket or in Supra's arbitration docket with BellSouth. Certainly, this is not a case of wanting to relitigate pricing as BellSouth would call it. Instead, it is a simple case of Supra requesting that the Commission establish a NRC price for a type of conversion that has never been considered. Without the Commission's assistance in this matter, the Commission's effort to implement and foster local competition in Florida's telecommunications market will be seriously impeded.

This Petition is seeking to set a price for a service that this Commission did not anticipate and therefore did not set a price for. Furthermore, Supra is the CLEC that is most impacted by the absence of this NRC. If the Commission for whatever reason decides to open a generic proceeding, in lieu of proceeding with this arbitration, Supra would ask the Commission to establish an interim NRC rate not to exceed $5.28 for UNE-P to UNE-L conversions as discussed in the initial petition. After an interim NRC rate is established, the Commission could take the time it felt it needed to initiate a proceeding on its own motion to investigate this issue on a generic basis.

Respectfully submitted this 5th day of May 2004.

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